



**New South Wales Government
Procurement System for Construction**

Procurement Practice Guide

Government contract disclosure

July 2008

Important notices

Current version

The current version of this Procurement Practice Guide is maintained on the Internet at:

<http://www.nswprocurement.com.au/Procurement-System-for-Construction/Reference-material/Procurement-practice-guides.aspx>

Amendments

Refer to the Procurement Practice Guide Amendments Log which is available on the Internet at:

<http://www.nswprocurement.com.au/psc/ppg/amendments.aspx>

Copyright

This work is copyright. Apart from any use as permitted under the Copyright Act 1968 (Cwlth), no part may be reproduced by any process without written permission.

© NSW Government 2008

Requests and enquiries concerning reproduction and rights should be addressed to:

NSW Procurement Client Support Centre:

Telephone: 1800 NSW BUY (1800 679 289)

Email: nswp_support@commerce.nsw.gov.au

Using hyperlinks in this document

This Procurement Practice Guide contains embedded hyperlinks and Uniform Resource Locators (URL).

To follow a hyperlink or URL:

- Right mouse click; and
 - Select "Open in web browser" in the drop-down box.
-

Government contract disclosure

Electronic copies of the *Government contract disclosure form* are available at:

http://www.nswprocurement.com.au/psc/service_provider_selection/sm_sf_government_contract_disclosure.doc

Contents

General information	ii
Introduction.....	ii
Completing the Government contract disclosure form	ii
Government contract disclosure.....	1
1 Contract details.....	1
1.1 Contract details	1
1.2 Managing the contract	4
1.3 Provisions for renegotiation *	5
1.4 Basis for future change in price *	5
1.5 Significant evaluation criteria *	5
1.6 Operation and/or maintenance provisions	6
2 Successful tenderer details.....	6
3 Multiple successful tenderer details	7
4 Contracts managed by a private sector project manager	7
4.1 Engagement details.....	7
4.2 Organisation details	8
4.3 Private sector Project Manager's details.....	8
4.4 Principal's Representative's details	8
5 Additional information	8
6 Publication of the contract	9
7 Submission of disclosure information.....	9
7.1 Completion and lodgement of form	9
7.2 Submission by NSW Government agencies	9
7.3 Submission within the Department of Commerce.....	9
7.4 Confirmation of lodgement.....	9
7.5 Publication of disclosure information.....	10

General information

Introduction

Premier's Memorandum *2007-01: Public disclosure on information arising from NSW Government tenders and contracts* introduced the revised *Guidelines for the public disclosure of information arising from NSW Government tenders and contracts* to support the *Freedom of Information Act 1989* (NSW). Refer to Part 2, Section 15A - Disclosure of government contracts with the private sector.

The Act, which applies to all NSW Government agencies (including Government Trading Enterprises) requires disclosure for the following classes of contract:

- **Class 1 contract** is a government contract where the estimated value of the project, goods and services, property or lease is likely to be over \$150,000.
Complete Section 1 and either Section 2 or 3 (as applicable) and Section 4 (when applicable).
- **Class 2 contract** is a Class 1 contract where:
 - there has not been a tender process; or
 - the terms and conditions of the contract have been substantially negotiated with the successful tenderer; or
 - obligations include maintaining or operating infrastructure or assets could continue for 10 years or more; or
 - it involves a privately financed project; or
 - it involves a transfer of a significant asset of the agency to another party to the contract in exchange for transfer of an asset to the agency.*Complete Sections 1-4 (as applicable) and Section 5 of this form.*
- **Class 3 contract** is a Class 2 contract with a value over \$5 million.
Complete Sections 1-4 (as applicable) and Sections 5-6 of this form.

In addition to the above requirements, within the Department of Commerce disclosure is required for **any** procurement, sale and disposal contracts including capital works, goods, services (including contracts from Standing Offer panels), maintenance, information and communications technology, property (including lease arrangements) and other contracts.

Completing the Government contract disclosure form

The information that is required is to be disclosed within 60 days of the contract becoming effective is set out in *Schedule 1 Amendments Section 15A* of the Act.

The items in the *Government contract disclosure* form that are marked with an asterisk * contain the information to be disclosed on the the NSW Government eTendering website. All other information collected is used for management reporting purposes.

