



Australian Government
Department of Finance

Submission to the Finance and Public Administration Legislation Committee Inquiry into Commonwealth Procurement Procedures

DECEMBER 2013

1. Introduction

In response to the invitation by the Senate Finance and Public Administration Legislation Committee, the Department of Finance (Finance) provides this submission for the inquiry into Commonwealth procurement procedures.

2. The current policies and procedures for procurement in Commonwealth departments and agencies

2.1 The current effectiveness of procurement policies and procedures

Procurement involves spending public money to obtain goods or services for Government or third party use. It enables agencies to acquire the goods and services needed to deliver the Government's policies, programs and services. Government procurement is expected to achieve value for money through competitive, open, transparent, efficient and publicly-accountable processes.

Finance is responsible for the procurement framework which forms part of the wider financial framework and currently applies to all agencies that come under the *Financial Management and Accountability Act 1997*, as well as prescribed bodies under the *Commonwealth Authority and Companies Act 1997*.

The new *Public Governance, Performance and Accountability Act 2013* (PGPA Act) will come into effect on 1 July 2014. The PGPA Act will be supported by rules that will set out specific financial management requirements, including procurement, for Commonwealth entities.

The Commonwealth Procurement Rules (CPRs) are a legislative instrument that agencies must comply with and are one of the most widely applied pieces of legislation in the Commonwealth. From 1 July 2014, the CPRs will form part of the PGPA Act rules. Minor changes are envisaged to the CPRs to include references to the PGPA Act. However, there will be no change to the number of agencies that must comply with the CPRs.

The CPRs are the core of the framework which also includes:

- Web based guidance, developed by Finance to assist agencies to implement the procurement framework;
- Finance Circulars which advise of key changes and developments in the procurement framework; and

- Chief Executive Instructions, which a Chief Executive may use to set out agency specific operational rules to ensure compliance with the rules of the procurement framework.

The Commonwealth Government's procurement policy framework is non-discriminatory in nature. The CPRs stipulate that potential suppliers to government must be treated equitably based on their commercial, legal, technical and financial abilities and not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or the origin of their goods and services.

Achieving value for money is the core principle of the CPRs and the cost of the goods and services to be procured is not the sole determining factor in assessing value for money. The CPRs outline the need to consider relevant financial and non-financial considerations a procuring agency needs to address when approaching the market. These factors include, among other things, fitness for purpose, environmental impact and whole of life costs.

The CPRs are not intended to target specific categories of goods or services, nor specific industries.

The CPRs incorporate Australia's government procurement commitments from our Free Trade Agreements (FTAs), including the Australia United States FTA (AUSFTA). These commitments provide access for Australian suppliers to the government procurement markets of other countries, whilst also placing obligations on the Commonwealth Government to open up access to our procurement market. These commitments limit the extent to which the Commonwealth Government can preference local suppliers.

Coordinated Procurement

A number of whole-of-government procurement arrangements have been established where efficiencies have been identified to maximise market benefits and deliver savings for the Government. These arrangements have been established by Finance in areas where the supply of goods and services to agencies are substantial and are in common use by all or most agencies with minimal diversity.

There are currently 22 whole-of-government procurement arrangements covering 10 categories of goods and services (agencies are required to use these). Finance is the lead agency for these arrangements, except for the Legal Services Multi-Use List which is managed by the Attorney-General's Department.

Outside of the benefits, efficiencies and savings achieved through the whole-of-government arrangements for the Government, suppliers benefit through reduced tendering costs. These arrangements also produce

enhanced procurement data quality leading to increased transparency for the Commonwealth.

A detailed listing of savings achieved to date from the existing whole-of-government arrangements is at [Attachment A](#).

AusTender

AusTender, the Commonwealth Government's online procurement system is the primary source for procurement information for the wider government and the private sector. The CPRs clarify agency reporting requirements on AusTender to ensure ongoing transparency and accuracy of procurement contract data.

AusTender is the authoritative source of information for suppliers and other interested parties seeking information on Commonwealth tenders.

