



**Australian Government**

# **Australian Government Procurement Statement**

**July 2009**

## INTRODUCTION

The Australian Government is a significant purchaser of goods and services in Australia. Government procurement activities are worth around \$24 billion per annum. The Government's management of procurement activities is important to the economy, to the quality of public goods and services, to employment opportunities in many parts of Australia, and to Australians receiving value for their taxpayer dollars.

The Australian Government's procurement framework is designed to support the activities of agencies in the delivery of government programs and services such as building quality infrastructure and delivering quality employment services. The public interest is best served when government agencies achieve value for money for their purchasing activities. The better the value government can achieve from each public dollar, the more community infrastructure, health services, education, and other public goods it is able to provide. That is why value for money is a central principle of government procurement.

Value for money is achieved by encouraging competitive markets, adhering to non-discriminatory purchasing practices, and using efficient, effective, ethical and transparent procurement processes. Importantly, government agencies must assess value for money on a "whole-of-life" basis. This means that agencies take into account a range of considerations other than purchase price when determining what constitutes good value for money. Agencies are not forced to choose lowest-cost suppliers when that choice would in the long-run cost the taxpayer more through the purchase of inferior quality goods or high ongoing service costs, or when that choice would have detrimental social or environmental effects.

In the 2007-08 financial year, the total value of contracts reported by the Australian Government on AusTender was \$23.7 billion. Australian-based goods and services represent \$16.5 billion or 69 per cent of this total. When procurement by the Department of Defence is excluded, the Australian-based share of contracts is 89 per cent of the total value of contracts awarded. The bulk of imports were for goods and services that are not made in Australia, such as photocopiers and specialist military equipment.

The Australian Government believes that it has a role as a model purchaser to encourage good practices from its suppliers. This includes an expectation that its suppliers comply with Australian laws. The Government can do this through a variety of mechanisms including requiring suppliers to pay attention to matters such as environmental sustainability, opportunities for small business, respect for employees' rights and support for apprenticeships.

The Australian Government also believes that it has a responsibility to taxpayers to ensure that its purchasing policies are transparent and that there is accountability for purchasing decisions. That includes ensuring that taxpayers know how public money is spent, and that suppliers to government are aware of the public expectations about their conduct.

This statement explains how the Australian Government is improving its purchasing policies to achieve greater transparency, better value and better outcomes for small businesses, jobs, training and the wider Australian community consistent with value for money principles, the procurement framework and Australia's international obligations.

## UNDERSTANDING THE PROCUREMENT FRAMEWORK

There are a number of dimensions to the Australian Government's procurement framework. This section explains the legal obligations which underlie procurement policy, how value for money is assessed, and the accountability, transparency and standards attached to procurement.

### Legal framework

Procurement at the Commonwealth level is governed by the Commonwealth Procurement Guidelines (CPGs). The CPGs are a subset of the broader Commonwealth financial framework and apply to all core government agencies<sup>1</sup> and to a number of Commonwealth companies<sup>2</sup> whose operations are predominantly non-commercial.

The CPGs outline the principles and procedures that officials or their agents must follow when undertaking procurement for the Commonwealth. Officials are responsible for the actions and decisions that they take in relation to procurement and for the resulting outcomes. Officials are answerable for such activity through established lines of accountability, including the agency's chief executive and senior management, the Government and the Parliament.

Probity is a strong feature of the procurement framework and is important for enabling purchasers and suppliers to deal with each other on the basis of mutual trust and respect. Transparent and accountable procurement processes are important to mitigate the risk of accusations of real or perceived conflicts of interest, fraud, theft or corruption. Sound probity measures aim to minimise conflicts and the potential for litigation; avoid the potential for corrupt practices to occur; produce better outcomes against stated objectives; and maintain public sector integrity.

The CPGs include provisions that enable government agencies to exclude a potential supplier on grounds such as bankruptcy, insolvency, false declarations or significant deficiencies in performance of any substantive requirement or obligation under a prior contract.

Agencies are required to manage contracts from the tender stage through to the delivery of the goods or services. Where suppliers are in breach of their contracts, the Commonwealth has access to a range of remedies, contractual and legal.

