



Australian Government



Australian  
**Small Business** and  
**Family Enterprise**  
Ombudsman

# **Review of the implementation of the 1 July 2022 changes to the Commonwealth Procurement Rules**

Issues Paper - August 2023

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## List of Terms

<b>ANAO</b>	Australian National Audit Office
<b>APS</b>	Australian Public Service
<b>ASBFEO</b>	Australian Small Business and Family Enterprise Ombudsman
<b>CASG</b>	Capability Acquisition and Sustainment Group
<b>CPRs</b>	Commonwealth Procurement Rules
<b>ESSA</b>	Enterprise Support Services Agreement
<b>Finance</b>	Department of Finance
<b>HUBZones</b>	Historically Under-utilized Business Zones (USA)
<b>IPP</b>	Indigenous Procurement Policy
<b>MSP</b>	Major Service Provider
<b>NSSG</b>	Naval Shipbuilding and Sustainment Group
<b>OIA</b>	Office of the Industry Advocate
<b>SAIPP</b>	South Australian Industry Participation Policy
<b>SDVOSB</b>	Service-Disabled Veteran-Owned Small Business (USA)
<b>SME</b>	Small and Medium Enterprise
<b>SON</b>	Standing Offer Notice

## 1. Introduction

The ASBFEO is reviewing the implementation of the 1 July 2022 changes to Commonwealth Procurement Rules (CPRs), and the impact these changes have had on small businesses that participate in Commonwealth procurement activities.

To help with this Inquiry, we are seeking your responses to the questions in this Issues paper, the [Terms of Reference](#)<sup>1</sup> or any other relevant matter. For more information about lodging a submission, including a webform listing the questions in this paper, please go to our [Procurement Inquiry webpage](#).

Please make your submission by 15 September 2023 to [inquiries@asbfeo.gov.au](mailto:inquiries@asbfeo.gov.au) via our [webpage](#)<sup>2</sup>.

## Background

The CPRs govern how Australian Government entities are to purchase goods or services. In 2021-22 the government awarded 92,303 contracts with a combined value of \$80.8 billion.<sup>3</sup>

The government introduced several changes to the CPRs (**Appendix A**) to improve SMEs' access to Commonwealth procurement that came into effect on 1 July 2022. These changes included:

- unbundling of major projects where appropriate
- right-sizing insurance requirements and not requiring a business to take out the insurance policy until the contract is awarded
- allowing the Department of Defence to source directly from SMEs for contracts up to \$500,000
- requiring that 20% of Commonwealth procurements by value be sourced from SMEs
- requiring that procuring officials consider a procurement's broader impact on climate change when undertaking a value-for-money assessment.

This paper expands on our [Terms of Reference](#)<sup>4</sup> for the Inquiry by seeking feedback on barriers small businesses face in participating in Commonwealth procurement, as well as exemplar examples of agency procurement practices. It also gives effect to the request on 16 February 2023 by the Minister for Finance, Senator the Hon Katy Gallagher, for the ASBFEO to:

- review the implementation of CPR changes
- assess the impact on small businesses that participate in Commonwealth procurement
- recommend future changes to CPRs and the Commonwealth procurement framework
- have regard to the implementation of the Buy Australian Plan.

<sup>1</sup> Australian Small Business and Family Enterprise Ombudsman, *Review of the 1 July changes to the Commonwealth Procurement Rules (2023)*, <https://www.asbfeo.gov.au/policy-advocacy/policy-insights/review-1-july-changes-commonwealth-procurement-rules-2023>

<sup>2</sup> Australian Small Business and Family Enterprise Ombudsman, *Review of the 1 July changes to the Commonwealth Procurement Rules (2023)*, <https://www.asbfeo.gov.au/policy-advocacy/policy-insights/review-1-july-changes-commonwealth-procurement-rules-2023>

<sup>3</sup> Department of Finance, *Statistics on Australian Government Procurement Contracts*, viewed 04 May 2023 <https://www.finance.gov.au/government/procurement/statistics-australian-government-procurement-contracts->

<sup>4</sup> Australian Small Business and Family Enterprise Ombudsman, *Review of the 1 July changes to the Commonwealth Procurement Rules (2023)*, <https://www.asbfeo.gov.au/policy-advocacy/policy-insights/review-1-july-changes-commonwealth-procurement-rules-2023>

## 2. Overview of Australian Government procurement and small business supply

Procurement is the process by which the government acquires goods and services to deliver its policies, programs, and services.

