



Our Reference: TA20/4576

NSW Department of Customer Service
2-24 Rawson Place
McKell Building
Sydney NSW 2000

By email: ICTSovereignprocurement@customerservice.nsw.gov.au

ICT/DIGITAL SOVEREIGN PROCUREMENT TASKFORCE

The NSW Small Business Commission appreciates the opportunity to provide feedback via the Department of Customer Service (DCS) on strategies and policies to diversify the NSW Government's ICT/digital partnership ecosystem and spend. Further to this submission the Commission looks forward to contributing through representation on the ICT/Digital Sovereign Procurement Taskforce and in doing so providing greater opportunities for SME participation.

About us

The NSW Small Business Commission advocates on behalf of small businesses across the state and helps to resolve issues affecting them by providing strategic advice and free to low cost mediation services. Small business is the engine room of the NSW and national economy, with NSW boasting the highest number of small businesses in Australia.

Context

The NSW Government announced in June 2020 that it will invest \$1.6 billion into its Digital Restart Fund to make the State the digital capital of the southern hemisphere. The focus of the expenditure relates to digital infrastructure and cyber security capability.

In July 2020, the Government announced a new taskforce that will make it easier for small and medium suppliers of information and communication technology (ICT) services to do business with Government. The ICT and Digital Sovereign Procurement Taskforce is intended to establish a greater diversity of digital and ICT service providers and suppliers that engage with the NSW Government.

We understand the Government also intends to enhance the ability of procurement processes to allow NSW small and medium businesses to compete on a fairer footing and maximise the industry development impact of its technology procurement spend.

Policy framework

A substantial existing policy framework relevant to the Taskforce's project operates, including the:

- Procurement Policy Framework
- Small and Medium Enterprises and Regional Procurement Policy
- Economic development, social outcomes and sustainability objectives

- Aboriginal Procurement Policy
- Exemption from Procurement Policy for Disability Organisations (M2010-06)

General observations

The NSW SBC supports measures targeted at diversifying the digital and ICT partnership ecosystem and the development of strategies aimed at ensuring greater opportunities for NSW small and medium enterprises.

The Commission actively encourages and supports measures aimed at improving opportunities for greater regional NSW participation noting that this will assist in providing new opportunities and assist in addressing challenges faced in areas such as youth unemployment as well as creating sustainable future-industry focused employment pathways.

We also note the many benefits to the NSW Government of engaging small and medium enterprises (SMEs) in diversifying the NSW Government's ICT/digital partnership ecosystem and spend. In many instances SMEs are able to sustain a lower cost base and often have a competitive advantage of being able to change plans or strategy much faster than larger competitors. Noting these competitive and comparative advantages the participation of more SMEs, including regional SMEs could enhance value for money, an overarching consideration for government procurement.

Please find below preliminary comments relating to certain aspects on which DCS has sought feedback:

Definition of sovereign procurement, in particular what is a small and medium enterprise (SME)

We note that sovereign procurement in the context discussed refers to sourcing from and thereby supporting the continued operation and growth of firms that have a strong connection with Australia or New Zealand, and preferably with NSW.

To define sovereign procurement, it appears necessary to discuss the characteristics of firms that might be engaged under such a theme. We list below several traits that DCS could consider:

Business characteristics:

- Location – place of business registration, physical premises, exchange¹, servers or relevant physical assets, and where work is performed.
- Ownership – identity and location of the 10 largest shareholders².
- Structure – whether the entity is part of a larger group or is independent.
- Employees – characteristics of employees e.g. Australian citizens, permanent residents, Australian temporary visa holders, or foreign residents.
- Skills – nature of roles e.g. technical or managerial, full time or casual.
- Outsourcing – extent to which the firm sub-contracts, and characteristics and location of primary and secondary sub-contractors which influences both domestic employment levels and the impact of skills development.
- Taxation – contribution to the NSW and Australian tax base.
- Influence – susceptibility to foreign influence.

¹ For publicly traded companies

² For example

Product or service characteristics:

- Importance – the extent to which a product or service will improve the ability of NSW to withstand or benefit from future events or disruption.
- Scarcity – the extent to which a product or service and/or a suitably trained workforce to deliver it are limited.
- Enabling characteristics – the extent to which a product or service might indirectly reduce costs, increase speed and enhance adaptability and sovereign capability.

SME characteristics:

The NSW Government's Small and Medium Enterprises and Regional Procurement Policy defines a SME as an Australian or New Zealand based enterprise with fewer than 200 full-time equivalent (FTE) employees.

A commonly understood indicator for SMEs in the Australian context is a firm with less than 200 employees.³

This characteristic is one reported on by the Australian Bureau of Statistics (ABS). According to ABS data, as at June 2019, only 4,271 firms, or 0.2 per cent of all Australian businesses had 200 or more employees.⁴

Some foreign jurisdictions specify that SMEs be non-subsidiary, independent firms which employ fewer than a given number of employees. The number varies across countries. Certain foreign jurisdictions also use financial assets or turnover limits to define SMEs.

We see merit in considering an SME to be a firm with fewer than 200 employees. If a firm is part of a group, consideration should be given to defining a group's headcount for the purposes of eligibility to 200 employees or less.