Agencies are also required to apply fair, equitable and non-discriminatory complaint-handling procedures. The primary existing external complaint mechanism is the civil legal system, which can be used to settle matters through a judicial process. The Commonwealth Ombudsman also has powers to investigate procurement complaints.

While these mechanisms can often work effectively, it is not always clear where external parties should go to raise questions about procurement practices and how to lodge a complaint. Because of the large number of agencies that participate in procurement processes, the extent to which agencies adhere to the procurement framework is unclear. This situation also means it is difficult for the Government to get an overall picture of implementation of new whole-of-government procurement policies.

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<sup>1</sup> Constituted under the *Financial Management and Accountability Act 1997 (FMA Act)*.

<sup>2</sup> Constituted under the *Commonwealth Authorities and Companies Act 1997 (CAC Act)*.

### **Box 1: Procurement Coordinator**

*The Government will improve the handling of complaints and the promotion of best practice and accountability by establishing a Procurement Coordinator within the Department of Finance and Deregulation. The Procurement Coordinator will:*

- provide external parties with an understanding of the Commonwealth framework;*
- review and advise on procurement practices across government on an ongoing basis;*
- handle complaints from suppliers and interested external parties;*
- review complaints regarding contract administration;*
- aggregate information about Commonwealth procurement across all procurement categories; and*
- submit an annual report on procurement matters to the Minister for Finance and Deregulation.*

*The Procurement Coordinator will be supported by a Procurement Advice and Complaints Handling Unit. The Procurement Coordinator will seek ongoing input on how government procurement can be enhanced from a procurement consultation committee comprising industry, union and community stakeholders.*

### **Value for money**

Australian Government procurement is based on achieving overall value for money. Purchase price is not the only determining factor in assessing value for money. Value for money is determined on a whole-of-life costing basis, which requires agencies to conduct a comparative analysis of all relevant costs and benefits of each proposal through the whole procurement cycle.

Whole-of-life value for money assessments include consideration of factors such as:

- fitness for purpose;
- the performance history of each prospective supplier;
- risk management;
- the flexibility to adapt to possible change over the lifecycle of the property or service;
- financial considerations including all relevant direct and indirect benefits and costs over the whole procurement cycle; and
- the evaluation of contract options.

The Government is currently conducting scoping studies in a number of product markets to determine whether coordinated procurement arrangements, such as negotiating whole-of-government contracts, can improve overall value for money in these markets. Greater coordination can reduce duplication between agencies and by aggregating demand can improve the Government's overall purchasing power.

### **Accountability and Transparency**

The main source of information about the Commonwealth Government procurement market is AusTender, a Government website that provides information about contracts across the

Commonwealth. AusTender is a key component of the Government's commitment to transparency and accountability in government procurement. It includes information on:

- All Commonwealth procurement contracts and agency agreements above \$10,000, including standing offers. Contract information reported on AusTender includes (but is not limited to) agency details; supplier details; contract details; contract value; start and end dates; procurement method; consultancy information; and confidentiality information.
- Agency Annual Procurement Plans (APPs), which draw suppliers' early attention to potential procurement opportunities. Agency APPs contain a short strategic procurement outlook for the agency supported by details of any planned procurement.
- All new tendering opportunities - by registering on AusTender suppliers can 'opt-in' to be informed electronically about government tenders and other approaches to the market in areas of interest that they indicate.

### **Box 2: Simpler AusTender search function to identify tender opportunities**

*The Government will improve the quality and searchability of agencies' published Annual Procurement Plans by upgrading AusTender and reinforcing policy guidance on Annual Procurement Plans to make agencies and industry aware of the benefits of early and automatic notification of opportunities.*

### **Box 3: Enhanced accountability measures**

*The Government has recently implemented a number of transparency and accountability reforms, including:*

- *A reduction in use of commercial-in-confidence provisions;*
- *Clearer guidance on whole-of-life costing and value for money assessments;*
- *Requiring agencies not to contract with suppliers who have a judicial decision against them for unpaid employee entitlements (not including decisions under appeal);*
- *Additional information relating to Chief Executives' obligations to comply with Government policy, consistent with recent amendments to Section 44 of the FMA Act;*
- *Limiting a contractor's liability to the Commonwealth, revised to clearly state a balanced approach to risk allocation in contracts; and*
- *Addition of a concise explanation of how other government policies impacting on procurement apply. This avoids potential confusion by having these policies stated in their own guidance by the agency with policy responsibility, and allows changes to other policies without the need to update the CPGs.*

The Government recognises that transparency around sub-contracting arrangements is important to the integrity of the procurement framework.

