



EUROPEAN UNION

DELEGATION TO AUSTRALIA

Trade and Economic Affairs Section

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Canberra, 2 July 2024

Australian Government
Department of Finance
Email: gptrade@finance.gov.au

Subject: Submission from the European Union to the Public Consultation of the Australian Government - Department of Finance on Guidance on the Consideration of Broader Economic Benefits in Procurement

Dear Sir /Madam,

The EU is grateful for the opportunity to submit comments to this draft, which contains some elements that raise significant doubts and concerns. The EU would kindly ask the Australian authorities to further clarify such elements, so as to ensure a seamless implementation of the Australian commitments on government procurement towards the EU.

In this regard, the EU notes, first, that pursuant to Article IV (6) of the Government Procurement Agreement, “[w]ith regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset”. “Offsets” are defined in Article I(1) of the same agreement as “any condition or undertaking that encourages local development [...], such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement”.

This is why the EU is concerned that the draft (point 7) states that “*economic benefits [...] result when the goods or services being procured:*

- *make better use of Australian resources [...] (for example employing people who would otherwise be under or unemployed [or] using spare industrial capacity [...]);*
- *otherwise increase productivity (for example by adopting new know-how or innovation, or enabling more people to acquire in-demand skills, or ensuring that resources are allocated to sectors in which Australia has a comparative advantage); [...]*
- *[...] enhancing key industry sectors through the Department of Defence’s Sovereign Industrial Capability Priorities.*

In addition, the draft (point 8) also states that “[a]n increase in productivity-enhancing technology development and adoption can also deliver economic benefit, for example through:

- *research and development [...];*
- *transfer of technology; [...]*
- *engaging [...] persons with a disability;*
- *traineeships or apprenticeships in areas of skills shortage; or*
- *boosting a supplier's international competitiveness [...]*".

The EU is concerned that the above criteria seem to require a degree of contribution to the development of the Australian economy (i.e. local development) and therefore risk constituting offsets within the meaning of Article I(1) of the GPA.

Furthermore, the EU notes that the draft lists, among others, the following examples of how suppliers can provide an economic benefit to the Australian economy (point 20):

- building, leasing or procuring infrastructure that benefit Australian communities;
- providing skills and training that benefit Australian communities;
- employing workers in Australia;
- employing apprentices or trainees in Australia;
- paying taxes in Australia;
- contributing to positive social outcomes in Australian communities, such as engaging unemployed people;
- developing and adopting innovative products or practices that benefit Australian communities;
- creating export opportunities for Australian goods and services;
- using goods and services from a business that provides services of persons with a disability
- developing Australian industry capabilities or industrial capacity.

The EU is of the view that companies based in Australia will be substantially more likely to fulfil some of the above criteria and examples than EU-based companies. In some cases, only companies based in Australia could fulfil the criteria (e.g. "paying taxes in Australia"). This means that if Australian contracting authorities took into consideration these criteria and relied on these examples, they would be very likely inclined to favour locally established companies. This outcome would raise significant doubts and concerns about the implementation of Australia's GPA commitments towards the EU.

The EU finds it useful, in this connection, that the draft clarifies that "*the policy operates within the context of relevant national and international agreements and procurement policies to which Australia is a signatory*" (point 3). However, whilst the EU welcomes this clarification, it respectfully submits that it should be further developed to ensure that contracting authorities conduct their activities in the area of covered procurement in full respect of the prohibition of offsets and also avoid all, formal or *de facto*, discrimination against EU suppliers.

To this end, the EU considers that the statement included in points 6 and 12 of the draft according to which "[Australian procurement commitments] *require officials [...] to treat all potential suppliers equitably and not to discriminate against suppliers on the basis of their size, location or ownership*" could be usefully clarified. The EU believes that, in its current drafting, contracting authorities could understand this statement as meaning that, when assessing the economic benefit, they should apply the same "formal criteria" to the offers presented by e.g. a company based in Australia and a company based in the EU. This would require examining in a formally non-discriminatory manner, how both offers contribute to the Australia's local development. The EU considers that the draft should, instead, specify that for all covered

procurement, contracting authorities should not take into account the contribution to the local development of Australia.

The EU therefore respectfully requests that the Australian authorities **make it clear in the draft that, for covered procurement, contracting authorities should not apply the “economic benefit” test.**

Furthermore, the EU would like to stress the importance of open procurement frameworks for the world economy and bilateral trade relations between Australia and the EU. The EU is concerned that Australia’s decision to favour offers contributing specifically to its own local development could contribute to closing the Australian procurement market to international competition for both covered and non-covered procurement. This could potentially call for a similar approach by other trading partners and would lead to a more fragmented international procurement market, creating inefficiencies and less value for money across all world economies.

Yours faithfully,

Joanna Pochtowska
Head of Section - Trade and Economic Affairs