2.2 The effectiveness of any policies or procedures designed to preference Australian goods and services

The Government procurement element of our international agreements allows for policies that benefit Small and Medium Enterprises (SMEs)¹. The CPRs include a commitment for FMA Act Agencies sourcing at least 10% of procurement by value from SMEs.

There are a number of exemptions in the CPRs that enable the Government to engage directly with Australian industry, while ensuring the principle of achieving value for money is met. The exemptions include procurements relating to:

- property or accommodation (but not construction services);
- motor vehicles;
- suppliers that primarily exist to provide the services of persons with a disability; and
- suppliers that are SMEs with at least 50% Indigenous ownership.

Australian suppliers are well represented in Commonwealth procurement.

120 Australian Government departments and agencies reported procurement contracts, valued at \$10,000 or greater, on AusTender in 2012-13. Analysis of AusTender data indicates that Australian suppliers are competitive on their own merits in winning contracts:

- 67,854 contracts valued at \$39.3 billion in total, were awarded;
- of the 11,460 suppliers contracted, 10,212 (89.1%) were SMEs;

¹ An Australian or New Zealand firm with fewer than 200 full-time equivalent employees.

- SME participation was 31.7% (\$12.5 billion) of the total contracts by value and 60.5% (41,032) of the total number of contracts;
- goods accounted for 43.8% by value (\$17.2 billion);
- services accounted for 56.2% by value (\$22.1 billion); and
- of the total number of contracts reported, 69.8% were valued below \$80,000 equating to 3.7% of the total value of all contracts awarded.

Further, in 2012-13:

- 82.4% of goods and services, by value purchased by the Commonwealth Government are likely to have been sourced from Australia Suppliers, or in the case of services, delivered by Australian suppliers;
- 92.0% of services are likely to have been sourced from Australian suppliers; and
- 70.1% of goods are likely to have been sourced from Australian suppliers.

2.3 The operation of procurement divisions of departments and agencies, including oversight and scrutiny, cost, and requirements relating to transparency and information-sharing

The Commonwealth Government operates a devolved procurement framework. Responsibility for spending public money rests with agencies' Chief Executives and their delegates. Agencies are currently required to report non-compliance with the CPRs in their annual Certificate of Compliance.

Finance conducts a range of education programs, including agency forums, whole of government outlets, agency outreach programs and web-based guidance to promote best practice in Commonwealth procurement processes.

3. The current policies and procedures for procurement for major Commonwealth-funded capital projects currently underway or foreshadowed in the budget

3.1 The current effectiveness of procurement policies and procedures for these projects

Finance, through the Property and Construction Division (PCD) delivers major capital projects on behalf of the Commonwealth Government and utilises outsourced providers to do so.

PCD undertakes the procurement of the consultants and contractors for the delivery of the major capital works projects utilising the policies and procedures contained in the CPRs, including the identification of potential procurement opportunities through the Departmental Annual Procurement Plan.

All procurements undertaken for the delivery of major capital works are either advertised using open tender processes through AusTender or procured from panels of prequalified suppliers established through the Defence Infrastructure Panel (DIP) or the Department of Finance's Heritage, Environment and Sustainability Services (HESS) panel.

3.2 The effectiveness of any policies designed to preference Australian goods and services

As the Commonwealth's Procurement Framework does not allow for the preferencing of any suppliers over another, there are no direct policies designed to preference Australian goods and services in major capital projects.² These non-discriminatory rules also ensure that Australian suppliers are not disadvantaged when tendering for government procurement in countries with which we have a trade agreement.

There are however two policies currently in place to assist Australian SMEs to contribute to these projects, the Department of Industry is responsible for these policies:

- Australian Industry Participation (AIP) Plans in Commonwealth Government Procurement policy; and
- ICT SME participation procurement policy.

² As there is no holistic definition for 'major capital projects' we have assumed this to mean a project that creates an ongoing asset for the Commonwealth.

The AIP National Framework applies to major Commonwealth Government procurements (generally above \$20 million). Tenderers for certain Commonwealth procurements are required to prepare and implement an AIP Plan to highlight how they will engage with suitably qualified SME suppliers.

