



Australian Government



Australian
Small Business and
Family Enterprise
Ombudsman

5 November 2024

Procurement Consultation Team

Department of Finance

1 Canberra Ave

Forest ACT 2603

via email: ProcurementConsultation@finance.gov.au

Dear Sir/Madam,

Defining an Australian business for Commonwealth Procurement

The ASBFEO welcomes the opportunity to comment on the Public Consultation on Defining an Australian Business for Commonwealth Procurement. The Australian Government's procurement process plays a critical role in supporting the economy, providing opportunities for businesses, and ensuring efficient public services.

It is important to understand the purpose of defining 'Australian business' is to ensure the definition meets the policy objective. For instance, if the goal is to strengthen compliance or delineate eligibility for Australian Government programs, then the definition may have a prescribed, regulatory focus. In contrast, if the aim is boosting domestic economic or sovereign capability, including through cross-border investment and collaboration, then a broader definition might be warranted.

For small businesses, winning a government contract can be life-changing for a small business. The Australian Government procured goods and services worth \$75 billion in 2022-23 of which small business suppliers accounted for only \$8 billion, or 11%, by value.¹

The Commonwealth Procurement Rules stipulate that entities must not discriminate between potential suppliers based on size, degree of foreign affiliation or ownership, location or the origin of their goods and services.²

At the same time, the Commonwealth Procurement Rules instruct officials to apply procurement practices that do not unfairly discriminate against SMEs and provide appropriate opportunities for them to compete. Officials are to consider the competitive benefits of drawing on a larger supplier base, the capabilities of SMEs, barriers to entry for SMEs, and their commitment to local or regional markets.³

The ASBFEO's inquiry report on 1 July 2022 changes to Commonwealth Procurement Rules made 11 specific, constructive, and practical recommendations to:

- remove complications in procurement
- maximise opportunities for small businesses to compete

¹ Department of Finance, *Statistics on Australian Government Procurement Contracts*, [Website] Department of Finance, Australian Government, updated 28 November 2023.

² Department of Finance, *Commonwealth Procurement Rules: 1 July 2024: Achieving Value for Money*, Commonwealth of Australia, 2024, p. 15.

³ Department of Finance, *Commonwealth Procurement Rules: 1 July 2024: Achieving Value for Money*, Commonwealth of Australia, 2024, p. 15.



- adapt and enhance the Small Business Identification Tool as used by the Payment Times Reporting Scheme, for whole-of-government use, to enable ready and reliable impartial identification of small businesses and business characteristics such as indigenous, women owned/women led, and veteran owned/veteran led
- timely and consequential reviews of decisions
- build the confidence of officials through increasing competence and improved support
- consistently measure outcomes to achieve policy objectives.

The Australian Government's Small Business Statement notes the following procurement measures to support small-business growth:

- defence industry grants, including the Defence Industry Development Grant Program
- the Buy Australian Plan, which includes objectives of enhancing opportunities for SMEs and First Nations businesses
- 1 July 2024 changes to Commonwealth Procurement Rules.⁴

The ASBFEO acknowledges improvements made by the Australian Government to Commonwealth procurement, which address issues and recommendations advanced in the ASBFEO Procurement Inquiry report, including:

- requiring that 25% of procurements below \$1 billion, and 40% of procurements below \$20 million, must be sourced from small and medium-sized enterprises
- raising the SME exemption threshold from \$200,000 to \$500,000
- requiring that at least one SME be approached for every request for quote from the mandated Management Advisory Services Panel and the People Panel
- introducing a flexibility allowance to allow agencies to source 5% of their spending through the Management Advisory Services and People Panels directly from First Nations businesses not on those panels
- clarifying that benefits for SMEs will only apply to independent entities, rather than small or medium-sized entities that are supported by the resources of a larger entity.⁵

One of the ASBFEO's ongoing concerns is that it can be difficult for officials to easily identify a potential supplier as an SME. The survey work undertaken by the Social Research Centre (SRC) to inform the *'Review of the implementation of the 1 July 2022 changes to the Commonwealth Procurement Rules'* (December 2023), found that both senior officials and operational staff had the difficulty of what qualifies a supplier as an SME, and thereby eligible to be included in the then 20% target. In fact, 78% of operational staff cited difficulty of identification as the most common barrier to them approaching or using an SME.⁶

⁴ Australian Government, *Budget 2024-25 Small Business Statement*, p. 4.

