



PROCUREMENT POLICY REFORM

The Government has approved a range of reforms to commence on 1 July 2004 designed to improve procurement outcomes of NSW Government agencies. The reforms simplify existing procurement policies and procedures. They also include mechanisms to promote better upfront planning for major procurements.

Summary:

Responsibility for whole-of-government procurement and asset management policy was transferred to the Treasurer from the Minister for Commerce in June 2003.

The Government has approved reforms designed to provide a simplified, more predictable and accountable procurement process. This Treasury Circular promulgates the Government's decision by way of a Treasurer's Direction issued under section 9 (1) of the *Public Finance and Audit Act*.¹

The reforms do not fundamentally amend the existing policies that underpin government procurement. They are directed at simplifying policy and procedures, and the achievement of greater and better quality upfront planning by agencies in their formulation of funding proposals. The objective is to assist agencies to make appropriate and informed decisions, particularly in major procurements, without diminishing their accountability for outcomes.

The reforms apply from 1 July 2004 on a whole-of-government basis to all government departments, statutory authorities, trusts and other government entities. Entities subject to the *State Owned Corporations Act* are exempt although they are encouraged to adopt aspects of the reforms that are consistent with their corporate intent.

Key elements of the procurement reforms include the following:

Simplified Procurement Policy

Outdated or duplicated instruments and documents which currently define government procurement have been retired. A simplified procurement policy framework, available on the NSW Treasury website, provides:

- ♦ A concise overarching policy statement on government procurement, based on value for money principles. It includes a clear outline of the roles and responsibilities of line agencies and central agencies.
- ♦ A single Code of Practice for Procurement covering all types of Government procurement (replacing eight previous Codes and associated guidelines).
- ♦ A ten stage procurement process map, separately tailored for three main categories of procurement – construction; information and communications technology (ICT); and general goods and services – each with electronic links to relevant policies, guidelines and procedures.

¹ Treasury Policy and Guidelines Paper TPP04-1 has also issued in conjunction with this Circular. It contains the Government's Procurement Policy Statement and a more detailed explanation of its key elements and implementation.

Gateway Reviews

The Gateway review process uses independent experts to assess whether an appropriate level of discipline is being applied at key stages of the procurement cycle, without diminishing agency accountability. Reviews typically take three days or less to complete. The degree of reviewer independence can range from intra agency to fully external to the agency, depending on the potential risk and value of the procurement. Risk is assessed using a risk profile assessment tool, which is part of the Gateway process.

As the potential to influence a successful outcome is greatest at the early stages of the procurement process, a Gateway review at the business case gate will be mandatory for all procurements to inform the funding decision for any major procurement (construction, ICT or other goods and services) where the risk profile is assessed as high or where approval for capital funding of \$10 million (\$5 million for ICT) or more is being sought, whether from the Budget Committee of Cabinet, or internal to an agency.

In addition to this mandatory review agencies are encouraged to conduct reviews on lesser value procurements or at other stages in the procurement cycle, especially prior to contract award, if there are doubts regarding the status of a procurement.

Treasury has engaged the Government Procurement Services Unit (GPS) of the Department of Commerce to provide assistance to agencies in conducting Gateway reviews. This assistance includes:

- ♦ facilitation services,
- ♦ maintenance of panels of independent reviewers,
- ♦ assistance to agencies in engaging appropriate reviewers,
- ♦ maintenance of the Gateway system as a whole, and
- ♦ provision of appropriate training for reviewers.

This service is at no cost to agencies, although agencies will be required to fund specific review costs such as venue, copying of documentation, time of their personnel and fees of reviewers.

Details of Gateway are available on the Treasury website. Agencies should contact the GPS helpdesk by phoning 9372 8600 for further information on the process or if seeking to conduct a review.

Agency Accreditation Scheme for construction projects

Specific agencies will be accredited by Treasury to carry out, unassisted, planning and/or delivery activities associated with the procurement of built assets (building and infrastructure) valued over \$1 million. The planning phase commences at the time an agency starts evaluating its identified service delivery options, based on Total Asset Management considerations and where procurement of built assets may be required. Planning essentially comprises the selection of an option and the development of the necessary business case to support a bid for capital funding. The delivery phase follows funding approval for a built asset.

Accreditation status is based primarily on whether planning for and/or delivery of the full range of built assets relevant to an agency's service delivery strategy is considered a core activity. For example while the Department of Housing may be accredited this would relate to built assets pertaining to housing and not a water treatment facility. Those without accreditation will be required to obtain assistance from relevant external experts, except for the planning phase of low risk projects which does not require accreditation. Projects are assessed as high, medium or low risk by using the Gateway risk profile assessment tool. External expertise may be either an accredited agency or a prequalified private sector advisor.

Treasury has engaged GPS to provide prequalified lists of private sector expert advisers, as well as a default procurement system to be used by such advisers for the delivery phase. The default procurement system generally consists of guidelines and procedures for selection of procurement strategies, contract risk allocation and contract formation, and supplier selection (including prequalification). These GPS services will be at no cost to agencies, although agencies will need to meet the costs associated with engagement and management of external experts for specific projects.

Partial accreditation will be available to unaccredited agencies who consider they have the requisite competency to deliver a specific project or a program or class of built asset of medium or low risk and valued less than \$50 million. For example, an agency may be employing a person with relevant project management skills to manage the delivery of a small low risk project. Rather than engage external expertise, approval from Treasury may be sought to assume partial accreditation for the delivery phase of that particular project, using the default delivery system maintained by GPS. Pro-forma applications for partial accreditation will assist agencies to determine whether they meet the requisite condition for partial accreditation.

