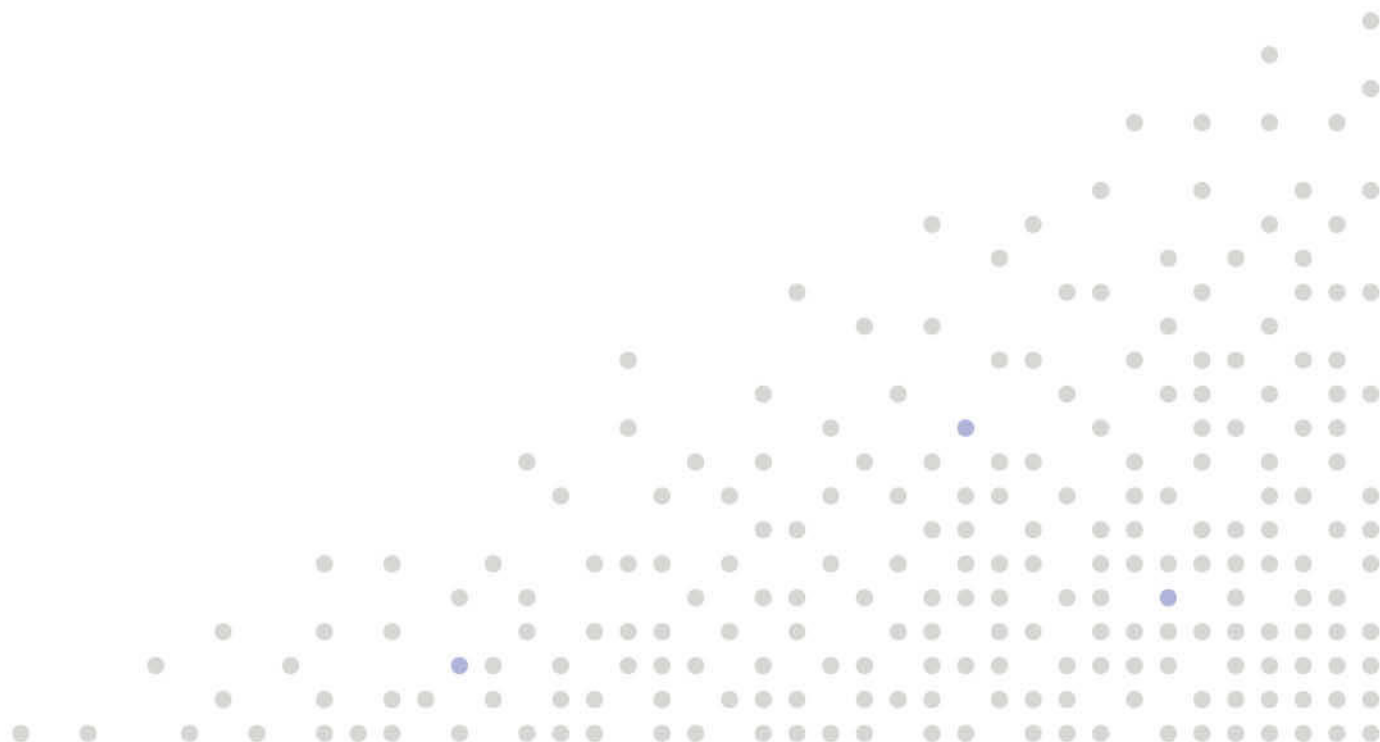




Australian Government
Department of Finance



Department of Finance

Submission to the
House Standing Committee on Infrastructure,
Transport and Cities

Inquiry into procurement practices for government-funded infrastructure

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A - Selected Government Business Enterprise – Infrastructure Projects underway

B - Resource Management Guide 308 - Commonwealth Investments

1. Commonwealth Funded Infrastructure Projects

The Commonwealth funds public infrastructure projects through a variety of different mechanisms, including direct delivery by Commonwealth entities, funding arrangements with states and territories, Government Business Enterprises (GBEs) and Commonwealth grants. Each mechanism has its own set of procurement functions, policies and frameworks that guide project delivery.