The *Government contract disclosure* form is divided into the following sections:

- 1 Contract details (required for **all contracts**)
- 2 Successful tenderer details (required for **all contracts**)
- 3 Multiple successful tenderer details (when applicable)
- 4 Contracts managed by a private sector Project Manager (when applicable)
- 5 Additional information (Class 2 and 3 contracts)
- 6 Publication of the contract (Class 3 contracts).

To enable verification of the information submitted, the person completing the *Government contract disclosure* form must include their name and telephone number in the fields at the top of the form together with the date when the form was completed.

Do not use abbreviations when completing the form.

Government contract disclosure

1 Contract details

1.1 Contract details

RFT number *

The RFT (Request for Tender) number is the number that identifies the specific tendering opportunity. This number is placed on all RFT documents and appears in tender advertisements, whether in newspapers or other printed material, invitation letters, and on the NSW Government eTendering website.

When contracts are awarded to multiple contractors/suppliers from a single RFT, a suffix must be added to the 7 digit RFT number to identify each separate contract; ie:

- For construction tenders, when more than one contract is awarded from a single RFT, assign the suffix "A" to the 7 digit RFT number for the first contract and continue with B, C, D etc. for each contract awarded thereafter.

For example:

If the RFT number is 0604222, the Contract Number of first contract will be 0604222A, the second 0604222B, and so on.

- For standing offer arrangements where several suppliers agree to provide goods and services over a period as embodied in separate deeds of agreement under the contract, assign the four digit suffix 0001 to the 7 digit RFT number for the first deed of agreement and continue with 0002, 0003, 0004 etc. for each deed of agreement thereafter.

For example:

If the RFT number is 0605333, the Contract Number of the first deed of agreement will be 0605333/0001, the second 0605333/0002, and so on.

Include details of multiple contracts and the suffixes in Section 5 *Multiple successful tenderer details* of the *Government contract disclosure* form.

Standing Offer agreement contract number *

The Standing Offer agreement contract number is an additional contract number which is used to identify the contract in the Smartbuy database. The Standing Offer agreement contract number must be quoted on the letter of award or deed of agreement and in correspondence relating to the contract together with the Contract Number obtained from CCMS.

Contract name *

Insert the Contract Name in upper and lower case. Place a colon (:) at the end of the Contract Name. Do not use abbreviations.

The Contract Name should contain the short title or name that identifies the contract (ie. as advertised in the press, on the NSW Government eTendering websites and as printed on the Request for Tender document).

For example;

- Bondi Public School Stage 1:
- Bathurst Waste Water Treatment Plant:
- Insurance Brokerage Services:
- Pharmaceuticals:
- Property Lease:

Contract description *

Insert the Contract Description. Place a full-stop (.) at the end of the Contract Description. Do not use abbreviations.

The Contract description should be a short description of the work or goods or services to be provided or the real property to be leased or transferred under the contract being sought; ie:

- as advertised in the press; or

- in invitation letters; or
- in the summary level of the public view area on the NSW Government eTendering website; and
- as printed on the Request for Tender document.

For example:

- Construction of a new 14 pupil school.
- Supply and installation of Aeration equipment.
- Provision of insurance brokerage services for the Office of the Protective Commissioner.
- Supply of Pharmaceuticals for NSW Department of Health.
- Property leased for the Office of Community Housing.

For Standing Offer agreements the Standing Offer agreement contract number is added to the end of the contract description when disclosed.

For example:

- Supply of Pharmaceuticals for NSW Department of Health. Standing Offer agreement contract 901.

Contract duration *

Insert the specified contract duration, in weeks.

Date for Completion *

Insert the Date for Completion.

The Date for Completion is the date resulting from the sum of the Contract commencement date and the contract duration.

For example:

If the Contract commencement date is 30 November 2006 and the contract duration is 52 weeks the Date for Completion is 29 November 2007.

Tendering method

Select the applicable tendering method:

- Selective
- Preregistered – specific project (Stage 1 EOI / Stage 2 Shortlist)
- Preregistered – worktype
- Invited (includes Direct Negotiation)
- Open

Basis of payment

Select the applicable payment method:

- Lump Sum; or
- Schedule of Rates or Schedule of Unit Prices (Standing Offer contracts); or
- Schedule of Rates and Lump Sum.

