



Defence Teaming Centre
Creating opportunities in the defence industry

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Senator James Paterson
Legislative Committee Chairperson
Senate Finance and Public Administration Committees
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By Email: fpa.sen@aph.gov.au

12 July 2017

Dear Senator Paterson

RE: GOVERNMENT PROCUREMENT (JUDICIAL REVIEW BILL) 2017

Thank you for the opportunity to make a submission to the Legislative Committee on Government Procurement (Judicial Review Bill 2017).

The Defence Teaming Centre (DTC) is a nationally-focused member organisation supporting Australian industry to develop capabilities and increase their overall competitiveness for opportunities in the Defence market.

DTC members include Prime Defence Contractors, Small to Medium Enterprises and Professional Service Providers who are involved in supplying and/or supporting Defence capabilities. The DTC provides a range of services to support entry into and business with the Defence market nationally and internationally. Services provided by the DTC are tailored to meet the needs of companies of all sizes and across all tiers of the supply chain.

The DTC commends the intent of the Judicial Review Bill 2017 (The Bill), but notes some areas of concern that require further consideration.

1. While the DTC fully supports the provision of an independent and effective complaints mechanism for procurement processes, giving jurisdiction to the Federal Circuit Court (FCC) could work in the favour of larger businesses and Government Departments who have easier access to legal expertise and the resources required to raise complaints within the court system. It is recommended that SME suppliers be provided with additional assistance through an Ombudsman or like body to reduce the expense associated with appointing legal representation and to support with the often onerous and complex court procedures.
2. It is not clear whether the Bill allows subcontractor suppliers to access the complaints mechanism provided by this Bill. The definition provided in the draft Bill is limited to a “*supplier whose interests are affected*”. Further, it is not clear from the Bill or explanatory memorandum if the complaint mechanism would allow an existing or

proposed subcontracted supplier to bring forward a complaint or file for an injunction against a Prime contractor for a breach of Commonwealth Procurement Rules.

This is an important consideration in the defence industry where the Department of Defence typically contracts with a Prime Defence Contractor and not individually with subcontracted suppliers.

The DTC firmly believes that subcontractor suppliers should have access to the complaints mechanism provided by this Bill, but as outlined above, SME suppliers should be provided with additional assistance.

3. Defence procurements are typically long, expensive and highly complex. There is a concern with the provision of the Bill which allows the FCC to suspend procurements. The concern relates to any adverse affect to industry not involved in the complaint through costly delays to the overall procurement. Further, a delay or suspension to the procurement could have more pressing impacts on national security or operational requirements if the delivery of vital Defence capability is delayed.

It is recommended that the suspension or delay only relate to the specific part of the procurement in question and not necessarily the entire procurement.

4. Where a breach of the Commonwealth Procurement Rules in deemed to have occurred, the Bill provides for the FCC to determine the amount of compensation payable based on the reasonable expenditure incurred in preparing a tender.

It is not clear from the Bill or explanatory memorandum what can be considered as preparation of a tender. Defence procurement strategy seeks to minimise risk. This can mean that in order to contract with Defence, either directly or indirectly as a subcontractor through a Prime Defence Contractor, businesses will often have to demonstrate the required infrastructure is in place by the *tender* stage of the procurement. As such, a business can be required to make a significant investment *prior* to the awarding of a contract. Would investment made in new technology or upskilling a workforce for example, to be even considered to deliver the contract, constitute preparation of a tender? The DTC believes that this needs further consideration and clarity within the Bill.

Should the Committee wish to discuss this submission further, please contact Sarah Taylor, Director Strategy and Communications on

Yours Sincerely

Margot Forster CSM
Chief Executive Officer