



Australian Government
Australian Taxation Office

Australian Taxation Office Submission

Inquiry into the Commonwealth Procurement Framework

31 March 2017

Contents

Foreword	3
ATO Submission	4
Thresholds	4
1. Current threshold	4
Standing Offers	4
2. Value for Money	4
3. Pricing	5
4. Continuously open panels	5
5. Coordinated procurement	5
Risk-based approach	6
6. Timeframes	6
7. Methods of procurement	6
Guidance materials	6
8. CPR Framework	6
9. New procurement rules	7

Foreword

As the Government moves toward a risk-based approach to its operations, more decision-making and control is shifting to the agencies seen as best-placed to make those decisions based on individual risk profiling. It is essential therefore that the Government rules and frameworks that agencies work within allow the agility and flexibility to take this risk-based approach.

Whilst the Commonwealth Procurement Rules (CPRs) provide a robust framework within which federal procurement professionals can confidently operate and allows a level of consistency to be applied across government, they also restrict competitiveness as many small business cannot afford the investment of resources required to respond to all standards and rules, while simultaneously costing agencies considerable amounts to ensure compliance.

The CPRs should be revisited to ensure that the market is being treated fairly and equitably and that value for money is truly being achieved.

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ATO Submission

Thresholds

1. Current threshold

Our organisational view is that the current procurement threshold should increase to a minimum of \$200,000:

- The procurement threshold has not been increased for several years.
- An increase to a \$200,000 threshold was proposed with the Trans-Pacific Partnership (TPP) or Trans Pacific Partnership Agreement (TPPA). Although the TPP cannot be ratified due to U.S. withdrawal from the agreement on 23 January 2017, an increase is still necessary.
- A trade agreement between Australia and the UK is highly likely given that the UK will be invoking Article 50 of the European Union and leaving the EU in the near future.
- Both the EU Public Procurement Directives and the UK Public Contracts Regulations increased their thresholds in 2015/16 to €135,000 and €5,225,000 respectively in the EU and £106K and £4.1m respectively in the UK, as against the CPRs' current \$80,000 and \$9m.
- Requiring an open market approach for low value procurement results in significant costs that can run close to or exceed the procurement value. This includes both the internal costs to the agency as well as the costs to the suppliers in submitting a bid. It wastes public money and discourages participation from suppliers due to cost.

Standing Offers

2. Value for Money

In accordance with Clause 4 of the CPRs, agencies must consider value for money to establish a standing offer arrangement:

- Where the intent is to establish a multi-supplier panel, it is challenging for agencies to establish that the standing offers under the panel are 'value for money' without a specific supply to assess.
- The assessment leads to duplication and is an unnecessary stage as each work order issued under the panel will be independently assessed as value for money against a specific requirement and cost profile

3. Pricing

Inclusion of pricing in standing offers should be optional:

- The Department of Finance guidance stipulates that panels should include set or indicative pricing.
- Enforcing pricing in panels limits flexibility and hampers the functionality of some types of panels.
- While pricing points are appropriate in some instances, in others it does not reflect the currency of the market both in terms of actual prices but also the way pricing is bundled and can hamper the useability of a panel over a period of time.
- Where competitive processes are being run under a panel, strong pricing should result regardless of building in 'locked down' or ceiling pricing

4. Continuously open panels

Panels should be allowed to be continuously open to allow participation from new suppliers:

- Current provisions restrict participation of new suppliers until a panel can be refreshed (which may not be for another 6 months if the refresh date is bi-annual). Given the level of change and the fast-paced nature of emerging services and especially technology markets, agencies require the agility to respond swiftly.
- While common submission deadlines should be maintained for the initial approach to market (as per paragraphs 10.19 to 10.25), amendments should be made to the CPRs to allow individual agencies can assess new supplier participation as appropriate.

5. Coordinated procurement

There are concerns with how whole-of-government arrangements are established. Upfront alignment on strategy is required so that the needs of consuming agencies are the primary priority:

- There is inconsistent approach to the establishment of whole-of-government arrangements, with some agency leads willing to work collaboratively while others are less inclusive particularly at the time of drafting of the Statement of Requirements, representation on the evaluation team etc. This results in an arrangement that does not meet the needs of a varied group of agencies and results in the regular application for exemptions and independent processes being run.
- Rigour and sufficient timeliness around the process is required to allow agencies considered resource planning and input.
- There is an absence of transparency around the performance of whole-of-government arrangements and workload undertaken by suppliers across agencies.

- Whole-of-government arrangements should not be mandated in the first instance wherever possible – where agencies and suppliers see value in using whole-of-government arrangements, they will want to use them.

Risk-based approach

6. Timeframes

Agencies should be able to apply discretion to supplier response timeframes relating to approaches to market based on the procurement risk profile and complexity to allow for greater flexibility:

- For example, for basic approaches to market a week may be a sufficient amount of time to allow for a response. For more complex approaches, 6 weeks may be required.
- If suppliers require more time, they will often contact the agency and request it.

7. Methods of procurement

The CPR framework needs to allow for more agile procurement methods enabling faster and cheaper processes:

- Pre-qualified tender should remain as a legitimate method of procurement. Whilst there may previously have been issues with the appropriate utilisation of MUL (multi-user lists) and that open tenders for the widest possible supplier base to respond to the opportunity, maintaining maximum transparency and open competition, the lack of supplier pre-qualification and volume of suitable/unsuitable bids that have to be opened and evaluated creates unsustainable workloads for agencies.
- There are clear uses for pre-qualification in cases where supplier adherence to certain standards, qualifications, licensing and relevant body registrations etc, are basic conditions of qualification. Therefore, it is only logical that the tender is only open to this select group of suppliers.
- Utilising technology that streamlines procurement processes, such as the Digital Marketplace platform, should be further encouraged.

Guidance materials

8. CPR Framework

Agencies are working towards more holistic procurement; however the majority of the guidance material focuses on the sourcing process and not on deriving value from other parts of the procurement process such as contract and supplier relationship management and time investment in up front strategy:

- Procurement best-practice recognises investment in pre-sourcing strategy as the biggest enabler to short, simpler and cheaper procurement for both government and vendors.
- Cross-agency future planning and more effective information sharing should also be encouraged to enable agencies to leverage off each other and take more collaborative sourcing approaches.

9. New procurement rules

When undertaking procurements, agencies must consider the economic benefit to Australia for procurements above \$4M (under paragraph 10.30 of CPRs, effective 1 March 2017), however this clause may be contradictory to paragraph 5.3 whereby suppliers should not be discriminated against based on 'their size, degree of foreign affiliation or ownership, location, or the origin of their goods and services':

- Currently there is a lack of guidance from the Department of Finance on dealing with this conflict, however until this guidance is forthcoming a common sense principle based approach should be adopted. For all relevant procurements where paragraph 10.30 of the CPR applies, the consideration of the economic benefit to the Australian economy must be addressed; however the approach in addressing the requirements through each procurement should be treated on a case-by-case basis. A risk-management approach, including the option to use weighting and giving consideration to both the intent of the CPR rule and also the desired outcomes of the specific procurement, are methods that should be adopted.

