



**Small Business
Development Corporation**

Our ref: D24/7132

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To whom it may concern

PUBLIC CONSULTATION - GUIDANCE ON THE CONSIDERATION OF BROADER ECONOMIC BENEFITS IN PROCUREMENT

Thank you for the opportunity to comment on the Public Consultation regarding *Guidance on the Consideration of Broader Economic Benefits in Procurement* (the **Consultation**).

The Small Business Development Corporation (**SBDC**) is an independent statutory authority of the Government of Western Australia (**WA**), established to support and facilitate the growth and development of small businesses in the State¹.

Under the leadership of the WA Small Business Commissioner, the SBDC provides a range of services to assist and empower small business operators in the State when they are making crucial decisions over the course of their business lifecycle, and when they are faced with uncertainty or unfairness in their business, particularly when dealing with another party.

These services are tiered based on the level of support needed, and include:

- information and guidance through online channels (including the SBDC's website), workshops, business advice and outreach services;
- dispute resolution service, which includes pre-mediation case management and mediation if required; and
- through the Investigations and Inquiry Unit, the SBDC can examine behaviour negatively impacting on the commercial interests of small businesses, particularly when there is a power imbalance between parties.

Through these various touchpoints with small businesses, along with regular engagement with small business and industry representatives, the SBDC is able to monitor the WA small business landscape and constructively contribute to government and parliamentary reviews and policy development. To that end, the SBDC's feedback on the Consultation follows.

¹ The views presented here are those of the SBDC and not necessarily those of the WA Government.

When referring to a small business, the SBDC generally uses the standard Australian Bureau of Statistics (**ABS**) definition of small business, which is any non-employing business or a business employing fewer than 20 people. This submission adopts this definition of small business. It should be noted however, that for the purposes of providing the SBDC's services, a more broader definition is applied under the *Small Business Development Corporation Act 1983* to ensure as wide reach of services as possible. The SBDC is aware that the *Commonwealth Procurement Rules 2024* (the Rules) defines Small and Medium Enterprises (**SMEs**) as:

an Australian or New Zealand firm with fewer than 200 full-time equivalent employees. When assessing the number of employees a firm has, employees of any associated entities (as defined in s 50AAA of the Corporations Act 2001) to the firm are included. Associated entities to a firm include a firm's parent company, a firm's subsidiaries, and any related bodies corporate to the firm.

This submission will focus on the WA small business perspectives in response to:

- Consideration of Broader Economic Benefits in Procurement
- Consultation issues for consideration
 - Should the guidance be expanded to cover any additional issues relating to the practical implementation of the policy?
 - Would there be benefit in a more detailed discussion of retained economic benefits?

WA small businesses

When considering the small business perspective in Western Australia, the size and geographic diversity of the state needs to be recognised. About one third of the nation's landmass, Western Australia covers 2.5 million square kilometres and is home to 2,905,922 people and 238,907 actively trading small businesses². Nearly two thirds (62.8 per cent) of these businesses are non-employing.

It is a state of extremes and distance, with regional and remote businesses faced with many challenges associated with their location. These challenges can often relate to high costs related to transport and commercial premises, a shortage of workers and associated housing, and unreliable telecommunications. For this reason, these businesses are generally unable to provide services at the same cost as their metropolitan counterparts. It is therefore essential that all government procurement decisions to be made with economic (and regional) value in mind.

Procurement, and the challenges experienced by small businesses when accessing State and Commonwealth contract opportunities, is an issue often heard by the SBDC.

In particular, complaints refer to:

- The low visibility of procurement opportunities, making it difficult for small businesses to find suitable contracts.

² Australian Bureau of Statistics 2024, *Counts of Australian Businesses, including Entries and Exits*, cat. no. 8165.0 ABS.

- The complexity of procurement processes which can be overwhelming for smaller entities with limited resources.
- Large, bundled procurement contracts or work packages which often put small businesses at a disadvantage when competing for tenders.
- Prescriptive contract requirements which can be difficult for small businesses to meet, further limiting their participation in government projects.

Demonstrating these barriers is the number of tenders awarded to small businesses in WA. From 30/06/2022 to 27/06/2024, 10,065 contracts were awarded to 12,130 contractors (multiple contractors may be appointed to the same contract)³. Of this number of awarded contractors, 10,863 were WA-based and 2,687 small business and WA-based. Even though in WA small businesses represent 96.9 per cent of all businesses, only 22 per cent of WA Government tenders were awarded to small businesses over a period of two years. There are barriers in Commonwealth procurement, as only 11 per cent by value of Australian Government procured goods and services were from the small business suppliers in 2022-23⁴.

Improvements by government entities that reduce barriers for small businesses to submit tenders would foster growth, entrepreneurship, and competition while enhancing sovereign capability and ensuring better value for taxpayers. The SBDC was pleased to read initiatives outlined in the Consultation issues for consideration that could reduce barriers for small businesses.

Consideration of Broader Economic Benefits in Procurement

The SBDC was pleased to read several aspects of the *Consideration of Broader Economic Benefits in Procurement* document that will reduce disadvantages experienced by small businesses when tendering for Commonwealth Government tenders. In particular, the commitments to source at least 20 per cent of all procurement by value from SMEs and 35 per cent of procurements valued up to \$20 million (point 2).

