



New South Wales Government

NSW Government Procurement Guidelines

Service Provider Performance Management

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User Information

These guidelines were prepared by the NSW Department of Commerce for the NSW Government on behalf of and with the assistance of NSW Treasury. They are available from the procurement web site at:

<http://www.treasury.nsw.gov.au/procurement/procure-intro>

They are governed by the NSW Government's Procurement Policy TPP04-01 July 2001. The NSW Government Procurement Policy is implemented as a Treasurer's Direction under Section 9 (1) of the *Public Finance and Audit Act*.

The Guidelines apply to all types of procurement including procurement managed by the State Contracts Control Board and accredited agencies.

Read the Guidelines in the light of applicable legislation and the NSW Government's Code of Practice for Procurement, available on the NSW Treasury Website.

For further information on these guidelines contact NSW Procurement Client Support Centre by phone 1800 679 290 or e-mail:

NSWP_Support@commerce.nsw.gov.au

Special Note

If you have downloaded this from the Internet, it may not be current. Please check on the NSW Government procurement website for the current issue:

<http://www.commerce.nsw.gov.au>

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1 About these Guidelines

To monitor the performance of service providers, government agencies need to acquire, maintain and exchange information about the performance of service providers on contract. To be effective, current information must be available. This can be achieved if each agency records objectively, the performance of each of its service providers in a timely manner.

A service provider reporting system is an important means for providing information to service providers on their contract performance and to facilitate their continuous improvement.

Service providers who do business with NSW government agencies need to be aware of the NSW government requirements on:

- performance reporting
- assessment of service provider performance on government contracts
- the use of Service Provider Performance Reporting when evaluating service providers for registration, pre-qualification, elective tender list, expressions of interest or awarding of a contract.

Structure of these guidelines

Although this guideline refers specifically to contracts, these processes can also be applied to the management of standing offer arrangements or period contracts.

2 Performance reporting

Objective

The objective of performance reporting is to provide a means whereby the calibre of the service provider is assessed on the contract for service with the NSW government agency.

Performance assessments during the course serve a means to help identify good performance as well as matters that may need improvement. Performance reports assist in the assessment of service providers for pre-qualification, selective tender lists, pre-registration, tender response evaluation and in the event of termination for unsatisfactory performance under a contract.

Application

Performance reporting on service providers is required for all goods and services contracts, all construction projects valued at over \$250,000 and for service provider engagements valued at over \$30,000. All consultancies with an estimated cost of \$30,000 or more.

A *Service Provider Performance Report* (performance report) is a means for measuring performance. The performance report format described in this guideline is used to assess performance against established criteria. Agencies may provide additional performance criteria for specialised services.

Performance reports serve to assist minimise the risks associated with poor performing service providers.

Frequency

The reporting periods must be stated in the contract and advised in Tender documents. A performance report would be prepared at:

- Project initiation
- midway through the contract or at stated milestones
- immediately after completion of a contract or at occupancy (if applicable)
- every six months from the date of acceptance, for contracts with a contract period exceeding seven months
- if a contract is, or is recommended to be terminated
- if a complaint has been lodged including a complaint related to the Code of Practice for Procurement and is initially deemed to be a serious nature.

Additional reports should also be obtained when there is a continuing period of unsatisfactory performance on a contract. Agencies should use the above list as a guide when considering the frequency with which they assess performance.

Preparation of performance reports

Responsibility for the completion of performance reports (outlined in Section 3 and exemplified by Appendix B) should be assigned to the person responsible for the management of the contract, which for the purpose of this guideline is referred to as the Reporting Officer. The Reporting Officer must be in a position to make factual assessments against evaluation criteria on the service provider's performance, and have frequent and direct liaison with the service provider, the service, the goods or the construction project.

If the contract is being managed by an agency not using the contract, the agency using the contract should assist the managing agency with any details necessary for the completion of performance reports.

A person experienced in contract management must review the performance report. This person will be referred to as the Reviewing Officer. The Reviewing Officer's task is to ensure that the report is objective and accurate so that it can be relied upon by an agency making decisions about selection, pre-registration or on-going engagement.

Service provider's response

It is important that service providers be informed as to their assessment. This is best achieved by having the appropriate representative of the service provider present whilst the performance report is being prepared.

Each performance report must be discussed with the service provider who must be given the opportunity to comment on the assessment. [A response time of 10 working days is recommended.]

The Reporting and/or the Reviewing Officer must address any matters raised by the service provider and respond to the service provider in writing. The service provider's comments and the written response by the Reporting and/or Reviewing Officer form part of the performance report. An important reason for assessing the performance of service providers is to determine whether the service provider is not suitable for further work of a similar type for the reporting agency.