Concerns have been raised about some of the reported practices of sub-contractors to government suppliers, and the fact that in the past there has been no transparency around sub-contracting arrangements. This has created a gap in the information provided to the public on where taxpayer dollars are spent and has undermined the transparency of contracting arrangements.

For this reason the Government has implemented reforms to the CPGs to require agencies to make available on request details of all sub-contractors engaged in respect of the procurement contract. This means that any member of the public can now find out who is performing work under government contracts if they have a concern that needs to be addressed.

In addition to this improved transparency around sub-contracting, the CPGs have also been amended to require suppliers to comply with materially relevant laws and, as far as practicable, pass on that requirement to sub-contractors.

#### **Box 4: Sub-contractors**

*The Government will examine options for modifying AusTender to improve the availability of information relating to the use of sub-contractors by government suppliers. As part of the next major AusTender upgrade, the Department of Finance and Deregulation will investigate the inclusion of more detailed information on sub-contractors involved in tenders.*

*In the interim the AusTender website will include a notification stating that where contractors are using sub-contractors, information about sub-contractors can be sourced from the relevant Government agency.*

## **INTERSECTING POLICIES AND PROGRAMS**

The core procurement framework managed by the Department of Finance and Deregulation is supplemented by a number of other programs and initiatives managed by other Commonwealth agencies.

### **Enhancing industry participation**

The Department of Innovation, Industry, Science and Research administers industry programs designed to improve the efficiency and competitiveness of Australian industry. Recognising that engaging successfully in procurement processes requires the development of particular capabilities, several of these programs can play an important role in linking Australian businesses to procurement opportunities.

It is important to note that improving Australian businesses' capabilities is not just about helping them to take advantage of Commonwealth procurement opportunities. The capabilities that they develop through participation in the Commonwealth framework are relevant to all procurement opportunities, whether in the private sector, with states and territories, or internationally. The global government procurement market alone has been estimated at \$14 trillion. As we develop ways to help Australian businesses generate jobs from supplying to the Commonwealth government, we should also be thinking about the much greater opportunities that exist in international markets for both public and private sector procurement.

The Australian Industry Participation (AIP) National Framework encourages the Commonwealth, State and Territory governments to adopt a consistent national approach to maximising Australian industry participation in major projects in Australia and overseas.

The AIP National Framework sets out four strategic approaches to achieve this goal:

- encouraging industry to meet world best practices through capability building;
- early identification of opportunities for Australian industry participation in Australia and overseas;
- promoting Australian capability and integrating industry into global supply chains; and
- enhancing project facilitation and Australian industry participation.

#### *Australian Industry Participation Plans*

In developing, publishing and implementing approved AIP Plans, proponents demonstrate how they will provide full, fair and reasonable opportunity to Australian businesses, including SMEs, to supply goods and services to the project. This can assist companies to lower search and transaction costs and increase the competitive supplier base to include capable and innovative Australian firms, especially SMEs.

AIP Plans are intended to ensure that a major project proponent is aware of all supply options and has the opportunity to consider domestic suppliers as well as international suppliers when making their commercial decisions.

Consistent with Australia's international obligations, the requirement for AIP Plans does not mandate the use of Australian suppliers, but rather aims to provide Australian suppliers with the opportunity to demonstrate their capabilities and tender if the procurement specifications are met.

#### *Supplier Access to Major Projects Program and the Industry Capability Network*

The Supplier Access to Major Projects (SAMP) program aims to increase opportunities for capable and competitive Australian industry to participate in major national and international projects. SAMP funds specialists with expertise in global services, design, engineering, procurement, construction, management and through-life support aspects of major projects, such as the Industry Capability Network. The SAMP program is designed to underpin long-term, coordinated and strategic approaches to pursue opportunities for Australian industry in major projects in Australia and globally.

Since the program's inception, Industry Capability Network Limited (ICNL) estimates that Australian companies have won contracts worth more than \$2.2 billion that may have otherwise gone to overseas competitors.

