



## What is APiC?

The Aboriginal Participation in Construction (APiC) policy is an initiative from the NSW Government Procurement Board to support greater participation by Aboriginal people in government construction projects across NSW.

## When does APiC come into effect?

The policy commenced on 1 May 2015, replacing the 2007 Aboriginal Participation in Construction Guidelines.

## Which construction projects are covered by the policy?

APiC applies to all government construction projects within the three categories set out below. It also applies to construction projects that are being jointly delivered with the private sector.

<b>Category 1</b>	Projects nominated by an agency that are primarily directed to one or more Aboriginal communities. This includes projects where an Aboriginal community is the sole or predominant beneficiary, is a key user group or a predominant stakeholder.
<b>Category 2</b>	All other construction projects where the estimated value is over \$10 million.
<b>Category 3</b>	All other construction projects where the estimated value is over \$1 million.

## How will the policy apply to Roads and Maritime Services projects?

From July 1 2016, most new contracts issued by Roads and Maritime will include a Target Project Spend (TPS) for Aboriginal participation.

## What is a TPS?

A Target Project Spend (TPS) is an amount a contractor must spend on Aboriginal employment and education activities directly related to the project's planning, design or delivery or costs indirectly related to the project that contribute to the education and employment goals outlined in Opportunity, Choice, Healing, Responsibility and Empowerment (OCHRE).

## What is OCHRE?

OCHRE is the NSW Government's plan to improve outcomes for Aboriginal people across all sectors of the community. More information on the plan can be found [here](#).

## What specific Roads and Maritime contracts does APiC apply to?

From 1 July 2016, Roads and Maritime will apply the policy to:

- All projects nominated by Roads and Maritime that are primarily directed to one or more Aboriginal communities (Category 1 contracts as defined in the policy)
- D&C contracts
- GC21 (major construct-only) contracts
- C41 Minor Works.

The policy may also be applied to:

- Non-design related Construction Industry Professional Service Contracts, including panels C71 & C72, for Services valued at more than \$1 million where TPS is more than \$0
- Certain major supply contracts where the contract value is more than \$1 million and where TPS is more than \$0.

Roads and Maritime will also trial the policy to design related Professional Service Contracts including panels (C71 & C72) for Services valued at more than \$1 million for a twelve month period.

### Are any contracts excluded from APiC?

Yes, the following contracts will be excluded from the policy:

- Roads and Maritime Non-Construction Industry Professional Service Contracts and panels, on the basis that the services are specialised
- Roads and Maritime utility adjustment work contracts on the basis that the utilities set their own panels
- Specific projects that are excluded under the Policy
- All Roads and Maritime multiple year Panel and Term Services arrangements executed before 1 June 2015.

### How is a TPS calculated on Roads and Maritime contracts?

A TPS is calculated for different Roads and Maritime contracts as follows:

Type of contract	TPS calculation
<b>Orders issued under the C72 PSC Panel Deed and the C41 Work-as-Ordered Contract</b>	1.5% x (the value of the Order – Exclusions)
<b>C41 Terms Services Contracts</b>	1.5% x (Annual Notional Contract Sum – Annual Exclusions).
<b>All other Contracts</b>	1.5% x total estimated value = 1.5% x (Contract Value – Exclusions)

- **TPS** is excluding GST; subject to agreement by Roads and Maritime and the Contractor, the TPS can be re-set during the contract, when legitimate Exclusions were not captured prior to contract award.
- **Contract Value** means the value (exclusive of GST) at the time of contract award. Where the contract is being delivered under the umbrella project arrangement (eg Woolgoolga to Ballina), Roads and Maritime may determine that the TPS will be calculated at the project level, rather than at the contract level (i.e. TPS = 1.5% of the estimated Project Value – Project Exclusions).

### How are Exclusions determined?

Exclusions are determined on a contract by contract basis (or project basis, where relevant), using the Roads and Maritime APiC Guidelines. A copy of these guidelines is available here.

