



30 March 2017

Joint Select Committee on Government Procurement  
Parliament House  
Canberra ACT 2600  
JSCOGP@aph.gov.au

***Re: Online submission from ACRS to the Inquiry into the Commonwealth Procurement Framework***

Dear Senator Nick Xenophon, Chair of the Joint Select Committee on Government Procurement

1. This is a submission from the Australasian Certification Authority for Reinforcing and Structural Steels (ACRS) in response to the Inquiry into the Commonwealth Procurement Framework.

**About ACRS**

2. The Australasian Certification Authority for Reinforcing and Structural Steels (ACRS) is a government recognised Australian product certification body.
3. ACRS certifies the compliance of reinforcing and structural steels with relevant AS/NZS standards. These reinforcing and structural steels are used across the Australian construction industry, including through government procurement for infrastructure projects and other developments (e.g. government buildings, public housing, defence installations, etc.)
4. ACRS currently certifies:
  - 66 manufacturers and processors; in
  - 157 locations; in
  - 17 countries around the world<sup>1</sup>to produce reinforcing and structural steels for the Australian and New Zealand markets in accordance with AS/NZS standards. This represents approximately 65% of all the reinforcing, prestressing and structural steel that is used in the Australian market.
5. ACRS was established in 2001 and operates as an independent not-for-profit company limited by guarantee. It is accredited by the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) for certifying reinforcing and structural steels to AS/NZS standards. The members of the company include Austroads, professional bodies and industry associations (see Appendix 1 for a list of the members).
6. ACRS certification is often specified in government procurement tendering documents for construction and infrastructure projects that require reinforcing and structural steels. The ACRS certification scheme is a successful home-grown example that ensures AS/NZS standards are complied with while avoiding technical barriers to trade, and being open to any supplier of reinforcing and structural steels in the world.

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<sup>1</sup> Australia, China, Germany, Greece, India, Indonesia, Japan, Malaysia, Moldova, New Zealand, Portugal, Singapore, South Africa, South Korea, Spain, Taiwan, Thailand and Turkey

## Submission summary

7. ACRS's submission focuses on the following items in the Committee's Terms of Reference:

- c)
  - i. *clauses 10.10, 10.18, ... and 10.37 (the 'new clauses'); and*
  - ii. *how the new clauses can most effectively be implemented...*

Clause 10.10  
Specifications

It is appropriate for Australian standards (and in their absence international standards) to be specified in government procurement tenders and contracts. This creates a level playing field for tenderers then to submit their competitive tender responses without compromising on the technical performance of their goods or services.

Specification of Australia standards is not a technical barrier to trade if those standards have been developed in accordance with the WTO Technical Barriers to Trade Agreement Annex C - *Code of Good Practice for the Preparation, Adoption and Application of Standards*. Australian Standards® (AS) produced by Standards Australia fulfil these requirements.

Clause 10.10 can be effectively implemented by government procurement agencies by specifying relevant Australian standards in their tender documentation and subsequent contracts. If the agency does not have the competence to identify and specify relevant standards they should seek technical advice from other agencies, contact the relevant Standards Australia technical committee or seek external advice.

Clause 10.18  
Conditions for  
participation

In relation to clause 10.18, it is appropriate to include consideration of labour regulations, ethical practices, OHS and environmental dimensions in conditions for participation, especially now that there are internationally agreed standards on these subjects and established certification and assurance services in Australia and globally.

Clause 10.37  
Contract  
management/  
Standard  
validation

The specification of certification and independent assessment to verify that goods and services meet prescribed standards in clause 10.37 is supported and can be achieved through specification in tender documentation. It is appropriate for the government procurement agency to rely on certification from recognised certification providers and assessors.

Because there is variability in the level of required competence and technical rigour amongst certifications schemes, it is appropriate for government procurement agencies to stipulate minimum requirements in this regard, such as what are the specified requirements that the goods or services must fulfil, how this must be determined prior to certification (e.g. what combination of testing, inspection and/or auditing), how the goods and services are to be sampled and by whom, the minimum competencies of assessors, the frequency and nature of any surveillance activities, and the frequency of recertification).

