

Procurement Consultation  
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28 October 2024

Dear Procurement Consultation Secretariat

**Re: Defining an Australian Business for Commonwealth Procurement**

### Introduction

The Council of Small Business Organisations (COSBOA) is the peak industry body representing the voice of Australia's 2.5 million small businesses. Small businesses have faced barriers to access Commonwealth contracts through the process being overly complex and difficult to navigate. According to the Australian Small Business and Family Enterprise Ombudsman's Procurement Inquiry Report (Procurement Report), small and medium enterprises (SMEs) account for \$20.5 billion worth of procurement contracts by value (27%) and small business suppliers account for a further \$8 billion (11%)<sup>1</sup>.

The definition of small business varies depending on which Government entity or legislation is considering a small business:

- **Australian Bureau of Statistics:** a small business is defined as having fewer than 20 employees.
  - Micro-businesses are defined as businesses with 1-4 employees
  - Other small businesses are defined as businesses with 5-19 employees.
- **Australian Taxation Office:** a small business is defined by an aggregated annual turnover of less than \$10 million.
  - For certain tax offsets, the threshold is less than \$5 million.
  - Micro-businesses are those with a turnover of less than \$2 million
- **Australian Securities and Investment Commission:** a small proprietary company under the *Corporations Act 2001*<sup>2</sup> is defined as meeting at least two of the following:
  - Consolidated revenue under \$25 million.
  - Consolidated gross assets under \$12.5 million.
  - Fewer than 50 employees.
- **Fair Work Commission:** a small business is defined as having fewer than 15 employees.

The varying definitions impact a small business' ability to navigate a complex legislative environment which creates an over-complicated operational environment. We note that Commonwealth Procurement Rules (CPRs) define SMEs as an Australian or New Zealand firm with fewer than 200 full-time equivalent employees, whilst defining a small business as a business with fewer than 20 full-time equivalent employees.

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<sup>1</sup> Australian Small Business and Family Enterprise Ombudsman, Procurement Inquiry Report, p 4.

<sup>2</sup> *Corporations Act 2001* s45A(2).

COSBOA supports a clear and consistent definition of “an Australian business” and notes the relevance of the ‘Australian’ portion as in addition to the existing SME definition as highlighted in the consultation paper.

#### Consultation Paper Questions

COSBOA notes the questions in the paper but given the broad breadth and nature of the small business cohort would need to seek engagement at further length with our membership to provide more comprehensive responses, particularly regarding any inadvertent consequences which might result in exclusion of small businesses in the procurement space.

COSBOA submits that items 1-4 are all potentially legitimate issues which could be considered when trying to define an Australian business. However, using any particular determinant as a definitive marker of status could produce unintended consequences. For example, many small businesses are sole traders, not incorporated and do not employ other individuals, particularly in the construction and consulting areas. Therefore, requiring status as an employer as a means of defining an Australian business definition could exclude many legitimate small businesses from procurement contracts.

Similarly, the paper also queries whether a definition of “Australian business” should require GST registration. We understand that there are many Australian small businesses which are not incorporated and have a turnover of less than \$75,000 per annum. Whilst those businesses may not all necessarily be pursuing government contracts, it would be inadvisable to set a precedent that an “Australian business” needs to be earning more than \$75,000 or alternatively to encourage by default GST registration if it is not required.

Perhaps a sensible approach would be to take an “either/or” approach to several factors which might be considered as creating eligibility to be an “Australian business”. In any event, an ABN should arguably be a minimum mandatory baseline requirement for any “Australian business”.

#### Conclusion

The very broad task cultivating an appropriate definition of Australian business in the context of SME’s is not straightforward. COSBOA would be keen to engage further with the Department in considering in more depth some of the proposals and would appreciate the opportunity to have more time to consult with our members about the implications, inadvertent or otherwise which could impact or make more difficult for Australian small businesses’ ability to engage in procurement contracts.

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