



Final Report

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## **Inquiry into Government Procurement Stage 2**

**8 November 2019**

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## About the South Australian Productivity Commission

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The Commission provides the South Australian Government with independent advice on facilitating productivity growth, unlocking new economic opportunities, supporting job creation and removing existing regulatory barriers.

The Department of the Premier and Cabinet (DPC) Circular PC046 sets out the objectives and functions of the Commission; how inquiries are referred to the Commission, undertaken and reported on; and how the Commission and public sector agencies work together.

The Commission was established to assist the government:

- i. to improve the rate of economic growth and the productivity of the South Australian economy in order to achieve higher living standards for South Australians;
- ii. to improve the accessibility, efficiency and quality of services delivered or funded by government;
- iii. to improve South Australia's competitiveness for private sector investment;
- iv. to reduce the cost of regulation;
- v. to facilitate structural economic changes while minimising the social and economic hardship that may result from those changes;
- vi. to take into account the interests of industries, employees, consumers and the community;
- vii. to increase employment;
- viii. to promote regional development; and
- ix. to develop South Australia in a way that is ecologically sustainable.

The Commission is supported by the Office of the South Australian Productivity Commission (OSAPC) which is an attached office of the Department of the Premier and Cabinet. The Chair of the Commission also serves as the Chief Executive of the OSAPC.

For more information on the Commission, including DPC Circular PC046, visit the website at [www.sapc.sa.gov.au](http://www.sapc.sa.gov.au).

### Disclosure

The commissioners have declared to the South Australian Government all personal interests that could have a bearing on current and future work. The commissioners confirm their belief that they have no personal conflicts of interest in regard to this inquiry.

# Terms of Reference

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## **SOUTH AUSTRALIAN PRODUCTIVITY COMMISSION INQUIRY INTO GOVERNMENT PROCUREMENT – CAPITAL PROJECTS AND PRESCRIBED PUBLIC AUTHORITIES**

I, Steven Marshall, Premier, hereby request that the South Australian Productivity Commission (the Commission) expand the scope of its current inquiry into the efficiency and effectiveness of South Australian Government procurement processes and practices to include capital project procurement and all public authorities including those currently exempt from the *State Procurement Act 2004*.

The Commission's deliberations on the additions to the scope are to be presented to the Government in a separate report.

### **Background**

The South Australian Government's 'Strong Plan for Real Change', documents its election commitment to implement reforms enabling South Australian businesses to better participate in government procurement.

The State's public authorities manage and perform their procurement functions via a mix of centralised and decentralised arrangements depending on their organisational structure and functions. Whilst subject to some exclusions, they are required to comply with the State Procurement Board's (SPB) Procurement Policy Framework and the Department for Industry and Skills' Industry Participation Policy (IPP), local interpretation and application of these governing frameworks, may lead to inconsistent implementation of policy and operational guidelines.

The general government sector capital investment program reflects continued significant investment by the government in delivery of its services. Purchases of non-financial assets are expected to be \$2.0 billion in 2018–19. The forward estimates contain a major infrastructure investment program of \$8.3 billion in the general government sector over four years. As a result of feedback received from the business sector during the current Commission inquiry into procurement, the government has decided that the scope of the inquiry be expanded to include capital projects, as it represents a significant portion of government procurement expenditure and there are opportunities to improve procurement processes.

The state's prescribed public authorities collectively are responsible for a significant amount of procurement in the course of delivering functions on behalf of the South Australian Government, including capital procurement that is not included in the figures above. Procurement by prescribed public authorities, as listed in Schedule 1 of the State Procurement Regulations 2005, is also now in the scope of this inquiry.

### **Terms of Reference**

This inquiry is an expansion of the scope of the current inquiry into goods and services procurement.

As a result, the Commission should address the following terms of reference in a second stage of the procurement inquiry that covers capital procurement and all procurement by prescribed public authorities:

1. Consider the time and costs associated with procurement, that is:
  - a. The time taken to complete the supplier selection stage of the procurement process;
  - b. The cost to business of participating in the procurement process; and
  - c. How the time and costs of the procurement process in South Australia compare to other jurisdictions.
2. Assess the level of compliance by public authorities and other declared bodies with government procurement policies, guidelines, principles, standards and directions.
3. Consider the appropriateness of procurement governance and reporting arrangements. This includes procurement under a Public Private Partnership arrangement.
4. Evaluate the effectiveness of the IPP, in particular, the IPP's impact on:
  - a. Competition between firms, including those from interstate and overseas;
  - b. Prices and value for money of goods and services procured over time; and
  - c. Broader economic effects such as the growth of local industry and employment.
5. Examine the risk management framework used by public authorities to evaluate supplier bids and specifically whether it is appropriate to the value of the procurement.
6. Consider examples of contemporary procurement policies and practices from interstate, overseas and the private sector and their effectiveness in:
  - a. Generating local output and employment;
  - b. Building industry capacity; and
  - c. Promoting innovation.
7. Provide recommendations on action the government should take to improve the effectiveness and efficiency of State Government policies and practices for the government's procurement activities.

### **Scope**

The Inquiry now includes government procurement for capital projects in addition to the procurement of goods and services.

All public authorities subject to the State Procurement Act 2004 continue to be in scope. Applicable prescribed public authorities, as listed in Schedule 1 of the State Procurement Regulations 2005 (attached), are also now in scope.

The Commission should have regard to relevant state and federal legislation, South Australia's national and international obligations about procurement and the South Australian Government's election commitments.

### **Process**

The Commission should consult with a cross section of businesses operating in South Australia, the Small Business Commissioner, Industry Advocate, State Procurement Board, key

business associations and industry representation (including unions), as part of the public engagement process. Engagement should also occur with the Public Works Committee of Parliament.

The Commission is to provide a separate report to the government on the first stage of this inquiry dealing with goods and services procurement, with a draft report due by 15 March 2019 and a final report by 17 May 2019.

The Commission is to provide a second report on capital procurement and procurement by prescribed public authorities, with a draft report to be provided during August 2019 and final report by 31 October 2019.



Hon Steven Marshall MP  
**PREMIER OF SOUTH AUSTRALIA**

31/1/2019

Attachment:

- Schedule 1 - State Procurement Regulations 2005

**Schedule 1—Prescribed public authorities**

Adelaide Venue Management Corporation  
Architectural Practice Board of South Australia  
Construction Industry Training Board  
Health Services Charitable Gifts Board  
Legal Profession Conduct Commissioner  
Local Government Finance Authority of South Australia  
Motor Accident Commission  
Return to Work Corporation of South Australia  
South Australian Forestry Corporation  
South Australian Housing Trust  
South Australian Water Corporation  
Superannuation Funds Management Corporation of South Australia  
Urban Renewal Authority

## Transmittal letter

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8 November 2019

The Hon Steven Marshall MP  
Premier of South Australia  
Level 15 State Administration Centre  
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Dear Premier

### **SAPC Inquiry into Government Procurement Stage 2**

In accordance with the terms of reference received by the Commission on Wednesday, 31 October 2018 and subsequently revised on Friday, 15 February 2019, we are pleased to submit the South Australian Productivity Commission's Final Report on Stage 2 of the inquiry into Government Procurement.

This Final Report has been prepared after wide consultation with individuals, businesses, organisations and government agencies, and consideration of the submissions they and other stakeholders made. We acknowledge and thank them for their support, together with the Office of the South Australian Productivity Commission staff for their work in preparing this Final Report.

We respectfully note that in accordance with the Premier and Cabinet Circular PC046 "The Commission must ensure that the report is available on its website within ninety days of delivering the report...", unless you specify a shorter period.

Yours sincerely

Dr Matthew Butlin  
**CHAIR**

Adrian Tembel  
**COMMISSIONER**

# Contents

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About the South Australian Productivity Commission .....	3
Terms of Reference.....	4
Transmittal letter .....	8
Contents .....	9
Key messages.....	15
Executive summary .....	16
1. The scope of the inquiry .....	16
2. A better system architecture .....	16
3. Feedback from Stakeholders .....	19
4. System process issues.....	23
5. System Governance Issues .....	28
6. Conclusion.....	30
Recommendations.....	31
Recommendation 3.1 .....	31
Recommendation 3.2 .....	31
Recommendation 3.3 .....	31
Recommendation 3.4 .....	32
Recommendation 3.5 .....	32
Recommendation 3.6 .....	32
Recommendation 3.7 .....	32
Recommendation 3.8 .....	33
Recommendation 3.9 .....	33
Recommendation 3.10 .....	33
Recommendation 3.11 .....	34
Recommendation 3.12 .....	34
Recommendation 3.13 .....	34
Recommendation 4.1 .....	34
Recommendation 4.2 .....	35
Recommendation 4.3 .....	35
Recommendation 4.4 .....	35
Recommendation 4.5 .....	36
Recommendation 5.1 .....	36

Recommendation 5.2 .....	36
Recommendation 5.3 .....	37
Definitions .....	38
Acronyms .....	42
1. Introduction.....	47
1.1 Context.....	47
1.2 Scope of work .....	48
1.3 Process .....	50
1.4 Structure of report.....	51
2. Feedback on draft reports.....	52
2.1 Public authorities.....	52
2.1.1 Value for money (including other government objectives).....	54
2.1.2 Timeliness .....	54
2.1.3 Capability .....	55
2.1.4 Assurance/compliance.....	56
2.1.5 Delegations and thresholds .....	56
2.1.6 Metrics .....	57
2.1.7 Engagement with market.....	57
2.1.8 Contract management.....	58
2.2 Prescribed public authorities.....	59
2.2.1 Commerciality.....	59
2.2.2 Risk.....	59
2.2.3 Governance and audit.....	60
2.2.4 Capability .....	60
2.2.5 Procurement activity.....	60
2.2.5.1 Goods and services .....	61
2.2.5.2 Construction.....	61
2.2.5.3 Whole-of-government contracts .....	62
2.2.5.4 Reporting and performance.....	62
2.2.5.5 Continuous improvement .....	63
2.2.6 Summary of PPA feedback.....	63
2.3 Business.....	64
2.3.1 Reducing the cost of tendering.....	65
2.3.2 More engagement between businesses and public agencies .....	66

2.3.3 Value for money considerations .....	66
2.3.4 Access to government procurement for SMEs and new businesses .....	68
2.3.5 More expertise.....	68
2.3.6 Better allocation of risks .....	68
2.3.7 Better contract management .....	69
2.4 Not-for-profit organisations .....	69
2.4.1 Market engagement, consultation and collaboration .....	70
2.4.2 Tendering: time, cost and information requirements .....	70
2.4.3 Funding and pricing arrangements .....	70
2.4.4 Contract negotiations, contract management and reporting arrangements.....	71
2.5 State Procurement Board (SPB).....	71
2.6 Advocates.....	72
2.6.1 Industry Advocate .....	72
2.6.2 Small Business Commissioner .....	73
2.6.3 Chief Entrepreneur .....	74
2.7 Other .....	75
2.7.1 Value for money.....	76
2.7.1.1 Sustainable procurement.....	76
2.7.1.2 Social procurement.....	76
2.7.2 Construction procurement .....	76
2.7.3 Construction procurement standards and contractor responsibilities .....	77
3. Commission’s assessment of current system process issues .....	78
3.1 Procurement process.....	78
3.1.1 Simplifying guidelines, policies and procedures .....	78
3.1.1.1 Construction governance and process.....	79
3.1.1.2 Accreditation.....	80
3.1.2 Thresholds and delegations in government procurement .....	82
3.1.2.1 Introduction .....	82
3.1.2.2 Interstate comparisons .....	86
3.1.2.3 Issues raised .....	88
3.1.2.4 Recent reforms.....	88
3.1.2.5 The Commission’s view .....	89
3.1.3 Timeframes for procurement .....	91
3.1.3.1 International and interstate benchmarks .....	92

3.1.3.2 South Australia performance .....	92
3.1.4 Approaching the market effectively .....	95
3.1.4.1 Reporting requirements.....	95
3.1.4.2 Use of direct negotiation and public tendering .....	96
3.1.5 Better engagement with suppliers.....	98
3.1.5.1 During tenders .....	99
3.1.5.2 Outside the tender process .....	99
3.1.5.3 Feedback/lessons learned.....	100
3.1.5.4 Transparency.....	101
3.1.6 Capturing the benefits of innovation.....	102
3.1.6.1 Innovation pathway through procurement.....	103
3.1.6.2 Treatment of intellectual property by public authorities .....	105
3.1.7 Improving risk management .....	107
3.1.7.1 Consistent application .....	108
3.1.7.2 Contract choice .....	109
3.1.7.3 Strategy and accountability .....	110
3.1.8 More effective contract management.....	111
3.1.8.1 Introduction .....	111
3.1.8.2 The contractual chain.....	111
3.1.8.3 Use of standard contracts.....	112
3.1.8.4 Improving the achievement of value .....	113
3.2 Achieving better value for money .....	115
3.2.1 Whole-of-government framework.....	115
3.2.2 Evaluation of tenders.....	117
3.2.3 Economic impact.....	120
3.2.4 Social and environmental policy .....	122
3.2.5 SAIPP .....	124
3.2.5.1 Local participation.....	124
3.2.5.2 Thresholds and weighting.....	125
3.2.5.3 Compliance .....	126
3.3 Aggregated and disaggregated contracts.....	127
3.3.1 Introduction .....	127
3.3.2 Economic theory of aggregation and disaggregation .....	129
3.3.3 Findings .....	131

3.3.4 Conclusion and recommendations .....	132
<b>4. Commission’s assessment of current system governance issues .....</b>	<b>136</b>
<b>4.1 Accountability framework.....</b>	<b>136</b>
4.1.1 Introduction to accountability in procurement .....	136
4.1.2 Interstate approaches to accountability.....	137
4.1.3 South Australia’s procurement accountability framework.....	141
4.1.3.1 Authorising environment.....	141
4.1.3.2 Compliance environment.....	145
4.1.4 Commission findings and recommendations.....	149
4.1.4.1 Existing scope/architecture .....	149
4.1.4.2 Streamlining, improving compliance and reducing risk.....	149
4.1.4.3 Conclusions and recommendations.....	150
<b>4.2 Capability .....</b>	<b>152</b>
4.2.1 A national perspective on capability in the infrastructure sector .....	153
4.2.2 The current procurement capability frameworks.....	154
4.2.2.1 State Procurement Board capability framework .....	154
4.2.2.2 Construction capability framework .....	154
4.2.2.3 Prescribed public authorities’ capability frameworks .....	155
4.2.3 Transactional vs. strategic procurement .....	156
4.2.4 Meeting the challenge .....	157
4.2.4.1 Improving professional standards and competencies.....	158
4.2.4.2 Contract management .....	160
4.2.4.3 Risk management.....	161
4.2.4.4 The right people — attraction and retention .....	162
4.2.5 Conclusion.....	162
<b>4.3 Measurement.....</b>	<b>162</b>
4.3.1 Procurement outcomes .....	165
4.3.2 Process measures.....	168
4.3.3 Continuous improvement .....	170
4.3.4 Keeping track of capability.....	172
4.3.5 Conclusion and recommendations .....	174
<b>5. A better architecture for government procurement.....</b>	<b>177</b>
5.1 Introduction.....	177
5.2 The proposition: a single system architecture .....	179

5.3 Procurement SA in further detail.....	182
5.3.1 Purpose .....	182
5.3.2 Functions.....	183
5.3.3 Staff .....	185
5.3.4 Working together – agencies and Procurement SA.....	185
5.3.5 Organisation options.....	186
5.4 The key early tasks .....	187
5.4.1 The initial strategy and work program.....	187
5.4.2 Performance information, reporting and analytics .....	188
5.4.3 Fit-for-purpose standards, policies and guidance.....	190
5.4.4 Building capability in the government procurement profession.....	192
5.5 Implementation .....	193
5.5.1 Procurement SA Chief Executive and team .....	193
5.5.2 Some transitional issues .....	195
5.5.3 Achieving other government objectives through procurement.....	195
5.5.4 Assisting agencies .....	196
5.5.5 Peer reviewed acquisition plans .....	196
5.6 Caveats.....	197
Appendices.....	199
Appendix 1: Submissions in response to the Government Procurement Inquiry Stage 2 draft report to support the final report.....	199
Appendix 2: Submissions in response to the Government Procurement Inquiry Stage 2 issues paper to support the draft report.....	200
Appendix 3: Submissions in response to the Government Procurement Inquiry Stage 1 draft report to support the final report.....	201
Appendix 4: Submissions in response to the Government Procurement Inquiry Stage 1 issues paper to support the draft report.....	202
Appendix 5: Assessment of different tender evaluation methods.....	204

## Key messages

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Over the past year the Commission has assembled and considered a large body of evidence; met with many stakeholders including business, SMEs, not for profit organisations and public authorities; and issued two draft reports and one final (for Stage 1) report.

The state procurement framework is, in practice, a combination of several frameworks that operate separately. This fragmentation is a barrier to a whole of government approach, limiting the prospects of simplifying the system for suppliers, improving the value generated by the state's procurement spend and achieving other system wide efficiencies.

As a key plank in addressing this constraint, the Commission recommends establishing Procurement SA with the role of improving the state's procurement system and being the government's chief adviser. As such, it would lead and build a profession of highly capable procurement practitioners and lead the task of simplifying the procurement system, making it far less reliant on outdated financial thresholds and shifting towards managing procurements based on their complexity and risk profile. It would also use system wide data, evidence and analytics in hunting improvements and new opportunities systemically focusing on achieving the direct and indirect value from the state's procurement spend and thereby help to develop more 'match fit' South Australian businesses.

The Commission sees the benefits of the proposed architectural reforms as:

- Scope: whole-of-government strategic focus on system improvement and revised fit-for-purpose governance arrangements;
- Simplification and devolution: simplifying procurement policy and reinforcing agency accountability for their procurement operations;
- Evidenced-based decision-making: data and analytical capacity to identify, unlock and deliver new and sustainable improvements to the procurement system; and
- Professional procurement capability: explicitly grow the expertise, competence capacity of the government's procurement professionals.

A single system means developing common principles, standards and benchmarks, while separating strategy and operations. The Commission proposes a sharp delineation between Procurement SA's whole-of-government focus, and agency chief executives' accountability for their own procurement. It also sees the need for some practical differentiation within the overall system to reflect major differences in skillsets, processes and market segments as well as agency capability.

There are at least four early tasks for Procurement SA, in conjunction with agencies: the initial strategy and workplan; performance information, reporting, analytics and the hunt for additional value; developing fit-for-purpose policies, standards and guidance; and building the procurement profession in government.

The Commission acknowledges that the proposed reforms are ambitious, will take time to implement fully and require a significant and coordinated effort to achieve.

# Executive summary

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## 1. The scope of the inquiry

In October 2018, the South Australia Government tasked the South Australia Productivity Commission (the Commission) with:

- evaluating the effectiveness and efficiency of state government policies and practices for the procurement of goods and services; and
- identifying options to improve procurement practices and their impacts on local industry, noting concerns expressed by small and medium enterprises (SMEs) about the cost of and time expended in tendering for procurement opportunities.

The inquiry initially focused on agencies and matters within the scope of the *State Procurement Act 2004*, which specifically excluded construction expenditure and prescribed public authorities (e.g. SA Water and Renewal SA). On 15 February 2019, the scope was expanded to cover these exclusions.

As the investigation of goods and services procurement was already well advanced, the inquiry was divided into two stages. Stage 1 addressed the inquiry's original scope and terms of reference. The final report for Stage 1 was delivered to the Premier on 17 May 2019. Its recommendations focussed on unlocking short-term value in government procurement while starting some key longer-term reforms. The Government's response has been released (<https://dpc.sa.gov.au/resources-and-publications/government-procurement-inquiry>): 28 of the Commission's 30 recommendations were accepted in full; and the others were accepted in part. In addition to the expanded scope, Stage 2 considered governance and institutional arrangements from a whole-of-government perspective.

The Commission appreciates the extensive assistance received from all participants (both private and public sector). In particular, the State Procurement Board's secretariat during Stage 1, and DPTI and SA Water during Stage 2. Both DPTI and SA Water allocated personnel to work with the Commission on a part-time basis to assist the Commission's understanding of their procurement arrangements.

This executive summary is structured slightly different than the report in that it first discusses the proposed system changes and then moves to the stakeholder feedback, system process and governance issues that led to the proposed changes.

## 2. A better system architecture

The state's procurement framework is, in practice, a combination of several frameworks that operate separately. This fragmentation is a barrier to a state-wide approach to improving public sector procurement, adding unnecessary complexity, limiting the prospects of simplifying the system for suppliers, reducing the value generated by the state's collective procurement spend and restricting other system wide efficiencies.

The *State Procurement Act 2004* was established to regulate the procurement operations of

public authorities. However, it is primarily limited to goods and services procurement by public authorities which essentially excludes construction procurement and prescribed agencies. In terms of procurement expenditure, this excludes approximately half of the state government's total procurement spend.

Notwithstanding the efforts of procurement professionals working on the state's behalf, the current efforts to improve public authority procurement and some impressive areas of individual excellence – all of which the Commission respectfully acknowledges – there are systemic shortcomings.

In looking at the system as a whole, it is obvious that there is no focused, purposeful strategy for lifting the value of whole of government procurement spending over the long term. This value includes:

- sourcing the goods, services and infrastructure the state needs at competitive prices;
- providing opportunities for South Australia businesses, especially SMEs, to participate and build more 'match fit' businesses that can compete outside the state; and
- contributing to other government objectives including skill formation, indigenous employment and environmental outcomes where appropriate.

This absence of strategy is one significant point of difference between South Australia and other comparable Australian jurisdictions where they have been reforming their procurement efforts, particularly in the use of information, in better understanding the marketplace, and in strategic investments in developing the professional capability applied in government procurement. The reforms also shift the focus from managing to financial thresholds towards managing, with highly capable professionals, based on the complexity and risk associated with that procurement. The Commission recommends that South Australia also adopt this strategic approach.

To enable this shift, the Commission recommends that the government create Procurement SA, which would have the strategic role of lifting the value generated by government procurement, and simultaneously abolish the State Procurement Board. Procurement SA would be accountable for:

- building a professional cohort of highly capable procurement practitioners working closely with their business unit colleagues;
- building a procurement system that is simpler and far less reliant on outdated financial thresholds, instead based on risk and complexity measures;
- using data, evidence and analytics both in its operations and in its search for improvement and new opportunities; and
- achieving the direct and indirect value for money the state spends, and for helping develop more 'match fit' South Australian businesses.

While the proposed reforms are consistent with the Commission's preferred option in the Stage 2 draft report, the Commission's views in relation to this proposed new entity have shifted in response to the constructive and considered feedback from agencies and external stakeholders.

The establishment of a single system means the development of common principles, standards and benchmarks, common sources of information and reporting and an overall strategy for increasing value, building professional capability and streamlined, simplified processes that would cut red tape for business and not for profit organisations wanting to compete for procurement opportunities. It does not mean the operation of the procurement system by a single entity. The Commission proposes a sharp delineation between Procurement SA's whole-of-government performance responsibilities, and agency chief executives' accountability for their own procurements' and improving their performance. Procurement SA would be the system steward, chief advisor and procurement profession lead, accountable for developing and maintaining system standards, increasing the capability of the procurement profession across government, and maximising the value generated by the state's procurement spend through central data analytics.

The Commission sees the additional benefits of the single system largely coming from:

- Increased scope: whole-of-government focus on system improvement and revised fit-for-purpose governance arrangements, with capacity to join up common issues in the current three streams of procurement and with appropriate authority to obtain information to support Procurement SA's functions;
- Evidenced-based decision-making: a significantly improved data and analytical capacity to identify, unlock and deliver new and sustainable improvements to the procurement system;
- Simplification and devolution: simplifying procurement policy, re-establishing agency accountability for procurement activity;
- Much deeper and broader professional capability: a substantial investment in lifting of the overall skill, expertise and judgement in the state's profession of procurement, led by the head of Procurement SA, to enable the shifting of government procurement to a risk and complexity-based system in which judgement and expertise are essential; and
- Collaborative relationships with agencies: enabling relationships between Procurement SA and agencies, business and industry; complemented by new standards, developed over time, to achieve optimal procurement outcomes.

Establishing Procurement SA and implementation of its reform agenda will necessarily require a staged approach. The SP Act would need to be repealed to make way for the new organisation, and new governance arrangements and authorities put in place to support its functions. The Commission has made recommendations and identified options that would support this. Initially, the change process would focus on goods and services procurement, then incorporating construction and the prescribed public authorities. The experience of other states is that the full change process will take an extended period. Queensland's reforms began in 2015 and, while significant progress has been made, the change process is not yet complete.

The Commission recommends Procurement SA be established as an administrative unit of the public sector with a qualified chief executive who will report to a senior minister. While some of the proposed changes could be progressed through alternative models (e.g. a

functional division of an agency like DTF or DPC), the proposed change is a major structural and cultural change that the Commission believes is best led by a qualified chief executive.

The establishment of an agency-led/central steward government procurement system is a significant commitment, but one that has the potential to transform government procurement, and is capable of generating potentially substantial additional value for South Australia.

### 3. Feedback from Stakeholders

The inquiry process has convinced the Commission there are real opportunities to increase the short and long-term benefits derived from South Australia Government procurement activity. The following is a brief summary of the constructive feedback from all government procurement stakeholders that has contributed to the Commission's views regarding system and governance issues, and its final recommendations.

#### 3.1 Public authorities

**Value for Money** - there is insufficient guidance and clarity on how public authorities can identify, measure and achieve value for money objectives in goods, services and construction procurements – particularly within the context of achieving efficiency and/or savings measures.

**Timeliness** - the number and type of approvals required to progress a procurement project under current requirements causes delays. Many public authorities questioned whether all the approvals were necessary – particularly for lower value and/or risk procurements, and some offered proposed reforms to streamline the process.

**Capability** - it has become increasingly difficult to attract and retain appropriately qualified and experienced procurement staff as demand for them is high in the current market. This is particularly the case for staff specialising in construction procurement projects. The areas identified as requiring further training and development were contract management, risk management, and construction procurement options analysis.

**Assurance/Compliance** - the procurement system has been focussed more on compliance rather than adding value. The compliance requirements have been developed and implemented without sufficient regard for other, existing assurance mechanisms including: Auditor-General assessments; Premier and Cabinet Circular requirements (including annual reporting); Treasurer's Instruction requirements (including TI 28 Financial Management Compliance Program); and compliance mechanisms that are now required by the *Industry Advocate Act 2017*. As a result, an increasing proportion of time and resources are being devoted to completing compliance activities which can be duplicative and excessive.

**Delegations and thresholds** - The Commission recommended in its Stage 1 final report that the financial authorisations for TI 8 be amended. The government accepted the recommendation and the financial authorisation delegation has been amended for chief executives and ministers. With respect to construction specific thresholds and delegations, the Commission received feedback from public authorities (including DPTI) that the current

delegations and thresholds have not been reviewed or adjusted recently, in part due to the limitations imposed by legislative instruments.

**Metrics** - The lack of appropriate systems, or legacy ICT systems is impacting on an agency's ability to consolidate and use information for strategic procurement purposes as well as existing whole-of-government reporting obligations. Agencies consider that a common platform would help to collect and manage strategic information and avoid the need to produce multiple reporting products.

**Engagement with market** - many public authorities have limited interactions with suppliers prior to commencement of a tender process (formal approach to market), and most do not have a strategic plan for market engagement with the exception of a few larger organisations. This is attributed to a risk averse culture that discourages staff from engaging with the market even when it fits within the rules of probity.

**Contract management** - contract management is an ongoing issue with respect to staff capability, ICT / metrics capability, and supplier capability.

### 3.2 Prescribed public authorities

The Commission engaged with prescribed public authorities (PPAs) once the scope of the inquiry was expanded. Prescription of public authorities seems ad hoc when considered from a whole-of-government perspective. The Commission has received very little information about the original reasons for prescribing the current PPAs and it notes there are a variety of other commercial public entities that are currently not prescribed. The following issues were raised by this group.

**Administrative Burden** - All PPAs share the view that to be subject to the SP Act would create administrative burdens and may result in lost commercial opportunities, potentially conflicting with their statutory and business obligations to operate commercially. A few provided specific examples of how compliance with the SPB regime would compromise those obligations.

**Flexibility** - Complex and specialised procurement activity is undertaken by some PPAs requiring timely and flexible procurement arrangements. Some are also required by law, or subject to a regulatory regime, to act commercially.

**Capability** - There is a wide divergence in human capability across the PPAs. The level of procurement capability generally reflected the size, frequency and complexity of an organisation's procurement requirements. Nonetheless, there is scope to improve procurement capability in most PPAs, accepting that, for those PPAs with very small and low-risk procurement needs, specific investment in procurement capability is not warranted.

