



Shadow economy – increasing the integrity of government procurement

Procurement connected policy guidelines

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In the spirit of reconciliation, the Treasury acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples.

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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 former Government announced a range of measures to tackle the shadow economy including a commitment that, from 1 July 2019, specified Commonwealth 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.

This policy is not intended to replace other due diligence and checks that procurement officers undertake, including those required under paragraph 6.8 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

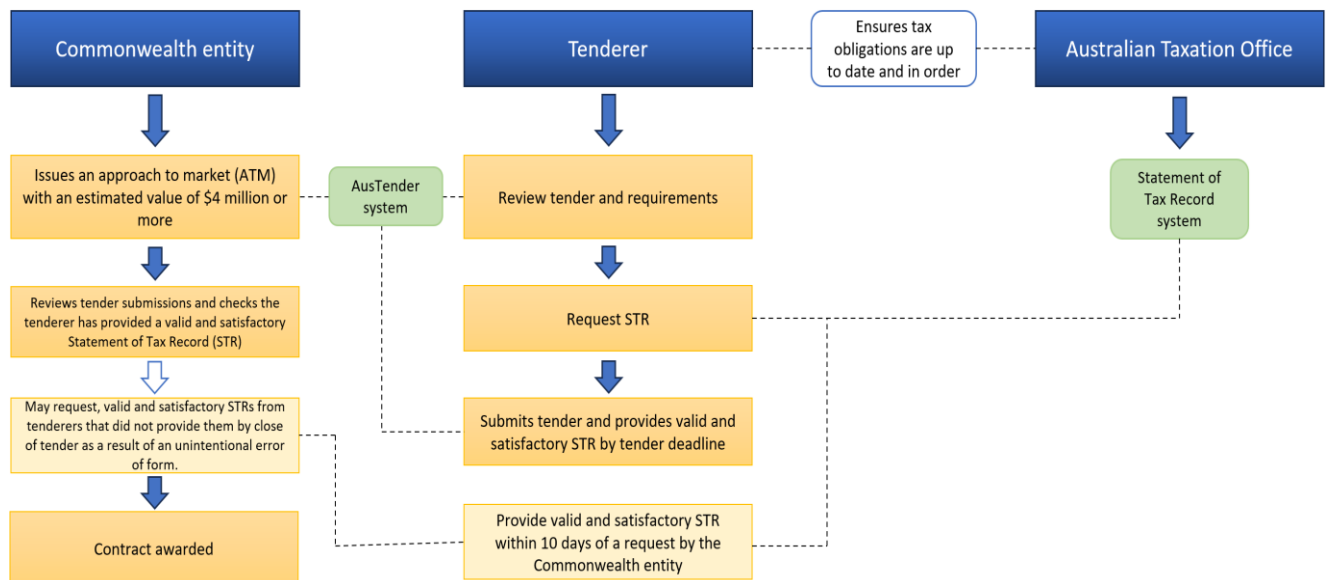
- a. All non-corporate Commonwealth entities **must** comply with this policy.
- b. Corporate Commonwealth entities and Commonwealth companies¹ are encouraged to adopt this policy.

¹ Department of Finance, Flipchart of PGPA Act Commonwealth entities and companies
<<https://www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector/pgpa-act-flipchart-and-list>>.

4. Commencement and threshold

- a. The original policy commenced on 1 July 2019. This revised policy applies to new and existing approaches to market which close on or after 1 October 2024, for procurements valued at \$4 million or more (including Goods and Services Tax (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.
- b. Where the total value of an approach to market exceeds the threshold, **all** respondents are subject to STR requirements regardless of the value of individual contracts that may be awarded under the procurement. An agency must not divide an approach to market into separate parts solely for the purpose of avoiding STR requirements.

5. Overview of the application of policy



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 \$4 million or more, inclusive of GST, tenderers **must**:
 - i. provide all valid and satisfactory² STRs required for their entity type in their submission³;
 - ii. hold copies of valid and satisfactory STRs required for the entity type of any first tier subcontractors⁴ that the tenderer will engage to deliver goods or services as part of a

² An STR is valid for 12 months from the time of issue by the ATO if you have an Australian tax record of 4 or more years and 6 months from the time of issue if you have an Australian tax record of less than 4 years.

³ The tenderer’s structure, residency status and the length of its tax history are relevant to which entity/ies are required to provide a valid and satisfactory STR and how. For additional information, see Parts 8-10.