Access to performance reports

Performance reports are confidential documents and should be held by a central office within an agency, preferably the office responsible for any registration or pre-qualification of service

providers. Within the agency, information on a service provider's performance report may be released to officers with appropriate authority, for example, to the convenor of the tender evaluation committee.

It is essential that performance reports are properly managed and archived.

In some instances, particularly ones involving very small firms, it may be possible to identify individuals from the performance report. If personal information can be reasonably ascertained from a performance report, it must be handled in accordance with the personal protection principles set out in the [NSW Privacy and Personal Information Protection Act](#).

3 Service provider performance report preparation

This section will assist agencies in the preparation of service provider performance reports and should be read in conjunction with Appendix B – Service Provider Performance Report.

Basic contract information

Each service provider performance report must contain the following:

1. Contract details set at the date of acceptance of the tender response:
 - Name of the agency
 - Name of the service provider, including full particulars of the business registration and Australian Company Number (ACN) or Australian Business Number (ABN)
 - Contact details of the service provider
 - Contract description 1 that includes sufficient details to allow a 3rd party to readily appreciate what is expected to be provided.
 - Contract value
 - Date of acceptance of the tender response
 - Contract period or date of completion.
2. Details of progress reports (if any).
3. Details of variations, claimed or approved (for example, costs, extensions of time) (if any):
 - Total extensions of time approved to date
 - Extended anticipated date for completion (confirmed in writing by the service provider)
 - Contract value at report date.

Identification of reports

The performance report must clearly show the reason for, or circumstances of, the report. For example, progress report after “X” months, final report, or report due to unsatisfactory performance.

¹ Contract(s) should be formally named and identified in the agencies permanent contract register

The dates on which various parts of the report are prepared must be clearly shown. This helps people using the report at a future date to make their own assessment of the relevance of the information to their decision making.

Context of the performance assessment

A service provider's performance must be assessed in the context of the contract as a whole, including the respective roles and obligations of the Principal and service provider under the contract.

Both the Reporting Officer and Reviewing Office must consider whether satisfactory progress or the completion of a contract has been affected by any matters which are:

- Outside the service provider's control
- The result of action by the Principal.

That is, evaluation against performance criteria must measure the service provider's performance, after taking into account matters beyond the service provider's control.

Standard performance criteria and evaluation

If any agency determines that there is no need to assess the contractor's performance against all of the standard criteria listed in the appendices, in addition it must be so stated in the contract documents.

In other contracts, other performance criteria may be added to meet an agency's specific requirements any specific performance requirements in the contract.

The types of criteria applied will vary with different contract types and an agency may have developed core criteria which are incorporated in all assessments. The recommended performance gradings are outlined later in this session.

The areas that should be considered when assessing a service provider's performance on each of these standard criteria are set out in the following sections.

Should an alleged breach be found, all such breaches and any sanctions against service providers must be reported to the State Contracts Control Board (SCCB) identifying the service provider by Company name, ABN, the full contract details, the breach and the sanction(s) imposed.

Any breaches of the NSW Government Code of Practice for Procurement should be dealt with by the agency, unless the breach is considered grave enough or is part of a pattern of breaches and a whole of Government sanctions is recommended. It should then be referred to the SCCB.

Environmental management

The requirements for environmental management on government contracts are set out in the NSW Government Procurement Policy and NSW Government Code of Practice for Procurement and the Environmental management guideline.

Occupational health and safety (OHS) management

Guidance on the content and the preparation of an OHS Management system are set out in the NSW Government OHS Management Systems Guidelines.

At all times the duties and workplace OHS obligations as arising from the Occupational Health and Safety Act 2000 and OHS Regulations take precedence in any contract or engagement.

Payment obligations

The Head Contractor is to ensure that payments to sub-contractors are made in a proper and timely manner. At no time is the head contractor permitted to adopt a payment practice of paid when paid.

Additional information regarding payments in the Building and Construction Industry is seen in the Building and Construction Industry Security of Payment Act. A short explanation of the Act and some extracts appear below.

Security of Payment Act

Building and Construction Industry Security of Payment Act 1999 No.46

The Security of Payment Act has established a procedure that will help contractors; subcontractors, consultants and suppliers in the NSW construction industry receive payments due to them. The Act enables quicker access to adjudication of claims for payment.

Object of Act

The object of this Act is to ensure that any person who undertakes to carry out construction work (or who undertakes to supply related goods and services) under a construction contract is entitled to receive, and is able to recover, progress payments in relation to the carrying out of that work and the supplying of those goods and services.