For large Commonwealth ICT contracts (also above \$20 million), tenderers need to meet the requirements of the SME Participation Procurement Policy to help foster Australian SME participation in large Commonwealth ICT contracts.

The effectiveness of these policies are difficult to measure as they are largely indirect. The Department of Industry, as the policy owner, and procuring agencies that require contracted suppliers to implement an AIP plan may be better placed to provide further information.

3.3 The transparency and accountability of project management

For construction projects, the Two Stage Capital Works Approval Process (Two Stage Process) was put in place to assist agencies to provide the Commonwealth Government with an appropriate level of oversight, transparency and information when deciding on whether to fund capital works construction projects. The Department of Defence (Defence) maintains a separate 'Two Stage Approval process for Defence Estate Capital Works'.

The principles and factors the Two Stage Process placed on agencies helps them to:

- make financially sustainable investment decisions throughout the capital works lifecycle;
- identify the elements to be considered when developing whole-of-life costs for Commonwealth capital works construction projects; and
- perform balanced and transparent evaluations of investment options through the adoption of cost-benefit analysis and other mechanisms that take into consideration economic, environmental, social, heritage and other relevant issues in their decision making.

Barriers to tendering, due to costly preparation of submissions, that may have prevented SMEs from tendering for major capital works, are minimised through the use of a two-stage open tender procurement process.

The main form of construction contracts used by PCD are the Managing Contractor and Head Contractor contracts. These contracts require the contractor to undertake the procurement for all goods and services generally in accordance with the CPRs, ensuring the achievement of value for money outcomes. These procurements are audited by the Project Manager/Contract

Administrator engaged directly by the Commonwealth as well as the Department's Internal Audit Service Provider where appropriate.

4. The economic, social and environmental benefits of utilising Australian goods and services

The CPRs do not allow for preferencing of Australian goods and services. However, over the last 3 financial years, the Commonwealth Government has purchased approximately:

- 93% of services from Australian suppliers (totalling \$60.2 billion); and
- 60% of goods from Australian suppliers (totalling \$28.7 billion).

After excluding Defence contracts for large military items such as aircraft and weaponry that are not produced by Australian suppliers, the overall percentage of goods supplied by Australian suppliers increases.

The establishment of our FTAs has given access for Australian suppliers to key international government procurement markets that otherwise, would not be available.

The Commonwealth Government has a range of policies and initiatives in place to support Australian industry participation in government procurement. These include, but are not limited to:

- Supplier Advocates (Department of Industry);
- Australian Industry Participation Plans (Department of Industry);
- Fair Work Principles (Department of Employment);
- On-Time Payment Policy (Finance);
- AusTender – provides information on procurement needs and process outcomes (Finance); and
- *Selling to Government* Guide (Finance).

The exemptions in the CPRs for Indigenous SMEs (with at least 50% Indigenous ownership) or suppliers that primarily exist to provide the services of persons with a disability gives Commonwealth agencies the ability to contract directly with these entities without the need to conduct a full tender process.

These exemptions aim to reduce the cost and administrative requirements for those entities and Commonwealth Government agencies. The use of the

exemptions is not mandatory and individual agencies are responsible for their own business decisions and for ensuring procurements are carried out in accordance with the Government's procurement framework.

The Commonwealth Government also has a number of economical, environmental and social policies that interact with the procurement framework these are known as procurement-connected policies. Procurement-connected policies are policies of the Commonwealth for which procurement has been identified as a means of delivery. There are currently 24 which can be found at:

<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/policy-framework/procurement-policies/principles.html>.

The use of procurement to deliver the non-procurement policies of government is common among all jurisdictions, both domestically and internationally. Measuring the effectiveness of policies is very difficult and relies heavily on assessing indirect benefits.

Many of these policies are the responsibility of agencies other than Finance. The policy agency is responsible for administering, reviewing and providing information on the policy as required.

Procuring agencies need to be mindful of the policies that may apply depending on the type of goods and/or services they are approaching the market for.

