



Submission to the  
Joint Select Committee on Government Procurement

# Inquiry into the Commonwealth Procurement Framework

Prepared by:

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## Introduction

With the introduction on March 1, 2017 of the new Commonwealth Procurement Rules (CPR17), Australia has entered into a new era in procurement policy and one that the Building Products Innovation Council (BPIC) applauds. In order to better implement these recent changes, the Joint Select Committee on Government Procurement has been tasked with inquiring into the changes embodied in CPR17 and report by 31 May 2017.

BPIC is a national peak body representing Australia's leading building products industries and related services. As such we have a considerable stake holding in the issues being considered by the Inquiry and its subsequent findings.

Over the last decade there has been deterioration in the integrity of the building supply chain due to a combination of factors. These factors include:

- The ease of purchasing online has brought into the market a plethora of products from both domestic and international sources. Buyers sourcing for example, small quantities or new products. However many do not have the knowledge to ensure products they purchase are 'fit-for-purpose'. Once these products are in the supply chain, the provenance is often lost and seeking a remedy when a problem arises becomes extremely difficult.
- The closure of the CSIRO Building, Construction and Engineering Division and its associated testing capabilities (beyond just fire safety) 15 years ago. Without the independent facilities and expertise provided by that CSIRO division, manufacturers, especially overseas suppliers and those local manufacturers with modest turnovers, have had to self-test their products (first and second party testing), which of course is not an independently verifiable process.
- A rapidly growing number of suppliers and buyers are using procurement, code and verification weaknesses (either unwittingly or deliberately) to substitute or provide substandard products. This activity is compounded by the fact that ignorance of procurement, code and variation requirements has become a common excuse with regard to substandard product and installation.
- The desire by some developers, builders and key purchasing decision makers to reduce construction costs may also conflict with their obligation to deliver compliant and safe buildings.
- A greatly reduced level of oversight of the construction procurement process by skilled, experienced and independent regulatory authorities to ensure good results.
- Lack of strong and meaningful penalties for those who knowingly use and/or specify NCBPs (Non-Conforming Building Products).

The building products industry strongly supports measures to improve the stringencies and robustness of Australia's procurement framework and the changes that came into force on March 1, 2017 are a significant step towards achieving positive outcomes. We believe Government procurement policies should be used to promote competition, encourage innovation and productivity and support economic growth through the use of building products that conform to relevant standards and deliver a quality outcome.

The building products industry in Australia is and has always been self-reliant and self-funded. The building products industry is confident that the measures envisaged in CPR17 and the following recommendations made by BPIC will help create a level playing field in the Australian building industry for all participants. This of course will in turn lead to good outcomes for consumers and tax payers, as well as strengthen the Australian economy.

# Inquiry Terms of Reference

BPIC understands that the Joint Select Committee on Government Procurement is established to inquire into the implementation of the recent changes to the Commonwealth Procurement Rules which came into effect on 1 March 2017 and report by 31 May 2017. BPIC would like to make a submission on the following matters being considered by the Committee, specifically:

- The Commonwealth procurement framework.
- Consideration of the Commonwealth Procurement Rules to come into force on 1 March 2017 (CPR17) and, in particular:
  - i. Clauses 10.10, 10.18, 10.30, 10.31 and 10.37 (the 'new clauses').
  - ii. How the new clauses can most effectively be implemented.
  - iii. Weighting and other mechanisms that should apply to any Commonwealth procurement decision making, taking into account CPR17.
  - iv. Its interaction with any other Government policies and programs (including grants), instruments, guidelines and documents relating to procurement, including the Department of Finance's Resource Management Guide No. 415.
- The extent to which CPR17 and any related instrument and rules can be affected by trade agreements and other World Trade Organization (WTO) agreements, including:
  - i. Existing trade agreements Australia has entered into.
  - ii. Trade agreements that the Commonwealth Government is currently negotiating, including the WTO Agreement on Government Procurement.

The following points provide BPIC's comments on the above matters.