The payment method as specified in the contract used to pay the contractor, supplier, or consultant (where payment by the Principal or Client is relevant).

- **Lump Sum**

A “Lump Sum” is the pre-agreed contract amount that is generally used as the basis of payment for work/services that are fully described and specified.

- **Schedule of Rates or Schedule of Unit Prices**

A “Schedule of Rates” basis of payment is generally used for items of work where quantities cannot be pre-determined and a variation of quantities may occur when work under the Contract is performed.

For example:

Schedule of Rates items may include rock excavation, pipe reticulation or building restoration.

A “Schedule of Unit Prices” basis of payment is generally used in Standing Offer contracts when quantities cannot be pre-determined and a variation of quantities may occur

For example:

Schedule of Unit Prices items may include the supply of various types of goods under standing offer agreements.

- **Lump Sum and Schedule of Rates or Schedule of Unit Prices**

Lump Sum and Schedule of Rates or Schedule of Prices is used when there is a combination of:

- work/services that are fully described and specified; and
- items of work/goods where quantities cannot be pre-determined and a variation of quantities may occur when work under the Contract is performed.

Contract delivery system

Select the contract system used for this contract.

- **Single contract (Construction)**

In a “Single Contract” delivery system, one major contract represents the total value of the project and is used to carry out the majority of the work of the project.

- **Developed design (or Construct only) (DD) or Design development and construct (DD&C)**

In a Developed Design or Construct Only (DD) contract the contractor is to construct the work in accordance with a fully developed and documented design provided by the agency;

In a Design Development and Construct (DD&C) contract the contractor is to develop the design from the concept or preliminary design provided by the agency and construct the work;

- **Design, novate and construct (DN&C)** – where the contractor takes over from the agency a previous contract for the design work, completes the design and constructs the work;
- **Design and construct (D&C)** – where the contractor prepares a design on the basis of a performance or functional brief and constructs the work;
- **Guaranteed maximum price (GMP)** – where the contractor tenders a fixed price and the contract limits the contractor’s entitlements to claims for extra.

- **Multiple contract (Construction)**

The “Multiple Contract” delivery system is a delivery system whereby the project is split into different packages. Each of these packages requires a separate contract with its own Contract conditions.

- **Contracts for projects with special needs (Construction)**

- **Managing contractor** – where the contractor is engaged early in the life of the project to manage the scope definition, design, documentation and construction of the project works using consultants and subcontractors, under a contract providing for payment of fees and involving incentives for maintaining actual costs within targets;
- **Alliance contract** – where the agency enters an agreement with other entities to undertake the work cooperatively, reaching decisions jointly by consensus, using an integrated management team and intensive relationship facilitation, sharing rewards and risks and using an open-book approach to determine costs and payments;
- **Privately funded project (PFP)** – where a private sector entity finances, designs and constructs the asset, possibly owns the asset for a period, and achieves a financial return on its investment, for example by charging for use of the asset over a concession period.

- **Professional services contract**

- Consultancy services
- Project management services.

- **Standing Offer contract (Goods and Services)**

The “Standing Offer” contract delivery system is an arrangement where there is a "Standing Offer Agreement/Contract" from the contractor for the provision or disposal of a Good or Service over the period of the agreement on the order of any eligible

customer for whom the State Contracts Control Board (SCCB) has arranged the agreement.

- **One-Off contract (Goods and Services)**

A “One-Off” contract delivery system is arranged specifically for a particular client agency for the provision or disposal of a Good or Service rather than a Whole of Government arrangement.

- **Other contracts**

Other contract delivery systems include:

- Lease Agreements.

For more information refer to [Procurement Method Selection Guidelines](#)

Standard form

Select the standard form used for the Contract:

Select from the following list:

Construction contracts

- GC21 General Conditions of Contract (Construction);
- HGC21 General Conditions of Contract (Construction) (Department of Health projects);
- Minor Works (Construction);
- Mini Minor Works (Construction);
- Other: (include details)

Professional services contracts

- Consultancy services agreement (Fee up to \$30,000);
- Consultancy services agreement (Fee over \$30,000);
- Project management services agreement.

