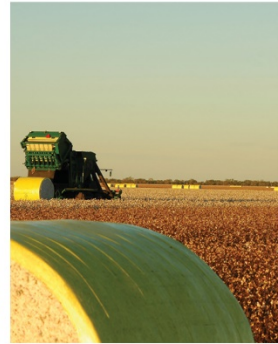


**The Voice for
Australia's exporters**



**Submission to the Joint Select Committee on
Government Procurement Inquiry into the
Commonwealth Procurement Framework**

March 2017

Submission by the Export Council of Australia



About the Export Council of Australia

The Export Council of Australia (ECA) welcomes the opportunity to provide a submission to the Joint Select Committee on Government Procurement's Inquiry into the Commonwealth Procurement Framework. The ECA is the peak industry body for Australia's exporters and importers, particularly SMEs. With a membership base of around 1,000 and a reach of over 15,000, the ECA represents companies of all sizes and across a wide range of industries.

The ECA's core activities include research, advocacy, skills development and events. The ECA collaborates with a number of government agencies, at Commonwealth, state and territory levels, to advance the interests of its members and support SMEs. Within the Commonwealth, these agencies include the Department of Foreign Affairs and Trade, Austrade, Efic, the Department of Immigration and Border Protection, the Department of Industry, Innovation and Science, and the Department of Agriculture and Water Resources.

In addition to over 60 years of training Australians how to export, the ECA has developed, or is currently developing, a range of activities to support Australian SME exporters. See further information at Appendix A.

Summary

Access to foreign markets is extremely important for businesses that provide goods and services to governments. The ECA strongly supports the Australian Government including government procurement in its past, current and future trade agreements. Doing so offers major benefits with few costs. Australia already has open government procurement markets, meaning there is negligible impact on Australian businesses competing for domestic contracts. For exporters, it opens up new markets, enhances certainty in existing markets and provides the right of review for discriminatory conduct.

Recommendations

The ECA recommends the Joint Select Committee on Government Procurement:

- affirm the benefit of government procurement chapters in existing trade agreements and recommend the Australian Government do more to educate SMEs about their rights under these agreements
- recommend the Australian Government finalise and ratify its accession to the World Trade Organisation (WTO) Government Procurement Agreement (GPA) as soon as possible
- recommend the Australian Government include government procurement chapters in current and future trade negotiations.

Background

The ECA is a strong supporter of the Australian Government entering into agreements on government procurement as part of bilateral, plurilateral and WTO trade agreements.

Australia has a relatively open approach to government procurement. The ECA supports this. We recognise that the government must seek to achieve the best value outcome for Australia, and must do so within constrained resources. This is especially important given the state of the Commonwealth Budget, which has been in deficit since 2008-09 and is estimated to remain in deficit until 2019-20.



Foreign governments are extremely important buyers of Australian exports. The Australian Bureau of Statistics (ABS) estimated that in 2015-16, Australia exported government goods and services worth \$1.02 billion (see catalogue number 5368.0.55.003). But this only counts export earnings not included in other goods and service categories (for example IT, construction and medical equipment). In reality, exports of government goods and services are far, far higher than the ABS figures suggest.

Exporting is particularly important for businesses that provide goods and services to government. Often these businesses—ranging from small firms operating in niche policy areas to major infrastructure firms—will build expertise and grow workforces when domestic governments are spending on particular programs or projects. But domestic government spending is sporadic. There may not be sufficient work to sustain these businesses until the next contract. Instead of laying off workers, and losing expertise, accessing foreign government procurement allows those businesses to survive, even thrive, when domestic spending dries up. And as a result of their export contracts, when domestic governments start spending again, those businesses are more experienced and therefore more competitive.

Anecdotally, exporting to foreign governments has been an important pre-condition for Australian businesses to win contracts with Australian governments. Several members have told the ECA that they were not able to break into Australian government procurement markets until they had demonstrated their capabilities by selling to foreign governments.

Given the importance of sales to foreign governments, guaranteeing existing access these markets, and opening up new access, is extremely important to Australian businesses that sell goods and services to government.

Existing trade agreements Australia has entered into

Based on feedback from our members about the government procurement chapters of the free trade agreements (FTAs) already in force, the ECA considers these to be successful. The ECA notes that the United States and Singapore—countries covered by FTAs with Australia that include chapters on government procurement—make up over 50% of all exports in government goods and services (based on ABS data, noting the data limitations mentioned above).

