

Disconnected Procurement

Submission on the draft Procurement Connected Policy
Document by the Australian Council of Trade Unions.

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Introduction

The ACTU welcomes the opportunity to provide feedback on the draft Procurement Connected Policy that the Treasury has produced as one outcome of the Shadow Economy Taskforce.¹ The ACTU is the peak body for Australian unions and represents 1.6 million union members Australia-wide. Australian unions are still concerned that the Commonwealth Procurement rules' narrow focus on cheapest price rather than the broader economic and social benefits of procurement, and the current Government's agenda to attack procurement policies that support local business, is disadvantaging local industry, costing jobs and resulting in exploitation of workers and breaches of industrial, superannuation and taxation law. It may also compromise Australia's sovereignty, through its effects on local capacity to sustain defence materiel. Even worse, this attitude squanders the opportunity to use government expenditure of taxpayer's money to actually raise standards for Australian workers and to support and increase secure, local jobs.

While we believe that some of the measures aimed at preventing companies with poor tax records from participating in government procurement, as outlined in the draft policy, represent good first steps, the future of Australian industry requires government procurement that goes beyond this and implements a procurement system that supports local content and good quality local jobs. The Government must use their procurement decisions, and other contractual arrangements with the private sector (such as grants), to achieve broader policy objectives and support local industry and ethical employment. To maximise the benefit to Australia and Australian working people from government procurement the system's priorities must be reconsidered. The new approach should include robust conditions of participation with a focus on ethical procurement and labour standards, full, fair and reasonable access and a clear and transparent assessment that delivers local benefits. Companies selected for Commonwealth procurement should have good tax records (including information from company tax, relevant royalty payments and incorporating information from systems like the Taxable Payments Reporting System (TPRS) where applicable) as well exemplary industrial relations, health and safety, environmental and social records and be required to demonstrate ethical labour standards throughout their supply chain.

The draft policy outlined by Treasury fails to address many of these points, though they were provided as part of our submission into this process. Those elements that the draft policy does address are treated lightly, 'phased in' or left as nebulous future potentialities out of fear of placing

¹ The ACTU prefers the term 'Shadow Economy' to 'Black Economy' as we believe that the conflation of 'blackness' with negative attributed contributes to the perpetuation of negative stereotypes about Indigenous Australians and other people of colour. We call on the government to be mindful of how the terminology it uses may be interpreted and ask that it cease to use this potentially discriminatory and offensive phrase.

a burden on business. It is the view of Australian unions that government contracts are not a right for business that need to be protected. They unapologetically should only be awarded to the most exemplary contractors/suppliers – for whom proving a proper record in our areas of concern should be simple. The rules outlined in the draft policy should be tightened and further requirements introduced more rapidly and with greater scope.

Halting First Steps

As outlined above, the draft policy provided by Treasury does appear to attempt to address some of the concerns that were raised in our initial submission. However, it appears that many of these attempts are half-hearted or are pushed into the future as features that ‘may’ be introduced at a later date. These steps do not go far enough.

For example, while a requirement for tenderers to provide proof of a Satisfactory Tax Record (STR) is considered a significant improvement over current policy settings, the eligibility requirements for STRs are far too lenient. The proposed requirements of:

- Proper ABN, GST and Tax file registration; and
- 90% of all income tax, FBT and BAS statements required from the past 4 years to be lodged; and
- No debt greater than \$10,000 to the ATO

are far too lenient and would result in the vast number of unsuitable businesses qualifying for government contracts. A requirement that tenderers have filled out some forms, almost complied with their obligations and owe less than \$10,000 in tax to be considered ‘satisfactory’ is inadequate. Requiring business to gain an STR in order to qualify for government contracts is meaningless if STRs are too easy to obtain and the rules don’t prevent businesses with poor tax and compliance records from gaining an STR. The requirements are even more lenient for new or foreign tenderers with a tax record of less than four years who will only need to provide a statement that they comply with tax obligations and will into the future. These rules should be significantly strengthened, making an STR contingent on:

- No adverse orders in tax-related proceedings
- No director disqualifications
- No garnishee notices
- No record of non-compliance with, or repeated, directions notices
- The timeliness of remittances
- No failure to remit (100% compliance)

