



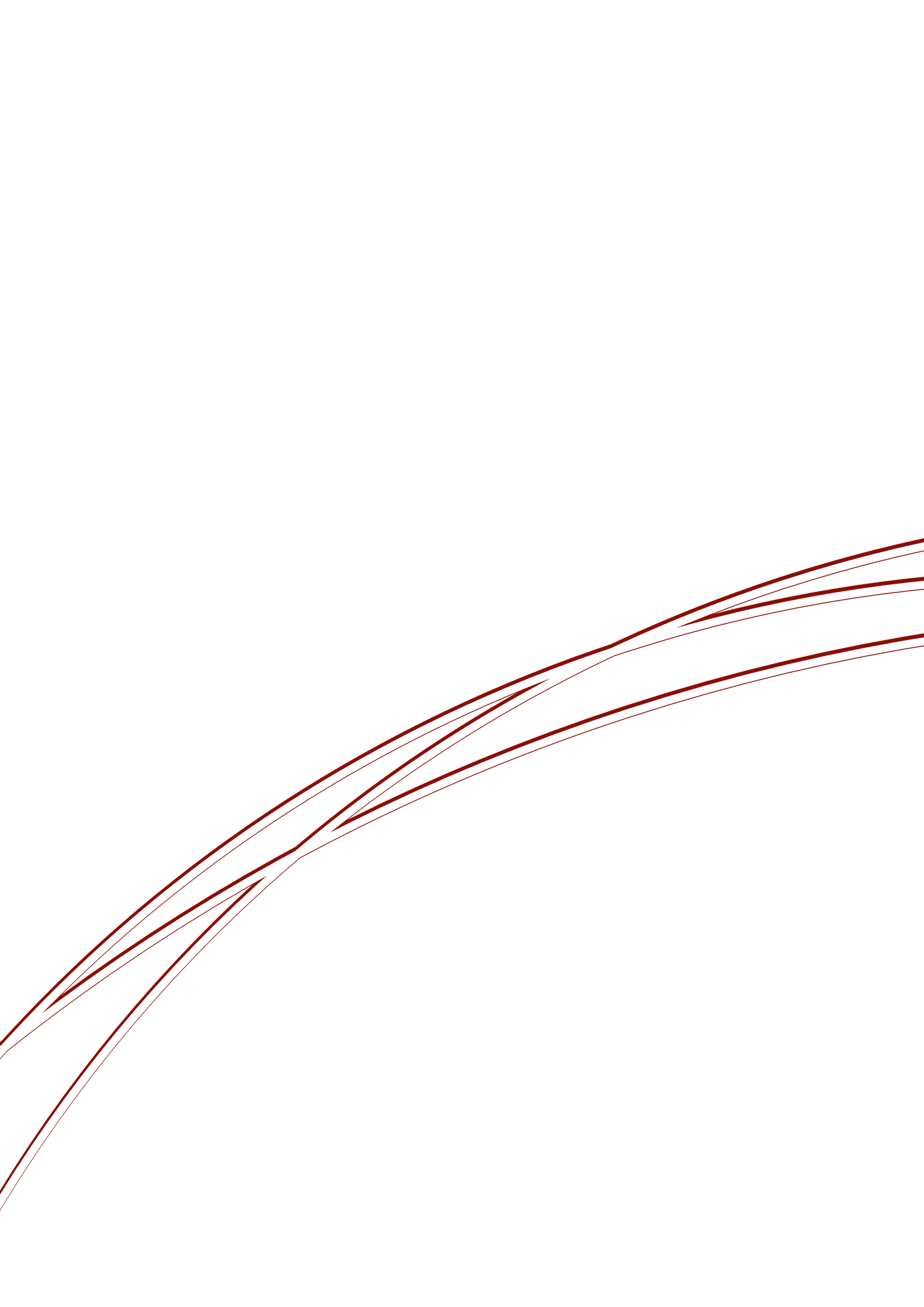
INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

The background of the cover features a close-up photograph of a document. The document has the title 'Due Diligence' in a large, bold, serif font. Below the title, there is a fountain pen and a pair of glasses. The text on the document is partially visible and includes phrases like 'apply to', 'various industries is the process', 'a target company or its assets for an', and 'is an in'.

Due Diligence

SUPPLIER DUE DILIGENCE: A GUIDE FOR NSW PUBLIC SECTOR AGENCIES

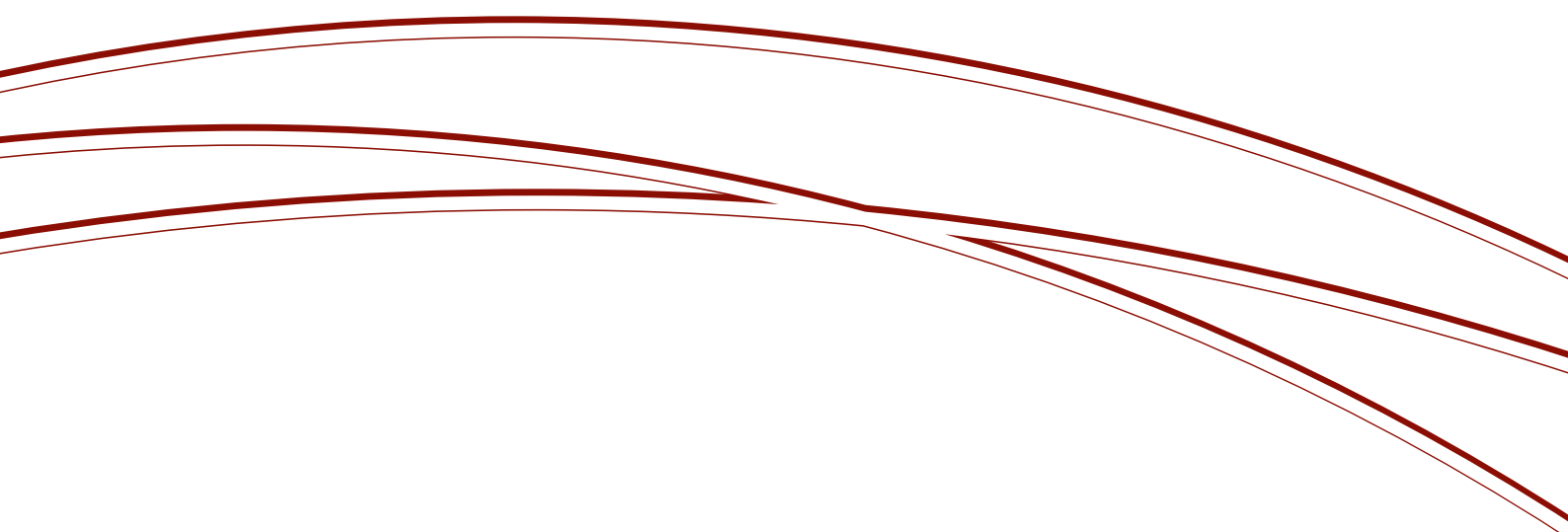
JUNE 2020





INDEPENDENT COMMISSION
AGAINST CORRUPTION

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SUPPLIER DUE DILIGENCE: A GUIDE FOR NSW PUBLIC SECTOR AGENCIES

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Public sector organisations are welcome to refer to this publication in their own publications. References to and all quotations from this publication must be fully referenced.



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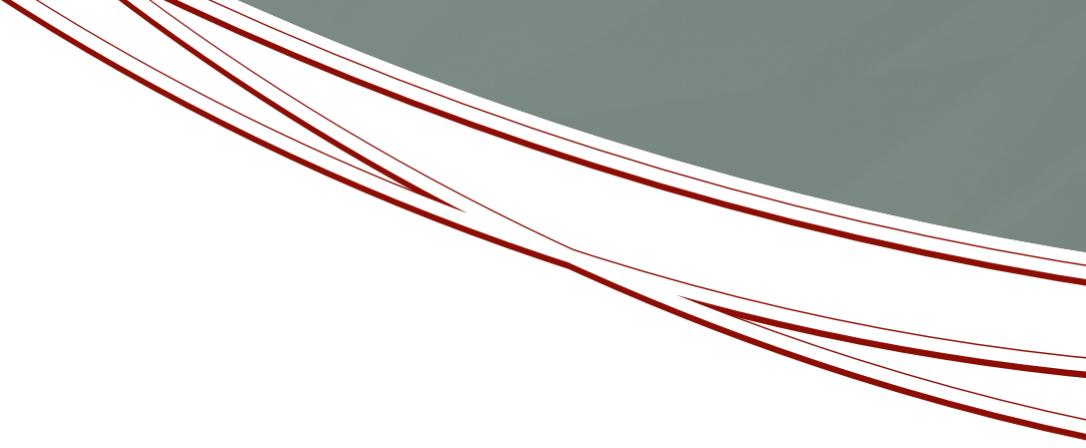
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Contents

Executive summary	5	Chapter 3: Practical issues when performing due diligence	16
What is due diligence?	5	Who does the checking?	16
Why perform due diligence	5	Outsourcing due diligence	16
When to perform due diligence	6	Prequalification panels and schemes	18
Who should perform due diligence?	6	Keeping watchlists or do-not-engage lists	18
How to perform due diligence	6	Subcontractors and supply chains	20
Introduction: why supplier due diligence is important	8	Post-engagement due diligence – contract management	21
Chapter 1: Using this guide	9	Procurement by credit card	22
Who is this guide for?	9	Chapter 4: Due diligence checks	23
The NSW Procurement approach and the supplier due diligence process	9	A note about sourcing information	23
Using the guide	10	Is the supplier genuine?	26
Chapter 2: Understanding risk and red flags	12	Is the supplier capable and reliable?	32
Taking a risk-based approach	12	Is the supplier financially viable?	36
A tiered approach	13	Does the supplier have the required authorities, licences and status?	40
Managing red flags	14	Is the supplier of good repute and integrity?	44



Appendix 1: Legislative and regulatory obligations	50
---	-----------

Appendix 2: Obtaining information about websites	51
---	-----------

Obtaining the date of website publication and modification	51
--	----

The WayBack Machine	52
---------------------	----

Obtaining the IP address and geolocation of a supplier's website	53
--	----

Reverse image searches	54
------------------------	----

Executive summary

Each year, NSW public sector agencies spend billions of dollars of taxpayer money on the procurement of goods and services. To put that public money to its best use, it helps to have some reliable information about the people and organisations that supply those goods and services.

This publication by the NSW Independent Commission Against Corruption (“the Commission”) aims to fulfil that need by providing guidance on undertaking supplier due diligence in the public sector.

While all public sector agencies are encouraged to have procedures for conducting supplier due diligence, it is not mandatory to adhere to the material in this publication. It is guidance for agencies to consider and adapt to their own circumstances.

What is due diligence?

In this publication, the term “due diligence” is used to describe checks performed by an agency on a counterparty to understand whether a supplier:

- is genuine
- is capable and reliable
- is financially viable
- has the required authorities, licences and status
- is of good repute and integrity.

In a nutshell, due diligence helps to answer the question: should we be doing business with this organisation?

While this publication is aimed at enhancing procurement practices, it can be adapted for use in activities such as recruitment, grant allocation and acquittal, sponsorship arrangements and other dealings with a counterparty.

Why perform due diligence?

Supplier due diligence is important because it:

- increases the probability of engaging a high-performing, reliable supplier that will provide value for money (maximising value for money is one of the basic principles of good procurement practice)
- helps prevent corrupt conduct (many of the Commission’s investigations involve procurement activities and have shown that poor due diligence contributed to corrupt conduct). The risk of events such as engaging a fictitious or non-existent supplier, being deceived by false information contained in a tender, or a staff member awarding purchase orders to a friend or relative, can be minimised with improved due diligence
- maintains trust in public administration, since it is in the public interest for procurement decisions to be fair and based on merit (it is therefore desirable for agencies to consider whether a potential supplier is reputable, and it is legitimate for agencies to refuse to contract with suppliers that are dishonest or have engaged in illegal practices)
- accords with the compliance and regulatory obligations set out in government policies and legislation.

When to perform due diligence

For obvious reasons, most due diligence tasks are performed during the procurement sourcing stage; that is, after potential suppliers have been identified but before an engagement is finalised. This includes the engagement of an individual supplier as well as the creation of a panel of prequalified suppliers.

However, due diligence usually needs to be considered during the planning phase of any procurement exercise. This is because many due diligence measures need to be factored into market-facing documents (such as the request for tender) along with the overall procurement strategy.

In addition, some due diligence procedures need to be repeated after a supplier has been engaged. For many engagements, this could be as simple as ensuring that a supplier's insurances and licences are up-to-date. More complex contracts may require obtaining detailed, ongoing assurance about a supplier's structure, financial health and compliance with regulatory obligations.

Additional due diligence is also required when an existing supplier requests a change to its bank account details.

Who should perform due diligence?

Due diligence is performed at various stages. As such, the task is usually spread across a number of experts.

An agency's procurement experts and the buyer of the goods and services typically "own" the due diligence process and perform many of the checks.

However, because accounts payable or shared services staff are generally responsible for additions and variations to the vendor master file (VMF), they play an important part in the due diligence process. Other subject-matter experts in disciplines such as legal, finance, contract management and data analytics can also contribute to due diligence exercises.

Many agencies rely on third-party providers of due diligence services. While all agencies should be capable of conducting a basic set of checks, it may make commercial sense to outsource complex due diligence tasks or procedures that can be performed in bulk.

Finally, because an agency does not have a contractual relationship with its subcontractors, the supplier itself can be held responsible for performing due diligence activities on its supply chain.