State contracts Control Board (SCCB) contracts

- GITC (Goods and Services);
- Procure IT (Goods and Services)
- SCCB One off (IT and Non IT);
- SCCB Standing Offer (Goods and Services);
- SCCB Standing Offer (Information Technology);
- Other: (include details).

Other contracts

- Property Lease (Property);
- Maintenance;
- Special agency conditions (include details).

1.2 Managing the contract

Contract Principal

Insert the name of the Principal nominated in the Contract:

Name of Client Agency *

Insert the name of the NSW Government agency / organisation that is funding the project.:

Agency or organisation managing contract *

Insert the name of the Principal's (or the private sector Project Manager's) office that will be responsible for managing the contract.

Complete Section 4 *Contract Managed by private sector Project Manager* of the [Government contract disclosure](#) form when a private sector Project Manager has been engaged to manage the contract.

Name of the person managing the contract or agreement

Insert the name of the person responsible for managing the contract or agreement on behalf of the Principal.

The name of the nominated person is included in the contract documents for each of the following roles:

- Principal's Authorised Person (GC21 and HGC21);
- Principal's Representative (Minor Works);
- Principal's authorised representative (Mini Minor Works)
- Contract Officer (SCCB contracts); or
- Principal's representative (Consultancy services and Project management services).

Email address

Insert the Email address of the person responsible for managing the contract or agreement on behalf of the Principal.

1.3 Provisions for renegotiation *

When provisions for renegotiation are included in the contract, include details of the requirements.

1.4 Basis for future change in price *

The *Guidelines for the disclosure of information in NSW Government Contracts* require the disclosure of the basis for future changes in price for all contracts.

In addition to provisions specific to contracts, a number of standard price change mechanisms are used. These mechanisms are described below.

When GC21, HGC21, Minor Works or Mini Minor Works construction contracts are used select :

- Construction contract with no cost adjustment:
 - Variations as instructed and valued by agreement or independently.

When an alternate construction contract with Cost Adjustment provisions is used select:

- Construction contract with cost adjustment:
 - Variations as instructed and valued by agreement or independently, and cost adjustments based on ABS indices.

When a professional services agreement is used select:

- Consultant, Project Manager and Project Director engagements.
 - Variations as instructed and valued by agreement or independently.

When a State Contracts Control Board (SCCB) contract is used select the applicable option from the list below

- SCCB contract with adjustments for labour and materials:
 - Periodically adjusted for changes in labour and material factors.
- SCCB contract with no cost adjustments (firm price):
 - Firm price quoted and accepted for the duration of the contract.
- SCCB contract with adjustments for CPI:
 - Periodically adjusted for CPI.

When a Medical Contract is used select:

- Medical contract:
 - Six monthly price revision.

If the above options do not meet the conditions of the contract insert details the information regarding Basis of Future Change in Price outlined in the contract.

1.5 Significant evaluation criteria *

Select the significant evaluation criteria and insert the weightings that were applied to this contract.

The *Guidelines for the disclosure of information in NSW Government Contracts* require the disclosure, for all contracts, of the significant evaluation criteria and any weightings used in tender assessment; ie:

- all criteria, which are rated and weighted, are considered significant and must be listed, together with their weightings; or
- where criteria are not rated and weighted, only criteria whose application has affected the award of the contract need be considered significant.

The criterion of value for money is invariably applied in the evaluation of tenders. Other criteria, which are absolute requirements, may also apply. This criteria, may be scored and weighted. Scoring and weighting is not necessarily applied to all tenders or selection criteria.

For example, the following items are **Significant evaluation criteria**:

- Price, (Mandatory);
- Previous performance; and
- Financial resources.

Where the above items do not meet the conditions of the contract, details of all other **Significant evaluation criteria** and weightings used in the contract must be included.

1.6 Operation and/or maintenance provisions

Does the contract contain any operation and/or maintenance provisions that entitle the successful tenderer to receive payment under the contract?

Select either Yes or No.

If yes is selected, list the operation and/or maintenance provisions in the contract.

2 Successful tenderer details

Legal name of organisation awarded the Contract *

Insert the legal name of the organisation awarded the contract / engagement.

Check that the correct legal name of the organisation is recorded. The legal name can be verified at the following websites:

- Australia Security Commission at www.search.asic.gov.au/gns001.html
- Australian Business Register Business Entry Point at www.abr.business.gov.au/

Trading name *

Insert the Trading Name of the organisation awarded the contract.