The introduction of the Accreditation Scheme on 1 July 2004 will result in the termination of the Project/Procurement Risk Management policy as outlined in Treasurer's memorandum TM91/7. Agencies with projects under that arrangement should discuss with GPS the appropriate transitional arrangements which would best apply to their projects.

The list of accredited agencies is provided in the Appendix to this Circular. A review of this status will be conducted after 12 months. It is intended to extend the Agency Accreditation Scheme to other procurement strands later.

Details of the Agency Accreditation Scheme are available on the Treasury website. Agencies should contact their Treasury analyst for agency specific issues, and GPS for project specific matters such as lists of experts and access to the default procurement system.

Enhanced Treasury Monitoring for construction projects

Treasury will adopt a greater role in assessing and monitoring major construction projects valued at \$1 million or greater throughout the full procurement cycle. The extent of this effort will depend on the size and risk of the project, with the risk assessed using the Gateway risk assessment tool. A strong emphasis will be placed on the quality of the business case supporting any funding/investment decision and service delivery objectives of the agency. The monitoring regime will consist of submitting the following information to the relevant Treasury analyst.

- ♦ For high risk projects and other projects valued at \$50 million or greater:
 - a project appraisal report, including a copy of the business case Gateway review and the economic appraisal (or financial appraisal in the case of internally funded proposals), and a copy of the project risk assessment using the Gateway tool prior to the investment decision being made either by the Budget Committee of Cabinet or internally as applicable.
 - a procurement strategy report and pre-tender estimate prior to tender call
 - a post tender review report prior to contract award
 - material variations reports during project delivery.
- ♦ For projects valued between \$10 million and \$50 million and not high risk:
 - a copy of the business case Gateway review and the economic appraisal (or financial appraisal as appropriate) and a copy of the project risk assessment using the Gateway tool prior to the investment decision
 - a procurement strategy report and pre-tender estimate prior to tender call.

- ♦ For projects valued between \$1 million and \$10 million and not high risk:
 - a copy of the project risk assessment using the Gateway tool and a summary of the economic appraisal (or financial appraisal as appropriate) prior to the investment decision.

Fundamental to this approach will be the need for an agency to clearly demonstrate that:

- ♦ the project supports its service delivery objectives;
- ♦ the initial business case that triggers any funding is sound; and
- ♦ the project, as it is delivered, either remains consistent with the original business case or properly informed decisions are made in terms of the project's future if this is not the case.

A checklist of material which may be required for the reports and a flow diagram illustrating the interaction of the agency accreditation scheme, Gateway reviews and the enhanced Treasury monitoring role are available on the Treasury website.

Agencies should contact their Treasury analyst for agency specific issues.

Treasury Financial Support

Treasury may be able to provide additional funding to small and medium sized agencies to assist them in meeting some of their upfront planning costs. The funding will be made available on application and where an agency which does not have procurement as a core function can demonstrate the project is of a significant nature, requires significant investment to complete its planning, and is consistent with the agency's service delivery objectives as substantiated in (among other things) the agency's Results and Services Plan and Total Asset Management plans.

Agencies should contact their Treasury analyst for agency specific issues.

Transition Issues

Agencies should contact GPS on transition matters regarding construction projects which were subject to TM91/7. Projects which are part way through their planning phase will not need to comply with the accreditation process for planning, but will need to do so for the delivery phase.

The single NSW Government Code of Practice for Procurement applies to all procurements for which tenders are invited or negotiations commence on or after 1 July 2004. The earlier codes continue to apply to procurements for which tenders were invited or negotiations commenced prior to 1 July 2004.

With Gateway reviews, no transitional problem should arise. Any high risk procurement or other procurement valued \$10 million (\$5 million for ICT) or more which has not had funds approved, either via the Budget Committee of Cabinet or internally by the agency (as appropriate) is to have a Gateway review conducted at the business case gate prior to funds being sought.

The enhanced Treasury monitoring will only apply to construction projects yet to have funding approved, except for projects that are classified as high risk or valued at \$50 million or greater. These projects will be required to submit procurement strategy report, pre-tender estimate, post-tender review report, and material variations reports depending on their stage of project delivery. All projects valued at less than \$50 million and not high risk may proceed under the earlier Treasury intervention arrangements. Enhanced Treasury monitoring requirements for ICT projects will be issued shortly.

Further Information

Procurement Policy Advice

Further information on procurement policy issues may be obtained from Treasury by contacting:

Stephen Chong, Principal Advisor on (02) 9228 4417 (email stephen.chong@mail.treasury.nsw.gov.au), or Phil Armessen on (02) 9228 5427 (email phil.armessen@mail.treasury.nsw.gov.au).

Procurement Implementation Advice

The Department of Commerce, Government Procurement Services helpdesk, on 9372 8600, is available to assist with enquiries on procurement implementation.

Treasury Website

All procurement policy documentation and implementation guidelines, including assistance with the ten step procurement process is available on the Treasury Website: www.treasury.nsw.gov.au

John Pierce
Secretary

Appendix

Agency Accreditation Scheme For construction procurement greater than \$1 million

Accredited Agencies (√)	Planning Phase	Delivery Phase
Attorney General's Department	√	No
Department of Commerce	√	√
Department of Corrective Services	√	No
Department of Education and Training	√	No
Department of Health	√	No
Department of Housing	√	√
Roads and Traffic Authority	√	√
State Transit Authority	√	No
Sydney Catchment Authority	√	No
Sydney Harbour Foreshore Authority	√	√
Sydney Olympic Park Authority	√	√
Zoological Parks Board	√	No

Note that all agencies not listed (this includes Government Trading Enterprises, Trusts, etc) are not accredited and therefore are subject to using expert assistance (except for the planning phase of low risk projects). Assistance consists of agencies using approved procurement systems and approved external expert advisors. Organisations established under the State Owned Corporations Act are however exempt.