

Aboriginal Participation in Construction (APIC) Policy

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1. Policy context

1.1. Purpose

The Aboriginal Participation in Construction (APIC) policy supports the NSW Government's framework Growing NSW's First Economy.

It meets the specific aims of increasing the number of Aboriginal people employed, and the number of Aboriginal owned businesses under the NSW Government plan for Aboriginal Affairs, **OCHRE** (Opportunity, Choice, Healing, Responsibility, Empowerment).

The APIC policy recognises that industry 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.

1.2. Objective

The objective of the APIC policy is to create opportunities for Aboriginal owned businesses and encourage Aboriginal employment and training through the supply chain of NSW Government contracts.

1.3. Policy target

The NSW Government target for supporting employment opportunities is set at a whole-of-government level.

In conjunction with the **Aboriginal Procurement Policy**, the APIC policy will aim to support an estimated **3,000** full time equivalent employment opportunities for Aboriginal people through NSW Government procurement activities by **2021**.

2. Applying the APIC policy

The APIC 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 APIC policy that are consistent with their corporate intent.

Construction projects for the purposes of the APIC policy include:

- construction related building maintenance and civil engineering
- construction related support activities, such as financial, advisory, architectural and professional services, where it is considered appropriate to achieve the APIC policy objective
- joint public/private sector
- those undertaken on land not owned by the government or where the built asset will be owned by a non-government entity.

2.1. Categories of construction projects covered by the APIC policy

On **1 July 2018** the APIC policy became mandatory for three categories of construction projects:

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, 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.

It should be noted that all figures exclude GST.

2.2. Aboriginal participation requirement

Under the APIC policy a minimum of **1.5 per cent** of project spend must be dedicated to Aboriginal participation. Agencies are encouraged to set higher requirements where appropriate. Agencies are responsible for setting the project spend and Aboriginal participation requirements on each project.

Aboriginal participation must be directed towards eligible spend. Eligible spend includes Aboriginal employment, engagement of Aboriginal owned businesses, education and training, and engagement or consultation with Aboriginal organisations or businesses.

2.3. Exclusions from project spend

Exclusions from project spend are determined by agencies and may include:

- specialised capital equipment (e.g. tunnel exhaust fans, tunnel boring machines, batch plants) where no suitable Australian supplier exists in the market
- materials imported from overseas where no suitable Australian supplier exists in the market
- existing and/or new non-contract/project specific assets apportioned to the contract/project, where they are used in delivery of the contract/project
- property (i.e. acquisitions, indirect leasing costs, extra land, adjustments)
- non-construction related services.

The application of any exclusion is at the discretion of the agency.

2.4. Aboriginal owned businesses

An **Aboriginal owned business** is one that is considered to be an Aboriginal owned business through recognition by an appropriate organisation, such as:

- NSW Indigenous Chamber of Commerce
- an organisation representing Aboriginal owned businesses in another state or territory that is a member of the First Australians Chamber of Commerce and Industry
- Supply Nation.

The NSW Procurement Board is working with Aboriginal organisations to establish a central register of Aboriginal owned businesses, to be made available for NSW Government agencies.

3. NSW Government agencies

Under the APIC policy agencies must:

- apply a minimum 1.5 per cent of project spend for Aboriginal participation to relevant construction projects
- monitor supplier compliance and reporting requirements, and assess and validate reports
- apply any further measures approved by the NSW Procurement Board in support of the APIC policy objective
- ensure all suppliers are aware of, and comply with, their obligations under the APIC policy
- provide APIC policy guidance and support during the tender and project life cycle to suppliers, Aboriginal owned businesses and local Aboriginal communities in the geographic location where the project will take place
- ensure contracts include supplier obligations under the APIC policy, including fully allocating the percentage for Aboriginal participation to eligible spend types, and where suppliers are unable to achieve this, distribution of the balance to the APIC policy's list of approved bodies.

Agencies may apply additional measures to achieve the APIC policy objective, such as:

- directly negotiating with suitably qualified Aboriginal owned businesses that can demonstrate value for money and delivery of quality construction goods and services for procurements valued **up to \$250,000**
- running a closed tender with prequalified Aboriginal owned businesses that can demonstrate value for money and delivery of quality construction goods and services for procurements valued **up to \$1 million**
- increasing the percentage for Aboriginal participation
- introducing incentives to recognise suppliers where they exceed policy requirements, and consequences for suppliers unable to fully allocate to eligible spend by distributing any remainder of eligible spend to approved bodies.

Agencies must apply the minimum 1.5 per cent of project spend for Aboriginal participation to relevant construction projects

4. NSW Government suppliers

The NSW Government values the contribution that the business community is making towards increasing Aboriginal participation in the economy. The government is committed to working with suppliers to create opportunities for Aboriginal owned businesses and to support employment and training of Aboriginal people.

Suppliers to NSW Government for Category 1, 2 and 3 construction projects are required to comply with the requirements in this APIC policy and additional requirements set by agencies and the NSW Procurement Board in support of the policy objective.

Suppliers are encouraged to engage with local Aboriginal communities, Aboriginal organisations or Aboriginal industry bodies to support achievement of Aboriginal participation requirements by supporting identification and engagement of Aboriginal employees or Aboriginal owned businesses.

Suppliers must allocate the minimum 1.5 per cent, or a higher percentage as agreed with the contracting agency, of project spend to eligible spend.

