

Sydney Opera House Policy

Title:	Procurement Policy
Policy Number:	2021/6
Effective Date:	16/05/2024
Authorisation:	Chief Executive Officer
Authorisation Date:	16/05/2024
Superseded Policy:	Procurement Policy – SOH127
Accountable Director:	Director responsible for procurement
Responsible Officer:	Procurement team

1. CORE PROPOSITION

The Procurement Policy (the Policy), its supporting *SOH Procurement Procedures Manual* and process tools are designed to ensure that Sydney Opera House (SOH) procurement:

- Complies with all relevant NSW Government legislation, including the *Public Works and Procurement Act 1912* (NSW), *Independent Commission Against Corruption Act 1988* (NSW), *Government Sector Finance Act 2018* and *Government Information (Public Access) Act 2009*.
- Complies with the *NSW Government Procurement Policy Framework* (NSW Framework) and NSW Procurement Board directives and policies.
- Aligns with SOH organisational values, objectives, governance principles, policies and *Delegations of Authority Manual*.

2. SCOPE

This Policy:

- Applies to all SOH employees, and any person committing or receiving money on behalf of SOH.
- Covers all expenditure for the procurement of goods and services by SOH, including artist engagements, food and beverage services, and partnership contracts, as well as construction.
- Should be read in conjunction with the *SOH Procurement Procedures* and the [Procurement pages on Intouch](#).
- Applies to contractors providing services, but not to the employment of staff under the *Government Sector Employment Act 2013*.
- Takes precedence over the NSW Framework where the Policy is more onerous than the Framework.

3. DEFINITIONS

3.1. Maximum Contract Value – is:

- The total value of the goods or services being procured over the life of the contract.
- The value of any options, extensions, renewals or other mechanisms that may be executed during the life of the contract.
- All amounts payable by SOH, including fees, interest, commissions and premiums.
- All revenue streams that may be covered by the proposed contract. For example, estimated revenue to food and beverage operators.
- All of the above amounts excluding GST.

3.2. **NSW Procurement Board** – is a statutory body responsible for developing and implementing a government-wide strategic approach to procurement.

3.3. **NSW Government Procurement Policy Framework (NSW Framework)** – is a policy made in accordance with the *Public Works and Procurement Act 1912*. The NSW Framework sets out the government-wide strategic approach to procurement.

- 3.4. **Procurement Review Panel (PRP)** – is the strategic leadership group for procurement at SOH, responsible for overseeing SOH procurement processes. The PRP reviews proposed procurements to ensure they are in line with this Policy.
- 3.5. **Program Book** – (as defined in the Sydney Opera House Presents (SOHP) Project Business Case (PBC) Policy) a document that outlines SOHP’s annual budget and programming for the upcoming financial year.
- 3.6. **Sensitive procurements** – includes any procurement that:
- Must be approved by the SOH Trust or the Minister.
 - Does not comply with SOH Procurement Procedures.
 - May be justified as an emergency procurement.
 - Requires an exemption from the NSW Procurement Board to proceed.
 - Is a high-risk procurement of goods and services, including where the procurement risk assessment has a high-risk rating.
 - Is an unsolicited proposal.
 - Involves direct negotiation (also called exclusive dealing, single select or direct dealing) for a Maximum Contract Value above \$30,000 and is not covered by a NSW Framework exemption or preference, or is a Project Business Case (PBC) for an artist, a performing company or a Program Book-related creative.
 - Must be approved by the CEO because the market approach seeks fewer than 3 quotes, has a Maximum Contract Value above \$30,000, is not on a whole of government contract or scheme and is not covered by a NSW Framework exemption or preference.
- 3.7. **SOH Procurement Procedures** – means the *SOH Procurement Procedures Manual*, including the decision tree, which together set out the detailed steps required for procurements, including:
- Selecting a procurement method.
 - Seeking approval for the procurement plan.
 - Approaching the market.
 - Managing and assessing procurement risk.
 - Evaluating responses.
 - Seeking legal advice.
 - Contract management.
 - Records management.

4. **PROCUREMENT PRINCIPLES AND OBJECTIVES**

All procurement at SOH must adhere to the probity principles and objectives set out in the NSW Framework. They are:

- **Value for money** – This is not necessarily the lowest price for a purchase or the highest price for a disposal, nor the highest quality good or service. It requires a balanced assessment of a range of financial and non-financial factors, such as quality, cost, fitness for purpose, capability, capacity, risk, total cost of ownership, or other relevant factors.
- **Fair and open competition** – Processes must be transparent, impartial and competitive to drive fair and ethical behaviour, safeguard probity, and foster healthy relationships with suppliers.
- **Easy to do business** – SOH endeavours to make procurement simpler, easier and more efficient by prioritising streamlined and accessible processes with lower barriers, to appeal to a broad supply base and expand opportunities.
- **Support economic development, social outcomes and sustainability** – SOH aims to achieve sustainable procurement by:
 - Extending the assessment of value for money beyond the sourcing process to include consideration of social, economic and sustainable impacts; and
 - Building a diverse supply base that comprises all types of businesses.

