



NSW Procurement  
NSW Treasury  
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To whom it may concern,

Thank you for the opportunity to provide a submission as part of the review of NSW Treasury's Aboriginal Procurement Policy (APP).

The NSW Small Business Commissioner (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy and affordable dispute resolution services across NSW.

The 2021 Census reported 7,145 Aboriginal and Torres Strait Islander owned businesses (owner managed) in NSW, which make up 1.4 per cent of all businesses in NSW.<sup>1</sup> Aboriginal owned businesses operate across a broad range of industries and sectors, and at different business scales, including small business.

### **Aboriginal Participant Strategy**

The Commission strongly recommends that all NSW government agencies increase the scope of their published Aboriginal Participation Strategy. Currently, agencies are only required to identify, address and publish upcoming procurement opportunities for Aboriginal participation for procurements valued at \$7.5 million or above.

The Commission recommends the Aboriginal Participation Strategy also includes how an agency will meet the APP target to award three per cent of the total number of goods and services contracts to Aboriginal owned businesses. This planning should consider how Aboriginal businesses, including Aboriginal small businesses, will be engaged across the suite of the agency's policy areas and functions, and for direct procurement with Aboriginal businesses of work valued up to \$250,000, consistent with the APP.

Planning should also consider barriers to Aboriginal small business participation in procurement, including inaccessible procurement processes, internal biases or misconceptions that prevent procurement with Aboriginal businesses, and misalignment between the market and agency requirements, to support strategic and targeted capacity building.

To ensure adequate progress and outcomes, agencies could be assessed or evaluated against their Aboriginal Participation Strategy, to ensure procurement requirements are being met. This process will also reveal the range of Aboriginal businesses and industries that are being engaged, and identify if targeted support is required to better procure a broader range of small businesses, or a broader range of sectors or industries.

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<sup>1</sup> Australian Bureau of Statistics (2021) *Census of Population and Housing*.

## **Participation at \$7.5 million plus**

The minimum 1.5 per cent Aboriginal participation in all contracts valued at \$7.5 million or above should be reviewed to assess what further measures can be developed and applied to support greater Aboriginal small business participation through subcontracting arrangements.

Current arrangements enable the 1.5 per cent value to be applied to the cost of education, training or capability building for Aboriginal staff or businesses. While building capacity is important, many Aboriginal small businesses would receive greater benefits from being directly engaged through subcontracting arrangements. To this end there would be value in considering a more direct assessment measure that monitors and tracks the value of direct engagement with Aboriginal small businesses.

## **Education, training and support**

Businesses are required to meet a high standard to win work from NSW Government. Like many small businesses, Aboriginal small businesses may require education, training and support to develop the capacity to win work from NSW Government and deliver value for the taxpayer.

The Commission, in partnership with TAFE, has identified four main stages of the tendering and contract process that businesses are required to navigate: getting business ready, finding opportunities, selling to Government, and successfully supplying. The Commission and TAFE have developed a training program and guide to support small businesses with these stages.

Aboriginal small businesses may also experience a range of additional barriers that require specialist support, including education and training that is culturally appropriate and accessible in regional and remote locations. The Commission has previously worked with the NSW Indigenous Chamber of Commerce (NSWICC) to deliver online and face-to-face procurement workshops.

The Commission recognises the 2019 review recommendation to provide more support and guidance to Aboriginal businesses and agency staff to apply the APP is still in progress. The implementation of this recommendation should leverage available business expertise that is specialised in the Aboriginal business sector.

This may include partnering with the NSWICC, the Office of the Registrar of Indigenous Corporation and Supply Nation to develop workshops and more tailored support for Aboriginal businesses. These groups may be able to leverage existing business continuity plans, mediation training and meet the buyer sessions to provide support and guidance to Aboriginal owned small businesses.

NSW Government could also consider further strengthening programs to mentor Aboriginal businesses to empower businesses to tender for Government contracts, and support growth and sustainability throughout the business lifecycle. This could include strengthening Business Connect's Aboriginal Business Advisory Initiative (ABAI), building referral pathways, and delivering new or existing support and guidance to Aboriginal students and trainees in schools and/or TAFE.

If unsuccessful in a tender process, it is essential that Aboriginal businesses are provided with timely, constructive and detailed feedback, so they can be more equipped and better prepared for future applications.

## **Procurement requirements**

The NSW Government should consider and remove any arbitrary procurement requirement that may act as a barrier to Aboriginal owned small businesses. For example, requiring businesses to hold professional indemnity and public liability at the time of tendering is a high cost to businesses, before they have the security of work. The Commission suggests that Aboriginal small businesses be permitted to provide a quote for professional indemnity and public liability insurance at the time of tendering for work, and that the appropriate insurance is only required once work is won. This is a measure that the Commission believes should be established for all small businesses tendering for NSW Government work.

## **Auditing and data collection**

Delivering outcomes under the APP requires a rigorous auditing and compliance process. Currently, the NSW Procurement Board is committed to undertake a random audit of five per cent of contracts annually. While this audit measure is sufficient for contracts under \$7.5 million, the Commission recommends increasing this auditing requirement to ten per cent of contracts valued at \$7.5 million or above, to ensure that Aboriginal employees and Aboriginal businesses are being fairly engaged through the APP. These audits would capture more than Aboriginal content but attain feedback from Aboriginal businesses on their tendering experience, process of negotiation and what measures might be introduced to assist them in winning future work.

Measuring Aboriginal small business engagement as subcontractors for contracts valued at \$7.5 million or above may also provide useful data as to the sectors that are fostering Aboriginal small business development. These insights may assist to build the evidence base for future economic opportunity and development policy.

Thank you for the opportunity to make a submission. If you require further information, please contact Megan Bennett, at either [megan.bennett@smallbusiness.nsw.gov.au](mailto:megan.bennett@smallbusiness.nsw.gov.au) or (02) 9372 8767.

Yours sincerely

Chris Lamont  
**Commissioner**  
**NSW Small Business Commission**

Date: 27/02/23