

Black Economy – increasing the integrity of Government procurement

J O'Dwyer and December 2018



INTRODUCTION

Master Electricians Australia (MEA) is a trade association representing electrical contractors, recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. MEA currently has a membership base of approximately 3000 electrical contractors in Australia. MEA understands the current and potential issues facing electrical contractors today.

MEA supports the Federal Government's move to improve and thus reduce the ability of companies to avoid taxation superannuation and other payroll related costs as this is a major impact on electrical contractors.

MEA would like to make the following observations that we believe may improve the policy as drafted.

1. **Contract value.** MEA believes that the \$4 million level of contract value is far too high to be effective, which may mean continuation of poor practices into the future. MEA believes that the Federal Government should in fact lower this level to contracts with a one-off value of \$330,000 including GST or \$1,100,000 including GST over a 12-month period.

MEA have chosen these values on the basis that it also matches other legislation including Unfair Contract Term (UCT) legislation. These levels then assist in determining that these are not small employers. We do not believe that the UCT level employee term is relevant in the procurement setting.

Whilst we realise this will possibly increase the impact and level of detail needed, given the introduction is staggered based on contracts only after 1 July 2019, we do not believe this will have a material impact on either medium or large businesses and should be part of a revised process for dealing with Government.

2. **Related Entities.** The policy also refers to a tenderer to supply a STR; we can foresee a weakness that this approach does not identify related entities. It is our experience, particularly in the construction industry, where by a builder/principal will have an entity/company to enter contracts /activities/tenders with no assets and few, if any employees and another entity that controls employees and possibly assets. As such it is our view that the policy as drafted only requires one STR from the tendering company at time of tender and we suggest that the tenderer be required to declare all related entities and supply an STR for all related entities, regardless if the second third or additional entities will be involved in the tender or not.
3. **Subcontractors.** MEA would also question section 9 of the policy where the principal subcontractors are only required to keep an STR where the subcontractor completes work over \$4,000,000. Again, this raises both of our previous concerns regarding the value being too high to achieve any meaningful change in industry regarding paying tax, PAYG and superannuation etc. This section also raises the question of related entities, as we identified in point 2, being used to avoid obligations under the contract whereby a related entity effectively pushes subcontractors to tier 2 and thus avoid the requirements.

- 4. Anti-avoidance.** MEA also believes that to discourage anti-avoidance behaviour the penalties, if discovered after being engaged to complete the contract should be that the contract is terminated and that damages should be the penalty in the terms of the contract.



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