



## **Australian Government**

Australian Government response to the  
Joint Select Committee on Government Procurement report:

Buying into our Future: Review of amendments to the  
Commonwealth Procurement Rules

NOVEMBER 2017

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The Government is committed to building a stronger, more prosperous and resilient economy where Australian businesses can be competitive on a domestic and international level. With this in mind, the Government is focussed on reducing the cost of doing business with the Commonwealth by reducing red tape, improving the operating environment, and enhancing government engagement with business, including small business, to build capability.

The Government supports a Commonwealth Procurement Framework that requires non-discrimination, allowing all suppliers, regardless of origin, to compete on their merits. This opens up comparable access to overseas markets for Australian businesses. This is further demonstrated by the Government's ongoing support of the Australian Industry Participation (AIP) National Framework, which encourages a national approach to maximise Australian industry participation in projects both domestically and internationally. Any recommendation to preference local suppliers must be carefully considered against Australia's international trade obligations.

There are a number of Government entities advocating in the interests of Australian businesses, including the Australian Industry Participation Authority, the Australian Small Business and Family Enterprise Ombudsman and the Centre for Defence Industry Capability. These entities are focused on supporting industry growth, facilitating innovation and supporting Australian businesses in building their own capacity to succeed in their own right. These entities will continue to work with businesses to enable them to be well equipped to participate within the Government procurement market.

The Government is committed to progressing programs aimed at reducing the burden on Australian businesses. For example, the Government is working with Industry Capability Network (ICN) Limited to transition the existing ICN Gateway, a supplier matching service for major public and private projects, to a new platform and enhance its service to businesses. As part of its National Innovation and Science Agenda, the Government is transforming the way it buys digital and technology services, focusing on making it easier for small and medium businesses to compete for Government ICT projects.

The Government is committed to innovation and leveraging emerging technology through such initiatives as Defence's Innovation Hub and Next Generation Technologies Fund, and the Government's investment in Industry Growth Centres and the Entrepreneurs' Programme. These initiatives focus on researching emerging and future technologies, and supporting Australian industry to commercialise such technology, which can deliver new and innovating capability for both Government and business. This grows capability and can lead to opportunities for export.

In response to the Committee's report, the Government supports public sector training, and notes the importance of Commonwealth entities ensuring that staff are appropriately trained, commensurate with the scale, scope and risks of the procurements they are undertaking. The Government also supports maintenance of appropriate records when undertaking a procurement, including reasons for the selection of preferred tenderers.

The Government is committed to a 12 month review of the new rules of the Commonwealth Procurement Rules, and will consider the feedback provided to Finance and the Committee when undertaking the review. In light of the committee's recommendation to expand the use of Clause 10 of the Commonwealth Contracting Suite, a 'clause bank' of standard terms and

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conditions will be established for use by procuring entities in all Commonwealth contracts where appropriate.

The Government supports Australian business through the ongoing negotiation of trade agreements in Australia's national interest, opening up new international markets to Australian businesses.

The Commonwealth Procurement Framework requires appropriate consideration of ethical practices, whole-of-life costs and efficient processing. The Government does not support the introduction of additional regulatory burden on businesses or the Commonwealth through the introduction of onerous reporting requirements.

The Government consistently exceeds its commitment to source at least 10 per cent of procurements by value from small and medium enterprises (SMEs), and recognises that SMEs are winning a large segment of Commonwealth contracts on their own merits.

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**Recommendations supported by Government:**

No.	Recommendation	Government Response
5	The Committee recommends that all Commonwealth contracts contain a similar clause to Commonwealth Contracting Suite clause 10, ensuring that the obligations of prime contractors apply to all sub-contractors.	<b>Support in principle.</b> Finance will expand the Commonwealth Contracting Suite to include a 'clause bank' of standard terms and conditions, including a clause similar to clause 10, which entities can use as appropriate for contracts above \$200,000.

