

Australian Information Industry Association

Submission to the Department of Finance on Recommendations for Strengthening Guidance on the Consideration of Broader Economic Benefits During Commonwealth Procurement Activities

3 July 2024

1. Introduction

The Australian Information Industry Association (AIIA) thanks the Department of Finance for the opportunity to make this submission. Our members maintain a high level of interest in the Commonwealth Procurement Rules (CPRs) and particularly the consideration of broader economic benefits during value for money assessments. The AIIA strongly supports clarifying and strengthening the consideration of long-term economic benefits during government procurement.

Importance of Long-Term Economic Benefits from Commonwealth Procurement

Government procurement is a powerful tool for driving long-term growth and resilience of the Australian economy. By encouraging benefits-based procurement activities, Australia can achieve significant economic impacts that extend well beyond the immediate scope of individual contracts for service delivery. This view is not unique to Australia; many nations have recognised the value of incorporating broader economic outcomes into their government procurement strategies.

Long-Term Benefits to Australia

Valuing long-term economic benefits during procurement activities offers several advantages to Australia's future prosperity and security:

- **Strengthening Domestic Capability:** Ensuring equitable access to Commonwealth procurement opportunities for businesses that do not necessarily have the resources of global brands (e.g., Australian domiciled businesses including SMEs) in procurement decisions will help build the capabilities of Australian industry. This supports job creation and productivity growth to sustain and scale Australia's economy.
- **Fostering Innovation:** By valuing R&D and the domestic creation of IP, government procurement can drive technological advancement in Australia's economy. This not only can position Australia as a leader in relevant industries, but it also expands markets for bilateral international trade.
- **Enhancing Supply Chain Resilience:** Ensuring that procurement policies consider the contribution of a supplier to the resilience of our supply chains can mitigate long-term risks associated with disruptive global events. This approach reduces dependency on fragile global supply chains and strengthens the security of our national critical infrastructure.
- **Promoting Environmental Sustainability:** Incorporating sustainability criteria in procurement can drive the growth of green industries and contribute to Australia's environmental goals. This yields a dual benefit of economic growth and environmental stewardship.

Benefits Realised by our Trading Partners

- **United States:** The Buy American Act mandates the preference for American-made products in federal procurements. This not only supports local manufacturers but also fosters job creation and stimulates domestic economic activity.
- **European Union:** The EU emphasises sustainable procurement practices, requiring that public contracts contribute to environmental sustainability and social inclusion. These policies aim to create long-term benefits by supporting green technologies and promoting social equity.
- **South Korea:** The Korean government uses procurement to promote technological innovation and support SMEs. By prioritising contracts for small and medium-sized enterprises, South Korea ensures that these critical sectors have the resources and opportunities to thrive, driving innovation and economic diversification.
- **Singapore.** The Singaporean government procurement framework was [updated](#) to help SMEs bid for government contracts under a new category that comes with simpler and fewer conditions in 2023. This enables them to transact with the Government cost-effectively and build capabilities to enhance their competitiveness and access new opportunities, both locally and abroad. In addition, from 2024, up to 5 per cent of evaluation points for tenders will be allocated to

sustainability-related considerations. This will apply to ICT projects with minimum Estimated Procurement Value of \$10 million.

Uncertainty in Guidance as to Assessing Broader Economic Benefits

The [July 2022 update](#) to guidance under paragraph 4.7 of the CPRs broadly referenced the need to ‘consider the economic benefit of the procurement to the Australian economy’ (vis-à-vis [the July 2024 CPR update](#) under paragraph 5.5 which encouraged officials to consider them in the context of ‘value-for-money’). However, neither update sufficiently capture the range of economic benefits that may be yielded by procuring suppliers in the ICT sector. Simplistic measures of ‘value for money’ such as direct employment and local spending do not account for long-range economic benefits, such as research and development (R&D), taxation revenue, improved economic complexity, supply chain resilience, etc. as outlined below.

Ensuring a Fair & Competitive Procurement Environment

Recognising and valuing the long-term economic benefits will help create a fairer and more competitive environment for all suppliers, in alignment with the non-discrimination principle outlined in the CPRs.