Complex procurement processes was noted above as a challenge for small businesses. Therefore, it was reassuring to read the guidance for government procurement officers that recommends the type and amount of information collected should be commensurate with the scale, scope and risk of the procurement; and it should not introduce excessive red tape and cost for tenderers bidding for government contracts (point 11). Also of relevance is the recognition of the amount of effort required to complete documentation and that small businesses have fewer resources than larger businesses to demonstrate their capability to meet the requirements. Procuring officials should be careful to ensure that the requirement to demonstrate economic benefit does not inadvertently disadvantage SMEs and that officials should be mindful that additional requirements in tender documentation could result in a greater burden on SMEs than larger businesses (Point 12).

³ WA Department of Finance, <https://www.tenders.wa.gov.au/watenders/index.do>, accessed 28 June 2024.

⁴ Australian Small Business and Family Enterprise Ombudsman, 16 May 2024. <https://www.asbfeo.gov.au/media-centre/media-releases/small-business-ombudsmans-procurement-report-released>

Should the guidance be expanded to cover any additional issues relating to the practical implementation of the policy?

The SBDC believes the *Guidance on the Consideration of Broader Economic Benefits in Procurement* could expand on the Conditions for Participation that features on the process map following 'Point 19: Procuring officials may consider economic benefits that deliver sustainable improvements to the Australian economy, such as to Australia's industry capabilities'. Specifically, the technical aspect of 'Conditions for Participation: limited to ensuring that a potential supplier has the legal, **technical** and financial abilities to fill the procurement' could benefit from additional guidance and direction.

In addition to procurement barriers already noted, is cybersecurity, which is not well understood or adopted in small businesses across Australia⁵. Anecdotally, the SBDC has heard of the burden of cybersecurity levels required for small businesses to tender for the Office of Defence Industry Support related contracts in WA. The cybersecurity levels required was at a minimum implementing the Essential Eight, which comprises of essential mitigation strategies and is recommended by the Australian Signals Directorate (ASD)⁶. The Essential Eight Assessment Course designed by the ASD Australian Cyber Security Centre delivered in partnership by TAFEcyber costs \$2,000, necessitates 18 hours of face-to-face training and has the entrance requirement of technical ICT knowledge⁷. Following time and resources spent on the course is the implementation of the mitigation strategies, which will require an in-house ICT officer or external service provider. For a small business this may be out of reach and may not be necessary for the works or service they would deliver. As the majority of small businesses in WA employ less than four workers (87.2 per cent), it is almost guaranteed that these businesses would need to engage the services of an ICT expert to implement the Essential Eight mitigation strategies before being eligible to apply for a defence related tender. Also to note is the lack of consistent telecommunications in regional areas of WA⁸, potentially disadvantaging even more businesses that do have access to reliable telecommunications to implement Essential Eight. It is assumed that a similar technical requirement may be part of the Conditions of Participation for Commonwealth contracts.

The Commonwealth Procurement Rules 2024 (CPR) 8.4 states:

8.4 As a general principle, risks should be borne by the party best placed to manage them; that is, *relevant entities* should generally not accept risk which another party is better placed to manage. Similarly, when a *relevant entity* is

⁵ Cyber Security and Australian Small Businesses (ASD 2020) reported that of national surveyed 1763 small to medium businesses, almost half rated their cyber security understanding as average' or 'below average' and had poor cyber security practices.

⁶ Australian Signals Directorate's Australian Cyber Security Centre
<https://www.cyber.gov.au/resources-business-and-government/essential-cyber-security/essential-eight>

⁷ <https://www.tafecyber.com.au/essential-eight>

⁸ In 2021, the WA Government carried out community consultation on digital matters and produced the report, *Digital Inclusion in WA: What We Heard*. The report found that 30 per cent of survey respondents that experienced at least one difficulty or unmet need in relation to connectivity, affordability, skills, or design of digital technology were from regional Western Australia.

best placed to manage a particular risk, it should not seek to inappropriately transfer that risk to the *supplier*.

a. *Relevant entities* should limit insurance requirements in *contracts* by reflecting the actual risk borne by *suppliers* in contractual liability caps.

b. *Suppliers* should not be directed to take out insurance until a *contract* is to be awarded.

Similar to insurance, the SBDC proposes that small businesses could adopt technical aspects such as cybersecurity practices after a contract is awarded.

Would there be benefit in a more detailed discussion of retained economic benefits?

It would be extremely beneficial to provide detailed examples of what a successful tender includes to report the correct economic benefits. *Guidance on the Consideration of Broader Economic Benefits in Procurement* point 13 states that only direct effects, or first round economic effects to the Australian economy are considered in the evaluation. What direct effects looks like in different sectors would provide solid examples for small businesses to work from, ensuring they are writing a competitive tender. To ensure that small businesses are not placed at a disadvantage, consideration should also be given to the requirement for a checklist or table to be completed that captures all the economic factors (for example, employment, suppliers, sub-contractors), rather than the requirement for a written statement.

Concluding remarks

The SBDC supports the intent of reducing barriers for small businesses in the *Guidance on the Consideration of Broader Economic Benefits in Procurement*. To remove even more barriers for small businesses winning Commonwealth tenders, the SBDC proposes that Conditions for Participation such as cybersecurity be borne by other entities, as well as the provision of detailed examples of first round economic effects.

Thank you for the opportunity to provide comments to this inquiry. If you would like to discuss this submission in more detail, please contact [REDACTED] on (08) 6552 3300 or at [REDACTED]

Yours sincerely

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2 July 2024