



Finance
& Services

NSW Government Policy on Aboriginal Participation in Construction

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NSW Procurement Board Secretariat
NSW Office of **Finance & Services**
T 02 9372 7748
F 02 9372 8177
E nswbuy@finance.nsw.gov.au



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Introduction

Government procurement provides a significant opportunity to increase Aboriginal skills and economic participation. The NSW Government Aboriginal Participation in Construction Policy is intended to support the NSW Government Plan for Aboriginal Affairs, [OCHRE](#). OCHRE aims to support strong Aboriginal communities in which Aboriginal people actively influence and fully participate in social, economic and cultural life. It recognises that the business community has a key role to play in broadening opportunities for Aboriginal people and that the NSW Government can use its relationship with business to deliver positive social outcomes.

This policy will contribute to the following policy aims of OCHRE:

- increasing school attendance and retention
- increasing student transitions from school employment or tertiary education
- increasing the number of Aboriginal people employed
- increasing the number of Aboriginal owned businesses.

The implementation of this policy is a key deliverable under the Aboriginal Economic Development Framework, an OCHRE connected initiative, which seeks to further empower Aboriginal people, communities and businesses to drive stronger economic outcomes. It will enable businesses in the construction sector to contribute to activities identified under the OCHRE industry based agreements and opportunity hubs.

Economically empowered Aboriginal workers and businesses also support the broader NSW Economic Development Framework, strengthening the global competitiveness of NSW.

Commencement

This policy commences on 1 May 2015, replacing the 2007 Aboriginal Participation in Construction Guidelines. It will apply to all relevant NSW Government construction contracts signed on or after the commencement date.



Who does the policy apply to?

The policy applies to all NSW Government departments, statutory authorities, trusts and other government entities (collectively referred to as 'agencies').

State owned corporations are encouraged to adopt aspects of the policy that are consistent with their corporate intent.

Which construction projects are covered by the policy?

This policy applies to all government construction projects that meet the criteria set out below. Construction includes building maintenance and civil engineering. Construction related support activities, such as financial, advisory, architectural and professional services may also be included where it is considered appropriate to achieve the policy goals.

Construction projects that are being undertaken jointly with the private sector are included in this policy, as are projects undertaken on land not owned by the government or where the built asset will be owned by a non-government entity.

There are three categories of projects that are impacted by this policy:

Category 1 Projects nominated by an agency that are primarily directed to one or more Aboriginal communities. This includes projects where an Aboriginal community is the sole or predominant beneficiary, is a key user group or a predominant stakeholder.

Category 2 All other construction projects where the estimated value is over \$10 million.

Category 3 All other construction projects where the estimated value is over \$1 million.



Applying the policy

Targeted project spend

The targeted project spend is a percentage of the total estimated value of the contract that is spent to support Aboriginal participation. Individual agencies are responsible for setting the targeted project spend on each project, in line with the policy goals. Where an agency considers that the estimated value of the contract includes significant amounts of expenditure which are unrelated to design and construction, these may be discounted from the estimated contract value for the purposes of identifying the targeted project spend. Agencies may also set a higher targeted project spend if considered appropriate.

This policy sets out a long term goal and short term incremental goals.

	1 May 2015	1 July 2016	Long term
Category 1	Indicative minimum target of 1.5 per cent	Mandatory minimum target of 1.5 per cent	Mandatory minimum target of 5 per cent
Category 2	Indicative minimum target of 1.5 per cent	Mandatory minimum target of 1.5 per cent	Mandatory minimum target of 4 per cent
Category 3	Indicative minimum target of 1.5 per cent	Mandatory minimum target of 1.5 per cent	Mandatory minimum target of 3 per cent

The NSW Procurement Board (the Board) may vary these targets at any time and will adjust the mandatory minimum target percentage upwards towards the long term goal as they are progressively achieved. Agencies may also set the target using other criteria, such as employment and training levels provided they are broadly commensurate in value.

The Procurement Board may also exempt specific projects or classes of projects, including where agencies or contractors have contractual obligations arising from the participation or funding of a project by the Commonwealth Government.

Agencies may at any time set targets for a project or class of projects at a higher rate than prescribed.



Allocating the targeted project spend

The targeted project spend may be allocated to both directly and indirectly related expenditure provided it meets the spending allocation requirements outlined below. Expenses may be incurred from the date of the contract award and up to 12 months after the anticipated completion of the project.