“Competition allows suppliers — including small to medium enterprises — to have a fairer and more equitable opportunity to secure government business... Evidence suggests that the decision to use non-competitive procurement methods, including approaching only one supplier on a panel, is often based on expediency and perceived efficiency to the procuring entity. This approach does not demonstrate an active focus on the core rule of the CPRs — to achieve value for money.”

- Australian National Audit Office

[Insights: Audit Lessons, Procurement and Contract Management](#) (ANAO Insights)

3 April 2023

2. Strengthening CPR Guidance on Economic Benefits When Making Value for Money Assessments

Broader Economic Contributions

We propose that the assessment guidance associated with the CPRs should recognise a range of economic benefits that are relevant and should be weighted when assessing value for money in ICT procurements. These benefits may be communicated as measurable KPIs to facilitate objective assessment by procuring officials when clearly demonstrated by suppliers:

- **Locally conducted R&D and commercialisation of IP:** Recognising the creation of ‘commercialisable’ domestically created IP in broad alignment with the Government’s Research and Development Tax Incentive (R&DTI).
- **Contribution to supply chain resilience:** Domestically assured supply chains aligned to the Department of Industry, Science and Resources list of critical technologies would enhance national resilience and economic stability by reducing dependency on international supply chains during global disruptions.
- **Higher company tax contributions:** Recognising taxation obligations of Australian tax-paying entities, particularly those that do not benefit from offshore tax structures/arrangements. Not accounting for the taxation contributions of suppliers can lead to significant structural bias in value for money assessments.
- **Investment in local skills development and training:** Recognising the proportion of a technology workforce being trained and developed as part of an Australian workforce. This is one measure that recognises the benefits accrual from ICT business that invest in workforce development as distinct from labour-hire providers.

- **Revenue creation:** Recognising opportunities for Australians (and superannuation funds thereof) to invest in an entity and share in the revenue creation effect. This particularly applies where the successful commercialisation of IP from Commonwealth procurement activities generates significant revenue, contributing to the wealth of Australian business owners/shareholders and reinvesting in further R&D activities. This wealth creation has follow-on benefits through improved standards of living.
- **Fostering Innovative Businesses:** Supporting growing innovative enterprises can drive innovation in partnership with the public sector, while increasing employment and diversifying Australia's economic base.
- **Environmental Sustainability and Green Procurement:** Encouraging procurement practices that prioritise environmental sustainability can lead to long-term economic benefits by promoting green industries and improving transparency and control of the government's ESG (Environmental, Social and Governance) supply chain.
- **Government Supported Technology and Innovation:** Recognition of domestic digital infrastructure and advanced technologies that have *already benefitted* from government grant programs can build on existing government investment and create a competitive edge for Australia's economy.

Recognition and Valuation of Intellectual Property Creation

Particularly for the ICT industry, procurement guidance should explicitly value Intellectual Property (IP) created and commercialised from Australia, recognising both IP transferred to Australia and IP developed domestically. This approach supports sustained investment in R&D and strengthens Australia's innovation ecosystem. Here's how and why this is crucial:

- **Sustained R&D Investment:** By valuing IP developed and commercialised domestically, businesses are encouraged to reinvest in R&D, leading to a cycle of innovation in Australia. This supports a robust innovation ecosystem where new ideas and technologies are constantly being developed in line with the government's agenda to grow innovative and competitive businesses in Australia.
- **Collaborations and Partnerships:** Domestically developed IP fosters collaboration between businesses, universities, and research institutions on the global stage. These partnerships can lead to significant technological breakthroughs and commercialisation opportunities.

Enhancing Global Competitiveness of our ICT Industry

Australia's ICT sector is an innovative growth industry that feeds innovation to other sectors of our economy.

Export Potential: IP created in Australia can lead to products and services that are competitive on the global stage. This broadens global markets for the Australian economy, increasing export revenues and improving the trade balance.

Attracting Foreign Investment: A strong portfolio of locally developed IP can attract foreign investment, as international companies seek to collaborate with or acquire innovative Australian firms.