**Governance and audit** - Most PPAs manage procurement risk and governance as part of their organisational approaches and models. PPAs undertaking specialised or niche procurement activity have developed policies and practices to manage those specific risks. Some PPAs have adopted the SPB's risk management policies and documentation. No PPAs have reported any adverse findings by the Auditor-General or third parties in relation to procurement activity in the last five years.

### 3.3 Business

The Commission has assembled a wide range of evidence from many sectors regarding business' concerns about South Australian government procurement, covering goods, services and construction. This information included direct consultations and submissions from businesses as well as the results from several recent surveys. Much of this information, helpful as it was, was anecdotal in nature. Often it was indicative partly through concerns that detailed information ran a risk of unwanted repercussions for future tenders. While the patterns of issues tended to be consistent, the intrinsic nature of the information often made it difficult to assess the frequency of the issue.

To better understand the frequency of these issues, the Commission gathered and analysed two random samples – one for goods and services in Stage 1 and one for construction in Stage 2 – of around 100 decisions by agencies on tenders. While the purpose of this information was primarily to understand how the South Australian Industry Participation Policy (SAIPP) was applied in practice, it also gave additional insight into some of the issues raised by business.

**Reducing the cost of tendering** - The key areas identified to cut business costs are more transparency, less red tape, better designed tenders and faster tender finalisation. Businesses asked for better transparency on selection criteria and evaluation strategies, including for panels, so they can better assess the value of responding to a tender or joining a panel, and in turn submit better suited tenders. Businesses asked for rationalisation of what is asked of them, in line with what is actually used by an agency to evaluate tenders. For goods, services and construction procurement, businesses report frustration with delays in making decisions, completing contracts and closing projects. They consider that public authorities' decision processes are slow, adherence to original timeframes is low, and communication with suppliers is insufficient.

**More and better engagement** - Businesses, particularly SMEs, believe the lack of engagement leads to suboptimal definition of government requirements resulting in decreased quality of bids and a lack of alignment of the goods and services offered with agency needs. Businesses also considered staff in some public authorities were reluctant to provide feedback to unsuccessful suppliers that could help improve future tenders.

**Value for money considerations** - a lack of focus on whole-of-life considerations, including the quality and durability of the product or service offered, as well as consideration of other social, environmental and economic benefits, and a lack of innovative outcomes were all raised.

**Access to government procurement for SMEs and new businesses** - business stakeholders' expressed the views that there is insufficient knowledge, in some public agencies, of the marketplace and local capabilities when planning the acquisition of goods and services; a lack of advance notice about tenders which prevents businesses gearing up; and that the aggregation of contracts acts as a barrier to participation for SMEs.

**Better allocation of risks** - Stakeholders have asserted most forms of risk are shifted through the contractual chain away from those most capable of managing risk down to those least capable of managing that risk. They also assert that, in construction, risk

avoidance results in head contractor agreements that encourage imposing subcontract conditions bearing little resemblance to the contract with the public agency in an effort to reduce cost and risk to the head contractor.

**Better contract management** - The Commission heard numerous examples from businesses in Stages 1 and 2 of the inquiry, including late payments to subcontractors by prime contractors, and insufficient due diligence by public authorities in selecting a prime contractor that may be at risk of failure. Several businesses acknowledged that public authorities generally provide timely payment to their prime contractors but raised the issue of ensuring prime contractors provide similar terms to sub-contractors.

### **3.4 Not-for-Profit organisations**

The Commission inquired into procuring social and health services from the Not-for-Profit (NFP) sector during Stage 1 of the inquiry. The Commission made five recommendations in the Stage 1 final report, all of which were supported by government and are scheduled to be completed by the end of 2019. There were no significant additional issues raised during Stage 2 of the inquiry.

### **3.5 Advocates**

South Australia has three independent bodies whose roles include, in part, to advocate in relation to specific areas that are relevant to this inquiry. All three – the Industry Advocate, the Small Business Commissioner and the Chief Entrepreneur – have made submissions and have been involved during this inquiry:

**Industry Advocate** - the key concerns highlighted by the Industry Advocate (IA) include:

- the lack of focus on outcomes to be delivered in agencies' tender requirements.
- the lack of opportunities for local innovative businesses (requires better Intellectual Property guidance and less prescriptive tender documentation); and
- the absence of a platform for businesses to provide anonymous feedback.

**Small Business Commissioner** - raised a number of issues including:

- delayed payment of contracts and inadequate review of the contracting firm's financial data;
- aggregation of contracts which can adversely affect businesses that are too small to tender for larger contracts, or unable to be incorporated into a larger business supply chain, especially in regional South Australia; and
- the absence of centralised data management.

**Chief Entrepreneur** - focused on the use of procurement to assist the development of innovative solutions. The main missing pieces were summarised as:

- early and ongoing dialogue between industry and government;
- effective governance, setting the rules to mitigate risks;
- independent advice to validate the process; and

- a benefit realisation framework.

### **3.4 Other**

There was feedback provided by a number of other interested parties that is covered in chapter 2 including members of parliament, union representatives and the university sector.

## **4. System process issues**

The Commission explored the key procurement process issues covering both construction procurement over \$150,000 by public authorities, and goods and services and construction procurement of PPAs.

### **4.1 Simplifying guideline, policies and procedures**

Prior to the introduction of the Across Government Facilities Management Arrangement (AGFMA), agencies could be accredited to undertake projects up to the value of \$1 million (exclusive of GST). Under the terms of the current AGFMA contract, most minor works must now be conducted under that contract. While most agencies are supportive of the repair, breakdown and maintenance aspects, agencies are less supportive of the minor works requirements of the AGFMA contract. The management fees charged are not viewed as providing value, and are perceived as increasing the overall cost relative to previous arrangements.

A review of the AGFMA is currently being undertaken by DPTI with input from a cross agency steering group. The Commission notes this work and supports public authorities exercising more independence in the management of and accountability for their assets.

In terms of the accreditation program, the Commission considers that far more value will be derived from arrangements that enable public authorities to manage their own low-risk construction procurement program.

### **4.2 Less complex thresholds and delegations**

Delegations and thresholds provide the mechanism by which government can manage risk and drive accountability and transparency. However, poorly designed delegations and thresholds can increase the complexity of the procurement process, set unnecessary barriers and significantly add to procurement timeframes and costs.

While the Commission acknowledges the positive steps that the South Australia Government has already taken to reform TI 8 Financial Authorisations and commit to reforms for the SAIPP thresholds, it also recommends that the South Australia Government review and reform the number of thresholds and delegations that apply to government procurement with a view to:

- simplifying the number and variety of financial value thresholds that currently exist; and
- moving to a system where thresholds/delegations focus on considerations of risk, complexity, capability, and whole of life value.

In order to ensure that the thresholds and delegations applying to procurement remain up to date and relevant, the government should also:

- implement a program that regularly reviews and, where necessary, revises the value thresholds applying to government procurement; and
- consider if and how the existing value of statutory thresholds can be reformed, regularly reviewed and more easily revised when necessary.

### **4.3 Timeframes for procurement**

The Commission acknowledges that timeliness is dependent on level of interest from the market and how many suppliers bid, the type of acquisition process used, approvals processes and governance. Some of these factors create unnecessary delays including limited information or unnecessarily high delegations of approval, while others are necessary checks and balances.

Stakeholders indicated that minimum decision times or service standards for types of procurement are often not published by public authorities. The Commission considers that the absence of this information during the tender process is undesirable in most cases and that an efficient and effective tender process would publish this information as a matter of course. This would also aid in the measurement of the effectiveness of government and agency processes.

### **4.4 Approaching the market**

The use of public competitive processes in procurement is low relative to the European Union's standard (24% in goods and services procurement) and the use of single supplier tenders are not well monitored. Closed processes have been the subject of complaints by business and the apparent lack of competitive tension raises the question of whether value for money for the state has been optimised. This lack of transparency is an important gap. Such basic information is central to analysing where and how the state can improve its procurement approaches and practices to get the best value from procurement. The Commission considers indicators of market access and competition are essential. Moreover, market reporting on market approaches needs to be simplified to reduce errors and ensure central government has access to robust data.

### **4.5 Better engagement with suppliers**

In response to the Commission's recommendations in the Stage 1 final report, the government decided to:

- develop a revised Meet the Buyer program that will include agency involvement and have specific forums for 'start-up' businesses;
- conduct regular 'supplying to government' workshops with interested businesses, enabling engagement with agencies to improve their understanding of public sector procurement process;
- create linkages between the Industry Capability Network and supplier information held by agencies;

- develop improved guidance and training for agencies on effective industry engagement and providing feedback to suppliers; and
- improve agency compliance with publishing forward procurement plans.

While not the subject of a separate recommendation, the Commission considers the responsibility for transacting with suppliers and engaging with business in a meaningful and productive way lies with public authorities. Greater transparency is needed in relation to:

- collaboration on specifications and project design as well as continuous dialogue on upcoming work;
- feedback and ongoing dialogue on tender responses and supplier capability;
- handling of complaints with clear pathways for suppliers and achieving resolution; and
- publication of, and supplier understanding of criteria used for tenders and weightings attributed to those criteria for types of procurement projects, with consistency of approach to be applied where possible.

#### **4.6 Capturing the benefits of innovation**

The Commission considers the current guidance on managing IP in procurement to be inadequate because it does not provide certainty and confidence for suppliers or procurement officers. This situation has led to a reluctance on the part of suppliers to engage with government or to approach government with their product, particularly SME's. The absence of clear guidance has also led to the risk averse nature of procurement processes which are considered to be overstated and impact upon the possible benefits of the proposal. This calls for much greater flexibility for IP contract provisions in government contracts and clear guidance for procurement staff.

#### **4.7 Improving risk management**

The Commission found the management of risk for construction procurement issues to be similar to those identified in relation to goods and services procurement in Stage 1 of this inquiry, namely shortcomings in data and reporting, risk allocation and guidance on risk management.

The Commission's research points to shortcomings in DPTI's management systems used to retrieve and present information related to projects managed on the behalf of public authorities (Lead Agencies). The Commission understands the shortcomings are largely related to the age of and lack of investment in the system. DPTI has indicated that systems improvements are a priority for the agency.

The Commission sees merit in better recording the outputs of risk management efforts, such as by category of expenditure and by project delivery types, which would provide information and insight into the purchasing profile and activities of government departments. In addition, project reviews following construction completion may well benefit from recording the outcomes of risk treatments to support future risk management improvements. This information is a foundation for identifying opportunities to continuously improve procurement and find whole-of-government improvement opportunities.

#### **4.8 More effective contract management**

The Commission has consulted with DPTI on the use of standard industry contracts, the inclusion of special conditions and other latent conditions that are in existence in the industry. DPTI is aware of the use of latent conditions clauses and has indicated that codifying clauses for use by industry would not be helpful. Rather, its view is that it would be more productive to develop principles for development of contracts while ensuring that they are applied by head contractors to subcontractors. When tenders are being awarded, head contractors would be required to sign a statement of principles demonstrating their commitment to ensuring that the subcontracting arrangements are fair and consistent with the head contract.

The contract management function in government agencies needs a stronger focus on strategic planning, reporting and capability building. The Commission suggests that that Procurement SA develop professional standards and capabilities for agencies appointing contract managers.

#### **4.9 Achieving better value for money**

The Government has accepted the Commission's recommendation to improve its 'Value for Money in Procurement' guidelines. After further research, the Commission considers that the updated guidelines need to address:

- economic, environmental and social objectives and associated targets;
- how those objectives and whole-of-life costs will be considered through the lifecycle of projects and by who;
- how each target will be measured and reported against; and
- how the evaluation of outcomes and improvement of practices/change of objectives will occur.

It also seems evident that guidance for and training of procurement officers on how to choose tender evaluation methods and formulas for specific projects would help reduce the risk of suboptimal outcomes. The Commission also recommends that the government establish appropriate guidance material regarding the exclusion of bids. Finally, the Commission recommends that calculations and scoring of total cost should be based on actual purchases or the best possible prediction of actual purchases, and not a sample.

#### **SAIPP**

The Office of the Industry Advocate has advised the Commission that the historic data it obtained regarding the use of South Australian labour in government procurement prior to the establishment of the SAIPP was of poor quality. In the absence of reliable baseline data to assess the impact of the SAIPP, the OIA has provided data regarding South Australian labour hours used to deliver government procurement over the past three years (89% of labour associated to government procurement comes from South Australia). The Commission suggests using this data as a benchmark for future evaluation of the SAIPP.

An SAIPP requirement, for procurement under \$4 million, is that at least one quote from a business based in South Australia be obtained (or \$1 million in the region for regional

procurement). However, there is currently no data collected to assess if this requirement is met. The only data recorded relates to the location of the winning tenderer.

The Commission considered three options to reduce the administrative burden of improving this reporting process without negatively impacting on the intended result. These include:

- when all the suppliers approached are local, using local labour and goods manufactured locally, have a 'tick the box' confirming all labour and goods will be from South Australia and reducing the required ECT/IPP elements to the sourcing of Aboriginal services or goods, and recruitment of apprentices, trainees or cadets;
- when all the suppliers approached are from interstate or overseas, using no local labour or goods, have a 'tick the box' and remove the filling in of the ECT/IPP;
- when the agency goes to a single supplier for a quote, the requirement for an ECT be eliminated.

#### **4.10 Aggregated and disaggregated contracts**

##### Construction procurement

The Commission met with DPTI to understand its processes for ensuring civil infrastructure projects are not unreasonably bundled, engagement with the market on the pipeline of future projects, and mechanisms encouraging local supplier participation in these projects. DPTI also pays attention to the volume of work being undertaken by key suppliers, the future pipeline of work available for industry to bid for, and the capability of suppliers to undertake work. The capacity and opportunity for SMEs to participate in infrastructure projects is taken into account, including as a subcontractor either within a larger value chain or contracted directly.

Organisational reforms have been put in place to support improved procurement outcomes and the achievement of government policies for the growth of local businesses. The progress in achievement of these reforms will need to be monitored. The size of the procurement program undertaken by DPTI underlines the importance not only of delivering on the reforms but also on delivering value for money for the state.

The Commission does not agree with some proposals by some business organisations and businesses to reserve a proportion of procurement expenditure and proportions of individual projects for SMEs. While it understands why such proposals have attractions to the sector, the Commission sees such targets for SMEs or set-asides of business as being more detrimental than beneficial to competition and developing 'match fit' local suppliers. The Commission sees value in agencies formally considering 'the best bundle' when approaching the market, including the opportunity for SMEs to participate. The decision and reasons would be made public. Such transparency would assist agencies and businesses.

In addition, there are other policy instruments to encourage local participation by SMEs, including their participation in the value chains of large businesses which could offer the possibility of working outside South Australia.

Research undertaken by the Commission has highlighted the importance of accompanying policy with practical incentives, in line with the results achieved in the EU. The report

outlines the principles the Commission believes would most positively reinforce the direction that DPTI is taking in regard to disaggregation of construction procurement. Those principles could be used by other public authorities undertaking construction procurement.

### Goods and services procurement

The Commission considers that the greatest amount of value from the procurement process is set in the planning and acquisition phases. Given the diversity of service provision and purchasing requirements across government, there will be considerable value in assessing and pursuing the whole of government outcomes being sought.

The Commission has considered that in determining whether centralisation, aggregation or disaggregation of procurement is appropriate, public authorities will need to categorise the elements of their total purchase requirements by outcome, identify portions of procurement expenditure that lend themselves to aggregation or disaggregation, and then put into place processes such as panels or breaking up spending into lots to meet agency objectives.

The Commission recommends that one of the first tasks of Procurement SA be to facilitate the development of strategic procurement plans for use by public authorities to generate greater information flow on their procurement requirements, and to translate this information into categories, aggregation of expenditure (including development of multi-agency arrangements), and expenditure suitable for disaggregation.

## **5. System Governance Issues**

### **5.1 Accountability**

The Commission made five recommendations to reform the recording, analysis and reporting of data and information in the Stage 1 final report. Those recommendations were intended to improve government analysis, public understanding of procurement, and provide greater accountability and demonstrate outcomes. The South Australia Government supported all five.

Accountability and transparency are key principles for government procurement policies and practices. At its simplest, accountability is taking responsibility for actions and decisions. Transparency enables appropriate scrutiny of actions and decisions and ensures obligations are consistently and clearly understood. Good governance practices include elements that support and promote accountability and transparency – particularly where the expenditure of public monies is concerned.

The Commission considers that some of the reforms undertaken by leading practice jurisdictions to support and strengthen procurement accountability are relevant to the proposed reforms in South Australia. In particular:

- corporate governance arrangements that drive accountability and transparency in procurement within a centrally enabled, agency led procurement model;
- publication of performance metrics that align to best practice approaches; and

- streamline and revise corporate practice guidelines to improve their application by helping staff to better understand their reporting and accountability obligations.

## 5.2 Capability

The Commission identified that the capability development recommendations it made in Stage 1 of the inquiry were equally applicable to public sector constructors and PPAs. To that end, the Commission has recommended expanding the Heads of Procurement Community of Practice approved by the South Australian Government in its response to the Stage 1 final report to include PPAs, and that a standing construction procurement sub-group be formed for both public authorities and prescribed public authorities.

Similarly, the Capability Development Strategy approved by the South Australian Government in its response to the Stage 1 final report also be expanded to cover construction procurement. As part of that strategy, and in consultation with constructing agencies, construction-specific procurement competencies be developed, along with a program of sponsored placements and exchanges.

## 5.3 Measurement

The Commission has found that:

- there is insufficient data and metrics suitable for measuring and reporting on value for money outcomes (including financial and non-financial factors);
- reporting of key performance indicators on government objectives is limited;
- the efficiency of agencies in completing milestones in contracts and effectiveness of contract management by agencies is not collected or reported to the SPB;
- reporting on contracts occurs at the individual project level;
- reporting on indicators common to contracts at an aggregate level is not a sector-wide practice;
- agencies cannot provide aggregate expenditure information by supplier or by type of purchase without significant time and effort, particularly for panel arrangements;
- current indicators make it difficult to compare supplier performance, and to assess risk controls and project outcomes due to inconsistent methodology;
- there is an inability to extract useful data from Basware, which makes it difficult to track prices for government purchasing and financial outcomes or savings; and
- feedback provided to suppliers is not recorded by public authorities.

The bottom line is that it is unclear how public authorities are, or can be, held accountable for maximising the value of procurement expenditure as the measurement of the system is focussed on compliance rather than performance.

It is proposed that agencies will measure and report on procurement benefits in accordance with whole-of-government procurement performance principles issued by Procurement

SA. Implementation of the reporting framework would be overseen by each agency's Chief Procurement Officer to ensure best practice and meaningful reporting of performance utilising a standard methodology.

## 6. Conclusion

This report is the conclusion of a year-long inquiry into government procurement. The Commission would like to thank all stakeholders for their help in completing the inquiry.

It is quite evident that the South Australia government procurement community is aware of the potential benefits of changing the government approach to procurement spending. It is also quite evident that the business community wants the government to take a more strategic approach to its procurement that will support and help grow local industry.

The Commission believes the reforms outlined in its report will help accomplish both objectives by simplifying the procurement process for both business and public authorities so that business understands the objectives of government procurement, and that agencies understand how to help achieve the state's economic and social objectives.

In addition, the reforms acknowledge the potential economic benefits of a more strategic approach to procurement in South Australia. The state procurement spend is approximately \$11 billion annually. By using this expenditure more strategically, the state can ensure it achieves value for money in the services it delivers to the public and help further the state's economic and social goals.

The proposed reforms represent the Commission's considered perspective on how to maximise the potential economic benefits of the state's procurement expenditure. The central premise is that the state has a significant economic lever that it can utilise to help achieve its social and economic goals that are not fully utilised. The Commission has concluded that the reforms outlined in this report will put South Australia in the best position to realise those potential benefits.

That said, the Commission acknowledges that the proposed reforms are ambitious, will take years to fully implement, and will require a significant and coordinated effort to achieve.

## Recommendations

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### Recommendation 3.1

To promote streamlining of smaller and specialised construction projects by government agencies and to enhance the value of the accreditation process whereby agencies are accredited to do construction procurement below a threshold, the Commission recommends that:

- Procurement SA, in conjunction with DPTI, establish a framework for accreditation with transition arrangements that can be applied to agencies based on the complexity and extent of their capital works program.
- The accreditation framework would include:
  - best practice policies and guidance covering all aspects of the procurement process including workplace safety;
  - appropriate governance arrangements and delegations;
  - capability standards for the agency and resources available to administer their program; and
  - reporting and continuous improvement arrangements once accreditation is established.

### Recommendation 3.2

To cut red tape, streamline processes, and better focus on risk management, the government reform the current structure of thresholds and delegations that apply to government procurement, including by:

- simplifying and reducing the number and variety of financial value thresholds that currently exist and aligning the remaining thresholds / delegations wherever possible; and
- moving from a procurement system where key decision gateways and processes are focused on financial value thresholds to a system with a small number of thresholds/delegations that incorporate considerations of risk, complexity, capability and whole-of-life value.

### Recommendation 3.3

In order to ensure that the thresholds and delegations applying to procurement remain up to date and relevant, the Commission recommends that the government task the proposed Procurement SA to:

- implement regular reviews of value thresholds applying to government procurement to ensure they are fit-for-purpose; and

- amend the associated procurement policies, guidelines and templates (including those for simple procurement and acquisition planning) in accordance with such reviews and government approval.

### **Recommendation 3.4**

In order to increase the transparency of the level of competition in government procurement, the Commission recommends that the government, through Procurement SA and Infrastructure SA:

- set targets for, monitor and report on the use of single supplier tenders and public tenders for goods and services and construction procurement; and
- develop acceptable standards for the use of single supplier tender, with a list of clear and verifiable reasons.

### **Recommendation 3.5**

In order to reduce the impediment to suppliers applying their IP in tender proposals, the Commission recommends the government develop clearer arrangements for IP by:

- developing and publishing improved guidance on the South Australian Government Intellectual Property Policy to provide a wide range of examples of types of procurement and the state's position on ownership of IP;
- including guidance on the relative merits of innovation and instructive case studies for construction procurement, outlining the factors for various delivery models and flexibility in contract provisions; and
- providing guidance on managing IP that covers needs analysis, managing IP through the procurement process and model clauses and contracts that address matters raised by stakeholders.

### **Recommendation 3.6**

To support improved outcomes from the use of standard contracts in construction procurement, the Commission recommends that:

- DPTI finalise its position on standard contracts and clauses within nine months and communicate the details to stakeholders;
- DPTI establish a mechanism to track the use of different types of contracts within the department and the types of clauses used along with establishing reporting mechanisms and governance to monitor these contracts; and
- All agencies accredited to undertake construction procurement use, where appropriate, the same standard industry contracts in their dealings with suppliers.

### **Recommendation 3.7**

Noting the government's decision to improve the 'Value for Money in Procurement' guidelines, the Commission recommends that the revised update address:

- current economic, environmental and social objectives and associated targets;
- how those objectives and whole-of-life costs will be considered through the lifecycles of projects (i.e. during the planning phase, in relation to tender specification and the process of tender evaluation, and during contract management) and by who;
- how each target will be measured and reported against;
- how the evaluation of outcomes and improvement of practices/change of objectives will occur; and
- inappropriate uses of rebate (asking tenderers to offer a rebate back to the agency), access fees (asking tenderers to pay a fee to access the site where the work must be conducted) or requesting a contribution to charity (asking tenderers to contribute to a charity).

### **Recommendation 3.8**

In order to cut unnecessary costs and red tape to tenderers, and to make the procurement decision processes more transparent, the Commission recommends that the government require that public authorities publish, when opening a tender:

- the formula used to select the winner; and
- the relative importance of each criterion.

### **Recommendation 3.9**

So that whole-of-life costs are properly incorporated in tender assessment, the Commission recommends, as an early priority for the proposed Procurement SA:

- that clear guidelines, case studies and training be developed and provided to public authorities on how to calculate whole-of-life costs;
- that use of whole-of-life pricing be mandated in tender evaluations; and
- reporting on the implementation of these elements.

### **Recommendation 3.10**

In order to build a stronger evidence base for understanding and monitoring rates of participation by SMEs in government procurement, the Commission recommends that the government:

- uses common definitions for SMEs and start-ups;
- simplifies tender documentation for SMEs;
- organises bidders' conferences to allow SMEs to discuss potential joint bids; and
- considers development goals for suppliers subcontracting to local SMEs.

### **Recommendation 3.11**

The Commission recommends that the compliance of agencies with the requirement that 'at least one quote from a business based in South Australia (or in the region for regional procurement)' for tenders be measured and incorporated in the performance information received and monitored by the proposed Procurement SA.

### **Recommendation 3.12**

In order to better deliver on efficient packaging of construction procurement and to respond to concerns expressed regarding aggregated contracts, the Commission recommends that DPTI adopt, and communicate to stakeholders, a formal step that considers:

- opportunities for SME participation to afford local suppliers the opportunity to tender for government work;
- the capacity and capability of industry to undertake the work, considering the risks and timeframes involved;
- an efficient pipeline of work supported by documented planning that is also communicated to, and understood by, stakeholders; and
- transparent and accountable engagement with suppliers during tender processes, including explanations of decisions.

### **Recommendation 3.13**

In order to better deliver on efficient aggregation of goods and services procurement, the Commission recommends that Procurement SA facilitate a systematic assessment of public authority procurement programs considering:

- SME participation strategies that afford local suppliers the opportunity to tender for government work;
- the capacity and capability of industry to undertake the work, considering the risks and timeframes involved; and
- transparent and accountable engagement with suppliers during tender processes, including explanations of decisions.

### **Recommendation 4.1**

In order to strengthen the activity of procurement as part of establishing the proposed Procurement South Australia, the government have Procurement SA, in consultation with agencies, establish an accountability framework that sets:

- roles, responsibilities, and authorisations that are appropriately aligned and take into consideration capability and risk assessments;
- sufficient support for key decision makers to afford them with clear and sufficient authority;

- streamlined policy requirements on the capture and reporting of procurement information;
- mechanisms that exploit information and data that is captured and reported as part of the procurement process in order to provide tangible evidence on procurement activity for decision makers and information on actual procurement outcomes and performance;
- an expectation for a shared commitment and understanding of procurement objectives and responsibilities; and
- enables the exercise of discretion by a team of highly capable procurement professionals.

### **Recommendation 4.2**

To strengthen procurement capability among smaller prescribed authorities and support construction-specific capability development and information sharing, the Commission recommends that the Heads of Procurement Community of Practice approved by the South Australian Government in its response to the Stage 1 final report (Recommendation 2.9), be expanded to include:

- prescribed public authorities; and
- a standing construction procurement subgroup for both public authorities and prescribed public authorities.

### **Recommendation 4.3**

To ensure all key areas of procurement capability in the South Australian public sector are supported, the Commission recommends that the Capability Development Strategy approved by the South Australian Government in its response to the Stage 1 final report (recommendation 2.10) be expanded to cover construction procurement, and in consultation with constructing public authorities and prescribed public authorities:

- develop construction-specific procurement competencies for technical (engineering etc.) staff, procurement professionals and Lead Agencies to ensure each group can effectively and collaboratively fulfil their role during a construction procurement; and
- develop a program of sponsored placements and exchanges within and between public sector agencies to foster competency development and information sharing, possibly as a program of the Heads of Procurement Community of Practice.

### **Recommendation 4.4**

To improve accountability and demonstration of performance in all government procurement, the Commission recommends that the proposed Procurement SA oversee and develop, in conjunction with agencies, the design of the information architecture required to collect, store, retrieve and report on data at a whole-of-government level. The possible strategies for designing the information architecture are:

- investing in the current whole-of-system arrangements, including SA Tenders, to improve data collection and information flows from agencies;
- enhance the functionality of systems currently used by agencies to meet whole-of-government requirements; and
- investing in a new whole-of-government system to meet data and reporting requirements.

### **Recommendation 4.5**

In order to strengthen the South Australian Government's capacity to understand, analyse and improve whole-of-government procurement in line with its support for Recommendation 2.7 of the Commission's final report into Stage 1, the Commission recommends that the reform of the reporting requirements and the related short-term actions previously approved in relation to goods and services be extended to cover construction procurement.

### **Recommendation 5.1**

In order to improve the efficiency, effectiveness and value of the state's procurement spending, the Commission recommends that the government moves the procurement system to one that is strategically focused, complexity and risk-based and applies strong professional capability, noting that to do so calls for:

- Fit-for-purpose central capability to shape and advise on the strategy for the procurement system
- Better performance information reporting and analytics, including improved supplier feedback;
- Fit for purpose standards, policies and guidance; and
- Building the capacity of the government's procurement profession.

### **Recommendation 5.2**

To establish a unit to give drive and direction to strategic reform of the state government's procurement, the Commission recommends the SA Government concurrently repeals the *State Procurement Act 2004* and establishes Procurement SA as an administrative unit of the public sector with a chief executive having authority to improve the overall performance of government procurement by:

- simplifying the procurement policy framework;
- establishing and embedding a data and reporting strategy to provide for evidenced-based procurement decision-making and reduce reporting requirements; and
- establishing and maintaining effective, value-adding relationships with public sector agencies, business and other government procurement stakeholders.

