



Australian Government
Department of Finance

Rosemary Huxtable PSM
Secretary

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Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
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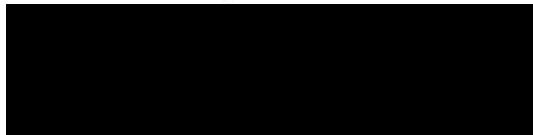
Dear Committee Secretary

In response to your invitation to the Minister for Finance of 25 May 2020, please find attached a submission by the Department of Finance to the Inquiry into the implications of the COVID-19 pandemic on Australia's foreign affairs, defence and trade by the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT).

The submission is focussed on the Committee's interest in the Commonwealth Procurement Rules (CPRs) that are issued by the Minister for Finance, in particular in relation to the potential reform to the CPRs to enable mandated onshore procurement where supply chain resilience indicates this is necessary.

Thank you for the opportunity to provide this submission to the Committee. I trust this information will assist your Inquiry.

Yours sincerely



Rosemary Huxtable
Secretary

30 June 2020

Introduction

The Commonwealth Procurement Framework provides significant flexibility for Accountable Authorities to conduct procurement in a manner that meets their obligations under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), delivers on their business objectives, and balances a broad range of policy objectives, including broader benefits to the Australian economy and environmental sustainability.

The Commonwealth Procurement Rules (CPRs) allow entities to consider issues including those relating to strategic alliances, human rights, quality, security of supply chains and regional security, including in those circumstances where an entity has a need to urgently acquire goods and services, for example due to unforeseen events such as those experienced due to the COVID-19 pandemic.

Commonwealth Procurement Framework

Government procurement is expected to achieve value for money through competitive, open, transparent, efficient and publicly-accountable processes. The Commonwealth Procurement Framework is devolved. Each entity is responsible for its own procurement processes and decisions in order to meet its own business needs.

The Department of Finance (Finance) is responsible for the procurement framework, which forms part of the wider financial framework. It applies to all non-corporate Commonwealth entities and those prescribed corporate Commonwealth entities listed in section 30 of the PGPA Act.

The CPRs are a non-disallowable legislative instrument issued by the Finance Minister under section 105B(1) of the PGPA Act. The CPRs are the core of the framework, which also includes:

- Web based guidance, developed by Finance, to assist entities to implement the procurement framework; and
- Resource Management Guides, which advise of key changes and developments in the procurement framework.

An Accountable Authority may also use Accountable Authority Instructions. These set out entity-specific operational rules to ensure compliance with the rules of the procurement framework.

Flexibility in the Framework

The CPRs incorporate the government procurement commitments from Australia's Free Trade Agreements. These obligations require that all potential suppliers to government not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or the origin of their goods or services above the relevant threshold. These commitments provide access for Australian suppliers to the government procurement markets of other countries, while also placing obligations on the Australian Government to open up access to its procurement market. These commitments limit the extent to

which the Australian Government can preference local suppliers however, the CPRs provide significant flexibility when undertaking procurements.

Achieving value for money is the core rule of the CPRs. Price is not the sole factor when assessing value for money. This requires consideration of the relevant financial and non-financial costs and benefits of each submission.

Accountable Authority discretion

Paragraph 2.6 of the CPRs allows an official to apply measures determined by their Accountable Authority to be necessary for the maintenance or restoration of international peace and security; to protect human health; for the protection of essential security interests; or to protect national treasures of artistic, historic or archaeological value.

This paragraph, which needs to be considered by entities on a case-by-case basis, allows an Accountable Authority to determine the extent of their departure from specific requirements of the CPRs to address the measure. As a result, an Accountable Authority could decide, for example, to undertake a procurement approach that will enhance local industry capability, building supply chain resilience, to protect human health or for the protection of essential security interests.

Consideration of economic benefit to Australia

For procurements valued above \$4 million, or \$7.5 million for construction services, paragraphs 4.7 and 4.8 in the CPRs require officials to consider the economic benefit of a procurement to the Australian economy in the context of determining value for money. The economic benefit consideration is in addition to the assessment of other evaluation criteria, such as the quality of the goods and services, fitness for purpose, flexibility of the proposal (including innovation and adaptability), environmental sustainability, and whole-of-life costs.

This policy operates within the context of relevant international agreements to which Australia is a signatory. Reciprocally, our free trade partners also apply rules to ensure Australian suppliers are not disadvantaged when tendering for government procurement in other countries.