The Department of Finance (Finance) is responsible for the Commonwealth Procurement Framework which determines the procurement practices of Commonwealth entities in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

1.1 Funding Arrangements with states and territories

The Commonwealth Government's infrastructure funding is mainly provided to the states and territories through the National Partnership Agreement on Land Transport Infrastructure Projects (NPA), which provides Commonwealth support on the basis of co-funding from the state or territory in which the project is being delivered.

The Department of Infrastructure, Transport, Regional Development and Communications leads the negotiating process for agreements with the states and territories, in consultation with the Treasury and the Department of the Prime Minister and Cabinet. The Government has committed \$110 billion over 10 years to deliver nation-building infrastructure projects, water security to inland Australia and to meet Australia's national freight challenge.

State and territory government procurements are governed by their own procurement frameworks. These frameworks, while similar to the Commonwealth, are designed to be used in the relevant jurisdiction.

1.2 Commonwealth Procurement Framework

Finance is responsible for establishing and promulgating the Commonwealth Procurement Framework which applies to all non-corporate Commonwealth entities and those corporate Commonwealth entities that are listed in Section 30 of the *Public Governance, Performance and Accountability Rule 2014*.

As a subset of the broader Resource Management Framework, the Commonwealth Procurement Framework is devolved, with each entity responsible for its own procurement processes and decisions.

Australia is party to a range of bilateral and multilateral Free Trade Agreements (FTAs), which help boost economic and job growth in Australia, and deliver new growth opportunities to Australian businesses through greater trade and investment access in overseas markets. Many FTAs include specific obligations for partner countries when undertaking government procurement. A key condition of these obligations is that Australian Government entities do not discriminate against suppliers based on locality, size, degree of foreign ownership, or origins of goods and services.

FTAs give our local businesses valuable access to overseas markets that are considerably larger than our own.

Examples of Australian businesses winning government contracts overseas:

Case study 1

In February 2021, Lynas Rare Earth Ltd, a rare earths mining company based in Perth, Western Australia, was awarded a \$US30 million contract by the United States Department of Defense. Lynas was contracted to construct a rare earth metal process plant in Hondo, Texas, with the aim to ship rare earths from its Western Australian mine for final processing.

Case study 2

In early 2021, Evolutionary Systems Pty. Ltd, a Sydney-based financial management software firm, was awarded a \$NZ3.6 million contract by the New Zealand Earthquake Commission. Evolutionary Systems was contracted to deliver software and implementation services for a Financial Management Information System.

The Commonwealth Procurement Rules (CPRs) outline the policy requirements for relevant Commonwealth entities and articulate Australia's international trade obligations. Achieving value for money is the core rule of the CPRs. Price is not the sole factor when assessing value for money - it requires consideration of relevant financial and non-financial costs and benefits.

Competition is a key element of the Commonwealth Procurement Framework and the CPRs require the use of competitive procurement processes to ensure that all suppliers compete on a level playing field when selling to the Australian Government. For example, the CPRs require the procurement of construction services by relevant entities valued at, or above \$7.5 million to be undertaken via a competitive open tender process.

The Australian Government enters into, on average, over 80,000 contracts annually. In 2019-20, contracts worth \$53.9 billion were registered on AusTender. The Commonwealth entered into 3,946 contracts for building and construction and maintenance services with a value of \$6.6 billion in 2019-20. Of the contracts reported, only six were valued at more than \$200 million, comprising approximately 46 per cent of the total construction services contracts by value.

1.2.1 Economic Benefits

The CPRs require officials undertaking procurements valued above \$4 million (or \$7.5 million for construction services) to consider the economic benefit of a procurement to the Australian economy in the context of determining value for money. This can include benefits such as:

- creating export opportunities for Australian goods and services;
- developing Australian industry capabilities or industrial capacity;
- training that benefits Australian communities; and
- sharing knowledge, skills and technology with Australian small and medium enterprises.

The consideration of economic benefits is in addition to the assessment of other evaluation criteria to achieve value for money. Finance publishes guidance on its website to assist officials when considering the assessment of economic benefits.