How to perform due diligence

Due diligence is a fact-checking exercise. In practice, it involves gathering and checking information from various sources, including the supplier itself.

Although due diligence has a number of clear benefits, detailed procedures take time and cost money. Accordingly, unless there are overriding legal obligations, agencies have to take a risk-based approach. Chapter 2 describes a number of relevant risk factors. In addition to the anticipated cost of the procurement, some of the key risk factors include:

- the agency's ability to identify and rectify substandard supply
- the degree to which the supplier is acting on behalf of the agency

- whether the supplier is in an industry or a country known to have high levels of corruption.

Since agencies procure a vast array of products, it is not practical to prescribe a detailed list of due diligence procedures that ought to be performed for each procurement activity. However, a good compromise is to adopt a tiered approach, which could look something like this:

Tier 1: baseline checks – which should be applied to a supplier regardless of the value or nature of the procurement and should generally be performed before placing a supplier on the VMF.

Tier 2: intermediate checks – includes tier 1 checks as well as additional procedures based on the risk of the procurement and supplier.

Tier 3: advanced checks – includes tiers 1 and 2 checks as well as additional procedures aimed at higher risk procurements and suppliers.

Chapter 4 sets out a range of specific due diligence checks that agencies should consider.

Due diligence checking will often yield a number of red flags. The due diligence process is only complete when an agency decides how to manage these flags. Some red flags will be “deal breakers” that automatically exclude a supplier from being considered (for example, the supplier does not hold mandatory licences or has been recently convicted of a serious fraud). Others will be “false positives” that can be disregarded after some further enquiry. However, many flags will simply alert the agency to a characteristic of the supplier that warrants closer management or a watching brief.

Introduction: why supplier due diligence is important

There are four reasons why it is important for agencies to undertake supplier due diligence.

1. Ensure value for money

Good due diligence is important because it increases the probability of engaging a high-performing, reliable, bona fide supplier that will successfully fulfil contract obligations and provide value for money.

Value for money is the difference between the total benefit derived from a good or service against its total cost, when assessed over the period the goods and services are to be used. Value for money does not mean the lowest price nor the highest quality good or service selected. It is a combination of factors that include the fitness of purpose, quality of the end product and life of contract costs.

2. Prevent corrupt conduct

Numerous investigations into corrupt conduct have shown that poor due diligence has contributed to:

- public officials awarding purchase orders or contracts to suppliers in which they have an undisclosed pecuniary interest
- reliance on false or exaggerated information contained in tenders and quotations
- engagement of fictitious or non-genuine suppliers
- corrupt amendments to supplier bank account details.

3. Maintain trust in public administration

It is in the public interest that procurement decisions be fair and based on merit. It is therefore desirable for agencies to make informed decisions about their potential suppliers.

It is legitimate for agencies to refuse to contract with suppliers that are disreputable, dishonest or have engaged

in illegal practices. At the very least, these are factors that should be weighed during the procurement process.

Failures arising from poor due diligence also reflect badly on the public sector as a whole and can diminish the community's trust in the probity, integrity and efficiency of how the public sector does business.

Public sector procurement can be used to discourage unethical conduct throughout a supply chain. For example, due diligence procedures can play an important role in confirming that suppliers and subcontractors pay fair wages, avoid child labour and source raw materials in an ethical manner.

4. Comply with legal and regulatory expectations

In many situations, public sector agencies are bound by legal and regulatory obligations to conduct due diligence and similar risk management activities (see Appendix 1).

Case study: fraudulent from the beginning

A NSW agency made a report to the Commission about the theft of over \$50,000. Following a competitive quotation process, the agency had appointed a contractor to perform some minor building works, which were considered to be low risk. After being appointed, but before completing any works, the contractor requested a pre-payment to meet the cost of obtaining materials. The agency agreed to the request for pre-payment but, ultimately, the contractor simply failed to perform any of the work.

A subsequent investigation found that the contractor had provided details for a fictitious referee and a false address, and was facing regulatory action. A search on Facebook revealed numerous customer complaints and warnings about the contractor.

Chapter 1: Using this guide

Who is this guide for?

This publication is designed for anyone involved in procurement in the NSW public sector. While it refers primarily to NSW legislation and policies, the content may be applicable to public sector agencies in other jurisdictions.

Likewise, suppliers that wish to be engaged by government agencies, and build a reputation as being competent, ethical and reliable, need to understand the information they may be required to provide.

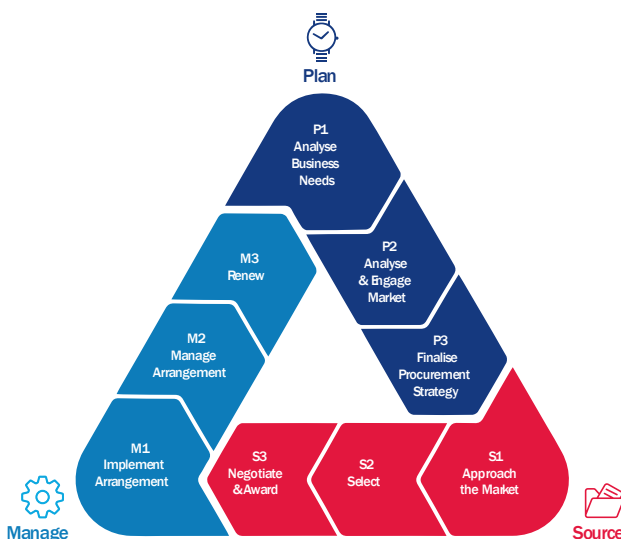
In addition, while this publication is intended to enhance procurement activities, it can be adapted for use in activities such as recruitment, grant allocation and acquittal, sponsorship arrangements, and other dealings with a counterparty.

In addition, this publication primarily deals with due diligence procedures conducted on the history and characteristics of a supplier. While it is difficult to draw a clear distinction, this guidance does not seek to address the broader probity issues associated with tendering, invoicing and contract management.¹

The NSW Procurement approach and the supplier due diligence process

The NSW Government Procurement Policy Framework uses the “Plan, Source, Manage” approach (figure 1) to provide a structured guide to the procurement process, as specified in legislation, government policies and Procurement Board policies and directions. Key considerations and mandatory requirements are identified at each step in the process.

Figure 1: NSW Procurement approach



Source: [NSW Government Procurement Policy Framework, NSW Procurement](#)

¹ A number of the Commission's other [corruption prevention publications](#) provide guidance in these areas.

Case study: EOFY scramble

In 2019, the Commission made serious corrupt conduct findings regarding a former ICT project manager working in a government agency. Among other things, the project manager was required to engage a number of software developers to complete an ICT implementation project. The project required rapid implementation before the end of the financial year. No business case or scope of works was prepared by the agency and the project manager was given wide discretion to conduct the project as he saw fit.

The project manager created a false business case arguing for the direct appointment of a new supplier called Petite Software Systems to carry out the project. The business case was successful. The agency did not perform adequate due diligence on Petite Software Systems, which had never traded and had no employees. The project manager corruptly caused the agency to pay Petite Solutions – a different but similarly-named firm – which he controlled, and effectively “hijacked” the identity of Petite Software Systems in order to obtain a personal benefit.

Ultimately, the Commission found that the agency was grossly overcharged, the project was significantly overspent and the project manager corruptly obtained over half a million dollars from his scheme.

Source: [Operation Yarrow](#)

Due diligence should be considered in each of the three stages.

Plan stage

Supplier due diligence should be addressed when planning a procurement activity. This includes:

- identifying the capabilities that will be required to fulfil the procurement
- understanding the regulatory environment that applies to suppliers in the market
- deciding how to approach the market, what information suppliers will need to provide and how this information will be verified.

Adequate planning will help to make the process more streamlined; for instance, by embedding due diligence procedures into market-facing documents.

Source stage

Most due diligence checks are performed at the sourcing stage. This allows agencies to verify that suppliers are capable of performing the work, and have provided truthful information about their skills, experience, business records and qualifications. At this stage, the agency can also require information about the extent to which the supplier intends to rely on subcontractors.

Manage stage

Properly managing suppliers and documenting their performance is essential for future due diligence exercises, especially if an agency intends to take action against a supplier that is persistently underperforming. In addition, it may be important for agencies to conduct regular, ongoing checks on existing suppliers and manage the risk of fraudulent changes to bank account details.

Using the guide

This publication is designed for different readers.

Chapter 2 explains the need for a risk-based approach and provides some advice about managing red flags.

Chapter 3 covers some practical issues that arise in the due diligence process including:

- who should carry out the checks
- whether to outsource the due diligence process
- use of prequalification schemes and panels
- use of watchlists and do-not-engage lists
- monitoring subcontractors and supply chains
- post-engagement due diligence
- monitoring procurement by credit card.

Chapters 2 and 3 will be of most assistance to those with responsibility for developing and overseeing a due diligence framework.

Chapter 4 sets out granular detail about a number of specific due diligence checks that agencies can consider. It also explains some common red flags that can arise from the due diligence process. This content is aimed at practitioners looking to identify and perform specific due diligence checks.

Appendix 1 lists some of the legislation and regulation that underpins due diligence activities. This is designed as a reference for readers wishing to understand the legal bases for a due diligence framework.

Appendix 2 provides basic guidance on how to obtain valuable information from open source material, including websites. This is for officers performing hands-on due diligence procedures.

The suggestions and good practice recommendations contained in this publication are not mandatory. It is up to agencies to determine whether aspects of this publication should be adopted for their own circumstances.

Chapter 2: Understanding risk and red flags

Taking a risk-based approach

It is not practical to prescribe the specific due diligence activities that ought to be carried out for each type of procurement. Procurement and contracting activities are increasingly varied and complex, and agencies need to

adopt a flexible, risk-based approach. Although many, basic due diligence checks can be performed quickly and at no cost, more advanced checks entail some outlay of money and time. These costs need to be factored into a risk-based approach, while several other risks need to be considered:

Agency capability

- What is the cost and effort of monitoring the supplier (including the cost of accurately measuring key performance indicators)?
- Is there in-house expertise regarding the goods or services being procured?
- How sophisticated is the agency's contract management function?
- Is the agency able to identify and rectify substandard goods and services?

Corruption and other abuses

- Is there a known or potential conflict of interest?
- What are the barriers to entry into the industry or market (low barriers or cost of entry make it easier for dishonest or disreputable people to start a business)?
- Does the supply chain extend into a country or belong to an industry that is known to have high levels of corruption, human rights or environmental abuses or evidence of modern slavery practices?

Financial risks

- How likely is it that any fraud, waste or inefficiency in the supply chain could be indirectly passed on to the agency?
- Does the agency have any bond, bank guarantee or other security that would protect it against failure to complete the contract?
- Is a supplier highly dependent on one or two customers?

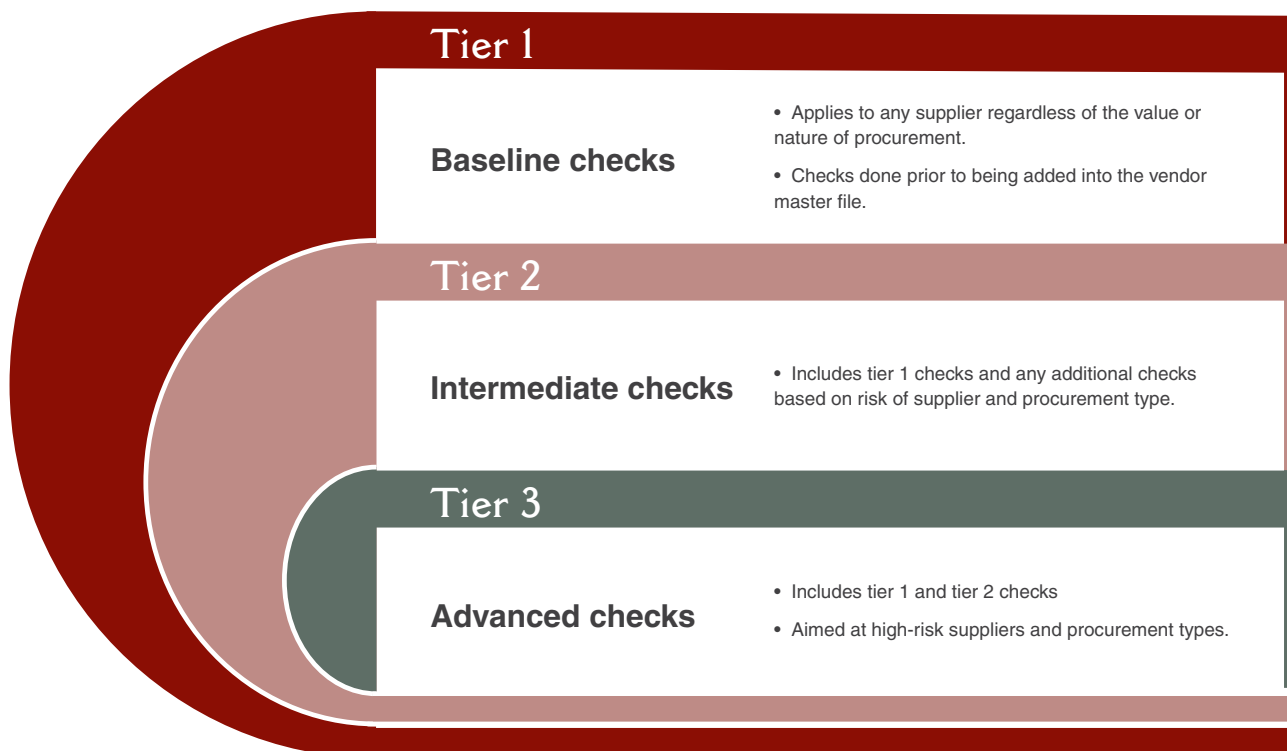
Supply risks

- If the supplier fails to perform, what would be the overall damage to public confidence in the agency?
- What is the overall significance of the purchase to the agency, the community and taxpayers (which is not necessarily correlated with the total cost)?
- Are there alternative sources of supply and the ability to quickly switch to a different supplier?
- Is a supplier delivering public services, exercising financial delegations or public powers or acting on behalf of the agency?
- Are the goods or services being procured specialist, bespoke or highly customised?