Key Performance Indicators (KPIs) be established by the Minister responsible for Procurement SA to assess its performance and report on at regular intervals.

### **Recommendation 5.3**

As part of establishing a Performance Information and Data Strategy, the Commission recommends that the proposed Procurement SA lead a whole-of-government project in conjunction with agencies to develop options for a whole of government data platform featuring a single access point, dashboards, and options for access to and use of that data to support Procurement SA's functions and agency procurement operations.

This project to include the development of a business case for government consideration, focus on large agencies initially and expand the scope of Government's decision in responding to Recommendation 2.7 in the Commission's Stage 1 report to include construction and PPAs.

## Definitions

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The following definitions represent the Commission's understanding of procurement terms based on the documents that have been reviewed.

### **Aggregated contract**

This is the practice of grouping together contracts for commonly purchased goods and services to harness greater economies of scale when procuring from the marketplace.

### **Chief Procurement Officer**

The Chief Procurement Officer is a senior executive in a public authority who has responsibility, delegated by the authority's principal officer, for the cost-effective and efficient management of the procurement operations of the authority, subject to, and in accordance with, the policies, principles, guidelines, standards and directions of the State Procurement Board.

### **Closed tender**

A closed tender is a procurement process where only selected suppliers, one or more, are invited to submit offers to supply goods or services to government.

### **Direct negotiation**

This is a procurement process undertaken by directly approaching and negotiating with one or more suppliers without testing the market. It is usually undertaken when comprehensive market research indicates that there is a limited-supply market.

### **Ethical procurement**

The conduct of employees (and/or representatives) and suppliers in undertaking and managing procurement.

### **Industry Capability Network**

The Industry Capability Network (ICN) was established in 1985 and is funded by the South Australian Government through the Department for Industry and Skills to provide specialist supply chain services. The ICN provides purchasers with a free sourcing service to identify Australian and New Zealand suppliers capable of supplying items that would otherwise need to be imported. The ICN's technical consultants have comprehensive knowledge of national industrial capability in all tiers of manufacturing.

### **Lead Agency**

A public sector agency responsible and accountable for the construction project as its sponsor and funder. The Lead Agency is responsible for aligning project planning with the state's strategic priorities, and for effective development of business cases for specific projects or programs. They are required to work with DPTI during construction project delivery, utilising and not duplicating DPTI expertise.

## **Open tender**

An open tender involves a publicly advertised invitation to all interested suppliers to submit offers to supply goods or services to government.

## **Panel providers**

A provider panel is a contractual arrangement established with at least two suppliers for the anticipated provision of goods or services over a specified period of time. A panel contract contains standard terms and conditions on the basis of which the goods or services will be provided by panel providers. A panel contract may be established by a public authority, a Lead Agency or at an across-government level.

## **Prescribed procurement operation**

In accordance with section 4 of the *State Procurement Act 2004*, the following prescribed procurement operations are excluded from the definition of procurement operations:

- a prescribed construction project with a cost exceeding \$150,000;
- the provision of funding to a third party by a public authority that, in accordance with Treasurer's Instructions, is classified as a grant.

## **Prescribed public authority**

In accordance with the *State Procurement Act 2004*, a prescribed public authority is a person or body that has been declared by the Regulations to be a prescribed public authority for the purposes of the Act.

## **Principal Officer**

Generally, the Principal Officer is the chief executive officer of the public authority as declared by the regulation to be the principal officer of the authority. The principal officer is responsible for the efficient and effective management of the procurement operations of their authority, subject to and in accordance with the policies, principles, guidelines, standards and directions of the State Procurement Board. This responsibility extends to the delegates of the principal officer (*State Procurement Act 2004*, s 20).

## **Procurement**

Procurement refers to the end-to-end process of buying goods and services that begins with defining the need, approaching the market, engaging the suppliers, contract management and closing the contract, as well as the disposal of the goods.

## **Procurement authority**

The authority to approve a proposed course of action, strategy or recommendation relating to procurement (acquisition plan or purchase recommendation) to a specified dollar amount as issued to a public authority's principal officer by the State Procurement Board.

### **Procurement governance committee**

A committee comprising nominated senior officers that oversee the purchase of goods and services within a prescribed delegation. May be called an Accredited Purchasing Unit (APU) or Procurement Governance Unit (PGU).

### **Procurement operations**

In accordance with the *State Procurement Act 2004* a procurement operation in relation to an authority means the procurement of goods or services required by the authority for its operations, including (without limitation) the procurement of:

- a supply of electricity, gas or any other form of energy;
- intellectual property;
- the management of goods of the authority, including (without limitation) the care, custody, storage, inspection, stocktaking or distribution of goods of the authority;
- the management of the authority's contracts for services; or
- the disposal of goods surplus to the authority's requirements,

but does not include operations excluded from this definition by the regulations.

### **Public authority**

In accordance with the *State Procurement Act 2004*, section 4 a public authority is:

- (a) an administrative unit or other agency or instrumentality of the Crown; or*
- (b) any incorporated or unincorporated body–*
  - (i) established for a public purpose by an Act; or*
  - (ii) established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or*
  - (iii) established or subject to control or direction by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown (whether or not established by or under an Act or an enactment); or*
- (c) a person or body declared by the regulations to be a public authority for the purposes of this Act.*

The Act states that a public authority does not include public authorities prescribed in the Regulations.

### **Risk management plan**

A document that is used to specify the nature and treatment of risks throughout the procurement cycle. The level of detail will be commensurate with the procurement's complexity and value. A risk register may be used to help develop a plan.

### **Small and medium enterprises (SMEs)**

Unless otherwise stated, SMEs refers to the Australian Bureau of Statistics' definition, being a business that employs up to 200 people.

### **South Australian Code of Ethics**

The Code of Ethics for the South Australian Public Sector is issued under the *Public Sector Act 2009* (the PS Act), in which it is referred to as the Code of Conduct. The code came into effect in July 2015 and builds on the principles outlined in the PS Act. It sets out the professional standards expected of every employee in the SA public sector.

### **South Australian Product Register**

The SA Product Register (the Register) is managed by the South Australian Industry Advocate and is designed to identify products that are created, manufactured and supplied in South Australia. The Register provides a practical way to find local manufacturers, creation experts and suppliers. It also measures jobs at critical points in the supply chain. The Register is designed to be used by government agencies, but access for other levels of government and the private sector is provided free of charge.

### **Value for money**

The SPB guideline defines value for money as the optimal use of taxpayer resources to achieve the intended outcome.

## **Acronyms**

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**ABN** – Australian Business Number

**ACA** – Association of Consulting Architects

**ACO** – Aboriginal Controlled Organisations

**ADE** – Australian Disability Enterprise

**AEPP** – Aboriginal Economic Participation Policy

**AGD** – Attorney-General’s Department

**AGFMA** – Across Government Facility Management Arrangements

**AIA** – Australian Institute of Architects

**AIIA** – Australian Information Industry Association

**AMA** – Australian Medical Association

**AMCA** – Airconditioning and Mechanical Contractors’ Association

**ANZGPA** – Australia New Zealand Government Procurement Agreement

**ANZSCO** – Australian and New Zealand Standard Classification of Occupation Code

**AP** – Acquisition Plan

**APBSA** – Architectural Practice Board of South Australia

**APCC** – Australian Procurement and Construction Council

**APU** – Accredited Purchasing Unit

**AUSFTA** – Australia–United States Free Trade Agreement

**AVMC** – Adelaide Venue Management Corporation

**BCSA** – Baptist Care South Australia

**BTFN** – Business Tax File Numbers

**CA** – Contract Awarded

**CAA** – Courts Administration Authority

**CCF** – Civil Contractors Federation

**CCS** – Crown Commercial Service (UK)

**CE** – Contract Extended

**CEPU** – Communications Electrical Plumbing Union

**CEDA** – Committee for Economic Development of Australia

**CES** – Client Engagement Service

**CHAFTA** – Chile–Australia Free Trade Agreement

**CIPS** – Chartered Institute of Procurement & Supply

**CITB** – Construction Industry Training Board

**COAG** – Council Of Australian Governments

**COTA** – Council On The Ageing

**CPTPP** - Comprehensive and Progressive Agreement for Trans-Pacific Partnership

**Cth** - Commonwealth

**DCP** – Department for Child Protection

**DCS** – Department for Correctional Services

**DE** – Department for Education

**DEW** – Department for Environment and Water

**DHS** – Department of Human Services

**DHW** – Department for Health and Wellbeing

**DIS** – Department for Industry and Skills

**DPC** – Department of the Premier and Cabinet

**DPTI** – Department of Planning, Transport and Infrastructure

**DTF** – Department of Treasury and Finance

**DTTI** – Department for Trade, Tourism and Investment

**ECT** – Economic Contribution Test

**EFAP** – Emergency Financial Assistance Program

**EOI** – Expression Of Interest

**EPAS** – Enterprise Patient Administration System

**ESCOSA** – Essential Services Commission Of South Australia

**EU** – European Union

**FAM1** – Formal Approach to Market date

**FAM2** – Formal Approach to Market closing date

**FAR** – Federal Acquisition Regulation (US)

**FTE** – Full-Time Equivalent

**GPRS** – Generic Procurement Recruitment and Selection System

**GST** – Goods and Services Tax

**HOP** – Heads of Procurement Group

**HSCGB** – Health Services Charitable Gifts Board

**IA** – Industry Advocate

**ICAC** – Independent Commissioner Against Corruption

**ICT** – Information and Communications Technology

**IP** – Intellectual Property

**IPAA** – Institute of Public Administration Australia

**IPP** – Industry Participation Policy

**JAEPA** – Japan–Australia Economic Partnership Agreement

**KAFTA** – Korea–Australia Free Trade Agreement

**KPI** – Key Performance Indicator

**LGFA** – Local Government Financing Authority

**LPCC** – Legal Profession Conduct Commissioner

**LWB** – Life Without Barriers

**MCIPS** – Member of the Chartered Institute of Procurement and Supply

**MTA** – Motor Trade Association

**NDIS** – National Disability Insurance Scheme

**NFP** – Not-For-Profit

**NSW** – New South Wales

**NZBN** – New Zealand Business Number

**OCPSE** – Office of the Commissioner for Public Sector Employment

**ODASA** – Office for Design and Architecture South Australia

**OECD** - Organisation for Economic Co-operation and Development

**OIA** – Office of the Industry Advocate

**OOHC** – Out-Of-Home Care

**PAC** – Procurement Approvals Committee

**PC** – Premier’s Circular

**PCI** – Procurement Capability Index (NZ)

**PFA Act** – *Public Finance and Audit Act 1987*

**PGC** – Procurement Governance Committee

**PGU** – Procurement Governance Unit

**PiP** – Project implementation Process

**PIRSA** – Primary Industries and Regions South Australia

**PoC** – Proof of Concept

**PPA** – Prescribed Public Authority

**PS Act** – *Public Sector Act 2009*

**PWC** – Public Works Committee

**PR** – Purchase Recommendation

**Qld** - Queensland

**RFDS** – Royal Flying Doctor Service

**RFP** – Request For Proposal

**ROSMA** – Return On Supply Management Assets

**RTWSA** – Return To Work South Australia

**SA** – South Australia

**SAAS** – South Australian Ambulance Service

**SACOSS** – South Australian Council Of Social Service

**SAFECOM** – South Australian Fire and Emergency Services Commission

**SAFTA** – Singapore–Australia Free Trade Agreement

**SAHA** – South Australian Housing Authority

**SAIPP** – South Australian Industry Participation Policy

**SAPC** – South Australian Productivity Commission

**SAPOL** – South Australia Police

**SARC** – Statutory Authorities Review Committee of the South Australian Parliament

**SATC** – South Australian Tourism Commission

**SBC** – Small Business Commissioner

**SBI** – Single Business Identifier

**SBIR** – Small Business Innovation Research (US)

**SME** – Small and Medium Enterprise

**SP Act** – *State Procurement Act 2004*

**SPB** – State Procurement Board

**SPC** – State Purchase Contract (Vic)

**SP Regs** – *State Procurement Regulations 2005*

**SRM** – Supplier Relationship Management

**TAFE SA** – Technical and Further Education South Australia

**Tas** - Tasmania

**TI** – Treasurer’s Instruction

**UCSA** – Uniting Country South Australia

**UNSPSC** – United Nations Standard Products and Services Code

**VFM** – Value For Money

**VGPB** – Victorian Government Purchasing Board

**Vic** – Victoria

**WA** – Western Australia

**WHS** – Workplace Health & Safety

**WTOAGP** - World Trade Organization Agreement on Government Procurement

# 1. Introduction

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The South Australian Productivity Commission (the Commission) was asked to undertake an inquiry into the South Australian procurement system. This inquiry has been divided into two stages. Stage 1 focused on goods and services procurement governed by the *State Procurement Act 2004* (SP Act). This stage was completed on 17 May 2019. The second stage focused on procurement spending not governed by the SP Act, that is, prescribed public authorities and construction expenditure above \$150,000 (excluding GST). A draft report, open to public consultation, was released on 30 August 2019.

This Stage 2 final report summarises the learnings from both inquiries and makes recommendations regarding the whole-of-system architecture.

## 1.1 Context

Procurement for the South Australian Government and its agencies is a substantial component of the South Australian economy, with contracting activities amounting to nearly \$5 billion and government spend reaching \$11 billion per year, or around 10 per cent of gross state product (June 2018). The total procurement spend broadly falls into three groups, each of which is subject to different regulatory and governance arrangements:

- public authorities that are required, for goods and services purchases and for construction projects under \$150 000 (excluding GST), to comply with the State Procurement Board (SPB) policy framework;
- prescribed public authorities that are not required to comply with the policies, principles, guidelines, standards or direction issued by the SPB; and
- spending on construction projects above \$150,000 (GST excluded) that are also not governed by the SPB.

Purchased goods, services and construction projects underpin the provision of most public services (e.g. office supplies, vehicles, roads and schools). Those purchases enable public sector employees to do their work, provide public services and ensure the general economic, environmental and social wellbeing of the state. As such, they need to be fit-for-purpose and deliver the best value for the expenditure of public funds.

Procurement spending in South Australia also has a significant impact on employment, business activity and investment in the state and can generate substantial social and environmental benefits. The award of a government contract can launch a new business or trigger expansion of a business. On the other hand, the loss of a major government contract can result in the closure of a business and the loss of associated jobs. The challenge is how to incorporate these parameters into the design, tender evaluation and contract management arrangements without compromising whole-of-life costs and fitness for purpose.

Despite some past efforts made by government, businesses and not-for-profit organisations (NFPs) are still expressing concerns about the cost and red tape associated with tendering

for government work, particularly when success is uncertain. The inquiry has spent a significant amount of time and effort to understand how the tender process works in practice and what options could simplify the tender process without compromising reasonable safeguards on the use of public funds.

This inquiry is thus an opportunity to reform the procurement systems in South Australia and increase the benefits of public expenditure.

## 1.2 Scope of work

The Commission was asked, on 31 October 2018, to evaluate the effectiveness and efficiency of state government policies and practices for the procurement of goods and services and to identify options to improve procurement practices and their impacts on local industry, noting concerns expressed by small and medium enterprises (SMEs) about the cost of and time expended in tendering for procurement opportunities.

The scope was originally confined to agencies and matters that fall within the scope of the SP Act, specifically excluding capital projects and prescribed public authorities (PPAs) such as SA Water and the South Australian Housing Trust. This scope became Stage 1 of the inquiry.

In its response to the Commission's final report for Stage 1 of the procurement inquiry, the South Australian Government accepted all 30 recommendations, the majority in full, with two partially supported. The Commission acknowledges, and welcomes, the South Australian Government's acceptance of those recommendations.

On 15 February 2019, the government expanded the scope of the initial terms of reference to include capital spending and PPAs. The Stage 2 draft report focused on the expanded scope and the overall system architecture.

In both Stages 1 and 2 of the inquiry, the Commission was required to have regard to:

- relevant state and federal legislation (see Box 1.1);
- South Australia's national and international obligations about government procurement (see Box 1.2); and
- the South Australian Government's election commitments (see Box 1.3).

### **Box 1.1 - South Australian and Commonwealth legislation relevant to government procurement**

#### 1.1 *State Procurement Act 2004* and *State Procurement Regulations 2005*

Those are the key regulatory instruments governing procurement operations for goods and services in South Australia.

#### 1.2 Treasurer's instructions (TIs)

The *Public Finance and Audit Act 1987* regulates the receipt and expenditure of public money. Under section 41, TIs are issued by the Treasurer and administered by the Department of Treasury and Finance. TIs apply to all public authorities (except specified universities) and all procurement activity (with exclusions) as per the Act.

#### 1.3 Premier and Cabinet circulars (PCs)

PCs establish whole-of-government policies and include instructions or requirements to take specific action on the implementation of those policies. PCs apply to all public authorities, including PPAs, and to all procurement activity unless specifically excluded.

#### 1.4 South Australian Industry Participation Policy (SAIPP)

The SAIPP is established under the *Industry Advocate Act 2017* which provides for 'the appointment of the Industry Advocate' and his/her 'powers and functions'.

#### 1.5 Code of Ethics

Under the *Public Sector Act 2009*, all public sector employees are accountable for exercising their delegated authority and for performing their roles within the values and standards of the public sector Code of Conduct. Delegated authority includes delegations under the SP Act and under TIs.

#### 1.6 Other procurement-related legislation, policies and agreements

### **Box 1.2 - Australian and international obligations relevant to government procurement**

The South Australian Government is a signatory to the *Australian and New Zealand Government Procurement Agreement (ANZGPA)* and has agreed to comply as if it were a party to the following free trade agreements:

- *Australia–United States Free Trade Agreement (AUSFTA)*
- *Chile–Australia Free Trade Agreement (CHAFTA)*
- *Korea–Australia Free Trade Agreement (KAFTA)*
- *Japan–Australia Economic Partnership Agreement (JAEPA)*
- *Singapore–Australia Free Trade Agreement (SAFTA)*
- *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*
- *World Trade Organization Agreement on Government Procurement (WTOAGP)*

**Box 1.3 - South Australian Government election commitments**

The election commitments on procurement include five commitments and three principles for government procurement. The five commitments comprise:

1. Reviewing the aggregation of contracts
2. Requiring selective market approaches to include South Australian businesses
3. Establishing a pre-registration system for tenderers and contractors
4. Reviewing the status of prescribed authorities
5. Establishing a small unit to assist small-to-medium businesses in preparing their tenders

The three principles for government procurement are:

1. Value for money – purchases should deliver an efficient price over the life of the procurement, including both the initial purchase and lifecycle costs.
2. Fit-for-purpose – purchases should consistently deliver on the requirements for which the procurement was made.
3. Compliance with all legal requirements – the government must observe all its legal obligations in undertaking public procurement to avoid exposing taxpayers to any unnecessary risks.

**1.3 Process**

The Commission published issues papers for Stage 1 on 16 November 2018 and for Stage 2 on 5 June 2019 which summarised its understanding of issues specific to goods and services, and to construction spending and PPAs. The Commission then released a draft report for Stage 1 on 25 March 2019 and one for Stage 2 on 30 August 2019, which both initiated further rounds of consultation with stakeholders on the Commission’s findings.

In response, the Commission received a grand total of 79 submissions (57 during Stage 1 and 22 during Stage 2), all of which are published on the Commission’s website ([www.sapc.sa.gov.au](http://www.sapc.sa.gov.au)). The Commission notes that several submissions to Stage 1 contained information also relevant to Stage 2.

The Commission also consulted through meetings, roundtables and teleconferences with over 440 individuals from industry associations, businesses, NFPs and local and interstate government agencies (283 in Stage 1 and 157 in Stage 2).

The Commission examined data from several sources including:

- surveys conducted by Business SA, the Office of the Industry Advocate and the SA Tenders website in 2018;
- a random sample of 209 procurements conducted in 2018 across 18 agencies;

- the State Procurement Board database of goods and services contracting activities for 2015-18;
- the Office of the Industry Advocate database on Industry Participation;
- the SA Tenders and Contracts database of procurement activities; and
- the Commission's consolidated database of 18 agencies contracting activities for 2015-18 (all activities for PPAs and construction activities only for the other agencies).

The Commission also acknowledges, with appreciation, the extensive assistance provided by SA Water and DPTI with documenting their respective approaches to procurement, as well as the time given by all other agencies to respond to the Commission's extensive information requests.

## 1.4 Structure of report

This final report contains the Commission's final findings, conclusions and recommendations to government. It addresses these matters in four chapters:

- Chapter 2 summarise the feedback received by businesses, PPAs, public authorities, NFPs, the State Procurement Board, the advocates, the members of Parliament and the unions.
- Chapter 3 finalises the Commission's assessment of the current process issues for both goods and services and construction procurement in the South Australian Government.
- Chapter 4 finalises the Commission's assessment of the current governance issues for both goods and services and construction procurement in the South Australian Government.
- Chapter 5 outlines the Commission's rationale and recommendations for an improved procurement system. In addition, it considers some of the implementation issues the government will need to address in developing a better system.

## 2. Feedback on draft reports

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The inquiry was divided into two stages. Stage 1 addressed the inquiry's original terms of reference. The final report for Stage 1 was delivered to the Premier on 17 May 2019 and the government's response has been released (<https://dpc.sa.gov.au/resources-and-publications/government-procurement-inquiry>): 28 of the Commission's 30 recommendations were accepted in full; and the others were accepted in part.

In summary, the recommendations aimed at unlocking short-term value in government procurement while initiating some key long-term reforms. The recommendations called for:

- a strategic plan to raise the capability of the South Australian Government's procurement professionals;
- reforming the reporting requirements for government authorities to central procurement to provide the metrics for understanding and analysing whole-of-government procurement;
- streamlining procurement, including adopting the principle that generally procurement decisions should only be authorised once; and
- actions to improve contract management, increase knowledge of the marketplace and provide clearer guidance in key areas such as achieving value.

In addition to the extended scope, Stage 2 considers some matters that were deferred to Stage 2 because they required a whole-of-government view of procurement. These matters were largely concerning governance and institutional arrangements.

The following sections in this chapter summarise the feedback received from all stakeholders in both stages of the inquiry. However, where the issue(s) have been largely addressed by the government's response to the Stage 1 report or discussed in detail in the Stage 1 report, the summary comments in this report are brief.

### 2.1 Public authorities

The table below summarises the mechanisms by which feedback was provided to the South Australian Productivity Commission (the Commission) by public authorities for Stages 1 and 2 of the procurement inquiry. 'Public authority', for the purposes of this discussion, is consistent with the definition of a public authority under the *State Procurement Act 2004* (SP Act). Unless otherwise stated, the information in the table excludes engagements with statutory authorities (such as the Office of the Industry Advocate), prescribed public authorities, interstate government agencies and State Procurement Board. Discussion on engagement with these other authorities is provided separately.

Table 2.1: Consultation and engagement

Public Authority Feedback Mechanism	Stage 1	Stage 2
Meetings	Over 40 meetings	Over 20 meetings
Requests for information templates (qualitative)	<p>Templates sent to tiers 1 and 2 public authorities plus additional follow-up request templates</p> <p>Draft report information requests</p>	<p>Tailored information requests sent to 18 public authorities according to the volume and value of their construction spend</p> <p>Separate requests for information sent to DPTI</p>
Procurement database requests for information	Data principally obtained via SPB secretariat re annual reporting	Data principally obtained via nine public authorities noting DPTI records data related to construction contracting activities it undertakes on behalf of most public authorities
Procurement contracting & expenditure data	<p>Public authority annual reports</p> <p>SA Tenders contracts awarded</p>	SA Tenders contracts awarded and tenders
Tenders database	103 examples of tenders provided by 14 public authorities	106 examples of tenders provided by six public authorities
Public submissions by public authorities	<p>DIS submission</p> <p>SA Government response to Stage 1 final report</p>	Not applicable
Embedded resources (personnel provided)	n/a	DPTI provided two on 0.4 basis and SA Water provided one on a 0.4 basis
Other	Information provided via emails, internal letters etc.	Information provided via emails, internal letters etc.

Source: Office of the South Australian Productivity Commission

Information obtained from public authorities was validated, data cleansed, consolidated, and analysed. The Commission appreciates the efforts of public authorities to provide the information as it is an essential part of the evidence used to develop the Commission’s key findings and proposed reforms.

From this evidence base, the Commission identified a wide range of stakeholder issues and drew its conclusions. Many of the issues and conclusions applied to both stages of the inquiry.

The discussion below summarises the feedback provided by public authorities according to the type of issue and focuses on the views and experiences rather than reiterating the statistical or data/process information provided (e.g. number of staff members etc.).

### **2.1.1 Value for money (including other government objectives)**

Public authorities commented that:

- There is insufficient guidance and clarity on how public authorities can identify, measure and achieve value for money objectives in goods, services and construction procurements, particularly within the context of achieving efficiency and/or savings.
- Across government, the only consistently recognised and applied 'other government objective' included in the value for money assessment is the SA Industry Participation Policy (SAIPP). Where other government objectives have been incorporated, they are generally project or agency-specific (e.g. DEW's focus on environmental sustainability) rather than identifying an objective common to all procurements.
- Except for the SAIPP, there is limited recording, measurement and reporting of data/information relating to non-price value for money objectives across agencies and/or government.
- There is a need for better training and/or education to enable agency staff to identify, apply and achieve value for money objectives through the procurement process. Such training and/or education needs to be tailored to its targeted audience (e.g. procurement professionals vs. business unit or staff vs. suppliers).

With respect to the SAIPP:

- Public authorities advised the Commission that ECT or IPP scores have had to be re-evaluated a number of times — this was a particular issue in the early stages of implementing the SAIPP.

### **2.1.2 Timeliness**

Most public authorities indicated that the number and type of approvals that they are required to obtain to progress a procurement project under current requirements cause delays. Many public authorities questioned whether all the approvals were necessary — particularly for lower value and/or risk procurements — and some offered proposed reforms to streamline the process.

Public authorities also conceded that internal governance requirements could impact on timeliness, in addition to those imposed by other government policy requirements.

In general, apart from timeliness recording and reporting requirements associated with the SPB Reporting Policy (for contracts valued over \$220,000), data capture and assessment of

timeliness is limited to individual projects and depends on the agency's ICT system capability (i.e. contract, workflow, software etc.).

Public authorities acknowledged that differences in ICT systems (capability and capacity) were barriers to integrating those systems across an agency, between different government agencies, and between government and suppliers. This impacts on timeliness by requiring duplication of data for different reporting requirements and/or potential variations in financial data resulting from manually transcribing the data into different databases.

With respect to construction procurement:

Concern was expressed by some public authorities on the time taken by DPTI between project approval and initiation of construction build (for building construction procurement). One of the larger construction public authorities provided specific examples to illustrate the delays associated with the PIP Gateway 4 and how they relate to internal DPTI processes around acquisition planning, approval of tender strategies and the preparation of tender documents. In particular, they pointed to the lack of a single point of contact within DPTI for liaison and transfer of project-specific knowledge (leading to miscommunication and delays), inadequate and/or loss of expertise following the centralisation of DPTI procurement staff, and a move away from the issuance of acceptance letters (which enabled construction to commence in advance).

### **2.1.3 Capability**

Public authorities advised that:

- The proportion of procurement staff working in public authorities who are formally trained in procurement (with a higher education diploma or above) and/or have formal accreditation is relatively low, particularly compared with other organisations (including SA Water).
- It has become increasingly difficult to attract and retain appropriately educated and experienced procurement staff, as demand for professional procurement staff is high in the current market. This is particularly the case for staff specialising in construction procurement projects.
- Although public authorities were able to provide some information on staff numbers and qualifications for those working in their central procurement function, they were generally unable to provide any information on those staff who work outside of the central procurement function who undertake procurement (including contract management) as part of their role or function.
- Procurement capability areas identified as requiring further training and development were contract management, risk management, and construction procurement options analysis.

Construction-specific feedback provided by public authorities on capability included:

- There are ongoing pressures to sustain and build internal capability to manage projects, particularly when well-qualified and experienced staff can easily transition to a similar role in the private construction sector with higher pay.

- Both DPTI and key construction public authorities advised the Commission that most of the training provided for procurement is directed towards goods and services procurement rather than construction. DPTI has been working on capability initiatives to improve construction procurement capability development, including a collaboration with the University of South Australia on construction project courses (including the topic of procurement) and to provide more opportunities for on-the-job training.

#### **2.1.4 Assurance/compliance**

Public authorities provided feedback that the State Procurement Board (SPB), and consequently the whole procurement system, has been focused more on compliance than strategic issues over time. Public authorities consider that the compliance requirements have been developed and implemented without sufficient regard for other assurance mechanisms, such as Auditor-General assessments, Premier and Cabinet circular requirements (including annual reporting), Treasurer’s instruction requirements (including TI 28 Financial Management Compliance Program), and the compliance mechanisms that are now set out in the *Industry Advocate Act 2017*.