The means by which this Act ensures that a person is entitled to receive a progress payment is by granting a statutory entitlement to such a payment regardless of whether the relevant construction contract makes provision for progress payments.

The means by which this Act ensures that a person is able to recover a progress payment is by establishing a procedure that involves:

- a) The making of a payment claim by the person claiming payment, and
- b) The provision of a payment schedule by the person by whom the payment is payable, and
- c) The referral of any disputed claim to an adjudicator for determination, and
- d) The payment of the progress payment so determined.

Aboriginal participation

For selected contracts tenderers will be required to indicate measures they intend to implement, if awarded the contract, which could lead to improved conditions in Aboriginal communities. Assessment items include:

- Extending employment opportunities to Aboriginal people
- Enhancing the business skills of Aboriginal people
- Providing economic benefits to Aboriginal communities

Employment and outwork obligations

The Government requires suppliers of textile articles, clothing and footwear to comply to the extent applicable, with all relevant laws, awards and other industrial instruments in relation to the contracting out of work and the employment and management of employees including outworkers.

Assessment items include:

- Compliance with all relevant laws
- Provision of a statutory declaration with the details specified in Appendix A of the Implementation Guidelines on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers 1998.

Time management

Most service provider engagements that require performance reports to be prepared should have an agreed work plan with milestones for intermediate phases of the work or services or goods to be provided as well as the completion time for the overall engagement. The work plan forms the basis for assessing the service provider's ability to manage time.

For some engagements, the only available measure of time management is completion of the work by the stated completion.

In assessing the service provider's time management performance the following should be considered:

- Ability to meet programmed milestones

- Timely allocation of appropriate resources to critical activities
- Updating of the work program to account for unforeseen delays
- Overall progress of the work
- Timely submission of meaningful progress reports
- Delays caused or by the Principal or other parties, agreed as outside the service provider's control that were documented and transmitted at the time of occurrence.

Management and suitability of project personnel

The service provider's ability to assign appropriate staff to the project for the duration of the project and then to achieve effective performance including:

- Appropriateness of skills and experience of personnel assigned to the work.
- Adequacy of the number of personnel assigned to the work.
- Efficient control of site personnel
- Application of proper administration of payments due.
- Consistency in the skills and experience of the staff assigned to the project with those nominated in the bid for the work.

Standard of service

Standard of work will generally be measured against the technical, financial and reporting requirements set out in the conditions of engagement. In particular, the following should be considered:

- Compliance with the contract or brief
- Quality of work including conformance with specified performance criteria, if applicable
- Adherence to budget
- Achievement of contracted performance standards
- Reviews and reports delivered in accordance with the brief
- Amount of rework required from the service provider
- Need to engage another service provider to undertake additional or remedial work
- Extent of involvement required from the Principal to achieve the desired standard of

The service provider's ability to coordinate and manage in-house and external sub contractors and other suppliers to ensure effective performance including:

- Compliance with contractual obligations affecting selection of sub consultants and other suppliers

- Timely completion of sub consultant services and other subcontracted work
- Coordination of interfaces
- Observance of equitable terms of payment for all parties down the payment chain
- Making payments to all sub service providers, subcontractors and suppliers in accordance with the conditions of their engagement or contract.

Cooperative relationships

Assessment items include:

- Commitment and implementation of a management approach that fosters continuous improvement, self assessment and general industry monitoring
- Adoption and commitment to partnering principles with clients, sub consultants, contractors and suppliers
- Commitment to resolving issues through open and effective communication with a non-adversarial approach.

Other categories

Other performance criteria may be included to meet specific performance requirements in the contract.

Assessment of service provider's performance

The service provider's performance should be assessed against the performance criteria and graded in accordance with the following definitions:

Better	Standard often exceeds the anticipated goods or services or level of performance
Acceptable	Standard often meets the required level of performance
Marginal	Mostly meets required level of performance but has some scope for improvement
Unsatisfactory	Well below the required standard ----- does not meet the level of performance required by a service provider.

Section 4 deals with unsatisfactory performance reports in more detail.

Overall performance

Assessment of overall performance should reflect the service provider's performance against the criteria stated in the contract documents.

A numerical assessment of overall performance can be made using the rating system detailed in Appendix C.

Review and recommendations

The Reporting Officer and the Reviewing Officer must make every effort to ensure that comments are objective, accurate, can be substantiated and supported by facts.

The Reviewing Officer is to ensure that the report is objective and accurate so that it can be used reliably for making decisions concerning pre-qualification, selective tender lists or selection of a tenderer.

Overall comment.

In completing reports it is important to report on good performance as well as unsatisfactory performance. Performance reports form part of future tender evaluations; service providers with good reviews should be noted.

