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Business SA submission: South Australian Productivity Commission - Government Procurement Inquiry

December 2018



Executive Summary

- The restricted terms of reference of the Commission’s procurement inquiry, only considering goods and services, has somewhat limited Business SA’s ability to solicit feedback from the business community and capital projects should be a focus of future inquiry.
- Business SA acknowledges the improvements made by the State Government, including its Industry Participation Advocate, in recent years to improve the ability of small to medium sized local businesses to access Government tenders, including measures to more realistically set insurance requirements on low to medium risk contracts. Industry Participation Policies are also putting more onus on procurement staff to consider local businesses, but concerns have been raised about enforcement of those policies to ensure only genuine local businesses benefit and not interstate companies establishing shell offices in South Australia.
- Communication aspects of tenders were amongst the highest priority issues emanating from the SME community, both knowing about tenders in the first place and the requirements for those tenders being clearly stated to enable their appropriate costing by tendering businesses. Long delays by some government departments/agencies in releasing expected tenders is also unacceptable and has caused substantial frustration amongst businesses, particularly when no adequate explanation has been forthcoming from procurement staff.
- Business SA recognises that many of our most successful local businesses are also active in interstate and overseas markets and it is important for the local procurement framework to not only assist our businesses to compete here, but also ensure they are equally well placed to win tenders interstate and overseas.
- Duplication of information requirements impacted over 83 per cent of businesses surveyed and while Business SA acknowledges that the State Government must balance privacy constraints, tendering businesses rightly expect that some standard information can be more readily shared by departments/agencies and that procurement staff should only need to know if something has changed, rather than requesting businesses to resubmit all the required information. A future reusable digital identity should assist to alleviate some of these frustrations and reduce tendering costs.
- Some concerns were raised that State Government procurement staff did not always understand the technical nature of the goods and services being purchased and that this could be improved by better consultation with industry in the formation stage of tenders. Notwithstanding, businesses also raised the dangers of government relying too heavily on external consultants in the tender formation stage when that may limit the ability of procurement staff to make the final tender decisions/recommendations themselves.
- Businesses had a range of views about standard procurement approaches taken by the State Government and while open market tenders were generally favoured, businesses also recognised that these were not always appropriate and that pre-qualification processes can lead to more efficient outcomes with complex tenders. While a direct negotiated approach was seen to be effective in the private sector, the level of trust is not always high with government tenders and businesses thought this approach was too open to abuse in the public sector.

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Introduction

Business SA, South Australia's Chamber of Commerce and Industry, was formed in 1839 and has approximately 3,200 members across a wide range of industry sectors, from micro businesses right through to listed companies. We are a not-for-profit business membership organisation which not only works on behalf of members, but for the broader business community and in pursuit of economic prosperity for both South Australia and the nation. Being primarily funded by our products and services to thousands of local businesses alongside member subscription support, Business SA is independent of the policy agenda of any government or political party.

Business SA has consistently sought to improve the ability of our membership and local businesses more broadly to access State Government tenders. In 2012, we provided strong advocacy to enable the creation of the Industry Participation Advocate (IPA), and continued to lobby to ensure that the IPA had enough powers and resources to adequately execute its mandate. In 2014, we prepared a Tendering Handbook as a practical 'how to' guide for local businesses to meet State Government procurement requirements, including probity constraints and identifying how value-for-money and competence could be demonstrated within the constraints of formal tender documents.