## Commonwealth Procurement Rules (CPR17)

### Specifications and Standards ('new clauses')

#### **CPR17: 10.10**

*Where an Australian standard is applicable for goods or services being procured, tender responses must demonstrate the capability to meet the Australian standard, and contracts must contain evidence of the applicable standards (see paragraph 10.37).*

#### **BPIC Recommendations:**

- 1 **BPIC strongly supports this clause because not only does it emphasise compliance with Australian standards, but it requires supplier and tenderers to provide evidence of compliance. To facilitate the intent of this clause BPIC suggests the following:**
  - 1.1 **Modification of clause 10.9 (c), which states that specifications should be based on international standards and appears to contradict the new clause (10.10). We propose additional wording that would remove the contradiction and provide clarity:**

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*...base technical specifications on Australian or international standards, when they exist and apply to the relevant procurement, except when the use of international standards would:*

- (i) *fail to meet the relevant entity's requirements; or*
- (ii) *impose greater burdens than the use of recognised Australian standards; or*
- (iii) *not deliver equivalent performance to that required by the Australian standards.*

- 1.2** In addition to the requirement for demonstration of compliance with Australia standards, evidence should also be provided that manufacturers/suppliers (including suppliers that market products as 'own brand') have an independently audited Quality Assurance system in place that is recognised in Australia and that as a minimum meets the following requirements:
- Testing or inspection of samples from the open market every 2-3 years (having passed completely through the supply chain and been subjected to all handling, transport and assembly stresses).
  - Product labels/receipts to identify manufacturing date and specific manufacturing facility from where product is produced.
  - Testing or inspection of samples from the factory/production facility.
  - Regular and documented quality system audits.
  - Independent assessment of the production process or service.

## Contract management/Standard verification ('new clauses')

### **CPR17: 10.37**

*Where applying a standard (Australian, or in its absence, international) for goods or services, relevant entities must make reasonable enquiries to determine compliance with that standard:*

- *this includes gathering evidence of relevant certifications; and*
- *periodic auditing of compliance by an independent assessor.*

### **BPIC Recommendations:**

- 2** BPIC strongly supports this clause and to facilitate its intent suggests the following:
- 2.1** Government entities should also give thought to accepting product/material compliance documentation derived from industry associations with certification schemes and authorities that comply with ISO/IEC 17065:2013.
  - 2.2** In stipulating periodic auditing of compliance by an independent assessor, government entities should ensure that they approve only NATA (National Association of Testing Authorities) accredited Inspection bodies with experience in construction materials, inspection, mechanical services and non-destructive testing.
  - 2.3** When government entities are setting out specifications in a statement of requirements that details forms/types/weighting of evidence for compliance, there is the potential for overlap with existing compliance mechanisms such as the

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National Construction Code or ATO Tariff requirements, as well as voluntary schemes like GreenStar or ISCA. Such overlap creates an unreasonable cost burden for tenderers and suppliers in having to collect data/evidence in different formats for different schemes. Therefore all effort should be made by government entities to not duplicate these existing compulsory and voluntary compliance scheme requirements when drafting tender documents.

- 2.4 In addition to periodic auditing of compliance, government entities and officials should impose penalties against awarded tenderers that provide procurement outcomes which deviate below modeled/predicted outcomes.

## Conditions for participation ('new clauses')

### **CPR17: 10.18**

Officials must make reasonable enquiries that the procurement is carried out considering relevant regulations and/or regulatory frameworks, including but not limited to tenderers' practices regarding:

- labour regulations, including ethical employment practices;
- occupational, health and safety; and
- environmental impacts.