⁴ First tier subcontractors are any subcontractors directly engaged by the prime contractor for the contract. Second tier subcontractors are engaged by the first tier subcontractor and are not in scope for this policy.

contract resulting from a procurement with an estimated value of \$4 million or more, including GST, as part of the tender if known at the time of submission; and

- iii. ensure, if first tier subcontractors are subsequently engaged in respect of the contract, that the successful tenderer or prime contractor⁵ holds valid and satisfactory STRs of their first tier subcontractors that are engaged to deliver goods or services as part of a contract resulting from a procurement that is valued at \$4 million or more, including GST.
- b. A satisfactory STR will be issued if the following conditions are met at the time when the Australian Taxation Office (ATO) checks the applicant's tax records (unless Part 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 ATO will not affect the receipt of a satisfactory STR; and
 - iii. 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.
 - 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. Where Part 6.a applies, Commonwealth entities can only award contracts to tenderers where they have provided STRs for all entities they are required to provide STRs for under these guidelines and where all of those STRs are both valid and satisfactory.
 - i. The Commonwealth entity **must** assess whether all valid STRs provided by a tenderer are satisfactory prior to the finalisation of the tender evaluation process and offer of contract to the successful tenderer (refer to Part 6.b.).
 - ii. At the time the contract is awarded, the Commonwealth entity **must** hold a valid and satisfactory STR for the successful tenderer, as well as any other entities the successful tenderer is required to provide valid and satisfactory STRs for under these guidelines. If STRs submitted by the successful tenderer are or will be no longer valid at the time of contract award, the Commonwealth entity **must** request renewed STRs from the successful tenderer prior to entering into the contract.
 - e. The requirement to provide valid and satisfactory STRs as part of the tendering process **must** be clearly expressed within the 'request documentation' to ensure tenderers understand that

⁵ The prime contractor refers to the business that is tendering or is in direct contract with the Commonwealth entity.

failing to provide a valid and satisfactory STR by the due date will prevent further consideration of their submission by the procuring Commonwealth entity.

- f. Successful tenderers are required to maintain valid and satisfactory STRs during the course of the contract. Such records must be made available to the Commonwealth entity on request. The consequences of failing to do so **must** be detailed in the contract and the 'request documentation'.
 - i. Successful tenderers must make the STRs of first tier subcontractors obtained at the time of the tender closing or at the time of entry into the subcontract available to the Commonwealth entity on request.
 - ii. The Commonwealth entity may require first tier subcontractors to maintain valid and satisfactory STRs during the course of the contract. If this requirement is included, it **must** be detailed in the contract and the 'request documentation'.
- g. Tenderers and potential tenderers are encouraged to apply for STRs as soon as possible and maintain valid STRs, in order to more easily submit their STRs 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.
- h. Tenderers are only required to provide valid and satisfactory STRs where the tender is an open tender. There is no requirement for tenderers to provide valid and satisfactory STRs where the tender is a limited tender.
- i. Where a tenderer has failed to submit all valid and satisfactory STRs required for its entity type, it may be open to the procuring Commonwealth entity to conclude based on the circumstances that the failure was an unintentional error of form. This might include circumstances where:
 - i. the tenderer was unable to provide a valid STR due solely to a failure by the ATO to fulfil its responsibilities under Part 13.c of these guidelines; or
 - ii. the failure by the tenderer to submit the STRs may have been unintentional, and the tenderer has otherwise exhibited an intention to submit a compliant tender.

The above examples are illustrative only, and it is the responsibility of the procuring Commonwealth entity to determine whether a failure to provide an STR may constitute an unintentional error of form in each case, and in light of all the relevant circumstances.

- j. Where a procuring Commonwealth entity determines that a failure by a tenderer to submit a valid and satisfactory STR may have been an unintentional error of form, and elects to provide the tenderer the opportunity to correct the error, the procuring Commonwealth entity **must**:
 - i. seek the correction as soon as possible after the time of tender closing;

- ii. require the tenderer to correct the error by providing all valid and satisfactory STRs within 10 business days of the procuring Commonwealth entity's request;
- iii. subject to Part 6.i, exclude the tenderer from further consideration if the tenderer fails to provide all valid and satisfactory STRs within the timeframe specified in subparagraph ii; and
- iv. provide the opportunity to correct errors equitably to all other tenderers, in accordance with paragraph 10.33 of the CPRs.

7. Statement of Tax Record

- a. 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 of this document.
 - i. Entities registered with the ATO can apply by accessing ATO online services. STRs will be provided through the same online service.⁶
 - ii. Corporate trustees that have a Tax File Number (TFN), but do not have an ABN cannot apply for an STR online. An STR application can be made by phone.⁷
- b. The STR is based on limited criteria designed to be used for this PCP and other policies designated by the Government.
- 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 the applicant to understand what corrective action they should take 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

⁶ Australian Taxation Office, Statement of Tax Record, accessed 5 September 2024, <<https://www.ato.gov.au/about-ato/ato-tenders-and-procurement/statement-of-tax-record#NonresidentthatisunregisteredwiththeATO>>.