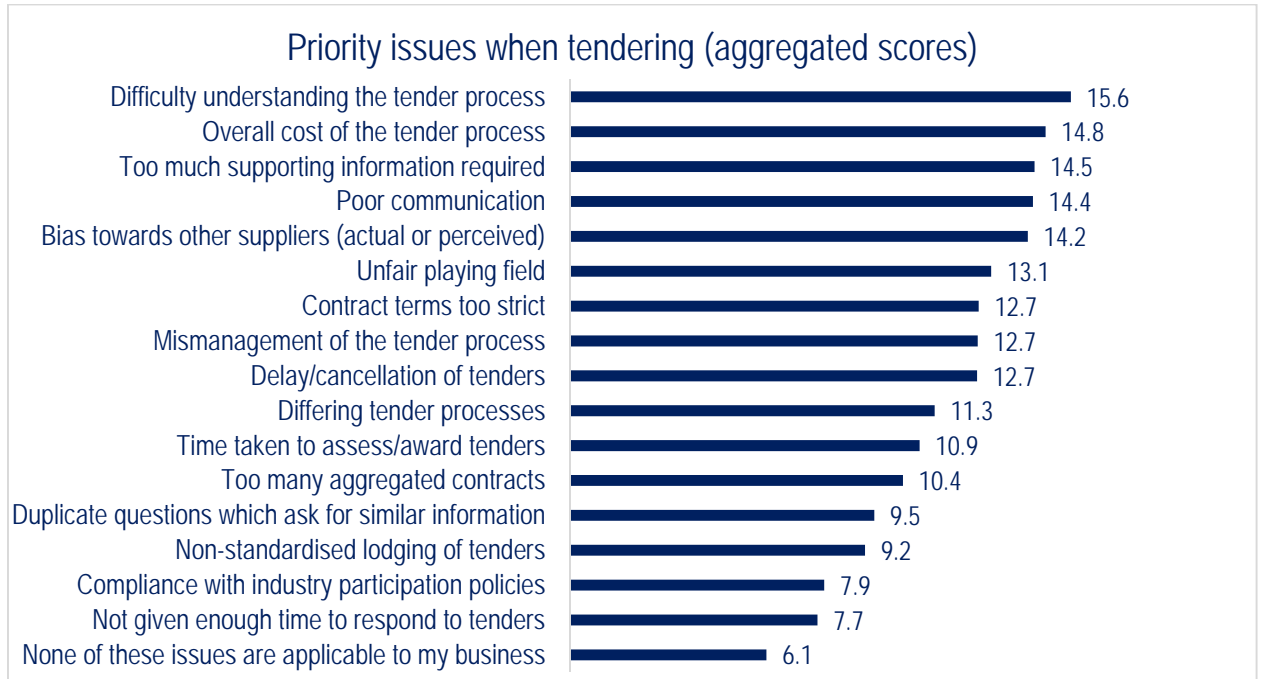
Over recent years, many of the changes to State Government procurement policies have been predicated on ensuring small to medium sized local businesses can be better placed to compete with larger businesses for tenders, including those from interstate or overseas. Business SA has welcomed this approach, including measures such as ensuring tender insurance requirements are commensurate with the risk of the subject contract. Notwithstanding, Business SA has also been mindful that policies to encourage local businesses to participate in State Government tenders do not add red-tape and cost to the tender process for no material benefit. We know that some local businesses already avoid State Government tenders because of the bureaucracy involved and ultimately that means less competition to provide what tax payers fund.

While this particular inquiry is focussed on State Government procurement, Business SA acknowledges the feedback we receive from members in relation to Local Government procurement practices and though we do not intend to make this a focus of our submission, any findings and recommendations of the State Productivity Commission (the Commission) should be considered for their applicability and extension to Councils.

To ensure our submission was reflective of current business community perspectives on State Government Procurement, Business SA surveyed its membership during November and December 2018. Not surprisingly, the median number of employees for survey respondents was less than 20 which reflects the broader constitution of South Australia's economy. Questions were asked about all key topics within the Inquiry's consultation paper, as well as providing opportunities for broader feedback on any related topics businesses wished to raise. Our survey solicited 45 responses which may not usually be considered high, but we acknowledge the level of response rate partly reflects that the inquiry was limited to goods and services and did not include capital projects. The survey response rate was also related to the complex nature of procurement policy and similarly complex surveys of the South Australian business community, for example by regulated utility companies, typically garner comparable response rates. Notwithstanding, our submission is predicated on both the survey responses and supported by feedback more broadly gathered from our membership and the wider business community which we continually gather as the state's peak business representative body.

1. Priority issues – State Government goods and services tenders

Business SA's survey asked businesses to rank from 1 to 5 their priority issues when tendering for State Government goods and services contracts:



With 'Difficulty understanding the tender process' and 'Poor communication from government departments/agencies' comprising two of the top five issues faced by small to medium sized businesses, the clear message for the State Government is that improving tender communications is critical to improving the tendering experience for local businesses.

Some specific examples provided by tendering businesses included information gaps related to a tender such as excluding some details or demands required, which ultimately led to the tendering business not including those costs in their response. This can also include components such as reporting requirements which can be particularly cumbersome for small businesses to comply with and government departments/agencies should carefully consider whether they are asking because they need to know, or just because they are interested or want to gather the data.

