



**MASTER BUILDERS  
AUSTRALIA**

# **HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON INFRASTRUCTURE, TRANSPORT & CITIES**

**Inquiry into procurement practices for government-funded infrastructure**

**28 July 2021**

# Introduction

**Construction is vital to Australia. It is the nation's third largest industry, with around 400,000 building and construction business operating in communities across the country. It employs 1.7 million people and trains more than 50,000 apprentices each year.**

**The Federal, State and Territory Governments are relying on construction activity to accelerate economic recovery from the Covid pandemic. Every \$1 of investment spent generates \$3 in the wider economy through the extensive construction supply chain.**

**A pipeline of Government infrastructure commitments, including new and fast-tracking existing projects, plays a major role in helping the economy bounce back from Covid. These commitments also drive productivity and economic gains over the longer term.**

**With the scale of infrastructure investment in the pipeline growing and the imperative to economically recover from Covid, now is the time to refine government procurement practices, to maximise the positive economic impact in local economies and communities around the country.**

**Procurement processes need to reflect the fact that most construction businesses are small in size and scale. This is because 98% of construction businesses are small businesses. They employ fewer than 20 people, with 60% operating as sole traders or partnerships. 57% have annual turnover of less than \$200,000 with about 1 in 5 typically bringing in less than \$50,000 per year.**

**It is our view that for government procurement processes to work, they need to be genuinely open to any capable construction business who can meet fair and reasonable procurement criteria - regardless of size.**





# Challenges and Opportunities

**The most significant limitation in government procurement processes is its failure to tap into local business capability; and grow more Australian businesses.**

To support a broader cross section of Australia's construction businesses and improve sovereign capacity, government procurement practices must ensure that local contractors and subcontractors have real access to opportunities to tender for government infrastructure projects.

Selecting the most appropriate model is important, but lessons from successful local participation policies that clearly state requirements need to be present at the outset of the procurement process, and applied across each model, need to be better implemented.

While clear policy commitments to opportunities for local contractors are laudable, their success is often undermined by how they are implemented in practice.

Effective local procurement models need to be show-cased and more consistently adopted. From a Federal Government perspective, the best performer is Defence. The Department of Defence has made substantial advances in developing and implementing policies to ensure local contractors and subcontractors can realistically and fairly tender for projects in their regions. Examples of this are provided in Attachment A.

The Federal Government's Defence local procurement framework is an effective model that should apply to future government investments such as funding agreements for transport and Olympic Games infrastructure.



# Greater competition and quality outcomes

**To facilitate greater competition to maximise return to the taxpayer, Master Builders is of the view that 3 keys issues need to be addressed in consideration of best value:**

1. Better balance of risk transfer that will encourage greater competition in the tender process.
2. Removing from tender processes, practices that in effect exclude a large number of otherwise capable businesses. For example, bundling and unreasonable contract terms.
3. It should not just be about the lowest price, but also should consider economic impact in local economics, quality outcomes, and social and environmental considerations.

## **Reducing risk load**

For many construction businesses, the proportion of the risk (in some cases 100%) they are required to take on when entering into government contracts is often too great and this dissuades them from partaking in the procurement process in the first place.

For example, businesses could be forced to bear the costs arising from delays to the project, even when those delays arise from uncontrollable factors like:

- Product shortages and supply chain disruption;
- Illegal industrial action; and
- The issuance of public health orders.

This is particularly relevant to the recent product shortages, which have in some circumstances caused significant delays or for alternate materials to be sought (giving rise to a variation under the contract).

Reducing the risk load faced by construction businesses would allow them to participate more fully in the procurement process. This could be achieved by providing a contingency under all government contracts that provide for qualifying causes of delay (both for time and related costs) due to disruptions from variations, latent conditions, requirements of authorities and industrial issues. This would then allow for necessary variations or valid extensions of time in circumstances where the works are delayed by any cause beyond the control of the Head Contractor.

Contract terms are also taking their toll on mental health. Studies have shown that the time-based nature of construction contracting is having a determinantal effect on the mental health of the industry. Unreasonable and tight programming deadlines imposed by the Principle, often result in workers experiencing extreme stress and pressure to complete the project on time to avoid delay costs being imposed under the contract. The Government should consider options that could be developed to address programming pressures upon contractors and what measures might be incorporated into procurement practices to alleviate those pressures.

### **Bundled contracts**

One of the most significant barriers to local contractor access to government procurement is the bundling up of projects into much larger projects. By virtue of their size these projects exclude local contractors and sub-contractors.

It is acknowledged that some larger and more complex projects by their very nature will limit the number of eligible contractors.

Bundling occurs at multiple levels and stages of procurement on government funded projects.

At the time that government tenders, discrete projects often located separately are bundled together and become megaprojects. This in turn limits the field of businesses that can tender to supply those services.

The result is that locally based construction contractors and subcontractors with the capacity to deliver projects as head or managing contractors are excluded from tendering to deliver work in their own communities. It also decreases levels of competition as there are much less businesses able to tender for megaprojects.

Access to government-funded construction contracts could be improved by unbundling larger contracts into smaller ones. This would effectively make a share of the market more contestable to all construction businesses regardless of size and would benefit competition.