- No filing of false or misleading information
- No misuse of ABNs either by the business itself or employees misclassified as contractors and improperly using ABNs
- Whether the business has entered into undertakings with the ATO
- Whether director penalty notices have been issued
- The full and public disclosure of all beneficiaries of public contracts, including aggregated figures to allow the combined value of contracts of multiple subsidiaries or other related corporate entities to be made publicly available
- The filing of a full financial statement with ASIC in full compliance with Australian accounting standards, with no recourse to use special purpose filings or reduced disclosure requirements. Whether directors have been associated with a company that has experienced an insolvency event and is the subject of an adverse administrator's report arising from that event
- Compliance with monitoring systems such as SuperStream, Single Touch Payroll and the TPRS
- The actions of not only the direct subsidiary but the parent company as well - including a review of contract performance and business conduct in other jurisdictions.

The inclusion of these requirements would significantly improve the STR system, ensuring that only tenderers with tax records that are actually satisfactory, in terms of community expectations regarding eligibility to benefit from public money, are issued with STRs. Further changes should also be made to require tenderers with turnover of \$100 million or more to show evidence they have adopted the Tax Transparency Code.

In terms of sub-contractors, the current proposal to limit STR requirements to sub-contractors doing more than \$4 million worth of work ignores the fact that small sub-contractors can often pose the largest risk of non-compliance. On this basis, the requirement for STRs should be expanded to all sub-contractors (not merely first-tier). Additionally, companies' STRs should include serious incidences of tax fraud by any sub-contractors engaged during the past five years. This will compel companies that receive public funds to assume responsibility for their own supply chains. In addition, tax avoidance that occurs on a Government contract by a sub-contractor that is not directly contracted to the Government should appear on the Statement of Tax Record of the lead contractor. Further, since the requirement to obtain and provide STRs relating to subcontractors would become mandatory, STR's of relevant subcontractors should be provided to government agencies/departments as a matter of course, not merely be available on request. The extension of

the TPRS to cover the use of all labour hire or outsourced firms used by government agencies and public bodies would provide greater accountability.

It should go without saying that we do not believe that Government should wait a year for a review to strengthen requirements on STRs and sub-contractors as proposed. They should be imposed at the commencement of the system. Any attempt to introduce new requirements will be strongly resisted by business groups and we believe waiting to introduce them merely increases the likelihood we will be left with a toothless and ineffective system that provides no better outcomes than the current procurement processes.

Steps Not Taken

In addition to proposing a too-lenient STR and sub-contractor regime, the proposed policy from Treasury appears to have completely ignored a number of areas of business behaviour that unions believe are central to any consideration of a business's suitability for government contracts.

Australian unions remain concerned that local business who use ethical and responsible practises are disadvantaged against international or local competitors that do not. We must focus on ethical and responsible procurement, including clear government mandated obligations on suppliers to demonstrate ethical labour standards throughout their supply chain and commit to environmental, social and governance (ESG) standards to ensure that Australian producers and providers who do the right thing are not disadvantaged against international or local competitors that do not.

Any new procurement policy should require tenders to take into account factors such as the proportion of Aboriginal and Torres Strait Islander (ATSI) employees, OHS records, corporate tax and industrial records, length and transparency of supply chains, the gender pay gap, various workplace factors (such as Health and Safety Representatives, registered agreements etc), environmental outcomes, secure jobs, regional renewal and minimum numbers of apprentices when choosing a supplier. Government should also commit to avoiding the most negative labour practices which have undermined job stability and wage growth in private sector workplaces, including excessive use of casual employees, temporary and irregular hours, unpaid internships, sham contracting arrangements, and others. The negative impacts of the procurement rules for construction-related goods and services set out in the *Code for the Tendering and Performance of Building Work 2016* mean that code must be repealed.

The current proposed policy from the Treasury fails to address any of these issues and as a result misses an opportunity for government procurement to be a force for positive change within Australian industry.

In Summary

The policy proposed by the Treasury can be regarded as little more than a tiny first step towards a procurement policy that better serves Australian workers and Australian industry. If a serious attempt is to be made to improve current procurement rules, then this proposal needs significant strengthening and broadening. This is an invaluable opportunity to put in place procurement rules that put Australian workers and industry first. Implementing ineffective half-measures with vague plans to review at a later date will be an opportunity lost.

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