The government purchases a wide variety of goods and services from the private sector, including SMEs.<sup>5</sup> Of the 92,303 contracts awarded in 2021-22, with a combined value of \$80.8 billion, SME's were:

- 86% of suppliers (estimation)
- awarded 30.8% (or \$24.9b) of contracts by value
- awarded 55.2% (or 50,921) of contracts by volume.

More statistics on small business and Australian government procurement can be found on the [Department of Finance's website](#).<sup>6</sup>

The Australian Government's process for procuring goods and services is explained in the [Commonwealth Procurement Framework \(framework\)](#).<sup>7</sup> The framework reflects government's expectations of procuring officials, Australia's free trade obligations and good practice in Commonwealth procurements. The government must also follow certain rules when buying goods and services. These are outlined in the [CPRs on the Department of Finance's website](#).<sup>8</sup>

Achieving value for money is the core rule underpinning government procurement decisions. Value for money is achieved through:

- encouraging competition and conducting non-discriminatory processes
- using resources in an efficient, effective, economical and ethical manner
- making accountable and transparent decisions
- considering the risks
- conducting an efficient buying process.

This means that value for money is not just about price. When the government procures goods and services, the decisions of government officials are based on an assessment of each proposal's costs and benefits against the original business need.

A value for money assessment may include consideration of factors in the tender response such as:

- meeting the specifications
- experience and performance history

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<sup>5</sup>An SME is defined as an Australian or New Zealand firm with fewer than 200 full-time equivalent employees. A small business is defined as a business with fewer than 20 full-time equivalent employees.

<sup>6</sup>Department of Finance, *Statistics on Australian Government Procurement Contracts*, viewed 04 May 2023 <https://www.finance.gov.au/government/procurement/statistics-australian-government-procurement-contracts->

<sup>7</sup>Joint Select Committee on Government Procurement: *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, Parliament of the Commonwealth of Australia, June 2017, pp 11, viewed 26 July 2023 [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Former\\_Committees/Government\\_Procurement/CommProcurementFramework/Report/section?id=committees%2Freportjnt%2F024068%2F24702#footnote30ref](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Government_Procurement/CommProcurementFramework/Report/section?id=committees%2Freportjnt%2F024068%2F24702#footnote30ref)

<sup>8</sup>Department of Finance, *Commonwealth Procurement Rules*, viewed 04 May 2023 <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>

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- flexibility, innovation and adaptability for the duration of the contract
- environmental sustainability
- whole-of-life costs.

The government has set targets within the CPRs to:

- source at least 20% by value of all procurement from SMEs (increased from a target of 10% in 2021-22)
- source at least 35% of contracts valued up to \$20 million from SMEs.

To support these targets, the government adopted a range of policies and developed guidance to assist SMEs to be competitive in government procurement. This includes:

- the [Selling to Government website](#)<sup>9</sup>, which contains information and support to help businesses understand how to identify business opportunities and sell to the government
- specific exemptions to the CPRs for procurements for goods and services up to \$200,000 and procurement from an indigenous-owned SME
- additional changes that came into effect from 1 July 2022 (outlined in the next section).

## 3. Explanation of the 1 July 2022 changes to the Commonwealth Procurement Rules and the Buy Australian Plan

Updated CPRs apply to all new procurements undertaken from 1 July 2022. The changes are intended to reflect the government's commitment to sourcing from SMEs and ensuring more opportunities are available to SMEs to participate in Commonwealth procurement. The updated CPRs apply to all new procurements undertaken from 1 July 2022.

