

# Terms of Reference: Review of the implementation of the 1 July 2022 changes to the Commonwealth Procurement Rules

## Context of review

For many small businesses, the processes involved in identifying and securing Commonwealth procurement contracts can be complex, costly and time-consuming. Improving Commonwealth procurement processes has the potential to expand growth opportunities for small businesses, encourage entrepreneurship, increase competition, strengthen sovereign capability and maximise value for money for taxpayers.

Issues to address include:

- complex processes that are challenging to navigate without prior expertise
- increasing transparency and communication regarding upcoming work and the use of limited tenders
- bundled procurement contracts or large work packages that make it difficult for small businesses to compete for tenders
- unnecessarily prescriptive contract requirements that impede small business access to procurement opportunities
- numerous panels and standing offer arrangements across the Commonwealth; all with different application requirements (to get onto these panels), and different ‘piggybacking’ arrangements between agencies.

The Minister for Finance, Senator the Hon Katy Gallagher with the Minister for Small Business, the Hon Julie Collins MP, announced the introduction of changes to the Commonwealth Procurement Rules (CPRs) on 1 July 2022. These changes were designed to increase the participation of Small and Medium Enterprises (SMEs) in Commonwealth procurement.

The Minister for Finance wrote to the Ombudsman, requesting the Ombudsman to undertake a review on the implementation of the changes to the CPRs, as well as the impact on small businesses that participate in Commonwealth procurement on 16 February 2023. Additionally, the Minister for Finance requested the Ombudsman consider the impacts of the findings on the implementation of the Buy Australia Plan.

## Objective

To review both the implementation of the 1 July 2022 changes to the CPRs, and the impact of these changes on small businesses that participate in Commonwealth procurement activities. This review will recommend changes to the CPRs or associated framework for consideration by the Australian Government.

## Scope of review

In undertaking the review, the Australian Small Business and Family Enterprise Ombudsman (Ombudsman) will:

1. Assess how effectively the reforms are being adopted by procuring agencies, identifying:
  - i. how many small businesses are securing and retaining procurement opportunities, noting current reporting groups SMEs together. That is, employers of less than 200 full-time-equivalent staff

- ii. the extent to which:
    - a. large projects have been disaggregated
    - b. insurance arrangements are right sized to facilitate small business participation
    - c. tenders for Defence contracts worth up to \$500,000 have been limited to SMEs
  - iii. exemplary practices and agency performance, including implementation of revised/updated CPRs and contracting approaches
  - iv. opportunities to improve whole-of-government guidance products and internal procedures (for agencies and their officials) to support/enhance implementation of the revised/updated CPRs.
2. Examine the utility and effectiveness of AusTender, the Commonwealth Contracting Suite, methods for identifying small businesses, and other measures to enable-small businesses to join together to bid for larger and multi-faceted contracts and how accessible rolling short-listed provider 'panels' are for smaller businesses.
3. Consider to what extent changes to the CPRs are:
  - i. helping SMEs participate in Commonwealth procurements
  - ii. increasing opportunities for businesses who currently do not participate, including consulting on their awareness of the rules and experiences during the tendering and contracting processes.
4. Provide input to the Future Made in Australia Office on review findings, to support the implementation of point three of the Buy Australian Plan.
5. Consider how the implementation of revised/updated CPRs might be enhanced to expand opportunities for small businesses owned by women, First Nations peoples and culturally and linguistically diverse communities.
6. Consider any other relevant matters surfaced by the review.
7. Recommend further potential changes to improve the operation of CPRs and procurement practices for small businesses, while delivering value for money for taxpayers and strengthening sovereign capability.

### **Consultation process**

As part of the review, the Ombudsman will engage with interested individuals and organisations, including small businesses, their advisers and representatives, as well as government and other relevant third parties.

### **Timeframe**

The Ombudsman will commence the review as soon as practicable and provide a report to the Minister for Finance no later than 15 December 2023.