Public authorities provided feedback that an increasing proportion of their time and resources is being devoted to completing compliance activities that are sometimes considered to be duplicative and excessive.

Agencies were asked as to whether, based on their experience, having different frameworks for goods and services and construction improved value-for-money outcomes, or whether it adversely impacted on agency operations and procurement outcomes. Most were in favour of a single framework for procurement, as having two different frameworks results in more red tape and increases the risk of non-compliance. The concerns raised with respect to a single framework were that it could result in a loss of specialised skills (construction projects) and/or add more red tape to the process by reducing flexibility and increasing centralisation.

#### **2.1.5 Delegations and thresholds**

In Stage 1, public authorities raised concerns with the Commission on the number and value of delegations and authorisations required as part of the procurement process. The Commission recommended in its Stage 1 final report that the financial authorisations for TI 8 be amended. The government accepted the recommendation and the financial authorisation delegation has been amended for chief executives and ministers.

With respect to construction-specific thresholds and delegations, the Commission received feedback from public authorities (including DPTI) that:

- The current delegations and thresholds have not been reviewed recently, in part due to the limitations of review imposed by legislative instruments (i.e. value thresholds that are specified in Acts and Regulations).

- Consistent with the above point, many public authorities noted that the \$4 million value threshold that triggers a review by the SA Parliamentary Standing Committee on Public Works has remained unchanged since 1991<sup>1</sup>.
- The thresholds applied to determine a prescribed construction project (exceeding \$150,000 excluding GST) and to determine a lower value/minor construction procurement (up to \$1 million excluding GST) have not been recently reviewed. The Commission notes that DPTI have advised that these thresholds are currently part of an ongoing review.

### 2.1.6 Metrics

Public authorities provided feedback throughout the procurement review on current capabilities and systems that enable information and data to be captured (recorded), analysed, and reported. This included specific feedback on ICT systems — both those that are specific to procurement (including contract management workflow software) and those that exist for purposes other than procurement (for example, financial management systems). The lack of an across-government ICT strategy with particular reference to procurement was repeatedly brought up. Specifically:

- Existing processes and practices require public authorities to capture information on a project-by-project basis (for example, information that is included in an acquisition plan template). However, the lack of appropriate systems, or use of legacy ICT systems, are leaving agencies unable to consolidate and use that information for strategic purposes or for whole-of-government reporting. A common platform would help with strategic management as well as providing information that could be used for multiple reporting requirements.
- Benchmarking and performance assessments vary widely across, and within, agencies, depending on the type of project, ICT system and whether the leadership of the public authority views procurement as a vital strategic function.

Commentary was also provided on the various ICT systems being implemented or planned in different agencies with little regard for future integration across government.

### 2.1.7 Engagement with market

Feedback provided by public authorities on how they engage with the market has indicated that:

- Many public authorities have limited interactions with suppliers prior to commencement of a tender process (formal approach to market), and most do not have a strategic plan for market engagement, with the exception of a few larger organisations including SA Water. Public authorities advised that the most intensive period of supplier engagement is during the supplier selection phase of the procurement process.
- The quality and type of supplier management approaches varies across public authorities depending on if, and how, they use supplier management tools, staff

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<sup>1</sup> *Parliamentary Committees Act 1991*, part 6, division 1, section 16A(1).

capability, and the level of strategic importance an agency places on planning for procurement.

- Most public authorities advised that the Office of the Industry Advocate's 'Meet the Buyer' sessions were a useful method by which agencies could strengthen their interactions with supplier markets.
- Many public authorities did not have an established process to work with businesses to create opportunities for them to present innovative solutions, yet expressed a desire to improve their capability and capacity to do so.
- Risk aversion, partly as a response to public, media and political expectations for transparency and accountability of procurement outcomes, is said to have often discouraged staff from engaging with the market, even when it fits within the rules of probity.
- Most public authorities appreciated the value that debriefs can provide to suppliers to improve their capability and competition.
- Published information on planned procurements is limited to the list published by the SPB (goods and services), advance market notifications for specific tenders (on the SA Tenders website), and DPTI's list of planned major procurements.

With respect to construction procurement projects, DPTI advised the Commission that:

- They conduct an industry briefing at the start of a procurement process, use structured interactive engagement during procurement where appropriate and provide appropriate feedback to unsuccessful tenderers.
- There are ongoing challenges to balancing the expectations of larger contractors, SMEs, designers, architects, public authorities and industry.
- Their key personnel regularly meet with industry representatives through industry association forums and activities as well as DPTI-initiated engagements.
- They have provided and attended industry briefings and supplier events.

### **2.1.8 Contract management**

The Commission heard feedback from public authorities on issues pertaining to contract management during both Stage 1 and Stage 2 of the procurement inquiry. In particular:

- Contract management capability is an ongoing issue of concern with respect to staff capability, ICT/metrics capability, and supplier capability.
- Public authorities are finding it increasingly difficult to attract and retain appropriately skilled and educated contract managers (refer capability feedback).
- Public authorities lack the capability to identify those staff whose role only involves procurement on a part-time or ad hoc basis.
- Different skills and expertise are required for different types of contracts.

- Appropriate data, collected either before, during, or after contract implementation to measure performance and identify improvements, is lacking.

## 2.2 Prescribed public authorities

The Commission engaged extensively with the prescribed public authorities (PPAs), seeking their detailed feedback in relation to their procurement expenditure, organisation, performance, capability and continuous improvement arrangements. The Commission sought the PPAs' views on system design to identify what criteria were most important in the procurement process, to what extent their procurement arrangements align with the SPB framework, and what procurement-related flexibility and autonomy attributes are most important to them. The Commission also considered the PPAs' responses provided to the SPB as part of the DTF 2018 Review of PPAs (the PPA Review 2018), which included PPAs' views on retaining their prescribed status, and the basis for doing so.

The Commission's intent was to understand what prescription is, why PPAs value it, and what considerations may be relevant to considering any potential changes. Specific attention was paid to distinguishing the specific and necessary procurement requirements sought by PPAs, from the general preferences to remain 'outside' the general government procurement framework.

The Commission has summarised its feedback around five themes: commerciality, risk, governance and audit, capability and procurement activity.

### 2.2.1 Commerciality

Most of the PPAs that are public (financial or non-financial) corporations indicated as part of the PPA Review 2018 that they operate on a commercial basis. This was emphasised to the Commission through comments from PPAs on the need for timeliness and speed to and from the market, and the capacity to respond in an agile way to support business requirements. PPAs generally indicated that they viewed the requirements of the SPB regime as being administratively onerous and cumbersome, leading to missed commercial opportunities, and impinging on mandated requirements for their organisations to operate on a commercial basis.

### 2.2.2 Risk

Several approaches to managing procurement risk were taken by PPAs, generally reflecting each organisation's corporate risk management arrangements and culture. PPAs have risk management frameworks, policies and procedures in place that form part of the mandated requirements of their establishing legislation. That said, the Commission's analysis of the procurement data provided by five PPAs showed that none centrally records the risk level of contracts valued at over \$220,000. Based on the feedback received, the Commission was unable to reach a view on whether the application of their corporate risk management policies and practices is equivalent to or better than the SPB's Risk Management Guideline.

### 2.2.3 Governance and audit

Those PPAs that are public corporations generally have governance arrangements determined by legislation. Their management by a board, and statutory requirements to establish and maintain internal auditing arrangements, an audit committee, and have their financial statements audited by the Auditor-General require effective, transparent and accountable governance arrangements.

In response to the PPA Review 2018, none of the PPAs reported any adverse findings in relation to their procurement activity from the Auditor-General, or any other investigations in the last five years.

### 2.2.4 Capability

The Commission considered capability from the perspective of policy, people and technology.

Most of the public corporation PPAs have their own procurement policies, processes and documents to support market engagement, acquisition, evaluation and contract management. They are generally consistent with general government sector (SPB) procurement principles, and the objectives of the SP Act. Some PPAs use SPB policies or variations of those policies and practices to support their procurement activity. The smaller PPAs' procurement policies can be characterised as providing general guidance and taking a principles-based approach.

The larger PPAs have dedicated procurement functions and staff. The medium-to-smaller PPAs use a 'hub-and-spoke' model; that is, they have a specialised central procurement manager who provides an internal service across the business to ensure effective procurement. The remaining PPAs do not possess any notable specialised procurement expertise and use their board reporting processes to validate procurement activity.

Procurement-specific qualifications and experience differed significantly across the PPAs. Some PPAs with centralised functions or a central procurement leadership role have recruited key procurement staff from the private sector who have brought significant and diverse industry experience. Other PPAs have central procurement staff but without procurement-specific qualifications and relatively modest amounts of experience — for example, an average of three years of public sector procurement experience. Recruitment from the private sector by some PPAs contrasted with the often expressed view by other public authorities that recruiting and retaining procurement professionals was difficult.

The extent of the presence and use of technology and systems to support procurement activity was found to be as diverse as the operations of the PPAs. The use of technological solutions to support procurement activity was strongest in those organisations using data-driven decision making. It was clear from most agencies that existing systems were a key barrier to applying analytics, sharing information and providing performance information.

### 2.2.5 Procurement activity

The Commission considered procurement activity from the perspectives of procurement type, size of spend, reporting and performance, and continuous improvement.

### **2.2.5.1 Goods and services**

All PPAs have varying needs to purchase goods and services in the form of common office consumables such as stationery and IT (hardware and software), and most source professional services on a regular or semiregular basis. The size and volume of this purchasing differs significantly. Some, mostly smaller, PPAs have standing agreements with suppliers that are evaluated on an annual basis with this evaluation appearing to be confined to the existing supplier's performance against the PPA's expectations and does not involve testing the market.

Some of the financial corporations conduct niche or specialised procurement activity (e.g. engaging and managing fund managers (Funds SA) or claims managers (RTWSA)).

The PPAs' advice on goods and services spend was provided to the Commission in a variety of forms, suggesting to the Commission that reporting their expenditure in procurement terms was a challenge. Based on selective follow-up enquiries by the Commission, it is understood PPAs developed their responses using their existing accounting and financial reporting systems, which are not generally configured to report on procurement expenditure as a discrete category.

### **2.2.5.2 Construction**

Four PPAs (SAHA, Renewal SA, SA Water and AVMC) indicated they conduct construction or capital-related procurement as part of their usual business activity.

SA Water has the largest construction spend, with a \$500 million spend on its FY 2018/19 engineering and construction services, representing more than 70 per cent of SA Water's total procurement spend. Approximately 95 per cent of this spend was with 20 specialist suppliers, all of which have developed the specific technical capabilities required for water and wastewater assets. The remaining spend is also specifically related to the development and management of the state's water and wastewater networks and infrastructure. This is one element of SA Water's strategy in developing the capability of its suppliers. It has also been raised as a point of concern by potential suppliers who consider these arrangements to exclude them. This matter is discussed elsewhere in the report.

SAHA follows with approximately \$137 million in FY 2017/18, with expenditure approximately half of that in FY 2016/17 and 2015/16. The Commission understands this relates to the move from Renewal SA to SAHA for its housing acquisition, development and disposal programs from 1 July 2018.

AVMC indicated that the completion of the Adelaide Convention Centre development in 2017 concluded a period of significant investment in construction-related expenditure. The typical capital expenditure for AVMC relates to venue redevelopment and was in the vicinity of \$3.4 million in FY 2016/17 and \$4.5 million in 2017/18. Examples of this include upgrades to change rooms, building fit-outs and lift installation.

Renewal SA advised its capital expenditure (excluding land purchases) was approximately \$49 million in FY 2017/18.

### **2.2.5.3 Whole-of-government contracts**

Some PPAs use whole-of-government contracts and panel arrangements, including banking facilities, telecommunications, stationery, software licensing, legal services and IT services. Some PPAs indicated they use up to four of these contracts. Examples of PPAs sourcing goods and services outside of whole-of-government arrangements included for stationery and photocopiers, security, and accounting and auditing services.

PPAs generally want to retain the ability to 'opt into' whole-of-government contracts where it is advantageous but consider they may be disadvantaged if they are compelled to use them. Instead of using a whole-of-government contract, some smaller PPAs follow the examples of other public authorities who use known 'good suppliers' in their purchasing methods or benchmarking of rates. Some PPAs, who had previously used whole-of-government arrangements, said they found it 'cumbersome' and now purchase directly from a national supplier, achieving reduced costs and access to certain specialist items (for example, certificates of professional registration) that were not available through whole-of-government procurement.

### **2.2.5.4 Reporting and performance**

Seven of the 12 PPAs were asked to provide details of their procurement for analysis by the Commission. Five PPAs were able to respond to the request. For two agencies, the task was too onerous because information was not stored in an accessible manner. Some smaller PPAs record and monitor basic contract information to keep track of when contracts require review or are expiring.

The information sought by the Commission included the standard information gathered by the State Procurement Board. The percentage of the data fields recorded by those five PPAs compared with the standard SPB comparator fields ranged from 74 per cent to 42 per cent. The Commission found:

- The contract identifier, contract name, supplier name and date of contract completion were universally recorded.
- None of the five PPAs recorded why direct negotiation was used, the number of quotes received, or the date the acquisition plan was approved.
- Recording of ECT or IP plan scores was very limited.
- Four of the five did not record data in relation to contract term, the number of quotes requested, or supplier location.
- Most PPAs indicated they comply with other government policies that require procurement (contract) reporting, variously citing Premier and Cabinet circulars PC013 (Annual reporting requirements), PC015 (Public Works Committee review), PC027 (Disclosure of government contracts), PC033 (Industry Participation Policy), and Treasurer's instruction TI12 (government purchase cards), TI17 (Public sector initiatives) and TI28 (financial management compliance program).

- Some PPAs indicated they report procurement activity as part of their quarterly reporting to their board, but this is in the form of corporate expenses or capital expenditure rather than categorised as procurement specifically.
- Some PPAs indicated they capture supplier complaints. One indicated it records this in its systems; others indicated they are managed on a contract-by-contract basis.

### **2.2.5.5 Continuous improvement**

With the exception of SA Water, while most PPAs stated that continuous improvement was not a specific focus of the procurement function, they indicated that continuous improvement is part of the organisation's general business planning review process, which may include purchasing arrangements.

A few PPAs indicated that their audit and associated reporting processes had led to procurement-related improvements including aligning their organisational procurement process with other government policy. One PPA indicated it mandates reviews of its procurement framework at least every three years, or else in response to changes in business operations, legislative changes or whole-of-government requirements. Another said a very large contract had been reviewed independently, the results of which will inform the next procurement process. One PPA indicated that feedback from a national regulator had resulted in an improvement in their evaluation process.

### **2.2.6 Summary of PPA feedback**

The key points identified by the Commission from PPA feedback are:

- Prescription of public authorities seems ad hoc when considered from a whole-of-government perspective. The Commission has received very little information about the original reasons for prescribing the current PPAs and it notes there are a variety of other commercial public entities that are currently not prescribed.
- All PPAs share the view that to be subject to the SP Act would create administrative burdens and may result in lost commercial opportunities, potentially conflicting with some statutory and business obligations and outcomes. However, only a few provided specific examples of how compliance with the SPB regime would compromise those obligations and outcomes.
- Complex and specialised procurement activity is undertaken by some PPAs, requiring timely and flexible procurement arrangements. Some are also required by law, or are subject to a regulatory regime, to act commercially.
- All PPAs purchase some common goods and services, suggesting a benefit from using whole-of-government contracts. Where such purchasing is confined to very low-spend/low-risk purchasing, a risk-based approach and direct purchasing may be more appropriate.
- PPAs generally observe the object of the SP Act, with some using SPB documentation or basing their procurement policies on variations of it. Others draw on the experience of public authorities to inform their own market engagement and

acquisition decisions, including in relation to whole-of-government and panel contracts.

- There is a wide divergence of human capability across the PPAs. The level of capability generally reflected the size, frequency and complexity of an organisation's procurement requirements. Nonetheless, there is scope to improve procurement capability in most PPAs, accepting that, for those PPAs with very small and low-risk procurement needs, specific investment in procurement capability is not warranted.
- Most PPAs manage procurement risk and governance as part of their organisational approaches and models. PPAs undertaking specialised or niche procurement activity have developed policies and practices to manage those specific risks. Some PPAs have adopted the SPB's risk management policies and documentation.
- No PPAs have reported any adverse findings by the Auditor-General or third parties in relation to procurement activity during the last five years.

## 2.3 Business

The Commission has assembled a wide range of evidence regarding business' concerns about the South Australian procurement system, from the goods and services and construction industries' perspectives. Evidence included:

- submissions from 21 businesses and 19 industry associations;
- meetings with 102 attendees from businesses (72 from SMEs and 30 from large enterprises) and 43 from industry associations; and
- survey results from the SA Tenders and Contracts website survey (146 respondents), two surveys conducted in 2018 and 2019 for the Industry Advocate (IA) (with respectively 213 and 178 respondents) and a survey conducted in 2018 by Business SA (with 45 respondents), regarding government procurement.

Most of the businesses who participated to those surveys reported low satisfaction with the government procurement process. However, the sample targeted by the second Industry Advocate survey also reported that winning work with the SA Government is a critical part of their turnover<sup>2</sup>.

Wherever possible, the Commission has synthesised a range of specific issues into the key themes most cited by businesses. A very small number of quotes has been provided to exemplify those issues; however, the sentiment is shared by a larger number of businesses and associations and more references can be found in individual submissions.

Regarding the Procurement Inquiry draft reports, a few businesses indicated in their submission that they would like more concrete requirements on public sector agencies: 'To change tendering practices to ensure that these barriers are removed on the ground, not

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<sup>2</sup> Action Market Research & Hudson Howells Partnership, 2019. Ready2Tender Research Project. Office of the Industry Advocate.

just in policies, so the benefits can be realised and to reduce the risk of being subject to interpretation' (Consult Australia, FR2-6 and Collin Fullerton, FR2-5).

### 2.3.1 Reducing the cost of tendering

The key areas identified by business stakeholders to cut the cost are more transparency, less red tape, better designed tenders and faster tender finalisation.

#### More transparency

Businesses have asked for more transparency on selection criteria and evaluation strategies, including for panels, so they can better assess the value of responding to a tender or getting on a panel and thus submit more appropriate tenders.

A handful of businesses also raised the issue of transparency on rebates and fees required in tender documents: they would like to know what the rule is in government.

#### Less red tape

Businesses ask for a rationalisation of what is asked of them, in line with what is actually used by agency to evaluate tenders, with most respondents to the IA survey indicating that they believe they should spend 25 to 70 per cent less time to complete a tender.

Some proposed changes included:

- a regular review of tender documents to ensure that requested information is pertinent and proportional to the value for the project;
- a central information repository to allow businesses to provide their information once and update it when required;
- the mandatory use of common templates and standard contracts, with limitations to the attachment of special conditions; and
- recognition of external accreditation of businesses (to accepted independent standards) as proof of compliance with relevant tender requirements.

Although reforms have streamlined the procurement process within the SA Government, businesses observe that implementation by agencies is slow (i.e. in relation to guarantee, indemnity and liability):

*ACA, Consult Australia and AIA SA have been participating in discussions with DPTI to develop a new suite of SA specific contracts. This process has been protracted and after 4 years not resulted in an outcome... due to the high volume of work and a lack of resources within DPTI. (AIA and ACA, DR2-6)*

Many businesses consider government agencies need greater awareness of the cost associated with contract conditions.

#### Faster tender finalisation

For both good and services as well as construction procurement, businesses report frustration with delays in making decisions, completing contracts and closing projects. They consider that public authorities' decision process is slow, adherence to original timeframes is

low, and communication with suppliers when timelines change insufficient. Specific comments highlight:

- the requirement for more preparatory work to be done at public agency level prior to tendering (better identification of needs, better integration of public consultation in those early stages and better planning of resources and approvals); and
- a better alignment of the time given to businesses to tender with the time taken by the agency to evaluate the tender.

### **Better designed tenders**

There were a number of suggestions for improvements including:

- better tender documentation from public agencies;
- a better match between government's needs and market approach (Business SA, DR1-11);
- multistaging of the tender process, to reduce the cost of tendering in line with the chance of winning the tender, with costly segments of tendering restricted to the preferred tenderer or reimbursed; and
- increased fairness in the market approach chosen.

### **2.3.2 More engagement between businesses and public agencies**

Businesses, and particularly SMEs, believe the lack of engagement leads to suboptimal definition of government requirements, resulting in decreased quality of bids (lower quality of goods and services offered). Businesses also considered staff in some public authorities were reluctant to provide feedback to unsuccessful suppliers that could help improve future tenders.

The AIIA proposed

*new channels of engagement ... For instance, informative YouTube clips... for educating new and incumbent suppliers to government... pre-procurement workshops to inform specific tenders... wider industry-specific dialogue on opportunities to improve outcomes and cater for innovation' (AIIA, DR2-1, p. 7)*

In addition, businesses with a track record of supplying innovative products to Australian and New Zealand jurisdictions see lack of opportunities for confidential engagement as a key barrier to the uptake of innovative solutions in South Australia. They indicate that if project managers do not see an innovative solution in action, they are unlikely to see it as adding value.

Businesses also considered staff in some public authorities were reluctant to provide feedback to unsuccessful suppliers that could help improve future tenders.

### **2.3.3 Value for money considerations**

The points highlighted by businesses relate to the lack of focus on whole-of-life considerations, including the quality and durability of the product or service offered, the other social, environmental and economic benefits, and innovative outcomes.

*Industry and the State don't appear to have a common understanding of what value for money is. It is suggested that buyers and sellers need to adopt a universal and shared understanding of value for money, otherwise, it is possible utility will be foregone and decision-making processes will be compromised. (Bus and Coach Association SA, DR1-10, p.9)*

### Whole-of-life costs

A Business SA survey found that, although 45 per cent of businesses said that South Australian Government agency procurement managers 'sometimes' adequately considered whole-of-life costs, 42 per cent of businesses said that the managers rarely or never considered whole-of-life costs, implying an over-emphasis on price factors.

### Innovation

Businesses observe that public authorities insist that the state government should own all intellectual property developed in a project, and they see this as a barrier to doing business:

*'Government condition to own IP stops businesses from being able to raise capital but then isn't used by government. Crown law needs to be challenged. Vic is not doing it (freed it up 10 years ago).'* (Leunig Advisory, DR1-22)

Business stakeholders also expressed a need for strong safeguards to prevent their intellectual property being leaked to competitors in the tender disclosure process or through future procurements.

The AIIA (Australian Information Industry Association) relayed views of their membership that innovation in procurement policies of government can be enhanced by:

- providing suppliers with the problem to be solved, rather than a prescriptive solution;
- ensuring contracts allow for emerging and incremental technology improvements and innovations, emerging products and services during the contract term, and extensibility beyond one agency, without the need for other procurement processes;
- creating a mechanism for innovation activities (such as proof of concept initiatives) and allowing for development or technology evaluation as part of the contract;
- providing platforms for engagement, informing the market on government expectations, and the government of what is available from the market; and
- incentivising mutual benefits realisation, where savings are shared between supplier and purchaser for a period.

AMCA SA commented that innovation in procurement requires a precise definition and description of objectives and implementation. AMCA SA stated innovative tenders need to ensure:

- the level of design and documentation can be understood and responded to meaningfully by suppliers where goods and services have characteristics not widely used in the marketplace;

- the specifications elicit responses from various specialist tenderers to enable clear assessment of what is required and the application of special design, products, performance, efficiency, operational costs and whole-of-life considerations; and
- the scope is open enough to allow suppliers to interpret the requirements.

Consult Australia highlighted the burden of addressing lengthy tender documentation and supported the Commission’s recommendation for tenders to focus on capability and capacity rather than administrative information.

Mark Ogden raised the issue of not knowing where to go to present innovative solutions to government (TC Pinpoint, FR2-11). This comment was received from many other businesses and highlights the need to better communicate the Unsolicited Proposal process.

### **2.3.4 Access to government procurement for SMEs and new businesses**

This issue pertains to business stakeholders’ perceptions of the:

- insufficient knowledge, in some public agencies, of the marketplace and local capabilities when planning the acquisition of goods and services;
- lack of specific feedback provided to businesses when they lose a tender;
- lack of advance notice about tenders, which prevents businesses gearing up;
- aggregation of contracts; and
- requirement for experience, locking new companies out of government projects.

*The prequalification system currently in use in DPTI creates artificial barriers to companies wishing to grow capacity or gain experience in larger projects (CCF SA, FR2-4).*

### **2.3.5 More expertise**

A number of businesses perceive that there is a lack of specific expertise within certain public authorities, specifically for the management of complex procurements, resulting in:

- tenders not identifying pertinent risks;
- design specifications not addressing the needs of the public authority;
- a lack of market knowledge in certain industries;
- tenders not being evaluated properly (important information missed from bids); and
- the overall focus being on process rather than outcome.

### **2.3.6 Better allocation of risks**

Stakeholders, including the AMCA and the CEPU, have asserted most forms of risk are shifted through the building and construction contractual chain away from those most capable of managing risk down to those least capable of managing that risk. They consider much could be gained from analysing the costs of a different risk allocation scenario (cost to agency of pushing the risks to suppliers versus taking on those risks, cost to the state of losing businesses who have been pushed to take on risks they could not manage).

These stakeholders also assert that risk avoidance results in contractor agreements that encourage head contractors to impose subcontract conditions that bear little resemblance to the contract with the public agency in an effort to reduce cost and risk.

### 2.3.7 Better contract management

The Commission heard numerous examples from businesses in Stage 1 and 2 of the inquiry of issues argued to affect suppliers including:

- late payments to subcontractors by prime contractors, causing significant financial stress for small businesses, (well expressed in the AMCA's submission, DR1-2);
- lack of sighting, by public authorities, of the final subcontracts established by the head contractors they have engaged;
- little account of timely payment to subcontractors by public authorities (expressed in Specialist Contractors SA's submission DR2-9);
- late payments to businesses in the design phase of projects (mentioned in AIA's submission DR1-6), resulting from the common practice of consultants being asked to continue to work on later stages of a project before the fee/variation is agreed (causing cash flow problems if delays in invoicing and payment occur);
- late payment with consultants expected to continue work while the projects were transferred from a managing contract to a design and construct contract (as evidenced in the Transforming Health projects);
- insufficient due diligence by public authorities resulting in hiring a prime contractor that may be at risk of failure, exposing subcontractors to serious consequences; and
- shifting of risk down the supply chain to subcontractors.

Several businesses acknowledged that the SA Government generally provides timely payment to its contractors. Concerns were raised about the security of payments to subcontractors in public sector construction projects and in the private sector more broadly. The lack of oversight, by government, of private sector attitudes to subcontractors, was criticised. The CCF SA recommends that 'a standard form subcontracting contract' be required to be used by all head contractors undertaking government work (FR2-4).

## 2.4 Not-for-profit organisations

The Commission inquired into procuring social and health services from the not-for-profit (NFP) sector during Stage 1 of the inquiry. The role of NFPs is significant to government, both in the type of services they provide and the amount of government spending that goes through them. The NFP sector delivers, for the SA Government, as well as federal and local governments, a broad range of human, community and health services to vulnerable people in the South Australian community. These include community service projects and programs, disability services, child protection accommodation arrangements (commercial, residential and family-based care), and primary health services, among many others.

The Commission made five recommendations in the Stage 1 final report, all of which were supported by government and are scheduled to be completed by the end of 2019. Those recommendations related to:

- evaluation of the implementation of Premier and Cabinet Circular 044 – South Australian Funding Policy for the Not-For-Profit Sector (the NFP funding policy);
- improving guidance for agencies on quality assurance accreditation for procurements involving the NFP sector;
- reviewing the adequacy of current tendering timeframes in procurements involving NFPs;
- determining appropriate exemption criteria in the SAIPP for NFPs; and
- removing disadvantages to NFPs due to the way they are incorporated.

During its Stage 1 consultations, the Commission received several submissions from the NFP sector, met with a number of NFP organisations and the South Australian Council of Social Services (SACOSS), consulted extensively with relevant public authorities, and held a roundtable discussion attended by public authorities and NFPs on 16 April 2019.

A consolidated summary of the feedback received by the Commission that led to those recommendations is summarised under the common themes as follows.

#### **2.4.1 Market engagement, consultation and collaboration**

NFP organisations and public authorities mutually acknowledged that the development and delivery of complex health and social services requires effective and trusting relationships to support engagement and enable the judgements and assessments that are needed to achieve the best client outcomes. Public authorities accepted that, in some parts of their business, cultural reform would support better and more sustainable relationships with NFPs.