Australia's Free Trade Agreements require that Australia does not engage in prejudicial decision making, but this does not preclude departments and entities from appropriately gathering information and using it to look at the full economic effects of a procurement as part of the decision making process. There is a difference between consideration of the economic benefit to Australia, which can be demonstrated by any supplier (regardless of country of origin), and consideration of Australian content or goods manufactured in Australia.

Finance's guidance on *Consideration of Broader Economic Benefits in Procurement* outlines what should be considered when assessing economic benefit.

There are many ways that a supplier can provide an economic benefit to the Australian economy. Some examples include, but are not limited to:

- employing workers in Australia;
- using Small and Medium Enterprises in delivering goods and services, such as a subcontractor or a supplier;
- sharing knowledge, skills and technology with Small and Medium Enterprises;
- building, leasing or procuring infrastructure that supports Australian communities;
- providing skills and training that benefit Australian communities;
- paying taxes in Australia;
- the environmental benefit of the proposed solution to Australia, for example, low environmental impact through energy efficient inputs; and
- contributing to positive social outcomes in Australian communities.

Finance is currently reviewing its guidance to further assist entities consider the economic benefit of a procurement to the Australian economy. The guidance will, among other things, ensure that the existing flexibility of this requirement is well understood and provide sufficient clarity regarding circumstances under which building and maintaining industry capability may inform the determination of value for money. We expect the review of this guidance will be completed shortly.

Further measures that promote domestic economic growth

There are also a range of measures in place to promote domestic economic growth through procurement. Examples include:

- Defence industry capability;
- requirements under the Australian Industry Participation National Framework; and
- Annual Procurement Plans.

Defence industry capability

Defence has in place initiatives that aim to maximise opportunities for Australian industry participation at the national and local level, to meet Australia's Defence capability goals.

Defence has a strong focus on significant local engagement through its programs, projects and contracts, including down the supply chain. This includes a number of targeted policies that complement the CPRs and focus on supporting Australian and local industry, including the:

- Centre for Defence Industry Capability, which supports Australian small and medium sized businesses entering or working in the defence industry by partnering with industry, Defence, and state and territory governments;
- Defence Policy for Industry Participation, an aspect of which aims to ensure local companies in the vicinity of Defence bases, facilities and training areas are properly considered and provided the opportunity to compete and win work; and
- Australian Industry Capability program that maximises opportunities for Australian industry participation, to the greatest practical extent, across all categories of Defence procurement.

The Department of Defence is the owner of these initiatives if you have any further questions.

Australian Industry Participation National Framework

Australian Industry Participation policies and programs encourage full, fair and reasonable opportunity for Australian businesses to compete for work in major public and private projects in Australia. The Australian Industry Participation National Framework, a procurement-connected policy, applies to major Commonwealth Government procurements valued at \$20 million and above.

Successful tenderers for certain Commonwealth procurements are required to prepare and implement an Australian Industry Participation Plan. Australian Industry Participation plans do not mandate the use of Australian industry, but rather aim to provide Australian industry with the opportunity to demonstrate their capabilities so they can be considered in purchasing decisions.

The Department of Industry, Science, Energy and Resources are the owners of this procurement-connected policy. Further information on the policy and its application can be found on their website [here](#).

Annual Procurement Plan

The CPRs require relevant entities to maintain a current Annual Procurement Plan on AusTender to draw the market's early attention to potential procurement opportunities.

Australian Procurement Plans provide information to the market on significant procurements that relevant entities plan to undertake through an open tender within the next 12 months. Early notice of upcoming procurement opportunities:

- help relevant entities to identify cooperative procurement opportunities and facilitate early planning and;
- enable collaboration between businesses that may not be in a position to bid on their own.

Public planning is essential to delivering outcomes and assists businesses anticipate and prepare for the potential pipeline of opportunities, supporting supply chain capability in Australia. This is particularly relevant as Australian businesses start to recover from the effects of the global pandemic.

Conclusion

While the Commonwealth Procurement Framework is bound by Australia's Free Trade obligations, there is significant flexibility for entities to conduct their procurements in a manner that delivers on their business needs while also achieving broader policy objectives. For example, this could include consideration of broader economic benefits to the Australian economy or more strategic objectives such as supply chain resilience to address the protection of human health or essential security interests.