They enhance opportunities for SMEs to participate in major projects by:

- requiring officials to consider disaggregating major projects into smaller contract opportunities, where unbundling would allow greater competition and is appropriate to the type of work on offer
- reducing the value of insurance costs that suppliers incur, to a reasonable level, and making it clear that, in most circumstances, insurance is not required until a contract is awarded
- providing faster cash flow through supply chains, by extending the 'Supplier Pay On-Time or Pay Interest Policy' to all contracts. The previous \$1 million threshold has been removed and the maximum payment terms now apply to all contracts regardless of value (this means paying invoices within five days and other invoices within 20 days or the government pays interest)
- allowing the Department of Defence to build local sovereign capability by directly purchasing from SMEs, or using tenders that are limited to SMEs, for procurements worth up to \$500,000.

The full set of changes can be found at **Appendix A**, or the [CPR webpage on the Department of Finance's website](#).<sup>10</sup>

The government has announced measures in the 2023-24 Federal Budget to further promote SME engagement in procurement. The Federal Budget provides Finance \$18.1 million over 4 years (and \$1.5 million each year from 2028-29 to:

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<sup>9</sup> Department of Finance, *Selling to Government*, viewed 02 May 2023, <https://sellingtogov.finance.gov.au/>

<sup>10</sup> Department of Finance, *Commonwealth Procurement Rules*, viewed 03 July 2023, <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>

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- deliver tools to improve the ability of businesses to compete for procurement opportunities more effectively
- improve AusTender to increase transparency and establish a supplier portal for panels
- increase engagement with SMEs and to promote awareness of opportunities to sell to the government
- improve procurement and contract management capability across the APS to deliver value-for-money Commonwealth procurements.

These measures build on the 2022-23 October Budget measures for the Buy Australian Plan.

## The Buy Australian Plan

The Buy Australian Plan (the Plan) is a comprehensive program of reform that will improve the government's approach to procurement. It aims to use the government's buying power to help industry grow, provide more diversity in our supply chains, and invite innovation. The Plan also aims to make it easier to do business with the government. It will do this by breaking down barriers, increasing the capability of businesses to submit competitive tenders, and supporting the Australian Public Service (APS) to better engage with industry and ensure government procurement supports the local economy.

The Plan will maximise the opportunities for businesses, especially regional businesses, Indigenous-owned businesses, and SMEs to participate in government procurement, through:

- decoding and simplifying procurement processes
- maximising opportunities in major infrastructure projects
- providing more opportunities for Indigenous-owned businesses
- supporting industry sectors
- strengthening defence industries and capability
- ensuring national partnership agreements with the states and territories maximise opportunities for local businesses.

The Future Made in Australia Office (the Office) has been established in the Department of Finance to support delivery of the Plan. The Office has redeveloped the Selling to Government website to provide the right resources to help businesses, particularly SMEs, better understand how to sell to the government and identify opportunities for their business.





## 4. Small business awareness of, and engagement in, Australian Government procurement

Increasing opportunities for small and family businesses to compete and participate in supplying goods and services to the Australian Government will expand growth opportunities, encourage entrepreneurship, increase competition, strengthen sovereign capability and maximise value for taxpayer's money.

Several stakeholders identified that the tender process can be difficult to navigate, with small businesses having low visibility of procurement opportunities without already existing in the procurement panel system, having existing relationships with procuring agencies, or having previous experience in government procurement.

Stakeholders identified several barriers to small business' engagement with Commonwealth procurement opportunities, including:

- complex processes that are challenging to navigate without previous experience
- limited transparency and communication regarding upcoming work and use of limited tenders
- bundled procurement contracts or large work packages making competition for tenders difficult
- prescriptive contract requirements impeding access to procurement opportunities
- numerous panels and standing offer arrangements across the government, with different panel application requirements and sharing arrangements between agencies.

We are also aware of small businesses supplying to government (or considering supplying) that have been deterred, discouraged or frustrated, citing one or more of the following reasons:

- the cost and investment of time required to tender
- lack of consideration by agencies of the high opportunity cost for small business of tendering
- limited or no feedback provided when tender is unsuccessful
- undertaking separate procurement processes for similar work to artificially avoid procurement expenditure thresholds
- insufficient due diligence to validate the credentials of SMEs purporting to have 50% or more Indigenous ownership
- rates of payment below market value
- perceived preference for large market suppliers
- overreliance on procuring through panels.