9	<p>The Committee recommends that the Department of Finance, or the proposed Australian Industry Advocate, publish comprehensive implementation guidelines for the new Commonwealth Procurement Rules as a matter of priority. The guidelines should:</p> <ul style="list-style-type: none"> <li>• explicitly define what constitutes economic benefit;</li> <li>• prescribe a minimum 15 per cent weighting across a tender in accordance with the economic benefit criteria;</li> <li>• procuring agency or Minister to retain discretion to increase weighting to leverage economic benefit;</li> <li>• encourage maximisation of economic opportunities and benefits when assessing a tender for the degree of local content and participation;</li> <li>• outline how rubrics or weighted criteria may be used to compare the unique economic benefits offered by different suppliers and in assessing economic benefit as part of the overall tender evaluation;</li> <li>• describe techniques for assessing the veracity of suppliers' claims of economic benefit and for ensuring these benefits are delivered; and</li> <li>• encourage the consideration of innovative solutions during the scoping and design stage of procurement projects.</li> </ul>	<p><b>Support in part.</b> The Government supports this recommendation in part, as a number of these initiatives are already in place.</p> <p>Finance already provides extensive guidance on what constitutes economic benefit and how it could be assessed when undertaking a value for money assessment. Considering the economic benefit to Australia when undertaking a procurement already encourages the maximisation of such benefits to the Australian economy. Additionally, for procurements over \$20 million, Australian Industry Participation (AIP) Plans are required of successful tenderers, detailing the actions they will take to provide Australian suppliers with full, fair and reasonable opportunity to supply to the project.</p> <p>The Government does not support mandatory weightings for any evaluation criteria, including economic benefit, as doing so could result in sub-optimal value for money outcomes for the Commonwealth. The Commonwealth Procurement Framework already allows entities to set weighting for evaluation criteria in line with the complexity and size of their procurement.</p> <p>A local content weighting would be inconsistent with Australia's international obligations and compromise Australia's ability to gain access to new markets for its exporters.</p>
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No.	Recommendation	Government Response
11	<p>The Committee recommends that the guidelines specifically require that, for all procurements over \$4 million, a record is created including:</p> <ul style="list-style-type: none"> <li>• the reason for the tender approach chosen;</li> <li>• the reason for the selection of the preferred tenderer; and</li> <li>• details of the economic benefit score.</li> </ul>	<p><b>Supported.</b> Paragraph 7.2(a-e) of the CPRs already requires procuring officials to maintain records underpinning the procurement process and decisions when conducting a procurement.</p>
12	<p>The Committee recommends that the Department of Finance design and deliver a public service wide training program to support the effective implementation of the new Commonwealth Procurement Rules in line with new guidance material.</p>	<p><b>Support in principle.</b> Finance has designed and delivered public service wide training on the new rules. This included the provision of guidance and presentations to all entity staff as well as training material to each entity’s senior procurement officials to facilitate training of internal staff. Finance continues to provide ongoing procurement assistance to support entities.</p>
13	<p>The Committee recommends that the Australian Government ensures that all departments and agencies must ensure that an individual has successfully undergone procurement training before that individual can be delegated a procurement authority.</p>	<p><b>Support in principle.</b> The Government supports procurement training for delegates. Commonwealth entities will be reminded to ensure their staff are appropriately trained, commensurate with the scale, scope and risk before exercising a delegation.</p>
15	<p>The Committee recommends that the Department of Finance incorporate supplier feedback, including on the rewording of clauses identified in this report, into its 12 month review of the new Commonwealth Procurement Rules. It also recommends that the findings of the review are made public.</p>	<p><b>Support in principle.</b> As detailed in its submission to the inquiry, Finance will undertake a 12-month review of the new rules in the CPRs. As part of this review, Finance will consider supplier feedback provided to Finance and the Committee while conducting this inquiry.</p>