This guidance was updated in August 2020 to address findings of the Joint Select Committee on Government Procurement's *'Buying into our Future: Review of amendments to the Commonwealth Procurement Rules'*, and reflects the increased Government priority on strengthening sustainable growth in Defence sovereign industrial capability. The updated guidance, which Finance developed in close consultation with the Department of Defence, includes case studies, detailed examples, guidance on establishing panel arrangements and further emphasis that the assessment must be commensurate with the scale, scope and risk of the procurement.

1.2.2 Procurement Connected Policies

Procurement Connected Policies are policies where procurement has been identified as a means of delivery. The key Procurement Connected Policies for Australian businesses bidding for major infrastructure projects are the:

- Australian Industry Participation (AIP) National Framework administered by the Department of Industry, Science, Energy and Resources; and the
- Code for the Tendering and Performance of Building Work 2016 (Building Code 2016) administered by the Attorney-General's Department.

The AIP National Framework, aims to support and ensure opportunities for Australian industry participation in major projects. Where required, AIP plans detail how the successful contractor will engage local industry, helping to ensure full, fair and reasonable opportunity for Australian industry to compete for work.

AIP plan requirements are applied to:

- major public and private projects with capital expenditure of \$500 million or more;
- Australian Government procurements of \$20 million or more;
- Australian Government grants of \$20 million or more;
- Australian Government payments of \$20 million or more, to state and territory governments for large infrastructure projects; and
- investments from the Clean Energy Finance Corporation and Northern Australia Infrastructure Facility of \$20 million or more.

The Building Code 2016 applies to all Commonwealth funded building work undertaken by relevant entities for, or on behalf of, a funding entity, if the funding entity issued the expression of interest or request for tender on or after 2 December 2016.

The Building Code 2016 also applies to building work that is indirectly funded where the Commonwealth's contribution is:

- at least \$5 million and represents at least 50 per cent of the total construction project value; or
- at least \$10 million (irrespective of its proportion of the total construction project value).

Relevant Commonwealth entities are required to apply the Building Code 2013 (and the Building Code 2013 – Supporting Guidelines (April 2016)) when managing construction contracts for building work where tenders were submitted prior to 2 December 2016.

1.3 Commonwealth Grants

The Commonwealth Grants Rules and Guidelines 2017 (CGRGs) are issued by the Minister for Finance under Section 105C of the PGPA Act. The CGRGs establish the overarching Commonwealth grants policy framework and articulate the Government's expectations in relation to grants administration by non-corporate Commonwealth entities.

The CGRGs apply to all forms and types of grants including grants that help fund infrastructure (paragraph 2.4 of the CGRGs apply).

Grants that help fund infrastructure:

Department of Health – 'National Aboriginal and Torres Strait Islander Flexible Aged Care Program 2021-2022 Infrastructure and Equipment' (GO4786). This program is designed for service providers to deliver aged care services by providing staff accommodation, minor capital works or upgrades to existing facilities or the purchase or replacement of furniture or equipment.

Australian Research Council – 'Linkage Infrastructure, Equipment and Facilities for funding commencing in 2022' (GO4619). This program provides funding for research infrastructure, equipment and facilities to eligible organisations. This may include the purchase, upgrade, transportation or, maintenance of and/or management of access to research infrastructure.

Department of Industry, Science, Energy and Resources – 'Space Infrastructure Fund – Space Payload Qualification Facilities' (GO4400). This program provides an Australian company or research institution with funds for the development of space payload qualification facilities to meet the needs of the Australian Space Industry. This may include purchasing, upgrading and commissioning testing equipment or purchasing hardware.

Grants for activities that include infrastructure are made to a range of grant recipients including profit and not for profit entities such as universities, local councils, charities and public corporations.

Grant opportunities that fund infrastructure are likely to result in multiple grants being awarded from the one grant opportunity for a number of similar infrastructure projects and:

- usually do not cover the full cost of the infrastructure;
- the infrastructure is not owned, or operated, by the Commonwealth;
- are required to assist in the achievement of the policy outcome; and
- assist grantees to achieve their objectives.