#### **2.4.2 Tendering: time, cost and information requirements**

The extent of information required of NFPs by tendering public authorities in their Requests for Proposal and associated documentation is inconsistent and can be disproportionate. Fewer and more open evaluation criteria would allow NFPs to respond more creatively, and realise efficiencies in time and costs invested by NFPs in responding to tenders.

Public authorities and NFPs generally supported the principle that tenders should be out to market for longer periods for complex social services and potentially shorter periods for commodity and consumable purchases.

#### **2.4.3 Funding and pricing arrangements**

NFPs and public authorities expressed divergent views on service funding levels, reasonable funding of business running costs and overheads, and retention of unexpended funds by NFPs. The Commission found inconsistent approaches across public authorities appearing to validate the claims of NFPs.

Late payments by public authorities to NFPs was also a key issue for SACOSS. SACOSS

submitted that late payment meant NFPs were forced to find money from elsewhere to fund services until payment was made by the public authority, and this was a particular problem for NFPs, who are unable to accumulate funds.

#### **2.4.4 Contract negotiations, contract management and reporting arrangements**

It was commonly acknowledged that effective negotiations, timely contract execution, and a cooperative approach to contract performance reporting and service evaluation are key to unlocking optimal social and health service delivery.

The approach of public authorities to contract management and reporting varies widely and is an area for improvement. The recent introduction of the Standard Services Agreement and grant funding equivalents, along with the amendments to the State Procurement Board's Acquisition Policy and Simple Procurement Policy are expected to address a variety of issues.

### **2.5 State Procurement Board (SPB)**

The SPB provided the Commission with a significant amount of information to inform and assist the inquiry in Stage 1. The key issues, concerns or considerations that were raised by the SPB during the inquiry are summarised below.

- The Commission proposed improvements to policy guidance material, training and tools for some procurement issues in response to feedback provided by businesses and public authorities. The SPB agreed to improve policies on:
  - value for money — improve clarity of understanding on what is value for money and provide case studies and information on its practical application;
  - market engagement — particularly with respect to negotiation and probity; and
  - contract management performance — expectations, methodology and measurement.

The SPB may review and develop improved information in consultation with key stakeholders both within and outside of government.

- Recent reforms implemented by the SPB have included:
  - policy considerations for contracting with NFP sector;
  - increasing the simple procurement threshold;
  - amendments to limitations of liability;
  - completion of a whole-of-government procurement; and
  - contract management capability assessment (to develop a new Capability Development Strategy and identify areas for improvement).

- SPB advises that timeliness and adequacy of information, independent action, absence of bias or favouritism, and ease of market entry for new or small suppliers are key aspects that inform the efficiency and effectiveness of a procurement system.
- The SPB has developed a capability strategy in 2018 structured around five key areas, although the strategy is not a publicly available document. In response to the Stage 1 draft report, SPB strongly agrees that procurement professionals working in the SA Government need to be recognised as strategic assets that add value.
- The SPB provided the Commission with a 'working list' it has developed indicating that there are approximately 500 staff across government whose principal role involves procurement and/or contract management (within the scope of the State Procurement Act 2004).
- There has been a lower uptake for some of the newer training courses facilitated by the SPB and they will be seeking feedback from heads of procurement on this issue.

A number of the recommendations put forward by the Commission in its final report for Stage 1 of the procurement inquiry required the participation and/or management of the SPB. The recommendations were made with the explicit understanding that the Commission would consider system architecture issues, including the role of the SPB, in the Stage 2 report. The South Australian Government's response to the final report indicates that all of those recommendations have been supported.

Following the Stage 1 final report, the Statutory Authority Review Committee released its report on the inquiry into the State Procurement Board. The report recommends the abolishment of the SPB and the establishment of an Office of the Chief Procurement Officer.

## 2.6 Advocates

Three business advocates have been particularly involved through this inquiry: the Industry Advocate, the Small Business Commissioner and the Chief Entrepreneur, all of whom provided submissions and met with the Commission a number of times.

### 2.6.1 Industry Advocate

The Industry Advocate is an independent statutory authority established by the *Industry Advocate Act 2017* (the Act) whose objectives are to facilitate South Australia's economic development from public expenditure and ensure capable local businesses are given full, fair and reasonable opportunity to participate in government contracts.

The key concerns highlighted by the Industry Advocate (IA) include:

- lack of focus on outcomes to be delivered in agencies' tender requirements;
- lack of opportunities for local innovative businesses (requires better intellectual property guidance and less prescriptive tender documentation);
- the absence of a platform for businesses to provide anonymous feedback.

The IA also reflected the concerns expressed to him by businesses in regard to:

- poor business case development and acquisition planning;
- lack of communication to businesses regarding the pipeline of work;
- delays in the tender process;
- amount of information required during a tender;
- withdrawal of tenders after the bids have been submitted;
- lack of useful feedback to businesses on their unsuccessful tender;
- the time and cost taken to submit a bid;
- the risk-averse attitude to innovative products and services; and
- the lack of understanding of the SA market, leading to market approaches that bypass South Australian SMEs (e.g. through aggregation of contracts).

The IA also suggested the following changes:

- Implement a secure, central, government-approved pre-registration system.
- Set realistic targets for timely tender processes.
- Create a simplified Industry Participation Plan formatted into Industry Development and Employment sections, scored separately.
- Report for tenders below \$4 million whenever the contract is awarded to businesses outside South Australia and give reasons.
- Implement an Economic Contribution Test for any secondary procurement (e.g. panel contracts).
- In cases where an agency proposes direct negotiation, determine whether (and how many) local businesses exist that may provide the services being sought.

The IA supported most of the Commission's recommendations, including the publication of tender evaluation criteria and weightings as part of the tender documentation.

## **2.6.2 Small Business Commissioner**

The Office of the Small Business Commissioner is an independent statutory office providing services to small businesses whereby disputes can be resolved in a timely manner without the need for litigation. The Commissioner also provides information to improve the capacity of small businesses to manage their affairs and inform their decision making, so that disputes are less likely to occur.

The Small Business Commissioner (SBC) has raised the following issues in its submissions and meetings with the Commission:

- Lack of transparency: 'The internal government process seems to favour silence under the cloak of probity';

- Lack of engagement and market awareness;
- Risk-averse agency culture: 'There is fear within the public sector that any inadvertent slip may lead to criticism or worse from senior management, the Auditor-General, the Ombudsman or the ICAC';
- Red tape;
- Delay and lack of accountability;
- Barriers to innovation.
- Delayed payment of contracts and inadequate review of financial data from the contracting firm: 'The state government should not deal with parties which do not pay their suppliers in accordance with agreed terms. If that means some companies missing out on future government work, so be it'. Also, despite improvement in timely payment for goods and services, through the *Late Payment of Government Debt (Interest) Act 2013* (payment within 30 days of registration within public sector agencies), the SBC notes that New South Wales has committed to a 5-day payment from invoice by end of 2019. The SBC recommends the move to a 20-day payment as a first step, noting some public authorities are still lagging.
- Aggregation of contracts: this can adversely affect businesses that are too small to tender for larger contracts or unable to be incorporated in a larger business supply chain, especially in regional South Australia. Across-government contracts appear to have failed to take into account the economic impact on businesses, which have either been excluded from new arrangements or have found the incumbent arrangements difficult to overcome: 'There is a "cultural" piece of work which needs to be done in some agencies that accepts there are economic benefits beyond the lowest price outcome'.
- Complaint mechanism: the complaint process attracts very few formal complaints despite businesses voicing a number of concerns with the Small Business Commissioner: 'Businesses will not lodge a complaint with either the agency or SBC for fear they will no longer gain access to government work/supplies. The fear of retribution is very real'.
- Data management: 'There is no centralised data management. This in itself can create security and confidentiality issues whereby there are many and varied storage locations across government'.

The SBC has also expressed support for a central procurement function with high levels of capability, driving a procurement strategy for the state and helping agencies with simple solutions that are easy to put into practice.

### 2.6.3 Chief Entrepreneur

The Chief Entrepreneur works collaboratively with businesses, researchers and investors to facilitate connections, provide advice and position South Australia as a destination for entrepreneurship and innovation.

The comments provided to the Commission focus on the use of procurement to assist the development of innovative solutions. The main 'missing pieces' to a more innovative procurement system in SA were summarised as:

- early and ongoing dialogue between industry and government;
- effective governance, setting the rules to mitigate risks;
- independent advice to validate the process; and
- a benefit realisation framework (a plan informing investment decision by government).

The Office of the Chief Entrepreneur has recently published the SA Government’s Future Industries Exchange for Entrepreneurship Strategy, which recommends the adoption of smart procurement policies. The elements of a smart procurement policy are:

- Public authorities are to take account of the objectives of the policy in their own purchasing strategies and procedures.
- A single sourcing procurement methodology will be developed for innovative start-ups and SMEs to develop and grow through securing opportunities for procurements valued up to \$550,000.
- The private sector will be encouraged and incentivised to collaborate and co-invest with government to deliver on stated government objectives.
- A series of scheduled 'hackathons', 'Meet the Buyer' or supply chain events will be developed to connect start-ups with potential public and private customers.

The aim of the strategy is to create the authorising environment and guidance for agencies to open up more opportunities for innovative products and services.

## 2.7 Other

The table below provides a summary of the feedback provided by other sources not identified elsewhere in this chapter. These were engagements with members of Parliament (including the Public Works Committee), union representatives and university.

Table 2.2 Summary of feedback

Other feedback mechanism	Stage 1	Stage 2
Meetings	Two meetings with Member of Parliament, and with union representatives	Two meetings with the Public Works Committee
Submissions	One submission from Member of Parliament	

Source: Office of the South Australian Productivity Commission

A summary of the key issues or concerns put forward by these sources is provided below.

## **2.7.1 Value for money**

### **2.7.1.1 Sustainable procurement**

A submission was received from Mark Parnell MLC on incorporating environmental and social objectives into the value for money with reference to:

- Climate change — *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) which provides measures to address climate change including setting greenhouse gas emission reduction targets, promotion of renewable sources of energy, increase business and community understanding of climate change and facilitate the development of policies and programs to address climate change.
- Waste recycling — proposal that the government leverage its purchasing power to create and/or support the recycling market by increasing the use of recycled materials and build demand and markets for recycled products, in addition to minimising unnecessary consumption.

The submission advised that although there may be broad policy objectives to support environmental objectives in procurement, these often do not translate into specific, measurable goals and actions.

### **2.7.1.2 Social procurement**

Feedback received from representatives of union organisations indicated their support for procurement policies and practices that incorporate broader social objectives or goals including support to employ persons from disadvantaged groups.

*...government procurement decisions have flow-on impacts for employment in industries and the economy generally...the concept of social procurement therefore can serve as a mechanism by which procurement decisions can be used to generate wider social benefits such as employment and training, social inclusion, sustainability, greater equity and fairer trade.<sup>3</sup>*

## **2.7.2 Construction procurement**

Some comments were provided on construction procurement, including the following:

- level of construction procurement negotiation and contract management skills in South Australia Government;
- current lack of appropriate performance benchmarking and reporting, particularly at a whole-of-government level;
- higher costs for relatively minor capital works projects compared to equivalent project costs interstate, and that costs continue to increase irrespective of other economic conditions or input changes;

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<sup>3</sup> ACTU (Australian Council of Trade Unions), submission 34 for the Commonwealth Government's Joint Select Committee on Government Procurement, Inquiry into the Commonwealth Procurement Framework, 6 April 2017, 7.

- the potential impact on the value proposition where the client agency has minimal involvement in the building capital works project; and
- an apparent lack of competition in construction tenders.

### **2.7.3 Construction procurement standards and contractor responsibilities**

Representatives from the Australian Building and Construction Commission, and the Electrical Trades Union indicated they have some concerns about the types of standards or specifications that are used in construction procurement projects and the impacts of using inappropriate standards. Issues raised included:

- monitoring (including inspections) and treatment of suppliers/contractors who use non-compliant materials – particularly those that impose unacceptable risks both during and after construction;
- ensuring prime contractor and subcontractor risks and responsibilities are clearly identified – particularly if there are problems with payments or conditions; and
- ensuring that the risk is allocated to those organisations that are best able to manage the risk (specifically with respect to construction and subcontractors).

## 3. Commission's assessment of current system process issues

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In Chapter 3, the Commission considers the system process issues identified in the Stage 1 and Stage 2 inquiries, covering both construction procurement over \$150,000 as well as goods and services procurement over \$33,000. Procurement governance issues are covered in Chapter 4. The Commission acknowledges there is some subjectivity in assigning issues to system process or governance issues; however, it found the distinction helpful in working through the issues.

### 3.1 Procurement process

This section covers issues associated with the procurement process. That is, guideline, thresholds, timeliness, and so on. While some of the information relates to construction procurement only, some elements of goods and services procurement are included where there is some overlap with the Stage 1 report or where the issue has been carried over from the Stage 1 report (e.g. aggregation and disaggregation of contracts).

#### 3.1.1 Simplifying guidelines, policies and procedures

Since 1995, government construction procurement has been managed under the *Construction Procurement Policy: Project Implementation Process*, which is the five-step Infrastructure Planning and Delivery Framework, and Treasurer's Instruction No. 17.

The Project Implementation Process (PIP) applies to all types of prescribed construction projects. The process provides detailed procedures which guide Lead Agencies through the process of procuring infrastructure and buildings. It also defines the role of DPTI in the delivery of prescribed construction projects.

DPTI advises that although there are process similarities between civil construction and building construction procurements, there are differences because DPTI delivers civil construction for transport infrastructure for which it also has end-to-end responsibility, compared to building infrastructure which it delivers on behalf of Lead Agencies (as clients). Consequently, references to the role and responsibilities of Lead Agencies in the PIP do not apply to civil construction projects. In summary:

- building construction projects are undertaken in accordance with PCO28 and the PIP process outlined above with Lead Agencies managing steps 1 to 4, and DPTI managing step 5; and
- civil construction projects are undertaken via an Infrastructure Planning and Delivery Framework with DPTI's 3PMO (program management office) responsible for steps 1 to 4, and the Procurement and Contracting Directorate responsible for the procurement process.

### ***3.1.1.1 Construction governance and process***

The analysis in this section only refers to DPTI processes for construction procurement. The Commission has not attempted to analyse common features of the processes undertaken by prescribed authorities.

#### *Lead Agency–DPTI relationship*

The PiP provides a framework for how Lead Agencies and DPTI work together in the delivery of building and civil infrastructure and minor works. The Commission has received feedback from both DPTI and Lead Agencies as clients to DPTI on the outcomes of the process and areas for reform.

#### DPTI view

DPTI reports that the two issues that cause suboptimal outcomes from its perspective are incomplete project briefs and changes in scope of the project during the design phase.

If the Lead Agency has not been able, potentially for a variety reasons, to provide a project brief that is resolved, DPTI is, for the most part, unable to proceed to market to engage with architects to commence the project. This can lead to significant delays to a program.

If, in the design phase of a project, the Lead Agency changes the scope of a project, there will be impacts on the program as well as additional costs to be charged by the design team. If the scope change occurs during the construction phase, these impacts can be even greater. Waiting for the design to be complete, prior to Lead Agency review, is often a cause of delay and design rework that may involve additional design fees.

#### Agencies views

Agencies views indicated:

- general acceptance and broad compliance with current system;
- acceptance of the need for a largely centralised model given skill, expertise and experience constraints and the volume of construction both in SA and nationally; and
- that some useful improvements could be made to the operation of the system with respect to:
  - the management of small projects, including the direct engagement of pre-qualified tradespeople;
  - guidance for Lead Agencies for minor projects (between \$150,000 and \$1 million); and
  - closer, clearer communication between agencies including on the choice of contracting model.

The issues identified by agencies largely relate to the scope of activities that might be undertaken by the agencies themselves rather than through the process established under the PIP. Agencies argue, in some cases, that the capability exists, or with some element of reform has the potential to exist, to manage smaller capital works programs within their

agency and that the project outcomes would be optimised. This is relevant for specialised or service-related requirements where the agency feels better placed to manage the project.

DCS, DHS, DE and DHW have all suggested that they have capacity and specialised knowledge and expertise in undertaking niche or bespoke construction projects.

The Commission considers that the PIP is best suited to larger, more complex projects where the knowledge and expertise that DPTI has developed over a considerable amount of time is most valued. It sees merit in a closer examination and adjustment of the threshold for minor works and development of an accreditation process for capable, competent agencies to undertake such works.

#### *Civil infrastructure*

Several layers of governance exist for civil infrastructure projects, depending on the complexity, risk and dollar value. There are gateway reviews and 3PMO oversight from a broader DPTI perspective. Internal stakeholder engagement, buy-in and input are used at all stages of the planning, procurement and delivery phases, which may involve collaboration across multiple divisions of DPTI.

DPTI advises it generally has a steering committee set up for the procurement phase as well as the delivery phase that includes senior executives from the department to provide advice and guidance. A Major Projects Executive Committee (formerly the Major Projects Review Panel) has responsibility for oversight of projects in the procurement phase as well as those in the delivery stage.

High-level organisational information provided by DPTI indicates significant sections and divisions of the department are involved at the various stages of the process.

#### **3.1.1.2 Accreditation**

DPTI has a process to provide agency accreditation for construction projects up to \$1.1 million (GST inclusive) for the delivery of lower risk construction projects (the Accreditation Assessment Framework). DPTI assesses the capabilities of a non-infrastructure agency to deliver low-risk building construction projects with reference to:

- the type and risk profile of projects or programs of work that may be undertaken by the agency;
- the existing capability (knowledge, skills and systems) to manage the risks;
- the public authority's approach to safety; and
- the resources available to government held in public authorities.

DPTI advised the Commission that, since September 2017, 22 projects have been managed through a construction procurement accredited agency. Four of those projects were building constructions and the remainder civil construction projects. Accreditation is offered on a project-by-project basis rather than as a program in total.

In the case of construction procurement, the scope of the accreditation program has been eroded by the expanded scope of the Across Government Facilities Management Arrangements (AGFMA) contract.

### *Findings and recommendation*

The Commission has found that accreditation for construction procurement is not widely used or understood by non-DPTI agencies.

Agencies can be accredited to undertake projects up to the value of \$1 million (exclusive of GST). However, under the terms of the current AGFMA contract, there are mandated minor works activities that now must be undertaken through the contracted service provider. For some agencies, such as DHS, these mandated activities were the core activities for which they were accredited in the past. In DHS's view, they question the value generated by the service provider fees.

A review of the AGFMA contract is currently being undertaken by DPTI to consider how services can be improved and how the scope of the contract might be modified. The review is utilising views and expertise from a cross-agency steering group. The Commission understands that key considerations of the review are to clarify scope, roles and responsibilities between DPTI and client agencies, and to identify and adopt best practice facilities management arrangements throughout the state. The Commission supports this approach but also would like to emphasise the importance of greater flexibility in operating arrangements for minor works that promote efficiency, clarity of roles and responsibilities and allow public authorities to exercise more independence in the management of their assets.

In terms of the accreditation program, the Commission sees merit in arrangements that enable competent, properly accredited public authorities to manage their own low-risk low-value construction procurement programs. Ongoing reporting and continuous improvement would be part of the accreditation process.

**Recommendation 3.1:** To promote streamlining of smaller and specialised construction projects by government agencies and to enhance the value of the accreditation process whereby agencies are accredited to do construction procurement below a threshold, the Commission recommends that:

- Procurement SA, in conjunction with DPTI, establish a framework for accreditation with transition arrangements that can be applied to agencies based on the complexity and extent of their capital works program.
- The accreditation framework would include:
  - best practice policies and guidance covering all aspects of the procurement process including workplace safety;
  - appropriate governance arrangements and delegations;
  - capability standards for the agency and resources available to administer their program; and
  - reporting and continuous improvement arrangements once accreditation is established.

### 3.1.2 Thresholds and delegations in government procurement

#### 3.1.2.1 Introduction

South Australian Government procurement is governed by three separate frameworks:

- Goods, services and construction procurement valued up to \$150,000 (excluding GST) undertaken by public authorities as defined in the *State Procurement Act 2004* (SP Act) and administered via the State Procurement Board (SPB)
- Prescribed construction procurement (valued over \$150,000) that is generally managed by DPTI and excluded from the SP Act
- Goods, services and construction procurement of any value that is undertaken by prescribed public authorities (prescribed by regulation from the SP Act)

Differences in the frameworks are due to the type and value of the procurement, and the entity responsible for the procurement. Over time, various delegations and thresholds have been established to support the governance structures and processes for procurement under each framework as well as across government. For example, depending on the delegation and/or threshold, it could apply to:

- all three procurement frameworks (as per those associated with TIs);
- a specific procurement framework (as per the SPB’s policy framework); or
- a specific SA Government agency (as per the internal governance structures).

The table below provides a summary of the key delegations and thresholds that are applied under current procurement rules and requirements across the South Australian Government. Unlike other sections of this report, the dollar values quoted in this section (3.1.2) onwards are all GST inclusive to be consistent with the dollar values that are quoted in the relevant policies and instructions (SPB, Treasurer’s Instructions, and Premier and Cabinet circulars).

*Table 3.1: Procurement delegations and thresholds applied by SA Government*

Regulatory requirement	Value thresholds / Scope	Responsibility / Description
<b>Scope-related thresholds</b>		
Prescribed Construction Procurement	Construction procurement value: <= \$165,000 is under the SP Act > \$165,000 is under PC028.	Clause 5, paragraph (1), line (a) excludes a prescribed construction project of a cost exceeding \$165,000 from the definition of procurement operations (SP Act, section 4).
<b>Authorising-related thresholds</b>		
SPB Procurement Authority	Procurement within scope of SP Act (goods, services, and construction up to \$165,000). The three tiers of procurement authority are: 1 = up to \$15 million 2 = up to \$1.5 million 3 = up to \$220,000.	Issued by the SPB under section 14 of the SP Act to a principal officer to provide authority to approve a proposed course of action, strategy or recommendation relating to procurement up to a specified dollar limit (beyond which SPB approval must be sought).

Regulatory requirement	Value thresholds / Scope	Responsibility / Description
Procurement Approval Committee	Procurement in scope of SP Act – established by SPB under section 13.	SPB delegates authority to PAC to consider and approve acquisitions for public authorities with tiers 2 and 3 procurement authority (unless high-risk).
Procurement Governance Committee	Procurement in scope of SP Act and within each individual agency.	SPB requires that public authorities with a Tier 1 procurement authority must establish a Procurement Governance Committee <sup>4</sup> .
Financial Authorisation (Treasurer's Instruction 8)	<p>Applies to:</p> <ul style="list-style-type: none"> <li>➤ All public authorities under <i>Public Finance and Audit Act 1987</i> (PF&amp;A Act), including PPAs</li> <li>➤ All contracts / purchases, including grants, leases and rentals.</li> </ul> <p>Approvals to execute contracts / purchases:</p> <ul style="list-style-type: none"> <li>➤ &lt; \$15m = CE delegated authority</li> <li>➤ Minister can approve all contracts within their portfolio</li> <li>➤ &gt;\$15m = Minister or Cabinet.</li> </ul>	<p>Required to:</p> <ul style="list-style-type: none"> <li>➤ enter into a contract;</li> <li>➤ make a payment; or</li> <li>➤ vary a contract where variation is more than 5% of total value.</li> </ul> <p>Recently amended following SA Government acceptance of SAPC recommendation 2.1<sup>5</sup>.</p>
Public Works Committee	Construction procurement projects valued over \$4.4m.	Must be submitted to the Public Works Committee for consideration and sign off before proceeding.
<b>Process-related thresholds:</b>		
SPB Simple Procurement thresholds	Procurement operations as defined in the SP Act (goods, services that are valued < = \$550,000 and construction up to \$165,000).	SPB provides separate policy requirements for simple procurement acquisition planning, purchase recommendations, procurement reports, and request for quotes.
SPB general procurement framework	Procurement operations as defined in SP Act valued > \$550,000	SPB includes additional requirements to simple procurements relating to acquisition plans and standard contracts.
SPB additional requirements	Procurement operations as defined in SP Act valued >\$4.4m.	SPB includes additional requirements to major procurement relating to market analysis, sustainability, post-sourcing, post-contract, capability and contract management.
International Obligations	<p>Goods, services and construction procurement undertaken by public authorities (as listed) valued:</p> <ul style="list-style-type: none"> <li>➤ &gt;\$657,000 goods and services</li> </ul>	Public authorities undertaking a procurement activity that is covered by FTAs to which SA is a signatory must comply with the requirements in that FTA's procurement chapter.

<sup>4</sup> SPB, Procurement Authority and Governance Policy, Version 2, July 2018, page 3.

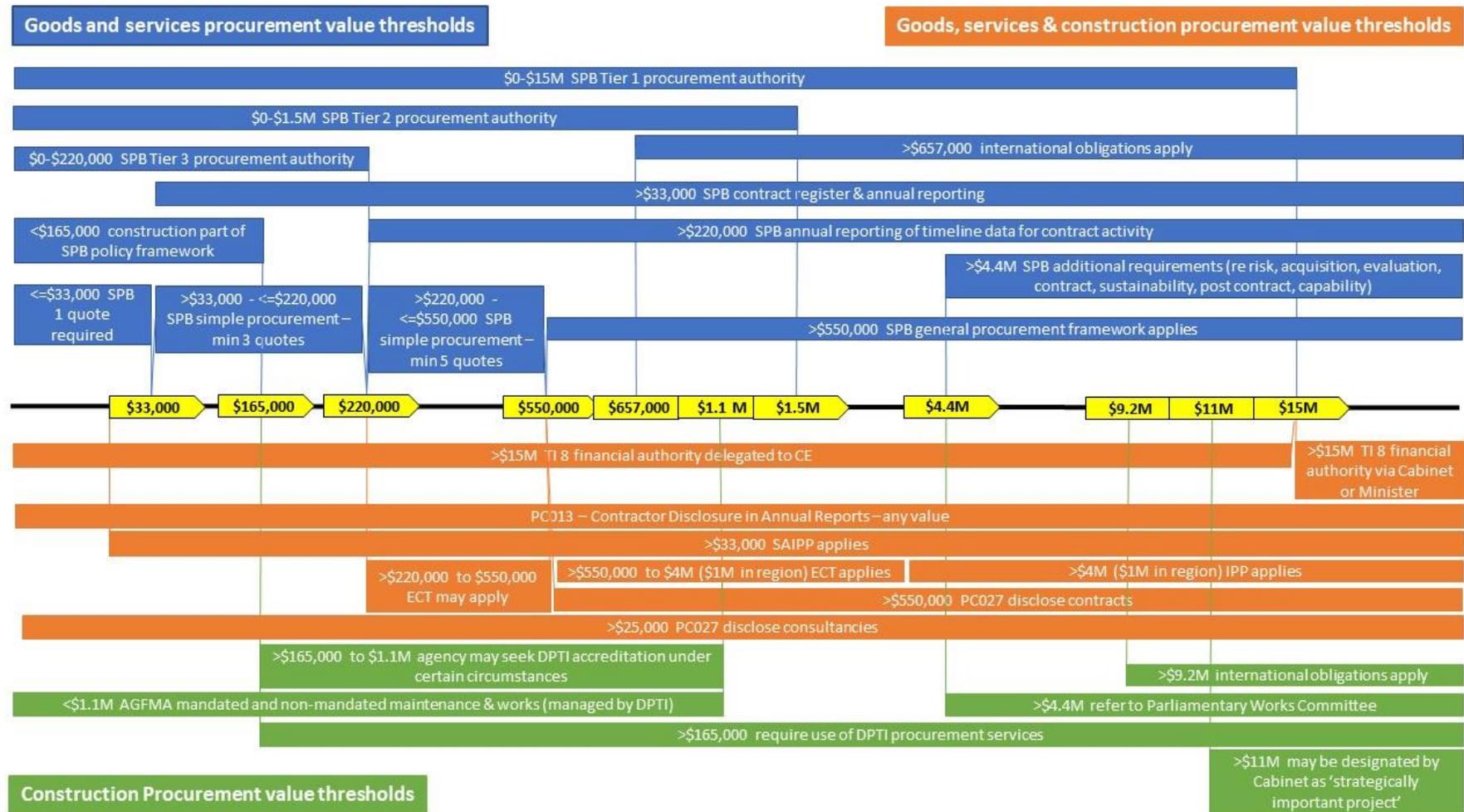
<sup>5</sup> SA Productivity Commission, Procurement Inquiry Stage 1 Final Report, 17 May 2019, p. 21.