**Recommendations noted by Government:**

2	<p>The Committee recommends that the Attorney-General's Department oversee the introduction and application of a procurement connected policy requiring Commonwealth agencies to evaluate suppliers' compliance with human rights regulation.</p>	<p><b>Noted.</b> The Australian Government is currently undertaking public consultation on implementing a requirement for large businesses to report on how they are addressing modern slavery risks in their supply chains. Lessons from this consultation process could inform further consideration of this proposal.</p>
8	<p>The Committee recommends that, in negotiating future trade or World Trade Organisation agreements, Australia not enter into any commitments that undermine the Australian government's ability to support Australian businesses.</p>	<p><b>Noted.</b> The Australian Government enters into commitments in trade agreements that are aimed at supporting Australian business, in particular to open up new market access opportunities internationally and to put in place a framework of rules and standards that support transparency and competition on a level playing field.</p>

## Recommendations not supported by Government:

1	<p>The Committee recommends that the Department of Finance revise clause 10.9(c) of the Commonwealth Procurement Rules (CPRs) to require all goods purchased by the Australian Government to comply with Australian standards unless none are applicable.</p>	<p><b>Not supported.</b> The Australian Government does not support this recommendation as the CPRs already allow the adoption of Australian standards should the international standard be too onerous or inapplicable to the procurement. Use of international standards enables Australian businesses to meet one standard and sell to multiple international markets as well as within Australia.</p> <p>Australian standards rarely differ from internationally recognised standards, and when they do, it is in response to particular issues where it is both necessary and justifiable. Amending the CPRs to require all procurements undertaken by the Australian Government to comply with Australian Standards unless none are applicable is likely to be inconsistent with Australia’s international trade obligations.</p> <p>Australian suppliers may also face technical barriers to trade if producing goods or services to meet Australian standards should they differ from international standards.</p>
3	<p>The Committee recommends that the Department of the Environment and Energy oversee the introduction and application of a procurement connected policy requiring Commonwealth agencies to evaluate the whole-of-life environmental sustainability of goods and services to be procured.</p>	<p><b>Not supported.</b> The CPRs already require consideration of the environmental sustainability of the goods and services being procured (such as energy efficiency and environmental impact) and whole-of-life costs (including the initial purchase price, maintenance and consumable costs as well as disposal costs).</p> <p>There is no evidence to show that existing requirements within the CPRs for consideration of environmental sustainability and whole-of-life costs are not adequate. Reintroduction of a procurement-connected policy for such considerations will reintroduce significant red tape for suppliers and entities without appreciable benefits. Introduction of such a measure would increase the regulatory burden and compliance costs for both suppliers and Commonwealth entities.</p>

4	<p>The Committee recommends that the Department of Industry, Innovation and Science enhance the procurement-connected policy for Australian Industry Participation Plans, requiring that good procurement practices are implemented down through the supply chain so that both prime and subcontractors:</p> <ul style="list-style-type: none"> <li>• implement best practice terms and conditions; and</li> <li>• are contractually obligated to report on those terms and conditions.</li> </ul>	<p><b>Not supported.</b> AIP Plans require a successful tenderer for procurements valued at \$20 million or more to outline the actions they will take to provide Australian suppliers with full, fair and reasonable opportunity to supply to the project. The requirements of AIP Plans flow to any subcontracted parties, and therefore the intent of this recommendation is met in regard to supplier opportunities. However, AIP does not relate to the contractual terms and conditions between businesses.</p> <p>The Australian Government supports business to structure its commercial relationships as they see fit. To regulate business to business relationships may limit the flexibility of suppliers to compete within the market and could affect suppliers' ability to innovate throughout the supply chain. More broadly, contracts entered into by the Australian Government already require contractors to act lawfully and in accordance with relevant regulations. The Government does not support the introduction of onerous reporting requirements on suppliers required to implement this recommendation. Introduction of such a measure would increase the regulatory burden and compliance costs for both suppliers and Commonwealth entities.</p>
6	<p>The Committee recommends that rural and regional small and medium businesses be added to the list of exemptions under Appendix A: Exemptions from Division 2 of the Commonwealth Procurement Rules.</p>	<p><b>Not supported.</b> The Australian Government is committed to sourcing at least 10% of procurement by value from SMEs. This commitment is routinely exceeded. SMEs already compete strongly in the Australian Government procurement market, achieving 61% by number and 24% by value (\$13.68 billion) of total procurement contracts in 2015-16.</p> <p>The proposed exemption based on location is inconsistent with some of Australia's international obligations and could compromise Australia's ability to gain access to new government procurement markets for its exporters in future trade negotiations.</p>