Exclusions may include:

- Specialised capital equipment (eg tunnel exhaust fans, tunnel boring machines, batch plants) where no suitable Australian supplier exists in the market
- Materials imported from overseas where no suitable Australian supplier exists in the market
- Existing and/or new non-contract/project specific assets apportioned to the contract/project, where they are used in delivery of the contract/project
- Property ie acquisitions, indirect leasing costs, extra land, adjustments
- Non-construction related services.

Exclusions must be nominated in the tender submission by the Tenderer. Roads and Maritime will consider exclusions and confirm the TPS to the successful Contractor prior to contract award.

### **Hasn't Roads and Maritime previously included APiC targets in contracts?**

Yes, Roads and Maritime has included an indicative TPS in its major forms of contract since 1 May 2015. The 1.5% target became a mandatory minimum across all government agencies on 1 July 2016.

### **What are the requirements to meet APiC targets?**

Contractors must allocate at least 50% of the TPS to employment and education activities directly related to the project's planning, design or delivery. Contractors may allocate up to 50% of the TPS to expenses that are indirectly related to the project or that contribute to the education and employment goals outlined in OCHRE.

Contractors must also prepare an Aboriginal Participation Plan (APP) and regular Aboriginal Participation Reports (APR) to meet policy and Roads and Maritime requirements.

### **How does APiC apply to procurement and contracts currently being assessed?**

APiC applies to all new tenders and those being assessed after 1 July 2016. Roads and Maritime tender and contract documents have been amended and now require the tenderer to:

- Provide evidence of its ability to meet the obligations of the policy and include APiC performance outcomes on other Roads and Maritime and/or NSW Government contracts that it has completed
- Nominate proposed exclusions for determining the TPS
- Include details of achieving targets in monthly progress reports (as appropriate)
- Report quarterly in accordance with the Department of Finance, Services and Innovation mandated form (as modified by Roads and Maritime).

### **Does the policy impact existing contracts?**

No, ongoing Roads and Maritime contracts awarded before May 2015 need to comply with the 2007 Aboriginal Participation in Construction Guidelines.

Roads and Maritime Construct Only, Design and Construct and Minor contracts awarded after May 2015 but before July 2016 have an indicative TPS target of 1.5% of contract value.

The compulsory TPS included in Roads and Maritime contracts from 1 July 2016 will not be retrofitted to contracts awarded before 1 July 2016.

### **What is an Aboriginal Performance Plan? How does it apply to Roads and Maritime contracts?**

An Aboriginal Participation Plan (APP) must be developed by the contractor to outline APiC initiatives that will be carried out during the project.

A draft APP may be requested by Roads and Maritime within 20 business days of contract award. The final APP must be submitted to Roads and Maritime within 60 days after contract award except in the case of C41 Term Services Contracts.

For C41 Term Services Contracts (including multiple year arrangements) a Contractor is able to provide an annual APP, rather than the APP for each engagement during the Term. The annual APP is to detail the initiatives that will be carried out for the next 12 months. The annual APP must be submitted to Roads and Maritime at least 30 days prior to the Term Services Contract award anniversary date.

### **What is an Aboriginal Participation Report? How does it apply to Roads and Maritime contracts?**

An Aboriginal Participation Report (APR) must be prepared by the contractor to report on the initiatives outlined in the APP.

Roads and Maritime Contractors are required to submit an APR within the timeframe scheduled in the Contract.

### **How will not meeting the APiC requirements affect a Contractor?**

Tenderers will be requested to provide evidence of their ability to meet the obligations of the Policy and include APiC performance outcomes on other Roads and Maritime and/or NSW Government contracts that they have completed. Roads and Maritime will consider contractors' demonstrated capacity to meet the obligations of the Policy when assessing tenders.

### **What resources are available to find Indigenous businesses in NSW?**

Contractors are advised to contact the [NSW Indigenous Chamber of Commerce](#) or [Supply Nation](#) for more details regarding Aboriginal businesses in their area.

### **Where can I get a copy of the policy?**

A copy of the APiC policy is available to view or download on the [ProcurePoint website](#).

### **Where can I find more information?**

For more information, email [APiC@rms.nsw.gov.au](mailto:APiC@rms.nsw.gov.au).