Stakeholders highlighted that when small businesses engage in procurement, the tendering process can be confusing and difficult to understand. Early consultations revealed that many small businesses do not understand the difference between the panel system and tendering. Writing tenders for government does not come naturally for many small businesses and they are rarely provided with feedback about how to improve.

Concerns were also raised that being on a goods and services panel does not necessarily translate to access. Submissions highlighted (citing AusTender data) that a significant portion of contract notices for panel procurements above \$10,000 are awarded to larger businesses.

Additionally, small business stakeholders expressed concern that the benefit of panel membership is undermined by a tendency of procuring officers to default to large suppliers owing to a perception of lower risk and lesser burden to engage.

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We would like to hear what small businesses and individuals with extensive experience of government procurement say about:

- possible challenges or difficulties you faced when first approaching government for procurement
- examples of exemplar agencies or effective processes or approaches.

## Questions for small business

1. Do you sell to the Australian Government, or are you doing business with the Australian Government? Why or why not?
2. Are you aware of Australian Government procurement opportunities and if so, how much do you know about these opportunities?
3. How could the Australian Government boost small businesses awareness of Australian procurement opportunities?
4. If you have participated in Australian Government procurement, how would you describe your experience?

## 5. Impact of 1 July 2022 changes on small-business access to Australian Government contracts

The changes to Commonwealth Procurement Rules on 1 July 2022 were designed to give small and medium businesses greater access to contracts commensurate to their size and capabilities. The changes increased the value target from 10% to 20% for government contracts sourced from SME suppliers. It also introduced a requirement on procuring officers that, where appropriate, they consider disaggregating larger projects into smaller projects that are more accessible for SMEs.

Stakeholders raised concerns about the awareness of the changes within government departments, and levels of education and training provided to procuring officers. While the changes were expected to increase SME procurement, our consultations suggest a focus remains on large businesses and familiar counterparties. Instead, SMEs are encouraged to participate in supply chains with large businesses.

While many small businesses view these requirements as a barrier, some regard working through larger companies as an effective means of gaining access to procurement opportunities. For example, developing key business relationships with large businesses can benefit SMEs that gain access to procurement work as a subcontractor. In some circumstances, SMEs use this opportunity to gain knowledge about government procurement and develop their capabilities to leverage relationships to support access to other non-government work.

We would like to hear from small businesses about your experiences of working through large businesses, particularly the impact this has had on boosting your capabilities.

Small businesses can face extra barriers to procurement opportunities that are outside of their control. Stakeholders have raised concerns with ASBFEO, including that:

- wholly owned subsidiaries of large companies are awarded contracts under the SME exemption
- personal relationships play a role in decision-making
- tenders are not transparent
- limited tenders are overused, sometimes without a reason
- limited tender exemptions being used incorrectly.

## Questions for small business

5. Do you know any of the changes to Commonwealth Procurement Rules that happened on 1 July 2022, and if so, how did you find out?
6. Have you noticed any changes in Australian Government procurement processes after the 1 July 2022? If possible, please describe the changes.
7. What role does networking and relationship-building play in gaining access to Australian Government procurement opportunities? How can SME providers improve their capabilities to navigate this aspect?
8. What would help small businesses collaborate with other entities or organisations to engage in larger procurement opportunities?

## 6. Exemptions and panel arrangements

Some procurements are exempt from Division 2 of the Commonwealth Procurement Rules and from paragraphs 4.7, 4.8 and 7.26 of Division 1.<sup>11</sup> Such exemptions are listed below.

- **Exemption 13.** Procurement of goods and services by, or on behalf of, the Defence Intelligence Organisation, the Australian Signals Directorate, or the Australian Geospatial Intelligence Organisation.
- **Exemption 16.** Procurement of goods and services from an SME with at least 50% Indigenous ownership.
- **Exemption 17.** Procurement of goods and services valued up to \$200,000, or up to \$500,000 by or on behalf of the Department of Defence, from an SME (note: the requirements under the *Indigenous Procurement Policy* must first be satisfied before this exemption is applied).

