



Electrical Trades Union

# *Submission: Consideration of Economic Benefits in Procurement*

JULY 2024

## About the ETU

The Electrical Trades Union of Australia ('the ETU')<sup>1</sup> is the principal union for electrical and electrotechnology tradespeople and apprentices in Australia, representing well over sixty-thousand workers around the country.

## Acknowledgement

In the spirit of reconciliation, the ETU acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples today.

## Recommendations

**Recommendation:** Tenderers and project proponents should be assessed on their prior performance and outstanding instances of non-compliance to qualify to submit a tender. The requirements should be commensurate to the value of procurement, with value thresholds aligned to thresholds under other government procurement policies (e.g. the Australian Skills Guarantee).

**Recommendation:** the guidance must be amended to include advice on the use of weighted criteria in order to ensure that government procurement delivers on a range of policy objectives. The introduction of weighted criteria should be commensurate with the value of procurement and may be specific to the policy objectives in diverse sectors.

**Recommendation:** the current guidance must provide advice on how the determination of economic benefits intersects with the requirements of other procurement policies. Delivering on broader policy objectives and targets, as established under other procurement policies, should take precedence over a narrow assessment of economic benefits, and some criteria should be considered threshold criteria that eligible proponents must meet to qualify to submit a tender.

**Recommendation:** The ETU supports the inclusion of tenderer commitments regarding economic benefits into the contract as a measurable KPI. These must be accompanied by monitoring and enforcement mechanisms, including penalties for breaches of merit criteria.

## Key Issues for ETU Members

The ETU welcomes the opportunity to make a submission to this consultation regarding the newly updated Guidance on the Consideration of Broader Economic Benefits in Procurement. This guidance was last updated in July 2022 and applies to government procurements above \$4 million (\$7.5 million for construction services).

ETU members are employed on a range of Commonwealth Government procured and financed projects. Our members have reported several issues on government financed projects, including:

1. Non-payment of superannuation
2. Non-payment or underpayment of wages
3. Unsafe working conditions

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<sup>1</sup> Being a division of the CEPU, a trade union registered under the *Fair Work (Registered Organisations) Act 2009* (Cth).

In addition to instances of non-compliance, the ETU has members on government financed projects where wages and conditions are well below industry-norms and/or employers are failing to employ apprentices. This includes projects that are critical to delivering the government's decarbonisation and emissions reductions targets, such as Project Energy Connect or the Hunter Power Project.

This is contributing to a loss of social licence for these projects and resulting in ongoing shortages in the electrical workforce. Jobs and Skills Australia (JSA) predicts that Australia will have a shortage of 42,500 electricians under a "Renewable Energy Superpower" scenario. Attracting, training, and retaining the clean energy workforce is critical to both a range of government priorities and, indeed, Australia's energy transition. Put simply, the failure of government projects to require minimum apprentice ratios and industry-standards places the achievement of broader policy objectives at risk.

Any revision of the procurement rules must look beyond strict financial metrics and consider how government procurement and financing can be used to deliver on its broad range of policy objectives. For this reason, this submission to how the procurement rules and specifically the "Guidance of Economic Benefits" interacts with other government procurement policies, including the Australian Skills Guarantees, to maximise the contributions that government projects can make to delivering a broad range of policy objectives.

In providing feedback on this guidance document and its implementation within the broader procurement rules, we note that this guidance and the rules themselves do not apply to various important procurement activities and entities, such as Government Owned Corporations, Special Investment Vehicles (SIVs), etc. Significantly, these entities and financing vehicles have become one of the primary ways that government finances and delivers the projects that employ ETU members.

As such, we urge the government to consider how any updated Commonwealth Procurement Rules interact with, and provide guidance on, project delivery through these other entities to ensure that all government finance delivers on the government's workforce and other policy objectives.

## Ensuring Compliance

P. 4 of the guidelines includes a process map outlining the various stages for assessment and contracting of a tender. The first stage "conditions for participation" is currently limited to "ensuring that a supplier has the legal, technical and financial abilities to fulfil the project. There is nothing at this step that requires procuring entities to conduct a detailed assessment of potential suppliers past performance, such as:

- Workers' compensation history
- Industrial relations history
- Compliance with Modern Slavery provisions
- OH&S compliance history
- Superannuation compliance history.

We also note that under the recently revised Commonwealth Procurement Rules, all suppliers will be required to comply with the government's *Supplier Code of Conduct* from the 1 July 2024, through contractual arrangements. However, there is no process to check compliance as part of the first stage of the tender process to exclude potential tenderers exhibiting current and/or systemic non-compliance.