Specifically regarding the Australia-United States FTA (AUSFTA), we consider the government procurement chapter to be very positive. While disappointed more US states did not accede to AUSFTA, ECA members have reported beneficial outcomes arising from the FTA. The ECA also notes the advantages of guaranteed access to this important market, as well as the independent complaint resolution mechanisms. These are particularly important given the current US administration's 'America First' policies.

The ECA is also optimistic about the benefits that will flow to Australian businesses based on the government procurement chapters in the Korea-Australia FTA and the Japan-Australia Economic Partnership Agreement.

However, the ECA notes there is a lack of understanding by Australian SMEs about their rights under these FTAs. The ECA recommends the Australian Government do more to raise awareness of these provisions, and educate SMEs about how to use these provisions (including recourse for resolving disputes). This should involve including a focus on government procurement in DFAT's FTA Portal. (See Appendix B for more information on what this could involve.)



Trade agreements that the Commonwealth Government is currently negotiating

The ECA strongly supports the Australian Government including government procurement in current and future trade agreements. In particular, the ECA is a major supporter of the WTO GPA.

The ECA expects the GPA to have minimal impact on domestic government procurement outcomes. Australian Government procurement processes are already largely consistent with the GPA, and there are sensible carve-outs for areas such as defence, security, Indigenous, SME and local government procurement. In addition, the main procedural change required under the GPA—the introduction of review procedures—will potentially be of greater value to Australian businesses competing for domestic government work than to foreign businesses.

Australia's accession to the GPA will deliver immediate benefits to Australian exporters in two ways. Firstly, it will guarantee access to GPA markets that are not currently covered by trade agreements with Australia. Most notably, this includes the EU and its member states, but it also extends government procurement access to major US states not covered by AUSFTA, such as Arizona, Iowa, Massachusetts and Minnesota (which have a combined gross state product greater than Australia's GDP). The WTO estimates the GPA provides guaranteed access to members' government procurement of \$US 1.7 trillion p.a.

Secondly, and perhaps more importantly, it will allow Australian businesses to have complaints about government procurement reviewed by independent bodies. This is important, as the ECA has heard anecdotally of Australian businesses facing discriminatory practices when trying to access government procurement in some GPA member markets.

Australia's quick accession to the GPA will also give us a stronger negotiating position with other states seeking to accede to the GPA, than we would have in bilateral negotiations. Government procurement is not covered in the China-Australia FTA (CHAFTA), although it does contain a commitment to future negotiations. Australia would have far greater influence in negotiating with China as part of China's accession to the GPA than we would under subsequent CHAFTA negotiations.

The ECA also supports the Australian Government including chapters on government procurement in the bilateral and plurilateral trade agreements currently under negotiation and also those due to start. This includes the Regional Comprehensive Economic Partnership, and the Indonesia-Australia Comprehensive Economic Partnership Agreement. It should also seek to include government procurement with the planned FTA with the United Kingdom, and seek additional opportunities for market access in the soon-to-commence negotiations with the European Union.

While the ECA was disappointed with the US's withdrawal from the Trans-Pacific Partnership (TPP), the ECA recommends the government pursue a revised agreement covering the remaining TPP parties. Such an agreement should seek to retain the agreed chapter on government procurement.



Appendix A: ECA activities to support Australia's SME exporters

Export training for SMEs

For over 60 years the ECA has educated Australian businesses on international trade. Through practical education and training, the ECA has helped thousands of companies to develop the business skills that have enabled them to succeed internationally.

Export Awards and Export Heroes

The ECA showcases Australia's top exporters by running Export Awards programs for NSW, Qld and WA, as well as running its own Export Heroes Awards program.

The Export Awards is a national program that recognises and honours Australian companies engaged in international business who have achieved sustainable growth through innovation and commitment. The awards measure businesses against their peers based on the strength of their international growth, marketing and financial strategies.

Australian Export Heroes Awards recognise individuals who have made an outstanding contribution to building Australia's position and performance in international trade. Export Heroes are the champions of Australia's export community, having contributed to building modern export enterprises and helping to further develop a uniquely Australian export culture.

Australia's International Business Survey

In 2014, the ECA launched a longitudinal survey, Australia's International Business Survey (AIBS), with Austrade and Efic. The 2014 survey captured data on the international business activity of over 1600 Australian exporters. It was the most comprehensive investigation into Australia's international business activity in more than 15 years. There have been annual AIBS surveys since 2014, with the 2017 survey going to field early 2017.

Advancing Trade Development report

This report examined the export-oriented trade promotion services offered by public agencies in some of the world's largest exporting nations. It highlighted the programs the governments of these countries offered and the contributions these programs made to international best practice. It made recommendations about how Australia could improve its support for exporters.

