# Supporting Economic Recovery of the Western Australian Building and Construction Industry

The WA Government is committed to driving economic recovery following the COVID-19 pandemic by leveraging its purchasing power for the benefit of local businesses. WA Government agencies are encouraged to maximise opportunities for local businesses, streamline procurement processes, and support existing local contractors.

On 27 May 2020, the Minister for Finance announced measures to support the Western Australian economy and local businesses recover from the economic impacts of the COVID-19 global pandemic. Those measures - in effect from 2 June 2020 until revoked – recognise the exceptional circumstances faced by Government, the community and industry, and serve to expedite government procuring activities and reduce barriers for local business participation in supplying goods and services to government.

As [announced by the Minister for Finance](https://www.mediastatements.wa.gov.au/Pages/McGowan/2020/07/Procurement-changes-for-works-to-further-boost-local-businesses.aspx) on 22 July 2020, the Department of Finance have issued a Procurement Direction which extends these measures to works procurement and introduces additional initiatives to benefit businesses operating in and supporting the Western Australian Building and Construction Industry.

In exercising greater discretions under the temporary policy changes, State agencies must still ensure their works procurement and contract management activities are conducted with probity and integrity.

## Temporary Measures to Assist Economic Recovery

State agencies **must** adopt the economic recovery measures set out below when procuring works.

### Works Procurement Policy Requirements

State agencies that undertake works procurement pursuant to statutory powers in their own enabling legislation are not required to involve the Department of Finance in their works procurement processes. It is intended that those State agencies continue to maintain and operate their existing works procurement policies and procedures, until further sector-wide procurement requirements are issued pursuant to the Act.

All other State agencies **must** continue to engage the Department of Finance to undertake works, unless an agency specific procurement direction issued under the Act states otherwise.

### Minimum Competitive Procurement Requirements for Works

The following table sets out the minimum competitive requirements that a State agency must use to procure works, unless using a common use arrangement, or an approved *co-operative procurement arrangement[[1]](#footnote-2)****.***

| Temporary Monetary Thresholds\* | Minimum requirements |
| --- | --- |
| Up to $250,000 | * State agencies may determine the most appropriate procurement method including direct sourcing, verbal quotations (up to $50,000) or written quotations based on assessment of the nature of the market, complexity and risk, and process efficiency. Put simply, State agencies may direct source up to $250,000. * Where the total estimated value is $50,000 up to $250,000 quotations must be requested in writing and any offer must be received in writing. * Appropriate documentation of decisions must be retained. |
| $250,000 up to $500,000 | * Request sufficient number of written quotations. |
| $500,000 and above | * Open tender through a public advertisement. |

#### Up to $250,000

State agencies can choose to issue a direct quote to a local business for procurements up to the value of $250,000 (rather than $50,000).

The temporary thresholds apply when there is an opportunity to purchase from a local business and one or more local businesses will be invited to submit an offer. Monetary thresholds are based on the total estimated value, including any extension options, and are inclusive of GST.

The original monetary threshold for direct purchases applies (i.e. up to $50,000) if:

* + There is no opportunity to purchase from a local business.
  + A direct purchase is not suitable.
  + Or the public authority chooses not to purchase from a local business.

When applying the temporary threshold, State agencies should:

* + Not seek verbal quotes for purchases valued $50,000 or more.
  + Establish an evaluation panel of at least two voting members when evaluating bids valued between $50,000 up to $250,000.

State agencies should carefully consider the impact of the purchase on the market before deciding whether to make a direct purchase under the temporary thresholds.

A direct purchase may be appropriate when:

* + There is an opportunity to purchase from a local business.
  + The local business has the capability and capacity to meet the contract requirements.
  + The purchase will contribute to the economic sustainability of the local business.
  + A direct purchase will achieve value for money, noting that supporting a local business can contribute to the assessment of value for money.
  + A direct purchase will expedite the timely award of the contract.

A direct purchase may not be appropriate when:

* + There are numerous local businesses in the market that have the capability and capacity to meet the contract requirements and the benefits of competition outweigh the benefits of a direct purchase.
  + The State agency has awarded numerous contracts to the same business without testing the market.
  + A direct purchase will not achieve value for money, noting that supporting a local business can contribute to the assessment of value for money.
  + The direct purchase is unlikely to contribute to the economic sustainability of the local business.
  + The risk of making a direct purchase at the temporary threshold is unacceptable.