While government procurement is commonly considered as a means to deliver the objectives of other policies, the true extent of its effectiveness is often overstated. Direct program delivery mechanisms tend to achieve more measurable outcomes for those non-procurement policies of the Government.

5. Any related matters

Finance is currently progressing several initiatives that have been identified to further enhance the procurement framework. This will result in reduced business and agency costs and greater transparency of the Commonwealth Government's procurement requirements.

Commonwealth Contracting Suite

In 2011, a standard suite of documents was developed following requests from various industry sectors and Government agencies for a simple standardised contract for low-risk, low-value procurements (under \$80,000). The aim was to reduce delays and costs caused by both requesting agencies and the suppliers requiring legal advice by streamlining the process for both parties and minimising the need for legal advice.

Following the success of that initiative, Finance is now developing a standard suite of contract documents for low risk procurements valued up to \$200,000 for use across the Commonwealth. This builds on the existing suite and will benefit suppliers by increased simplification of the liability, insurance and indemnity clauses which will be a key aspect of the suite.

Dynamic Sourcing for Procurement

As part of the 2013-14 budget process, Finance was funded to develop the Dynamic Sourcing for Procurement (DS4P) project to address issues associated with the increased use of panels for procurement, including access by other agencies to those panels.

For agencies that both lead and participate on panels, DS4P, through enhancements to AusTender, will deliver improvements to

- panel procurement process workflow
- overarching contract information access, and
- vendor and participant agency communication.

DS4P will extend AusTender's existing reporting and online tendering functions to support Request for Quotation (RFQ) processes, including automated vendor capability matching and shortlisting, RFQ issuance and quotation lodgement.

New AusTender functions will allow lead agencies to notify and update information on AusTender throughout the life of a panel, on pricing models, contract terms and conditions and empanelled vendors, including their approved goods and services.

For agencies that have implemented their own Procure to Pay (P2P) systems, DS4P will establish AusTender as the single source for up-to-date information on panels in which they participate. This information will be automatically uploaded to agencies for integration into their internal P2P systems, as panels are implemented and modified over time.

General communication with empanelled vendors and participant agencies will be configurable by lead agencies and automated through AusTender.

DS4P will deliver efficiency gains across departments and agencies, by streamlining procurement processes and reducing overheads associated with finding and accessing panel information. It will also improve the transparency of procurement processes generated under panel contracts.

The project draws on the experience and expertise of agency users with AusTender's existing functionality and does not require changes to procurement policy.

Attachment A

Whole of Government Arrangements – Cost Reductions and Savings

The table below details the cost reductions and savings achieved to date generated from the existing whole of government arrangements.

Whole-of-Government Arrangements							
As at 30 June 2013							
Cost Reductions or Savings Retained by Agencies							
Arrangement		2008/09	2009/10	2010/11	2011/12	2012/13	Total
		\$M	\$M	\$M	\$M	\$M	\$M
Non ICT Arrangements	Stationery & Office Supplies					2.8	2.8
	Air Travel			20.0	20.0	20.0	60.0
	Major Office Machines				2.9	4.0	6.9
	Recruitment, Tender & Public Notices Advertising		27.0	30.0	22.0	13.0	92.0
ICT Arrangements	Desktops			7.5	18.0	1.3	26.8
	Volume Sourcing Agreement 1	15.6	21.8	24.4	23.7	23.4	108.9
	Data Centres				9.0	15.0	24.0
Total Agency Cost Reductions and Savings		15.6	48.8	81.9	95.6	79.5	321.4
Savings Returned to Budget							
Air Travel				40.0	40.0	70.0	150.0
Major Office Machines					0.5	0.8	1.3
Desktops						6.2	6.2
Internet-based Network Connection Services						1.2	1.2
Total Returned to Budget				40.0	40.5	78.2	158.7
Gross WoAG Arrangements		15.6	48.8	121.9	136.1	157.7	480.1
Less NPP Funding *		0.6	6.8	7.5	7.3	8.0	30.2
Net WoAG Arrangements		15.0	42.0	114.4	128.8	149.7	449.9

*Note: NPP funding was received in the 2009-10 Budget