Some due diligence checks are mandated by law, contractual terms and conditions or an agency's own policies. These can include working-with-children checks, requirements for certain insurances and safety certifications. For mandatory checks such as these, it is obviously not appropriate to use a risk-based approach.

A tiered approach

Adopting a tiered approach can be a simple way to administer a complex decision about risk. In broad terms, a tiered approach could involve the following checks.



It is recommended that agencies consider adopting a similar, tiered approach to their due diligence activities. A tiered approach can also be used as a method for escalating red flags. For example, if a tier 1 check identifies a red flag (such as a supplier that has only recently obtained its Australian Business Number (ABN)), an agency can then move to tier 2 checks (such as a detailed referee check or analysis of related entities) and so on.

Of course, it is a matter for each agency to determine the number of tiers it uses and which due diligence checks are applied in each. The appeal of a tiered approach is that it can be converted into a repeatable process.

Managing red flags

A risk-based approach can extend to the way red flags are managed.

The due diligence process will inevitably generate a number of red flags with varying degrees of seriousness. Some red flags will be “deal-breaking” (for example, a supplier does not hold mandatory licences and authorities, or has been recently convicted of a serious fraud), some will require the agency to implement detailed risk mitigation measures and others might simply warrant a watching brief.

In addition, some red flags will be “false positives” or be otherwise explicable. For example, a supplier’s managing director might have the same name as someone convicted of a criminal offence. However, on closer inspection, it could be established that they are two different people.

Consider the following advice when managing red flags.

- All red flags, assessments of risk and reasons for decisions taken should be documented to provide reassurance that due process has been followed.
- Relevant internal subject matter experts should be consulted. In particular, specialised procurement staff should have experience in suggesting a consistent, proportionate response to any red flag and identifying false positives.
- It is not unusual for staff to disagree about the best way to manage a red flag. As such, a protocol for escalation to a more senior officer should be in place.
- Many red flags can be resolved by providing the supplier with an opportunity to explain. For example, a supplier with an out-of-date

insurance certificate might simply be waiting for a new one to be issued by its insurer. If a red flag cannot be resolved on the spot, it may be appropriate for the agency to work with the supplier to rectify any agreed problems.

- It is preferable that any potentially deal-breaking red flags be identified before a supplier has been awarded a tender or signed a contract, especially if a competitive process has been used. It may be difficult to reject a supplier that has won a tender assessment process but is subsequently found to have a serious red flag.
- The age of any proven misconduct could be relevant. For example, a company or staff member that was convicted of an offence 10 years ago should be viewed in a different light from one that was convicted last month. In particular, a supplier that can show it has addressed historical shortcomings should not necessarily be excluded from doing business with government.
- The manner in which a supplier engages with an agency’s due diligence process can also raise red flags. If a supplier is unreasonably uncooperative, repeatedly fails to provide information or is evasive or belligerent in its communication, the agency is entitled to be suspicious.

Case study: CFO abuses lax systems

In 2017, the Commission finalised its investigation into a local Council. The council's chief financial officer (CFO) engaged in serious corrupt conduct based on a finding that he approved or caused the payment of invoices totalling over \$5 million, which he knew to be either entirely false or for inflated amounts.

The Commission found that council's vendor master file (VMF) was not subject to any segregation or review-based controls. Accounts payable clerks would add vendors without any review by others and without checking that key details, such as vendors' ABNs, were genuine.

Non-genuine vendors were added to the VMF and bank details of dormant vendors were changed to those of the CFO. Since there was no periodic review of changes to the VMF and dormant vendors were not deleted, this allowed payments made to the CFO and others to appear legitimate.

Source: [Operation Ricco](#)

Chapter 3: Practical issues when performing due diligence

Who does the checking?

There are **three key reasons** why an agency should consider spreading responsibility for conducting due diligence checks.

1. **Many of the checks require a degree of expertise that is unlikely to be held by one individual.** This expertise can include assessing:
 - financial information and filings made to the Australian Securities and Investments Commission (ASIC)
 - legal cases and regulatory findings
 - technical information about the supplier's performance.
2. **Due diligence checks are often performed at different points during the procurement process.** Most are performed during the sourcing phase but others may also be carried out:
 - during the planning phase
 - just before the supplier signs a contract
 - when the supplier is added to the VMF
 - after the supply of goods and services has commenced.
3. **In order to minimise the risk of corrupt conduct or error, it makes sense to segregate certain due diligence tasks.** It is possible that a person tasked with conducting due diligence checks has an undisclosed relationship with a supplier, which is unlikely to be revealed if they have end-to-end control over the process.

Some examples of the types of checks that could be performed by different business units are set out on page 17. This is intended to be illustrative and individual agencies should determine their own allocation of responsibilities. It makes sense that checks are coordinated and not performed in silos. Therefore, good practice may involve the appointment of a single function that can connect and draw together an agency's due diligence program.

Outsourcing due diligence

There are a number of companies that specialise in conducting due diligence checks. At the time of writing, the following schemes included organisations offering these services:

- [NSW Performance and Management Services \(SCM0005\)](#)
- [Financial Assessment Services \(SCM2491\)](#).

Agencies must use providers on the SCM2491 scheme unless they have access to equivalent capability. Financial assessment reports are held in a central repository that is accessible to NSW Government agencies.

In addition, [Procurement Board Direction \(PBD\) 2013-01C](#) sets out mandatory requirements for financial assessment of construction contractors, including rolling assessments for contracts over \$1 million.

While all agencies should be capable of designing and performing a basic set of due diligence checks, providers of due diligence services may provide a value-for-money solution for certain procedures. In particular, the following specialised procedures may suit an outsourced arrangement:

- analysing complex foreign companies
- eliminating false positives
- conducting checks on large volumes of suppliers.

Accounts payable or shared services	<ul style="list-style-type: none"> • ABN, business name and other relevant contact details • GST status • Duplicate suppliers • Bank account details
Central procurement unit or category leader	<ul style="list-style-type: none"> • Status of the supplier on whole-of-government or other agency panels • Insurances • Authorities, licences and status • Past performance • Other open source/internet searches
Legal	<ul style="list-style-type: none"> • Relevant judgments or legal action involving the supplier • Relevant regulatory findings • Evidence of modern slavery practices
Buyer (unit that will be using the goods and services)	<ul style="list-style-type: none"> • Referee/reference checks • Capability and reliability of the supplier • Site visits and product demonstration
Contract manager	<ul style="list-style-type: none"> • Documentation of key performance indicators (KPIs) and contractual achievements • Changes in the personnel or structure of the supplier • Subcontractor arrangements • Conflicts of interest management • Gifts and hospitality disclosures
Finance or commercial team	<ul style="list-style-type: none"> • Financial health, including review of available financial statements • Credit rating • Beneficial ownership and related corporate entities • Profiles of directors and senior management
Data analytics team	<ul style="list-style-type: none"> • Conflicts of interest checks • Politically exposed persons • Other checks on red flags and suspicious activity

Some due diligence providers offer quasi real-time services that automatically scan and report on relevant information in the public domain (for example, changes in directors/officeholders, change in GST registration, new ASIC filings or payment account details). This may assist agencies to monitor suppliers post-engagement.

Naturally, agencies should conduct the necessary checks on their due diligence provider and the quality of outsourced activities should be assessed from time-to-time. In addition to using the schemes mentioned above, it is recommended that agencies examine a sample report before engaging a third party to conduct due diligence checks.

Prequalification panels and schemes

One of the main benefits of creating a panel of prequalified or pre-assessed suppliers is that it removes the need to repeat due diligence checks each time a particular supplier is used. It therefore makes sense to ensure that a suitable set of due diligence checks be carried out before a supplier is permitted to join any panel or scheme.

If an agency is using a panel or scheme that is managed by another agency, or by an organisation such as NSW Procurement, Local Government Procurement or a Commonwealth agency, it should make enquiries about what initial and ongoing due diligence has been performed. It is up to the buying agency to conduct any additional due diligence to ensure the supplier's capability, expertise and qualifications are commensurate with the level of risk and value of the agency's specific engagement.

Keeping watchlists or do-not-engage lists

For a number of reasons, including any serious red flags identified during the due diligence process, an agency may choose to create a supplier watchlist or do-not-engage list.

As its name suggests, a **watchlist** identifies any suppliers that the agency is prepared to engage but which require closer monitoring or control because of some risk. For example, a supplier may have been fined for polluting the environment in the course of providing services to another customer. This conduct might not be serious enough to terminate the supplier's services but it would be reasonable for the agency to closely manage the supplier's performance or seek other assurances that similar conduct will not be repeated.

A watchlist could also include companies in which agency staff might have approved secondary employment, or any other entity in which a staff member has a known

financial interest. The Commission has conducted numerous investigations that have identified public officials awarding contracts to companies in which they have an interest. There would be an obvious risk if such companies were to become suppliers to the agency.

Maintaining some form of watchlist might be an appropriate method for tracking suppliers that pose a risk to the agency. Any agency with a mature contract or management function may already have measures in place to monitor at-risk suppliers.

A **do-not-engage** list identifies suppliers with which the agency no longer wishes to do business.

The NSW Procurement Board has set out the following seven criteria applying to an organisation, their directors and management, which can be used as the basis for excluding a supplier. While these criteria only apply to those classes of procurement covered by PBD 2019-05, [Enforceable Procurement Provisions](#), it is recommended that they be used as the basis for assessing whether a supplier should be included on any do-not-engage list.

1. The supplier is bankrupt or insolvent.
2. The supplier has made one or more false declarations.
3. If there has been a significant deficiency or persistent deficiencies in the performance by the supplier of any substantive requirement or obligation under a prior contract.
4. The Commission (or an equivalent body in a jurisdiction in Australia), within the previous 10 years, has made a finding or has been of the opinion that the supplier has committed corrupt conduct.
5. The supplier has failed to pay taxes.
6. The supplier has been convicted of an offence punishable by imprisonment for a term of two years or more, or by a fine of \$200,000 or more.
7. The supplier has been found guilty of professional misconduct or unprofessional conduct in a jurisdiction in Australia.

Suppliers should also be made aware of the provisions in the NSW Procurement Board's [Supplier Code of Conduct](#).

PBD 2017-07, [Conduct by Suppliers](#), requires relevant agencies to report any adverse findings about a supplier to the Procurement Board. Any decision to place a supplier on a do-not-engage list, or in some cases, a watchlist, ought to be reported.

There is no legal basis for agencies not covered by the direction (such as local councils or universities) to report adverse findings about a supplier to the Procurement Board, except:

- when the adverse finding is in relation to work performed under a whole-of-government contract or prequalification scheme, or
- the adverse finding is public information.

Considerations for maintaining watchlists and do-not-engage lists

Agencies can maintain watchlists and do-not-engage lists, but it is important that suppliers be treated fairly and consistently, especially if a decision is taken to no longer engage them. Consequently, agencies should consider the following points.

1. Base watchlists or do-not-engage lists on evidence and findings; not conjecture, or personal antipathy between a contract manager and supplier. Preferably, a senior officer such as the chief procurement officer should have delegation to add/remove suppliers from lists. The basis for placing or removing a supplier on such a list should be documented and agencies should be aware that the documentation could be subject to an application under the *NSW Government Information (Public Access) Act 2009*.
2. A decision to exclude a supplier from participating in a procurement covered by PBD 2019-05 (such as by placing them on a do-not-engage list), can be challenged by the supplier under s 176A of the *Public Works and Procurement Act 1912*. This includes potential proceedings in the Supreme Court. An agency should:
 - obtain legal advice when preparing any procedures for adding a supplier to any such list
 - have adequate documentation to be able to defend this decision in legal proceedings.
3. For less serious misconduct or non-performance, consider instituting a warning process before placing suppliers on a list (for example, a “three strikes” approach). This provides suppliers with adequate notice that their performance is under close review. Agencies could also consider suspending a supplier from a prequalification scheme for a set period or until agreed corrective actions have been taken. Of course, for serious failures such as criminal conduct, an agency should have scope to immediately cease doing business with a supplier.
4. Give reasons for any decision to list a supplier and ensure that documents such as a statement of business ethics or request for tender (RFT) template explain the approach to managing misconduct and underperformance by suppliers.
5. Do not defame the supplier or unnecessarily damage its commercial interests; that is, do not publish the lists. However, agency staff are entitled to provide an honest response to a request for a referee’s report about the performance of the supplier.²
6. Provide the supplier with an opportunity to be re-engaged (or removed from the lists) if it demonstrates the necessary corrective actions.
7. Treat suppliers consistently while having regard to the overall public interest. In particular, it is reasonable for an agency to consider whether placing a supplier on a do-not-engage list could materially dampen the level of competition and choice in a market.
8. Have controls in place to ensure that relevant staff cannot engage an excluded supplier or ignore the watchlist (for example, an automatic flag is raised if someone tries to raise a purchase order for an excluded supplier). Suppliers may be able to circumvent a watchlist or do-not-engage list by working as a subcontractor, by re-establishing themselves under a different name and ABN or even by arranging to be paid by credit card (while this behaviour may be difficult to detect, some of the checks detailed in chapter 4 of this report can be used to identify closely related or recently created suppliers).