When publishing contract award details on [Tenders WA](https://www.tenders.wa.gov.au/), State agencies are required to indicate whether the temporary momentary thresholds were applied. This information will be used for reporting and auditing purposes.

#### $250,000 to $500,000

State agencies can choose to invite businesses to submit an offer without publicly advertising the Request for procurements up to the value of $500,000.

To determine whether the temporary thresholds should apply, the public authority must conduct market research as part of the procurement planning stage and identify whether there is an opportunity to directly purchase from a local business.

The procurement should be publicly advertised at the original monetary threshold (i.e. where the procurement is valued $250,000 or more) if market research indicates:

* + There are no local businesses in the market.
  + That the temporary thresholds are not suitable.
  + Or the State agency chooses not to purchase from a local business.

When applying the temporary threshold, State agencies should:

* + Invite at least one local business to submit an offer.
  + Convene an evaluation panel of at least three voting members.

State agencies should carefully consider the impact of the purchase on the market before deciding whether to apply the temporary threshold.

The temporary threshold may be appropriate when:

* + There is an opportunity to purchase from a local business or businesses.
  + Local businesses have the capability and capacity to meet the contract requirements.
  + The purchase will contribute to the economic sustainability of the local businesses.
  + Inviting offers without publicly advertising will achieve value for money, noting that supporting a local business can contribute to the assessment of value for money.
  + Issuing quotes will expedite the timely award of the contract(s).

The temporary threshold may not be appropriate when:

* + The State agency has awarded numerous contracts to the same businesses without testing the market.
  + Inviting offers without publicly advertising will not achieve value for money, noting that supporting a local business can contribute to the assessment of value for money.
  + The purchase is unlikely to contribute to the economic sustainability of local businesses.
  + The risk of using the temporary threshold is unacceptable.

When publishing contract award details on [Tenders WA](https://www.tenders.wa.gov.au/), State agencies are required to indicate whether the temporary momentary thresholds were applied. This information will be used for reporting and auditing purposes.

## Procurement Practice Measures to Benefit Local Small and Medium Enterprises

State agencies undertaking works procurement are required to consider further measures to maximise the participation of the local building and construction industry in projects, including by:

* informing the local building and construction industry stakeholders including small and medium enterprises about upcoming projects and procedural requirements;
* emphasising local and regional benefits in the selection of procurement methods, design of tender evaluation criteria and value-for-money assessments;
* arranging programs of work so they are accessible to small and medium enterprises;
* refreshing existing panels periodically to provide opportunities for further small and medium enterprise participation;
* where it is necessary to specify proprietary products to describe a requirement of the procurement, consider specifying (by example) locally available building materials, while allowing for the consideration of equivalent alternatives;
* exercising existing contractual extension options, or approving short beyond term extensions (of no more than two years) for existing arrangements expiring before 30 June 2021, where the current arrangement is delivering value for money and extending would give an incumbent local business economic security and facilitate the retention of jobs; and
* providing timely and meaningful feedback in relation to unsuccessful tenders and performance of contracts.

State agencies will be asked to inform the Department of Finance by 30 September 2020 the measures they have adopted within their agency.

### Managing risk

With the increased flexibility that the policy amendments create, it is important for State agencies to remember their obligations to manage risk and ensure due process is followed.

State agencies should consider whether they have the appropriate internal mechanisms to manage the risk of fraud and corruption that may arise from the procurement process.

This should include:

* + Declarations of conflict of interest.
  + Registration of gifts and benefits received or offered.
  + Contract, variation and exemption registers.
  + Appropriate audit mechanisms for procurement processes and contract variations.

The Department of Finance provides a [Declaration of Confidentiality and Interest Form template](https://www.wa.gov.au/government/document-collections/goods-and-services-templates) that State agencies can use for all officers involved in a procurement process. Declarations should be signed at the start of an officer’s involvement in the procurement process and be revisited once offers have been received. It is recommended that procurement decision makers also sign a declaration. All declarations should be appropriately recorded. There are conflict of interest guidelines available from the Integrity Coordinating Group webpage at: <https://www.wa.gov.au/government/document-collections/integrity-coordinating-group>.

Procurement processes conducted during and after the pandemic will be subject to the same, if not greater, audit requirements. Agencies must continue to observe good internal controls for both procurement and financial decisions and maintain audit trails. In addition, State agencies may wish to undertake increased expenditure analysis during this time to identify any off contract or maverick purchasing.