Barriers to achieving measurable targets

International agreements

We understand that international agreements, such as the Trans-Pacific Partnership, may affect how sovereign procurement is pursued – via stipulations relevant to preferencing local suppliers for example. We believe it will assist the DCS to liaise with the Australian Department of Foreign Affairs and Trade and to consider legal advice about the effects of international agreements on sovereign procurement.

SME preparedness

Anecdotal reports suggest that some SMEs find it challenging to navigate procurement processes. We anticipate that a relatively small proportion of SMEs are prequalified suppliers, on panels or other arrangements. Typically, non-participants may be unfamiliar with these schemes, and/or require assistance and further information to effectively participate.

SMEs would benefit from more information and assistance on how to register and participate in government tendering and other procurement opportunities. This includes specific

³ not necessarily FTE employees

⁴ 8165.0 - Counts of Australian Businesses, including Entries and Exits, June 2015 to June 2019 Released at 11:30 AM (CANBERRA TIME) 20/02/2020, Businesses by Main State by Industry Class by Employment Size Ranges, June 2019 sheet. NSWBC analysis applied.

information and support on how to accurately estimate the cost/benefit of developing a proposal and how to quote at profitable, competitive and sustainable rates.

Further efforts and activity to assist SMEs to become more 'procurement-ready' are strongly supported. We understand that organisations including Business Connect and the Industry Capability Network provide training and support in this area.

Procurement processes, transparency and profitability

Anecdotal reports suggest that various government organisations have found the opportunity costs of running certain procurement processes can exceed the value of the contract itself.

Transparency is important to tenderers who generally consider their potential participation in a tender process against: tender requirements; evaluation criteria; level of competition; time and cost of submitting a tender; and prospect of success.

Various parliament inquiries have cited the complexity of tender processes and contract documentation as a barrier to businesses participating in government procurement processes. To address these and related issues it is essential that the following are addressed:

- complexity of tender documentation
- accessibility of an effective complaints process
- application of procurement-connected policies
- training and technical expertise of procurement officers
- regular information and dialogue between industry and government on future opportunities, expectations and capacity

Insurance requirements

Stakeholders have regularly commented on what they perceive to be onerous insurance requirements prevalent in government contracts. Agency templates often include requirements for insured amounts in the tens of millions of dollars, generally without explanation of the basis for the quantum. The policy may be required to be maintained by the business for several years following completion of the project.

Challenges with this practice/requirement include that the premium is often many multiples of the contract value, and insurance premiums incurred to hold the policy into the future might erode any operating profit derived from contract performance. For many SMEs the cost of these insurance premiums may not be able to be amortised across a broader portfolio of work and therefore the requirement for this level of insurance cover acts as barrier to participation.

In some cases, sophisticated larger businesses may seek to renegotiate the upper limit of liability, even after having entered into the contract, but smaller businesses often wouldn't anticipate that any such flexibility may be contemplated.

Strategies and policies to bridge the identified gaps in achieving the targets

Several prominent reports have been published with recommendations on strategies and policies to enhance government procurement.⁵

⁵ we will avoid repeating that detail here but encourage DCS to explore these

Accredited independent contractors

We note several large technology companies accredit independent contractors to work with clients utilising their services via activities including training, customisation, and operations. This may be a readily accessible means to support local small businesses under major contracts.

Argument for local flexibility

Whole-of-government, agency specific, or other centralised contracts, while commendably achieving value for money, can limit flexibility at a local level. We noticed during and following the 2019–20 bushfire season that large departments already had suppliers locked in and it was difficult to meet the Government's intent to award clean-up and certain other contracts locally.

We are advised of local procurement arrangements, including:

- Agencies located in a non-metropolitan area being able to purchase goods and services up to the value of \$5,000 from local sources
- Principals of Department of Education schools being able to purchase goods and services up to the value of \$5,000⁶

We encourage consideration of empowering non-metropolitan agency representatives to source relatively low value goods and services directly from local digital and ICT service providers and suppliers.

Standardising protocols

There may also be value in standardising procurement processes to allow respondents can quickly recognise required information across tenders and use standard responses to reduce the time required to apply for multiple possible contracts.

Insurance requirements

Consideration could be given to limiting standard insured amounts to the lower of a reasonable standard, or a multiple of the contract value. Where risk is evaluated that would justify a more stringent approach, the agency could vary this approach on a case by case basis.

Other Comments

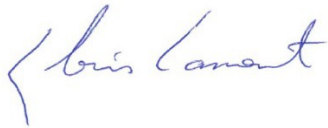
In consulting with industry and business stakeholder the following key points were received and we encourage the Taskforce to consider each of these in further detail.

- Impact of short timeframes for tender responses noting the capacity of SMEs
- Value of frequent trade shows, held across the state that allow businesses to showcase their capabilities to prospective clients in government
- Further guidance and clarity for SMEs on how to apply for preapproval as a supplier and provide detailed information on the typical tenders on offer

⁶ despite those goods and services being available on whole-of-government contracts (except excluded contracts)

For further information on this submission please contact Murray Johnston, Principal Advisor
Advocacy and Strategic Projects, on (02) 6885 9388 or at
murray.johnston@smallbusiness.nsw.gov.au.

Yours sincerely,

A handwritten signature in blue ink that reads "Chris Lamont". The signature is written in a cursive style with a large initial 'C'.

Chris Lamont
Commissioner
NSW Small Business Commission
7 August 2020