

KPMG submission

Draft procurement connected policy guidelines

Black economy – increasing the integrity of government procurement

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Executive Summary

KPMG welcomes the opportunity to comment on the draft procurement connected policy (PCP) *Black Economy – increasing the integrity of Government procurement.*

KPMG has been and will continue to be a consistent supporter of government action to combat the black economy. We support the government in giving high priority to this consultation and the objective of ensuring that government procurement processes are optimised to more effectively exclude black economy firms.

Given that this consultation asks no specific questions of its respondents, we have taken the opportunity in the below to outline our general support of the draft PCP with several points of specific feedback where we think it is needed.

Key KPMG submission points

- The validity period of a Statement of Tax Record (“STR”) should be extended to three years. The PCP’s proposed 12-month validity period would impose a significant administrative burden on both the bidders and the Australian Taxation Office (“ATO”).
- The online application facility for bidders to apply for an STR needs to be available by April 2019 at the latest in order to allow STR application and if necessary, rectification of the bidder’s tax affairs before the proposed start date of 1 July 2019.
- Partnerships with 20 or more partners should be able to have the ATO sign off on their firm-wide tax policies and procedures for partners, instead of being required to obtain STRs for individual partners. This would be a much more efficient way for Commonwealth departments to obtain assurance regarding the partners’ tax compliance behaviours.
- The requirement for 90% of returns and statements to be lodged in respect of the last four financial years should be clarified. The requirement should allow for instances where forms are lodged up to 60 days late, without this impacting the provision of a satisfactory STR.

Detailed comments

1. General

- 1.1 The draft PCP – *Black Economy – increasing the integrity of Government procurement* – generally represents a constructive and measured step towards barring black economy traders from the supply chain servicing the Commonwealth.
- 1.2 In principle, we support the content of the draft PCP as a means of reducing the risk of Commonwealth contracts being awarded to businesses who do not make an acceptable effort at complying with their tax obligations.

2. Item 10 b. administrative concerns relating to partnerships

Partnerships of fewer than 20 partners

- 2.1 It would be reasonable to require all partners to obtain an STR as part of the procurement process if required.

Partnerships of 20 partners or more

- 2.2 However, the number of STRs that might be required by larger firms would create significant burdens for bidders, administrators and the ATO.
- 2.3 We propose that for these partnerships only the partnership itself and any related corporate or trust entities involved with the bid should be required to provide an STR. No individual partners' STRs should be required where there is appropriate evidence of satisfactory oversight of partners' tax affairs by the partnership. This could include:
 - Evidence that a registered tax agent employed or engaged by the partnership, and who is familiar with the partnership's financial structure, either lodges all partners' returns or checks them prior to lodgement; and
 - Evidence of a tax governance policy that requires partners to confirm to the firm at least annually that they have complied with all of their tax lodgement and payment requirements, and imposes meaningful sanctions if a partner makes a false statement; or

- Evidence that the partnership and / or its partners are members of a professional body or hold a statutory registration, the requirements of which include timely lodgement and payment in relation to members' tax obligations (e.g. partners registered with the Tax Practitioners' Board.).
- 2.5 Alternatively, in the event that the final policy required STRs for partners in these larger firms, we recommend that there should be a simple authorisation process for the firm to be able to obtain STRs on behalf of partners. We also expect that if the firm is tax agent for the partners, then as tax agent it should have the ability to request the STR for partners.
- 2.6 Where STRs are required for a larger group of partners than those involved in delivering the services under the particular contract, we submit that it would be reasonable for the Commonwealth to accept that the bidder is compliant where it can provide satisfactory STRs for a percentage of that group (say 95%).
- 2.7 For newly admitted partners STRs should only consider their tax affairs from the point they joined the partnership rather than the full previous four year period. In other words, each individual partner's tax affairs should only be considered in determining their eligibility for an STR for the shorter of the previous four year period or the period between their joining the partnership and the date of application for the STR.
- 2.8 If STRs for individual partners in larger firms were ultimately required, those firms would in practice be likely to want to centralise and manage the application process, following a regular pattern. This could result in upwards of 500 STRs being requested at once. Those partnerships would require confidence that the ATO's systems and processes could accommodate the timely actioning of such bulk requests.

3. Extending the validity period

- 3.1 It is reasonable to expect that, with effectively only a 9-month validity period for STRs, bidders would be applying for all of the STRs that they may potentially be required to produce for a bid on a rolling basis every six to eight months as a safeguard against any risk of losing out on a contract due to not having the right documentation.

- 3.2 We submit that it would be more appropriate to provide an STR with a longer validity period – of 36 months – to alleviate this concern and the associated administrative burden.

4. Lateness of lodgement as a potential disqualifying factor

- 4.1 Broadly, the PCP indicates that a bidder will be eligible for a satisfactory STR where they have lodged at least 90 per cent of all income tax returns, FBT returns and BAS's for the previous four year period, unless an agreed extension applies.
- 4.2 We recommend that the final policy expresses more clearly the lodgement requirement. In the PCP it is not clear whether a satisfactory STR could be obtained where a form had been lodged before the date of the STR application, but was lodged late and without an agreed extension.
- 4.3 KPMG submits that this be clarified such that a bidder's STR will be satisfactory where 90% of a bidder's relevant lodgements are made no more than 60 days after the relevant due date, in the absence of a prior ATO-agreed extension.

5. Integrity issue: subcontract splitting to artificially avoid the threshold

- 5.1 We note that under the draft PCP the successful bidder or prime contractor should hold satisfactory and valid STRs of their subcontractors where the relevant estimated subcontract value will be over \$4 million. We recommend that it be clarified that this requirement will apply in cases where the same subcontractor is expected to perform work of a value greater than \$4 million in relation to the same head contract, whether under one or multiple subcontracts.

6. Prompt implementation

- 6.1 We commend the government's commitment to implementing the PCP without delay, but we submit that it would only be appropriate for the 1 July 2019 start date to apply if potential bidders were able to apply for an STR by no later than 1 April 2019. This is necessary to provide all potential bidders with sufficient time to take remedial

action regarding their eligibility for a satisfactory STR in the event that the first application is not deemed satisfactory.

7. The need for robust and failsafe administrative systems

7.1 KPMG submits that any final PCP must be supported by efficient and robust administrative systems to reasonably minimise the impost on government procurement processes and those that tender for government contracts.

7.2 This means, without limitation:

- Bidders for government contracts must be able to obtain all applicable Statements of Tax Record (STR) from the ATO within 4 business days of applying for one;
- In the rare cases where this is not possible, then it should be written into the PCP that this should not disadvantage any firm in tendering for a government contract; and
- In all other regards any faults in the system for distributing STRs to potential bidders / applicants should not be responsible for the any bidder / applicant incurring any detriment in securing a government contract.

8. Scope for a stricter PCP: the need for ongoing consultation

8.1 KPMG welcomes the consultative approach the government has taken so far in respect of this matter and reforms targeting the black economy generally.

8.2 We acknowledge both that: (1) the draft PCP will be subject to an annual review if implemented, and, (2) it is possible that it will be amended subsequent to review to make the STR process more robust.

8.3 In light of these points we strongly believe that future amendments to the PCP should be subject to further consultation.

8.4 This includes, inter alia, additional obligations for bidder firms that also provide tax agent and advisory services.

9. Support for greater transparency for procurement within reasonable boundaries

- 9.1 The draft PCP indicates that a further STR criterion that requires disclosure under the voluntary tax transparency code (VTTC) may be included following the initial implementation of the PCP. This may encourage transparency, however, we would support further consideration being given to such a proposal in due course.