⁵ Senator the Hon Katy Gallagher, Minister for Finance, Women and the Public Service, and the Hon Julie Collins MP, then Minister for Housing, Homelessness and Small Business, *New procurement rules to deliver more for small business*, joint media release, 17 June 2024; Department of Finance, *Commonwealth Procurement Rules: 1 July 2024: Achieving Value for Money*, Commonwealth of Australia, 2024, p. 34.

⁶ Australian Small Business and Family Enterprise Ombudsman (ASBFEO), *Review of the implementation of the 1 July 2022 changes to the Commonwealth Procurement Rules*, ASBFEO, 15 December 2023 p 2



Given these data, the ASBFEO is encouraged by:

- The launching of the Procurement and Contract Management Profession through the Australian Public Service Commission.⁷
- The Department of Finance establishing the:
 - GovPanels/Supplier Portal, which will:
 - allow suppliers to maintain their own information, ensuring they remain active and visible on panels
 - identify the key characteristics of supplier business, such as whether it is a small to medium enterprise, a First Nations business or a women-led business
 - empower suppliers to update information once and store commonly used documents, rather than having to contact many entities to provide the same information repeatedly
 - streamline government buyers' engagement with suppliers and enhance the information available about a supplier's potential offering
 - provide a central system for buyers to discover panels, research and chose potential suppliers, and guide them through each step of the panel procurement
 - enable panel managers to promote their panels, as well as make them available to buyers and suppliers in a standardised way
 - assist demand management by showing panel managers how many procurements are being conducted through their panel, and at what stage⁸
 - Contractor Reporting, Integrity Information Solution, which is a web-based platform that will provide:
 - suppliers with an interactive platform to submit and manage mandatory panel reporting obligations
 - contractors with a single verified profile, secure platform and feature to establish supplier relationships
 - workforce data to government buyers and enhance due diligence in recruitment processes.⁹

The GovPanels/Supplier is currently in phase 2b (panel administration), with phase 3 (panel supplier portal) scheduled for mid-2025. The Contractor Reporting, Integrity Information Solution will be initially targeted to support the People Panels and the Management Advisory Services Panel.

⁷ Australian Public Service Commission, *Procurement and Contract Management*, Australian Government, 18 September 2024.

⁸ Australian Government, *Introducing GovPanels / Supplier Portal*, austender Help, access gained 5 November 2024

⁹ Australian Government, *Contractor Reporting, Integrity Information Solution*, austender Help, access gained 5 November 2024.



The ASBFEO makes the following recommendations:

Recommendation 1: The Commonwealth Procurement definition of Australian business should be consistent with:

- existing Australian Government definitions relating to economic activity regulation
- Australia's international trade obligations
- a 'retained economic benefit' approach to evaluating the contribution of procurements.

The *Foreign Acquisitions and Takeovers Act 1975* offers a useful reference for broad regulatory approval processes and defines an Australian business as one that operates entirely or partly in Australia.

A business is taken to be an Australian business for the purposes of this Act if:

1. the business is carried on wholly or partly in Australia, whether or not in anticipation of profit or gain, by:
 - i. the Commonwealth, a State, a Territory, or a local governing body; or
 - ii. a body corporate established for a public purpose by or under a law of the Commonwealth, a State, or a Territory; or
 - iii. an entity wholly owned by the Commonwealth, a State, a Territory, a local governing body, or a body corporate covered by subparagraph (ii); and
2. the business would, or could, be carried on in anticipation of profit or gain if it were carried on by someone other than:
 - i. a body referred to in subparagraph (1)(i) or (ii); or
 - ii. an entity referred to in subparagraph (1)(iii); or
 - iii. a foreign government; or
 - iv. a separate government entity.

The ASBFEO sees merit in the government using a 'retained economic benefit' framework. This would capture, but not prescribe, the contributions of procurements to domestic employment, labour market participation, productivity, innovation, small and First Nations businesses, national resilience, and sovereign capability.

