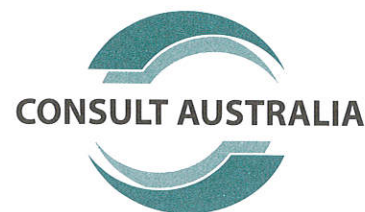


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Driving business success for consulting firms in the built and natural environment

Wednesday, 3<sup>rd</sup> May 2017

Committee Secretary  
Joint Select Committee on Government Procurement  
PO Box 6021  
Parliament House  
Canberra ACT 2600

**By email:** [JSCOGP@aph.gov.au](mailto:JSCOGP@aph.gov.au)

Dear Committee,

Thank you for the opportunity to provide a supplementary submission and to provide further details to questions on notice following the evidence before the Committee. This submission will focus specifically to how the Commonwealth Procurement Rules (CPR's) and provide further details to the Committee following the evidence given.

In relation to 10.18 of the CPRs, officials "must make reasonable enquiries that the procurement is carried out considering relevant regulations and/or regulatory frameworks". Examples provided refer to "labour regulations, including ethical employment practices", OH&S and environmental impacts.

Consult Australia is generally supportive of this provided there is a level playing field across state and international jurisdictions. However, we submit that this depends on the definition and interpretation of the term "reasonable". Consult Australia is concerned that this clause will increase regulatory burden associated with the time and cost of complying, should agencies take a heavy compliance interpretation, which we find is often the case. We would contend that in our sector, complex contract arrangements and fragmented supply chains can lead to such requirements causing overly onerous regulatory burdens.

Under paragraph 10.30 of the CPRs, for procurements over \$4 million in value, Commonwealth officials are required to "consider the economic benefit of the procurement to the Australian economy".

It should be noted that Consult Australia is generally supportive of the consideration of economic benefit, if it is in the context of value for money. However, the CPR's don't specify if the 'economic benefit' is direct or indirect, nor does it give any guidance on how this will be assessed or proven.

For example, the CPR's don't specify whether direct benefits such as employment will take precedence over indirect benefits such as productivity increases, increased overseas investment or other indirect economic benefits to the Australian economy. Further, we are of the view that 10.30 potentially creates a conflict between economic benefits and value for money, where the difference between these two concepts is often subject to timing and interpretation.

Consult Australia is also concerned about a level playing field across state and international jurisdictions, and fair treatment of firms in an increasingly complex and global supply chain.

In addition, under paragraph 10.35 "Unless a relevant entity determines that it is not in the public interest to award a contract, it must award a contract to the tenderer that the relevant entity has determined:

- a. satisfies the conditions for participation;
- b. is fully capable of undertaking the contract; and
- c. will provide the best value for money, in accordance with the essential requirements and evaluation criteria specified in the approach to market and request documentation".

Consult Australia is unsure how paragraph 10.30 fits with the overarching requirement in clause 10.35 to award the contract to the tenderer that provides the "best value for money".

In relation to 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.

The overarching observation that we make in relation to this is that again there is no clarification on how one determines demonstrable compliance with a standard. Additionally, we submit that there are likely to be additional regulatory burdens on our member firms as compliance may involve hundreds of standards. Further, given the nature of work consultants undertake in the built and natural environment there are additional liability issues in relation to warranting the compliance of sub-consultants and additional third parties such as builders and building products.

Further, if the aim of 10.37 is to encourage the use of Australian manufactured products, we submit that this CPR will not fundamentally solve what is a very complex issue.

There are several issues in relation to complying with Australian product standards, these include:

- a. Non-conforming products – there is no doubt that there are community concerns that some overseas supplied product is not fully compliant with Australian Standards. This is evidenced in relation to the ACCC's recent national recall of installed electrical cable.
- b. Inappropriate substitution and/or application of products – there is also valid concerns that non-compliant products are swapped out, or used incorrectly in the building process, leading to quality and safety consequences. For example, in a recent apartment building fire in Victoria the cause of the fire was attributed to material used on that building didn't comply with the rules in relation to combustibility for products on external facades.
- c. Fraudulent certification – There is also instances where testing processes or fraudulence lead to building products being watermarked as compliant when in fact they are sub-standard.

We note the work that is being undertaken by various parties and specifically the Building Products Innovation Council (BPIC) on talking the complex issues around non-conforming building products.

In addition, Consult Australia notes that there are no details in relation to *periodic auditing of compliance by an independent assessor* and how often this may occur and by whom.

We would be pleased to discuss these issues further and will be in contact to arrange a meeting, alternatively if you require any further information please contact Ryan Bondar, Associate Director of Policy & Government Relations [ryan@consultaustalia.com.au](mailto:ryan@consultaustalia.com.au) phone 02 8252 6700.

Yours sincerely,

**Megan Motto**  
Chief Executive