Grant Opportunity Guidelines may specify laws, standards and industry codes that apply to infrastructure that is funded through grant funds, but rarely do guidelines specify other requirements such as the exact type of infrastructure, capacity or specific location. Grant applicants who include infrastructure within proposals would typically provide information on how this will contribute to policy outcomes in order to be considered for a grant.

1.4 Government Business Enterprises

Government Business Enterprises (GBEs) also undertake considerable infrastructure procurement activity. Operating at arms-length from Government which is a shareholder and in some cases a funder of projects, GBEs are encouraged to deliver value for money outcomes.

GBEs enables the effective delivery of policy objectives while adding value to the Commonwealth's asset base. While not subject to the Commonwealth Procurement Rules, GBEs are strongly encouraged to apply the basic principles found within the CPRs and Procurement Connected Policies to their procurement activity. As the responsible contracting party, GBEs drive for value for money outcomes manifests through structured procurement strategies.

Attachment A provides more detail on projects being undertaken by GBEs.

1.5 Engagement with Industry Groups

Finance has undertaken and will continue to undertake stakeholder engagement meetings with different industry groups to discuss the interaction of the Commonwealth's Procurement Framework with infrastructure and construction projects (including the pipeline of projects) the Commonwealth has underway.

Finance has directly engaged with state and territory civil construction procurement officials. These workshops discussed the engagement of construction companies, the review of the National Guidelines for Infrastructure Project Delivery, avenues for industry engagement, and professional indemnity insurance for large projects.

Finance also engages with state and territory counterparts on coordinating and improving procurement practices, including construction, through its membership on the Australasian Procurement and Construction Council.

Examples of engagement include with:

- Australian Owned Contractors on access to major public infrastructure projects by Australian-owned, Tier 1 and Tier 2 infrastructure suppliers, and with officers from the Department of Industry, Science, Energy and Resources to discuss the AIP policy and AIP plan;
- Infrastructure Partnerships Australia to understand their experiences in relation to public infrastructure projects; and
- Australian Constructors Association to discuss Commonwealth procurement practices and provide their perspective on public infrastructure projects.

1.6 Alternative Models

The Commonwealth Investment Framework (CIF) supports the Australian Government to realise the benefit of investments that use the Commonwealth balance sheet. The CIF aims to stimulate productivity, drive economic growth and deliver critical infrastructure.

The CIF comprises a comprehensive policy document (Resource Management Guide 308 at [Attachment B](#)) and a toolkit of practical user focused content which:

- supports the Government to undertake non-grant investments for program and project delivery where it is the most appropriate financial mechanism to achieve the desired policy objectives;
- provides decision-makers with the best evidence to support consideration of investment proposals;
- ensures Commonwealth entities have access to the necessary tools and expertise to support Commonwealth investment; and
- creates the foundation for successful long term implementation and management of investment decisions from a whole-of-life investment perspective.

Finance is supporting agencies to consider the benefits of commercial financing and procurement by:

- investigating and testing an expanded set of commercial options and approaches to secure private capital and capability; and
- working with key stakeholders to further support strategic engagement with the investment community.

The focus of this work is on opportunities to leverage private sector capital, investment, innovation, risk appetite and capability, to maximise the efficiency and effectiveness of major Government investments.

1.7 National Cabinet Infrastructure and Transport Reform Committee

To support faster and more efficient delivery of infrastructure projects, the National Cabinet agreed to establish the Infrastructure and Transport National Cabinet Reform Committee, chaired by the Commonwealth Minister for Infrastructure, Transport and Regional Development. The Committee is developing proposals to streamline planning and approval processes at all levels of government.

1.8 Conclusion

The Commonwealth contributes to Australia's public infrastructure through direct funding to the states and territories, investing in projects through GBEs and through the CPRs. Finance engages with these entities and peak industry bodies to explore and consider the challenges and opportunities present in infrastructure procurement.