### **BPIC Recommendations:**

- 3 BPIC strongly supports this clause. To facilitate the intent of this clause BPIC suggests the following:

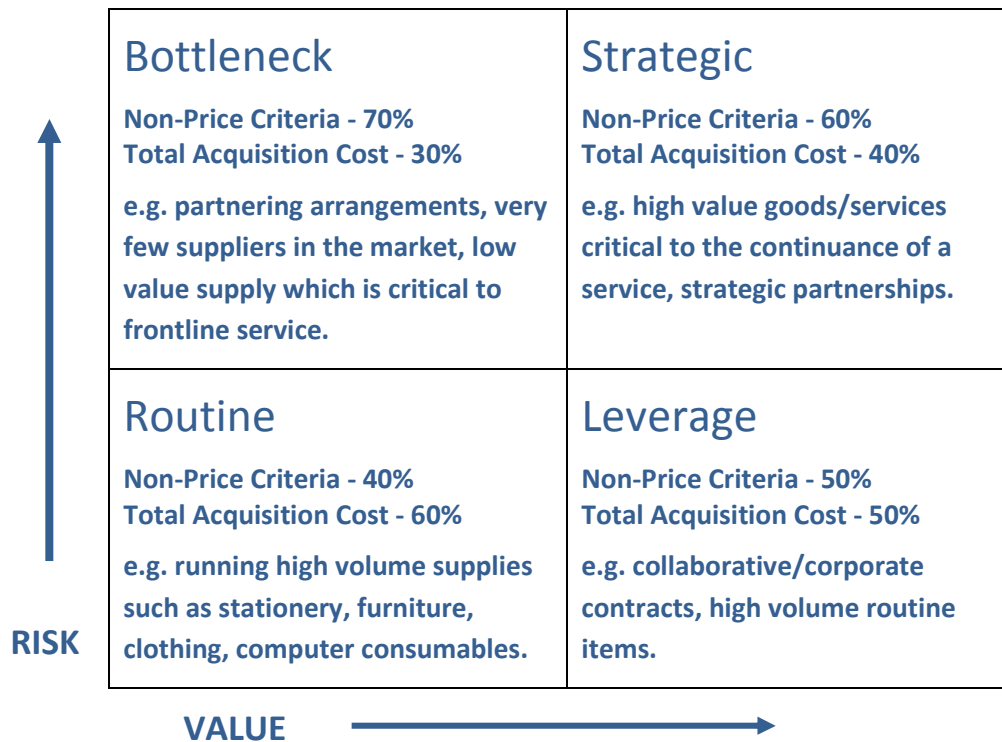
3.1 Officials should also consider the following tenderers' Non-Price or Quality practices regarding:

- **Commissioning, Training and Handover:** Clear, cost efficient strategies for delivering and handing over the procurement so it meets the needs of the end user.
- **Facilities/Operational Management:** Clear, cost efficient strategies for managing the delivered procurement.
- **Financial Performance:** Ability to maintain financial viability during and after the delivery of the procurement.
- **Sustainability:** Demonstrated commitment to whole-of-life sustainability principles.
- **Digital Innovation:** Demonstrated digital engineering and Open BIM capabilities as well as strategies for securely capturing, protecting, updating and maintaining procurement related information.
- **Modeling/Predictive Analysis:** Demonstrated successful track record of producing modeled performance outcomes of procurements, that closely or exactly match actual performance outcomes.
- **Delivery Performance:** Demonstrated successful track record of procurement delivery on time, on budget and to the expected standard, as well as the full acceptance of liquidated damages for failure to provide tendered requirements to stated expectations.

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- **Technical Skills:** Competence of key management, professional and technical personnel that the tenderer proposes to engage on the project.
- **Management Skills and Systems:** Availability within the tenderer’s organisation of personnel with appropriate management skills together with effective management systems and methods appropriate to the successful management of the procurement.
- **Resources:** Equipment, including facilities and intellectual property, which the tenderer proposes to for the procurement.

3.2 With regard to weighting, bSA suggests that Commonwealth officials position the type of goods/services being procured into a classic Kraljic four box model and thus arrive at the most appropriate Non-Price/Quality:Cost ratio for the evaluation of each tender, with a stipulation that those evaluating the performance/technical/quality aspects of a tender should not have sight of the Total Acquisition Cost element (or any other pricing data) until such time as the performance/technical/quality scores have been concluded:



## Value for Money and broader benefits to the Australian economy ('new clauses')

### **CPR17: 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*

#### **BPIC Recommendations:**

- 4** BPIC strongly supports this clause and believes this threshold to be reasonable and practical. To facilitate the intent of this clause BPIC suggests the following:

- 4.1** Commonwealth officials should investigate and identify overseas best practice models for intended procurements and adopt these where appropriate. As an example, New Zealand is able to source pharmaceuticals for its Pharmaceutical Schedule (pharmaceuticals subsidised by the NZ Government), at significantly lower costs than Australia is able to do for its Pharmaceutical Benefits Scheme (pharmaceuticals subsidised by the Australian Government) largely due to differences in the procurement model adopted.