This should only be completed if the trading name is different to the organisation name.

Organisation ACN

Insert the Australian Company Number of the organisation awarded the contract / engagement.

Organisation ABN

Insert the Australian Business Number of the organisation awarded the contract / engagement.

Business address *

Insert the street address of the organisation awarded the contract / engagement.

Telephone number

Insert the telephone number of the organisation awarded the contract / engagement (include the area code)

Facsimile number

Insert the facsimile number of the organisation awarded the contract / engagement. (include the area code)

Details of Related Body Corporate *

Insert a list of details of any related body corporate in respect of the successful tenderer, that will be involved in carrying out any of the successful tenderers obligations under the contract or will receive a benefit under the contract.

The *Freedom of Information Act 1989* (NSW) **Section 15A subsection 2b** requires the disclosure, for all contracts, details of other entity obligations or benefits under the Contract.

List details of any related body corporate (within the meaning of the *Corporations Act 2001* (Cwlth)) in respect of the successful tenderer, or any other private sector entity in which it has an interest, that will be involved in carrying out any of the successful tenderers obligations under the contract or will receive any benefit under the contract.

The Act does not require the undertaking of any ownership and control investigations additional to those normally required, but any ownership and control information that is

common knowledge or has received wide publicity, should be disclosed if it would have been relevant to the award of the contract.

There may be ownership and control information that appears likely to have affected the award of the contract that was not taken into account. If this happens, a brief explanation, for example, that the information was not available at the time of awarding the contract should be included in the information you provide.

For example:

- The successful tenderer has nominated direct payment to a related entity; or
- The contract involves a direct transfer of an asset to another entity.

Contract Price *

The “contract price” (known as “contract fee” for professional services) is the total amount for which the contract is awarded, including GST. In the GC21 and HGC21 construction contracts the contract price includes the Completion Amount.

Examples of how to calculate the Contract Price:

- A tender response is received for a lump sum price of \$3,350,235. The Contract is awarded on the basis of contract price. The amount entered is \$3,350,235.
- A tender response is received for a lump sum price of \$51,350. The Contract is awarded on the basis of contract price. The amount entered is \$51,350.
- A tender response received provides rates of \$10,000 per month for a maintenance contract. The contract term is three (3) years, with an option of extension for a further two (2) years. The amount entered is \$360,000 ($\$10,000 \times 12 \times 3$).
- A Schedule of Rates tender response is received. Each rate is multiplied by the estimated quantity for that rate to calculate to a price (the rate). The amount entered is the sum of all rates.

Estimated annual turnover *

“Estimated annual turnover” applies to SCCB Period or Standing Offer Contracts and is the estimated total per annum value of the contract for all suppliers under the contract in terms of total sales to eligible Government customers.

Example of how to calculate the Estimated Annual Turnover:

- A standing offer contract is awarded with deeds of agreement with six (6) suppliers. The estimated annual turnover of the whole contract (estimated total sales to customers by all suppliers under the contract) was \$1,200,000 p.a. The amount entered is \$1,200,000.

Estimated value

Insert the Estimated Value over the life of the SCCB Standing Offer Contract only.

Date of notification of contract acceptance *

Insert the date the notification of acceptance / engagement was issued to the Contractor, Consultant or Supplier.

Contract commencement date *

Insert the date the contract commenced.

3 Multiple successful tenderer details

Complete Section 3 - *Multiple successful tenderer details* of the *Government contract disclosure* form when a contract is awarded to multiple contractors or suppliers.

4 Contracts managed by a private sector project manager

Complete Section 4 *Contracts managed by a private sector project manager* of the *Government contract disclosure* form when a private sector project manager has been engaged to manage the contract on behalf of a NSW Government agency.

4.1 Engagement details

Private sector project manager engaged by

Insert the name of the NSW Government Agency that engaged the private sector project manager.

RFT number of private sector project manager's contract

Insert the RFT number for the engagement of the private sector project manager (or this contract).

4.2 Organisation details

Legal name of organisation *

Insert the legal name of the organisation awarded the engagement of the private sector project manager.

The legal name can be verified at the following websites:

- Australia Security Commission at www.search.asic.gov.au/gns001.html
- Australian Business Register Business Entry Point at www.abr.business.gov.au/

Trading name *

Insert the Trading Name of the organisation awarded the contract.