#### *Industry Capability Network*

The Industry Capability Network (ICN) operates in Australia and New Zealand and assists businesses to maximise the opportunities that arise from purchasing requirements from both the government and private sectors.

ICN is overseen by the ICNL, whose primary functions include:

- national coordination of the ICN;
- delivery of the SAMP Program on behalf of the Australian Government; and
- management of the national database of Australian industry capabilities and project opportunities.

ICNL also develops and markets information on Australian industry capability.

## **Box 5: Extending and strengthening the Australian Industry Participation framework**

*The AIP framework will be strengthened and extended by new initiatives costing \$19.1 million over four years.*

### **Australian Industry Participation Plans**

*The Australian Government will strategically apply the AIP framework to large Commonwealth tenders (generally above \$20 million) and to Commonwealth infrastructure projects, such as projects financed through the Building Australia Fund, by requiring tenderers to prepare and implement Australian Industry Participation Plans. In providing full, fair and reasonable opportunity, the Government will ensure that tender specifications are not designed in a way which has the effect of excluding Australian suppliers.*

### **AIP National Framework**

*The Government will renegotiate the AIP National Framework to ensure it reflects current circumstances, and to maximise the ability of Australian industry to win work at home and abroad. The Government will also seek a reconfirmed commitment to the AIP National Framework through Council of Australian Governments (COAG) and use this opportunity to link government procurement more effectively with industry development, innovation and training initiatives.*

### **Tariff Concession System and Enhance Project By-law Scheme**

*The Government will also clarify the intent of the Tariff Concession System and Enhanced Project By-law Scheme (EPBS) and provide appropriate resources to strengthen AIP requirements in private sector investment projects which access the EPBS. The Government will encourage greater interaction between major project proponents and Australian businesses by ensuring AIP Plans are in place at an early stage of projects and so increase the opportunities for local suppliers.*

### **Industry Capability Network**

*The Government will provide an additional \$8.5 million over four years to the Industry Capability Network through the SAMP program to increase opportunities for Australian business. There will be an emphasis on connecting Australian suppliers to Commonwealth-funded infrastructure projects.*

### **Supplier Advocates**

*The Australian Government will appoint Supplier Advocates with specialised industry knowledge within the Department of Innovation, Industry, Science and Research at a cost of \$8.2 million over four years. The program will begin with strategic sectors such as steel, infrastructure, the built environment, engineering, logistics and the textile, clothing and footwear industries. The Supplier Advocates will help Australian SMEs market their capabilities to government buyers in Australia. Eminent industry people will be engaged as Supplier Advocates. They will provide leadership to industry sectors to champion improved competitiveness, effective tendering for government business and use of government programs such as Enterprise Connect. These activities will dovetail with other initiatives to integrate Australian suppliers into global markets. The Government will ensure that Austrade, ICN and Enterprise Connect work more collaboratively and that the ICN national office has appropriate funding for this purpose.*

## **Fairness in the workplace**

The Australian Government recognises its public responsibility to provide a model of fairness in the workplace for those who are performing work for the Commonwealth, whether as employees of a Commonwealth agency, or as employees of a contractor to the Commonwealth.

Contracting is a normal part of modern business arrangements that can provide flexibility and efficiency in resource allocation. However, it is also sometimes used as a vehicle to undermine the entitlements of employees. The Australian Government does not support the adoption of contracting arrangements for this purpose. The Government will only contract out when it is in the public interest, having regard to such considerations as the quality and accessibility of services and the implications for affected public sector employees. Further, the Government expects that in conducting their businesses, government contractors will meet public expectations of fair and reasonable workplace practices.

The Government expects all tenderers to meet their legal obligations under the *Fair Work Act*. This includes obligations regarding legislated minimum standards, rights of freedom of association, and access to dispute resolution processes. For this reason, the Government has required that agencies will not enter into contracts with suppliers who have a judicial decision against them for unpaid employee entitlements.

The Australian Government recognises that the procurement framework has not always been effective in ensuring that all tenderers meet their legal obligations to their employees. Commonwealth agencies have often had only limited access to information about the past conduct of firms, both prior to and during the tender process, and during the life of contracts. This has made it difficult for agencies to take into consideration any past industrial misconduct by firms during the tender stage and to monitor breaches while contracts are on foot.