These contributions can be quantified as:

- value of goods and services supplied by domestic enterprises, including SMEs, First Nations businesses, start-ups, or suppliers of innovative goods and services
- value of labour/services provided by Australian residents and First Nations Australians
- amount of expenditure on capital goods and social infrastructure in Australia.¹⁰

¹⁰ South Australian Government Industry Advocate, South Australian Industry Participation Policy (SAIPP): Measuring Economic Benefit through Jobs, Investment and Supply Chain Opportunities, South Australian Government Industry Advocate, 2023, access gained 10 November 2023.



The advantages of this approach include:

- conveying in efficient, commercial terms what prospective suppliers need to offer and what requirements they need to satisfy to be eligible and competitive
- prompting officials to consider all the components of value for money and to seek further guidance as required
- enabling key procurement information to be codified and compared across entities, including the rationale for engaging or not engaging SMEs and First Nations businesses
- going beyond an Australian Business Number as an indicator of domestic enterprise
- identifying weaknesses in domestic economic capability or social performance over time
- assessing the effectiveness of the Buy Australian Plan, including with regard to strengthening Defence industries and capability to advance sovereign capability, and
- consideration of the multiplier effects from income generated and fiscal contributions derived from business activity in Australia.

The ASBFEO is not recommending that officials give precedence or a heavier weighting to businesses that are Australian-owned or based. This would be contrary to Australia's international obligations and the CPRs that embed them.

Rather, the intent of the retained economic benefit approach is to further the aims of the Future Made in Australia agenda and Buy Australian Plan to maximise opportunities for small and First Nations businesses, strengthen sovereign capability and national resilience, and develop priority industries. All of Australia's international trading agreements include procurement exemptions for preferencing SMEs and advancing the health and socio-economic position of First Nations people (upon which the Indigenous business and small business exemptions in the CPRs depend).

As a small open economy and net capital importer, Australia's growth and development depends on attracting and realising the benefits of international investment, technology, and expertise. Greater participation by Australian industries, small businesses and First Nations businesses can be facilitated by foreign or domestic firms undertaking work for the Australian Government – where there is a sincere commitment to pursuing these objectives.

The key is ensuring that the procurement incentives of officials are aligned with this objective and that there are means of assessing progress across government.

Recommendation 2: The Australian Government should:

- **clarify all requirements and process steps for suppliers under the Commonwealth Procurement Rules – including the multiple dimensions of the 'value for money' consideration – with a concise and commercially relevant decision support tool**
- **introduce a new 'sourcing strategy checklist' and an 'assessment outcomes checklist' to supplement existing guidance to advance the Buy Australian Plan, for procurements valued up to \$20 million, which is the threshold for Australian Industry Participation Plans**
- **before a procurement is undertaken, ask officials via the sourcing strategy checklist to indicate whether they have considered:**
 - **engaging a First Nations business before approaching the market**



- **engaging an SME**
- **engaging an Australian business**
- **disaggregating a large project into smaller packages to maximise competition**
- **any barriers to entry, such as costly preparation of submissions, which may prevent small or First Nations businesses from competing, increasing scale, or advancing priority industries, national resilience, or sovereign capability**
- **environmental sustainability and use of recycled content**
- **broader domestic economic or social benefits**
- **require the sourcing strategy checklist to include an ‘if no, please indicate why’ response, which could include three closed answers of ‘price’, ‘capability’ and ‘capacity’, and one open answer of ‘other’ to detail any considerations**
 - **the sourcing strategy checklist should be reviewed by a senior executive under the Public Governance, Performance and Accountability Act 2013**
- **require delegates for contracts (other than those requiring an Australian Industry Participation plan) to complete a corresponding ‘assessment outcomes checklist’ to:**
 - **monitor compliance**
 - **inform any complaints or investigations**
 - **generate comparable data over time to inform the effectiveness of procurement policy objectives, including the Buy Australian Plan.**

Recommendation 10 of the ASBFEO’s review of the implementation of the 1 July 2022 changes to Commonwealth Procurement Rules urged the Australian Government to decode rules and guidance, including by introducing a new ‘sourcing strategy checklist’ and an ‘assessment outcomes checklist’ to supplement existing guidance for procurements valued up to \$20 million, which is the threshold for Australian Industry Participation Plans.¹¹

The ASBFEO is encouraged by the government’s decision to consider the potential for use of a ‘sourcing strategy checklist’ and ‘assessment outcomes checklist’ as part of ongoing resource development.¹² Capturing broader value-for-money considerations through these checklists will encourage more consistency in procurement deliberations across departments and more transparent and comparable reporting within government.