We note that the federal government has made commitments to establish a *Secure Australian Jobs Code* as part of its *Buy Australia Plan*, to "prioritise secure work in government contracts and ensure that government purchasing power is being used to support businesses that engage in fair,

equivalent and ethical and sustainable practices.<sup>2</sup>

Following best practice state legislation, a two-gate system should be established, to require companies to demonstrate their compliance with industrial legislation prior to being allowed to tender. Only once companies have met this threshold to tender for a project, should their tender be assessed, taking into account both their ability to deliver the procurement activity *and* deliver broader value for money for government.

Following state legislation, any two-gate system should be limited to procurement over a certain value to ensure that compliance is proportionate to the value of the contract.

**Recommendation:** Tenderers and project proponents should be assessed on their prior performance and outstanding instances of non-compliance to qualify to submit a tender. The requirements should be commensurate to the value of procurement, will value thresholds aligned to thresholds under other government procurement policies (e.g. the Australian Skills Guarantee).

## Weighted criteria & the consideration of “economic benefits”

The guidance outlines which activities Commonwealth officials may consider domestic economic benefits. Significantly, the case studies provided in the 2022 guidance suggest that the only consideration in ranking tenderers on this metric is economic value. In other words, if the assessed monetary value is identical, the value of taxes paid in Australia and employs 100 staff would be ranked as highly as a tenderer who partners with indigenous businesses to offer apprenticeship programs.

The ETU does not believe that economic benefit should be assessed separately or without consideration of how the proposed tender will support government to deliver on its broader policies and objectives, for example, addressing workforce shortages in clean energy trades.

We note, furthermore, that neither the guidance nor the Commonwealth Procurement Rules provide advice on how “economic benefit” be assessed as part of broader “value for money” criterion. The ETU argues that value for money, which takes into account financial and non-financial measures, is a better principle for measuring how government procurement and financing can be used to deliver on a broader range of government policy aims and objectives, without restricting procuring entities to taking the lowest cost tender or proposal or only considering financial metrics.

Any introduction of multiple, weighted criteria must be proportionate to the size of the procurement, with potential thresholds determined by those already used in other procurement policies, such as the Australian Skills Guarantee or Australian Industry Participation Plan (AIPP).

**Recommendation:** the current guidance must provide advice on how the determination of economic benefits intersects with the requirements of other procurement policies. Delivering on broader policy objectives and targets, as established under other procurement policies, should take precedence over a narrow assessment of economic benefits, and some criteria should be considered threshold criteria that eligible proponents must meet to qualify to submit a tender.

## Intersection with other metrics

The government has put in place several procurement policies that are intended to signal government ambition and support it to deliver on its broader policy aims and objectives through

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<sup>2</sup> Treasury, 2023, *Working Futures: The Australian Government’s White Paper on Jobs and Opportunities*, <https://treasury.gov.au/sites/default/files/2023-09/p2023-447996-09-roadmap.pdf>, p. 249.

specially targeted procurement practices. For example, the Australian Skills Guarantee is designed to send a clear message to the private sector that it needs to lift its ambitions with regards to training apprentices and expanding Australia's trade workforce in construction.

The current guidance does not include any information on how consideration of economic benefits should be assessed alongside these other procurement policies. It is the view of the ETU, that these policies should be assessed as standalone criteria and weighted significantly higher than any pure consideration of economic benefit. This recognises that delivering on broader policy objectives may significantly increase the cost of a tender relative to other tenders, but may deliver significant social benefits, or even be a requirement of ongoing delivery of government projects – as in the case of training apprentices.

**Recommendation:** the current guidance must provide advice on how the determination of economic benefits intersects with the requirements of other procurement policies. Delivering on broader policy objectives and targets, as established under other procurement policies, should take precedence over a narrow assessment of economic benefits.

### Monitoring, compliance and enforcement

The Guidance does not provide advice on the monitoring, compliance and enforcement of the economic benefits proposed by tendering companies. The guidance should be amended to include clear and consistent guidance to agencies on how they perform these functions on companies who are awarded tenders, and the process of ongoing auditing of companies and procuring agencies. Any monitoring and compliance provisions should be proportionate to the value of the tender.

The ETU has observed that while government procurement often includes significant penalties for suppliers who fail to deliver goods and services in the contract, there are few – if any – penalties for suppliers who fail to deliver on other elements of the contract, including the employment of minimum numbers of apprentices, commitments regarding 'economic benefit' etc. The government must develop similar enforcement penalties for breaches of merit criteria – in more severe cases, this could include being prevented from tendering for future government contracts.

**Recommendation:** The ETU supports the inclusion of tenderer commitments regarding economic benefits into the contract as a measurable KPI. These must be accompanied by monitoring and enforcement mechanisms, including penalties for breaches of merit criteria.