### **Box 6: Australian Government Fair Work Principles**

*The Fair Work Act 2009 establishes the new framework for workplace relations in Australia. To assist with compliance with the Fair Work Act, the Australian Government has developed a set of Fair Work Principles for employees of the Commonwealth and employees of Commonwealth contractors. Commonwealth agencies will be responsible for ensuring that suppliers and their sub-contractors comply with the relevant provisions of the Fair Work Principles. The Principles support the creation of quality jobs and decent work by ensuring that procurement decisions are consistent with the Fair Work Act.*

*To support the implementation of the Principles, the Government will introduce a requirement that suppliers, when submitting tenders, provide information about how they comply with the Fair Work Principles.*

The Government recognises that employees in some areas of contracted work operate in workplace environments with a record of poor workplace practices and inconsistent compliance with legal entitlements. To ensure maintenance of fair work practices among contractors, the Government will take steps in specific sectors where employees are at greatest risk.

### **Box 7: Better workplace practices for cleaners and homeworkers**

*In view of the history of underpayment, exploitation and unsafe work practices in the cleaning industry, it has been identified by the Australian Government as a sector potentially requiring assistance to promote fairness, bargaining, freedom of association and other workplace rights.*

*The Australian Government notes these concerns are shared in the community and notes the recent development of the Cleanstart Agreement in the cleaning industry.*

*In addition to the Fair Work Principles, Australian Government agencies must take the following requirements into account when awarding contracts:*

- The key parameters that will define relevant performance levels and provide adequate staffing to achieve these performance level;*
- Information about how the supplier will provide their employees with the appropriate training, supervision, equipment and materials to enable them to perform their job safely and efficiently, and*
- Provision of information by the supplier that will allow Australian Government agencies to verify that the terms and conditions of a contract are being met.*

*Further, the Procurement Coordinator will work together with property owners and managers, cleaning contractors and relevant unions on a tripartite basis, to pilot the development of best practice measures that can be embraced by cleaning contractors to fully realise these Principles and fair, cooperative and productive workplace relations as described above.*

*The Australian Government is also committed to ensuring an appropriate safety net for homeworkers. All government contractors in the textile, clothing and footwear industry must be accredited or be seeking accreditation with the Homeworkers' Code of Practice.*

### **Expanding opportunities for all Australians**

The Australian Government is committed to expanding opportunities for all Australians, especially those from communities suffering higher levels of disadvantage. The Government believes that procurement policies can play a role in expanding opportunities for disadvantaged Australians.

### **Disability services**

Supported businesses for people with disabilities have a valuable role in assisting people with disabilities to integrate into the employment market and helping to improve their overall independence. However, disability business services may sometimes find it difficult to access and obtain government contracting opportunities.

Changes to the Commonwealth Procurement Guidelines now provide agencies with increased flexibility when sourcing goods or services from disability business services. The procurement of property or services from a business that primarily exists to provide the services of persons with a disability is now exempt from the Mandatory Procurement Procedures, which means that those businesses are not required to devote resources to preparing tenders and can now be engaged directly by agencies to deliver the services of persons with a disability.

It is important to note that these measures for businesses that primarily exist to provide the services of persons with a disability should not be confused with policies relating to businesses that exist to provide goods and services for disabled people. This means that, for instance, mailing services provided by people with a disability would fall under the exemption, whereas the supply of wheelchairs would not.

### **Indigenous procurement opportunities**

The Australian Government is committed to closing the gap between indigenous and non-indigenous Australians in health, education and other life opportunities.

Government procurement policy can assist in closing the gap in employment outcomes. The Government's Indigenous Opportunities policy applies to projects with expenditure over \$5 million (\$6 million for construction and related facilities) undertaken in areas that have significant Indigenous populations with limited employment and training opportunities.

This policy requires agencies undertaking such projects to consult the Department of Employment, Education and Workplace Relations with a view to consideration of training and employment opportunities for indigenous people and of the capabilities of local indigenous suppliers.

COAG recently agreed on a National Partnership involving complementary investment and effort by the Commonwealth, States and Territory governments to improve opportunities for indigenous Australians to engage and public and private sector jobs. As part of its commitments under the National Partnership Agreement, the Government is planning to strengthen and extend measures to help indigenous Australians take advantage of opportunities arising out of government procurement.