Integrating the valuation of domestically developed IP into procurement policies ensures that government spending supports and amplifies these economic benefits.

3. Recommended Approaches to Strengthening Guidance for Assessing Economic Benefit

Recommendation 1: Provide an Expanded List of Economic Benefits

We recommend that the government publish an easily understandable and assessable list of economic benefits that procurement officials must consider, with weighted importance based on industry/sector relevance. For the ICT sector, factors such as IP creation, domestic R&D, tax, and supply chain resilience as laid out in the preceding pages should be weighted more heavily given the nature of the ICT industry.

This list of recognised and measurable benefits will help ensure that non-discriminatory economic outcomes are readily and objectively valued during procurement assessments. These benefits will be measurable via KPI and be industry-relevant, non-discriminatory, be aligned with the government's industry policy, and be amendable from time to time without requiring reissuance of the CPRs.

Recommendation 2: Create a Dedicated Business Unit to Measure and Track Compliance with the REB Requirements

A recurring theme in the context of Commonwealth procurement is a perceived lack of consistency and transparency in procurement processes as executed by relevant entities under the CPRs. As evidence of this, ANAO performance audits routinely find that entities have not complied with CPRs mandate that entities maintain appropriate documentation for each procurement in a way that reflects the scale, scope and risk of the procurement. Measurement is a fundamental element of accountability and transparency in procurement. It ensures that officials are responsible for the actions and decisions they have taken, and for the resulting outcomes according to [ANAO Insights 7 and 8](#).

The AIIA is of the opinion that the proper execution of REB is as successful as the effective implementation of data collection, documentation, and progress monitoring. To help remedy this perception the AIIA strongly recommends establishing an appropriately sized business support unit – e.g., minimum five FTEs – to maintain, educate, benchmark, and monitor REB performance. We recommend an industry-focussed department such as DISR operate this business unit and report to the Department of Finance in accordance with the former's remit in technology industry development.

Recommendation 3 Threshold Adjustments for Considering Economic Benefit

The current threshold of \$4 million for considering broader economic benefit in non-construction procurements excludes many ICT contracts where such assessment would be clearly achievable and appropriate.

We recommend:

- A tiered approach starting at \$200,000, with 10% consideration of broader economic benefits for procurements valued at \$200,000 to \$2 million.
- Increasing to 20% for procurements valued at \$2 million to \$5 million.
- Setting 30% for procurements above \$5 million.

This adjustment aligns with the existing tax residency reporting threshold and ensures that smaller but significant contracts are also incentivised to contribute to broader economic benefits for Australia.

4. Other Issues for Consideration

Panel Integration

Given the high proportion of ICT procurement that transacts via panel arrangements, the broader economic benefits guidance should be incorporated into panel procurement processes. Suppliers should respond to economic benefit questions as part of panel inclusion, and this information should be prominently and readily available to procurement officials.

Guidance on Engaging with Industry

- *Continuous Monitoring:* Implement continuous reporting on economic benefits during the contract period and at closure to allow the government to adjust the standard benefits criteria from time to time.
- *Collaborative Approach:* Foster a collaborative approach between procuring officials, suppliers and companies along the value chain to adjust and optimise economic benefit realisation as based on the nature of outcome being procured for (e.g., on the nature and treatment of IP creation). Noting that not all benefits noted in the REB rules will apply to all modalities of procurement.
- *Tenderer Commitments and KPIs:* Incorporating supplier commitments made as to economic benefits into contracts, along with measurable KPIs, is necessary for the measurement and tuning of procurement policy impact. This ensures accountability and provides a clear framework for assessing the impact of procurement activities. Such guidance should provide:
 - *Template KPIs:* Standardised templates for KPIs relevant to different industries and contract types/sizes.
 - *Flexibility:* Allow flexibility for suppliers and buyers to propose additional benefits KPIs that reflect unique contributions or innovative approaches.
 - *Transparency:* Require transparent reporting on KPI performance to ensure accountability and facilitate continuous improvement by the government.