⁷ Apply by calling ATO business enquiries on 13 28 66.

foreign tenderers) will need to state on behalf of the relevant tenderer, as part of completing the STR application form⁸, 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 inside or outside of Australia (applicable to Australian and foreign entities); and
 - iv. is complying with its tax obligations inside and/or outside of Australia (applicable to foreign tenderers and new Australian businesses).
- b. After the ATO receives the statement from a foreign applicant, 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. If the ATO receives the statement from a resident with a tax record with the ATO of less than four years, the STR will be issued stating that 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 valid and satisfactory STR from all first tier subcontractors that will be undertaking work resulting from a procurement with an estimated value of \$4 million or more, 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.

⁸ Australian Taxation Office, Statement of Tax Record application form – for new Australian and international tenderers without an Australian TFN or ABN, accessed 5 September 2024, <https://caat-p-001.sitecorecontenthub.cloud/api/public/content/10068b9b-d852-4014-97eb-4921e960cea2_37aec00_8672_4d3f_9443_0606cf31c6dc_pdf>.

10. Applying the rules to partnerships, trusts, joint ventures and tax consolidated groups⁹

- a. An STR **must** be requested on behalf of the business tendering for the contract.
- b. If the tenderer or subcontractor is a partnership, a valid and 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 valid and 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 an Australian trust, a valid and satisfactory STR **must** be provided in respect of the trust and trustee.
- d. If the tenderer or subcontractor is a foreign trust without an Australian tax record of at least 4 years, a valid and satisfactory STR **must** be provided in respect of the trust and trustee (refer to Part 8.a.).
- e. If the tenderer or subcontractor is a joint venture, a valid and 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 valid and satisfactory STR.
- f. If the tenderer or subcontractor is the head company of a tax consolidated group, or a Multiple Entry Consolidated (MEC) group, a valid and satisfactory STR **must** be provided by the head company, but need not be provided for subsidiaries.
- g. If the tenderer or subcontractor is a subsidiary of a tax consolidated group, or a Multiple Entry Consolidated group, a valid and satisfactory STR **must** be provided by the subsidiary and the head company.
- h. If the tenderer or subcontractor is a member of a GST group, a valid and satisfactory STR **must** be provided by the group representative and the group member.
- i. Where the tenderer is an individual, a valid and satisfactory STR must be provided by the individual. Individuals who are not in business should apply to the ATO for their STR application to be processed manually.

⁹ Australian Taxation Office, Requesting an STR and not registered with the ATO, accessed 5 September 2024, <<https://www.ato.gov.au/about-ato/ato-tenders-and-procurement/statement-of-tax-record#NonresidentthatunregisteredwiththeATO>>.

11. Panel Arrangements

- a. This revised policy applies to approaches to market to establish panel arrangements which close on or after 1 October 2024 when the total value of orders under the arrangement is collectively estimated to be at \$4 million or more, including GST.
- b. For panels established before 1 July 2019, 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 \$4 million or more, inclusive of GST contain the requirement for an STR where required	Treasury with assistance from other agencies.
c. Unsatisfactory STRs issued result in corrective action by an applicant where possible.	ATO
d. Satisfactory feedback received from suppliers, procurement officers, ATO and Department of Finance.	Treasury

13. Roles and Responsibilities

- a. Tenderers and suppliers
 - i. Providing valid and satisfactory STRs to the relevant Commonwealth entity when submitting tender documents where tender request documentation requires it.
 - ii. Providing valid and satisfactory STRs to the relevant Commonwealth entity prior to contract award where STRs provided earlier in the tender evaluation process have expired and are no longer valid.
 - iii. Maintaining a satisfactory STR and holding a valid and satisfactory STR during the life of the contract. Such records must be made available to the Commonwealth entity on request.
 - iv. Requiring, collecting and maintaining valid and 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 \$4 million or more, inclusive of GST, include the requirement that tenderers must submit a valid and satisfactory STR as part of their tender.
- ii. Retaining submitted STRs and requesting new / updated STRs as appropriate.
- iii. Assessing STRs prior to the finalisation of the tender evaluation process and only awarding contracts with tenderers who provided a valid and satisfactory STR.
- 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 application made through ATO online service portals 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. Reviewing this policy on an annual basis to assess its effectiveness, consistent with the Commonwealth Grants and Procurement Connected Policies.