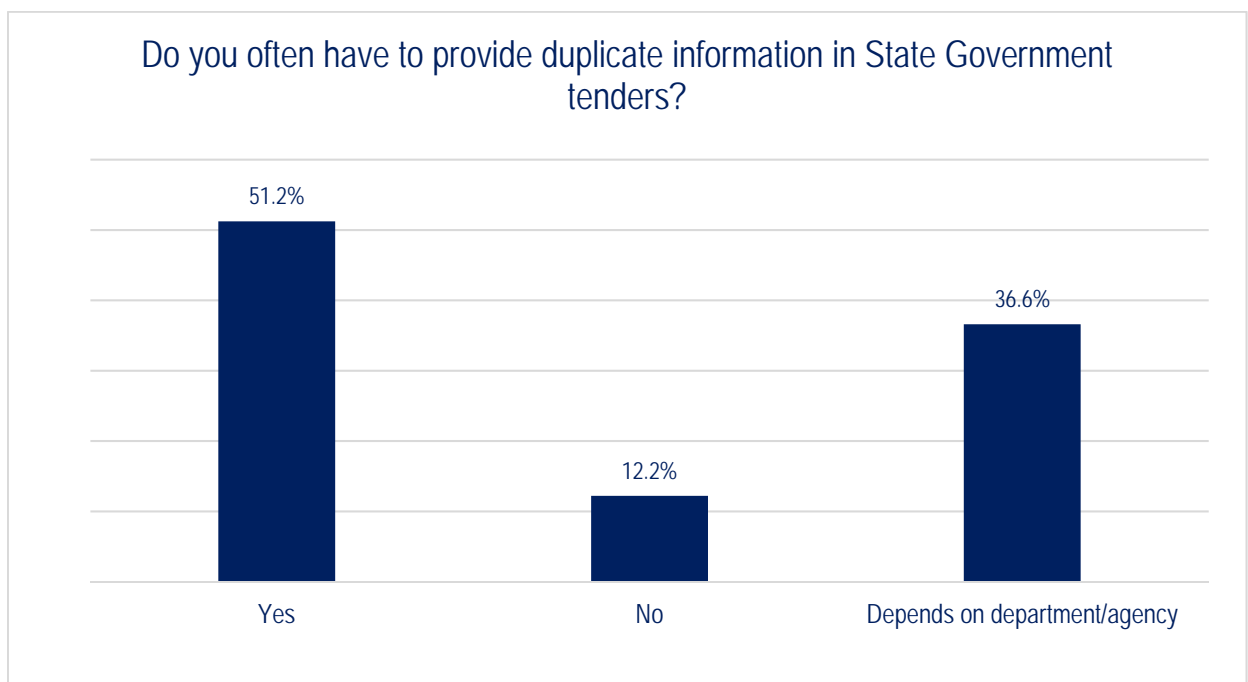
Businesses were also quite concerned about the overall costs of the tender process, which included issues related to the amount of supporting information required. *'The cost in terms of time and money is amazing, and not respected, understood or acknowledged at agency procurement levels.'* (Professional services company, 1-19 employees)

Bias towards other suppliers (actual or perceived) came out in the top five issues and is a reminder that government departments/agencies must be even handed in their management of tender processes. More specifically, there was concern about government favouring existing suppliers with some tenders being viewed as a charade. *'Personally, I support the ability of a government organisation to give preference to a supplier with whom they have a well-established trust/value relationship – but not when they have to go through the charade of tendering – wasting everyone else's time. Of course there are cases where the motives are less genuine and there should be an audit process to identify that – with the potential sanction that an offending organisation must in future undertake procurements under supervision, i.e. just as a supplier must demonstrate their track record, so too should a customer.'* (ICT services company, 1-19 employees)

Businesses also raised concerns about some tenders not going to market, particularly in the IT area. These types of outcomes, unless adequately substantiated by governments, can lead to a loss of confidence from the business community dealing with governments and reduces the ability of governments to achieve competitively priced outcomes.

There were problems identified with tenders being cancelled, and in some cases the government department/agency did not even provide an explanation. Other tenders have also been significantly delayed, in some cases for several years, which from Business SA's perspective is completely unacceptable, particularly in the absence of a proper justification to interested parties which are often small to medium sized businesses.

2. Information duplication in goods and service tenders



Considering duplication of information requests was the experience, at least in part, for 83.3 per cent of survey respondents indicates a clear need for information management to be addressed across the State Government. While Business SA accepts that in some circumstances related to privacy that information cannot easily be shared between departments/agencies, there was a sense from members that a raft of more standard information related to company identification details, work/health/safety (WHS) policies and insurance coverage should be able to be more readily stored and available to procurement staff. Current work being undertaken on a reusable digital identity could go part of the way to addressing at least some of businesses' concerns but further work is likely to be required to materially improve outcomes.