7	<p>The Committee recommends that the Department of Finance and the Department of Industry, Innovation and Science jointly develop and implement a framework to collect relevant data on the degree of Commonwealth procurement that is supplied by Australia-owned businesses, contains Australian-manufactured goods, or uses Australian-based services.</p>	<p><b>Not supported.</b> The Australian Government does not discriminate against suppliers based on their location, or the origin of their goods and services. This ensures comparable access to overseas markets for Australian businesses. The Government does not support the introduction of onerous reporting requirements on suppliers required to implement this recommendation. Introduction of such a measure would increase the regulatory burden and compliance costs for both suppliers and Commonwealth entities.</p>
10	<p>The Committee recommends that, in order to limit discretionary decision making, promote consistency and safeguard transparency, the guidelines prohibit the use of qualitative assessments across whole tenders.</p>	<p><b>Not supported.</b> For strategic or complex procurement processes the inclusion of qualitative assessment is critical to ensuring value for money is achieved by the Commonwealth. Restriction of value for money assessment to only quantitative measures could result in the inability to consider non-financial differences between potential suppliers, and result in an inability for potential suppliers to differentiate themselves from the market. This could result in sub-optimal value for money outcomes for the Commonwealth.</p>

14	<p>The Committee recommends that the Australian Government legislate as a statutory authority under the responsibility of the Minister for Industry, Innovation and Science an Australian Industry Advocate to:</p> <ul style="list-style-type: none"> <li>• aid Commonwealth agencies to design procurement processes which maximise benefits to the Australian economy and increase opportunities for SME participation;</li> <li>• support Australian businesses to access Commonwealth procurement by promoting opportunities and assisting businesses to promote the economic benefits they can offer;</li> <li>• provide independent, transparent and consistent evaluation of the unique economic benefits offered by different suppliers;</li> <li>• guide Commonwealth agencies' application of weighted criteria and assessment rubrics to overall procurement evaluations; and</li> <li>• monitor suppliers' delivery of contracted economic benefits.</li> </ul>	<p><b>Not supported.</b> The Government does not support the establishment of a statutory authority, or limiting flexibility within the procurement framework by standardising the assessment of value for money.</p> <p>There are already several Australian Government entities advocating in the interests of Australian businesses, including the Australian Industry Participation Authority, the Australian Small Business and Family Enterprise Ombudsman and the Centre for Defence Industry Capability.</p> <p>These entities and Finance will continue to work closely to ensure all Commonwealth entities are aware early in procurement processes of obligations to provide full, fair and reasonable opportunity for Australian businesses, including SMEs, to compete for major public projects.</p> <p>Australian suppliers are already well represented winning approximately 94% of Commonwealth contracts by number, worth \$48.27 billion in 2015-16.</p>
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16	<p>The Committee recommends that a Parliamentary inquiry is established by March 2018 to evaluate:</p> <ul style="list-style-type: none"><li>• supplier feedback, including on the rewording of clauses identified in this report;</li><li>• interaction with the Anti-dumping framework and the tax system; and</li><li>• recent changes to the Australian Industry Participation Plan policy.</li><li>• The inquiry should report by the end of 2018.</li></ul>	<p><b>Not supported.</b> Noting the Joint Committee on Public Accounts and Audit already has the duty to 'examine the financial affairs of authorities of the Commonwealth', which can include procurement and tax issues.</p>
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