

Future of Work

Government Procurement Policy

Australian Jobs, Industry and Decent Industrial Relations

Preamble

1. The federal and state governments' expend billions of dollars every year on the acquisition of goods and services. At a time of increasing job insecurity and rising unemployment due to the Global Financial Crisis, governments' need to be especially mindful of, and committed to, the need to ensure that their expenditure of taxpayers money encourages the creation and retention of jobs within Australia. Furthermore, the context for this is that it should always occur within the terms of the nation's international obligations and that workers are paid fairly and employed under decent terms and conditions.
2. The following is proposed for adoption by the Federal Government in particular, and state branches and affiliated unions are encouraged to pursue similar initiatives with their respective state and local governments.

Application of Australian Government Procurement Policy

3. Australian Government Procurement Policy should apply to:
 - a) the purchase of goods and services by the Australian Government including all budget agencies, statutory authorities and government owned corporations;
 - b) organisations contracted to the Australian Government to provide goods and/or services;
 - c) funding agreements between the Commonwealth and State or Local Governments, Community organisations and NGO's and any other organisation in receipt of Commonwealth monies.

Introduction

4. The Australian Government's procurement policy should have as its objectives the retention and creation of jobs and the development and support of local industry in Australia requiring that contractors supplying goods and services to government adhere to ethical employment practices.
5. The ACTU believes that such procurement policy should be based on the Government Procurement provisions in the 2007 ALP National Platform and that all of the following matters need to be included.

Industrial Relations

6. All government contractors and all those to whom this policy applies (including sub-contractors in the supply chain) must adhere to all industrial relations and employment related laws including, but not limited to:
 - a) compliance with awards and industrial agreements,
 - b) primacy of collective bargaining,
 - c) annual leave,
 - d) long service leave entitlements,
 - e) best practice occupational health and safety, workers' compensation,
 - f) superannuation,
 - g) legal age of employment,
 - h) discrimination, and
 - i) taxation laws.
7. Government contractors should be contractually responsible for their subcontractors' adherence to this policy. Contractors will be liable for the remedies below should their subcontractors breach this policy. Where a government contractor or tenderer provides or seeks to provide goods to government that could be made by an outworker, it must comply with the additional obligations outlined in Attachment A.
8. In addition to compliance with legislative provisions relating to Freedom of Association, all successful tenderers must comply with the principles of Freedom of Association. This means they shall not provide barriers to employees joining and being active members of a union. This should include:

- a) allowing employees to participate in negotiations with employers and representative bodies of employees to develop enterprise agreements;
 - b) no victimisation of any kind for persons who choose to be members of a union;
 - c) codification and effective implementation of the rights of union representatives where the employees concerned choose to have such representatives;
 - d) recognise the role of union delegates and unions generally in representing workers;
 - e) observance of the applicable right of entry provisions by authorised union officers and health and safety representatives for legitimate purposes including the recruitment of members, dealing with member grievances and investigating any suspected breach of industrial awards, agreements or legislation; and access to an inspection of the relevant employer records by a union;
 - f) a half hour paid industrial rights induction with a representative of the relevant union;
 - g) the right of elected union workplace representatives to represent members
9. The process for tendering must be transparent. Prior to a decision on a successful tenderer, the government will publish a full list of tenderers with both unions and employer organisations having the right to supply information to the government agency about any potential contractor (including any potential sub-contractor in the supply chain) that it believes has a history of acting contrary to law or behaving in a manner which does not comply with the principles of Freedom of Association.
10. The letting of government contracts will be transparent with strict limitations on the use of commercial in confidence exclusions. All government agencies will maintain a register of commercial-in-confidence exclusions, to be periodically tabled in parliament and subject to scrutiny.
11. The government will require agencies to disclose details of any sub-contract arrangements including the identity and location of sub-contractors.
12. All government contracts should set minimum wages and conditions standards in all contracts until such time as the Fair Work Australia laws are fully implemented. This should be done by way of a no disadvantage test against the relevant award and/or contract determination and/or industrial agreement that would have applied had it not been for WorkChoices. As an overarching principle, it should be clear to any

potential tenderer that contracts will not be awarded on the basis that a competitive price is arrived at by undercutting the wages, conditions and rights of employees. At all times, the tenderer should have cognisance of any prevailing terms and conditions applicable to employees on collective agreements within the given industry.

13. Employers who are party to a collective workplace agreement with a registered trade union shall automatically be deemed to comply with clauses 1 and 2 above.
14. Where it is alleged a contractor has breached any of its industrial relations obligations including issues of Freedom of Association, as an initial step the government will consult with stakeholders (including the relevant union) about the best means to ensure compliance. If the matter remains unresolved, the matter shall be referred to Fair Work Australia for resolution and/or determination. This shall be a requirement of the contract.
15. Notwithstanding the above, where a breach has occurred the Government Agency must be able under its contract to apply remedies which include:
 - a) ordering rectification of the breach;
 - b) formal warnings;
 - c) partial exclusion from tendering, i.e. a reduction in the number of tendering opportunities;
 - d) preclusion from tendering for any work for a specified period;
 - e) contract cancellation;
 - f) financial penalties;
 - g) reporting of the breach to relevant regulatory and enforcement authorities;
 - h) A combination of any or all of the above.
16. The Federal Government will publish a full list of successful tenderers, including:
 - a) the name of the company or individual who holds the contract and all sub-contractors they will use in the supply chain along with their business addresses;
 - b) the location and duration for performance of the contract;

- c) whether outworkers could be used to produce the goods under the contract and if so whom and at what location; and
- d) tenderers' answers to industrial relations and OHS questions referred to in 1 and 2 above.