Regulatory requirement	Value thresholds / Scope	Responsibility / Description
	<ul style="list-style-type: none"> <li>&gt;\$9.2m construction</li> <li>Some exclusions apply.</li> </ul>	Requirements are embedded in current SPB policy documentation.
<b>Reporting-related thresholds:</b>		
SPB Register & Reporting Contracts	Limited to goods and services under SP Act: <ul style="list-style-type: none"> <li>Total procurement spend by goods and services</li> <li>Contracts executed &amp; valued &gt;\$33,000 (plus timeline information if valued &gt;\$220,000).</li> </ul>	Public authorities under the SP Act must develop & maintain a contract register and must report annually to the SPB on contracting activity. Principal officers sign off and attach a compliance certificate verifying documents & annual compliance with SPB procurement policy framework.
PC013 Annual Reporting	All public authorities under PF&A Act except public corporations to disclose information in published annual reports on contractors engaged for the financial year. Different information requirements apply for <\$10,000>	CE's must ensure compliance with PC013 & use template provided.
PC027 Disclosure of Government Contracts	All public authorities under PF&A Act. Disclose all contracts over \$0.5m involving government expenditure (including asset sale contracts).	CE's must ensure compliance with PC027 re publicly disclosing specified contracts on SA Tenders and Contracts website.

Source: Office of the SA Productivity Commission

The above table provides an indication of the key procurement delegations and thresholds currently applying to South Australian Government procurement. This is further illustrated by the following figure showing the various dollar value thresholds that apply depending on the value of the procurement and the framework that applies (construction, SPB, or all).

Figure 3.1: Current financial value thresholds that apply to SA Government procurement (includes recent reforms)



Source: Office of the SA Productivity Commission

### 3.1.2.2 Interstate comparisons

The Commission has reviewed and consulted with various interstate government jurisdictions to gain a better understanding of their procurement framework arrangements, and to study whether there are any practices or approaches applied by interstate jurisdictions that could address the procurement issues identified in South Australia.

Table 3.2 below provides an overview of the main delegations and thresholds applied by some interstate government jurisdictions with focus on those thresholds that limit the scope of coverage (by type of procurement), and that confer authority on the agency to independently manage their procurement operations.

Table 3.2 Interstate government jurisdictions – delegations and thresholds

<p><b>New South Wales Government</b></p> <p>Enabling legislation covers goods, services and construction.</p> <p>Currently separate accreditation schemes for goods and services, and construction although this is under review.</p> <p>Goods and services – level 1 or 2 accreditation to independently conduct procurements:</p> <ul style="list-style-type: none"> <li>➤ Level 1 – independence depends on risk and value of the procurement (minimum is \$20m, maximum is \$50m)</li> <li>➤ Level 2 – up to their agency’s approved budget &amp; financial delegations.</li> </ul> <p>Annual self-assessment and central reporting by accredited agencies.</p>
<p><b>Queensland Government</b></p> <p>Procurement policy covers goods, services and construction.</p> <p>Authority devolved to agencies to undertake procurement in accordance with category management approach.</p> <p>Delegations are assigned to agency (not across government) and are based on the agency’s risk and tolerance profile.</p> <p>Use of dollar value thresholds is limited to international obligations; innovative approaches; major project best practice principles (over \$100 million); and public disclosure of contracts (over \$10,000) and of the procurement process (over \$500,000).</p> <p>Has recently mandated an ‘Ethical Supplier Threshold’ although this is a threshold of ‘conditions’ – not values – to ensure ethical supplier practices.</p>
<p><b>Victorian Government</b></p> <p>Victoria has a system that devolves responsibility to portfolio ministers and departments to manage a global budget to deliver certain agreed outputs aligned to department objectives. Under this arrangement, the government contracts the delivery of goods and services to departments.</p> <p>The VGPB introduced a supply policy framework that moves away from a prescriptive financial threshold to a complexity and risk-based model where agencies self-assess based on the capability and complexity of their procurement activity. Agencies are responsible for managing their own procurement activity. Once an agency is aligned with the framework (has adopted the framework with their own internal compliance structure for</p>

self-assessment), they can apply to be 'accredited' which means that they can access VGPB secretariat support and to purchase off across-government contracts<sup>6</sup>.

Construction procurement has separate Ministerial Directions and applies a number of additional dollar value thresholds including those relating to limited tender processes, probity requirements, and the shared reporting regime.

### Australian Government

Commonwealth Procurement Rules (CPRs) are issued by the Finance Minister under the *Public Governance, Performance and Accountability Act 2013 (Cth)*. Relevant entities are listed and must comply with the CPRs.

Independent assurance / audits are facilitated through the central department.

CPR 9.7 specifies specific dollar thresholds to be applied to procurements above which additional rules apply. The dollar thresholds (there are three) and additional rules or requirements are directly related to the international obligations in FTAs to which the Australian Government is a party.

Source: Office of the SA Productivity Commission

With respect to the application of thresholds and delegations in other leading practice government procurement jurisdictions, the Commission notes:

- most employ a centrally enabled, devolved procurement model using shared accountability in an integrated environment;
- Internal and external controls for 'earned autonomy' are achieved via:
  - regular self-assessments on capability and risk;
  - periodic recording, analysis and reporting (including public reporting) of metrics and performance specific to procurement; and
  - purchasing via specific categories of spend and/or through across government arrangements.
- most agencies are covered by the centrally led procurement frameworks with few exceptions;
- a combination of capability, risk and dollar thresholds are used to determine different authorisation and process requirements;
- common dollar value thresholds are applied to ensure compliance with international obligations, including contract disclosure, mandatory use of standardised contract clauses, prompt payment of contract invoices, opportunity to participate (SMEs, local), to meet social objectives and encourage innovative procurement/suppliers;
- dollar thresholds are applied to determine mandated procurement processes (e.g. SPB's simple vs. major procurement categories) and are largely limited to application for purchases not covered by an existing arrangement (including purchasing under categories) and/or where an agency is not accredited / authorised to procure; and

<sup>6</sup> Victorian Government Procurement Board (VGPB), 'Frequently asked questions about the VGPB procurement framework', p. 2.

- thresholds and delegations are often defined via elements apart from financial value, particularly complexity/risk and capability (of the agency and of the supplier market).

### **3.1.2.3 Issues raised**

An overview of the feedback received throughout the procurement inquiry is provided in chapter 2. Some of that feedback has related to the delegations and thresholds applying to government procurement in South Australia. In addition to that feedback, the Commission has undertaken research and consultation on procurement delegations and thresholds including reference to leading practice approaches by other government jurisdictions.

The key concerns and issues that have been identified and examined about procurement thresholds and delegations include:

- The misalignment between the value of a public authority's procurement authority (assigned by the SPB) and the financial authority delegated to chief executives under TI 8.
- The time taken to obtain the appropriate approvals via appropriate delegated authorities, given it is undertaken in a sequential rather than concurrent process. This is further exacerbated by low-value thresholds — particularly when the level of seniority required to provide an approval is relatively high.
- The complex approval processes for endorsements/sign offs at multiple levels within an agency and at multiple times across government.
- The infrequency with which thresholds are reviewed and revised, and limitations on the ease with which thresholds can be amended given existing legislation.
- The current thresholds applied to minor construction procurement and the relative capability of public authorities to self-manage and undertake those procurements.
- An over reliance on using dollar thresholds to determine different authorisation/delegation and process requirements over risk/complexity and capability thresholds or assessments.

### **3.1.2.4 Recent reforms**

Prior to the Commission commencing its procurement inquiry, and as acknowledged in the Stage 1 report, the SPB amended the simple procurement threshold from \$220,000 to \$550,000 to reduce red tape and streamline the procurement process.

The Commission made the following recommendations<sup>7</sup> to reform some of the thresholds and delegation issues that had been raised in Stage 1:

- Recommendation 2.1 proposed four reforms to cut red tape and reduce procurement process delays: adopt the principle that procurement decisions only be authorised once; identify exceptions where further decisions may be required before commencing the procurement; increase financial delegations for chief executives;

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<sup>7</sup> Department of the Premier and Cabinet, 'South Australian Government's Response to the South Australian Productivity Commission Inquiry into Government Procurement, Stage 1', 9 August 2019,

and provide Ministers with sufficient financial delegation to approve contracts for ordinary business requirements.

- Recommendation 3.4 proposed that the IPP be simplified by lifting the minimum threshold for which an ECT is required to \$550,000; and making the ECT optional for prospective suppliers to include in their tender responses for tenders valued between \$220,000 and \$550,000.

The South Australian Government provided full support for recommendation 2.1 and partial support for recommendation 3.4. The government committed to:

- Review TI 8 and SPB policy framework to ensure the establishment of one approval; identify excepted circumstances to the one approval approach; reform TI 8 to increase financial delegations for chief executives; and provide ministers with sufficient financial delegation.
- Lift the minimum threshold at which the IPP is mandated to \$550,000; allow agencies to determine whether to include ECT requirements into assessment criteria for each tender between \$220,000 and \$550,000 (while requiring that agencies ensure at least one local business has the opportunity to submit a tender).

The South Australian Government committed to complete the above reforms by 31 October 2019. On 30 September 2019 the Department of Treasury and Finance (DTF) released a revised TI 8 that enables chief executives or governing authorities to approve all contracts up to \$15 million and ministers to approve all contracts within their portfolio (with specific considerations for those valued over \$15 million).

### ***3.1.2.5 The Commission's view***

Delegations and thresholds can perform an important function for government procurement by providing a mechanism by which government can manage risk and drive accountability and transparency. However, poorly designed or considered delegations and thresholds can increase the complexity of the procurement process, set unnecessary barriers and significantly add to procurement timeframes and costs. Furthermore, a system that principally defines its thresholds and delegations via financial values with little regard for risk, complexity and capability reduces the government's ability to meet the procurement principles of accountability, transparency, simplicity and value for money.

It is clear that, over time, an increasing range and type of thresholds and delegations have been incorporated into the government's procurement policies and processes with apparently limited regard to the impact on other regulatory mechanisms and on the efficiency and effectiveness of government procurement. Under the current system, government authorities and businesses must navigate a myriad of delegations and thresholds as illustrated in Table 3.1 and Figure 3.1 above, in order to comply with government procurement rules.

Comparisons with government procurement frameworks in other jurisdictions indicate that capability, complexity (or risk) and value thresholds are leading practices in managing governance and processes. In particular:

- Combinations of capability, risk and dollar thresholds are used to determine different authorisation and process requirements.
- Limited use of financial value thresholds with the more common situations where a dollar threshold is applied being:
  - compliance with international obligations;
  - public disclosure of contracts;
  - application of particular standard contract clauses;
  - requirement for prompt payment of contract invoices;
  - meeting of social objectives (including tender participation by SMEs, local firms etc.); and
  - encouragement for innovative procurement / suppliers.
- The use of dollar thresholds to determine mandated procurement processes (e.g. SPB's simple vs. major procurement categories) is largely limited to application for purchases that are not covered by an existing arrangement (including purchasing under categories) and/or where an agency is not accredited / authorised to procure.
- Thresholds and delegations are often defined via elements apart from financial value, particularly complexity/risk and capability (of the agency and of the supplier market).

While the Commission acknowledges the positive steps that the South Australian Government has already taken to reform TI 8 financial authorisations and commit to reforms for the SAIPP thresholds, it proposes that additional changes would also be beneficial. The recommendations have been designed so that they build on the reforms arising from the Commission's Stage 1 final report that have been implemented and/or committed to; and they complement and support the Commission's recommended procurement model outlined in Chapter 5.

**Recommendation 3.2:** To cut red tape, streamline processes, and better focus on risk management, the Commission recommends that the current structure of thresholds and delegations that apply to government procurement be reformed by:

- simplifying and reducing the number and variety of financial value thresholds that currently exist and aligning the remaining thresholds / delegations wherever possible; and
- moving from a procurement system where key decision gateways and processes are focused on financial value thresholds to a system with a small number of thresholds/delegations that incorporate considerations of risk, complexity, capability and whole-of-life value.

**Recommendation 3.3:**

In order to ensure that the thresholds and delegations applying to procurement remain up to date and relevant, the Commission recommends that the government task the proposed Procurement SA to:

- implement regular reviews of value thresholds applying to government procurement to ensure they are fit-for-purpose; and
- amend the associated procurement policies, guidelines and templates (including those for simple procurement and acquisition planning) in accordance with such reviews and government approval.

The Commission’s recommendations above do not provide specific details on what is to change and what is to remain. The Commission considers such decisions are best addressed by the new procurement authority in association with the experienced and capable procurement staff in government agencies and with representatives of key non-government stakeholders. That being said, the Commission offers the following observations on potential reforms that would support the move towards a more streamlined, complexity-based procurement system, noting discussions regarding minor works in section 3.1.1.

- Remove the SPB accreditation program thresholds.
- Align contract disclosure/reporting thresholds across government, including Premier and Cabinet Circular 13 (annual reporting on contractors), Premier and Cabinet Circular 27 (disclosure of contracts), and other central reporting of contracting/procurement activity.
- Increase and/or revise the variation rule applied under TI 8 where cabinet approval is required wherever a variation changes the value of the contract by more than five per cent — particularly in those circumstances where larger contracts have been disaggregated to SMEs, as variations to the contract can quickly exceed the five per cent threshold.

It will be important that change is managed such that the risks of moving from the current system to a new system are managed effectively. This is particularly important for those procurements and contracts that are currently in progress or pending. This will require the active participation and cooperation of all key stakeholders in both planning and implementing the reforms. A staged approach to implementation will also help to minimise disruption; however, it should not be an excuse for minimising progress. Agencies will need to have the appropriate capabilities and support to transition as smoothly as possible from one system to another.

**3.1.3 Timeframes for procurement**

The timeliness and adequacy of information is a key aspect that informs the efficiency and effectiveness of a procurement system.

Feedback to the Commission on timeliness of the procurement process had two distinct perspectives. Some business and NFP suppliers provided feedback that often procurement decisions by public authorities are undertaken within the context of public sector savings targets or timeline pressures that are imposed on public authorities (and suppliers). Short response periods for suppliers to respond to public tenders in these circumstances limits the opportunity to achieve higher value outcomes. Businesses have also commented that, for some procurement projects, the time taken to reach a decision and to engage the successful tenderer has been inordinately long, sometimes taking years to resolve.

The Commission considers that these perspectives are not incongruent. The diversity of procurement and the differing objectives associated with individual projects can result in a range of time periods needed to decide on the best choice of supplier. Data provided to the Commission has demonstrated that instances of very short as well as very protracted supplier selection timeframes do occur.

The Commission considers that ensuring suppliers have enough time to respond to tenders and that public authorities respond to suppliers by making timely decisions are key aspects of an efficient procurement process.

### ***3.1.3.1 International and interstate benchmarks***

The Commission's research has focused on European Union (EU) benchmarks for timeliness, including for both goods and services and construction procurement, as the breadth of information and suitability for comparison is useful in the South Australian context. The current EU procurement directive<sup>8</sup> states that the average minimum time limit for submission of tenders in open procedures is 35 days from the publication date of the contract notice. If a prior information notice has been published alerting the market to an upcoming tender, the average time limit can be reduced to 15 days. Similar time benchmarks are codified in the EU directive for other tender processes such as restricted tenders, competitive dialogues and expressions of interest.

Compliance with the minimum time limits by member states is monitored and reported to the European Parliament. This contrasts with the measure of timeliness in South Australia, which focuses on the median time taken by public authorities. That said, the Commission also notes that South Australia is the only jurisdiction in Australia to publish any timeliness indicator.

### ***3.1.3.2 South Australia performance***

#### Goods and services

The SPB has a policy that requires public authorities to quantify and report on the process duration for procurements valued in excess of \$220,000 (GST inclusive). Projects not in scope for reporting are grants and procurements attached to secondary purchasing, for example panel contracts.

Timeliness in the tender process is publicly reported by the SPB as the median time taken from the market approach stage through to contract award (i.e. the timeframe during which

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<sup>8</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.

suppliers are engaged in the procurement process). The SPB collects public authority data on all milestones of the procurement process, including time taken to approve acquisition plans and time for contract execution; however, these milestones are not included in the published statistics. The preparation of a formal business case includes internal review, approval processes, financial authorisation and market research; these are critical activities that occur prior to the acquisition plan commencing. It is only at this stage that agencies will register the project as active.

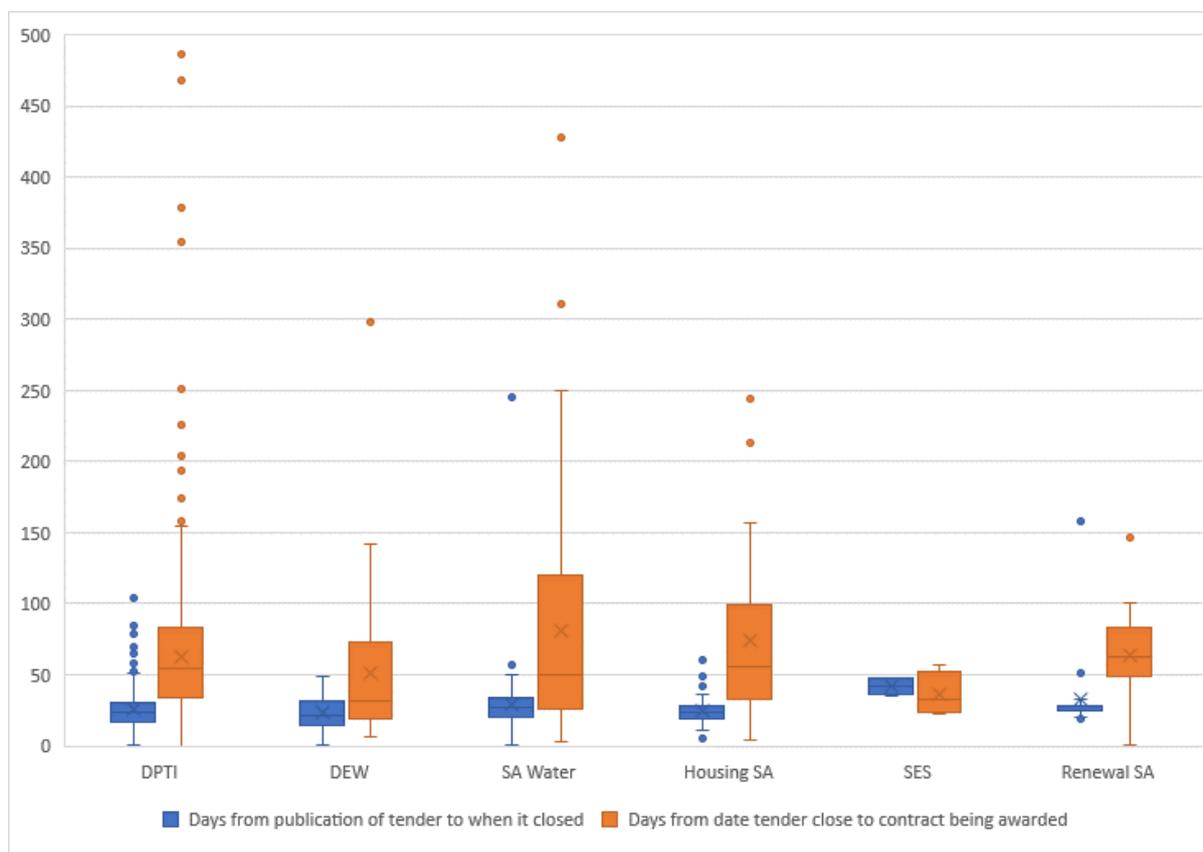
Most tenders are expedited in good time; however, the Commission notes some cases took years to resolve.

Construction projects

After analysing data and attempting to determine the typical time taken for construction procurement processes, the Commission found that these types of projects vary greatly in scope, levels of competition, evaluation and engagement with the market on design or to negotiate the contract.

Time spent in the early planning phases of an initiative (problem identification, initiative identification, options development and business case development) is not typically reported on by the agencies in the Commission’s data or in other Australian jurisdictions.

*Figure 3.2: Average time (in days) allowed for suppliers to tender against the time taken by agencies to award the tender, by agency (for contracts executed between 2015 and 2018)*

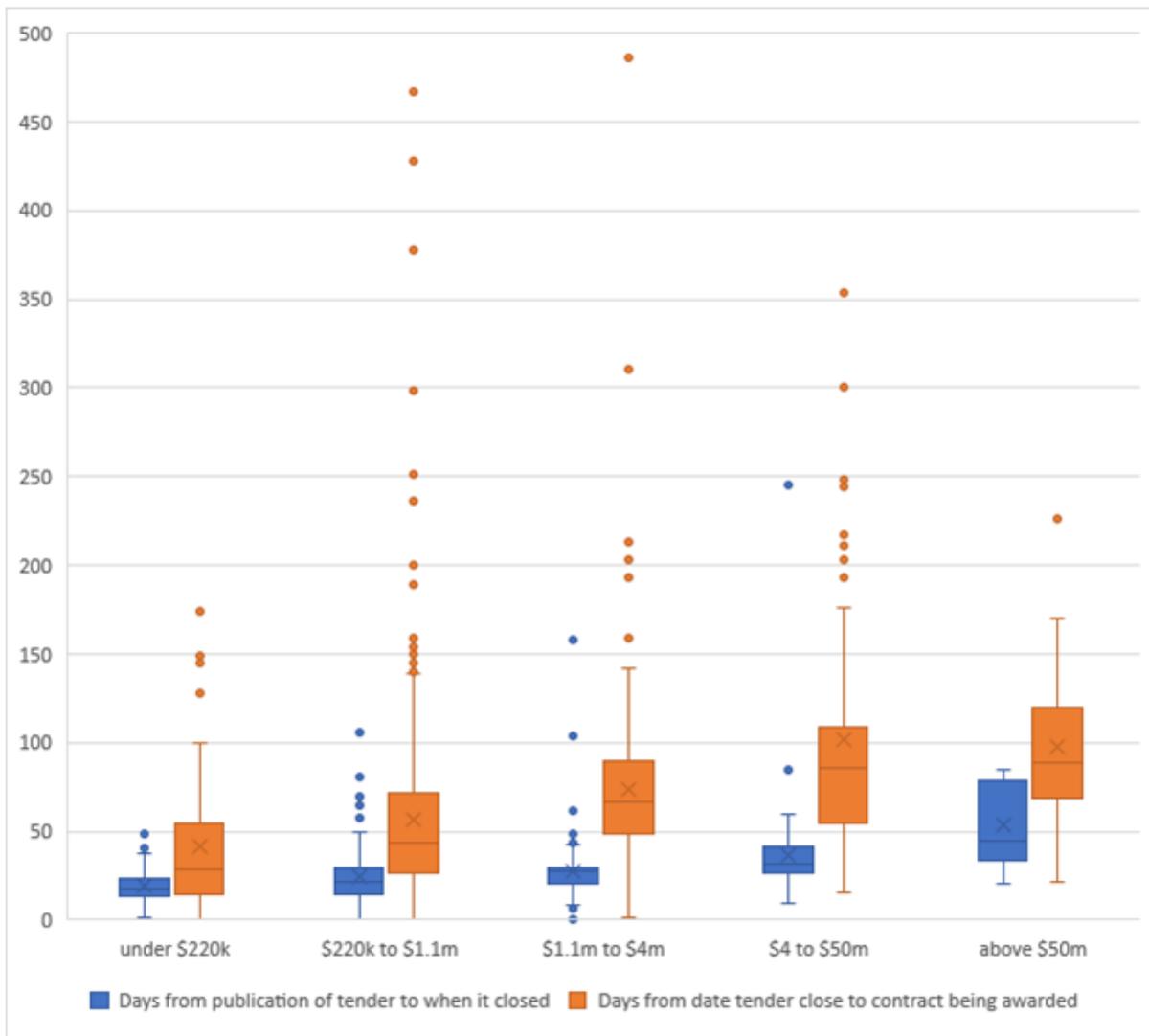


Source: OSAPC consolidated database from agencies’ 2015–18 databases of procurement activities

Analysis indicates that the average time taken for agencies involved in construction procurement varies significantly across the sector, reflecting the complexity of the projects, individual needs and business objectives along with the efficiency of the process. Similar to goods and services procurement, the outliers highlighted in Figure 3.2 above shows that the evaluation period for construction tenders can be protracted.

Further, as shown below in Figure 3.3, the average time taken for evaluation of the contract increases with the value. The analysis shows the short period of time on average that tender documents are put out to market compared with the average evaluation period. This difference can be disproportionate for projects approaching \$50 million in value.

Figure 3.3: Average time (in days) provided to suppliers to tender versus the time taken by agencies to award the tender, by value of contract (for contracts executed between 2015 and 2018)



Source: OSAPC consolidated database from agencies' 2015-18 databases of procurement activities

### *Conclusion*

The Commission acknowledges that timeliness is dependent on level of interest from the market and how many suppliers bid, the type of process, approvals processes and governance and the time that key public authority officers can devote to the process. Some of these factors are considered manageable blockages, such as limited information or insufficient delegations of decision makers, while others reflect time for necessary checks and balances.

Stakeholders indicated that minimum decision times or service standards for types of procurement are often not published by public authorities. The Commission considers that the absence of this information during the tender process is unreasonable in most cases and an efficient and effective tender process would publish this information as a matter of course. The publishing of this information would also aid in the measurement of the effectiveness of government and agency processes.

The Commission considers it useful and important that agencies report on whether they have met the expected timeframes for procurement processes and, where overruns have occurred, whether the time taken for the process has gone beyond an acceptable margin. This topic is taken up in the discussion of metrics and performance measures in Chapter 4.

#### **3.1.4 Approaching the market effectively**

Going to an open tender generally increases competition, gives opportunities to new businesses and SMEs to access the market, maximises value for money and upholds the integrity of public procurement.

The European Commission has six indicators of procurement performance<sup>9</sup> and two relate to market approach and competition:

- 'No calls for bids' (proportion of tenders that have not been published); and
- 'One bidder' (proportion of tenders for which only one bid was received).

Businesses perceive that public authorities are reducing the use of competitive processes and suggest this is to minimise the time taken for procurement and/or to roll over existing contractual arrangements.

The Commission has investigated this matter and found a high use of direct contracting in goods and services, and a low use of public tendering in goods, services and construction, compared with the EU performance indicators. There were also some issues with the data currently collected.

##### ***3.1.4.1 Reporting requirements***

Currently, the data collected on market approach by public agencies for goods and services and construction is inconsistent and contains errors. For example, the Commission noted projects where calls for tenders were reported as 'public tender' when only two suppliers

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<sup>9</sup> Anthony Flynn, 'Measuring procurement performance in Europe', (2018) 18(1) *Journal of Public Procurement*, 2–13.

were approached, or reported as selective tender when a public Expression of Interest was directed. The Commission notes that the list of options that can be selected by the data entry officer is often long and the definitions provided by the relevant agency or in the SPB reporting guidelines<sup>10</sup> are confusing.

The Commission's research has shown that the important information to track from market approach data is:

- how transparent and competitive the procurement process is; and
- what the trends are.

An additional field relating to prequalification and panels would provide useful information on the use of those procurement options to assess their value.

The Commission considers that the reporting on market approach can be simplified to reduce the risk of errors and provide clearer visibility of the extent to which competitive processes are used. The Commission suggests three categories are important:

1. Single supplier tender (direct contracting) - only one supplier is invited to quote;
2. Selective tender (or limited tender) - a limited number of suppliers (but greater than one) is invited to bid. This market approach would require an entry for the field 'number of suppliers approached'.
3. Public tender (open tender) – invitations to supply are publicly advertised and open to all interested suppliers. This is the most competitive market approach; it does include multistage processes which combine different market approaches (usually an Expression of Interest followed by a selective tender with suppliers that can demonstrate the required capability).

This matter is taken up in Chapter 4, section 3 (reporting and performance indicators).

### ***3.1.4.2 Use of direct negotiation and public tendering***

#### Single bidder

The European Commission's standard is that a level of 20 per cent or fewer tenders attracting a single bidder is satisfactory for goods and services contracts valued above €135,000 (\$220,000) and for construction contracts valued above €5.225 million (\$8.5 million).

In comparison, in 2017–18, South Australia had:

- 16 per cent of construction projects valued above \$8.5 million (equivalent to the EU threshold of \$5.225 million euros) that were tendered to a single supplier, which meets the EU performance threshold for this indicator.

