



Shadow economy – increasing the integrity of government procurement

Procurement connected policy guidelines

March 2019

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Please note as of August 2022 the title of the 'Black Economy Procurement Connected Policy' has been revised to the 'Shadow Economy Procurement Connected Policy'

Joint message from the Assistant Treasurer and Minister for Finance

The Commonwealth Government has committed to improving procurement practices to protect honest businesses by increasing the integrity in supply chains for Government procurement.

This policy is about reducing black economy behaviour by businesses involved in Government procurement contracts so the Government can lead by example and support businesses that are doing the right thing.

Targeting the integrity of Government procurement was recommended in the Black Economy Taskforce final report that found the supply chain is becoming more complex and competitive. Supply chain integrity can easily be undermined due to illegal supplier practices that are often unknown to the purchaser at the procurement stage or during the course of the contract that creates an unfair advantage.

The black economy harms those less able to protect themselves and penalises those doing the right thing. These people bear the cost of the individuals and businesses dishonestly participating in the black economy. While the financial costs for individuals and businesses are significant, it is the societal costs that can cause the most harm. The black economy undermines trust and creates an uneven playing field.

For the first time, the Commonwealth Government is requiring businesses seeking to tender for Australian Government procurement contracts over \$4 million to provide a statement from the Australian Taxation Office showing they have a satisfactory tax record.

This policy will level the playing field for businesses that are already doing the right thing by locking out their competitors that may undercut prices by not complying with their key tax obligations.

The Hon Stuart Robert MP
Assistant Treasurer

Senator the Hon Mathias Cormann
Minister for Finance and the Public Service

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Shadow economy – increasing the integrity of government procurement

1. Introduction

As part of the 2018-19 Budget and in response to the Black Economy Taskforce's Final Report, the Government announced a range of measures to tackle the shadow economy including a commitment that, from 1 July 2019, Government procurement processes will exclude businesses that do not have a satisfactory tax record.

Increasing the integrity of Commonwealth Government procurement processes promotes good tax behaviour and creates an even playing field for businesses that comply with their tax obligations.

This document is a procurement-connected policy (PCP) that sets out the key components to increase the integrity of Commonwealth Government procurement and provides guidance to assist Commonwealth entities to implement the policy.

2. Purpose of the policy

The Black Economy Taskforce found that the supply chain is becoming more complex and competitive and recommended that the Government lead by example in its procurement processes to reduce shadow economy activity in the supply chain.

Supply chain integrity can be undermined due to illegal supplier practices that are often unknown to the purchaser at the procurement stage or during the course of the contract. This can mean that suppliers that do meet their regulatory obligations are at a commercial disadvantage.

The Government is demonstrating best practice by ensuring businesses that provide goods and services to the Government participate with the Australian tax system by providing a satisfactory Statement of Tax Record (STR). This will set an example for private sector firms for their own supply chain management practices.

In the first year of operation, the policy components as set out in the guidance below will be limited to ensure a smooth transition of the policy. Learnings from the first year of operation will be assessed and updated guidance may be issued. This could result in further criteria to determine a satisfactory tax record for this purpose such as whether:

- the business meets its superannuation law requirements, withholding tax obligations and third party reporting obligations;
- it discloses information about its tax affairs under the voluntary tax transparency code;
- court order penalties have been imposed on its directors; and
- there have been convictions for phoenixing behaviour, bribery or corruption.

Similarly, businesses such as tax agents or consulting firms that provide tax advisory services to their clients may be required to provide details of their services and confirm that they are not involved in promotion of tax schemes that are not reasonably arguable.

This policy is not intended to replace existing due diligence and checks that procurement officers already undertake, including those required under paragraph 6.7 of the Commonwealth Procurement Rules (CPRs) (relating to supplier practices that are dishonest, unethical or unsafe and includes not entering into contracts with tenderers who have had a judicial decision against them

(not including decisions under appeal)) relating to employee entitlements and who have not satisfied any resulting order.