² Agencies are discouraged from signing any non-disclosure agreement (NDA) with a supplier regarding reasons for termination of a contract, as an NDA could make it easier for a corrupt supplier to win work elsewhere in the public sector. It is not in the public interest that substantiated poor performance by a supplier be concealed.

Subcontractors and supply chains

By definition, agencies do not have a contractual relationship with their subcontractors. Nor do they have direct control over the extended supply chain used by their contracted suppliers. However, the conduct of subcontractors and those further down the supply chain can contribute to the risks described in chapter 2.

In addition, public sector agencies have a responsibility to take reasonable steps to ensure their purchasing decisions do not inadvertently support illegal or unethical business practices. An organisation's supply chain can extend into countries where practices such as forced labour, trafficking in children and sexual servitude are common occurrences.

The Ethical Trading Initiative (ETI) has developed the [Human Rights Due Diligence Framework](#) setting out the key steps that companies should take to prevent, manage and mitigate human rights abuses in their own operations and supply chains.³ The ETI's framework identifies a number of vulnerable workers and industries (see below).

In addition to human rights and modern slavery abuses, agencies should also be aware of other forms of exploitation such as underpayment of staff and subcontractors, unreasonable rates and false claims about the use and support of small or local businesses, Indigenous or disability workforce suppliers.

Consequently, agencies should consider the need to conduct due diligence checks on key subcontractors or high-risk links in the supply chain. This could entail an agency performing the checks itself but, in many cases, it is more practical to require the primary contractor to provide assurances about its own due diligence and contractor management processes. If necessary, agencies should seek to include the right to audit a supplier's relevant processes.

Hypothetical: Employment of exploited workers

A local council needs to hire casual staff to work in the kiosk at its public swimming pool over the busy summer period. The pool manager, Ben, wants to act quickly and calls Alison, who runs a local catering business that supplies the kiosk with food and beverages. Alison is only too happy to nominate one of her staff members, Charles, to work some regular shifts in the kiosk. "To make it easier," says Alison, "why don't I just bill you for Charles' time as part of my usual catering invoices?" Ben readily agrees to this arrangement, which will save him from completing some paperwork.

English is not Charles' first language, so initially there are some communication difficulties. But after a few shifts, he proves to be an excellent worker. Alison also gives Ben a small discount on her usual services, which she described as a "loyalty gesture for a valued customer". Ben is very busy so he doesn't get much of a chance to get to know Charles. But, after a few months, he asks Charles about his plans for the weekend. Charles tells Ben that he "has to work for Alison all weekend to pay off the money I owe her".

Ben is taken aback and, after asking some more questions, discovers that Charles lives with some other migrants in a bunk house at the back of Alison's premises. Despite working extremely long hours, Alison only provides Charles with a small cash payment each week after deducting costs for food and accommodation. She also has possession of his passport and has threatened to "report him to immigration" if he tries to quit.

Vulnerable workers	Vulnerable industries
Children Women Migrants Seasonal workers Contract and agency workers Domestic workers Marginalised groups	Construction Care Cleaning Hospitality Apparel and textile Food and farming Hard goods General merchandise Surgical supplies

³ Another useful source is [Due Diligence Guidance for Responsible Business Conduct](#) by the Organisation for Economic Co-operation and Development.

Post-engagement due diligence – contract management

While most due diligence is undertaken during the sourcing stage of the procurement process, it may be necessary to perform or repeat certain checks after the supply of goods and services has commenced.

Events that might trigger post-engagement due diligence checks include:

- requests to change bank account details (which might be accompanied by suspicious invoices)
- a supplier stops or starts charging GST
- changes to subcontracting arrangements
- changes in the supplier's relevant personnel
- merger or acquisition of the supplier by another entity
- adverse media coverage about the supplier
- a complaint or tip-off about the supplier
- advice from an external agency, such as NSW Procurement
- evidence that the supplier is failing to perform or is in financial distress
- adverse audit findings.

Contracted suppliers could be required to notify the agency if these events are triggered. Otherwise, it may be necessary for an agency to reconfirm certain particulars about the supplier, especially in the case of a lengthy contract. For example, it may be necessary to verify that a supplier remains solvent and that its relevant insurances, licences, safety credentials or working-with-children status are in order. This could be achieved by imposing a time-based milestone that prompts further due diligence checks or a continuous-controls monitoring system.

Agencies with mature contract management teams are likely to have business-as-usual procedures that address these issues. Otherwise, it may be necessary to develop post-engagement checks on a case-by-case basis.

Apart from these trigger events, it is important that agencies document information about the performance of suppliers, including the achievement of KPIs or any agreed deliverables. This information is crucial for future due diligence exercises concerning the supplier. If an agency decides that it no longer wishes to do business with a supplier, or rates its past performance as unsatisfactory, it should be able to support its position with documented evidence.

In addition, it is recommended that agencies have systems in place to identify suppliers that are awarded increasingly large or numerous purchase orders. Many procurement frauds start with a supplier being awarded a small, low-risk purchase order, which by itself is not suspicious and does not appear to warrant many due diligence checks. Once on the VMF, a corrupt supplier (possibly aided by an agency employee) may then be in a position to obtain additional purchase orders or scope variations. If care is taken to split these transactions so they fall below significant procurement thresholds, they may be difficult to detect without a specific test or procedure.

Case study: rookie mistakes

In 2020, the Commission made serious corrupt conduct findings against various individuals contracted or subcontracted to provide security services to a university. Among other things, the corrupt conduct involved submitting false timesheets in order to dishonestly claim payment for work not performed.

The Commission found that, during the relevant tendering process, the university did not obtain important information about subcontractors, including:

- details about each subcontracting entity, including key personnel, history and capabilities
- evidence of compliance with security licensing requirements
- evidence of compliance of each subcontracting entity with workplace laws and industrial instruments (in particular, information about managing fatigue limits)
- proof of public liability insurance and workers compensation insurance
- details concerning how subcontractors would be appointed and monitored.

The Commission also found that the contract with which the university entered into with the successful tenderer did not contain a mechanism for controlling the extent of subcontracting permitted.

Source: [Operation Gerda](#)

Procurement by credit card

When using an agency credit card, it is usually impractical to conduct due diligence checks on the supplier before the transaction. However, in addition to setting card and transaction limits, agencies can consider:

- blocking certain transactions based on the relevant merchant code.⁴ For example, there are merchant codes for services such as dating services, massage parlours, video game arcades and gambling (among others). Agencies can make arrangements with their credit card provider to prohibit card transactions involving designated merchant codes. Alternatively, data on sales by merchant code can be used to identify suspicious transactions
- implementing access, time and geographic limits on card use (for example, preventing international payments, contactless card payments or payments made outside of regular business hours)
- prohibiting cash withdrawals.

A number of agencies conduct a range of post-transaction checks on credit card use, often using a data analytics approach. These checks can be used to identify transactions that are suspicious because they:

- are split (that is, multiple sales just below the transaction limit)
- occur at unusual times or locations

- bear unusual descriptions or do not appear to relate to the work responsibilities of the cardholder
- are outliers or follow an unusual pattern.

For more information refer to Treasury Policy Paper 17-09 [Use and Management of NSW Government Purchasing Cards](#).

⁴ Merchant codes are four-digit codes used by credit card companies and banks to classify merchants by the primary type of goods or services provided.

Chapter 4: Due diligence checks

This chapter details a number of due diligence checks for agencies to consider, grouped under the following five categories.

1. Is the supplier genuine?
2. Is the supplier capable and reliable?
3. Is the supplier financially viable?
4. Does the supplier have the required authorities, licences and status?
5. Is the supplier of good reputation and integrity?

The categories are not mutually exclusive. For example, due diligence checks pointing to a supplier's financial viability will also provide information about its capacity and capability. For brevity, this chapter does not repeat due diligence checks that might fall into multiple categories.

The checks described in this chapter are based primarily on information available in NSW and of most relevance to NSW public sector agencies. But other jurisdictions maintain databases, registers and information sources that would assist due diligence efforts.

The information provided references a number of websites and other sources of information. These were checked at the time of writing but may be superseded in the future.

Agencies should be mindful that better due diligence practices are likely to be shaped by technological and regulatory change. Advanced data-driven solutions or even artificial intelligence technologies could play a key role in altering the way organisations approach due diligence.

A note about sourcing information

Broadly speaking, information about a supplier can come from one or a combination of sources, as follows.

1. **The supplier itself**, such as information submitted directly to the agency in response to a request for information or tender, or a supplier on-boarding questionnaire. It also includes information the supplier has placed in the public domain under its own name, typically on its website or social media accounts.
2. **Third parties**, such as the numerous organisations that hold information about a supplier and its relevant personnel. For example, other public sector agencies, banks, ASIC, courts and police, referees, licensing authorities, and third-party due diligence service providers.
3. **An agency's internal records**, which often contain data about the performance of incumbent and former suppliers and unsuccessful tenderers.

In practice, points 1 and 2 can become blurred because information provided by third parties is often derived from the supplier itself (for example, most ASIC data is provided by companies and is not necessarily verified by ASIC). In addition, many suppliers hold third-party information about themselves and provide it to agencies during the due diligence process (for example, insurance certificates of currency and copies of licences and accreditations).

The information that a supplier provides about itself can be thought of in the same way as a job applicant's resumé. Understandably, this information will be designed to promote the supplier's commercial interests and could omit or understate information that is adverse to those interests.

Unfortunately, a small number of suppliers will provide information that is intentionally false or misleading.

Consequently, it is better practice to avoid relying exclusively on information generated by the supplier, as this is unlikely to identify all red flags. While it is usually impractical to complete a set of due diligence checks without placing some reliance on information provided by the supplier, it is recommended that this be balanced with information from other sources.

Some third-party checks can only be performed with the consent of the supplier. These includes police records checks and financial information about non-public companies.

Case study: a non-existent consultancy

The Commission investigated a manager, working at a university, who had entered into a corrupt arrangement with a personal friend to place a one-man IT consultancy on the university's VMF without completing any due diligence checks. The manager then engaged the consultancy to perform a number of small tasks, which came to a six-figure value. No consulting work was ever completed and all of the invoices were false. The manager did not have financial delegations but, in each case, his supervisor relied on his advice that the invoices should be paid.

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Is the supplier genuine?

Regrettably, some organisations that purport to be genuine suppliers have never operated, seek to mislead the agency about their bona fides, have no real intention of providing the goods or services they plan to charge for, or simply do not exist.

Some suppliers have a real existence, in that they are legitimately registered on the Australian Business Register (ABR) and have a real ABN. However, they would not be “genuine” if they have been established for the purpose of engaging in fraud, have lied about the nature of their operations or know that they cannot or will not provide goods and services. In addition, a supplier may

not be genuine if it is owned or controlled by an employee of the agency whose conflict of interest has been concealed or who is colluding with other parties to disadvantage the agency.

Non-genuine suppliers do not generally try to win a large tender or other competitive procurement process. The level of governance and internal control around these processes normally makes it difficult for a non-genuine entity to succeed. More often, non-genuine suppliers aim to gain a small foothold by obtaining a single, modest purchase order that does not involve a competitive process. This necessitates creation of the supplier in the agency’s VMF, which can expose the agency to an ongoing risk of false invoicing.

Is the supplier genuine?		
Due diligence checks	Sources	What to look for
<ul style="list-style-type: none">Supplier name and registration details, including date of registrationContact details: telephone number, physical location, mailing address, email address and websiteOwnershipDirectors and office holdersBusiness structureSizeANZSIC codeGST registration status and date	<p>Most basic information about businesses can be obtained from the following sources.</p> <p>Australian Securities and Investments Commission (ASIC)</p> <p>Australian Business Register (ABR)</p> <p>ABN Lookup</p> <p>Open Data</p> <p>Australian Charities and Not-for-profit Commission (ACNC)</p> <p>This information can be compared with details provided by the supplier and open sources, including its website.</p> <p>Agencies should note that data available from certain sources (such as ASIC, the ABR and the ACNC) is usually submitted by the entity itself and may not be up-to-date or independently verified.</p> <p>Agencies should also be aware that the ABR contains useful data that is not freely available via the ABR website. NSW public sector agencies can apply to the ABR to access this non-public data.</p> <p>In addition, a number of organisations that specialise in due diligence services and market intelligence have access to data that is not freely available on the ABR.</p>	<p>Phantom vending schemes can often be easily detected through simple, inexpensive checks. The following list suggests some steps to detect such schemes.</p> <ul style="list-style-type: none">Take care if the supplier has no ABN, an ABN that has lapsed or is invalid, the ABN does not match to the ABR, or other details provided by the supplier do not match the ABR and associated registries (for example, the person who purports to be the CEO of the supplier is not listed as a director in ASIC/ABR records). Business registration documents and similar paperwork can be falsified or forged. Suspicious-looking documents should be compared with copies filed with ASIC or the ACNC.Some suppliers have a trading name that is different from their legal business name. However, the ABR lists all registered trading names.A supplier that is not registered for GST is particularly suspicious if its quote or invoice includes GST and/or if it purports to be a substantial business.If the supplier was registered very recently (for GST, on the ABR, or with ASIC) it might suggest it does not have a suitable trading history, or perhaps that it was created for the purpose of conducting a fraud. While it is not appropriate to simply refuse to do business with a supplier just because it is a new company, agencies should take steps to ensure that such entities are real.The Australian and New Zealand Standard Industrial Classification (ANZSIC) system is used to categorise organisations by industry. A business’ ANZSIC code is on the ABR, albeit not accessible to the general public. A supplier whose ANZSIC code is inconsistent with the goods or services it purports to provide may be suspicious (for example, a potential supplier of IT consulting services has an ANZSIC code for the transport industry).If there is no known physical address, or if the physical address of a supplier is a residential address, vacant lot, abandoned building or “virtual office” it may suggest the supplier is not genuine or sophisticated (note: the street view function in Google maps provides a fast way to visualise an address). Utility bills or office lease agreements in the name of the supplier can be used to verify a physical address.Other indicators that a supplier may not be genuine or mature include entities that use generic email addresses (for example, gmail); have no website; have a website that is “under construction”, newly registered, or that contains information that is incorrect or out-of-date; or an amateur looking logo or business stationery.⁵Agencies can also be cautious about formal correspondence from the supplier that does not bear a written or electronic signature or a signature block making it unclear on whose authority the communication is sent.Be careful about a supplier that does not have a landline, or if it does, all staff seem to share the same number. Calling the number provided by the supplier may not always be a viable option to test its validity. The Free Carrier Lookup service provides information on the telephone number carrier and produces an alert if the telephone number is not valid. If it is suspected that a series of telephone numbers may be related, one possible indicator may be if they have the same carrier. <p>continued...</p>

⁵ However, it should be noted that it is not difficult to create an authentic looking website or business logo.

