



Department of Finance
One Canberra Avenue
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Australia

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Subject: Response to Request for Public Consultation on Strengthening the Guidance on the Consideration of of Broader Economic Benefits in Procurement During Procurement Activities

Vault, an Australian company dedicated to providing secure and sovereign cloud services, is honoured to contribute to the government's commitment to reinforce the Commonwealth Procurement Rules (CPRs). Vault is a strong proponent of the need to improve legislation, regulations and government policy on procurement and we recognise the importance of a fairer, more transparent, clearer, and stronger guidance in the Commonwealth Procurement Rules (CPRs).

We understand that the new Commonwealth Procurement Rules (CPRs) have been released on 17th June 2024, which reinforces the Government's commitment to sourcing from Small and Medium Enterprises (SMEs) and opening the door to more opportunities for businesses that contribute to Australia's economy. The purpose of this document is to put forward suggestions that encourage better tender processes and provide a more level playing field for Australian vendors in government procurement.

Disparities and Discrimination Against Australian Companies

Australian companies face disparities in legal protections due to a lack of legal and administrative means to address and seek remedy for discrimination. Unlike foreign companies, Australian firms lack adequate avenues available to address and rectify discriminatory practices they encounter, highlighting a critical gap in the current regulatory framework. This disparity is exemplified by the higher tax rates imposed on domestic companies relative to their foreign counterparts¹ based in low tax jurisdictions, which often leads government agencies to often favour lower-cost solutions offered by foreign firms. This creates a significant imbalance in legal protections and rights, resulting in an oversight or gap in the current legal framework.

This disparity not only undermines the competitive position of Australian companies but also highlights a need for reforms to ensure equitable access to legal remedies and protections for all businesses operating within Australia, alongside comprehensive reviews of tax policies to eliminate biases and ensure fair taxation practices across all businesses. We also proposed enhancing transparency measures and robust enforcement mechanisms to monitor compliance and address discriminatory practices effectively. By implementing these solutions, Australia can foster an environment that supports the growth and sustainability of its domestic enterprises, enhancing economic resilience and promoting equitable business practices both domestically and globally.

¹ <https://www.abc.net.au/news/2023-11-05/lots-of-companies-legally-pay-no-tax-why-do-taxpayers-give-them/103059742>



Recommendations:

1. Australian companies must have non-discriminatory treatment on the basis that they are Australian owned.
2. Form a body that addresses complaints from Australian companies.

Equitable Business Practices under the US-Australia Free Trade Agreement

Despite the benefits and reduced trade barriers facilitated by the Free Trade Agreement (FTA) between the United States and Australia, the US Government is hesitant to engage in business with Australian companies unless these companies re-domicile as American entities. Colocally, this is referred to as “America First”, whereby the US retains more economic benefit to the US taxpayer. While within the enforceable limits, or at least what is practically enforced of the FTA, this preference for re-domiciliation presents a significant barrier for Australian companies seeking to expand their market presence in the US. Vault has first-hand experience of this where the US Government directly sighted the need to comply with America First and Made in America requirements.

When Australia does not implement the FTA with an “Australia First” approach it results in an asymmetric procurement system that harms Australia’s economy and National Security. In the Technology sector, the current Australian trade deficit is an empirical evidence that this is a significant issue.

Recommendation 3: Match the United States Free Trade Agreement implementation.

Frameworks for Holistic Evaluation in ICT Procurement

We propose the following guidance on how to calculate Broader Economic Benefits in Procurement:

Evaluation Criteria	All ICT tenders must have a 20% Evaluation Criteria that measures the Broader Economic Benefits to Australia
Measure	The seller can propose the value that Australia would reasonably gain by their solutions being purchased, excluding the benefits of the solution being procured (which are evaluated separately)
Non-SME including MNC method of calculation	<p>The Broader Economic Benefits is the sum total of the following as a result of the procurement:</p> <ul style="list-style-type: none"> ● The estimated direct pay of Australians including temporary and permanent residents ● The estimated direct tax paid within Australia ● National wealth creation - the estimated increase in value to market capitalisation of Sovereign Australian companies based on industry market valuations as a result of direct spend ● The estimated direct spend with Australian companies