## Submission detail

8. The following commentary provides ACRS's views on how the specific *Commonwealth Procurement Rules* clauses that are identified in the Committee's Terms of Reference can be effectively implemented (the specific clauses are reproduced in *italics* for convenience).

### **Specifications**

*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).*

9. ACRS supports the continued inclusion of this clause. It provides for the use of a set of minimum requirements for the goods or services being procured, upon which tenderers can then build their competitive tender responses.
10. Reference to an Australian standard is appropriate provided the Australian standard has been developed by an organisation that has subscribed to the WTO Technical Barriers to Trade Agreement – Annex C *Code of Good Practice for the Preparation, Adoption and Application of Standards*, and has had the input from a balanced group of suitable experts<sup>2</sup>. This will ensure the Australian standard reflects Australian conditions, and not be considered as a technical barrier to trade. Australian Standards<sup>®</sup> (AS) produced by Standards Australia fulfil these requirements and require a comprehensive national net benefit case to be submitted before these standards are developed or revised.
11. This clause can be effectively implemented by government procurement agencies by specifying relevant Australian standards in their tender documentation and subsequent contracts. If the agency does not have the competence to identify and specify relevant standards they should seek technical advice from other agencies, contact the relevant Standards Australia technical committee or seek external advice.

### **Conditions for participation**

*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:*

- a) labour regulations, including ethical employment practices;*
- b) occupational, health and safety; and*
- c) environmental impacts.*

12. ACRS supports the continued inclusion of this clause.
13. While it is recognised contemporary government procurement practices often include technical quality and performance specifications for the supply goods and services, until recently they have not necessarily included these other dimensions - especially in situations where there is a probability of the goods and services being sourced from overseas.
14. This is understandable given the limitations faced by most government procurement agencies to effectively check whether statements made by tenderers regarding compliance with labour

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<sup>2</sup> This is in accordance with ISO/IEC Guide 59:1994, *Code of good practice for standardization* and ISO/IEC 17007: 2009, *Guidance for drafting normative documents suitable for use for conformity assessment*.

regulations, ethical practices, OHS and environmental impacts are true. However, in recent years significant progress has been made by the international standards and certification community to provide assurance that these dimensions are indeed being adequately addressed.

15. Government procurement agencies can effectively implement this clause by officials requiring appropriate self-declarations from tenderers (so as to establish the tenderers legal liability) on these dimensions, and having them backed up by appropriate reports and certifications against the following standards:
  - a) AS/NZS ISO 14001:2016, *Environmental management systems - Requirements with guidance for use*;
  - b) ISO 26000:2010, *Guidance on social responsibility*; and
  - c) ISO/DIS 45001 (still under development), *Occupational health and safety management systems - Requirements with guidance for use*.
16. Organisations that apply these standards must be able to demonstrate that they know and comply with relevant labour regulations, ethical practices, OHS and environmental impacts in the countries that they operate. Reports and certifications in accordance with these standards are obtainable from a multitude of certification and other assurance bodies globally.
17. Increasingly there are also sector specific recognition and certification programs addressing these dimensions for specific goods and services. These could be referenced in tendering specifications and contracts. Examples in the construction sector include:
  - a) Responsiblesteel certification program of the Steel Stewardship Council; and
  - b) Greenstar rating system of the Green Building Council of Australia.

**Contract management/Standard verification**

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:

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

18. ACRS supports the continued inclusion of this clause.
19. Tenderers can effectively implement this clause through making first party declarations that their goods or services comply. These declarations can be made legally enforceable through subsequent contract provisions.
20. First party declarations (self-declarations) should be based on AS ISO/IEC 17050.1-2005, *Conformity assessment - Supplier's declaration of conformity*, which requires the supplier to have actually undertaken some form of check to ensure their goods or services comply, and that this information must be made available when requested (this evidence of compliance is often called a 'Technical file' and many goods and services supplied into the European market are based on self-declarations in accordance with ISO/IEC 17050).
21. As a complementary activity to underpin and support a self-declaration, or as an alternative if the government procurement agency prefers, third-party certification of goods or products may be specified as a tender/contract condition, especially for products that can present a high risk if they fail. Reinforcing and structural steels are examples of those types of products.

