

Diversity in supply arrangements



Queensland
Government

Title

v1 April 2020

The State of Queensland (Department of Housing and Public Works) 2020



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Acknowledgments

This guide is a product of the Queensland Government Social Procurement Project. The Queensland Department of Housing and Public Works gratefully acknowledges funding and assistance received from the Queensland Mental Health Commission in establishing and guiding the Queensland Government Social Procurement Project.

Contact us

The Office of the Chief Advisor – Procurement is committed to continuous improvement. If you have any suggestions about how we can improve this guide, or if you have any questions, contact us at

betterprocurement@hpw.qld.gov.au.

Disclaimer

This document is intended as a guide only for the internal use and benefit of government agencies. It may not be relied on by any other party. It should be read in conjunction with the Queensland Procurement Policy, your agency's procurement policies and procedures, and any other relevant documents.

The Department of Housing and Public Works disclaims all liability that may arise from the use of this document. This guide should not be used as a substitute for obtaining appropriate probity and legal advice as may be required. In preparing this document, reasonable efforts have been made to use accurate and current information. It should be noted that information may have changed since the publication of this document.

Where errors or inaccuracies are brought to the attention of the Department of Housing and Public Works, a reasonable effort will be made to correct them.

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Introduction

Increasing diversity in supply arrangements aligns with the policies and principles outlined in the *Queensland Procurement Policy* (QPP), supporting social outcomes for Queensland communities. By leveraging even small amounts of government's spend to add social value, communities and suppliers across the state can benefit enormously.

For the purposes of this guide, 'supply arrangements' include standing offer arrangements (SOA), registers of pre-qualified suppliers, panel arrangements or preferred supplier arrangements.

This document is primarily concerned with process and practice associated with establishing and reviewing supply arrangements. It will help government buyers using those arrangements to deliver on the government's commitment to consider social value in procurement.

It complements a range of other materials supporting government objectives, including:

- *Frequently asked questions*¹
- *Social procurement guide*²
- *Social procurement clauses* - example clauses for tenders and contracts³
- *Integrating sustainability into the procurement process*⁴
- *Ending domestic and family violence - guidance for government buyers*⁵

Policies, principles and context

Queensland Government has an 'agency-led, centrally enabled' procurement model. This means that each government agency is accountable for their own procurement, supported by the Office of the Chief Advisor – Procurement (for policy and guidance), and 'lead' agencies. All procurement activities must comply with the QPP, and departmental procedures and delegations.

The Queensland Government is committed to supporting diversity among its suppliers, as described in the QPP and the *Queensland Indigenous (Aboriginal and Torres Strait Islander) Procurement Policy* (QIPP).

Commitments aimed at diversifying the government's supply chain include:

- increasing spend with genuine, quality social enterprises, and
- increasing government procurement with Aboriginal and Torres Strait Islander businesses to three per cent of addressable spend by 2022.

Queensland Government procurement is organised into six categories of spending. Lead agencies for each category typically establish arrangements on behalf of the state, so that a number of agencies can easily access a contract that offers them value for money on frequently purchased goods and services.

Embedding diversity on these arrangements enables agencies to more easily deliver social, environmental and economic value when buying for Queensland.

¹ *Frequently asked questions* can be found at <https://www.forgov.qld.gov.au/social-procurement-frequently-asked-questions>

² *Social procurement guide* can be found at https://www.hpw.qld.gov.au/data/assets/pdf_file/0020/3980/socialprocurementguide.pdf

³ *Social procurement clauses* can be found at https://www.hpw.qld.gov.au/data/assets/pdf_file/0015/3435/socialprocurementclauses.pdf

⁴ *Integrating sustainability into the procurement process* can be found at https://www.hpw.qld.gov.au/data/assets/pdf_file/0019/3349/procurementguideintegratingsustainability.pdf

⁵ *Ending Domestic and Family Violence: Guidance for Government Buyers* can be found at https://www.hpw.qld.gov.au/data/assets/pdf_file/0014/3218/dfvguideforgovernmentbuyers.pdf

Policy in practice

Embedding diversity in supply arrangements aligns with the policies and principles within the QPP, enabling government buyers to more easily deliver social value when buying for Queensland. This might mean actively recruiting meritorious Aboriginal businesses and/or Torres Strait Islander businesses, and social enterprises who work with and support marginalised groups⁶, on standing offer arrangements (SOAs) or establishing registers of pre-qualified suppliers, which are typically larger and include a more diverse set of suppliers.

Despite best efforts, initial diversification strategies when establishing arrangements can be ineffective. There can be a lack of diverse suppliers tendering, or supplier capability may need further development before they are ready to undertake a government contract. The challenge is to build and embed diversity on arrangements that typically have multi-year terms and often have extension options.