Is the supplier genuine? ...continued		
Due diligence checks	Sources	What to look for
		<ul style="list-style-type: none">• A supplier’s name, address, telephone number, email address, or bank account (or those of its staff) may match to the details of an existing or former employee of the agency. This might indicate that an employee has a hidden interest in the supplier.• If a prospective supplier has not been identified via a formal market approach or by drawing from an existing supplier panel, it may be reasonable to conduct enquiries into how it was sourced. That is, in addition to conducting due diligence checks on the supplier itself, checks can be performed on how the supplier initially became known to the agency. This may identify pre-existing relationships between the supplier and an agency employee.• Consider using geo-fencing technology to identify or block email correspondence that originates from overseas but which purports to be from a domestic supplier. These emails may be a means to perpetrate fraud. <p>Some businesses have a Data Universal Numbering System (DUNS) number. The DUNS number system was developed by the firm Dun & Bradstreet as a unique business identifier. It is not necessarily suspicious if a supplier does not have a DUNS number and, in Australia, it is not mandatory to have one. However, a DUNS number can assist in identifying a supplier and some of its credentials.</p> <p>Most suppliers operate for a profit. However, in some cases, it is relevant that the supplier or contractor is a not-for-profit organisation or a charity. To verify an organisation’s not-for-profit status, it may be necessary to examine its governing documents or constitution. A not-for-profit may also be a registered charity or have deductible gift recipient status. The ABR and ACNC websites contain this information.</p>
<ul style="list-style-type: none">• Related business entities• Collusion between suppliers• Duplicate suppliers		<p>It is not unusual for an agency to conduct business with multiple related entities that fall under the same large corporate structure. For example, ABC Holdings Pty, ABC Operations Pty Ltd and ABC Australia Pty Ltd may all be legitimate, legally distinct parts of the same corporate family.</p> <p>It is expected that related entities like this would have identical or similar details in some respects, which by itself would not be suspicious. However, where suppliers are unrelated, or where one is subcontracting to another, it may be suspicious if they share common details (including staff, contact details and bank accounts).</p> <p>Where suppliers have duplicate details, it is also possible that one may be trying to impersonate the other, or that a supplier has erroneously been created twice in an agency’s VMF. In any case, it is good practice to periodically check for duplicate suppliers. Unless updated due diligence checks are performed, it is also good practice to review the VMF for dormant suppliers and set them to inactive.</p> <p>Bid rigging</p> <p>Bid rigging is collusive behaviour by suppliers coordinating bids so as to guarantee selection of a particular vendor and restrict buyer choice. By affecting the merit process that competition is meant to deliver, it means that agencies are not likely to obtain value for money from the procurement. Agencies might discover the same errors or characteristics appearing in responses from different suppliers (for example, misspelled words, grammatical errors, mathematical mistakes or formatting). This may indicate that suppliers have shared information with each other and may be acting anti-competitively. It may also indicate that one or more bids have the same author or are completely false.</p> <p>Price fixing</p> <p>Price fixing is acting to fix, control or maintain prices. Its purpose is to obtain the benefit of prices greater than those which would be obtained in a competitive market. Procurement affected by price fixing or bid rigging is unlikely to achieve best value for money. Agencies may find that tenders are missing detailed costings to show how a tender price was calculated, prices submitted are much higher than previous quotes, pricing is inconsistent with market intelligence or a pre-tender/quote estimate or prices drop markedly after a new supplier tenders. These are signs of possible price fixing. For more information about bid and price rigging and cartels, visit the Australian Competition and Consumer Commission (ACCC).</p>

Is the supplier genuine? ...continued		
Due diligence checks	Sources	What to look for
Bank account details	<ul style="list-style-type: none">Banks and financial institutionsNumerous websites provide a BSB lookup function that can be used to verify a financial institution’s BSB number.Third-party account number and payee verification provider.	<p>A common form of fraud involves a dishonest request to amend the bank account details of a legitimate supplier. Once the relevant change is made, payments purporting to be to the legitimate supplier can be intercepted by the fraudulent party.⁶ Often, the conduct is accompanied by a false invoice submitted shortly after the bank account details have been amended. Some points to consider when verifying a supplier’s new or amended bank account details are listed below.</p> <ul style="list-style-type: none">Information from a supplier detailing its bank account details should be on its business letterhead, submitted via a verified email address and independently confirmed through another verified communication channel with the supplier’s accounts department. This verification should not rely on the contact information provided with the account change request.An additional control is to require verification on the letterhead/stationery of the relevant bank or financial institution (although, it should be noted, that criminals are capable of creating authentic-looking but false bank documents).Some banks offer functionality that allows an account holder to grant another party view-only access to its business account details. This can be used as a method for verifying a supplier’s account. <p>Sometimes, when obtaining a supplier’s bank account details, an agency might identify that the account has been recently opened. This might be a red flag that the supplier is not genuine or does not have a suitable trading history.</p> <p>On rare occasions, a supplier might provide a BSB number that does not match with its nominated bank or financial institution. This is a red flag that should be followed up.</p>
Overseas suppliers	<ul style="list-style-type: none">ASICEquivalent overseas business registries <p>Since conducting due diligence on foreign entities can require specialist knowledge, many agencies engage third-party due diligence service providers to conduct the necessary checks on overseas-based suppliers.</p>	<p>“Foreign companies” must be registered with ASIC to carry on business in Australia (see s 601CD of the <i>Corporations Act 2001</i>). Subject to certain exemptions,⁷ foreign company registration applications must be supported by documents including a certified copy of the entity’s certificate of incorporation, the entity’s constitution and memorandum stating the powers of certain directors. Once registered with ASIC, a foreign company has ongoing disclosure and operating obligations.⁸</p> <p>However, if an overseas supplier does not have to register with ASIC (because it is exempt or is not classified as a “foreign company”), it may be necessary to search equivalent overseas registries.</p> <p>In addition to the due diligence checks that would apply to a domestic supplier:</p> <ul style="list-style-type: none">any failure by a foreign company to register with ASIC could be a red flagsome foreign suppliers partner with a local company to distribute and market their products. As such, agencies may need to conduct due diligence on the local distributor as well as the primary supplier.

⁶ When banks process EFT payments (for example, from agencies to their suppliers), they rely on the account number and do require a match on the account name of the payee. In the future, additional controls may be imposed that require the payer to correctly state the account name.

⁷ At the time of writing, under s 601CDA of the *Corporations Act 2001*, New Zealand companies registered with the New Zealand Companies Office were exempt.

⁸ A non-resident entity can apply for an ABN and must provide certain proof of identity information to the ATO when doing so. It is reasonable for an agency to require an overseas supplier to register for an ABN. In many circumstances, overseas businesses will also be required to register for GST.

Is the supplier genuine? ...continued		
Due diligence checks	Sources	What to look for
<p>Beneficial ownership</p> <p>This refers to individuals who ultimately own or have control over or entitlement to a company.</p> <p>Identifying beneficial owners may be important because opaque structures can be used to conduct illegal activities such as money laundering, tax evasion and organised crime.</p> <p>A supplier may also wish to obscure beneficial ownership in order to hide other red flags.</p>	<p>It may be possible to identify beneficial ownership by conducting iterative searches of ABR and ASIC data. However, this can be time-consuming or expensive, especially if a supplier is part of an international enterprise.</p> <p>In practice, some agencies rely on third-party due diligence service providers to conduct checks on more complex organisational structures.</p> <p>A more practical approach can be to require the supplier to provide documentation showing or attesting to the identity of its beneficial owners.</p>	<p>It is normal for large suppliers to have complex corporate structures with numerous related entities, and sometimes based in overseas countries. In addition, some suppliers may adopt a certain structure in order to lawfully minimise tax or protect assets (for example, a trust). This can make it difficult to verify the ultimate controllers and beneficiaries. However, some particular red flags include:</p> <ul style="list-style-type: none">the complexity of the supplier’s corporate structure seems unnecessary for legitimate commercial purposes or the purpose of the structure could be to obscure beneficial ownership or another red flag such as criminal activitythe corporate structure involves “shell”, “shelf” or “two dollar” companies (that is, companies that are not commercially active and may exist on paper only)a politically exposed person (PEP) or foreign government has beneficial ownership or control of the supplier (see section on “Is the supplier of good repute and integrity?” for more information about PEPs)the supplier refuses to disclose its beneficial ownershipthe supplier’s beneficial owners or ultimate controller are registered in a jurisdiction that is a known tax haven or has high levels of corruption, terrorism and human rights abuses. <p><u>Guidance issued by AUSTRAC</u> regarding customer due diligence states that it is reasonable to identify the beneficial owner of a trust by requiring a certified copy of a trust deed that allows the beneficiaries, the appointer and settlor to be identified.</p> <p>At the time of writing, a number of countries have established, or are considering, public beneficial ownership registers. In time, Australia may introduce a public register.</p>

Is the supplier capable and reliable?

Due diligence checks should include obtaining some assurance that a supplier can deliver the goods and services required by the agency. While a newly-formed company is not necessarily a high-risk supplier (especially in an emerging industry), agencies should obtain some information about the track record of the supplier and its key staff.

Is the supplier capable and reliable?		
Due diligence checks	Sources	What to look for
<p>Agencies should satisfy themselves that suppliers are capable of providing the requested goods and services to the required standards of quality and timeliness.</p> <p>This requires evidence about the specific goods and services the supplier can provide. It can also extend to conducting checks on:</p> <ul style="list-style-type: none">the skills, qualifications and experience of key staffthe resources (employees, capital, stock and property) that the supplier has available to meet the agency’s requirements	<p>Much of the information about a supplier’s capability will be sourced from the supplier itself, typically as part of a request for information or another go-to-market approach, or from its website. This can be supplemented by:</p> <ul style="list-style-type: none">visiting the supplier’s premises, factory, distribution network, and so forthvisiting the premises, and so forth, of the supplier’s other customersrequesting product demonstrations and samplesconducting interviews with key staffresumés of key staff.	<p>Performance and service delivery</p> <p>Organisations that are very small (such as a sole trader) or new (such as a business that has just obtained its ABN or relevant licence) may be capable suppliers. However, with suppliers such as these, agencies should perform additional checks to ensure that the required goods and services can be reliably provided. A supplier that is offering products that are not part of its normal core business, or one that has recently entered a new market, might also warrant additional scrutiny.</p> <ul style="list-style-type: none">A supplier that relies heavily or exclusively on a single customer (such as a public sector agency), to stay in business, should be considered high risk.A supplier that has recently replaced its CEO or senior management team, or has recently been acquired by a new owner, may indicate a lack of stability that could warrant closer examination. <p>continued...</p>