### Participation by First Nations people and additional exemptions

Under the current CPRs Indigenous Procurement Policy (IPP), Indigenous businesses must be given an opportunity to demonstrate value for money before a general approach to market.<sup>12</sup> According to statistics from AusTender, 768 Australian government contracts were awarded using the Indigenous limited tender exemption in the 2021-22 financial year.<sup>13</sup> The Indigenous limited tender exemption applies for SMEs with at least 50% Indigenous ownership.

Stakeholders identified challenges for First Nations people-owned small businesses engaging in the government procurement process and securing the benefits of Exemption 16. Additionally, stakeholders have described challenges in identifying First Nations people's businesses through the current panel system and the barrier this creates for increasing First Nations people's participation.

Stakeholders recommended the inquiry consider the merits of additional exemptions and procurement policies to better support businesses in unrepresented groups, and the unintentional barriers to engaging an SME created by existing exemptions. For example, small business participation in government procurement could be increased by allowing procuring entities to select small businesses that satisfy two or more broader policy objectives. This might be a superior alternative to requiring that other specific policy objectives must be met first, and unintentionally creating a single gateway to small business procurement with prior hurdles.

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<sup>11</sup> Department of Finance, *Commonwealth Procurement Rules*, viewed 03 July 2023, <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>

<sup>12</sup> National Indigenous Australians Agency, *Indigenous Procurement Policy*, viewed 11 May 2023. <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>

<sup>13</sup> AusTender, *How the Government Buys*, viewed 22 May 2023. <https://help.tenders.gov.au/getting-started-with-austender/information-made-easy/how-the-government-buys/>

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The government's requirement that procurement officials consider a procurement's broader impact on climate change when undertaking this value for money assessment could also be incorporated into a 'multi-gateway' approach.

Stakeholder submissions and consultations suggested that exemptions should exist for women-owned-and-led small businesses, as well as small businesses owned by Defence veterans.

## Panel arrangements

The ASBFEO is aware of instances where small businesses have invested time and resources applying for various Australian Government panels and complying with panel requirements, only to discover that large agencies are using different panels to procure the same goods and services.

Analysis of AusTender data by the Australian National Audit Office (ANAO) found that of the contracts associated with a Standing Offer Notice (SON), 43% were reported as panel arrangements in 2012-13, increasing to 95% in 2021-22. This increase was also observed in the committed value of contracts associated with a SON that was reported as a panel arrangement, from 48% in 2012-13 to 80% in 2021-22.<sup>14</sup>

Further, there were 3,173 individual SONs active at a point in time between 2012-13 and 2021-22, with 45% (1,418) of these reported to be panel arrangements. It is worth noting that 26% (812) SONs did not report any information against the 'Panel Arrangement' flag of the SONs dataset.<sup>15</sup>

Data confirm that panel arrangements form a significant part of government purchasing processes. At the time of writing, there are more than 600 standing offers, including panels that deliver similar or duplicate products and services.<sup>16</sup> This leaves small businesses with a complex web of procurement panels that is difficult to navigate without previous experience or knowledge about the inner workings of government procurement.

Stakeholders have also raised concerns that many small businesses invest time and money gaining entry to government procurement panels and receiving little or no work. These concerns are fuelled by limited indications that a range of suppliers on a panel are engaged.

### Questions for Australian Government agencies

9. How can Australian Government procurement officers and policymakers create more inclusive procurement policies to better support small businesses in underrepresented groups, including First Nations people, culturally and linguistically diverse Australians and women-owned and led businesses?
10. Are there barriers to increased small business participation in Australian Government procurement? If so, what are they?
11. What technological opportunities should be explored to simplify and decode Australian Government procurement processes, allowing more SMEs to participate in these opportunities?
12. Do you know of any support services or resources to help small businesses participate and identify opportunities in Australian Government procurement? What support services and resources are required?