Currently, prospective suppliers who are made aware of arrangements part way through their term, or are unsuccessful in the initial tender, can be effectively 'locked out' of becoming a listed supplier until the arrangement is renewed. 'Locking' arrangements in this way is intended to protect the integrity of the original tender process, and the interests of the listed suppliers. This can lead to longstanding 'locked' arrangements that lack diversity options for buyers.

Arrangement managers should ensure that terms and conditions allow for increasing diversity during the life of the arrangement and consider any additional assessment requirements. Being clear about diversity objectives when setting up new arrangements provides clarity to the market about what they can expect and creates greater flexibility in managing and refreshing arrangements as needed.

What can it look like?

Work is already underway to create more diverse and inclusive arrangements when they are first established. For example:

- The General Goods and Services category have supplier diversity targets in all their category plans. They also include specific supplier diversity objectives in their tendering for new arrangements and use this to ensure that the right mix of suppliers is appointed to a panel.
- QBuild established a panel for landscape maintenance services. The panel includes a social enterprise. To inject greater diversity, QBuild provisionally approved five other small businesses, including an Aboriginal business or Torres Strait Islander business and two social enterprises. These businesses were able to prove their capacity and capability to deliver on requirements by doing some typical maintenance jobs, before being confirmed as ongoing members on the new arrangement.
- General Goods and Services requires some Tier 1 firms to mentor social enterprises or Aboriginal businesses and Torres Strait Islander businesses as part of their obligations, to help uplift supplier capability.

Many capable social enterprises and Aboriginal businesses and/or Torres Strait Islander businesses have little, or no exposure to government contracts. While there are a number of programs to help business understand how to tender for government opportunities, thinking about the best way to assess quality and capability can also have an impact.

⁶ Marginalised groups include, but are not limited to, people with disabilities, people from culturally and linguistically diverse backgrounds, people with a lived experience of mental health conditions, long term unemployed, ex-offenders, and women led and owned businesses.

Considering diversity in each stage of the procurement process

The Queensland Government is committed to supporting diversity among its suppliers. Government buyers are encouraged to search the arrangement's membership list to find suppliers that are a social enterprise, Aboriginal business and/or Torres Strait Islander business. If unsure if such a supplier is on the arrangement, please refer to the arrangement's buyer's guide or call the arrangement manager.

Table 1 documents the diversity considerations and potential actions buyers can implement in each stage of the procurement process, to ensure the government has diversity in its supply arrangements.

Table 1 – Diversity considerations during a procurement process

Stage	Diversity considerations	Potential actions
Planning	<ul style="list-style-type: none"> • Being clear about diversity objectives when setting up new arrangements provides clarity to the market about what they can expect, but also creates greater flexibility in managing and refreshing arrangements over their terms. • Ensure your market analysis includes diverse supplier sectors to better understand the potential supply market. • Consider the context of your procurement as different strategies will be applicable depending on the context and circumstances. • Consider who the procurement is designed to benefit and whether there is an opportunity to include suppliers from within that community on the arrangement. For example, if the objective is to deliver products or services to communities with high Aboriginal and/or Torres Strait Islander populations, explore opportunities for capable Aboriginal and/or Torres Strait Islander businesses, that provide value for money products and/or services, to be included in the arrangement. 	<ul style="list-style-type: none"> • Include diversity strategies in procurement plans. • Future proof arrangements by including clauses in the invitation to offer (ITO) and the arrangement terms and conditions, to allow for suppliers that meet certain diversity criteria to be added during the term of the arrangement (refer Appendix 1). • Research and engage the supply market early to ensure the groups you are targeting are aware of the upcoming opportunity and can be prepared to respond. This may include providing a copy of your forward procurement notice to the Aboriginal and Torres Strait Islander Chamber of Commerce and Department of Aboriginal and Torres Strait Islander Partnerships (enterprise@datsip.qld.gov.au) to distribute, in addition to QTenders' notice. • If a number of diverse suppliers have been identified, consider whether there is sufficient justification to set aside places for social enterprises or Aboriginal and/or Torres Strait Islander suppliers, or structure the invitation to tender and the evaluation process to preference these supply groups, where they have demonstrated capability and value for money. <p>Alternatively, consider how these supply groups might instead be given a provisional award (such as in the QBuild example on page 5), particularly where goods and services are to be delivered in Aboriginal and Torres Strait Islander communities.</p>