The ASBFEO also notes the heightened importance of a clear, quantifiable method of formulating and assessing broader benefits to the Australian economy, following the government’s announcement on 17 June 2024 to reduce the threshold for procurements that require an economic benefit assessment from \$4 million to \$1 million (with the threshold for construction services remaining at \$7.5 million).

¹¹ Australian Small Business and Family Enterprise Ombudsman, *Review of the implementation of the 1 July 2022 changes to the Commonwealth Procurement Rules*, final report, ASBFEO, Australian Government, 15 December 2023.

¹² Department of Finance, *Australian Government Response to the Australian Small Business and Family Enterprise Ombudsman Procurement Inquiry Final Report*, Department of Finance, Australian Government, April 2024, access gained 4 July 2024.



The ASBFEO Procurement Inquiry found that smaller businesses without experience in engaging with government struggle to understand what they need to do and what will persuade officials, especially regarding broader economic and social contributions.

In its submission to the Inquiry, the Department of Industry, Science and Resources observed that businesses are not confident that the broader components of value for money are informing procurement decisions:

A common pinch point reported by businesses across sectors is the perceived lack of effective value for money assessments undertaken as part of government tender evaluations. Although the CPRs require value for money assessments that go beyond seeking the lowest cost option, industry feedback indicates a strong view that, in practice, tender assessments do not sufficiently address the broader economic, environmental, and social benefits of proposals.¹³

While existing guidance (*Consideration of broader domestic economic benefits in procurement*) canvasses a range of factors relevant to demonstrating and assessing domestic economic benefit, not all of these are directly quantifiable and codifiable. While it is straightforward to measure the employment of workers or apprentices in Australia, or purchases from small-and-medium sized businesses or First Nations businesses, the sharing of knowledge or development of industrial capabilities must be measured by proxy.

Further, the checklist for officials sets out broad rules of procedure, rather than a method for selecting and weighting relevant variables. This approach entails a high degree of subjective evaluation by procuring officials, and therefore a low prospect of consistent decision-making between them.

This is why the ASBFEO continues to advocate an alternative approach that adapts the successful South Australian model. The South Australian Advocate's Industry Participation Plan template could be modified to clarify all requirements under the CPRs – including the multiple dimensions of the 'value for money' consideration – in a concise and commercially relevant form (see Figure X below).

Similarly, highlighting broader value-for-money considerations in a 'sourcing strategy checklist' and a corresponding 'assessment outcomes checklist' (like that of the South Australian Industry Advocate) would encourage more consistency in procurement deliberations across entities and more transparent and comparable reporting within government (see Figures Y and Z below).

More broadly, we urge the Department of Finance to assume more active stewardship of procurement reforms. The ASBFEO's Procurement Inquiry suggested that rule changes and process enhanced are not always immediately or fully understood by suppliers – especially smaller ones – or indeed all officials.

Senior officials interviewed by the Social Research Centre (to inform our Procurement Inquiry) noted that entities were unlikely to be monitoring the implementation of changes to Commonwealth Procurement Rules internally. These observations were reflected in an online survey of 112 operational staff. Less than two-thirds (62%) had received information or advice that

¹³ Australian Small Business and Family Enterprise Ombudsman, *Review of the implementation of the 1 July 2022 changes to the Commonwealth Procurement Rules*, final report, ASBFEO, Australian Government, 15 December 2023, p. 58.



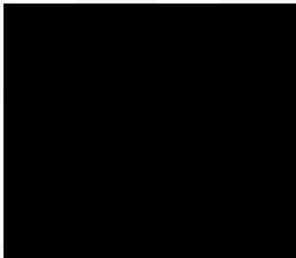
the CPRs specifically had changed. The main frustrations for operational staff were manoeuvring through policies when dealing with complex tender processes (71%) and additional administrative burden (69%). The majority also wanted information about whom to contact for assistance (74%) and further details about how to apply the Commonwealth Procurement Rules (71%) and the exemptions (70%).