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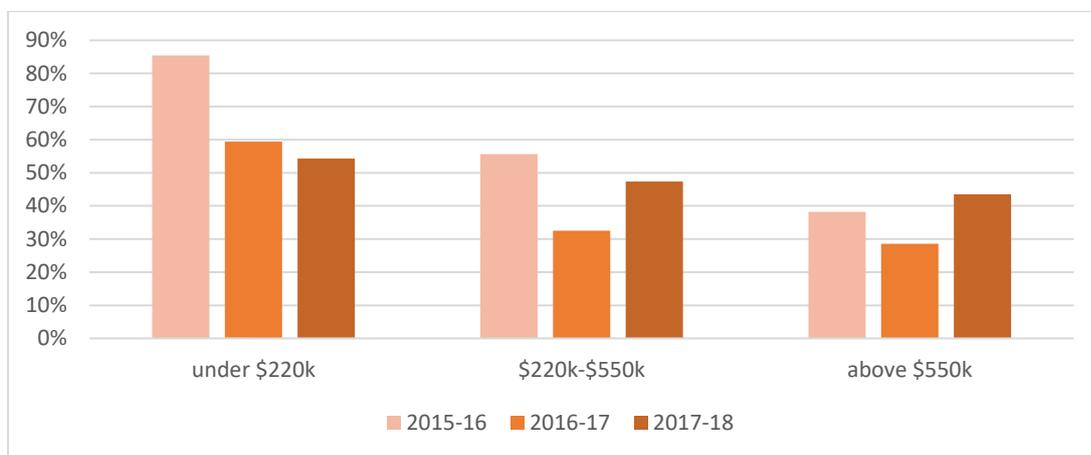
<sup>10</sup> State Procurement Board (SA), *Board Procurement Reporting Policy* (April 2019)  
<<https://www.spb.sa.gov.au/sites/default/files/Board%20Procurement%20Reporting%20Policy%20v%204.8%20April%202019.pdf>>

- 35 per cent of goods and services projects valued above \$220,000 (equivalent to the EU threshold of \$135,000 euros) that were tendered to a single supplier, which does not meet the EU performance threshold for this indicator.

The Commission noted that there are significant differences in the use of direct negotiation between departments (ranging between 27 per cent and 74 per cent of the number of tenders for goods and services contracts, above \$33,000 and between 9 per cent and 50 per cent for construction contracts above \$165,000).

Figure 3.4 also shows a high level of non-compliance, in goods and services, with the minimum number of quotes required by government, a finding which corroborates SMEs’ feedback about their lack of access to government procurement.

*Figure 3.4 Trends in goods and services tenders requesting only one quote (in number) above \$33,000 (including GST)*



Source: State Procurement Board Contracting Activity data, 2017-18, 2016-17 and 2015-16 (unpublished data).

Figure 3.4 shows that for goods and services in 2017-18:

- Between \$33,000 and \$220,000, where a minimum of three quotes is required by the SPB, 54 per cent of tenders only requested one quote;
- Between \$220,000 and \$550,000, where a minimum of five quotes is required by the SPB, 47 per cent of tenders only requested one quote, an additional 14 per cent from 2016-17;
- Above \$550,000, where a public tender is required by the SPB, 44 per cent of tenders only requested one quote, an additional 15 per cent from 2016-17.

When public authorities undertake public tenders, they do attract satisfactory levels of competition (above five bids per tender on average for goods and services and above three for construction, from the sample of 209 random tenders reviewed by the Commission).

Public tendering

The European Commission indicates that a level of 90 per cent or more in public tendering is satisfactory.

In 2017-18, South Australia was at 34 per cent in construction (for projects valued above \$8.5 million) and 24 per cent in the goods and services sector (for projects valued above \$220,000), which is significantly less than the EU benchmark.

Of particular interest is the practice, in Housing SA, DPTI building construction and SA Water of requesting tenders from a selected group of three to six suppliers on a panel or prequalification list. From the 106 random tenders studied by the Commission, this market approach was used for 100 per cent of DPTI's building construction tenders, 82 per cent of Housing SA's tenders and 50 per cent of SA Water's tenders valued above \$500,000.

The European Commission has developed a list of instances when public tendering is not required<sup>11</sup>. This list could assist Procurement SA when developing standards.

**Recommendation 3.4:** In order to increase the transparency of the level of competition in government procurement, the Commission recommends that the government, through Procurement SA and Infrastructure SA:

- set targets for, monitor and report on the use of single supplier tenders and public tenders for goods and services and construction procurement; and
- develop acceptable standards for the use of single supplier tender, with a list of clear and verifiable reasons.

### 3.1.5 Better engagement with suppliers

The Commission explored market engagement in Stage 1 on goods and services procurement, focusing on public authority knowledge of the marketplace and supplier capability; information provided to suppliers during the tender process and information on future procurement needs of public authorities.<sup>12</sup> In response to the Commission's recommendations in the Stage 1 report, the government decided to:

- develop a revised Meet the Buyer program that will include agency involvement and have specific forums for 'start-up' businesses;
- conduct regular 'supplying to government' workshops with interested businesses engaging with agencies to improve their understanding of the public sector procurement process;
- create linkages between the Industry Capability Network and supplier information held by agencies;
- develop improved guidance and training for agencies on effective industry engagement and providing feedback to suppliers; and
- improve agency compliance with the publishing of forward procurement plans.

<sup>11</sup> European Commission, *Public Procurement Guidance for Practitioners* (2018) pp46-47.

<sup>12</sup> South Australian Productivity Commission, *Inquiry into Government Procurement: Stage 1, Final Report*, pp. 65-75.

The following sections incorporate information received before and after the draft report. The evidence includes significant additional information from DPTI, other public authorities and prescribed public authorities.

Section 3.1.4 discusses the public authority approach to selecting their market engagement method for construction procurement.

#### ***3.1.5.1 During tenders***

The AIIA (Australian Information Industry Association) SA Branch provided support for the government's general approach to selecting market approach insofar that different engagement models are appropriate for different types of products and services.

Business stakeholders consider the cost of tendering is an issue for construction procurement processes, particularly for the design phase of the process. Stakeholders are concerned that project briefs tend to lack relevant detail and can omit significant information. This can significantly increase the risk to the consultant responding to the tender. In addition, a lack of resolution regarding the construction procurement methodology at the time of the tender request increases uncertainty.

The AIIA considers a regular review of tender documents should occur to ensure that requested information is pertinent and that a level of detail would ensure improvements to the tender system. Consultancy tender requirements for small projects remain disproportionately onerous as compared to the potential fees for the project.

Some tenders also require information that has already been captured in the prequalification process or which contradicts prequalification requirements. Other examples cited included multiple requests for resourcing and financial information, adding significant time to the preparation of the tender without adding useful information, and sometimes not commensurate with the size of the tender.

#### ***3.1.5.2 Outside the tender process***

DPTI advised that balancing state and industry interests is an ongoing challenge. Meeting and managing the expectations of large contractors, SMEs, designers, architects and other professional service providers requires ongoing commitment, particularly regarding value for money and apportionment of risk.

DPTI supports 'Meet the Buyer' events, works closely with the Office of the Industry Advocate and engages with industry bodies to discuss upcoming construction procurement opportunities.

The prequalification framework for building and transport infrastructure projects is one of the main initiatives to improve supplier capability for construction procurement. DPTI advises it works closely with suppliers to address prequalification requirements. It reviews the procurement strategy for each procurement and determines the best method of engaging the market having regard to market conditions, and the value and risk of the procurement.

DPTI's Projects Pipeline Industry Briefings are attended by the minister, chief executive and senior DPTI representatives and provide an overview of the state's upcoming and future

capital projects, including proposed delivery models, timeframes and information on tendering opportunities for industry.

The Department for Education indicated it engages and collaborates with other jurisdictions and industry about alternative delivery models. The example cited was a collaboration with Victoria regarding a model that offered faster delivery of school classrooms.

The Department for Health and Wellbeing (DHW) advised it has a network of professional services contractors which help to identify potential new suppliers and technologies. It also receives direct approaches from suppliers to present their products or services. DHW holds various memberships with key organisations and associations to better understand the market.

SA Water communicates with its suppliers through a range of activities. The Commission notes that the SA Water framework for engaging the market and understanding its capabilities is well-considered and structured. SA Water has also implemented a supplier relationship management strategy, including:

- annually identifying its strategic suppliers;
- recording information on its strategic suppliers, including through profiles, a supplier performance management tool and a contractor management system;
- evaluating its strategic suppliers through performance and risk scorecards (including level of satisfaction and regular financial viability assessments);
- engaging with its strategic suppliers through annual or biannual meetings; and
- reporting on its strategic suppliers through a supplier management dashboard.

### ***3.1.5.3 Feedback/lessons learned***

In Stage 1 of the inquiry, stakeholders reflected on the ad hoc nature of feedback provided to suppliers and its usefulness when tendering for goods and services contracts. The feedback on construction procurement processes in Stage 2 has mirrored these sentiments.

The AIIA (SA Branch) reflected that while public authorities are obligated to offer unsuccessful suppliers the opportunity to receive feedback, they consider that the feedback received is usually unhelpful as it too high-level or abstract, not delivered in a consistent manner (thus not allowing longitudinal analysis of performance/success rates and relevant causes), or actionable in the sense of driving improvements and encouraging learning.

According to several stakeholders, feedback on tenders generally has to be requested by suppliers and is not offered as an automatic follow-up service. When feedback is gained, it tends to be brief and lacking in specific information.

In general, stakeholders limit their complaints to public authorities as they perceive complaints may prejudice future invitations to bid for projects. This is certainly the view within many industries, where businesses are concerned that they will not be considered for future projects if they raise concerns regarding procurement methodology, contract conditions or project management.

There is no documented process for analysing the results or addressing the common themes from surveys of, or engagement with, suppliers for either goods and services or construction procurement. The use of survey results and engagement with suppliers to derive meaningful feedback is identified as a deficiency in data management and reporting and is discussed in Chapter 4.

While the number of supplier complaints made to the SPB for goods and services procurement is recorded and reported on, there is no such corresponding process for reporting on supplier complaints regarding construction procurement. The Commission has concluded that Procurement SA, in its sizeable task of reviewing and revising procurement policies, needs to ensure coverage of construction procurement by creating supplier feedback and supplier complaint policies to ensure meaningful recourse for suppliers in the absence of statutory provisions contained in the *State Procurement Act 2004*.

#### **3.1.5.4 Transparency**

Stakeholders provided feedback to the Commission on their concerns regarding the transparency of the procurement process and regarding transparency more broadly in situations when public authorities engage with suppliers.

Consult Australia cited examples of the approach by public authorities to requests for information or amendments to previously submitted documentation during the tender stage. Some agencies deem a tender to be nonconforming due to the tenderer seeking clarification on the requirement to attend a set number of meetings, or because the tenderer has raised concerns regarding contract terms and conditions. The Commission has been unable to verify these examples.

Stakeholders have also highlighted inconsistencies in the approach of agencies to contract negotiations; the more collaborative agencies recognise that the process enables both parties to resolve issues in order to avoid wasted costs or disputes further down the line, while others limit the use of this process impacting on fairness and transparency.

The AIIA (SA branch) reflected that data and analytics as part of the market engagement stages would also provide value in informing better procurement outcomes by allowing respondents to better understand context, complexity, current usage, trends and volumes. This corresponds with feedback to the Commission on government panels, which is presented in section 3.3.

The Commission has observed that public authorities use different assessment criteria for similar construction projects and that the assessment of value for money is not consistently applied.

While not the subject of a recommendation, the Commission has concluded that an improved level of transparency would be helpful at all stages of the procurement process and that responsibility for transacting with suppliers and engaging with business in a meaningful and productive manner lies with public authorities. Improved transparency relates to:

- collaboration on specifications and project design as well as continuous dialogue on upcoming work;

- feedback and ongoing dialogue on tender responses and supplier capability;
- handling of complaints with clear pathways for suppliers and resolution;
- publication and supplier understanding of criteria used for tenders and weightings attributed to those criteria for types of procurement projects with consistency of approach to be applied where possible; and
- the pricing of risk being disclosed as a factor in the value for money assessment and choice of supplier.

### 3.1.6 Capturing the benefits of innovation

The terms of reference of this inquiry include considering examples of contemporary procurement policies and practices from interstate, overseas and the private sector and their effectiveness in promoting innovation. This section addresses both construction procurement and procurement of goods and services.

Public procurement is generally considered an instrument for fostering innovation to deliver new or improved functionality in government procurement and by providing reference sites as a customer for innovative businesses. The use of public procurement to stimulate innovation is either incorporated within, or subordinate to, the primary function of government procurement, namely to provide public services at the best whole-of-life cost.

In supporting innovative products and purchases, public authorities must strike a balance between traditional value for money considerations and purchasing products that are in the development stage or not widely available. This approach carries with it inherent risks and potential costs.

#### *Stakeholder views*

Feedback from stakeholders to the Commission has focused on strategic aspects of utilising procurement to facilitate innovation outcomes as well as the practical application of procurement guidelines and policies by agencies when purchasing innovative products.

The AIIA (SA Branch) suggested reforms to innovation policies by ensuring that contracts allow for emerging and incremental technology improvements as well as emerging products and services during the contract term, without the need for additional procurement; by engaging more meaningfully with industry to communicate future plans and discuss market developments; and by creating mechanisms such as proof of concept initiatives, allowing for development or technology evaluation to be included as part of the contract.

Supplier feedback to Business SA indicated frustration with the requirement for IP transfer in state government contracts, which is perceived as a disincentive to innovation and a barrier to doing business. Business SA members questioned why government necessarily had to own businesses' IP when they do not have the commercial capability to exploit it. Business stakeholders said they would not share IP with public authorities without strong safeguards to prevent their IP being given to competitors in the tender disclosure process or through future procurements.

Some feedback has suggested shortcomings in the ability of public authorities to define and describe to suppliers what is being purchased and the objectives of the purchase during the

tender process. This has implications more broadly for procurement outcomes as well as innovation outcomes. The AMCA SA's submission detailed potential improvements in the tender process to ensure that public authority tender:

- designs and documentation can be understood and responded to meaningfully by suppliers where goods and services are not common in the marketplace;
- specifications elicit responses that enable clear assessment of how suppliers will meet the requirements and that address assessment criteria; and
- scope is open enough to allow suppliers to interpret the government's requirements.

### *Innovation policy and practice in South Australia*

In the context of construction procurement, DPTI guidance material for building infrastructure discusses innovation in the context of shared risk contracts being part of the contractor risk and reward system. DPTI offers rewards for excellence in the management of construction contingency or for achievement of on-time completion of projects.

DPTI guidance material for building construction includes a schedule of delivery models and selection factors, including innovation in design and construction and the level of innovation desired. There is no further guidance on the relative merits of different delivery models from an innovation perspective.

For goods and services procurement, agencies dealing with innovative proposals must comply with the SPB policy on probity and ethical behaviour, as well as other government policies, guidelines and codes to monitor ethical behaviour and prevent fraud and corruption.

Currently, there is limited guidance for public authorities on supporting innovation and evaluating innovative proposals in the suite of policy/guidance documents issued by the SPB. Innovation and IP do not have a dedicated policy or guideline and are not common themes in other guidance material. Procurement officers in public authorities use, when the situation requires, the South Australian Government Intellectual Property Policy.

#### **3.1.6.1 Innovation pathway through procurement**

##### *Evidence*

The Commission has found that the current procurement frameworks for construction and goods and services, in design and in practice, have limited avenues for enabling collaboration or commercial partnerships for the purchase of goods and services with innovative characteristics. The underlying causes may be:

- innovation is often considered during the market approach phase rather than at project design. Project design is where most of the benefits can be maximised;
- a lack of understanding that poor procurement specification and acquisition processes may limit innovation; and
- the absence of processes applied within agencies across the public sector to identify opportunities for innovative solutions, coupled with poor market engagement.

During both stages of the inquiry, the Commission has not been presented with quantitative information that enables assessment of the extent of innovation in procurement projects. Much of the information is anecdotal. The evidence received from stakeholders and public authorities included the following points:

- In construction procurement, the spectrum of delivery models allows, to varying extents, innovative design and contractual arrangements for delivery of project objectives. In practice, this consideration needs to be factored in with others including risk, time, capabilities and outcomes which may be dictated by government considerations of budget, availability of key Tier 1 contractors and timing (scheduling the delivery of projects related to service provision or political considerations).
- In goods and services procurement, while the guidance on innovation is more comprehensive and explicit than in construction procurement, the focus of public authorities on delivering financial savings in their purchasing is said to cause reluctance to encourage and select innovative solutions. The use of preferred suppliers and negotiation with one or a small number of suppliers reduces competition and the potential to test a range of innovative products to meet business requirements.
- The Commission's study of tender documents and purchase recommendations showed that agencies seem to be reluctant to engage with suppliers at critical parts of the planning process. This limits important opportunities for collaboration with suppliers. These concerns may result in the choice of more expensive bids that have in-built insurance against risk of project failure.
- Innovation is often not seen as an enabler to meet purchasing objectives. Engagement with public authorities by the Commission revealed very few examples of innovation in procurement. Public authorities and businesses lack a common understanding in terms of the application, use and development of innovative products and services.
- There is evidence, for both goods and services and construction procurement that significant value may be lost when comparing what the market has to offer and what public authorities are willing to take up. This is observed in the construction sector where a focus on minimising price risk and timeframes can reduce the likelihood of encouraging innovation in design.

The Office of the Chief Entrepreneur has recently published the SA Government's Future Industries Exchange for Entrepreneurship Strategy, which supports local businesses to improve their capacity to innovate and commercially develop proposals.

The strategy recommends the adoption of a Smart Procurement Policy to source more innovative solutions from entrepreneurs and early stage businesses. Fundamental elements of the Smart Procurement Policy are:

- public authorities to take account of the policy in their purchasing;
- a single sourcing procurement methodology for innovative start-ups and growth of SMEs through securing opportunities for procurements valued up to \$550,000;

- encouragement and incentives for the private sector to collaborate and co-invest with government to deliver projects; and
- a schedule of supply chain events (e.g. Hackathons and 'Meet the Buyer') to connect start-ups with potential public and private customers.

The policy would take effect through the SPB's policies and guidelines; however, no evaluation mechanism has yet been developed.

The Chief Entrepreneur and the Industry Advocate have argued for the Smart Procurement Policy to become part of the government's suite of entrepreneurship and innovation policies and programs. The policy would ensure that local businesses would have better opportunities to participate in trials and pilots of their products and to gain more widespread acceptance of their innovative products by South Australian Government agencies.

The Victorian Innovation and Procurement Process Guide details innovation activities such as pilot projects, cost sharing and longer-term contracts for innovative products, sharing of elements of risk and licensing arrangements. The Department of Agriculture and Fisheries, in Queensland, in another example, developed new varieties of fruit and vegetables, licensing them for distribution and commercialisation. Queensland and New South Wales have implemented versions of the SBIR program. The Commission is not aware of any evaluations of these programs at this stage.

The Commission notes the efforts currently being taken to increase the flexibility of procurement to encourage more innovation and creativity in addressing the state's procurement needs. That said, the Commission considers such flexibility should not be at the expense of rational, well-considered procurement that is fit-for-purpose and will deliver value for money for South Australia.

It is likely, in the Commission's view, that innovation can be encouraged by asking, early in the acquisition process, what innovative solutions might exist and deciding early to what extent they could be examined and tested. It is likely that such a two-step process has wider application than at present; at the same time the Commission considers it unlikely to be the main emphasis for procurement, as in most cases the procurement need is clear and well understood.

The Commission recommended in the draft report a number of changes to policy and practice to encourage more innovation in procurement in line with the policy changes proposed by the Chief Entrepreneur; however, upon further review the Commission considers they are addressed sufficiently by the Chief Entrepreneur's proposals.

### ***3.1.6.2 Treatment of intellectual property by public authorities***

The Australian Government issues, for use by all Public Service Act entities, a statement of IP principles that provides a broad policy framework for IP management by Australian Government departments. The statement of principles is supported by extensive guidance material including<sup>13</sup> a manual, model contract clauses for ICT contracts and related

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<sup>13</sup> Australian Government, *Intellectual Property Manual*, June 2018, p. 10.

explanatory material, and guidelines on licensing public sector information for government departments.

The New South Wales Government has developed comprehensive guidelines on management of IP<sup>14</sup> and the Queensland Government has developed IP principles to provide a high-level policy guide for public sector agencies in managing IP.<sup>15</sup> The Victorian Government provides guidance for their procurement staff on encouraging and facilitating innovation in procurement<sup>16</sup>.

The South Australian Government IP Policy provides little practical guidance for officers in managing the IP of suppliers in the procurement process. The inclusion of IP is not a mandatory requirement in the procurement process.

Difficulties for procurement officers in South Australia generally arise where public authorities are purchasing a product or service that is designed wholly for use of the public authority or when suppliers want to protect their IP relating to a particular project. The Commission has been advised that the intent of the state's policy is that only in the instances where the entirety of the product and all capital developed are wholly for the use of a public authority should IP be required to transfer to government.

The Commission considers the current guidance and policies on managing IP in procurement to be inadequately specified in relation to providing certainty and confidence for suppliers or procurement officers. This situation has led to a reluctance on the part of suppliers to engage with government or to approach government with their products, particularly SMEs. The absence of clear guidance has also led to the risk-averse nature of procurement processes being overstated at the expense of noting the possible benefits of the proposal. This calls for much greater flexibility for IP contract provisions in government contracts and clearer guidance for procurement staff.

The benefits of redressing this situation are that:

- officers in public authorities would have authoritative information in engaging with suppliers on IP issues; and
- suppliers would have complete transparency on how their IP will be handled in specific situations.

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<sup>14</sup> New South Wales Government, *Intellectual Property Management Framework for the NSW Public Sector*, Premier's Department, 2005.

<sup>15</sup> Queensland Government, *Queensland Public Sector Intellectual Property Principles*, January 2013.

<sup>16</sup> Victoria Department of Treasury and Finance – Innovation and the Procurement Process – Procurement Guide, October 2012.

**Recommendation 3.5:** In order to reduce the impediment to suppliers applying their IP in tender proposals, the Commission recommends the government develop clearer arrangements for IP by:

- developing and publishing improved guidance on the South Australian Government Intellectual Property Policy to provide a wide range of examples of types of procurement and the state's position on ownership of IP;
- including guidance on the relative merits of innovation and instructive case studies for construction procurement, outlining the factors for various delivery models and flexibility in contract provisions; and
- providing guidance on managing IP that covers needs analysis, managing IP through the procurement process and model clauses and contracts that address matters raised by stakeholders.

### 3.1.7 Improving risk management

The Commission found several similar risk management issues in construction procurement and goods and services procurement. They are shortcomings in data and reporting, risk allocation and the need for guidance on risk management. The choice of delivery model for various types of projects also came up as a risk issue.

Public procurement projects involve different types of risk, including design, material, site and construction, operation and markets, service interruptions and political and regulatory conditions. Some risks are project-specific, while others are system-wide. In addition, risks are not uniform over the life of a project, with risks being more numerous during the start-up phase of a project and generally less numerous during the operating phase. Effective risk management optimises the highest expected value.

Effective risk allocation and management means that risks are borne by those most able to mitigate them, are efficiently priced, and are allocated in a way that shares the benefits and the costs of a materialised risk.<sup>17</sup>

There are a limited number of ways that risks can be allocated. Risks can be:

- retained by the government;
- transferred to, and retained by, the private party; or
- transferred to the private party but then reallocated to third parties, including to subcontractors, covering by insurance or by passing on to end users.<sup>18</sup>

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<sup>17</sup> Productivity Commission, *Inquiry Report, Public Infrastructure*, No. 71, 27 May 2014, p. 123.

<sup>18</sup> E.R. Yescombe, 2007, *Public-Private Partnership: Principles of Policy and Finance*, Elsevier, UK.

### *Stakeholder feedback*

Stakeholders' feedback on risk management in Stage 2 of the inquiry fell into two groups: the allocation of risk between government and the head contractor; and between the head contractor and subcontractors.

External stakeholders consider that the government is driven to minimise the risk it retains (without necessarily reducing or managing the total risk inherent in the project) through contract terms and conditions that transfer risk to other parties. External stakeholders, unsurprisingly, see this as unreasonable as it exploits the asymmetries of information and power between contracting parties, and often results in risk being transferred to those least capable of managing it. The view among the business sector is that this transfer inevitably results in a risk premium being built into the tender price. Businesses believe that public authorities are aware of the risk premium.

External stakeholders also observed that if projects have uninsurable risks and liabilities, then these disincentives push contractors to the simplest, easiest and least innovative solution. The overall outcome in terms of cost and functionality (and missed innovation) can be suboptimal for the state.

The Australian Institute of Architects (AIA) indicated that a recent DPTI review of consultant contracts found some examples that unfairly attribute risk to consultants. This includes levels of insurance exceeding the actual financial risk to the client and removal of established limits for liability. The Commission has not been able to obtain a copy of the report for its review.

#### ***3.1.7.1 Consistent application***

The Commission's investigation pointed to risk allocation being approached in two ways. The first considers the size of project or projects undertaken, while the second considers the nature of the relationship between the client and contractors.

In its inquiry into public infrastructure in 2013-14, the Commonwealth Productivity Commission found that, for large projects, Australian governments were increasingly consulting with industry over the way a project may be packaged (in terms of breakdown of work and size of contracts) to increase competition by:

- reducing overall project complexity — if the work is too large or complex, there may only be one or two suppliers able to complete the entire package of work; and
- reducing the level of risk transferred to any one market participant — again, only a small number of suppliers may be able to take on the risk related to an entire project.

DPTI has advised of its intent to reduce the complexity of some projects by tendering smaller contracts for work to address issues like service relocations and other latent conditions prior to tendering the larger projects. Stakeholders are supportive of this approach but would like to see some tangible outcomes before acknowledging that progress is being made. Further information on DPTI's approach is set out in section 3.3, which considers bundled and unbundled contracts in connection with civil works.

SA Water's approach to managing the supply chain is through major framework partners. These are suppliers considered critical to the operation of SA Water. Part of supply chain management involves framework partners achieving high levels of collaboration and integrity in the management of suppliers and risk. This long-term supply system is also likely to increase the opportunities to seek innovative solutions, given the experience of other sectors. It does result in fewer suppliers with long-term arrangements, which is a feature of supply chains in other industries, such as automobile manufacture.

The Commission considers that application of risk ratings in construction procurement appears more consistently and rigorously applied than is generally the case in goods and services procurement. Risk assessment is a well understood step in DPTI's construction procurement and is a major consideration in, among other things, the choice of contracting model, packaging of work and approach to the market.

While the Commission is aware in broad terms of the processes and importance of risk assessment in DPTI's procurement activity, it understands the work is done on a project-by-project basis. It considers that more formality would be useful in developing staff capability beyond a small number of key personnel.

The South Australian Auditor-General's reporting and review of the agency operations over the last four to five years has identified similar deficiencies in the design and application of risk management, notably in construction and infrastructure projects. The Commission has not sought to replicate this work but it has been included as part of its evidence.

### **3.1.7.2 Contract choice**

The National Public Private Partnership Guidelines state that in determining the appropriate delivery model, departments need to consider which model will:<sup>19</sup>

- facilitate achievement or optimisation of project objectives and outcomes;
- achieve the most suitable balance between the level of control the department requires and the degree of risk that is optimal to bear;
- optimise the schedule, cost and quality outcomes for the project;
- best suit the characteristics of the project;
- provide the best value for money;
- achieve the risk management objectives for the organisation and the project; and
- provide the most appropriate risk allocation among parties.

A key aspect of these criteria and the assessment of value for money generally relates to the way project risks are allocated among parties. Delivery models vary in their scope to allocate risks and should be chosen based on a consideration of the types of risks the project is likely to face. There is also inherent risk in the design solution, with the delivery model dictating the proportion of the design that is completed before it is taken to market.

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<sup>19</sup> Infrastructure Australia, *National PPP Guidelines, Volume 1: Procurement Options Analysis*, Canberra, 2008.

The delivery models more suited to achieving dollar savings, such as construct or design and construct, also feature a greater allocation of risk to the contractors. These models usually have a well-defined scope with standard solutions and few unknowns from a risk perspective.

Delivery models based more on collaboration and supplier relationships, such as Alliances or Private Public Partnerships, have greater opportunities for risk and opportunity sharing. These types of projects have a greater number of unknowns that are time-critical but also offer a far greater scope for delivering innovative solutions and flexibility for both parties to share the benefits.

DPTI have indicated that while risk does play a large role in consideration of delivery models, it is not the only consideration, with timeframes, desired outcomes and capability of the local market being other factors.

From DPTI's perspective, the main issues associated with risk in the delivery of civil infrastructure are service relocations and unknown latent conditions; for instance, water mains where service providers operate through uncontested arrangements. This drives uncertainty on timeframes, dates for access and completion dates for service relocation or installation.

SA Water have designed a suitability scale for determining the choice of delivery model related to the characteristics of the project; it is included in their category management strategies and planning processes.

### ***3.1.7.3 Strategy and accountability***

#### *Strategy*

The Commission has reviewed the extent and content of guidance material on the DPTI intranet. The material is mostly technical and procedural. The Commission suggests it would benefit from the inclusion of methodologies that can be applied across the organisation to facilitate consistency of risk ratings, mitigation and evaluation.

In addition, the Commission's review of tender documents and consultation with external stakeholders suggests the application of the existing risk management tools is conservative. While this may be appropriate, the Commission suggests DPTI test this matter in its current improvement activities and consider developing appropriate training and guidance material. Such material could acknowledge all risks inherent in public procurement projects, even where they are borne by contractors, since they can affect public authorities and end users. It is in the public interest that all risks are considered, treated and tracked accordingly.