Stage	Diversity considerations	Potential actions
Planning (continued)	<ul style="list-style-type: none"> Consider encouraging or stipulating a requirement for partnering with social enterprises or Aboriginal and/or Torres Strait Islander businesses, as part of the service delivery. This strategy is particularly relevant for head contracts or where a portion of the services might be sub-contracted. 	<ul style="list-style-type: none"> Consider offering diverse suppliers' opportunities to build capability before being considered (or reconsidered) for inclusion on an arrangement. This might include, but is not limited to: <ul style="list-style-type: none"> delivering goods or services on a trial basis before receiving feedback and potentially being included on an established arrangement if value for money can be demonstrated⁷ accessing assistance already available, e.g. through the Department of State Development, Manufacturing, Infrastructure and Planning or the Department of Employment, Small Business and Training.
Tender specifications and evaluation criteria	<ul style="list-style-type: none"> Design innovative processes, enabling suppliers to present their best offering. 	<ul style="list-style-type: none"> Consider alternative ways that suppliers might prove their merit for inclusion on arrangements, particularly on lower risk goods/services. Some services may be best assessed through presentations, or an interview style process where pre-determined questions can be asked (and scored) and evidence supporting capability can be provided in a verbal, rather than written way, from potential offerors. Consider how to provide an environment where culturally diverse suppliers can feel comfortable to ask questions about the opportunity.
Go to market	<ul style="list-style-type: none"> Justify diversification strategies by referencing government commitments and policies. 	<ul style="list-style-type: none"> Promote the tender opportunity through diverse sector networks. Contact Aboriginal and Torres Strait Islander suppliers and social enterprises to inform them of the opportunity on QTenders.
Evaluation	<ul style="list-style-type: none"> To ensure a fair and equitable process, diverse suppliers must demonstrate merit for inclusion before being added to arrangements. Evaluation reports should specifically identify the inclusion of a diverse set of suppliers. 	<ul style="list-style-type: none"> Consider getting specialist advice when assessing claims made by suppliers relating to diversity. Check the credentials of Aboriginal and Torres Strait Islander businesses by using the Supply Nation directory or seek the advice of the Program Manager – Deadly Innovation, Department of Innovation Tourism Industry Development. To confirm the credentials of a social enterprise, please refer the Social enterprise certification guide.

⁷ Subject to appropriate probity and fairness considerations

Stage	Diversity considerations	Potential actions
		<ul style="list-style-type: none"> If there were suppliers from under-represented groups that demonstrated good capability but narrowly missed the initial award of business, be clear about where they need to improve in the debrief. This will support these suppliers to better demonstrate capacity the next time the arrangement is refreshed.
Establishing and managing arrangements	<ul style="list-style-type: none"> For existing arrangements, assess the diversity of the arrangement. Where there is a lack of diversity, before inviting further tenders from under-represented businesses types, check whether the existing arrangement terms and conditions allow for this (refer Appendix 1). If unsure, seek advice from your agency's legal services area. 	<ul style="list-style-type: none"> Flag diverse suppliers in the arrangement's membership list to make it easy for buyers to identify and engage with them. This includes small business, social enterprises, Aboriginal and/or Torres Strait Islander businesses. Periodically review membership and the available supply market to identify opportunities to add diversity and increase spending with these suppliers.

Appendix 1—Example clauses

Invitation to offer (ITO) clause

Where the invitation to offer relates to a potential SOA, the principal reserves the right to:

- a. enter into a SOA for the supply of the Goods, Services and Deliverables with other suppliers which participate in the invitation process; and
- b. enter into SOAs with other suppliers for the supply of the Goods, Services and Deliverables at any time during the term of any SOA established as a result of this invitation process, notwithstanding that the other suppliers did not participate in the invitation process, if:
 - i. the principal considers it is necessary or desirable to comply with government procurement policy, including policy regarding diversity in supply chains and the achievement of social objectives; or
 - ii. special circumstances exist that warrant entering into SOAs with additional suppliers, including but not limited to changes in technology.

Standing offer arrangement (SOA) conditions—non - exclusivity

The supplier acknowledges that:

- a. unless stated otherwise in the SOA details, the Principal and eligible Customers may engage other suppliers (or themselves) to provide goods, services and other deliverables the same as or similar to the Deliverables; and
- b. the Principal may, during the term of the SOA, appoint other suppliers to provide the Goods, Services and Deliverables under the SOA if:
 - i. the Principal considers the inclusion of one or more additional suppliers is necessary or desirable to comply with government procurement policy, including policy regarding diversity in supply chains and the achievement of social objectives; or
 - ii. special circumstances exist that warrant the inclusion of additional suppliers.

No process contract

The conduct of the invitation process does not give rise to any legal or equitable relationship. A supplier will not be entitled to claim compensation or loss from the customer for any matter arising out of the invitation process, including but not limited to any failure by the customer to comply with these Invitation to Offer Conditions.