There is a risk that a devolved approach could result in the total reform benefit being less than the sum of enhancements. We consider that Finance has an integral role to play in:

- helping entities to understand and implement Commonwealth procurement rules and procurement connected policies
- driving the Commonwealth to be a model customer that is timely, respectful, and responsive in its dealings with suppliers
- working with agencies and the Australian Public Service Commission to address critical knowledge gaps in procurement among officials and accelerate the formation of a professional procurement cohort across the Australian public service
- continually engaging and encouraging SMEs, culturally and linguistically diverse businesses, First Nations businesses and women-owned/women-led businesses.

If you require any further information, please do not hesitate to contact the Policy and Advocacy team via email at advocacy@asbfeo.gov.au.

Yours sincerely



The Hon Bruce Billson

Australian Small Business and Family Enterprise Ombudsman

Appendix: Indicative checklists proposed in ASBFEO Procurement Inquiry report, December 2023.

Figure X: Indicative Commonwealth procurement checklist for potential suppliers

Tender details			
Title	Purchasing entity reference number:		
Issuing entity:	Purchasing entity contact name:		
	Purchasing entity contact email:		
Business profile			
Title	Your name:		
Title	Your position:		
Title	Your email:		
Are you a First Nations business registered with Supply Nation?	Yes/No	Your telephone number:	
Are you a foreign person as defined in section 4 of the Foreign Acquisitions and Takeovers Act 1975 ?	Yes/No	Total Australian employees (full-time equivalent):	
Office location from where you will be primary servicing this contract:	Total First Nations employees (full-time equivalent):		
	Australian metropolitan	Australian regional	International
Is your business women-owned and women-led?	Yes/No	Is your enterprise veteran-owned AND veteran-led?	
			Yes/No

Supply inputs Call values are to included GST)

<p>Total tender value for the full term including all extension options: \$</p>	<p>Total value of labour/professional services:\$ Include all costs related to time spent by an employee or (sub)contractor</p>
<p>Total value of products:\$ Include the value of products purchased from all businesses</p>	<p>Number of new training contracts for Australian apprentices/trainees: Formal apprenticeship or traineeship contracts to be undertaken during the contract period</p>

First Nations supply inputs (all values are to include GST)

Sum of value of products purchased from any First Nations business:\$

Total value of labour/professional services by First Nations citizens:\$

Value-for-money considerations

<p>Have you consulted Finance's guidance on what constitutes value for money for the Australian Government?</p>	<p>Yes/No</p>
<p>Have you consulted the Australian Government's Sustainable Procurement Guide? Recognising the Australian Government's commitment to sustainable procurement practices, the Commonwealth Procurement Rules require entities to consider the Sustainable Procurement Guide where there is opportunity for sustainability or use of recycled content.</p>	<p>Yes/No</p>
<p>Have you consulted Consideration of broader domestic economic benefits in procurement? Under subsection 4.7 of the Commonwealth Procurement Rules, officials must consider the direct benefits to the Australian economy for procurements above \$4 million (or \$7.5 million for construction services).</p>	<p>Yes/No</p>

Procurement Connected Policies

1. Are you bound by the [Payment Times Procurement Connected Policy](#)?

This policy requires, from 1 October 2021, large businesses (Reporting Entities under the Payment Times Reporting Act 2020) that are awarded Australian Government procurement contracts valued over \$4 million (GST inclusive) to pay their subcontracts valued up to \$1 million within 20 calendar days.

Yes/No

2. Are you bound by the [Shadow Economy- increasing the integrity of government procurement policy](#)?

The policy requires, from 1 July 2019, businesses seeking to tender for Australian Government procurement contracts over \$4 million (including GST) to provide a statement from the Australian Taxation Office showing they have a satisfactory tax record.

Yes/No

All non-corporate Commonwealth entities must comply with the policy.

3. Have you consulted the [Indigenous Procurement Policy](#)?

The Indigenous Procurement Policy, intended to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy, has three key components:

- a target for purchasing from Indigenous enterprises
- a mandatory set-aside to direct some Commonwealth contracts to Indigenous enterprises
- minimum Indigenous participation requirements for certain Commonwealth contracts.