### **CPR17: 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.*

#### **BPIC Recommendations:**

- 5** BPIC strongly supports this clause and believes it demonstrates good practice for government entities.

## Procurement –connected policies ('existing clauses')

### **CPR17: 4.7**

*Procurement-connected policies are policies of the Commonwealth for which procurement has been identified as a means of delivery. To assist relevant entities in complying with policies of the Commonwealth, Finance maintains a list of procurement-connected policies, which can be found at [www.finance.gov.au/procurement](http://www.finance.gov.au/procurement).*

#### **BPIC Recommendations:**

- 6** BPIC strongly supports this clause and to facilitate the intent of this clause suggests the following:

- 6.1** BPIC has from time to time observed that procurement has been used as a strategy by which governments can deliver on other political or ideological policies and promises. Therefore we would ask the Commonwealth government to ensure that procurement-connected policies have a means of delivery which is purely



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procurement related and not a means to achieving some other political or ideological end.

### Encouraging competition ('existing clauses')

#### **CPR17: 5.1**

*Competition is a key element of the Australian Government's procurement framework. Effective competition requires non-discrimination and the use of competitive procurement processes.*

#### **BPIC Recommendations:**

- 7** BPIC strongly supports this clause and to facilitate the intent of this clause suggests the following:
  - 7.1** BPIC has from time to time observed that procurement has as a consequence of policy implementation, limited competition, not just within an industry but across industries. Examples of this are where procurement policies prioritise or promote one individual building product sector over another (as has occurred in some State and Territory jurisdictions). Therefore we would ask the Commonwealth government to ensure that procurement policies and activities treat all industry players equally, so that a level playing field is maintained. Otherwise competition will be severely curtailed and this is not in the nation's interests. Competition is a significant driver of improvements in construction materials, construction methods and solutions, productivity, innovation, and cost of delivery. Preferential and anti-competitive policies lead to anti-competitive behaviours including discrimination, and limit the choices available to markets. Policies that limit choice should be discouraged, while policies that encourage choice, competition and innovation should be fostered.

## The Role of BPIC

The Building Products Innovation Council (BPIC) is a national peak body representing Australia's leading building products industries and related services (listed in the footer of this document) in:

Steel	Gypsum Board	Concrete	Quantity Surveyors
Insulation	Timber Products	Roof Tiles	
Windows & Glass	Clay Bricks	Concrete Masonry	
Cement	Housing Industry	Insulated Sandwich Panels	

BPIC's members and associated companies directly employ over 200,000 Australians with more than 470,000 employed indirectly. Their collective industries are worth over \$54B in annual production to the Australian economy. BPIC is a not for profit organisation governed by a Board of Directors comprised of representatives from its member organisations.

BPIC's primary objective is to provide coordinated representation of the building products industry to interested parties including Government, the construction industry, and the general public to help improve building and construction standards. We also provide a forum for discussion, information sharing and policy formulation among major product categories in the building industry.

BPIC's mission is to:

- Promote the efficient production and use of building products within a nationally consistent regulatory environment.
- Develop policy and make submissions or representations to governments, industry and the community on agreed technical standards, codes and regulatory issues of mutual concern to Members.
- Promote the innovative use of building products.

BPIC works to fulfill these aims by gathering and supplying practical and current industry information on behalf of BPIC member organisations and other organisations and companies that are not members but follow BPIC through various means. This industry-wide approach to responding to regulatory issues, helps to ensure that Governments are informed of potential problems in the building industry and are provided with appropriate industry-considered responses.

BPIC also encourages investment in skills formation, product development and industry research by helping to identify and remove regulatory impediments to innovation.