

Inquiry into the Commonwealth Procurement Framework

Submission to the Joint Select Committee on Government
Procurement
March 28, 2017

Introduction

The Australian Chamber of Commerce and Industry (the Australian Chamber) acknowledges the Government's prerogative and flexibility to determine its own procurement rules, and note that they do not require legislative change. The Australian Chamber further acknowledges the opportunity for engagement from industry, stakeholders and the wider public, and we welcome the opportunity to make a submission to the Joint Select Committee on Government Procurement ahead of our appearance on 29 March 2017.

The Australian Chamber represents over 300,000 businesses of all sizes, across all industries and all parts of the country, making us Australia's most representative business organisation.

Government procurement, undertaken on behalf of and with accountability to the taxpayer, has significantly increased from \$17 billion in 2003-04 to around \$60 billion now. The increasing significance of this spend requires that government procurement should support the efficient and effective delivery of government services and infrastructure. As a general proposition, procurement rules, and how they are implemented, should be guided by the principles of value for money, access to a competitive evaluation process, clarity of assessment requirements, and transparency in decision-making. These principles need to underpin the implementation of procurement rules including new rule 10.30 and its qualifier 10.31.

Rule 10.30

In addition to the considerations at paragraph 4.4, for procurements above \$4 million, Commonwealth officials are required to consider the economic benefit of the procurement to the Australian economy.

Rule 10.31

The policy operates within the context of relevant national and international agreements and procurement policies to which Australia is a signatory, including free trade agreements and the Australia and New Zealand Government Procurement Agreement.

This submission makes some general observations based on feedback received from member associations, but primarily focuses on the new rule relating to economic benefit.

Principles

Value for money

Procurement decisions should deliver value for money to maximise the benefits to society and promote the wise use of taxpayer funds. Price and quality of outcomes are key considerations in the value for money equation. Where appropriate standards exist, they should be followed to create a level playing field.

Consideration of the economic benefit to the economy should be a balanced assessment, including not only economic indicators such as job impacts (e.g. increased Australian jobs, upskilling Australian workers and indirect economic benefits through the supply chain and beyond), but also issues such as effectiveness (e.g. expected quality of project outcome and the dissemination of innovations); and efficiency (e.g. the allocative efficiency of resources and impact on the budget deficit and government debt).

The breadth of judgement that is required from the creation of rule 10.30 is extensive. The definition and demonstration of economic benefit could prove challenging in practice. For example, there are two competitors shortlisted to build a community centre. Both offer the same price and the same project outcome but for the purposes of the project one offers to hire and train workers in the local community including offering apprenticeships. At first glance, the business that will hire and upskill local workers would add more benefit to the economy. On the other hand, the other business may actually be a well-known provider of apprenticeships and opportunities but may not be putting forward that this is project-specific. This business is already contributing an economic benefit and is expected to do in the future because of its reputation. In the end, what decision does the government procurement officer make based on economic benefit? It is not clear what they will do.

This example demonstrates how important it is to have clear guidelines.

Access to a Competitive Process

To achieve value for money and to promote fairness, it is imperative that the procurement process be easily accessible so that all businesses who want to compete in the process can do so. It is encouraging to see that the procurement rules encourage officials to be cognisant of the burden on small and medium sized enterprises (SMEs) to engage in the procurement process such as writing lengthy submissions. However, the Australian Chamber urges the government to consider whether this is being implemented effectively by departments.

The Government needs to remain vigilant to ensure that departments are simplifying the procurement process, that the rules are not unreasonably burdensome and that they are fit for purpose. SMEs often do not have the time or the expertise to read and understand complicated rules and write lengthy submissions. There may also be a case to reduce liability cover on small value contracts.

Not fit for purpose

A SME was locked out of a procurement process for admission to a marketing services panel because of the complex and onerous criteria set. This included demonstrating standards in environmental management, quality management and work, health and safety. While these certifications may be desirable, they were not necessary in the context of delivery of marketing services.

Transparency

Without impacting on commercial-in-confidence issues, the Government should make their cost-benefit analysis available. Transparency in decision-making is important, particularly when making decisions about spending taxpayer money. For example, a local firm may put forward a higher price but be successful in the tender because of the assessment of the economic benefit. It needs to be clear what criteria were used to assess economic benefit.

Additional red tape

We do not support additional red tape being imposed on businesses during the procurement process. It should not be an onerous process for a business to demonstrate the benefit to the Australian economy.

International implications

Australia has built a reputation as an open, trading economy. Exports, including the opportunity to participate and win contracts to supply goods and services to foreign governments, are key to our prosperity.

The Australian Chamber urges the Government to ensure that implementation of rule 10.30 by departments is not discriminatory against a foreign company because of ownership.

The rules critically state that *"for procurements above \$4 million, Commonwealth officials are required to consider the economic benefit of the procurement to the Australian economy."* and (10.31) *"the policy operates within the context of relevant national and international agreements and procurement policies to which Australia is a signatory, including free trade agreements and the Australia and New Zealand Government Procurement Agreement."*

The Government and departments should not be making decisions that are inconsistent with Australia's international obligations. Further, the Australian Chamber interprets these changes to mean that department officials will consider the impact on the economy broadly such as spending taxpayer funds wisely to achieve the most beneficial outcomes for society as well as jobs for Australians that is consistent with Australia's international obligations.

We support the Government's statements that potential suppliers will continue to be treated equitably and cannot be discriminated against based on their size, location or ownership.

Summary

An assessment of the economic benefits to Australia of a procurement decision is best done transparently. It should recognise that paying a premium, for any reason, means less money will be available for the Government to spend in other areas and does not necessarily guarantee optimal quality of outcomes.

Therefore, it is crucial that in the implementation and interpretation of these rules that the Government ensure:

- taxpayer funds are used in the most effective manner based on an assessment of value for money;
- fit-for-purpose and simplified requirements and processes;
- additional red tape is not unnecessarily generated; and
- that decisions are made consistent with Australia's international obligations.



About the Australian Chamber

The Australian Chamber of Commerce and Industry speaks on behalf of Australian Businesses at home and abroad.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, making us Australia's most representative business organisation.

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