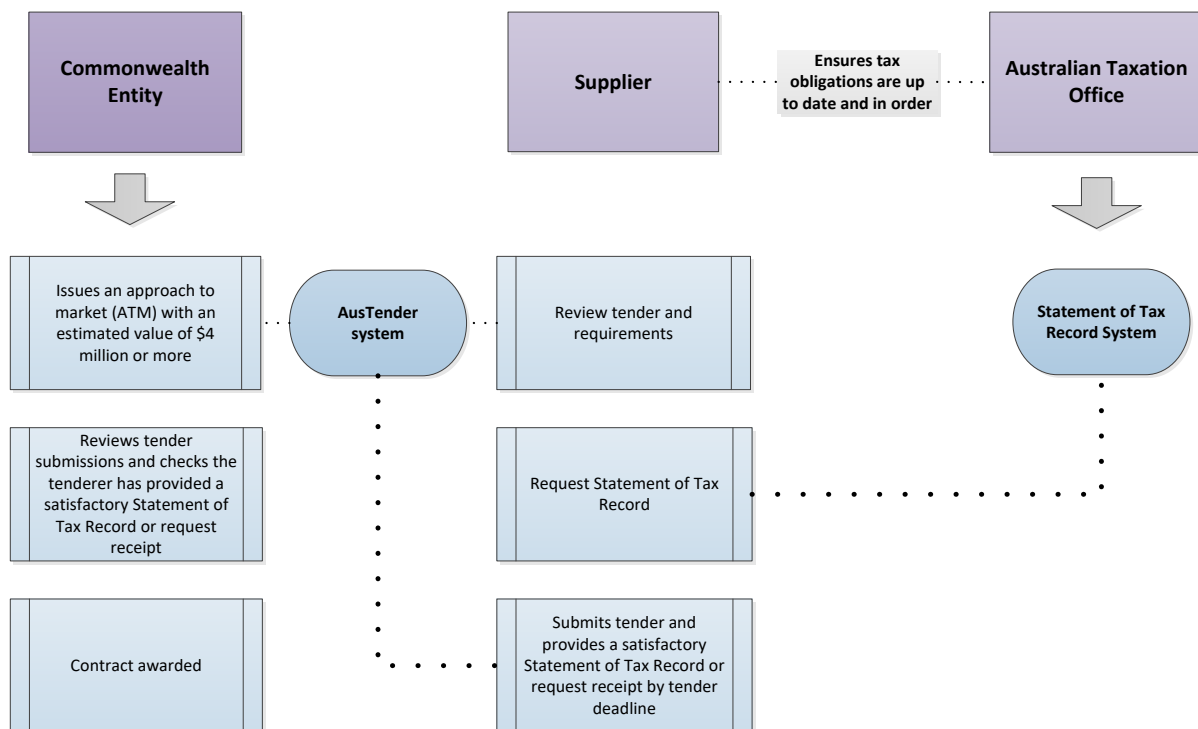
3. Application

- All non-corporate Commonwealth entities **must** comply with this policy.
- Corporate Commonwealth entities and Commonwealth companies¹ are encouraged to adopt this policy.

4. Commencement

- This policy commences on 1 July 2019 and applies to new approaches to market on or after 1 July 2019, for procurements valued over \$4 million (including GST) for all goods and/or services, including for construction services. This policy does not require Commonwealth entities to amend existing contracts or deeds of standing offer that are in place prior to this policy's commencement date.

5. Overview of the application of policy



¹ Department of Finance, Flipchart of Commonwealth entities and companies, accessed 29 August 2018, <<https://www.finance.gov.au/resource-management/governance/>>.

6. Policy Requirements

- a. For Commonwealth Government procurements that are undertaken through open tenders, are subject to the CPRs and have an estimated value of over \$4 million inclusive of GST, Commonwealth entities **must** require that tenderers:
 - i. provide a satisfactory STR that is valid at the time of the tender closing.
 - ii. in circumstances where a satisfactory STR has not been issued in time to meet the tender deadline - provide a STR receipt, demonstrating a STR has been requested from the ATO. In this case, the tenderer **must** provide the satisfactory STR no later than four business days from the close of tender and before the awarding of the contract.
 - iii. hold copies of satisfactory and valid STRs for any first tier subcontractors² that the tenderer will engage to deliver goods or services with an estimated value of over \$4 million including GST as part of the tender if known at the time of submission.
 - iv. ensure, if first tier subcontractors are subsequently engaged in respect of the contract, that the successful tenderer or prime contractor³ holds satisfactory and valid STRs of their first tier subcontractors where the subcontractors estimated contract value will be over \$4 million including GST.
- b. A satisfactory STR will be issued if the following conditions⁴ are met (unless 6.c) below applies):
 - i. The applicant is up-to-date with registration requirements which may include being registered for an Australian Business Number (ABN) and GST, and having a Tax File Number;
 - ii. The applicant has lodged at least 90 per cent of all income tax returns, Fringe Benefit Tax returns and Business Activity Statements that were due in the last four years or the period of operation if less than four years. Reasonable delays in lodgements due to extensions agreed to by the Australian Taxation Office (ATO) will not affect the receipt of a satisfactory STR; and
 - iii. On the date the STR is issued, the applicant does not have \$10,000 or greater in overdue debt due to the ATO (excluding debt subject to a taxation objection, review or appeal under the provisions of Part IV C of the *Taxation Administration Act 1953*). If the applicant has entered into a payment plan with the ATO, they will meet this criterion.