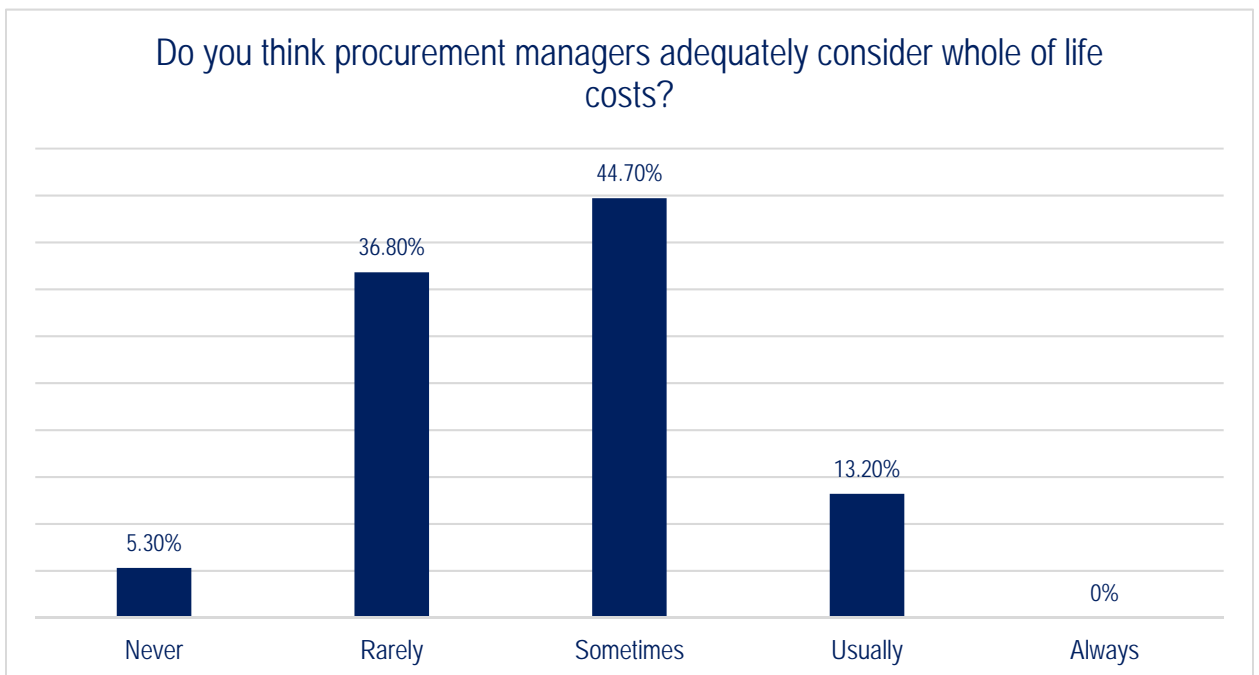
'Most documents are asked for multiple times, sometimes by different departments within the same institution. There is clearly no common bank of documents. This is a huge hassle, as supplying these documents with other supporting comments and notes can be time consuming.' (Construction company, 1-19 employees)

While businesses accepted that procurement officers would need to be notified of any changes to standard information, it was suggested this could be a question rather than simply asking for all the same information again.

Businesses also raised having to provide the same sorts of information in varying formats which points to deficiencies in the structure of tender documents if multiple questions are ultimately soliciting the same response.

