

Government Procurement

Developments since Congress 2009

The revised *Commonwealth Procurement Rules*, which will become effective from 1 July 2012, contain no significant policy changes from their 2008 counterpart. However, these rules are now supplemented by the *Fair Work Principles*, which came into effect on 1 January 2010, and which set out ongoing requirements on government contractors aimed at ensuring that they comply with the *Fair Work Act* as well as with relevant industrial instruments and employment-related laws including those relating to occupational health and safety, workers' compensation, superannuation, anti-discrimination and taxation.

The Commonwealth Government has further recognised the history of underpayment, exploitation and unsafe work practices in the cleaning industry by implementing the 2011 *Cleaning Services Guidelines*, which compel potential contractors to demonstrate, at the tendering stage, compliance with mandatory practices including practices relating to inductions, training, supervision, use of equipment, duty schedules, fair and reasonable workloads, freedom of association, consultation and dispute resolution.

Key Issues

In the 2010-2011 financial year, the federal government was engaged in 79,286 reported contracts, with a value of \$32,641 million. Twenty nine of those contracts were valued at \$80,000 and above. This represents a 11.1% decrease in reported contracts valued at over \$10,000 since the 2005-2006 financial year.

In recognition of the fact that direct government procurement represents only a proportion of the money the Australian Government expends each year, unions believe that procurement policies (including those that promote good workplace relations outcomes and Australian industry participation) should be extended to other areas of government expenditure including grants and other funding.

This policy provides that adherence to industrial laws must remain a condition of participation in government procurement contracts. Further, pre-qualifying requirements should apply to the tendering process across all industries to ensure that government considers only contractors who act in a socially responsible manner and who treat workers fairly and consistently with prevailing pay and other working conditions as determined by law or collective bargaining. Appropriate pre-qualification requirements for the tendering process are particularly necessary in industries with high non-compliance risk, such as those characterised by low pay, low bargaining density, work of an insecure nature (such as where work is predominantly casual) or

where there are vulnerable workforces (such as where there is a high prevalence of casual workers, migrant workers or young workers).

Government procurement must also be transparent and accountable, be consistent with international legal standards relating to government procurement, and must actively encourage Australian industry participation, the creation of traineeships and apprenticeships, and increased Aboriginal and Torres Strait Islander employment.

Agenda 2012 -2015

The federal and state governments expend billions of dollars every year on the acquisition of goods and services. Where it is in the public interest to contract out goods and services, governments need to be mindful of - and committed to - the need to ensure that their expenditure of taxpayers' money encourages the creation and retention of jobs within Australia. Further, this policy provides that government must ensure that it promotes ethical and decent workplaces in which employees are treated fairly and with respect, including in relation to freedom of association and the right to be represented at work.

Over the next three years, this policy calls on unions to campaign for the government to ensure that it promotes ethical and decent workplaces by:

- extending the scope of the Commonwealth Procurement Rules and Fair Work Principles so that they apply to other areas of government expenditure, including grants and other funding;
- requiring all contractors who perform government work, including sub-contractors in the supply-chain, to demonstrate compliance with all relevant industrial legislation and other industry-specific workplace standards. Ongoing compliance must be a contractual requirement so that a breach of any relevant industrial law or law relating to employment will also constitute a breach of the procurement contract;
- establishing a pre-qualification system which requires prospective tenderers to demonstrate compliance with all relevant industrial legislation and other relevant industry standards as a pre-condition to being able to submit a tender;
- requiring contractors who perform government work to be contractually responsible for any sub-contractor's adherence to the requirements of the law, and liable for the remedies available as a consequence of breach;
- requiring breaches of any industrial obligations or the Fair Work Principles to be dealt with in a consultative manner with the relevant union, with recourse available to Fair Work Australia for resolution and/or determination;
- ensuring transparency of the procurement process by requiring the government to 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, by

maintaining a list of commercial-in-confidence exclusions and by publishing a full list of successful tenders including disclosure of the details of any sub-contracting arrangements;

- promoting Australian industry participation through effective utilisation of the Australian Industry Capability Network;
- requiring government contractors to provide apprenticeship and traineeship positions;
- initiating a strategy to include and promote Aboriginal and Torres Strait Islander business employment or outcome targets in all government procurement and purchasing;
- using existing tripartite consultative mechanisms, and creating new ones as appropriate, to enable stakeholders to regularly monitor the effective implementation and compliance of contractors with their industrial and contractual obligations; and
- encouraging the government to ratify ILO Convention 94 on the payment of market wages in government procurement.