Export research

The ECA has delivered many large-scale research projects, usually in collaboration with public bodies or private industry. We focus on both specific areas related to trade—such as free trade agreements and their impact—as well as broader topics, such as on market-based opportunities.

Non-tariff measure portal

The ECA is planning to develop a portal to help Australian exporters to overcome non-tariff measures (NTMs). As Australia's growing FTA network reduces tariffs, NTMs become more prominent barriers to trade. The NTM portal will collect and analyse data on the range and frequency of NTMs. It will provide Australian companies resources, information and linkages to help overcome NTMs, and allow government to prioritise which NTMs to address

Campaign promoting the importance of trade

In 2017, the ECA intends to launch a campaign to strengthen support in Australia for open trade. The campaign will highlight to everyday Australians how central trade is to their lives.



Appendix B: ECA scoping of a portal to help businesses take advantage government procurement provisions in trade agreements

The ECA has scoped a portal to help Australian SMEs better understand the access and benefits they have under the GPA and government procurement chapters in FTAs. We welcome the opportunity to collaborate with the Australian Government on this portal.

Scope

Research by the Economist Intelligence Unit found that just 19 per cent of exporters have taken advantage of each of the nine FTAs signed between Australia and other nations since 2005, and this includes the government procurement opportunities that are often negotiated as part of an agreement.

The major reasons Australian companies are not chasing the opportunities created through FTAs are:

- a poor understanding of FTAs
- the complexity and length FTAs, for example, FTAs can run to 500 pages or more in length and most SME companies do not have the time or resources to dedicate to reading and interpreting the text
- a sense that the negotiated FTAs are not relevant to their company.

By contrast, 75% of Australian companies who use an FTA have experienced export growth. Key advantages included access to new markets, access to a wider client base and the creation of new business opportunities.

The Export Council of Australia has identified an opportunity to develop a portal that could be used by Australian SMEs in anticipation of Australia joining the WTO GPA agreement.

An interactive portal would allow companies to easily search for information by country or product/service/technology line in order to find information about the opportunities available to their business through government procurement.

The portal would:

- provide SMEs with the ability to either 1) search or 2) subscribe to receive updates by industry and/or country on government procurement opportunities.
- provide SMEs with a single point of access to market information under the GPA and directs them to the WTO site for further information
- provide information on which countries are party to the agreement and what they have committed to provide. This would involve linking DFAT's FTA portal (ftaportal.dfat.gov.au) with the WTO's GPA portal (e-gpa.wto.org).
- help SMEs in not only identifying the market opportunities but also educates them on the complexities of doing business with government.

This portal would need to go beyond the text of the agreement. The below case study highlights the complexity of selling goods and services to the US Government.

Example case study: selling goods and services to the US Government

- Sales to the U.S. Federal Government are completely different from commercial sales. This reflects in large part the purchasing power of the Federal Government.
- Suppliers must agree to a panoply of requirements and obligations imposed by the buyer both in the supply contract, under Federal law and in U.S. Government procurement regulations. The latter are known as the Federal Acquisition Regulation (FAR).



- Individual departments also have their own supplements to the FAR.
- These various requirements dictate required business practices of the contractor, formulas for and restrictions on pricing, detailed cost criteria and a range of other restrictions and obligations.
- The regulations also have highly specialized provisions on the treatment and ownership of intellectual property that must be studied and considered carefully prior to entering into a contract, or subcontract on a Federal Government project.
- The process of adhering to these contracting requirements and submitting a responsive and compliant bid is highly complex and involves a large amount of advance preparation on the part of intending bidders.
- There is no tolerance within the system for bids that fail to meet the detailed requirements set forth in the RFP and in legal and regulatory provisions and clauses incorporated by reference.
- There are also various different strategies for contracting with the US Federal Government that should be considered. These include:
 - offering a good or service as a sole source product
 - offering a good or service as an off-the-shelf item
 - seeking to qualify for a small business set-aside contract
 - seeking U.S. Government R & D funding for a project
 - selling via a prime contractor
 - licensing vs selling to the government via a prime contractor.
- Because of the complexity of the U.S. federal acquisition system, many non-U.S. companies seek to act as a subcontractor to a prime on a federal procurement. This can be a viable strategy but companies still need to understand the procurement system and be able to make the case for their good, service or technology.
- Companies must also understand the potential risks of contracting through a prime, and be aware of the fact that the federal procurement regulations often flow down to subcontractors and will apply to their performance as well.