<sup>14</sup> The Australian National Audit Office, *Australian Government Procurement Contract Reporting – 2022 Update*. viewed 1 June 2023.

<sup>15</sup> The Australian National Audit Office, *Australian Government Procurement Contract Reporting – 2022 Update*. viewed 1 June 2023

<sup>16</sup> AusTender, *Standing Offer Notice List*. viewed 1 June 2023.

## 7. Supporting Australian Government entities and procuring officers to better engage small businesses

While there are whole-of-government CPRs, individual entities can shape how they conduct procurement. For instance, within the Department of Defence, both an Office of Defence Industry Support and a Small Business Advocacy Team have been created to assist small businesses and procurement officials to increase SMEs involvement in Defence procurement.

The ASBFEO is aware of examples of procuring officers adopting practices to enable SMEs to compete on procurement contracts. An example is the disaggregation of a media project into several smaller contracts. These smaller contracts allowed SMEs who would not have been able to compete for the larger 'bundled' contract to compete for and eventually deliver content within their scale and capabilities.

Stakeholders have also identified examples where procurement practices have not supported SME participation. These examples include:

- where procuring officials have avoided using the SME exemption for contracts under \$200,000 (\$500,00 for Defence contracts)
- requirements to gain access to government procurement often duplicating or overlapping with other industry standards or already existing requirements (noting that any inconsistency in requirements disproportionately disadvantages small businesses)
- the use of surety bonds or bank guarantees throughout the supply chain disproportionate to the value of the contract
- excessive insurance requirements, such as having an agency listed as a named insured on the businesses insurance policy
- longstanding and static panel arrangements 'locking out' small business suppliers for extended periods
- the use of limited tenders to repeatedly approach existing suppliers and exclude new entrants
- perfunctory acknowledgement of exemptions as a procedural compliance step.

The ASBFEO acknowledges that early feedback from stakeholders indicates a perception of little to no indication of an attempt to disaggregate larger projects since the 1 July 2022 changes.

Stakeholders highlighted that knowledge of these changes by procurement officials can be limited owing to low levels of staff retention, limited training opportunities and risk aversion favouring bundling to reduce integration risk.

Stakeholders also referred to difficulties identifying SMEs capable of delivering specific programs as panels can contain a wide variety of capabilities and services. The trend towards multiple panels existing for similar goods and services compounds this concern. As panels can exist to serve a variety of purposes, it can be challenging for a procuring official to find a business that can deliver the goods or service required by the government agency.

## Measures to encourage greater small business participation in Commonwealth procurement



The ASBFEO acknowledges and welcomes the funding to conduct technology upgrades to the panels system included in the 2023-24 Budget.

The inquiry by the House of Representatives Standing Committee on Infrastructure, Transport, and Cities into procurement practices for government-funded infrastructure recommended the introduction of industry sustainability and enterprise-growth criteria within the early stages of procurement design.<sup>17</sup> Introducing these criteria would encourage international tier-one contractors to partner with a non-tier one domestic company in the head-contract. This would increase small business access to capacity and capability building contracts.

The Department of Defence Major Service Provider (MSP) Panel is comprised of four large entities. The MSP Panel provides a strategically managed approach for the engagement and management of large multi discipline services to the Capability Acquisition and Sustainment Group (CASG) and Naval Shipbuilding and Sustainment Group (NSSG). MSPs are contracted to provide a range of services under the terms of the MSP Enterprise Support Services Agreement (ESSA). The government and the MSPs objectives to enter the ESSA include to:

- recognise industry's importance as a fundamental input to capability
- maintain a viable and vibrant small business sector for 'above the line' (working on behalf of the Commonwealth) subject matter expertise, through the MSP supply chain.<sup>18</sup>
- more effectively engage with industry to better leverage resources and experience
- make the most efficient use of industry resources in an integrated way to deliver the CASG and broader Defence capability outcomes
- ensure that an enhanced and sustainable capability exists within both Defence and industry to support current and future Commonwealth work requirements
- promote collaborative behaviours, strategic, co-operative, and constructive working relationships
- deliver better value for money to the government, including through highly competitive labour rates, pre-agreed terms and conditions for the various kinds of services and optimising economies of scale
- minimise operating costs for both the Commonwealth and industry (including costs of tendering and other transaction costs).<sup>19</sup>

Stakeholder consultations have highlighted that in many cases, the ESSAs support SMEs to obtain a steady stream of work and grow capability throughout the supply chain.