A contractor engaged on two or more projects must provide Aboriginal Participation Plans that have separately funded programs. While a single program may be funded more than once, inclusion of a duplicate spending activity on multiple projects is not permitted.

Expenditure directly related to the project

Contractors must allocate at least 50 per cent of the targeted project spend to employment and education activities directly related to the project's planning, design or delivery.

Direct employment and education activities include:

- a) The employee-related expenses of Aboriginal people engaged in the planning, design and delivery of the project by the contractor.
- b) Expenses related to the engagement of Aboriginal people in the planning, design and delivery of the project through a recognised group training or labour hire company.
- c) Expenses related to the procurement of goods or services from recognised Aboriginal businesses by the contractor specifically to consult and engage with Aboriginal communities in the area where the project will be delivered.¹
- d) Education expenses paid for by the contractor on behalf of Aboriginal people engaged in the planning, design and delivery of the project.

¹ See Procurement Board Direction 2013-04 for the definition of a recognised Aboriginal business.

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- e) Expenses related to the engagement of Aboriginal Land Councils, the NSW Indigenous Chamber of Commerce, Supply Nation or other Aboriginal community representative bodies nominated by the NSW Procurement Board.

Other expenditure eligible to be included in the target project spend

Contractors may allocate up to 50 per cent of the targeted project spend to expenses that are indirectly related to the project, but that contribute to the education and employment goals outlined in OCHRE. These goals are:

- increasing school attendance and retention
- increasing student transitions from school employment or tertiary education
- increasing the number of Aboriginal people employed
- increasing the number of Aboriginal owned businesses
- otherwise meet the policy aims of OCHRE including its industry based agreements program and opportunity hubs.

Eligible indirect expenses are defined as:

- Expenses related to Aboriginal cultural awareness and mentoring programs operated for or on behalf of the contractor for the benefit of employees (whether or not engaged on the project), and for subcontractors and their employees engaged on the project.
- Expenses related to the procurement of goods or services from recognised Aboriginal businesses by the contractor in the planning, design and delivery of the project.

Programs and bodies established for the purpose of delivering OCHRE's goals in the construction industry may seek approval from the Board. Spending on these approved programs and bodies may also be included as eligible indirect expenses by the contractor.



Aboriginal Participation Plan and Participation Report

Contractors for all projects covered by this policy must provide an Aboriginal Participation Plan to the contracting agency within 60 days of the contract being awarded. A Participation Report must also be provided to the agency when the project reaches 90 per cent completion which explains how the Participation Plan has been implemented. Participation Plans and Reports must be provided in the format prescribed by the Board.

Category 1 and Category 2 projects are also required to provide their Aboriginal Participation Plans and Participation Reports to the NSW Procurement Board for publication at the same time they are provided to the contracting agency. They will be published on a specific site determined by the Board and must remain on the site for at least two years from the conclusion of the project. Category 3 projects are exempt from these publishing requirements until 1 July 2016. As a matter of good practice, contractors and agencies are encouraged to submit participation plans for publication up until this time.



Roles and responsibilities

NSW Procurement Board

The Procurement Board is responsible for the administration, monitoring and reporting of this policy. This includes:

- Maintaining the website and publishing the Aboriginal Participation Plans and Progress Reports provided by contractors for Category 1 and 2 projects.
- Publishing a list of approved charitable bodies, trusts or other not-for-profit organisations which contractors may support to meet their obligations.
- Publishing a yearly review of this policy as part of its annual report.
- Dealing with complaints about the application of this policy via its established complaints handling procedures.

The Procurement Board may also issue a Direction requiring agencies to use standard form contract clauses on projects subject to this policy.

The Procurement Board may delegate any of these functions to the Construction Leadership Group or the chair of the Procurement Board.

Agency responsibilities

Agencies are responsible for ensuring contractors are made aware of their obligations under this policy at the time of tender. From 1 July 2016, agencies are obliged to consider the demonstrated capacity of contractors to meet obligations under this policy when assessing value for money.

Contractor responsibilities

Contractors are responsible for providing their Aboriginal Participation Plans and Participation Reports to the relevant agency and, for Category 1 and 2 projects, to the NSW Procurement Board for publication (nswbuy@finance.nsw.gov.au).

Contractors are required to have the Participation Report certified by the contractor's chief financial officer, chief executive officer, or another person authorised by the Procurement Board to issue statements on behalf of the contractor.



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TTY 1300 301 181

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