

QUESTION ON NOTICE

Question on notice for the Department of Foreign Affairs and Trade.

Topic: Government Procurement commitments in Free Trade Agreements

Question submitted by Senator Paul Scarr

Question

Senator SCARR: I might start with the Department of Foreign Affairs. We had from the Department of Finance the gentleman in charge of the procurement rules for the Australian government. There are these procurement principles. He made the point to us that they reflect in part our obligations under free trade agreements. I put a question to him, which I'd like to put to you, and that is: to what extent do the free trade agreements, for example, give the Australian government a bit of flexibility to, say, in low-level contracts—contracts under \$100,000 in terms of contract value—discriminate in favour of fintechs or regtechs in this country in start-up phase? Is there any flexibility in trying to encourage local investment in this space under government procurement principles?

Ms Bowes : I'll start and then I'll hand to my colleagues. Generally, government procurement rules are contained in both in bilateral and plurilateral FTAs. We've just recently acceded to the WTO government procurement agreement. Generally, the commitments reflect thresholds. That enables or guarantees access or the ability to participate in a government procurement process within those threshold arrangements. Generally, our agreements do not allow for discrimination across the board. However, there are some specific programs—I think John might be able to address that—such as indigenous procurement arrangements where we can perhaps be a bit more favourable.

Senator SCARR: I'm aware of the indigenous area. That's certainly reflected in the principles. Is there any other flexibility of provision in terms of encouraging local investment in that lower end service in the regtech and fintech space, or does it just have to be open to all players, wherever they are?

Ms Bowes : We'll come back on notice on that. Just more generally, there are limited carve-outs where we're looking at projects that are above the threshold. So I will come back.

Senator SCARR: What are the thresholds? When do the thresholds kick in? What is the threshold level?

Ms Bowes : Well, they are negotiated bilaterally. Often they are indexed as well.

Senator SCARR: What are some examples? Can you think of just one example, say, with Singapore or the US? Do they kick in at \$10,000 or \$10 million? That is the question.

Ms Bowes : I'll have to take that on notice. I know this because we just notified it in January. But the figure is not quite in my mind. If I can take that on notice for the United States, I can certainly provide an example of the thresholds in that agreement. As I said, they do vary depending on the exchange rates and indexation as well.

Senator SCARR: So there is flexibility if you're under the threshold. Is it correct to say that?

Ms McCarthy : I think that's correct, Senator. We could certainly check on that. But the obligations don't kick in until you get to the thresholds.

Senate Select Committee on Financial Technology and Regulatory Technology

28 February, 2020

Senator SCARR: So, just to be clear, the reason I'm asking the question is to see whether or not there is any scope in terms of government procurement policy to give some sort of preference at a lower threshold to local fintech or regtech companies in start-up phase. It would give them some assistance in terms of getting a cash flow to grow. So that's the genesis of the question. I hope that assists you to come back with information that might be useful in terms of this committee's consideration of procurement principles in general in this space.

Ms Bowes : Just on that point, while we can comment—and we will—on notice on where the trade obligations might apply, if there are other government obligations that are domestic in nature that might apply below the thresholds, obviously that's—

Senator SCARR: Absolutely. I realise when you come back it's just going to be that narrow ambit.

Ms Bowes : Exactly.

Answer

As an example, the relevant threshold in the Australia-United States Free Trade Agreement applying to goods and services procurement by the Australian Government is currently \$114,000. For states and territories, the threshold is currently \$680,000. Procurements of goods and services, including related to fintech and regtech, below these thresholds are not currently subject to government procurement obligations in any of Australia's trade agreements.

We also note that any form of preference to benefit small and medium sized businesses, including fintech and regtech companies, is not subject to the government procurement requirements in Australia's FTAs or its WTO commitments

The SME exception is in all of our FTAs with GP chapters and our WTO commitments. For the purpose of government procurement, SME is not defined in any of our trade agreements. However, the Commonwealth Procurement Rules (CPRs) define an SME as a firm "with fewer than 200 full-time equivalent employees". States and territories apply similar SME definitions.