² First tier subcontractors relate to subcontractors engaged by the prime contractor. Second tier subcontractors are engaged by the first tier subcontractor and are not in scope for this policy for the first year (this will be reviewed for subsequent years).

³ The prime contractor refers to the business that is tendering or is in direct contract with the Commonwealth entity.

⁴ From 1 July 2020 and subject to further consultation, including concerning the availability of data and data sharing, the STR criterion may be extended. See above at 2. Purpose of the Policy.

- c. If the applicant does not have a record with the ATO at all or a record of less than four years, the applicant has met the conditions outlined in Part 8.
- d. The requirement to provide a satisfactory STR as part of the tendering process **must** be clearly expressed within the 'request documentation' to ensure tenderers understand that failing to provide a STR by the due date will prevent consideration of their submission by the procuring Commonwealth entity. If the Commonwealth entity chooses to make it a condition of the contract that the successful tenderer will be required to maintain an up-to-date satisfactory STR during the course of the contract, this **must** also be stated in the 'request documentation'. In this case the consequences of failing to do so **must** be detailed in the contract and the 'request documentation'.
- e. If the STR is no longer valid at the time the contract is awarded, the Commonwealth entity may request a renewed satisfactory STR before awarding a contract.
- f. Tenderers and potential tenderers are encouraged to apply for a STR as soon as possible and keep their STRs up to date in order to more easily submit their STR for current and future tender processes. It is not necessary to wait until an approach to market is released. This will improve their ability to meet tender timelines and/or to respond to possible issues with the ATO.

7. Statement of Tax Record

- a. A STR (or STR receipt) **must** be included with a tender submission when the tender request document indicates it is required. The STR is available on request from the ATO and will be provided within four business days from application. It includes a statement indicating whether or not the tax record is satisfactory, based on the conditions outlined in Part 6.b) i) – iii) of this document.
- b. The STR is based on limited criteria designed to be used for this PCP.
- c. A satisfactory STR is not evidence of financial viability.
- d. An applicant with an unsatisfactory STR will be provided with supporting reasons on its 'Statement of Tax Record – Taxpayer Report'. The ATO can be contacted to assist in taking corrective action where possible.
- e. STRs will be valid for twelve months from the time of issue. Applicants that do not hold an Australian tax record with the ATO of at least four years will receive STRs that are valid for only six months.
- f. The STR will include disclaimers including that the Commonwealth and its contractors should undertake a range of ordinary due diligence measures even if the STR is satisfactory. This will ensure that the STR itself is not seen as a document that certifies that no other checks are required.

8. Applying the rules to new and foreign tenderers

- a. Directors, partners, trustees or appropriate officers with the relevant authority of applicants that do not have an Australian tax record of at least four years (such as new businesses and foreign tenderers) will need to state on behalf of the relevant tenderer that it:
 - i. is a non-resident with no tax record or a tax record of less than four years in Australia (applicable to foreign entities);
 - ii. will comply and pay all their Australian tax obligations (applicable to Australian and foreign entities);
 - iii. has no tax related convictions in the last four years (applicable to Australian and foreign entities); and
 - iv. is complying with its tax obligations outside of Australia (applicable to foreign tenderers and new Australian businesses).
- b. Once the ATO receives the statements, the STR will be issued, stating they do not have a tax record with the ATO but will be accepted as having a satisfactory tax record, or, if they have a tax record with the ATO of less than four years, they meet the criteria at 6.b) i) – iii) but have a record of less than four years.
- c. The STR will also be based on the tax records that are available to the ATO and be valid for six months only.

9. Applying the rules to subcontractors

- a. Where a tenderer is proposing to subcontract a part of their contract, they **must** obtain (at the time of tendering or engagement if later) and hold a satisfactory STR from all first tier subcontractors that will be undertaking work individually valued over \$4 million including GST. Where a sub-contractor does not have an Australian tax record of at least four years, the rules in Part 8 apply.
- b. The requirements relating to first tier subcontractors engaged after the awarding of the contract **must** be specified as contract clauses and included in the finalised contract between the prime contractor and the Commonwealth entity.
- c. If Commonwealth entities decide to exercise their discretion to require subcontractors to maintain a valid and satisfactory STR during the life of the contract they **must** include this requirement in the contract terms.
- d. The rules for subcontractors will be reviewed after the first year of operation with a view to strengthening the requirements.