Australian Industry Participation

- 17. The Government should be committed to maximising retention and creation of jobs in Australia and should seek to utilise its procurement practices to that end. Therefore, while having regard to whole of life value for money considerations and Australia's international trade agreement obligations, departments and agencies will also assess tenders on the basis of full and fair Australian industry participation opportunities retained or created in Australia - including through effective utilisation of the Australian Industry Capability Network.
- 18. Government departments and agencies will be required to purchase from Australian and New Zealand suppliers who are price and quality competitive and who comply with the terms of this policy. The policy will provide a price preference advantage for Australian suppliers of 20 per cent with an additional five per cent for those companies based and operating in regional Australia. Consistent with this formula, and where all other things are equal, favourable consideration will be given to the tenderer who maximises Australian employment.
- 19. Government should avoid a 'whole of contract' procurement approach that preferences companies that can provide all the goods and services required at the expense of excluding small to medium local suppliers from participation in the tendering process. In line with government policy to award a greater share of government procurement contracts to small businesses, contracts to small and medium local suppliers for goods and services will, where applicable, be maximised. This should apply also to the use of "Common Contracts Purchasing" where only one company is awarded a contract to supply all of a particular good or service to governments e.g. stationery supplies, IT, motor vehicles etc. The use of a variety of suppliers will not only provide for ongoing competition but will also ensure that smaller, local businesses are supported. Contracts should only be awarded totally offshore in circumstances where it is evidenced that the goods or services cannot be sourced locally (as described in item 9 above). Where parts of the goods or services are thus available locally, preference will be given to those contractors who include the use of such local providers.
- 20. In the event of contracts being awarded offshore, successful tenderers should be required to demonstrate compliance with the relevant employment standards contained within the UN human rights instruments, the ILO Conventions and where applicable the OECD Principles for Multi-National Enterprises. Opportunities will be afforded to stakeholders to

verify such compliance via the consultative mechanisms referred to in item 14 below.

21. Contracts which aggregate to in excess of \$50million per annum are of national significance. Where such contracts are for services or goods and material provided predominantly from offshore, successful tenderers must comply with the additional obligations to those outlined in clause 11 above. Wherever practicable, successful tenderers must be required to enter into contractual arrangements that maximise opportunities for full and fair Australian industry participation. Where it has been determined that a reasonable opportunity exists for the local provision of such services and material, those contractual arrangements would include;
 - a) Local skill development including investment in training for higher level broad based qualifications and retraining of existing workers,
 - b) effective labour market planning and forecasting,
 - c) the use of skilled migration only where a genuine skills shortage has been demonstrated to exist.
22. In assessing tenders for services contracts that have a high labour content, the government should take particular care to ensure that sufficient staffing is proposed to allow the service to be delivered. Any such contract should not be awarded to the exclusion of a Public Sector agency that may be able to deliver the service.

Aboriginal and Torres Strait Islander Employment - Closing the Gap

23. The Government will reinforce their commitment to “closing the gap” by initiating a strategy which includes Aboriginal and Torres Strait Islander business, employment or outcome targets in all government procurement and purchasing. This is consistent with current procurement guidelines at the commonwealth and some state government levels and should be spread through COAG for a consistent national approach. Congress calls on unions, governments, industry bodies and employers to develop and implement a targeted, quantitative scheme which addresses high unemployment and low levels of certified training in all areas with a high density of Aboriginal and Torres Strait Islander peoples.

Consultation

24. The Government should use existing tripartite consultative mechanisms, and create new ones as appropriate, to enable stakeholders to regularly monitor the effective implementation and compliance with this policy and to suggest modifications where necessary.

ATTACHMENT A - OUTWORKERS

1. In addition to compliance with the instruments and legislation set out in clause 1 of the Procurement Policy, all government contractors (including sub-contractors in the supply chain) who give work out and/or engage outworkers in the textile, clothing and footwear industry must be accredited with the Homeworkers Code of Practice and must comply with any relevant Federal and State legislation, awards, industrial instruments and codes of practice relating to the performance of work by outworkers.
2. Tenderers (including any sub-contractor in the supply chain) who tender to provide goods to government that could be made by an outworker must provide evidence of compliance with applicable awards and legal obligations relating to the giving out of work and the engagement of outworkers when they lodge a tender. The evidence must be provided in a statutory declaration and must include but is not limited to:
 - a) the name of the relevant award or workplace agreement (howsoever described) or other relevant employment law
 - b) registration number of factory or workshop, where applicable
 - c) registration number as an employer giving out work, where applicable
 - d) whether outworkers have previously been engaged
 - e) evidence of compliance, in the twelve months prior to the tender being lodged, with the applicable award or other relevant employment law requirements relating to the lodgement of periodic work lists of employers and other parties to whom work has been given, where applicable
 - f) evidence of workers compensation insurance such as a renewal notice
 - g) evidence of current superannuation fund membership and contributions
 - h) location of time book, sheet or records required to be maintained under the applicable award and industrial legislation or other relevant employment law
3. Unless the statutory declaration and information is provided, a tender will not be considered.
4. Where a tenderer tenders to provide goods to government that could be made by an outworker the government will notify the Textile Clothing and Footwear Union of Australia ('TCFUA') and will consult with the TCFUA about the compliance of the tenderer with industrial instruments outlined in clause 1 of the Procurement Policy and clause 1 of Appendix A of the Procurement Policy. If such a tenderer is successful in its bid to supply goods to the government, the government will notify the TCFUA.