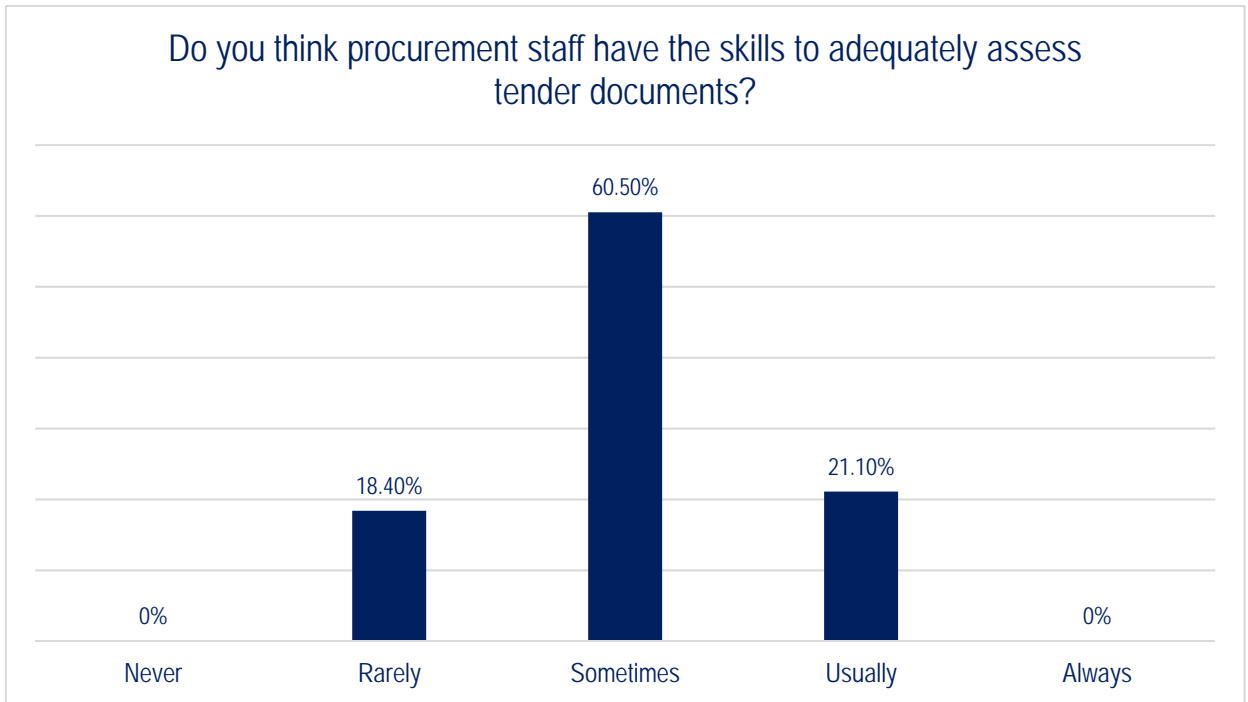
Feedback specific to the IT area indicated that despite there being standard tender templates, often individual departments/agencies were varying these templates. This practice is making it difficult for tendering businesses and resulting in additional time and cost responding to tenders.

3. 'Whole of life' cost consideration in goods and services tenders



While this is a commonly raised issue with Business SA, it was a promising result that in at least some instances, over half of businesses are experiencing State Government procurement staff that do consider 'whole of life' costs when assessing tenders. However, only 13.2 per cent of businesses found this was 'usually' the case which demonstrates the substantial challenge that still faces the State Government in better equipping its procurement employees to assess tender costs on a more holistic basis. *'Over emphasis is given to price, rather than assessing value for money.'* (IT company, 1-19 employees). Software purchases were raised as a specific example of where 'whole of life' costing was particularly important.