Yes/No

4. Are you bound by the [Workplace Gender Equality Procurement Principles and User Guide](#)?

To be considered for Australian Government procurement contracts valued at or above the relevant procurement thresholds, certain tenderers (employers with 100 or more employees in Australia) must be able to demonstrate they are compliant with the Workplace Gender Equality Act 2012 by supplying a letter of compliance either with their submission to an ATM or before entering into a contract.

Yes/No

5. Are you required to prepare an [Australian Industry Participation Plan](#)?

The Australian Industry Participation (AIP) National Framework applies to major Commonwealth Government procurements (\$20 million or more). Successful tenderers for certain Commonwealth procurements are required to prepare and implement an AIP Plan.

Yes/No

Figure Y: Indicative sourcing strategy checklist for Commonwealth procurements up to \$20m

Project title:

Project manager:

Delegate:

Contracting entity:

1. Does the sourcing strategy include engaging First Nations businesses?

Yes No

If **NO**, then indicate why:

Price

Capability

Capacity

Other _____

2. Does the sourcing strategy include engaging small or medium-sized businesses?

Yes No

If **NO**, then indicate why:

Price

Capability

Capacity

Other _____

3. Does the sourcing strategy include engaging Australian businesses?

That is, not a foreign person as defined in s4 of the *Foreign Acquisitions and Takeovers Act 1975*.

Please refer to the [Buy Australia Plan](#).

Yes No

If **NO**, then indicate why:

Price

Capability

Capacity

Other _____

4. Has the sourcing strategy considered disaggregating the project into smaller packages to maximise competition?

Yes No

If **NO**, then indicate why:

Price

Capability

Capacity

Other _____

5. Has the sourcing strategy considered barriers to entry, such as costly preparation of submissions, that may prevent small or First Nations businesses from competing?

Yes No

If **YES**, please specify how these barriers are to be addressed: _____

If **NO**, please explain why not: _____

6. Does the sourcing strategy consider environmental sustainability and use of recycled content?

Please refer to the Australian Government's [Sustainable Procurement Guide](#).

Yes No

If **NO**, then indicate why:

Price

Capability

Capacity

Other _____

7. Does the sourcing strategy consider broader domestic economic or social benefits?

Please refer to Finance's [Consideration of broader domestic economic benefits in procurement](#).

Yes No

If **NO**, then indicate why:

Price

Capability

Capacity

Other _____

Figure Z: Indicative outcomes checklist for Commonwealth procurements up to \$20m

Project title:

Project manager:

Delegate:

Contracting entity:

1. Did the evaluation of offers consider opportunities for First Nations business?

D Yes **No**

If **NO**, then indicate why:

D Price

D Capability

D Capacity

D Other _____

2. Did the evaluation of offers consider opportunities for small or medium-sized business?

D Yes **0** No

If **NO**, then indicate why:

D Price

0 Capability

D Capacity

D Other _____

3. Did the evaluation of offers consider opportunities for Australian businesses?

That is, not a foreign person as defined in s4 of the *Foreign Acquisitions and Takeovers Act 1975*.

Please refer to the [Buy Australia Plan](#).

D Yes **0** No

If **NO**, then indicate why:

D Price

0 Capability

D Capacity

D Other _____



4. Did the evaluation of offers consider opportunities for disaggregating the project into smaller packages to maximise competition?

Yes

If **NO**, then indicate why:

Price

Capability

Capacity

Other _____

5. Did the evaluation of offers consider barriers to entry, such as costly preparation of submissions, that may prevent small or First Nations businesses from competing?

Yes

If **YES**, please specify how these barriers are to be addressed: _____

If **NO**, please explain why not: _____

6. Did the evaluation of offers consider environmental sustainability and use of recycled content?

Please refer to the Australian Government's [Sustainable Procurement Guide](#).

Yes

If **NO**, then indicate why:

Price

Capability

Capacity

Other _____

7. Did the evaluation of offers consider broader domestic economic or social benefits?

Please refer to Finance's [Consideration of broader domestic economic benefits in procurement](#).

Yes

If **NO**, then indicate why:

Price

Capability

Capacity

Other

8. Has a framework been put in place for communicating and receiving feedback?

Yes No