Assessment comments should be kept to the facts relating to the contract at hand. Where it is considered necessary to give an opinion, the opinion should be:

- A first-hand opinion;
- Recorded and signed by the Reporting Officer, and
- About the service provider, not individuals and;
- Be factual and preferably be supported with relevant documents.

In particular, comments should commence with 'In my opinion'. For example

- 'In my opinion, the service provider did not provide a suitably experienced leader of the design team', or
- 'In my opinion, the management of the sub consultants was not satisfactory'.

Comments should refer to the weakness/failure of the service provider and not to individuals.

In reporting, do not use extreme language. For example

- 'In my opinion, the service provider was totally (or completely) inefficient'.

It is easy to challenge such opinions, as there may be some area, no matter how small, where the service provider was not inefficient and/or you are unable to substantiate the inefficiency.

Reasons for any opinion should be stated and should refer to the relevant evidence for that opinion.

4 Unsatisfactory performance

An unsatisfactory service provider performance report

A service provider's performance may be rated as unsatisfactory in one or more of the assessment criteria or in the overall assessment.

In most cases, an unsatisfactory overall rating will lead to a recommendation that the service provider be assessed or regarded as unsuitable for further work of a similar nature for the agency preparing the performance report.

Review of performance ratings of 'unsatisfactory'

Overall assessment satisfactory (but rated unsatisfactory in one or more assessment criteria in one more performance reports)

The procedure below is to be used where the overall assessment is satisfactory but one or more of the assessment criteria is rated as unsatisfactory, ie below 50%.

The service provider must be made aware if its performance is rated as unsatisfactory in any assessment criterion and be given an opportunity to comment on the report in accordance with the following procedure:

1. The service provider is to be advised in writing of the assessment and requested to respond in writing within a reasonable time, for example, 10 working days from the date of transmission.
2. The Reviewing Officer considers the service provider's response and the service provider are advised if the unsatisfactory rating(s) is to be retained.

Overall assessment unsatisfactory

Where the overall assessment is unsatisfactory or the service provider is not recommended for further work of a similar nature for the reporting agency, the following procedure applies:

1. A meeting between the service provider, the Reporting Office and the Reviewing Officer is to be convened.
2. At that meeting, reasons for the scoring seen in the performance report are to be discussed and the discussions minuted.
3. The service provider shall be given the opportunity to respond in writing i.e., 10 working days of the meeting.

4. The service provider's response may provide sufficient grounds that would allow the performance report to be adjusted, however doing so is entirely at the discretion of the original Reviewing Officer. An adjustment must be evidence based. The onus is on the Service Provider to produce the evidence.

If upon completion of steps 1 to 4 the service provider's overall assessment remains unsatisfactory, the service provider is to be informed that they can seek a further review by the Agency which will be undertaken in accordance with the review process.

Review process for service provider performance report

If, after following the review process described, a performance report rates the service provider's overall performance as unsatisfactory or the service provider is not recommended for further work of a similar nature the service provider must be given the opportunity to have an independent review as follows:

1. The review will be undertaken within a reasonable time, for example, 10 working days of receipt of an appeal by the service provider.
2. The officer(s) of the agency conducting the review must be senior management, and not associated with the contract concerned. For works requiring prequalification or for large engagements with fees over \$100,000, the review should be carried out by a Review Committee, of not less than 3 officers which should include an independent representative, for example from another government agency. The review is to be undertaken on the available evidence submitted by all parties and the reviewer or committee may at its absolute discretion seek additional information from the service provider, Reporting Officer or Reviewing Officer, either in writing or in person.
3. The service provider is to be notified of the outcome of the review within 10 working days of the review. Where the performance report is changed as a result of a review, an adjusted copy of the report is to be given to the service provider.

5 End of contract performance report

The end of contract performance report will be an important source of data for evaluation of the performance of a service provider. For this reason, the final report should reflect the performance of the service provider throughout the entire contract period.

When performance is unsatisfactory, concise supporting evidence and all relevant details of the unsatisfactory performance must accompany the report.

All performance reports must be accompanied by documentary evidence supporting the reports, including minutes of meetings with the service provider.

6 Exchange of Performance Reporting information between government agencies

Management of information exchange

All agencies should nominate a person with authority, who will be responsible for the receipt of requests for, and the subsequent supply of, information on service provider performance reports.

For additional security, agencies should nominate specific positions with the authority to seek information, and to place restrictions on the purposes for which the information can be sought. An authorised officer of a NSW government agency should only supply information as a result of a written request.

All requests for performance report information should be included in a dedicated permanent record. Details of any copy of a performance report that is provided to a requesting agency is to be recorded in the permanent file. In addition, any comments should be minuted and placed on the permanent file irrespective of whether a copy of a performance report was issued.