4. Feedback on Government procurement staff

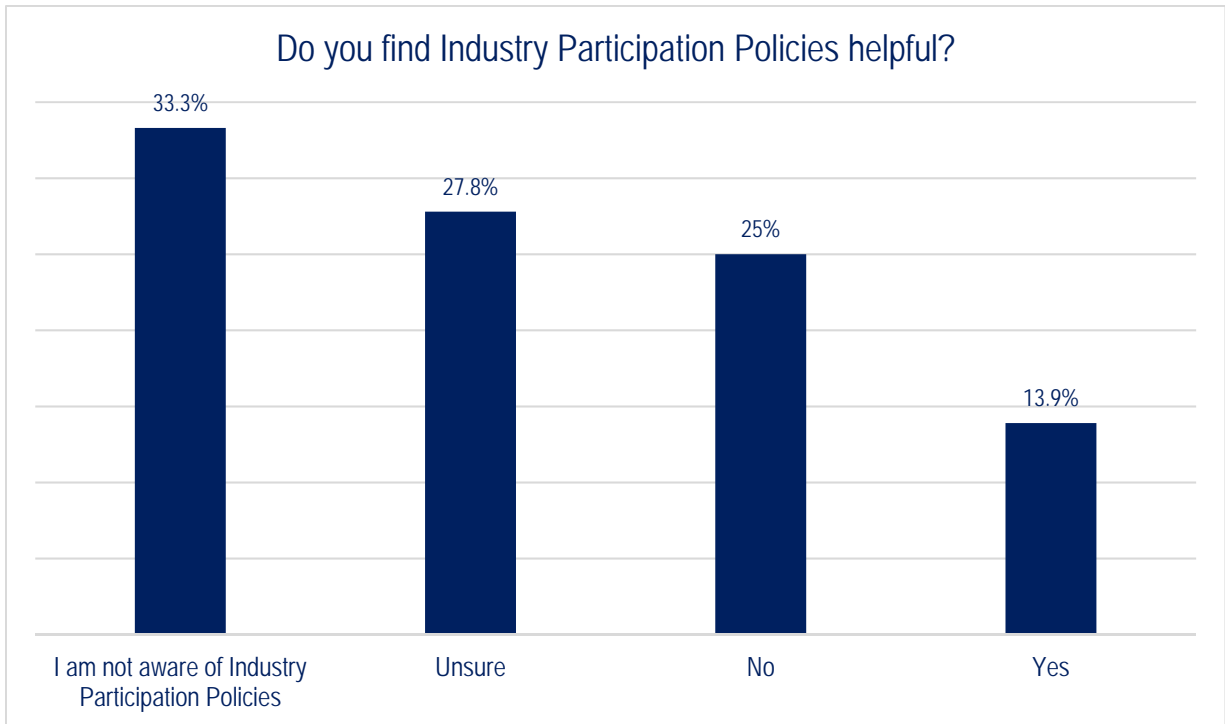


While in the main, businesses were more positive about their experiences with government procurement staff than negative, there is still significant room to improve to ensure the majority of businesses are 'usually' feeling that the person assessing their tender has the required skill set.

Most of the qualitative feedback centred around procurement staff not having the degree of technical understanding of the product or service they are actually procuring. *'Many procurement managers understand policy, and often not the services that is being tendered.'* (ICT services company, 1-19 employees)

There was also a call for more industry consultation ahead of tenders being released to avoid issues related to shortcomings in technical understanding from the government's perspective. In addition, concerns were raised that if the government relied too much on external consultants in the tender formation stage, that they would not have the adequate skills internally to assess the actual tender responses.

5. Businesses experience with Industry Participation Policies



While the direct benefits of Industry Participation Policies (IPP) experienced by surveyed businesses was low, and some businesses did not think the policies were adequately working for them, there was a surprising number of businesses either unsure about the effectiveness of IPP or unaware of their existence. With over 61 per cent of businesses falling into the latter category, the Commission should focus on analysing how the current policy settings are leading to measurable outcomes. Business SA also recognises that our members understanding of how these policies work is one matter, and their actual effectiveness another, with both elements needing to be adequately understood to make a fair and balanced assessment of IPP.

There was some disquiet from local businesses about interstate companies setting up an office in South Australia to be considered 'local', or smaller local companies using interstate contractors but not being transparent in the tender process. Specifically in the food services sector, there was feedback provided about contracts going to national suppliers that tended to use lower cost suppliers in Victoria and New South Wales, a result of the product being primarily sourced on price, not state of origin.

The extent to which the policies actually favoured genuine local businesses was also raised, with calls for better auditing of actual outcomes in conjunction with an appropriate level of enforcement.

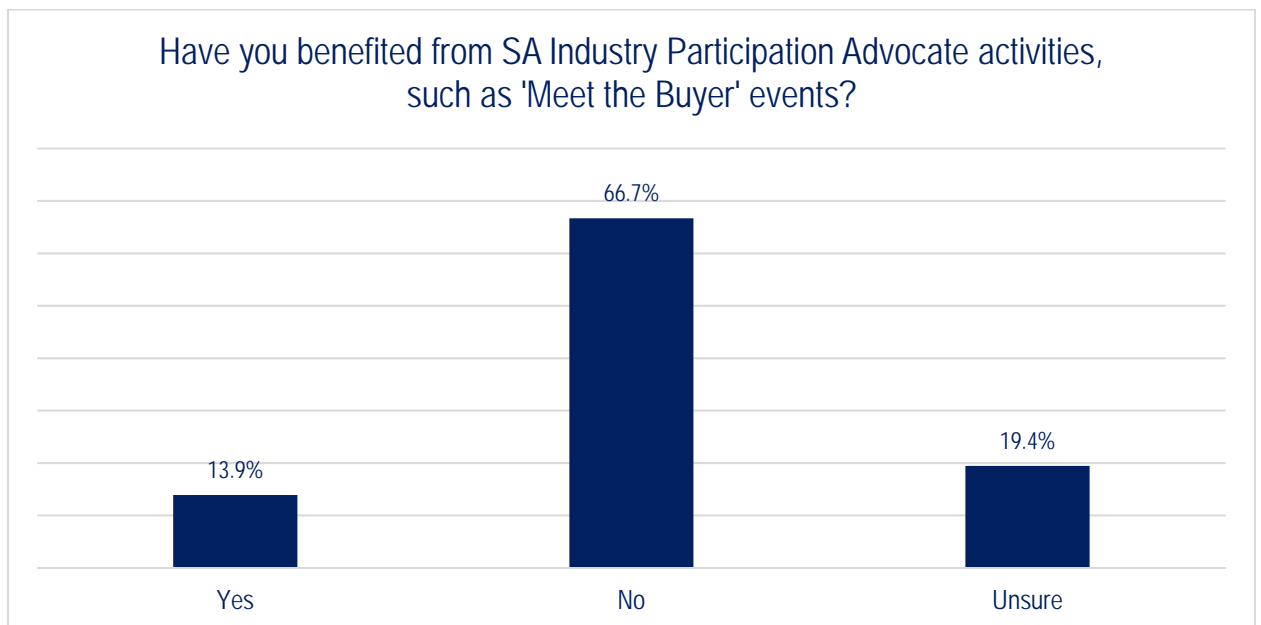
Smaller businesses raised some concerns about the complexity of filling out industry participation aspects of tenders when they did not necessarily have the staff to do so, and members also commented that for local businesses, they should have some pre-qualification process such that they only had to prove their 'local' credentials once, or at least not every time they applied for a tender.