22. Based on international experience and practices, ACRS consider first party declarations should only be accepted for construction products that are low risk, non-structural and non-safety critical. For products like reinforcing and structural steels, government procurement agencies should require independent third party product certification by certification bodies that are accredited with a relevant accreditation scope by JAS-ANZ (see paragraph 26 below).
23. In these cases the tenderer would need to obtain certification of their goods or services as complying with the specified Australian standard. This is a common tender and contract requirement, especially for goods and services that present a high risk if they fail. Reinforcing and structural steels are a good example of this so it is normal for government procurement agencies to require ACRS certification as a condition of tendering and supply.
24. It is noted inclusion of such conditions do not constitute a technical barrier to trade, and in the case of reinforcing and structural steels, ACRS certified producers from around the world can supply into Australian procurement contracts because their goods have been certified as complying with relevant AS/NZS standards.
25. When relying on certification one important aspect to understand is not all certifications come from reliable and competent sources. In fact, there is great variability in the amount of rigour and degree of competence required between various certification schemes.
26. When relying on certification, officials should specify:
  - a) certification must be obtained from a certification body that fulfils the requirements of the relevant Australian standard, or its identical international equivalent (see Appendix 2);
  - b) that the certification body must be recognised as being competent by being accredited with a suitable technical scope by a signatory member of the International Accreditation Forum (IAF) Multilateral Arrangement<sup>3</sup>;
  - c) minimum expectations of the certification scheme that is being applied to certify the goods or services (for example, the specified requirements that the goods or services must fulfil, how this must be determined prior to certification (e.g. any combination of testing, inspection or auditing), how the goods and services are to be sampled and by whom, the frequency and nature of any surveillance activities, and the frequency of recertification).
27. In relation to periodic auditing of compliance by an independent assessor, this is normally the surveillance activity included in any robust certification scheme, and officials may wish to specify specific minimum competency requirements for the assessor.
28. If the periodic auditing of compliance by an independent assessor is being done outside of a certification scheme, then officials should also specify those items in 22 c) to ensure consistent assessments are undertaken in addition to any competency requirements for the assessor.

## Concluding remarks

29. Overall the specific clauses discussed in this submission are supported and should remain in the *Commonwealth Procurement Rules*. They provide a good basis to ensure goods and services brought by government purchases agencies will meet minimum requirements and be fit-for-purpose.

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<sup>3</sup> The IAF signatory member for Australia and New Zealand is the Joint Accreditation System of Australia and New Zealand (JAS-ANZ). It is a signatory to a mutual recognition arrangement with equivalent counterparts in most of Australia's trading partners.

30. It is appropriate for Australia standards (and in their absence international standards) to be specified in government procurement tenders and contracts as it creates a level playing field for tenderers then to submit their competitive tender responses without compromising on the technical performance of their goods or services. Clause 10.10 can be effectively implemented by government procurement agencies by specifying relevant Australian standards in their tender documentation and subsequent contracts.
31. In relation to clause 10.18, it is appropriate to include consideration of labour regulations, ethical practices, OHS and environmental dimensions in conditions for participation, especially now that there are internationally agreed standards on these subjects and established certification and assurance services in Australia and globally.
32. The specification of certification and independent assessment to verify that goods and services meet prescribed standards in clause 10.37 is supported and can be achieved through specification in tender documentation. It is appropriate for the government procurement agency to rely on certification from recognised certification providers and assessors. Because there is variability in the level of required competence and technical rigour amongst certifications schemes, it is appropriate for government procurement agencies to stipulate minimum requirements in this regard.
33. Thank you for the opportunity to provide this submission. Please do not hesitate to contact ACRS with any comments or questions, and ACRS is willing to be called as a witness to the public hearings if required.

Yours sincerely

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