Any information exchanged between agencies must be treated confidentially.

Advising service providers about information exchange

Service providers must be made aware that, in tendering for or entering into service provider agreements with any agency, the agency may exchange information about their performance with other NSW government agencies.

7 Alleged breaches of the Code of Practice for Procurement

Tenderer complaints should initially be directed to the agency responsible for the tendering process, and agencies must have procedures for promptly and adequately investigating and responding to such complaints.

Refer to the State Contracts Control Board for further information on tender complaints.

The NSW Government Code of Practice for Procurement identifies procedures relating to complaints regarding Code breaches.

Tenderers and others may also direct complaints in writing to the State Contracts Control Board.

Further information and assistance

For further information and assistance please contact one of the following organisations.

Department of Commerce

NSW Procurement Client Support Centre

Phone: 1800 679 290

Fax: 02 9372 8844

Email: NSWP_Support@commerce.nsw.gov.au

Website: <http://www.commerce.nsw.gov.au>

State Contracts Control Board

The Chairperson

Level 22, McKell Building

2-24 Rawson Place

Sydney NSW 2000

Phone: 02 9372 8910

Fax: 02 9372 8922

Email: sccb@commerce.nsw.gov.au

Website:

<http://www.dpws.nsw.gov.au/Government+Procurement/State+Contracts+Control+Board.htm>

Appendix A: Model clauses for inclusion in service provider briefs

Model clauses for inclusion in service provider briefs

Conditions of engagement

Exchange of information between NSW government agencies

The service provider authorises the Principal to make information concerning the service provider available to other NSW government agencies if requested in writing to do so. This includes, but is not limited to, any information about the service provider's performance under the engagement.

The service provider acknowledges that any information about the service provider from any source, including substantiated reports of level of performance on previous engagements, may be taken into account by NSW government agencies considering whether to offer the service provider future opportunities for NSW government work.

The service provider acknowledges that the Principal regards the provision of information about the service provider to any NSW government agency as privileged under Section 30 of the Defamation Act 2005 (NSW). The service provider acknowledges that the Principal or the State of New South Wales will reject claims in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the service provider arising out of the communication.

Appendix B: Service provider performance report

Reporting Agency

General Information

service provider's name	
ACN/ABN	contract no.
contract description	
contract period	due date for completion
date of acceptance of tender response	contract sum

Service provider's performance

(√) tick appropriate box	Unsatisfactory	Satisfactory	Good	superior
Environmental management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Occupational health and safety management and workplace injury management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Workplace and industrial relations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Security of payment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Training management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Aboriginal participation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employment and outwork obligations for textile, clothing and footwear suppliers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall performance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

overall performance

Suitability for further work Not Suitable Suitable

Optional to (√) during course of contract. If not suitable is ticked detailed
Must (√) as appropriate on completion of contract reasons must be given

Breaches of the Code of Practice for Procurement

Document any breaches and action taken

<u>Name (please print)</u>	<u>phone number</u>
<u>Signature</u>	<u>date</u>

Overall comments (attach separate sheets if necessary)

■ Reporting Officer

In my opinion:

<u>Name (please print)</u>	<u>phone number</u>
<u>Signature</u>	<u>date</u>

■ Reviewing Officer

I concur / do not concur with the Reporting Officer's assessment detailed in the report.

In my opinion:

This report has been forwarded to the service provider . Yes No

Recommended for further work Yes No
(to be answered on completion of contract)

If the recommendation is no, the unsatisfactory performance aspects have been discussed with:

Name of service provider's representative (please print)

<u>Phone number</u>	<u>Date of discussion</u>
---------------------	---------------------------

Minutes of meeting and service provider's response attached

Name Phone number

Signature Date

Appendix C: Service provider performance rating system

Performance criteria

Service provider performance ratings may be allocated points against the performance criteria (for example, time management, quality of service etc) based on the rating scale below:

Better	10 points
Acceptable	7 points
Marginal	5 points
Unsatisfactory	0 points

Performance rating formula

The Reporting Officer determines the performance rating as a percentage using the formula:

$$A = \frac{\text{Service provider's point score}}{\text{Total maximum points}} \times 100$$

The service provider's point score is the total of the points scored against the performance criteria. The total maximum points applicable is the number of criteria graded against x 10.

The total maximum points may vary from report to report, depending on the number of performance criteria the service provider is graded against.

Performance grading

The assessment percentage (A) is then graded as follows:

Better	over 85%
Acceptable	over 63%
Marginal	over 50%
Unsatisfactory	below 50%