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Manatu Aotere

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

Dear Secretary

Inquiry into the Commonwealth Procurement Framework: New Zealand Government submission

On behalf of the New Zealand Government, I welcome the opportunity to provide a submission to the Joint Select Committee on Government Procurement inquiry into the Commonwealth Procurement Framework and revised Commonwealth Procurement Rules (CPRs) which were implemented on 1 March 2017. I wish to comment on the importance of ensuring that the CPRs remain consistent with the Australia New Zealand Government Procurement Agreement (ANZGPA).

Value of the ANZGPA

The ANZGPA was initially signed in 1997. It creates a single government procurement market between the two countries in accordance with the objectives and principles of the Australia New Zealand Closer Economic Relations Trade Agreement (CER).

The combined value of the single procurement market is approximately AUD\$160 billion per year, representing a significant proportion of GDP in each country. Australian and New Zealand businesses and tax payers benefit from access to the larger market created by the ANZGPA. It maximises competitive opportunities for Australian suppliers and helps to reduce costs of doing business for the Australian government and industry. A diverse range of Australian companies have successfully engaged in the New Zealand procurement market, most notably during the Canterbury earthquake rebuild. The ANZGPA also facilitates trans-Tasman business ventures, improves competition, and makes it easier for both Governments to acquire the best products and services from both countries so that tax payers get the best value for their money.

More generally the ANZGPA is an important pillar of our bilateral economic relationship. It advances both Governments' goal of establishing and consolidating a single economic market between our two countries. At their annual Leaders Meeting in February 2017, Prime Ministers Turnbull and English highlighted our countries' shared commitment to continuing to make trans-Tasman trade in goods and services more efficient to benefit all levels of Australian and New Zealand society. In this context they referred to the single market for government procurement created by the ANZGPA (which celebrates its 20th anniversary in 2017), noting that it was one of the most comprehensive agreements of its type. They also welcomed the launch of the trans-Tasman Infrastructure Pipeline to provide important transparency and enable forward-planning in this crucial area of government expenditure.

New Zealand comments on consistency between the CPR and the ANZGPA

New Zealand welcomes the inclusion of paragraph 2.14 of the CPRs which notes Australia's international obligations and asserts that the CPRs have incorporated those obligations. We also welcome that the core rule of the CPRs, i.e., achieving value for money, requires that procurements should be non-discriminatory (refer paragraphs 4.4 and 5.1). We note the rules of non-discrimination in paragraph 5.3 which specifically states that suppliers would "not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or origin of their goods and services."

However, the ANZGPA not only addresses discrimination referenced above but also requires that practices are not biased against or have the effect of denying equal access or opportunity to suppliers from the other country. Against that background New Zealand is concerned that the practical application of the new "economic benefit" criteria in the revised CPRs (paragraph 10.30) has the potential to be inconsistent with the key tenets of the ANZGPA. The criteria may deny New Zealand suppliers legitimate access to the single market for government procurement. More broadly, the criteria may work to undermine the Australia and New Zealand Governments' goal of advancing the single economic market.

The "Consideration of broader economic benefits in procurement" guidance for CPRs does not provide detailed information on how procurement practitioners should assess economic benefits during the sourcing process. This means it is difficult to judge how the CPRs are consistent with Australia's obligations under the ANZGPA. The lack of detail also does not provide the necessary guidance to practitioners to ensure they maintain a level trans-Tasman playing field by complying with the ANZGPA. New Zealand is concerned that some examples of qualifying business activity provided in the guidance could only be met if the tenderer is domiciled in Australia (for example "employing workers in Australia" and "paying taxes in Australia"), which would not be consistent with the intention of the ANZGPA to develop an efficient single trans-Tasman market.

Evaluation and weighting of such activities could have the effect of discriminating against and disadvantaging New Zealand suppliers, particularly where a good or service may be wholly manufactured or delivered in New Zealand and exported to Australia. The

example provided in the guidance of Commonwealth officials procuring call centre services could equally be provided by a New Zealand-domiciled call centre service but would not receive any rating for benefit to the Australian economy and would therefore be discriminated against and disadvantaged in the tender evaluation process.

Given the economic benefits that Australia and New Zealand acquire from the single government procurement market, and the importance of maintaining the integrity of the ANZGPA which underpins it, we would welcome elaboration of how the Commonwealth will ensure that the practical application of the economic benefits criteria does not impact the objectives of the ANZGPA.

Yours sincerely

Llewellyn Roberts
Acting High Commissioner