Whilst most supply chains have stabilised and the need for emergency purchasing has significantly reduced, the Public Sector Commission’s [Integrity Guidance](https://www.wa.gov.au/government/publications/integrity-risks-during-challenging-times) and the Office of the Auditor General’s guidance on a [Financial and Governance Matters](https://audit.wa.gov.au/wp-content/uploads/2020/05/COVID-19-Financial-and-governance-matters-better-practice-guidance-April-2020.pdf) about controls may still be pertinent as examples of how agencies may wish to ensure integrity of their procurement function whilst implementing the temporary policy changes.

### Due diligence

Due diligence should not be compromised when streamlining procurements, particularly when contracting with new suppliers. Some procurements will inevitably require thorough verification processes, but due diligence is important for any procurement. Researching a new supplier online and/or requesting a financial report on a new supplier does not add a lot of time to the procurement process, but may save considerable contract management effort in the future.

The following online information can be searched in a timely manner to determine if further due diligence is required:

* + Business searches, using [ABN Look-up](https://abr.business.gov.au/) or [Australian Securities and Investment Commission](https://asic.gov.au/online-services/search-asics-registers/) to verify business status.
  + [Tenders WA](https://www.tenders.wa.gov.au/) and [Common Use Arrangements](https://www.wa.gov.au/government/cuas/common-use-arrangements-cuas), which may provide details on any past contracts that a business may have been awarded.
  + Trade associations, industry certifications, chambers of commerce membership and other professional recommendations, which may verify whether the business has required industry licences and memberships with reputable industry associations.
  + Independent media searches, which may identify news items relating to business practices or industrial relations matters.

Whilst verifying using online information may be a quick tool, be mindful of the validity of the evidence source as some information may be unsubstantiated or biased.

### Communication

Procurement teams within State agencies are encouraged to communicate and reinforce the requirements for high standards of accountability and probity within procurement processes at all times, even when responding to emergency situations like the COVID-19 pandemic. This should also involve awareness of how officers can report suspicious activities.

## Supporting local businesses

The following sections of this guideline outline strategies that can be used at each stage of the procurement process to maximise opportunities for local businesses and support economic recovery following the COVID-19 pandemic.

### Researching local businesses

In the early stages of the procurement planning process, State agencies should research the market to determine whether there is an opportunity to purchase from a local business or local businesses.

Methods for identifying whether there is a local business in the market include:

* + Desktop internet research including ‘WA’ and/or ‘small business’ in the search criteria.
  + Searching the [Western Australian Disability Enterprise](http://wade.org.au/) website or the [Buyability](https://buyability.org.au/) register to identify whether an Australian Disability Enterprise can provide the requirements.
  + Searching Supply Nation’s [Indigenous Business Direct](https://supplynation.org.au/) or the [Aboriginal Business Directory Western Australia](https://www.abdwa.com.au/) to identify whether an Aboriginal business can provide the requirements.
  + Consulting [Local Content Advisors](http://industrylink.wa.gov.au/advisory-services/services-to-businesses-head-contractors/regional-support) for advice on local businesses based within the regions.
  + Reviewing contracts that have been previously awarded on the [Tenders WA](https://www.tenders.wa.gov.au) website.

**Confirming a business is local**

To confirm whether an identified business is a local business, it is recommended that Public Authorities apply similar measures to those used for the [Buy Local Policy 2020](https://industrylink.wa.gov.au/about/buy-local-policy).

Public Authorities can consider whether the:

* + business maintains a permanent, local operational office and the business address aligns with the business’s marketing, telephone directory or website information;
  + majority of the contract outcomes will be managed and/or delivered locally; and
  + business employs local people.

If further evidence is required to confirm that a business is local, Public Authorities could consider requesting documentation such as:

* + Utility, electric or telephone bills;
  + Lease agreements or local government rates notices;
  + Invoices issued from the business address;
  + Contract documentation to demonstrate that work has been carried out at the business address; and
  + A list of key staff that would be involved in contract delivery.

### Disaggregation to create opportunities for local businesses

State agencies should consider disaggregating purchasing where appropriate to distribute government expenditure over multiple suppliers and maximise opportunities for local businesses. For example, instead of developing a State wide contract, consider developing multiple, smaller regional arrangements to distribute expenditure over several businesses and support regionally based businesses.