<sup>17</sup> House of Representatives Standing Committee on Infrastructure, Transport and Cities, *Government Procurement: A sovereign security imperative*. March 2022

<sup>18</sup> Team Downer, *About Us*, viewed 18/07/23, <https://www.teamdownermmsp.com.au/about-us>

<sup>19</sup> Strategic Panels, Department of Defence, *Strategic Panels*, viewed 2/06/2023 <https://www.defence.gov.au/business-industry/industry-programs/strategic-panels>

## Questions for Australian Government agencies

13. What can the Australian Government and its agencies do to help more small businesses gain access to and compete for their procurement opportunities – either for the first time or more regularly?
14. Other than procurement, are there other policies and regulations that are affecting small businesses' ability to compete for Australian Government contracts?
15. What changes have you made to implement the 1 July 2022 changes to Commonwealth Procurement Rules?
16. As an agency or procuring official, are there impediments in approaching or utilising an SME to provide a good or service not related to regulation or policies? For example: Difficulties in identifying competitive small business options; concerns about small businesses capacity to undertake the project; or concerns that small businesses pose a greater risk than larger businesses.
17. Is there adequate guidance available for the procuring officer to confidently exercise the discretion necessary to utilise SME exemptions whilst satisfying audit and review scrutiny?
18. Do you have any examples of exemplary procurement practices and supporting frameworks that encourage and facilitate small business participation? If so, please describe.
19. Do you have any Australian Government examples of procurement or industry engagement practices that should be replicated or further developed? If so, please describe.
20. What existing processes encourage and support unsuccessful small business tenderers to improve their chances of securing future Australian Government contracts? What additional processes should be considered?
21. Have you participated in debriefing sessions with unsuccessful small business tenderers? Did you feel confident? Is there extra information or advice that would help you?

## 8. Procurement policies and practices supporting small business engagement across comparable jurisdictions

Government procurement can be a significant public policy and economic lever to support the growth and development of local business and industries to deliver services and solve problems efficiently. Jurisdictions around the world employ different methods to advance specific policy objectives. For example, the United States Department of Defense runs several initiatives to support the engagement of specific businesses and cohorts in procurement opportunities. These include the:

- Women-Owned Small Business Federal Contract Program and 5% women-owned small business contracting target
- Service-Disabled Veteran-Owned Small Business (SDVOSB) outreach effort to identify small businesses controlled by veterans and service-disabled veterans. The SDVOSB effort aims to improve prime and subcontracting opportunities for veteran and service-disabled veteran owned small businesses
- Historically Under-utilized Business Zones (HUBZones) program to promote job growth, capital investment and economic development to HUBZones by providing contracting assistance to small businesses located in these economically distressed communities.<sup>20</sup>

<sup>20</sup> US Department of Defense, *Office of Small Business Programs*, viewed 22 March 2023 <https://business.defense.gov/>

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In the United Kingdom, central departments have appointed SME champions along with SME action plans to bolster procurement contracts awarded to small business.<sup>21</sup>

The South Australian Industry Advocate, Mr Ian Nightingale, was appointed in 2013. The Industry Advocate ensures local businesses can make the most of South Australian government procurement opportunities, including through ensuring procurement opportunities are disaggregated into portions suitable for small business.