Business SA has also received qualitative feedback over recent years that while IPP can ensure procurement staff are aware of local businesses, and even consider that as a weighted component in their decision making, ultimately the tendering businesses themselves still feel they are primarily competing on price as they do not know where each other will price and how much the 'local' component will realistically favour the local business. Furthermore, local businesses are also competing against other local businesses so again, they still feel price is primarily the deciding factor.

While businesses were not specifically asked questions about the weightings of IPP in South Australia, Business SA acknowledges that South Australia's current IPP weighting of 15 per cent sits in the middle of other states and territories, with the larger states typically lower and the smaller states higher, up to 30 per cent in the case of the Northern Territory. A higher IPP weighting can assist small businesses in slower growing economies like South Australia and the State Government should also be considering how it can assist South Australian businesses to compete in the faster growing economies of New South Wales and Victoria where policies to favour their own local businesses are less generous, with local weightings of 6 and 10 per cent respectively.

Some members were seeking additional local weightings and more genuine support for local businesses. Practices in other states were raised with Queensland's approach of requiring a specific number of local quotes viewed as a practical measure which has assisted to grow local businesses there. However, other businesses viewed IPP as adding an unnecessary layer of red-tape when local goods of equivalent price and quality would most likely be purchased regardless.

Businesses were also asked if they had benefited from Government sponsored activities to improve local business access to State Government contracts:



While it may be hard to measure direct benefits from these types of events, other verbal feedback provided to Business SA over recent years about 'Meet the Buyer' events has been mostly positive, particularly where businesses have not known the relevant procurement people within a department/agency that they should be dealing with.

For surveyed businesses which did not feel they had a positive outcome, there were suggestions related to how the State Government could emulate large companies which run similar events for small suppliers but typically provide more opportunities for confidential discussions. This was particularly important for businesses which did not want to discuss matters of IP within earshot of competitors.

Whatever the format, it is important for local businesses to be able to access relevant procurement people within Government and while that will always need to be tempered with probity measures, efforts made through initiatives such as 'Meet the Buyer' are a positive foundation to work from.

Broader qualitative feedback provided to Business SA on the Office of the Industry Advocate has indicated that businesses find the staff quite helpful, and supportive of businesses promoting their local attributes.

6. Business perspectives on common procurement approaches

Business SA's survey asked businesses their opinion about four key procurement approaches used by the State Government, with a summary provided for each:

Open Market Approach (publicly advertise and open to all)

Businesses were generally quite favourably disposed towards this approach, however there was recognition that it was not necessarily suitable for low value contracts and can be a waste of time for tendering businesses. In the main, businesses saw an open market approach as being fair to all businesses. It was also viewed as important when the full capabilities of the market place may not be known by the tendering authority.

Pre-qualification (Suppliers who have demonstrated experience, capability, resources and management systems)

Businesses did see merit in this approach, particularly for more complex contracts and where quality assurance needs were high. While it was accepted that the bar had to be set higher for pre-qualification arrangements, there was also feedback around constant changes that required businesses to keep pre-qualifying. Businesses were also concerned that the pre-qualification process favours incumbents and is not conducive to giving a fair go to new market entrants.

Panel Arrangements (used primarily for common goods and services e.g. stationary)

The feedback on panels was predicated on the type of good or service, with a tendency for businesses to prefer panels where the nature of the procurement was more commodity related. Where businesses were accepting of panels, there was still uncertainty about how the work was actually shared.