Attachment A

Selected Government Business Enterprise – Infrastructure Projects underway

GBE	Project	Steps to support/engage smaller constructors
Australian Naval Infrastructure	Osborne South Development Project	<ul style="list-style-type: none"> • Managing Contractor contract for Greenfield work awarded to Lendlease in October 2017. • ANI encourage the managing contractors to maximise Australian and local suppliers wherever possible as part of the managing contractor's procurement of work packages. • 66 of 68 subcontractors awarded to Australian businesses. • 59 subcontracts awarded to local South Australian businesses. • 7 indigenous businesses with a total spend of over \$14 million engaged on the project.
Australian Naval Infrastructure	Osborne North Development Project	<ul style="list-style-type: none"> • Managing contractor contract awarded to Laing O'Rourke Australia in November 2018, with phased delivery of work packages – work is still ongoing. • ANI encourage the managing contractors to maximise Australian and local suppliers wherever possible as part of the managing contractor's procurement of work packages. • As at the end of April 2021, 43 major trade packages had been awarded, with more than 90 per cent Australian content to date. • 95 per cent Australian steel fabricated by local suppliers.
Australian Rail Track Corporation	Inland Rail	<ul style="list-style-type: none"> • The 1,700km Inland Rail alignment has been divided into 13 sections, with procurement strategies being developed for each section, and in some cases, sub-sections. • Construction works have commenced on the Narrabri to North Star section, with the ARTC engaging Trans4m Rail for the phase one works package. Trans4m Rail is a joint venture between John Holland and SEE Civil (SEE Civil is an Australian owned contractor). Construction of Inland Rail from Narrabri to North Star is expected to directly employ 500 people, with ARTC seeking to maximise benefits to communities through its social performance program. • The ARTC is implementing a procurement model that enables shorter and smaller procurements. ARTC has hosted Trans4m Rail on-line information sessions briefing local suppliers about opportunities on the Narrabri to North Star section. • On the recently completed Parkes to Narromine section, the project generated over 1,850 jobs, including 197 local and indigenous jobs, with \$109.7 million spent through engaging 99 local businesses, and \$14.1 million spent through engaging nine indigenous businesses.
Moorebank Intermodal Company		<ul style="list-style-type: none"> • MIC has partnered with Qube Holdings, through their wholly owned subsidiary, Sydney Intermodal Terminal Alliance (SIMTA) to construct and deliver the Moorebank Logistics Park (MLP). Qube has established a range of mechanisms to support local businesses and contractors to provide goods and services to MLP. This includes a requirement for all major contractors to demonstrate those efforts. Local companies

GBE	Project	Steps to support/engage smaller constructors
		<p>wishing to pre-register for work on MLP can do so via the Industry Capability Network.</p>
Snowy Hydro	Snowy 2.0	<ul style="list-style-type: none"> • Future Generation, a joint venture between Australian company Clough, Webuild (formerly Salini Impregilo) and Lane, was appointed as the Snowy 2.0 principal contractor in April 2019, and is responsible for building Snowy 2.0 on behalf of Snowy Hydro as well as hiring the project workforce and sub-contractors. • Future Generation is committed to continuing to provide opportunities to local businesses to support the delivery of the project. To date more than 150 local businesses have been involved in Snowy 2.0 through the provision of landscaping, haulage, surveying, civil works and equipment supplies, injecting more than \$60 million into the local economy. • Future Generation and Voith Hydro (responsible for delivering the hydro generation technology in the new power station) publish work packages for Snowy 2.0 on the ICN Gateway.
WSA Co	Western Sydney Airport	<ul style="list-style-type: none"> • WSA Co was established in August 2017 as a GBE to build and operate the Western Sydney International (Nancy-Bird Walton) Airport. Major works on the \$5.3 billion Western Sydney Airport, originally envisaged as a single procurement, was broken down by WSA Co into smaller works packages to support greater competition and value for money. • WSA Co is covered by the Government's Australian Industry Participation framework. In addition, WSA Co has committed to a set of employment targets, with 30 per cent of the workforce to be residents of Western Sydney during the construction phase.