10. Applying the rules to partnerships, trusts, joint ventures and tax consolidated groups

- a. A STR **must** be requested on behalf of the business tendering for the contract.
- b. If the tenderer or subcontractor is a partnership, a satisfactory STR **must** be requested on behalf of the partnership and in respect of each partner that is directly involved in the delivery of the contract. If a new partner subsequently becomes directly involved in the delivery of the contract a satisfactory STR **must** be provided to the contracting entity within a reasonable time after the partner becomes involved. STR requirements in respect of partners are limited to the time they remain partners in the partnership.
- c. If the tenderer or subcontractor is a trust, a satisfactory STR **must** be provided in respect of the trust and trustee.
- d. If the tenderer or subcontractor is a joint venture, a satisfactory STR **must** be provided in respect of each party to the joint venture. Where the joint venture operator is not a participant of the joint venture, the operator **must** also provide a satisfactory STR.
- e. If the tenderer or subcontractor is a subsidiary of a tax consolidated group, or a Multiple Entry Consolidated (MEC) group, a satisfactory STR **must** be provided by the subsidiary and the head company.
- f. If the tenderer or subcontractor is a member of a GST group, a satisfactory STR **must** be provided by the group representative and the group member.

11. Panel Arrangements

- a. This policy will apply to the process to establish a panel arrangement from 1 July 2019 (or to refresh a panel established after that date) when the total value of orders under the arrangement is collectively estimated to be over \$4 million including GST.
- b. For existing panels, including panels established before 1 July 2019 but that are refreshed or renewed from 1 July 2019, there is no requirement to obtain a satisfactory STR unless requested by the Commonwealth entity.

12. Accountability and Transparency

Performance of this policy will be measured by:

Performance criteria	Responsible entity
a. STRs are issued and provided to businesses within four business days	ATO
b. Procurements with an estimated value of over \$4 million inclusive of GST contain the requirement for a STR where required	Treasury with assistance from other agencies.
c. Unsatisfactory STRs issued result in corrective action by an applicant where possible.	ATO

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| d. Satisfactory feedback received from suppliers, procurement officers, ATO and Department of Finance. | Treasury |
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13. Roles and Responsibilities

- a. Tenderers and suppliers
 - i. Providing satisfactory and valid STRs to the relevant Commonwealth entity when submitting tender documents where tender request documentation requires it, or providing a STR receipt if a STR has been requested but not issued in time to meet the tender deadline.
 - ii. Maintaining a satisfactory STR and providing an updated STR if required in the contract terms during the life of the contract.
 - iii. Requiring, collecting and maintaining satisfactory STRs of relevant subcontractors engaged by the tenderer according to the contract terms and during the course of the contract with the Commonwealth entity. Such records must be made available to the Commonwealth entity on request.
- b. Commonwealth entities and officials
 - i. Ensuring request documents for procurements with a value of over \$4 million inclusive of GST include the requirement that tenderers must submit a STR or a STR receipt as part of their tender.
 - ii. Only accepting tenders that are accompanied by a valid and satisfactory STR or a STR receipt followed by a valid and satisfactory STR within four businesses days of close of tender.
 - iii. Retaining submitted satisfactory STRs.
 - iv. Providing de-identified information to Treasury in relation to performance indicators as indicated in the accountability and transparency table above as requested.
- c. Australian Taxation Office
 - i. Issuing STRs within four days of an online application and providing STR receipts at the time of the request.
 - ii. Providing applicants receiving an unsatisfactory STR with information on why they have not received a satisfactory STR and possible remedial action which can be taken by the tenderer.
 - iii. Maintaining the system that issues STRs.

- iv. Providing de-identified information to Treasury in relation to performance indicators as indicated in the accountability and transparency table above as requested.
- d. The Treasury
 - i. Implementing and monitoring this policy.
 - ii. Evaluating and reporting on the effectiveness of this policy and undertaking a review of the policy as required.

14. Review and Evaluation Process

This policy will be reviewed on an annual basis by the Department of the Treasury to assess its effectiveness, consistent with the Commonwealth Grants and Procurement Connected Policies.