This should only be completed if the trading name is different to the legal name.

Organisation ACN

Insert the Australian Company Number of the organisation awarded the engagement.

Organisation ABN

Insert the Australian Business Number of the organisation awarded the engagement.

Business address *

Insert the street address of the organisation awarded the engagement.

Telephone number *

Insert the telephone number of the organisation awarded the engagement (include the area code)

Facsimile number *

Insert the facsimile number of the organisation awarded the engagement. (include the area code)

4.3 Private sector Project Manager's details

Name of Project Manager

Insert the name of Project Manager responsible for the management of the contract.

Telephone number

Insert the Project Manager's telephone number (include the area code)

Mobile number

Insert the Project Manager's mobile number

Email address *

Insert the Project Manager's email address.

4.4 Principal's Representative's details

When an private sector Project Manager has been engaged to manage the contract on behalf of the Principal insert the name of the NSW Government agency person that is responsible for managing the Project Management services agreement.

Name of the Principal's Representative managing the private sector Project Manager

Insert the name of Principal's Representative.

Telephone number

Insert the Principal's Representative's telephone number (include the area code)

Email address *

Insert the Principal's Representative's email address.

5 Additional information

Complete Section 5 of the [Government contract disclosure](#) form for all Class 2 and 3 contracts.

The [Freedom of Information Act 1989](#) (NSW) requires the publication of additional information for all Class 2 and 3 contracts.

The requirements set out in Schedule 1 Amendments *Section 15A* include:

- Transfer of assets to the Government;
- Transfer of assets to the contractor;
- Public Sector comparator;
- Cost-benefit analyses;
- Risk sharing;
- Guarantees or undertakings between the parties;
- Key elements of the contractual arrangements not subject to a specific confidentiality agreement; and
- Financial model.

6 Publication of the contract

Complete Section 6 of the [Government contract disclosure form](#) for all Class 3 contracts.

The *Freedom of Information Act 1989* (NSW) requires the publication of the contract on the NSW Government eTendering Internet website (<https://tenders.nsw.gov.au>) for all Class 3 contracts.

The requirements set out in Schedule 1 Amendments *Section 15A* include:

- Publication of the contract (excluding the provisions not to be published).

7 Submission of disclosure information

7.1 Completion and lodgement of form

Timely and correct completion and lodgement of the [Government contract disclosure form](#) will ensure that information from awarded contracts is:

- promptly recorded in the Contractor and Consultant Management System (CCMS) for management and reporting; and
- published on the NSW Government eTendering website in compliance with Government disclosure guidelines.

7.2 Submission by NSW Government agencies

Within 10 working days of awarding a contract submit the completed [Government contract disclosure form](#) by email to: CCMSDATA@commerce.nsw.gov.au.

7.3 Submission within the Department of Commerce

Within 10 working days of awarding a contract enter the information required by the form directly into CCMS or submit the completed [Government contract disclosure form](#):

- to the Local CCMS Administrator; or (if none)
- by email to tenders@commerce.nsw.gov.au.

7.4 Confirmation of lodgement

When the [Government contract disclosure form](#) is lodged and the information recorded in CCMS, an e-mail will automatically be generated to confirm that:

- the contract award information has been recorded in CCMS;
- the information will be held for 7 days to allow for correction prior to publishing on the NSW Government eTendering website; and
- the 7 digit RFT (Request for Tender) number has become the “Contract Number”.

The Contract Number must be quoted on the letter of award or deed of agreement and in correspondence relating to the contract.

Standing Offer agreement contracts have an additional contract number which is used to identify the contract in the Smartbuy database. The Standing Offer agreement contract number must be quoted on the letter of award or deed of agreement and in correspondence relating to the contract together with the Contract Number obtained from CCMS.

7.5 Publication of disclosure information

Once the 7 day correction period has elapsed, the disclosure information will appear on the NSW Government eTendering website against the relevant RFT number. Information published on the NSW Government eTendering website may also be published on NSW Government agency websites, if applicable.

When there are multiple contracts, in addition to the disclosure information for the contract, the identity of the suppliers, details of any cross ownership and the commencement date for each supplier will also be displayed against the RFT number.