Level of Detail in Tenders

- *Commensurate Detail:* Additional guidance on the level of detail expected to be explicated in a tender, proportional to the scale and scope of the procurement, is essential. This can help manage the burden on suppliers who may more readily 'self-qualify' in or out of a tender process, whilst ensuring larger contracts provide comprehensive information. The guidance should include:
 - *Scalable Requirements:* Clear, scalable requirements that adjust the level of detail based on the contract value and complexity.
 - *Examples and Case Studies:* Provide examples and case studies illustrating the appropriate level of detail for the relevant procurement scenario.

Contribution to Closing the Gap Targets

- *Economic Benefits and Closing the Gap:* We support the inclusion of guidance on how economic benefits criteria can contribute to Closing the Gap targets and align with or augments the Indigenous Procurement Policy (IPP), noting the current success is measured by an increase in the number of Indigenous businesses awarded a contract and the volume and value of contracts awarded to Indigenous businesses. This ensures that procurement activities align with broader social objectives. The guidance should offer:
- *Targeted Criteria:* Specific criteria that link procurement activities to Closing the Gap outcomes, such as employment opportunities for Indigenous Australians, and community development initiatives.
- *Measurable Impact:* Clear methods for measuring the impact of procurement activities on Closing the Gap targets, with examples of successful initiatives and how success was assessed.

Use of Weightings in Tender Evaluation

- *Guidance on Weightings:* Additional guidance on the use of weightings when considering economic benefits in tender evaluation criteria is needed to ensure consistency and fairness. The guidance should provide:
- *Standardised Weightings:* Suggested weightings for different types of economic benefits, with flexibility for adjustments based on the specific procurement context.
- *Rationale for Weightings:* Clear rationale for the chosen weightings to ensure transparency and justify their application.

Application of the Government Procurement (Judicial Review) Act 2018

- *Clarification and Examples:* Clarification regarding the application of the Government Procurement (Judicial Review) Act 2018 is necessary to help procuring officials and suppliers understand its implications. Given limited oversight or recourse for suppliers that believe CPRs have not been complied with during a procurement, this right to judicial review of procurement decisions is a key pillar of governance of the CPRs. Guidance as to the GPJR Act should include:
 - *Simplified Language:* Use clear and simplified language to explain the Act's provisions.
 - *Practical Examples:* Provide practical examples and case studies to illustrate how the Act applies in different procurement scenarios or to address particular supplier concerns.
 - *Compliance Tips:* Offer tips and best practices for ensuring compliance with the Act while maximising economic benefits.

5. Conclusion

To achieve the Commonwealth government's objective of maximising economic benefits from its procurement spend, the guidance for value for money assessments needs to be strengthened. By valuing a range of well-defined economic benefits and adjusting thresholds to apply to more contracts, the revised guidance can ensure that ICT suppliers are recognised for their contributions and are not placed at a competitive disadvantage. The AIIA wishes to see a fair and competitive environment for all suppliers, enabling Australian owned, and operated, tax-domiciled businesses who aim to supply ICT services to the Commonwealth government the opportunity to thrive.

This submission emphasises the long-term benefits to Australia, including building supply chain resilience, fostering innovative businesses, environmental sustainability, and digital transformation, and supports the broader economic benefits approach. These recommendations align with the current CPRs while advocating for more comprehensive guidance as to economic benefits specific to the ICT sector. The AIIA is committed to adding value to this process and providing further input as requested.

Should you have any questions, please contact Ms [REDACTED], [REDACTED], [REDACTED] at [REDACTED].

Yours sincerely

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About the AIIA

The AIIA is Australia's peak representative body and advocacy group for those in the digital ecosystem. Since 1978, the AIIA has pursued activities to stimulate and grow the digital ecosystem, to create a favourable business environment for our members and to contribute to Australia's economic prosperity.

We are a not-for-profit organisation to benefit members, which represents around 90% of the over one million employed in the technology sector in Australia. We are unique in that we represent the diversity of the technology ecosystem from small and medium businesses, start-ups, universities, and digital incubators through to large Australian companies, multinational software and hardware companies, data centres, telecommunications companies and technology consulting companies.