- **Encourage innovation.**

5. RISK ASSESSMENT

A risk assessment may be completed for any procurement of any value. A risk assessment identifying procurement risks must be completed for procurement activities worth more than \$30,000, including the implementation of risk mitigation strategies in accordance with the *Risk Management Policy*.

6. SUSTAINABILITY

- 6.1. Procurement evaluation, approval processes and contracts must align with the *SOH Sustainable Procurement Framework (SPF)*, which outlines economic, social and environmental considerations that SOH must take into account when undertaking procurement. These are reflected in the Procurement Procedures.
- 6.2. The NSW Framework sets out threshold exemptions to support small and medium-sized businesses, Aboriginal-owned businesses, regional businesses and social enterprises. Refer to the *SOH Procurement Procedures Manual* for guidance.

7. PROCUREMENT VALUES, METHODS AND REQUIREMENTS

- 7.1. SOH must use an applicable mandatory whole-of-government arrangement, including any contract, scheme or panel. SOH may use an applicable recommended whole-of-government arrangement. SOH may establish a panel of suppliers to meet a business need.
- 7.2. Purchase orders should reflect the contracted value and must not be split to avoid procurement approval thresholds or process requirements.
- 7.3. The estimated Maximum Contract Value, among other aspects of the procurement, informs the approach to market and approval process. If the Maximum Contract Value changes during procurement to require additional approvals, the portfolio procurement contact person must be informed and an appropriate course of action determined and implemented, consistent with this Policy.
- 7.4. Procurements must be submitted to the PRP for review and endorsement where:
 - The Maximum Contract Value of the procurement exceeds:
 - \$100,000 (excluding GST) for general goods and services.
 - \$150,000 (excluding GST) for Building, Safety & Security (BSS) procurements for general goods and services, or construction.
 - It is a Sensitive procurement (as defined in section 3.6).
- 7.5. There may be circumstances where an exception to the procurement method outlined in this Policy is required, or where the process can be accelerated, for example, in the case of an emergency. In this case, the procurement is deemed a Sensitive procurement and must be endorsed by the PRP.
- 7.6. Direct negotiations must be avoided as they increase the risk of corrupt conduct and may not achieve the NSW procurement objective of fair and open competition. SOH staff who need to engage in direct negotiations must comply with the *NSW Direct Dealing Guidelines* and applicable *Independent Commission Against Corruption (ICAC) Guidelines*, and where the Maximum Contract Value is above \$30,000, a direct negotiation is deemed to be a Sensitive Procurement and a robust justification must be provided for consideration by the PRP. This does not apply to PBCs for the engagement of artists, performing companies or Program Book-related creatives. Please see 7.10 below in relation to these procurements.
- 7.7. Foreign exchange risk must be considered when planning the procurement, and processes followed in accordance with the *Treasury Risk Management Policy*.
- 7.8. Responsible SOH staff must:
 - Manage contracts following the terms of those contracts and SOH Procurement Procedures.
 - Monitor and manage contract and supplier performance.
 - Review outcomes to assess the effectiveness of arrangements.
- 7.9. The form of the contract and its length must be considered early in the procurement planning phase. Staff undertaking procurement activities must seek advice from the Legal team if the procurement needs to be submitted to the PRP.
- 7.10. This Policy covers the engagement of artists/performing companies/Program Book-related creatives and other Artistic Strategy-related costs. However, the engagement of artists/performing companies/

Program Book-related creatives (the cost of which may from time to time include payment to the artists/performing companies/Program Book-related creatives for certain Artistic Strategy-related goods and services they are to arrange) (Artistic Fees) for which a PBC applies, does not generally fall within whole-of-government arrangements and is not suited to a competitive market procurement process.

Given this:

- The *Sydney Opera House Presents (SOHP) Project Business Case Policy* (PBC Policy) sets out the review and approval matrix for SOHP programming and PBCs based on the strength of an artist's or a company's work, SOH's Artistic Strategy, value for money, risk and financial parameters and impact; and
- Expenditure caught within and related to a PBC must be made in compliance with the PBC Policy and, to the extent only that it relates to Artistic Fees, does not need to be submitted to the PRP for endorsement. Please note that normal procurement processes will still apply in relation to expenditure for Artistic Strategy-related costs other than Artistic Fees, where those costs arise from procurement arrangements made directly between SOH and a provider, e.g. for accommodation, travel, freight, ground transport, staging and the like.

7.11. Disposals of assets are to be undertaken in accordance with the SOH Procurement Procedures. Disposals must be approved by the appropriate person and consider recycling, repair and reuse opportunities.

8. RECORDS MANAGEMENT AND INFORMATION CLASSIFICATION

- 8.1. SOH will maintain procedures and tools that ensure procurement processes and decisions are documented, in line with this Policy.
- 8.2. Any confidential or sensitive information must be managed in line with the *SOH Information Classification Policy*. Any information that includes personal identifiable information must be managed in line with the *SOH Privacy Management Policy and Plan*.