	<p>that are not the seller</p> <p>Where 1/10th of the Broader Economic Benefits is divided by the Total Procurement Value. (The 1/10th adjustment is means that the “multiplier effect” is not recognised above 10x)</p> $\frac{\text{Retained Economic Benefit}}{\text{Total Procurement Value}} \times 0.1$
Non-SME including foreign owned supplier worked examples	<p>At the start of the Financial Year an independent party would determine the the public market (ASX where available) sector rates for ICT valuations, for example:</p> <ul style="list-style-type: none"> • Resellers: 0.1 x revenue • System Integrators: 1 x revenue • SaaS: 5 x revenue • IaaS: 15 x revenue • Data Centre: 30 x revenue <p>For a \$1m procurement example of an Australian based SaaS service, the Broader Economic Benefits would be the sum of:</p> <ul style="list-style-type: none"> • Pay, \$300k in implementation staffing costs • Tax, \$100k in taxes • Wealth, \$4.75m (\$0.95m at a 5x multiple) • Spend, \$50k on third party contractors <p>This creates a total of \$5.2m in Retained Economic Benefit to Australia.</p> <p>Where the total procurement value is \$1m and the Broader Economic Benefits is:</p> <ul style="list-style-type: none"> • \$0.5m the seller would get 5% of the evaluation criteria • \$1.0m the seller would get 10% of the evaluation criteria • \$2.0m the seller would get 20% of the evaluation criteria • \$5.2m the seller would get 52% of the evaluation criteria • \$10.0m the seller would get 100% of the evaluation criteria
Australian SME method of calculation	<p>If the seller is an Australian owned SME (with Australian control) the seller is eligible for the following Retained Economic Benefit calculation:</p> $\frac{\text{The SME Component}}{\text{Total Procurement Value}}$ <p>where the SME Component is the total spend on Australian SMEs less any component that is subcontracted to a MNC or any components that are resold from an MNC</p>
Australian SME worked examples	<p>Where the total procurement value is \$1m and the SME Component is:</p> <ul style="list-style-type: none"> • \$0.1m the seller would get 10% of the evaluation criteria • \$0.5m the seller would get 50% of the evaluation criteria



	<ul style="list-style-type: none"> • \$1.0m the seller would get 100% of the evaluation criteria
Transparency	The Government will publicly disclose the calculation for each procurement

Other factors that could be considered on a more subjective basis:

- Intellectual Property (IP) Creation
- Domestic Research And Development (R&D)
- Supply Chain Resilience

This calculation of Broader Economic Benefits would be discriminatory against companies that choose to pay less tax in Australia through mechanisms like transfer pricing and companies that choose not to create or keep value in Australia. An Australian company or a foreign company can equally choose to contribute to Broader Economic Benefits or choose to minimise costs through the use of other jurisdictions. Therefore, this Broader Economic Benefits calculation affords non-discriminatory treatment of foreign suppliers, goods and services while also affording non-discriminatory treatment to Australian companies.

Recommendations:

4. Publish Guidance on the Consideration of Broader Economic Benefits in Procurement focuses on calculable and measurable factors.
5. Fund a team that can assist agencies calculating Broader Economic Benefits

Conclusion

Efforts to effectively maximise economic benefits from Commonwealth government procurement involve enhancing guidance for value-for-money assessments, ensuring fair recognition of ICT suppliers' contributions without geographic discrimination. This approach supports Australian-owned businesses, aligns with procurement rules, and aims to strengthen supply chains, foster innovation, and drive sustainability. Implementing these measures will create clearer, fairer procurement processes, benefiting local suppliers, taxpayers, and promoting innovation in government procurement practices.

Yours sincerely,



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CEO