The *Industry Advocate Act 2017 (South Australia)* designates functions for the Industry Advocate, supported by the Office of the Industry Advocate (OIA), including to:

- take action to further the objectives of the South Australian Industry Participation Policy (SAIPP) including, without limitation, by building the capability and capacity of businesses based in South Australia to participate in government contracts
- receive and investigate complaints by and on behalf of business and their industry representatives about the SAIPP
- make recommendations (taking into account requirements under any other law) to responsible officers for procurement and principal officers of public authorities to resolve complaints, remove impediments or improve procurement practices and processes
- refer unresolved complaints and issues to the minister for consideration
- review, and assist in the negotiations of industry participation plans to ensure they comply with the SAIPP prior to the finalisation of contract conditions
- investigate and monitor compliance with the SAIPP by participants in government contracts
- take action to promote and ensure compliance with the SAIPP
- encourage the adoption of industry participation policies by local government.

To support South Australian small businesses seeking to engage with major procurement opportunities, Procurement Services South Australia has also agreed to publish a Forward Procurement Plan for all public authorities, informing prospective suppliers about future procurement opportunities for a 24-month period. This will give local businesses time to increase the likelihood of a successful tender process, and develop new and innovative approaches. This innovation is crucial for small businesses who lack the resources of their larger counterparts and can drive productivity gains by streamlining processes.

## Questions for Australian Government agencies

21. Are there successful approaches in comparable jurisdictions (within Australia or internationally) that could be replicated by the Australian Government?
22. Is there anything else that would increase or enhance small businesses opportunities to engage with Australian Government procurement?

For more information about the Inquiry, including examples of pathfinders and Terms of Reference, please visit [www.asbfeo.gov.au/procurement](http://www.asbfeo.gov.au/procurement).

<sup>21</sup> United Kingdom Cabinet Office, *Small and Medium Business Hub*, viewed 11 April 2023, <https://www.gov.uk/guidance/small-and-medium-business-hub>

<sup>22</sup> Office of the Industry Advocate, *2020-21 Annual Report*. Pg. 6.



## APPENDIX A

### Changes to the Commonwealth Procurement Rules (CPRs) taking effect on 1 July 2022

CPR Change	General Comment
Foreword	New foreword attributed to the Minister for Finance.
Achieving value for money (4.5 e)	Amended text to include climate change impacts in relevant financial and non-financial considerations of value for money.
Achieving value for money (4.5 e. ii)	Amended text to reflect the new Department of Climate Change, Energy, the Environment and Water.
Small and Medium Enterprises (5.6)	Amended text to increase the Australian Government's commitment to non-corporate Commonwealth entities sourcing 20% of procurement by value from SMEs.
Procurement from standing offers (9.14)	New text advising officials to approach multiple potential suppliers from a standing offer, to maximise competition.

### Previous changes to the Commonwealth Procurement Rules (CPRs) taking effect on 1 July 2022

Figure 1: Legislation and Policy	Inclusion of Government Procurement (Judicial Review) Act 2018 under Legislation heading and inclusion of new text 'free trade agreements and other commitments' under international obligations heading within Legislative and policy environment.
Compliance with the two divisions of the CPRs (3.8)	Amended text to provide clarification that the CPRs apply to the administrative services of the Commonwealth Superannuation Corporation that relate to the superannuation schemes it administers.
Procurement-connected policies (4.9)	Amended text stipulates that non-corporate Commonwealth entities and prescribed Commonwealth corporate entities must comply with procurement-connected policies where the policy indicates that it is applicable to the procurement process and to the entity.
Small and Medium Enterprises (5.5 d)	Updated sub-paragraph requiring procuring officials to consider the disaggregation of large projects into smaller packages that maximise competition where appropriate.
Small and Medium Enterprises (5.8)	Amended text reflecting the removal of the \$1 million threshold in the Supplier Pay On-Time or Pay Interest Policy – Resource Management Guide (RMG 417).
Procurement risk (8.4)	New text to provide that suppliers do not need to take out insurance until a contract is to be awarded and to limit insurance imposts in contracts and embed the principle of risk sharing by better reflecting the actual risk in contractual liability.
Appendix A: Exemption 17	Amended text allowing the Department of Defence to directly engage an SME for procurements valued up to \$500,000 (note: the requirements under the Indigenous Procurement Policy must first be satisfied before this exemption is applied).

Source: [Department of Finance](#)

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