9. ACCREDITATION

- 9.1. The NSW Framework sets out the levels of accreditation that apply to the procurement of goods, services and construction.
- 9.2. With the approval of the PRP, SOH may choose to become accredited, or seek and obtain assurance from an accredited agency for a specific procurement. The thresholds for the assurance process are set out in the NSW Framework and SOH Procurement Procedures.

10. NOTIFYING SUPPLIERS OF OPPORTUNITIES

All open approaches to market must be advertised on NSW eTendering. It is recommended that the platform be used wherever possible to aid probity, governance and transparency.

11. BREACHES AND CONFLICTS OF INTEREST

- 11.1. Any person or people with a real or perceived conflict of interest that arises during any procurement activity must declare the conflict as soon as possible, in line with the *SOH Code of Conduct*. Failure to follow this Policy may result in disciplinary action, including termination of employment.
- 11.2. A person may be guilty of corrupt conduct under the *Independent Commission Against Corruption Act 1988 (NSW)* if found to have been involved in collusive tendering or official misconduct (including maladministration) or using public assets or funds for private advantage.
- 11.3. Corrupt conduct includes action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives. Corrupt conduct could include: taking unlawful action; failing to apply policies consistently; serious and substantial waste of public resources, that is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of public money (e.g. not following competitive tendering processes for a large-scale contract or purchase of unnecessary or inadequate goods); or unauthorised disclosure of confidential information.
- 11.4. Corrupt conduct must be reported. See the *SOH Public Interest Disclosures Policy*.

12. RESPONSIBILITIES

- 12.1. **All staff** (including employees and contractors) are responsible for:

- Understanding and complying with this Policy and seeking advice if they do not understand any aspect of it.

12.2. **Staff undertaking procurement activities** are responsible for:

- Ensuring appropriate record-keeping, in line with the *SOH Records Management Policy*.
- Contract management, in line with the SOH Procurement Procedures and the *Access to Information (GIPA) Policy*, which refers to the public disclosure of contracts with a Maximum Contract Value of more than \$150,000.
- Seeking guidance from the portfolio procurement contact person for procurements with a Maximum Contract Value of more than \$30,000, Sensitive procurements, or any proposed change to a Procurement Evaluation Plan (PEP) that has been endorsed by the PRP.

12.3. **Procurement contact staff** are responsible for:

- Maintaining procedures and templates.
- Assisting business units in the procurement process.
- Considering any proposed update to an endorsed PEP and advising whether it should be taken to the PRP.

12.4. **Procurement team leader** is responsible for:

- Overseeing the secretarial function of the PRP.
- Providing advice on the management and implementation of this Policy and leading its review.

12.5. **Procurement Review Panel (PRP)** is responsible for:

- Assessing procurement processes where the:
 - Maximum Contract Value of the procurement exceeds:
 - \$100,000 (excluding GST) for general goods and services.
 - \$150,000 (excluding GST) for BSS team procurements for general goods and services or construction.
 - Procurement is a Sensitive procurement.
- As part of the assessment process, reviewing the PEP, including assessment criteria, and any requested change to a PEP.
- Reviewing the Tender Assessment Report (TAR) where a PEP has been considered by the PRP.
- Acting in accordance with the PRP Protocol.

12.6. **Director responsible for procurement** is responsible for:

- Ensuring SOH has the appropriate procurement infrastructure to support the business.
- Holding the position of Chief Procurement Officer at SOH.

13. RELEVANT LEGISLATION, POLICIES AND OTHER GUIDANCE

- Government Information (Public Access) Act 2009
- Government Sector Finance Act 2019 (NSW)
- Independent Commission Against Corruption (ICAC) Act 1988 (NSW)
- ICAC 'Direct Negotiations: Guidelines for Managing Risks' (2018)
- ICAC 'Supplier due diligence: a guide for NSW public sector agencies' (2020)
- Modern Slavery Act 2018 (Cth)
- NSW Direct Dealing Guidelines (2021)
- NSW Government Procurement Policy Framework and directives of the NSW Procurement Board
- Public Works and Procurement Act 1912 (NSW)
- Treasury NSW Government Foreign Exchange Risk Policy TPP18-03.

14. SOH SUPPORTING DOCUMENTS

- Access to Information (GIPA) Policy
- Code of Conduct
- Conservation Management Plan
- Delegations of Authority Manual
- Environmental Sustainability Policy
- Information Classification Policy
- Privacy Management Policy and Plan
- Public Interest Disclosures Policy
- SOH Procurement Procedures Manual
- Sydney Opera House Presents Project Business Case Policy
- Records Management Policy
- Risk Management Policy
- Sustainable Procurement Framework (SPF)
- Treasury Risk Management Policy.

Version History

Version	Approved by	Approval date	Effective date	Sections modified
1.0	Chief Executive Officer	19/10/2021	03/12/2021	New policy
2.0	Chief Executive Officer	16/05/2027	16/05/2027	Revision to refer to the engagement of artists and other performance-related costs.

APPROVED



Chief Executive Officer
Date: 16/05/2024