Is the supplier capable and reliable? ...continued		
Due diligence checks	Sources	What to look for
<ul style="list-style-type: none">the existence of key systems, processes, procedures and assurance frameworksthe management of subcontractorspast performance. <p>Note: the NSW Procurement Policy Framework requires certain construction contractors to provide evidence of acceptable work health and safety, and environmental management systems.</p>	<p>Another rich source of information is an agency's own records about previous dealings, performance and management.</p> <p>Third-party sources include:</p> <ul style="list-style-type: none">references/referee checks, including with recent customersprofessional and industry associationsquality accreditations such as AS/NZS ISO 9001, which is the standard for quality management systemsopen source websites containing customer and employee reviews of the supplierprofessional networking sites such as LinkedInmarket intelligence and research companiespre-qualification schemes and procurement panel information by NSW Procurement and Local Government Procurement.	<ul style="list-style-type: none">Check whether the supplier is on a NSW Procurement or Local Government Procurement approved prequalification scheme or contract. Alternatively, verify whether the supplier is a member of a panel or contract maintained by another NSW agency. Importantly, this check should identify the specific goods or services that the supplier is prequalified or contracted to provide. Pursuant to PBD 2014-07, agencies can also make use of supplier lists on the Australian government AusTender site.Certain types of procurement require the supplier to be located close to the agency (for example, asset maintenance work). In these situations, it may be a red flag if the supplier is located interstate or at a distance.⁹Under the <i>NSW Government Information (Open Access) Act 2009</i>, agencies are required to maintain registers of certain contract information, including the name of the supplier. These are available at eTendering and can be used to assess a supplier's relevant experience.Check that the supplier has the right to use relevant intellectual property. Searches of certain registered intellectual property can be conducted at IP Australia. Some suppliers may also purport to be an authorised (or exclusive) distributor of a particular product. This can be verified by obtaining the relevant documentation setting out the authorisation.Agencies should be aware of "key person risk"; that is, a supplier's dependence on one or a few individuals to deliver its products. Suppliers can be asked to warrant that the required staff will be available and/or that suitable back-up plans are in place.Identify whether the supplier is a member of a recognised professional or industry association, especially one that requires members to uphold minimum standards of quality, training or conduct. Also look for any awards or accolades won by the supplier, or if staff from the supplier have been office bearers for a relevant association.Not all suppliers have one, but evidence of a certified quality management system (or similar certification to a relevant Australian or industry standard) may provide information about a supplier's capability.Open source searches can often identify publicly available reviews, ratings and feedback from customers and staff. Open source searches of media reports and relevant trade and industry publications may also provide useful information about a supplier.A supplier's list of clients and achievements should make sense in relation to its date of registration and size. For example, if a supplier's response to an RFT states that it has "decades of experience" but it has only been in operation for a few years, the claim is likely to be an exaggeration. Similarly, it might be suspicious if a one-person company purports to service a "vast number of global multinational clients".Market intelligence and research companies provide information, for a fee, about industries and individual companies. This analysis is generally about public companies. <p>Reference and referee checks</p> <ul style="list-style-type: none">A supplier should be able to nominate an independent entity or client to vouch for its past or recent performance. An inability to provide an acceptable business reference may indicate unsatisfactory performance or a lack of trading history.As is the case with employee references, a supplier is unlikely to nominate a referee that will provide an unfavourable report. Agencies should therefore avoid placing too much weight on this type of information.Although it may be time-consuming to conduct separate due diligence checks on referees, it is not unheard of for a supplier's referee to be a close friend, relative or someone impersonating a real customer. Ideally, the referee should be contacted via a corporate email or landline, or have their identity verified in some other way. If possible, it is also preferable to obtain a reference from another public sector client.

⁹ Agencies should, however, not assume that a supplier located interstate, for example, is not capable of providing the required goods or services. A supplier's location is just a potential red flag to be taken into consideration.

Is the supplier capable and reliable? ...continued		
Due diligence checks	Sources	What to look for
		<ul style="list-style-type: none">Agencies should consider obtaining reports or opinions from customers that have not been nominated by the supplier or checks on recently completed or current internal projects. Alternatively, the agency could insist that it be provided with the contact details of at least one recent customer. <p>Subcontracting</p> <ul style="list-style-type: none">A supplier whose business model relies heavily on subcontracting is a potential risk. Among other things, it may require the agency to identify the key subcontractors and carry out further due diligence checks. In rare circumstances, a contrived subcontracting arrangement could be used to circumvent the due diligence process by putting greater distance between the agency and the “real” supplier.To enable further checks, suppliers can be asked to identify relevant subcontractors and specify the nature and volume of work that will be performed by each.It is good practice to obtain evidence that the supplier has systems and contractual arrangements in place to monitor subcontractors.If the supplier and subcontractor are related entities, or the subcontractor is related to a director or senior executive of the supplier, this will increase related party risks such as non-disclosure, misstatements and possibly fraud.

Is the supplier financially viable?

Agencies may face significant risk if their key suppliers are unprofitable or otherwise in financial distress. A supplier that is not financially viable or is experiencing financial distress may be:

- unable to complete the contract
- under pressure to cut corners or engage in illegal practices
- create reputational and legal consequences for the agency.

Therefore, it makes sense to conduct some due diligence checks aimed at assessing the financial health of certain suppliers and, in some circumstances, their key staff.

Is the supplier financially viable?		
Due diligence checks	Sources	What to look for
<ul style="list-style-type: none">Profitability and overall financial healthCredit rating scoreBankruptcy and insolvencyAbnormally low pricingTimeliness of payments to employees and subcontractorsInsurances	<p>NSW public sector agencies can access the Financial Assessment Services Prequalification Scheme (SCM2491). This scheme lists a number of providers that specialise in conducting financial assessments on contractors or suppliers.</p> <p>Relevant agencies must use providers on the SCM2491 scheme unless they have access to equivalent capability. Financial assessment reports are also held in a central repository, which is accessible to NSW Government agencies.</p>	<p>SCM2491 provides a number of financial capacity assessment template reports. They can be undertaken by providers under SCM2491 but can be performed by agencies themselves with access to equivalent capability. Some of the checks suggested in these templates are:</p> <ul style="list-style-type: none">key data from financial statements such as profitability, revenue, cash flow, liquidity, borrowings, ageing receivables, solvency, net asset (including any associated trajectories or forecasts and key financial ratios)contract value as a percentage of the supplier’s annual revenue (a high percentage might indicate the supplier is heavily reliant on one agency or contract to remain viable)former directors (or current staff) that have been disqualified (ASIC maintains a register of banned and disqualified directors that can be searched free-of-charge and a public enforceable undertakings register)winding up orders against the supplier (or a related entity) or notice that it is under external administration

Is the supplier financially viable? ...continued		
Due diligence checks	Sources	What to look for
<p>Note: in NSW, agencies are required to obtain a financial assessment on the preferred contractor prior to awarding a construction contract for work valued over \$1 million (see Financial Assessments PBD 2013-01C and NSW Procurement Policy Framework).</p>	<p>If an agency has access to equivalent capability, it may be able to conduct its own financial analysis. This can be done by requiring a potential supplier to submit relevant financial information as part of its tender response.</p> <p>Alternatively, some companies are required to file financial reports with ASIC, which can be obtained at a cost. Some relevant information about listed companies can be obtained from the ASX or equivalent overseas stock exchanges.</p> <p>Other external sources:</p> <ul style="list-style-type: none">• ASIC• MoneySmart• Australian Taxation Office (ATO)• ASX• Bankruptcy Register Search and National Personal Insolvency Index• PPSR check• financial institutions• credit rating companies• certificates of currency issued by insurers.	<ul style="list-style-type: none">• credit check with a recognised credit agency• bankruptcy check on directors and key managers• check of the Personal Property Securities Register to determine any parties with charges over the supplier• potential liabilities arising from unresolved litigation or regulatory action, which may be on the public record or disclosed in financial statements• work-on-hand and pipeline of work• key debts that fall due during the term of the contract with the agency. <p>With regard to the check list above, in some cases, it may be necessary to analyse the finances of a supplier’s parent company or other related entities. Similarly, it may be appropriate to identify other past or present directorships or management positions held by key staff of the supplier. In particular, it may be important to know if a director/manager of a supplier is associated with another company that became insolvent or otherwise failed. SCM249I also suggests the possibility of holding discussions with the supplier’s bank or financier in order to establish its financial health, which would require the consent of the supplier.</p> <p>Credit check reports</p> <p>A number of specialist firms provide credit checks on registered businesses for a fee. Each credit bureau uses its own scoring system and assessment methodology that incorporates a combination of publicly available information and aggregated unpublished data to create a financial risk profile of the supplier. Reports can address failure risks or financial distress, trade payment data and information about directors. These reports typically also contain ASIC information about the business or corporation structure.</p> <p>Other checks to consider</p> <ul style="list-style-type: none">• Failure to file reports with ASIC or the ACNC (where relevant) or a history of late filing.• Failure to pay wages or superannuation (and other industrial relations breaches). The Fair Work Ombudsman and the Fair Work Commission publish some relevant decisions. Some industrial relations matters are also dealt with in the court system and/or are often reported in the media. The Australian Building and Construction Commission publishes information about actions taken in the construction sector.• Failure to pay its subcontractors. This information may not be in the public domain unless relevant court action is under way or there has been media or social media reporting.• Failure to pay required taxes. This information is generally not in the public domain but the ATO issues media releases about some of its enforcement action. Businesses tendering for significant Commonwealth government contracts must provide a “statement of tax record” (STR), obtainable from the ATO. This sets out satisfactory compliance with relevant tax obligations in terms of registration, lodgement and payment. While this is not a requirement in NSW, agencies could consider asking a supplier to provide an STR (for example, if it is already suspected of failing to pay tax).• Auditor’s documents. While not all suppliers will be required to have their financial statements audited, those that do will receive an auditor’s written opinion on whether the statements are free from material misstatement. Auditors also provide management letters to their clients setting out observations about significant weaknesses and areas for improvement.• Where relevant, searches of land titles can be conducted to verify the existence of a parcel of real property or determine whether a supplier has interest in real property. NSW Land Registry Services has an online portal that allows a number of searches (some are free-of-charge). Other searches can be conducted via third-party information brokers and data aggregators.

Is the supplier capable and reliable? ...continued		
Due diligence checks	Sources	What to look for
		<p>Phoenix companies Company directors with a history of closing down and restarting businesses may be involved in illegal phoenix activity. Illegal phoenixing occurs when a company is deliberately liquidated to avoid paying suppliers, outstanding debts, taxes and employee entitlements. The owners or operators then create a new company to carry on the same, or similar, business to the previous entity. Such activities should be regarded as a red flag and, if necessary, reported to ASIC.</p> <p>Abnormally low bids It is usually desirable for a supplier to bid a low price for its services, but agencies should be wary of bids that are unrealistically low or that are outliers compared with other offers. This behaviour might be a sign that the supplier may:</p> <ul style="list-style-type: none">• not be paying award wages to its employees or otherwise have unrealistically low costs• be highly dependent on winning additional work with the agency, securing variations to the existing contract or raising prices at a future time• be at risk of engaging in fraudulent conduct• be compensating for other deficiencies, such as a history of misconduct• be at risk of insolvency or bankruptcy while trying to complete the contract. <p>Insurance NSW public sector agencies generally have well-established procedures requiring suppliers to hold relevant insurance, typically with respect to workers compensation, professional indemnity and public liability. In some cases, it will be appropriate for a supplier to hold specific additional insurances such as construction, vehicle or product liability. Key points to note:</p> <ul style="list-style-type: none">• the NSW State Insurance Regulatory Authority, which regulates certain insurance schemes, publishes summaries of relevant court decisions on its website and in its annual report• an uninsured or under-insured supplier may have an incentive to provide false certificates of currency (certificates should be checked to ensure they have been correctly issued, are not expired and have not been altered)• a workers compensation insurance certificate of currency should show the number of employees covered by the policy (this can be compared with the supplier's claims about the size of its operations; an inconsistency may be a red flag)• the NSW Government Small and Medium Enterprise (SME) and Regional Procurement Policy aims to make it simpler and easier for SMEs to access government opportunities (under the policy, agencies must ensure that the minimum possible levels of public liability and professional indemnity insurance are imposed)• liability can extend to other parties engaged by the principal supplier in a subcontracting capacity (agencies can require the principal supplier to take appropriate steps to ensure that all such parties have sufficient cover).

Does the supplier have the required authorities, licences and status?

Many suppliers require a formal authority or licence¹⁰ to operate, which can apply to the business itself as well as individual staff. For example, security firms are required to hold a master licence issued by the NSW Police, but individual security officers are also required to hold a licence.

In some cases, the relevant authority or licence is required by law. However, the requirement can also be imposed by the agency as a matter of policy. Alternatively, a supplier may claim to hold a particular status or characteristic, which may not be

mandatory, but is nonetheless desirable (for example, a supplier that qualifies as a small- or medium-sized enterprise, or employs people with a disability).

Importantly, many licensing/registration bodies are also active regulators of an industry or profession. They may require members to uphold minimum standards of competence and honesty and may have power to revoke a business' licence to operate, or otherwise penalise non-compliance. Much of this regulatory action is publicly available and can form part of an agency's due diligence checking.

¹⁰ In this publication, an authority, licence or similar document may or may not be mandatory and could be issued by a public sector authority, an industry or professional body, a training organisation or another private sector organisation.