The decision to disaggregate a procurement should be based on a thorough assessment of the market to determine whether there is opportunity to support local businesses and assess the risks of disaggregation.

Disaggregation may be appropriate when:

* + The requirements span multiple regional areas.
  + Local businesses have the capability and capacity to meet the contract requirements within each region.
  + Aggregating the requirements will likely exclude local businesses from competing for the work directly.

Disaggregation may not be appropriate when:

* + The requirements cover a single region.
  + There are no local businesses in the market.
  + The same businesses will have to submit multiple bids, increasing industry tendering burden.
  + The loss of potential economies of scale or higher risk allocation from managing contractor integration is materially outweighed by the benefit of supporting local businesses.

When deciding to disaggregate, State agencies should consider the sequencing and timing of procurements to allow time for the procurements to be advertised in stages, if appropriate.

### Developing the contract requirements

When developing the contract requirements, State agencies should consider how to maximise support and opportunity for local businesses. For instance:

* + Consider the appropriate contract term and extension options, balancing assurance of work for local businesses with future opportunities.
  + Ensure qualitative requirements have been adequately balanced, providing the public authority with the information needed for decision making, without placing an unnecessary burden on local businesses to respond.
  + When designing reporting requirements, remember to balance frequency and extent of reporting effort by the contractor with what data is necessary to support effective contract management.
  + Consider whether the insurance requirements are suitable for the risk/complexity of the procurement and whether they will exclude local businesses from submitting an offer.
  + Consider whether any requirements or standards included within the scope will discourage a local business from submitting an offer or make it difficult for a local business to submit a competitive offer.

Refer to the *Procurement Practice Measures to Benefit Local Small and Medium Enterprises* section for more information.

### Advertising the request

When advertising a Request, State agencies should consider the following points to maximise support for local businesses:

* + Consider the appropriate advertising period, acknowledging that local businesses, particularly small businesses, will be completing offers while juggling competing priorities and limited resources.
  + When publicly advertising a Request, consider inviting local and/or small businesses identified during market research that may be interested in submitting an offer.
  + Release an Early Tender Advice on Tenders WA to provide advanced notice to local businesses of upcoming opportunities.
  + Where appropriate, organise tender briefings to allow local businesses to ask questions before submitting an offer.

### Value for money

Value for money allows for the consideration of both cost and non-cost factors when making a procurement decision. This can include the benefit of purchasing from a local business and supporting economic recovery following the COVID‑19 pandemic.

The value for money decision should be clearly documented and recorded for purchases of any value.

### Contract management

Contract managers are encouraged to consider the following points to maximise support for local businesses.

### Managing a panel contract

If you are managing a panel contract, consider supporting local businesses by:

* + Encouraging the use of local contractors where possible (while still complying with any buying rules).
  + Distributing purchases over multiple panellists, rather than using the same provider multiple times and look for opportunities to maximise work for local contractors.
  + Reviewing the information available about the panel arrangement with a view to better identifying local businesses.
  + Reviewing whether there is a need to add local businesses to existing panel arrangements, considering the commitments to existing panel members and the risks associated with varying the contract.

# Guidance Notes for State Agencies

## Co-operative Procurement Arrangements

All State agencies are advised Part 5 of the *Procurement Act 2020* provides for the establishment of co-operative procurement arrangements.

These arrangements, if approved, allow State agencies to:

* 1. purchase cooperatively under a single arrangement with other State agencies, or authorised bodies; and
  2. purchase on behalf of other State agencies, or authorised bodies.

State agencies interested in these concepts should seek further guidance on the required approvals from the Department of Finance (details below). During the operation of this procurement direction 2020 / 1, the Department of Finance advises that State agencies seeking approval to enter into a cooperative arrangement should be able to demonstrate how the arrangement would benefit:

* Aboriginal businesses;
* Australian Disability Enterprises;
* regional communities;
* small and medium business participation; or
* more efficiently implement priority government commitments.

Further information and support from the Department of Finance can be obtained from:

**Email:** [procurementadvice@finance.wa.gov.au](mailto:procurementadvice@finance.wa.gov.au)

## Promotion within State agencies

State agencies are required to bring the matters contained therein to the attention of the relevant staff within their agency.

1. See the ‘Guidance Notes for State agencies’ accompanying this procurement direction for information on co-operative procurement arrangements. [↑](#footnote-ref-2)