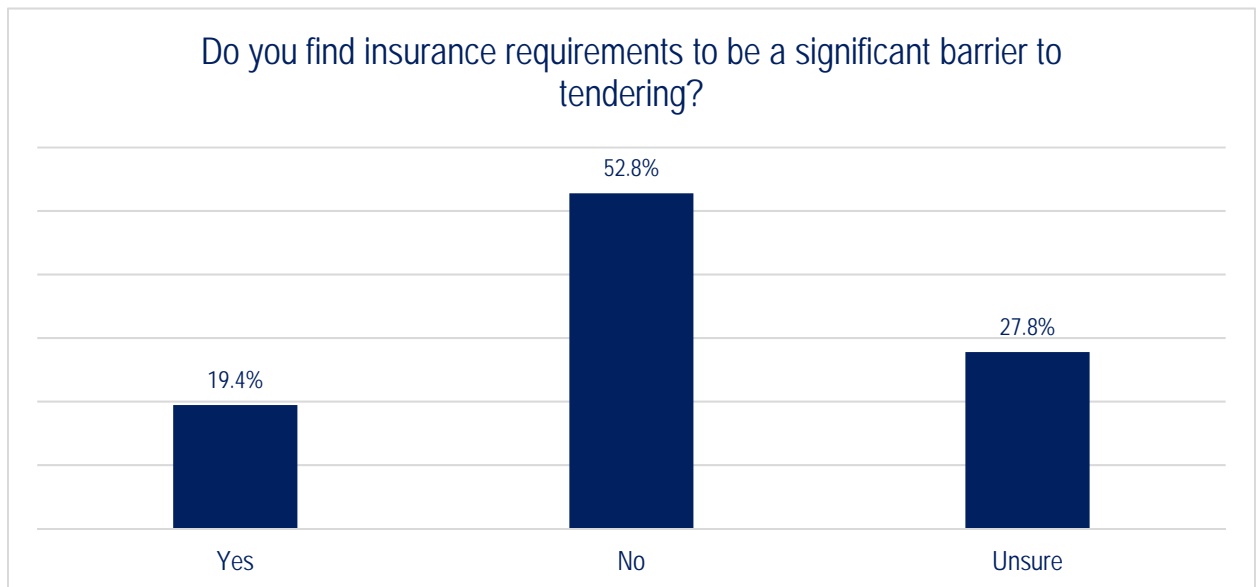
There were calls to allow for more regular opportunities for new market entrants that are suitably qualified to join panels, for example on an annual basis, as opposed to being locked out for several years.

The work from a tendering business perspective getting onto a panel was seen as a hurdle, particularly when it was argued that not all panels seemed to be used or that the presence of panels within some government departments/agencies was not always clear.

Negotiated Approach (exclusive negotiation between agency and supplier; no competitive tender)

Businesses acknowledged that this type of approach was more common in the private sector and that while it can work well there, its effectiveness is contextual. In a public sector setting, there was not a high degree of trust that negotiated approaches will generally result in the best value outcomes, with concerns about this approach being prone to abuse. There was also a view that specific departments/agencies should need to demonstrate their own competence before being given the privilege of taking a direct negotiation approach to procurement.

7. Insurance requirements in goods and services tenders



Considering that only 20% of businesses found this to be the case, Business SA acknowledges that in the main this is not a major concern for the business community. On this point, Business SA acknowledges the 2016 reforms by the State Government, in conjunction with the Industry Participation Advocate, have led to more reasonable insurance requirements for low and medium risk contracts, with a global liability cap of five times the contract value.

Notwithstanding, specific feedback was provided about the level of public indemnity (PI) required on specific classes of contracts, for example IT, and the relativity to the actual number of claims against local businesses in recent years. Requirements for \$20 million in PI cover for contracts covering relatively simple goods and services was seen as excessive and should be a point for the Commission to explore further, particularly if some agencies/departments are not adequately following the 2016 reforms.

8. Intellectual Property in State Government contracts

Businesses were typically frustrated about the general requirements for Intellectual Property (IP) transfer in State Government contracts and questioned why the Government necessarily had to own businesses' IP. *'Most contracts require IP to be held with the Government. In most instances this denies the supplier the ability to develop IP and add value when the Government really has few reasons to want to own IP developed.'* (IT company, 1-19 employees)

There was also a lack of trust with transferring IP to Governments for fear it would not be adequately protected by department/agency staff.

In generally, blanket requests for IP ownership from the Government were met with suspicion. *'Their blanket request for ownership of IP is at times bullish.'* (Personal services company, 1-19 employees)

9. Apportioning risk in State Government contracts

There was generally a degree of skepticism from business related to the risks they were required to bear under government contracts relative to the risks borne by the government. *'I'm not convinced they necessarily understand where risks arise from but they generally agree they shouldn't carry any of it!'* (ICT services company, 1-19 employees)

Businesses also felt they were not always bearing the risks they were best placed to manage which led to them being exposed to the costs of those risks, creating a barrier for businesses to tender in the first instance.