Does the supplier have the required authorities, licences and status?		
Due diligence checks	Sources	What to look for
<ul style="list-style-type: none">• Current, valid licence to operate in a given industry or profession• Evidence of any licence breaches or regulatory action• Evidence of any other memberships or accreditations the supplier purports to hold• Compliance certificates and accreditations• Professional association memberships <p>Similarly, individual employees of a supplier may need to hold individual licences (for example, builders, solicitors and doctors).</p>	<ul style="list-style-type: none">• Issuing authorities and organisations• Regulatory bodies• Professional bodies and associations• Registered training organisations	<p>There are many organisations that licence and regulate different business activities. Not all of these are listed below but some that might be relevant to NSW public sector agencies are as follows.</p> <ul style="list-style-type: none">• The Australian Business Licence and Information Service lists the government licences, permits, approvals, regulations and codes of practice that relate to various industries. This can be used to identify the types of licences or other credentials that a particular supplier may need to hold.• NSW Fair Trading and Service NSW provide searchable registers showing the holders of a number of business licences in areas such as building and trades, real estate, motor dealers and conveyancing. A search can be conducted on current and expired licences, as well as any recorded compliance issues.• The Australian Charities and Not-for-profits Commission lists all registered charities and adverse regulatory findings.• Certain suppliers may need to register with the Office of the Children's Guardian and relevant staff may need to pass a working-with-children check.• SafeWork NSW issues licences for work in areas such as asbestos-handling, demolition, working with explosives and fireworks, and certain other high-risk activities. A licence check can be conducted, which also provides information about significant penalty notices. SafeWork NSW also publishes summaries of prosecutions, enforceable undertakings and deeds of agreement.• The NSW Security Licensing and Enforcement Directorate issues licences for security-related work. A licence check can be performed.• The NSW Environment Protection Authority maintains public registers of information including environmental protection licensees (including certain waste activities), dangerous goods licensees and pesticides licensees. The registers can also be searched for convictions and civil proceedings, penalty notices and enforceable undertakings.• This Commonwealth website includes a database of all registered training organisations (RTOs) and recognised training courses. Relevant registration status, contact details, areas of operation and regulatory decisions can also be located. The Australian Skills Quality Authority also publishes regulatory decisions about RTOs.• The Law Society of NSW maintains a list of practising solicitors and the Office of the Legal Services Commissioner maintains a list of disciplinary action against legal professionals.• If someone claims to be a justice of the peace (JP) or provides documentation certified by a JP, the public register of JPs can be useful.• PBD 2016-03, Construction Standards and Conformance, directs agencies to require construction companies to comply with nominated industry standards for building materials and manufacturing processes.• The Joint Accreditation System of Australia and New Zealand accredits certain bodies that perform inspections or certifications. The website contains a directory of accredited bodies and a searchable list of companies that have received a valid certification of a management system. Information about potential suppliers that hold various certifications can also be found here.• The NSW Indigenous Chamber of Commerce and Supply Nation maintain a list of recognised Indigenous businesses.• NSW government agencies need not conduct open, competitive tenders when engaging a disability employment organisation or an Australian disability enterprise. A directory of Australian disability enterprises are available at BuyAbility. A directory of disability employment support service providers is also available.• NSW government agencies may preference SMEs as well as regional suppliers subject to preconditions and requirements set out in the Small and Medium Enterprise and Regional Procurement Policy, and PBD 2019-03, Access to Government Construction Procurement Opportunities by Small and Medium Sized Enterprises. An SME may be verified by requesting a copy of its ATO PAYG summary statement and/or its workers compensation insurance certificate.

Is the supplier of good reput and integrity?

Ideally, agencies should have an understanding of steps taken by their suppliers to conduct business in an honest ethical manner, as well as any legal or regulatory breaches by their suppliers.

Is the supplier of good reput and integrity?		
Due diligence checks	Sources	What to look for
<ul style="list-style-type: none">Recorded criminal, civil and regulatory breaches and associated convictions and penaltiesEvidence of corrupt conductBreaches of the Corporations Act 2001Anti-competitive behaviour or breaches of consumer lawModern slavery or human rights abusesPolitically exposed persons	<ul style="list-style-type: none">Published case lawPolice recordsAnti-corruption agencies and other oversight bodies or regulatory agenciesIndustry or professional associations <p>Since adverse regulatory findings are often newsworthy, basic internet searches will often provide useful information.</p>	<p>Case law and criminal convictions</p> <p>Not all court judgments are published in the public domain free-of-charge. In NSW, Caselaw is the primary source for this information but see also the Australasian Legal Information Institute, which includes interstate cases. Published cases tend to be the significant judgments of higher courts and sometimes the decision to publish is at the discretion of a particular judicial officer. A selection of other judgments or summaries can be obtained by subscribing to services provided by a specialist legal publisher¹¹ but many judgments of local courts are not published or searchable.</p> <p>Despite this, Australian courts often publish attendance lists or case listings that can be searched. Note: a scheduled attendance at court is quite different from a conviction, and care should be taken to avoid drawing incorrect inferences from this information.</p> <p>Other ways to obtain information about a criminal history are to conduct police records checks or access relevant media coverage.</p> <p>Criminal/police records checks</p> <p>Disclosable police or criminal records checks can only be performed with the permission and cooperation of the person or company being checked. In a contracting environment, these checks are mainly used in situations where a contractor/supplier will have access to highly sensitive government information or assets. The check is processed via the NSW Police or Australian Federal Police. A criminal records check may be conducted as part of a formal vetting process required to obtain a security clearance (performed by the Australian Government Security Vetting Agency).</p> <p>Adverse findings by integrity agencies and oversight bodies</p> <ul style="list-style-type: none">Anti-corruption agencies, such as the Commission and counterpart agencies in other states, publish findings of corrupt conduct in public reports. The Commission’s website contains public investigation reports covering the last 10 years, as well as a summary of relevant prosecution outcomes and briefs with the Director of Public Prosecutions covering the last five years.Other integrity agencies, such as an ombudsman’s office, may also publish reports that can be useful for due diligence purposes. Reports from royal commissions or other government inquiries may also provide useful information.Agencies such as the ACCC and ASIC have key roles in regulating corporate misconduct. Information about key findings can be found in published media statements or publicly available registers of regulatory findings.State and Commonwealth governments maintain a significant number of specialist regulatory bodies in aviation, aged care, workplace safety, food, medicines and prescription drugs, media and communications and various industries that access natural resources, and so forth. Some of these bodies make public findings about misconduct by potential suppliers. <p>In addition, some professions or industry associations publish information about members who have engaged in professional negligence or misconduct, including members who have been expelled from an association.</p> <p>Modern slavery and high-risk countries and industries</p> <ul style="list-style-type: none">The Transparency International Corruption Perceptions Index is the best known measure of countries that are perceived to be corrupt. A number of firms and organisations that specialise in due diligence or consulting, such as the World Bank, also publish information about high-risk countries.

¹¹ This website allows users to search numerous [global databases](#), including legal judgments in Australia.

Is the supplier of good reput and integrity? ...continued		
Due diligence checks	Sources	What to look for
		<ul style="list-style-type: none">• Anti-Slavery Australia has listed a number of indicators of modern slavery, including:<ul style="list-style-type: none">– the person is not being paid– the person owes a debt to their employer or a third party– the person is unable to end their employment at any time– personal documents, such as passports, are being held by the employer or a third party and the worker is not allowed to access these documents– the person is being subjected to, or threatened with, violence at their workplace– the person is being confined or isolated in the workplace or only leaves at odd times– the person is living at the workplace, or another place owned/controlled by their employer– the person is subject to different or less favourable working conditions than other workers because they are from overseas– the person is in the control of another person and is not allowed to speak for themselves– a third party holds or invests the person’s money for them– the person does not understand the terms or conditions of their employment.¹²• The USA Department of Labor publishes data about products, goods and countries associated with child or forced labour.• Information about particular countries and regions, including relevant trade agreements and areas of risk, can be found at the Department of Foreign Affairs and Trade. <p>Politically exposed persons (PEPs) checks The Australian Transaction Reports and Analysis Centre defines a PEP as:</p> <p><i>an individual who holds a prominent public position or role in a government body or international organisation, either in Australia or overseas. Immediate family members and/or close associates of these individuals are also considered PEPs.</i></p> <p>PEPs can include politicians, party officials and senior agency executives. They can also include potentially influential persons such as major political donors. PEPs who are connected to suppliers may represent a higher risk because they may have influence over procurement decisions. Alternatively, if a supplier is owned or controlled by a foreign power, it may present a risk to the agency or the government.</p> <p>Information about PEPs can often be obtained from basic internet searches, and additional sources such as:</p> <ul style="list-style-type: none">• political donor registers at the NSW Electoral Commission or Australian Electoral Commission• registers of party agents, official agents, associated agents and third-party campaigners at the NSW Electoral Commission• the NSW register of third-party lobbyists and their clients

¹² See also Commonwealth *Modern Slavery Act 2018* and a link to this Commonwealth Government [site](#).

Is the supplier of good repute and integrity? ...continued		
Due diligence checks	Sources	What to look for
		<p>Sanctions and debarment lists</p> <p>A number of organisations maintain publicly available databases of companies that have been banned or debarred from procurement activities due to some form of misconduct. Many of these are focused on overseas firms but some that might be of relevance in Australia include the:</p> <ul style="list-style-type: none">• Department of Foreign Affairs and Trade consolidated sanctions list• TRACE Compendium of anti-bribery enforcement actions• World Bank Listing of Ineligible Firms and Individuals• The US System for Award Management contains useful data about organisations registered to do business with the US government, and those that have been excluded. <p>Demonstrated good practice and corporate social responsibility</p> <p>Suppliers may be requested to provide evidence of good integrity practices. This can include a supplier providing proof of basic documentation such as a code of conduct, conflicts of interest and gifts policies, whistle-blower management policies, risk management processes, human resources practices and its internal training program.</p> <p>It could also include evidence of key governance mechanisms such as an audit and risk committee and an internal audit function. At a more formal level, it could include evidence of compliance with:</p> <ul style="list-style-type: none">• ISO/AS 37001:2019, the standard on anti-bribery management systems• AS 8001:2008, the standard on fraud and corruption control¹³ (or at least the supplier’s policies on managing the risk of fraud and corruption)• the ASX Corporate Governance Principles and Recommendations• guidance issued by the Commonwealth regarding the “adequate procedures” for preventing foreign bribery.¹⁴ <p>In a similar vein, some agencies may place weight on a supplier’s commitment to sustainability and corporate social responsibility (CSR). Large organisations may have published CSR statements but any supplier can be asked to provide information about its policies and outcomes regarding the environment, diversity and contributions to the community.</p> <p>Useful resources include:</p> <ul style="list-style-type: none">• the Standard on Sustainable Procurement, AS ISO 20400:2018• the OECD’s Due Diligence Guidance for Responsible Business Conduct• Local Government NSW’s Sustainable Procurement Guide. <p>In accordance with PBD 2017-07, Conduct by Suppliers, agencies must, in all tender or sourcing documents, ensure prospective tenderers or suppliers provide information concerning any findings of dishonest, unfair, unconscionable, corrupt or illegal conduct against the supplier, its directors or management. Any failure to comply with this requirement, including any false statement made by a supplier, should itself be considered a red flag.</p>

¹³ Under review by Standards Australia at the time of writing.

¹⁴ At the time of writing, a new offence relating to failure to prevent bribery of a foreign public official had been proposed, but not yet enacted by the Commonwealth. Under the proposed legislation, an entity can defend itself against this offence if it can demonstrate adequate procedures designed to prevent foreign bribery. See Commonwealth Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019.

Appendix 1: Legislative and regulatory obligations

There are a number of legislative and regulatory obligations in NSW that either specify or imply the need for sound due diligence practices. These are set out below. These obligations are amended from time to time but are correct at the time of publication.

The [*Public Works and Procurement Act 1912*](#) requires relevant agencies to obtain value for money when procuring goods and services and to act in accordance with “the principles of probity and fairness” ([s 176](#)). The [*NSW Procurement Policy Framework*](#) expands on these requirements and provides additional detail in relation to tendering and contractual obligations for classes of supplier.

The [*Government Sector Finance Act 2018*](#) requires relevant agencies to maintain effective systems for risk management, internal control, assurance and the protection of the integrity of financial and performance information ([s 3.6](#)). Public officials are also expected to use government resources efficiently, effectively and prudently ([s 3.7](#)).

The [*NSW Fraud and Corruption Control Policy*](#) (Treasury Circular 18-02, April 2018) requires relevant agencies to develop, implement and maintain a fraud and corruption control framework to prevent, detect and manage fraud and corruption. Among other things, the framework must contain risk based preventative and detective controls, and “robust third-party management systems”.

PBD 2017-07, [*Conduct by Suppliers*](#), requires agencies to use their best endeavours to report all adverse findings about suppliers to the Procurement Board. Among other things, this assists the Procurement Board to take action against suppliers that have engaged in misconduct. Agencies are also required to ensure that tenderers disclose information about “any findings of dishonest, unfair, unconscionable, corrupt or illegal conduct against the tenderer, its directors or management”.

PBD 2019-05, [*Enforceable Procurement Provisions*](#), outlines some criteria under which a relevant agency may exclude a supplier (see chapter 3 of PBD 2019-05). PBD 2019-05 also includes restrictions on the types of standards that can be used to assess potential suppliers and prohibitions against discrimination. Supplier capacity and capability data may also be published pursuant to a scheme established under PBD 2019-05.

Major projects are subject to increased supplier due diligence scrutiny through escalation to a Gateway Coordination Agency for robust peer review and project assurance. See the [*NSW Gateway Policy*](#) (TPP 17-01), the [*Major Projects Policy for Government Businesses*](#) (TPP 18-05) and the [*Governance Framework for Major Transactions*](#) (Department of Premier and Cabinet Circular C2014-09).

The [*Use and Management of NSW Government Purchasing Cards*](#) (Treasury Policy & Guidelines Paper 17-09, November 2017) sets out the responsibilities of agencies and cardholders as to the proper management, administration and responsible use of PCards as well as outlining controls to prevent, detect and limit their misuse.

The [*Local Government Act 1993*](#) states that local councils should have sound policies and processes in relation to financial and asset management, funding decisions and risk management practices ([s 8B](#)). They should also obtain the best possible value for residents and ratepayers ([s 8A](#)).

Appendix 2: Obtaining information about websites

Valuable information about a supplier (or any other organisation) can be gleaned from its website. This appendix describes some techniques that can be used as part of an agency's due diligence procedures.

Obtaining the date of website publication and modification

Navigate to a supplier's website on your browser. The two best browsers for this are Google Chrome and Firefox. The following steps can be applied to both:

1. Once on the website, right click on the page.
2. In the pop-up menu select "View Page Source".
3. This will reveal the HTML source code for that page (see figure 1).