4.1. Eligible spend for Aboriginal participation

Suppliers must allocate the minimum **1.5 per cent**, or a higher percentage as agreed with the contracting agency, of project spend to eligible spend.

Eligible spend may be distributed from the date of the contract award and up to project completion.

Eligible spend does not include donations or gifts to public benevolent institutions unless programs have been pre-approved by the contracting agency and identified as programs specifically designed to generate capability and employment of Aboriginal people for future construction projects.

Expenses must not to be duplicated in different types of eligible spend, for example the same costs related to trainees and apprentices for a project cannot be included as costs in both employment and education.

There are four types of eligible spend for Aboriginal participation:

4.1.1. Employment

- Aboriginal employees (including apprentices, trainees and office support roles) by suppliers and subcontractors engaged on projects.
- Aboriginal employees supporting Aboriginal participation requirements for the project (reasonable percentage of salary correlating to time allocated to individual projects).
- Labour hire.

4.1.2. Engagement of Aboriginal owned businesses

Engagement of Aboriginal owned businesses to provide related goods and services to the project, such as:

- raw materials and plant
- cleaning and maintenance services
- on-site food and beverage services
- professional services such as design consultancy, insurance, work health and safety, cultural awareness training and Aboriginal cultural heritage assessments.

4.1.3. Education / training

- Expenses for training of Aboriginal employees engaged in the planning, design and delivery of the project.
- Expenses paid for by the supplier for the development and delivery of Aboriginal education programs and courses to its employees.

Eligible training and education activities are to be pre-approved by the contracting agency and provided by Registered Training Organisations and / or TAFE NSW.

4.1.4. Engagement / consultation

Expenses approved by the contracting agency for the engagement of Aboriginal organisations or Aboriginal industry bodies directly related to supporting achievement of policy requirements by identifying and engaging Aboriginal employees or Aboriginal owned businesses.

4.1.5. Achieving the full allocation for Aboriginal participation

The full allocation for Aboriginal participation must be distributed to eligible spend types. Where suppliers are unable to achieve this, they must distribute the remainder to the APIC policy's list of approved bodies:

- Master Builders Association
- Literacy for Life Foundation.

Approved bodies support programs to improve capability and employment outcomes for Aboriginal people for future construction projects.

The allocation for Aboriginal participation from suppliers to the approved bodies and the distribution of these funds by the approved bodies is monitored by the NSW Procurement Board.

4.2. Reporting

The value of the construction project dictates reporting requirements. Suppliers must provide an **Aboriginal Participation Plan** specific to each project and report:

- **monthly** on progress towards the requirements in the Aboriginal Participation Plan on all projects **over \$10 million**.
- **quarterly** on progress towards the requirements in the Aboriginal Participation Plan on all projects **up to \$10 million**.

Aboriginal Participation Plans are part of the tender response and approved by the contracting agency. The requirements of the approved plan are to be entered in the APIC policy reporting portal and reported against as per the APIC policy reporting requirements.

A final **Aboriginal Participation Report** must be provided by suppliers through the APIC policy reporting portal at the completion of the construction project and identify if Aboriginal participation requirements were met.

The information from supplier plans and reports may be published and will be used for annual reviews of the APIC policy.

Where an Aboriginal owned business is awarded a construction contract, the Aboriginal owned business must provide regular reporting on the employment of Aboriginal people to contracting agencies. Where possible, the NSW Government will leverage the existing employee information available via Supply Nation and NSW Indigenous Chamber of Commerce or another appropriate organisation.

4.3. Requirements for Aboriginal owned businesses

Aboriginal owned businesses supplying directly to NSW Government are exempt from the 1.5 per cent of project spend requirement for Aboriginal participation, however the business must provide regular reporting on the employment of Aboriginal people within the business.

Aboriginal businesses must meet any additional measures applied by the contracting agency in support of the APIC policy objective.

5. Governance

5.1. NSW Procurement Board

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

- maintaining the website and publishing Aboriginal Participation Plans, progress reports and Aboriginal Participation Reports
- governance of the list of approved bodies
- conducting regular or ad-hoc audits and reviews of the APIC policy
- dealing with complaints about the application of the APIC policy via its established complaints handling procedures
- exempting specific projects or classes of projects and allocating specific requirements against individual contracts based on opportunity assessment and identification by geography, spend, market supply and capacity
- issuing directions to agencies, including use of standard form contract clauses, on projects subject to the APIC policy.

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

5.2. Annual review

The NSW Procurement Board will undertake an annual review of compliance with requirements and progress towards the target, in consultation with Aboriginal Affairs NSW, NSW Government agencies and industry. The APIC policy requirements, including the requirement for 1.5 per cent of project spend that must be dedicated to Aboriginal participation, will be assessed at each annual review.

5.3. Evaluation of the APIC policy

The outcomes of the APIC policy will be reviewed in accordance with the **NSW Government Program Evaluation Guidelines**. This outcome review will be undertaken in **2022**, 12 months after the NSW Government target is due to have been achieved.

The APIC policy is covered under the **OCHRE plan**.

The Deputy Ombudsman (Aboriginal programs) has a legislated function to independently monitor and assess the implementation of prescribed Aboriginal programs including OCHRE- the NSW Government's Aboriginal Affairs plan. This function is an integral part of the overall accountability framework for OCHRE.

6. Information and guidance

APIC policy information and guidance for agencies and suppliers is available on the **ProcurePoint** website.

Contact details

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