A good example of The Federal Department of Defence uncoupling projects is the Air 7000 2(B) project. The national defence infrastructure program has been redesigned to allow local firms to bid for local components of those programs. Originally designed as a \$300–400 million project for works in both Adelaide and Tindal for the Triton UAV, the model has been revised as two separate construction contracts. The Tindal component is now estimated to be \$110m which is within the scope of the local market to deliver.

This example and other projects administered by Defence under its Local Capability and Industry Participation Model are supported by local industry across Australia. The framework opens up 'opportunities' that many considered had

been closed off. Importantly, Defence will benefit too. Works Packages will bring intense local competition for those opportunities, delivering a true reflection of 'value for money'. The model provides Defence with some certainty around what their partners propose to do with engaging local firms and their employees. Uncoupling is already paying dividends, providing Defence with greater value for money and a truer out-turn cost for projects across the country.



# Recommendations

**Procurement decisions shape projects and project outcomes. This is why a more concerted effort by government towards opening up the process for greater competition is vital.**

The barriers that need to be addressed largely relate to risk loads, contract bundling by both government and head contractors, poor application and evaluation of local participation requirements, and lack of awareness in public sector procurement administration about local industry capability.

To support greater competition, Master Builders recommends the following.

**1. Adopt a consistent best practice local industry capability and participation framework in all Federal Government infrastructure investments and funding agreements based on the Department of Defence Model. Specifically:**

- the approach adopted by the Department of Defence to uncouple projects where an objective assessment of technical capacity or capability does not preclude it (eg. Only one contractor operating in Australia with the equipment required to bore a tunnel in a particular environment).
- Defence style Local Capability and Local Industry Participation Plans are implemented and enforced by the Federal Government when structuring funding agreements with state and territory jurisdictions for the construction of infrastructure.

## 2. Reduce the Risk:

- Procurement processes should require government to transfer risk on a more fair and reasonable basis.
- Provide a contingency under all government contracts that provide for qualifying causes of delay (both for time and related costs) due to disruptions from variations, latent conditions, requirements of authorities and industrial issues.
- Government be more cognisant of cashflow pressures within the supply chain in determining payment times.
- Government should consider options that could be developed to address programming pressures upon contractors and what measures might be incorporated into procurement practices to alleviate those pressures.

## 3. Improve government oversight:

- Projects valued at \$100m and over be referred to the relevant Minister for consideration of procurement strategy.
- Ministerial oversight would provide an important check on how to aggregate projects in work packages that have been arrived at.
- Governments separate situations where they play a dual role as a client and regulator.
- Governments commit to a rigorous assessment of local capabilities to enhance their understanding of the appropriate procurement model and tendering processes to maximise the economic benefits to communities where infrastructure will be delivered.
- The Small and Family Business Ombudsman should investigate subcontract documents and focus on dealing with unequal market power with contract hierarchy.
- Conflicts between Federal and State/Territory procurement regimes and codes need to be addressed through more consistent obligations for Head Contractors and local participation.

## 4. More transparent reporting on local participation requirements:

- Details of tender outcomes, contracts (description of works, successful firm, contractor value etc) awarded by head contractors should be published to increase transparency.
- Governments should collectively publish procurement outcomes which is both good governance and boosts competition by providing a market signal for local construction contractors with which to gauge their relative competitiveness. This delivers benefits to the taxpayers beyond local communities.

# ATTACHMENT A

## Defence Procurement

### Local Capability and Industry Participation Model

The Department of Defence is investing billions to enhance its facilities around the country. It has made substantial advances in developing and implementing policies to ensure that local contactors and subcontractors can realistically and fairly tender for projects in their regions.

The Minister for Defence announced a set of procurement 'pilot projects' in late August, 2017 in response to representations from regional industry representatives. Those 'pilots' were designed to test options for increasing the opportunities for local businesses to bid for opportunities on Defence infrastructure projects.

### Works Packages

On the \$550m Larrakeyah/Coonawarra Redevelopment Project, the Managing Contractor has designed its procurement plan to include a set of discrete projects that could be let to the local market. A works package might be a new Headquarters Building or the redevelopment of the Main Gate entrance.

These works packages would be let as a single contract to local head contractors, who would bring into those bids a local supply chain and a local workforce.

### Local Industry Capability Plans

Bidders for Defence Projects are now required to develop a Local Industry Capability Plan (LICP) that details their intentions to make use of local industry in the delivery of a project. The successful bidder is contractually bound to deliver on those commitments.

### Uncoupling National Projects

Several national infrastructure programs have been redesigned to allow local firms to bid for local components of those programs. Air 7000 2(B) is an example. Originally designed as a \$300–400m project for works in both Adelaide and Tindal for the Triton UAV, the model has been revised as two separate construction contracts.

The Tindal component is now estimated to be \$110m which is within the scope of the local market to deliver.

These reforms are supported by local industry across Australia. Each opens up 'opportunities' that many considered had been closed off. Importantly, Defence will benefit too. Works Packages will bring intense local competition for those opportunities, delivering a true reflection of 'value for money'. The LICP's provide Defence with some certainty around what their partners propose to do in engaging local firms and their employees. And uncoupling is already paying dividends, providing Defence with greater value for money and a truer out-turn cost for projects across the country.









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