4. On the source code page, using your keyboard press "Ctrl+F" (control find).
5. In the text search box that appears, type the word "publish".
6. This may identify the date when the URL was published, possibly in the form "datePublished:YYYY-MM-DD" (see figure 1). Some variations may be "publishdate" or "published_time".
7. To identify when a page was modified, use "Ctrl+F" and search for the word "modified".

Be wary of drawing negative inferences as there may be legitimate reasons for creating or modifying a website.

```
{"value":1719,"limit":1000000},"postexpandincludesize":{"value":42129,"limit":2097152},"templateargument":20},"unstrip-size":{"value":34205,"limit":5000000},"entityaccesscount":{"value":1,"limit":400},"te:Cite_web"," 10.61% 76.577 1 Template:Refimprove"," 9.40% 67.822 1 Template:Ambox","e:Side_box"]},"scribunto":{"limitreport-timeusage":{"value":"0.200","limit":"10.000"},"limitreport-meip>
```

```
org\/entity\/Q128751","author":{"@type":"Organization","name":"Contributors to projects"},"|  
googpub.png"},"datePublished":"2001-09-27T20:48:16Z","dateModified":"2020-02-18T16:59:17Z","headline
```

Figure 1: An example of "Date Published" and "Date Modified" via the Source Code.

The WayBack Machine

The [WayBack Machine](#) is a digital archive of the internet. Historical snapshots of a website are taken at different points in time. It can provide information about:

- the types of goods and services sold or marketed through the website over time
- past and present employees
- current and historical telephone numbers, physical addresses and potentially different ABNs affiliated with the website.

If the URL of a website is entered into the Wayback Machine search bar, an archive bar graph is displayed that represents the number of times a snapshot of the website has been taken. See figures 2 and 3.

Users can then click on a year shown in the bar graph, which displays an archive calendar of dates (see figure 4). Clicking on a specific date takes the user to a snapshot of the relevant website at that time. Popular websites, such as news services, will have multiple daily snapshots. Less popular websites will be captured less frequently and, on occasion, may not be captured at all.

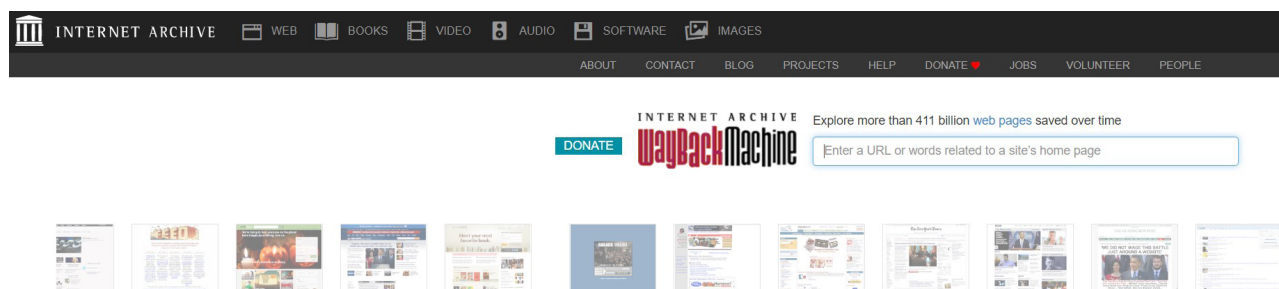


Figure 2: The [WayBack Machine](#).

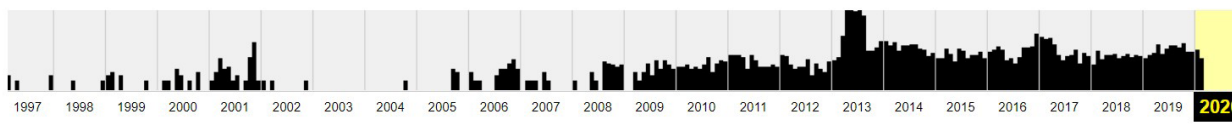


Figure 3: WayBack Machine Archive Bar Graph

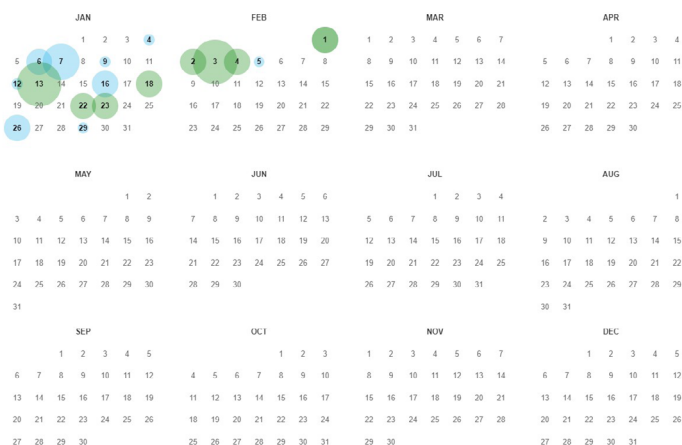


Figure 4: WayBack Machine Archive Calendar

Obtaining the IP address and geolocation of a supplier's website

Internet protocol (IP) addresses are unique identification numbers that makes it possible to identify the geolocation of where a website is hosted. If the IP is being hosted in a remote country with no discernible link to the company, it may represent a red flag.

One reliable method of obtaining an IP address is to use the Command Prompt inherent in the Windows operating system, as follows.

- In the “search windows” icon located in the toolbar at the bottom left of the screen, type “cmd”.
- Next to the C: drive...> path type “ping”.
- Press space and then enter the name of the website to be analysed. Do not include anything other than the name followed by the .com, and, if applicable, the .au. For example, simply enter icac.nsw.gov.au (see figure 5). Do not include the prefix “www” or “https”.

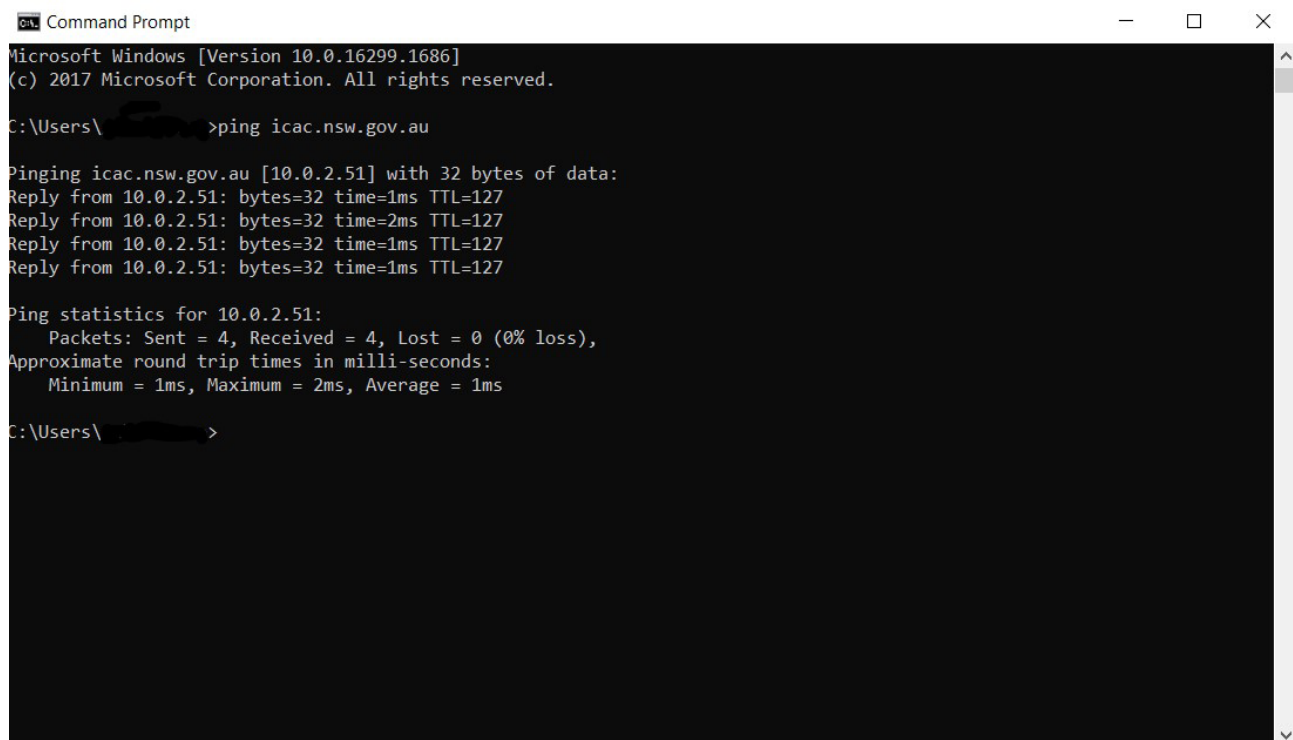
- As shown in figure 5, the IP address for the ICAC website is 10.0.2.51.

To then identify the geolocation of a website:

- Go to an IP address lookup website such as: whatismyipaddress.com
- Enter the IP address in the search field
- Press “Lookup IP Address”

Note that IP address mapping tools are not always precise. If they cannot identify the specific location of the IP host, it will simply drop a pin in the middle of the relevant country. For example, if the IP Lookup has identified the United States as the location of an IP address, but has not been able to find the precise location, it defaults to Kansas, the geographic centre of the country.

Other useful resources to obtain IP information are [CentralOps](#) and [Whois Lookup](#).



```
Microsoft Windows [Version 10.0.16299.1686]
(c) 2017 Microsoft Corporation. All rights reserved.

C:\Users\ >ping icac.nsw.gov.au

Pinging icac.nsw.gov.au [10.0.2.51] with 32 bytes of data:
Reply from 10.0.2.51: bytes=32 time=1ms TTL=127
Reply from 10.0.2.51: bytes=32 time=2ms TTL=127
Reply from 10.0.2.51: bytes=32 time=1ms TTL=127
Reply from 10.0.2.51: bytes=32 time=1ms TTL=127

Ping statistics for 10.0.2.51:
    Packets: Sent = 4, Received = 4, Lost = 0 (0% loss),
    Approximate round trip times in milli-seconds:
        Minimum = 1ms, Maximum = 2ms, Average = 1ms

C:\Users\ >
```

Figure 5: Command Prompt Ping the IP Address

Reverse image searches

Images on a supplier's website can be checked. Photographs of company office holders and images that purport to show the operations of the company may not be authentic. Reverse image searching can help evaluate them.

There are two main reverse image searching databases: Tin Eye and Google Images. Both are easy to use and all they require is the URL of the image, or the image itself.

To perform a reverse image search on [Tin Eye](#), simply paste the URL of the image in the search bar and Tin Eye will show other websites where the same image appears.

For Google reverse image searching, save a copy of the image on to the desktop. Some websites do not allow

visitors to simply save an image as a JPEG directly onto the computer. If this is the case, take a screenshot, or use the Windows snipping tool and then save the image to the desktop on the local drive.

Navigate to Google Images and drag the image into the search bar. As pictured in figure 6, a "drop image here" box will appear. Simply drop the image and Google will scan its index looking for other sites where the same or very similar images appear. The advantage of using a reverse image search on Google is that it has an extremely large index of images. It may also show the identity of the person in the image.

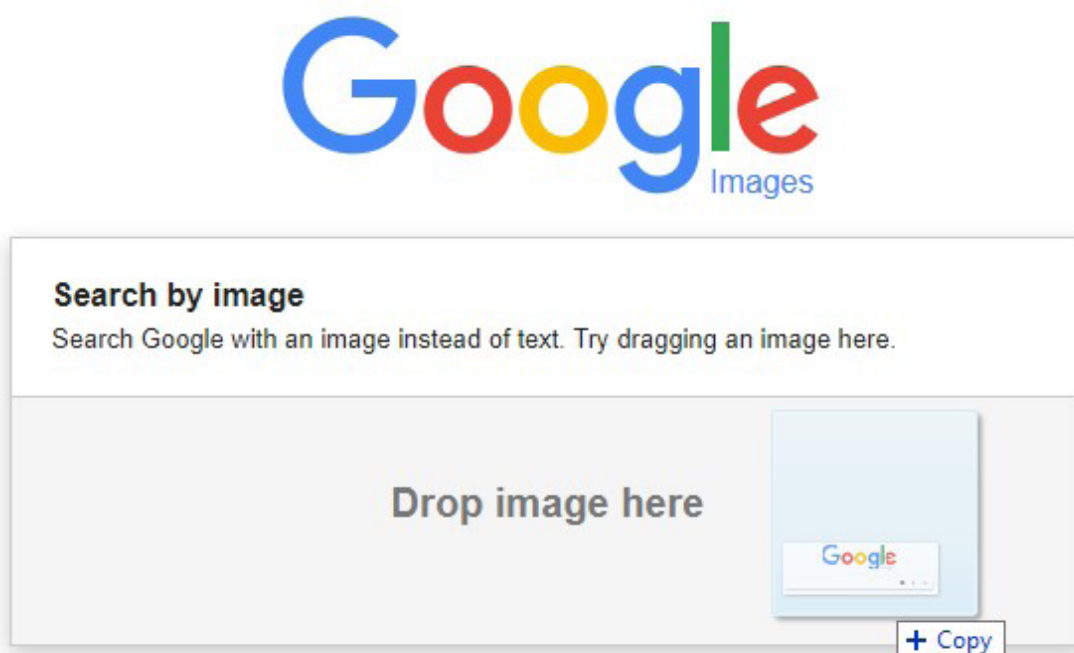


Figure 6: Google Images reverse image search



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