DPTI has advised the Commission that improvements to its risk management approach are being developed. Existing systematic issues are said to result in too high a focus on low-value, low-risk projects, a lack of data and reporting, poor management of risk through the project supply chain and a low level of strategic importance attached to planning and managing risk to support better procurement outcomes.

Based on its self-assessment, DPTI believes improvements can be made in:

- ongoing engagement with industry more broadly;

- developing better models for risk allocation that improve outcomes for both the client and contractors;
- better understanding within the department and industry about the impacts of changes in scope and delay on major projects; and
- greater focus on risk across the department in respect to the contract management phase of construction projects.

In terms of risk allocation to contractors in the supply chain for construction projects, the Commission considers that SA Water's approach to managing its supply chain by encouraging best practice among its Tier 1 suppliers represents an opportunity to minimise the adversarial and risk-shifting approach on these projects. SA Water's approach recognises that the health of suppliers in the chain affects all other suppliers and shows how the client (government) expects smaller businesses to be treated.

#### *Accountability*

Practical difficulties in extracting information from existing systems were identified by agencies, including DPTI, which highlighted the constraints imposed by its old, inefficiently linked and functionally limited system. DPTI is aware of this issue and has indicated that systems improvements are a priority for the agency. The Commission agrees with this view.

The Commission sees merit in better recording the outputs of risk management efforts, such as by category of expenditure and by project delivery types, which would provide information and insight into the purchasing profile and activities of government departments. In addition, project reviews following construction completion may well benefit from recording the outcomes of risks, where they eventuated, for improvements to the process in the future. This information is a foundation for identifying opportunities to continuously improve procurement and find more whole-of-government improvement opportunities.

### **3.1.8 More effective contract management**

#### ***3.1.8.1 Introduction***

This section focuses on contract management relating to construction procurement. It complements the earlier examination of contract management for procurement of goods and services in Stage 1 of this inquiry.

Effective contract management ensures the supplier and the public authority meet their contractual commitments to time, cost, quality and other agreed matters. It requires systematic and efficient planning, execution, monitoring and evaluation to ensure that both parties fulfil their contractual obligations with the goal of achieving value for money and the intended benefits for the community.

#### ***3.1.8.2 The contractual chain***

The Commission notes the obvious point that for construction projects the government's contractual relationship is with the head contractor, not with its subcontractors. Nonetheless, the government has an interest in the stability of the construction industry, including subcontractors.

The key issues for subcontractors in public infrastructure projects are payments to subcontractors, financial health of head contractors and the allocation of risk in the contract.

*Stakeholder feedback*

Stakeholders, including the AMCA, the CEPU and the Small Business Commissioner, have asserted that all forms of risk are shifted through the building and construction contractual chain away from those most capable of managing risk down to those least capable of managing that risk.

These stakeholders also maintain that implementation of head contractor agreements results in the imposition of subcontractor conditions that bear little resemblance to the contract between the government and the head contractor, and that the subcontractor has little or no bargaining power to negotiate fairer contractual terms. The Commission received submissions on this point as well as hearing the point made by numerous stakeholders.

**3.1.8.3 Use of standard contracts**

*Stakeholder feedback*

Consult Australia and O'Connor's Mechanical Engineers and Constructors consider that more frequent use of standard contracts would be an important reform to assist better contract management and project outcomes. Such contracts may reduce the need for costly legal review or negotiation and allocate risk and reward more efficiently.

Consult Australia told the Commission that standard contracts for professional and technical services have been adopted to some extent by DPTI, but they argue that agencies are still attaching special conditions that reduce the benefits associated with using standard contracts.

The Commission has consulted with DPTI on the use of standard industry contracts, including the addition of special conditions and other latent conditions that are used as standard throughout the industry.

*Findings and recommendation*

Regarding the use of standard contracts, the Commission has been presented with examples where bespoke contracts, or standard contracts amended to varying degrees through inclusion of additional clauses, are being used for low-risk and low-value procurement projects. Further, the types of standard contracts used by departments can be reviewed and replaced by different standard contracts without consultation with suppliers.

Stakeholders have identified instances of persistent delays to the review of standard contracts, resulting in a lack of knowledge in the marketplace of which contract is currently being used. The MBA have advised the Commission that they have been participating in the most recent review of standard contracts.

The Commission's investigations of risk management and contract management processes sought quantitative evidence on:

- types of contracts used corresponding to types of procurement;

- instances where clauses within standard contracts are being replaced with bespoke clauses, with reference to project type and identified risk; and
- length of time that contracts remain standard for use by suppliers.

Unfortunately, this information is not collected by public authorities.

The Commission considers that the lack of tracking of the use of contract types, including standard contracts, and clauses within contracts is a weakness in information flow for decision makers. The Commission sees merit in collecting this information to support DPTI knowledge of commonly used arrangements and to assist review of the efficacy of contract types and contract clauses.

**Recommendation 3.6:** To support improved outcomes from the use of standard contracts in construction procurement, the Commission recommends that:

- DPTI finalise its position on standard contracts and clauses within nine months and communicate the details to stakeholders;
- DPTI establish a mechanism to track the use of different types of contracts within the department and the types of clauses used along with establishing reporting mechanisms and governance to monitor these contracts; and
- All agencies accredited to undertake construction procurement use, where appropriate, the same standard industry contracts in their dealings with suppliers.

### ***3.1.8.4 Improving the achievement of value***

#### *Stakeholder feedback*

It is the view of stakeholders that DPTI, and government more generally, work on the premise that when undertaking a building project, the only recognised contractual relationship is between the client (DPTI) and the builder.

AMCA SA stated it was not aware that DPTI has processes in place to monitor consistent terms and conditions throughout the contractual chain, at the time of the issuing of head contracts and subcontracts, and during their operation. It was also not aware of the proportional allocation of risk, or the application of the government's commitment to pay within 30 days.

#### Contract management

A performance rating meeting and subsequent Performance Rating Summary Report is used by DPTI to measure overall performance of the contract while the work is being performed. This information is provided to the contractor, DPTI Procurement, DPTI Contracting and DPTI project areas and can be used for:

- review of contractor prequalification level;
- general improvement of DPTI practices for future projects; or

- updating of DPTI contract-specific requirements and master specifications.

'Lessons learned' meetings are used to identify what was done, what worked well and what can be improved.

#### Evaluation, data and reporting

The evaluation phase for building infrastructure is usually undertaken by Lead Agencies. The Commission has sighted examples of close-out reports conducted by DHW for works conducted for that department. These reports provide insight into project outcomes, including financial and non-financial outcomes, such as environmental impacts.

At the end of the project for significant contracts, a performance rating meeting between DPTI and the contractor is held, and a report is produced incorporating lessons learned from the project. The lessons learned report covers issues identified during the course of the project and how they were addressed.

Consistent with the findings in Stage 1, the absence of whole-of-government contract management reporting and performance measures limits the ability of public authorities involved in construction procurement to assess relative performance across similar types of contracts or across service delivery elements.

The Commission observes that most of the procurement effort occurs at the approach to market and supplier selection stages. Following these stages, the subsequent governance and oversight of contractual arrangements for construction procurement appear weak in design and in practice. These following observations from stakeholders support this conclusion:

- the most common issue for variation or delays to project is poor upfront planning owing to a condensed timeframe for completing the project;
- capability to manage projects has been lost, with key public authorities considering options to remedy the issue;
- contract management and procurement IT systems are not adequate for current and expected business levels; and
- the contract management function in government agencies needs a stronger focus on strategic planning, reporting and capability building.

The Commission sees merit in Procurement SA addressing professional standards and capabilities for agencies appointing contract managers. Section 4.2 contains recommendations for the development of strategic procurement competencies of construction procurement staff in contract management.

## 3.2 Achieving better value for money

### 3.2.1 Whole-of-government framework

SPB's Value for Money Guideline, developed in January 2018 for goods and services, defines value for money as 'the optimal use of taxpayer resources to achieve the intended procurement objectives'.<sup>20</sup> The guideline states that:

- Value for money is to be considered and applied throughout the procurement process.
- Determining whether value for money has been achieved requires clearly stated objectives that can be measured and compared to the outcome of the procurement once it has been delivered.
- 'Spending less' may be traded off against 'spending well'.

The concepts of whole-of-life costs, quality, risks, client satisfaction and other government objectives are often mentioned in policies. No targets are set and, apart from the SAIPP, no process is suggested on how to incorporate those objectives in the acquisition plan or the evaluation process and how to ensure actual outcomes through the contract management process.

In considering value for money, the Commission found it useful to distinguish direct and indirect value. Direct value is the best price paid to achieve a desired or preferred whole-of-life functionality. Quality, whole-of-life costs and risks are three factors relevant to assessing direct value for money. Indirect value refers to achieving or contributing to wider government objectives through government procurement, such as SME participation in government contracts, opportunities for Aboriginal employment, environmental outcomes or apprenticeship training. In the Commission's view, guidance on value for money needs to clarify this distinction and suggest how (and when) to incorporate indirect value. In practice, this can be particularly relevant to high-value construction projects and whole-of-government contracts. Transparency of these objectives, including measurement, is extremely important.

The SAIPP started with economic impacts (jobs and investment in SA) and is now integrating some social objectives (e.g. Aboriginal participation, trainees and apprentices). It provides an example of other government objectives being integrated into the procurement process. However, the consideration of other social or environmental objectives is currently an ad hoc process. There are examples of agency-led approaches (e.g. SA Water's Zero Cost Energy Future program and its Reconciliation Action Plan), whose targets are included in the IPP and tailored plan for SA Water tender documentation and are reported on publicly.

In the case of construction projects undertaken by DPTI on behalf of other agencies, the 'value for money' objectives must be set by the client agencies, including whole-of-life requirements and other government objectives. Once agreed, Lead Agencies' objectives are then integrated, where appropriate, in the tendering process. Apart from the SAIPP, there

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<sup>20</sup> State Procurement Board (SA), *Value for Money Guideline* (January 2018), 4

is no common plan or framework across public authorities to guide the realisation of those objectives.

**Recommendation 3.7:** Noting the government's decision to improve the 'Value for Money in Procurement' guidelines, the Commission recommends that the revised update address:

- current economic, environmental and social objectives and associated targets;
- how those objectives and whole-of-life costs will be considered through the lifecycles of projects (i.e. during the planning phase, in relation to tender specification and the process of tender evaluation, and during contract management) and by who;
- how each target will be measured and reported against;
- how the evaluation of outcomes and improvement of practices/change of objectives will occur; and
- inappropriate uses of rebate (asking tenderers to offer a rebate back to the agency), access fees (asking tenderers to pay a fee to access the site where the work must be conducted) or requesting a contribution to charity (asking tenderers to contribute to a charity).

The Commission has noted the following examples, in other jurisdictions, to incorporating social and environmental objectives in procurement:

- NSW social procurement strategy<sup>21</sup> concentrates on three objectives (Aboriginal participation, people with a disability and SMEs) and sets KPIs for those:
  - 1 per cent stretch target (meaning that the supplier can go above) for Aboriginal participation;
  - 1 per cent stretch target for either workers with disability participation or SME participation (or a mix of both);
  - Minimum targets have been set for Aboriginal participation: 3,000 FTE opportunities created through procurement by 2021 (this is measured in per cent of contract value to reduce the risk of decreased wages), 3 per cent of domestic contracts for goods and services awarded to Aboriginal-owned businesses and 1.5 per cent Aboriginal participation for all construction projects over \$1 million or directed to an Aboriginal community.
  - The supplier's commitments are included in a participation plan, which is reported on and audited annually.

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<sup>21</sup> Social Procurement Action Group (NSW), *Social Procurement in NSW – A Guide to Achieving Social Value through Public Sector Procurement* (October 2012) <<https://www.socialtraders.com.au/wp-content/uploads/2016/05/Social-Procurement-in-NSW-Full-Guide.pdf>>

- Victoria's social procurement framework<sup>22</sup> includes a greater number of social and environmental objectives (targeted towards social and disability enterprises, Aboriginal businesses, disadvantaged communities, women, disability, family violence, fair and safe workplace, environmental sustainability and climate change) which have a combined weighting of 5 to 10 per cent of tender evaluations for projects above \$3 million (\$1 million in regional areas). This framework is in addition to the Victoria Industry Participation Policy (local participation) and Major Project Skills Guarantee (apprentices, trainees and cadets). Where possible, the Victorian government aims to avoid duplicating reporting requirements (e.g. use of ABN wash templates to collect the percentage of government procurement spend that went to Aboriginal businesses, SMEs, social enterprises, etc.).

### 3.2.2 Evaluation of tenders

For goods, services and construction, scoring tenders is how a contracting authority determines the most advantageous tender. It is normally based on finding the best price-quality ratio.

An important principle, when fixing the evaluation method appropriate to the purpose of the procurement, is that the contracting authority selects the criteria and decides their relative weighting.

It follows that the assessment method needs to reflect those preferences.

The Commission has found significant disparity in the evaluation methods used by different public authorities and within public authorities, and frequently poor documentation regarding the different methods used. The most common denominator in the choice of formula is the public authority or branch undertaking the tender, instead of the type of project and associated complexity and risk profile. More importantly, some of these formulas distort the integrity of the weighting given to all criteria, including the SAIPP.

The Commission has tested some of the methods used by different agencies (or, in some cases, by different areas in the same agency) on individual tenders. In a few instances, different methods (all other things being equal) returned different outcomes, meaning that a different supplier would have been chosen if a different formula had been used (see case study 3.1).

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<sup>22</sup> Department of Economic Development, Jobs, Transport, and Resources (Vic), *Victoria's Social Procurement Framework – Building a Fair, Inclusive and Sustainable Victoria through Procurement* (April 2018)  
<<https://buyingfor.vic.gov.au/social-procurement-victorian-government-approach>>

**Case study 3.1 – Comparison of price scoring formulas on tender outcome**

*Formula 1:  $2.5 + 5(\text{pretender estimate} - \text{tender price}) / \text{pretender estimate}$*

*Formula 2:  $5 - 5 \times \% \text{ deviation from avg (median} + \text{pretender estimate)} / (-2)$  if negative*

*Formula 3:  $5 \times (\text{lowest price} / \text{tender price})$*

Bidder	Price	Quality score	Total score with F1	Total score with F2	Total score with F3
1	8000	2.47	3.72	3.34	3.72
2	29000	3.25	3.72	4.01	3.60
3	26000	3.16	3.77	4.10	3.55
4	16000	2.62	3.71	3.73	3.25
5	10000	2.11	3.36	3.05	3.08
6	21000	2.34	3.17	3.55	2.81
7	15000	2.83	3.95	3.92	3.48
8	11000	1.89	3.14	2.86	2.77

In this scenario:

- bidder 7 wins with formula 1 (4<sup>th</sup> lowest price, 3<sup>rd</sup> best for quality)
- bidder 3 wins with formula 2 (2<sup>nd</sup> most expensive, 2<sup>nd</sup> best for quality)
- bidder 1 wins with formula 3 (cheapest tender, 5<sup>th</sup> best for quality)

Source: Office of the SA Productivity Commission

As part of its research, the Commission has examined the literature on tender evaluation methodologies and their respective values (see appendix 5). In summary, two types of methods can be used: absolute methods (evaluate a bid on its own merit) and relative methods (evaluate a bid in relation to other bids received or reference price). Relative scoring creates a ranking paradox<sup>23 24</sup> (situation when the original ranking of bids changes after one or more bids are added or removed<sup>25</sup> or if the reference price is changed), is not transparent<sup>26</sup> and does not treat bidders equally. Relative price scoring has been banned in Portugal and Rotterdam and is discouraged in France. However, despite being criticised in

<sup>23</sup> P. Stilger, *Formulas for Choosing the Most Economically Advantageous Tender: A Comparative Study* (Faculty of Sciences, Utrecht University, 2012)

<sup>24</sup> Tsong Ho Chen, 'An economic approach to public procurement' (2008) 8(3) *Journal of Public Procurement*, 407-430.

<sup>25</sup> P. Kiiver and J. Kodym, 'Price-Quality Ratios in Value-for-Money Awards' (2015) 15(3) *Journal of Public Procurement*, 275-290.

<sup>26</sup> Sofia Lundberg and Mats A. Bergman, 'Tender Evaluation and Award Methodologies in Public Procurement' [2011] <<http://ssrn.com/abstract=1831143>>

most papers reviewed by the Commission, it is the most common method used in South Australia and many other jurisdictions as a result of its apparent simplicity. This is an area for better guidance from the proposed Procurement SA.

The Commission notes the SPB's template for evaluation planning recommends the use of an absolute evaluation method with the following components:

- Establishment of mandatory evaluation criteria (any offer which cannot meet the criteria is not considered further);
- Establishment of weighted evaluation criteria (scored out of 10): in this evaluation, for each criterion, an offer meeting the criterion scores 9/10 and an offer exceeding requirement scores 10/10, with the overall score for the criterion being: score x weighting; and
- Use of a value for money index to measure and compare the overall package offered by different bidders, with the lowest value for money index winning the tender:
  - (Total Cost) divided by (Sum of Weighted Score for all criteria)

Despite the guidance being offered, in practice, various evaluation methods have been observed by the Commission, including selection on criteria only (no consideration of the price) or selection on price only (no consideration of other criteria).

Other scoring methods, used by public authorities, that are difficult to justify include:

- the exclusion of bids when the price is too high or too low, or the "0" scoring for prices that are too far off a benchmark (25 to 30 per cent away). In several jurisdictions, abnormally low tenders may only be rejected where the explanations given and evidence supplied do not satisfactorily account for the low level of price or costs proposed, taking into account a list of possible explanations (e.g. Scotland legislation, in *The Public Contracts (Scotland) Regulations 2015*).
- the evaluation of bids based on a few representative products or services (e.g. Stationary Panel Contract; Managing contractor selected on the basis of his fees but contracted for the whole value of the construction contract).
- Examples witnessed by the Commission, where mandatory criteria should have been included but were not, included: time limit for project finalisation, budget limit, coverage, minimum budget under which bids will not be considered, etc.

From this review, it seems evident that guidance for and training of procurement officers on how to trial and select a formula for a specific project would also help reduce the risk of suboptimal outcomes. The Commission also suggests that the proposed Procurement SA establish appropriate guidance material regarding the exclusion of bids. Finally, the Commission suggests that calculations and scoring of total price (or cost) be based on actual purchases or the best possible prediction of actual purchases.

### Transparency

*The bidder would obviously like to submit its most competitive combination of price and quality. However, if the scoring rule is not transparent, the bidder may inadvertently submit a*

*non-optimal bid. This is likely to be unfortunate also for the procurer, since the bids will then in general offer suboptimal qualities; also, from a social perspective this will be inefficient. For this reason, transparent scoring rules that match the procurer's utility are likely to improve the outcome.<sup>27</sup>*

In the EU, contracting authorities are legally obliged to disclose information about how they reached their conclusions. Tasmania<sup>28</sup> also offers transparency in its evaluation method.

In South Australia, public authorities usually only specify in their tender documents the minimum requirements and the list of criteria that will be considered. DPTI is an exception and provides a high level of transparency into its evaluation methodology,<sup>29</sup> which the Commission regards as good practice. Although agencies acknowledge that more transparency would be beneficial to bring the bids closer to the client's expectation, they also suggest that the risk, with a fully transparent method, is that businesses game the evaluation or disregard certain criteria if the weight for those is low.

The Commission does not accept this view. Transparency and post-contract accountability for delivery address these concerns while cutting unnecessary compliance and red tape burdens on bidders.

**Recommendation 3.8:** In order to cut unnecessary costs and red tape to tenderers, and to make the procurement decision processes more transparent, the Commission recommends that the government require that public authorities publish, when opening a tender:

- the formula used to select the winner; and
- the relative importance of each criterion.

### 3.2.3 Economic impact

Currently, the following aspects are considered in terms of economic impact directly linked to the project:

- whole-of-life costs;
- whole-of-government contracts (see 3.3 Disaggregation); and
- quality vs. price analysis of tenders.

<sup>27</sup> Sofia Lundberg and Mats A. Bergman, 'Tender Evaluation and Award Methodologies in Public Procurement' [2011] <<http://ssrn.com/abstract=1831143>>

<sup>28</sup> Department of Treasury and Finance (Tas), *Guidelines on Tender Evaluation using Weighted Criteria for Building Works and Services* (2019) <<https://www.purchasing.tas.gov.au/Documents/Guidelines-on-Tender-Evaluation-using-Weighted-Criteria-for-Building-Works-and-Services.pdf>>

<sup>29</sup> Department of Planning, Transport and Infrastructure (SA), *Tender Evaluation Guidelines*. (2016) <[https://www.dpti.sa.gov.au/contractor\\_documents/tender\\_evaluation\\_guidelines](https://www.dpti.sa.gov.au/contractor_documents/tender_evaluation_guidelines)>

The following aspects are indirectly linked to the project:

- local participation, as in employment, origin/sourcing of goods, investment in South Australia, participation of trainees, apprentices and cadets (dealt with in 3.2.4 SAIPP);
- innovation (see section 3.1.6 Innovation); and
- SME participation and capability building.

### Whole-of-life costs

In construction, public authorities indicate that including whole-of-life cost considerations to their tender specifications is important, and multiple businesses have confirmed this point. However, the Commission has only found one occurrence, in the 106 random tenders it collected, where whole-of-life costs were actually calculated for different bids. In other words, whole-of-life considerations relate to meeting a standard (marked as a pass or fail) as opposed to generating additional value.

Multiple jurisdictions, as well as the EU<sup>30</sup>, provide guidance on the incorporation of whole-of-life costs in tender evaluations that South Australia could adopt. Scotland has even legislated which method to use for the calculation of whole-of-life costs<sup>31</sup>.

**Recommendation 3.9:** So that whole-of-life costs are properly incorporated in tender assessment, the Commission recommends, as an early priority for the proposed Procurement SA:

- that clear guidelines, case studies and training be developed and provided to public authorities on how to calculate whole-of-life costs;
- that use of whole-of-life pricing be mandated in tender evaluations; and
- reporting on the implementation of these elements.

### SMEs and capability building

There can be advantages to using large full-service firms rather than SMEs, including perceptions of risk mitigation and simpler administration. It is also relatively harder for SMEs to complete complex tender documentation.

CCF SA recommends a certain number of tenders be put aside for SMEs (40 per cent of all work, with some specific targets in subcategories, for example, 100 per cent of projects under \$2 million). They also recommend the organisation of bidders' conferences following the issuing of tender documents 'to allow SMEs to network and discuss potential joint bids'.

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<sup>30</sup> European Commission, *Public Procurement Guidance for Practitioners* (2018) p71.

<sup>31</sup> *Public Contracts (Scotland) Regulations 2015*

The Small Business Commissioner recommended, in his submission, maintaining or increasing the efforts made by government to assist small businesses with cash flow management, understanding profit and loss and how to prepare a tender proposal.

The Commission notes these views and considers it has addressed them in Stage 1. In particular, the Commission believes the key goal is to increase the number of SA businesses that are 'match-fit' and capable of meeting competition in the marketplace.

The Commission notes that, in OECD countries, procurement strategies are increasingly used to fostering participation and development of SMEs<sup>32</sup>, with the following approaches used (in order of frequency):

- division of the contract into lots (see section 3.3.2 Disaggregation);
- guidelines focused on SMEs;
- training and workshops (the government has agreed to the Commission's recommendation to resource the OIA training platform for businesses);
- simplified and flexible procedures;
- specific unit specialising in SMEs.

Good data is needed to understand better the participation of SMEs rather than relying on largely anecdotal information. In South Australia, very little reporting exists on the size (small, medium or large) of suppliers participating in and winning government, making the assessment of SME participation difficult. There is no common definition throughout South Australian public authorities for the terms SME or start-up (e.g. one major agency uses the Corporation Act definition of SMEs (with staff size being less than 100) compared with the Australian Bureau of Statistic's definition (staff size less than 200).

**Recommendation 3.10:** In order to build a stronger evidence base for understanding and monitoring rates of participation by SMEs in government procurement, the Commission recommends that the government:

- uses common definitions for SMEs and start-ups;
- simplifies tender documentation for SMEs;
- organises bidders' conferences to allow SMEs to discuss potential joint bids; and
- considers development goals for suppliers subcontracting to local SMEs.

### 3.2.4 Social and environmental policy

Several other indirect benefits have been included in the procurement process through the SAIPP, sharing common themes of wider participation and benefits to the state. Some of these inclusions appear to be partly opportunistic and ad hoc.

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<sup>32</sup> OECD, *Government at a Glance 2017* (2017) <[https://doi.org/10.1787/gov\\_glance-2017-en](https://doi.org/10.1787/gov_glance-2017-en)>

Green Industries South Australia's Waste Strategy 2015-20 also identifies the long-term objective of increasing procurement by all levels of government of re-manufactured products<sup>33</sup>.

Some examples of initiatives in other states include:

- Social Procurement in NSW Whole-of-Government Contracts. The project scope covered facilities management services (\$2.24 billion in cleaning and maintenance). This initiative achieved a \$160m spend on social procurement (Aboriginal and disability employment enterprises), \$135m savings, 15 per cent productivity improvement, and was a winner of the Australasia Conference and Supply Management Awards 2019.<sup>34</sup>
- WA Aboriginal Capability Building Program (led by the Social Procurement Initiatives Team in the Department of Finance, implemented on 1 July 2018). This sets targets for the award of contracts to Aboriginal businesses (3 per cent by 2010-21) and is based on regional requirements, building capability within Aboriginal businesses and having Aboriginal representation on evaluation panels.
- Queensland Procurement Policy 2019 and Indigenous Procurement Policy 2017 (QIPP). This targets a 3 per cent spend with Indigenous businesses by 2022.

The Australian Government and several states have also instituted exemption clauses related to Australian Disability Enterprises (ADEs) which effectively enables government departments to purchase from ADEs without first going to public tender if the purchase involves a simple procurement process.

All initiatives indicate, in their lessons learned, the importance of planning and integrating procurement policies, not by over-constraining the market, but rather enabling it by encouraging relationship building between client agencies, head contractors and Aboriginal suppliers, social enterprises, NFPs, etc. The development of relationships is key to understanding the capabilities of those suppliers, therefore reducing risks and maximising inclusive procurement practices.

Social Traders recently released a report which evaluates the saving to government through social enterprise procurement<sup>35</sup>. The conservative estimate of social return on investment (avoided cost to society due to employment of individuals experiencing disadvantage and people with disabilities) is \$8.41 per dollar invested. It recommends that 'the South Australian government should look at ways of incorporating social outcomes into its procurement framework, in order to capture this additional value at little to no cost' (Social Traders, FR2-10).

Most OECD countries (29 countries) provide for green public procurement through various legislative provisions, policies or strategies often accompanied by detailed guidance on how

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<sup>33</sup> Green Industries South Australia (SA), *South Australia's Waste Strategy 2015-20* (2015) <<http://www.greenindustries.sa.gov.au/LiteratureRetrieve.aspx?ID=165440>>

<sup>34</sup> 'Winner: Property NSW Project', CIPS Australasia Conference & Supply Management Awards (Web article 2019) <<https://www.cipsaustralasiaconferenceandawards.com/public-procurement-property-nsw/>>

<sup>35</sup> Social Traders (Vic), *Principled profits - Helping business helping others* (by PWC, Oct. 2019).

to implement them (e.g. guidance developed by the Ministry of Environment in Estonia and by the Environmental Protection Agency in Ireland). Considerations mostly focus on energy efficiency, environmental considerations and lifecycle costs in procurement<sup>36</sup>, incorporating both economic and non-economic dimensions. In 2015, the OECD published a collection of best practices<sup>37</sup>:

- Green Public Procurement Legal and Policy Framework;
- Understanding Market Capacity and Assessing Costs and Benefits;
- Introducing Environmental Standards in Procurement;
- Professionalising Green Public Procurement;
- Raising Awareness; and
- Monitoring Green Public Procurement.

Those examples can assist with the drafting of South Australia's new value for money guidelines.

### **3.2.5 SAIPP**

The comments received by the Commission on the SAIPP are usually:

- positive from businesses, especially regarding the scope of the policy and the culture change within certain agencies, with some level of dissatisfaction that no preference is given to local businesses and mixed views on benefits;
- neutral or negative from agencies, with an overall uncertainty about the value of the policy.

SAIPP promotes factors of economic benefit as 'employment of South Australian residents', in line with South Australia's obligations under free trade agreements, including the ANZGPA. It does not consider the location or ownership of a business.

#### ***3.2.5.1 Local participation***

In 2017-18, the percentage of contracts going to SA based businesses was 78 for construction and 73 for goods and services, with DPTI indicating 97 per cent of its contracts go to South Australian suppliers. Compared to other public authorities' definitions for the location of a supplier, the Commission noted that DPTI's definition of 'local supplier' was broader as it includes all suppliers with a workforce in SA (with no mention of a requirement for that workforce to be engaged in servicing the contract, and no requirement to have a physical office in South Australia). This may contribute to the high local supplier ratio of contracts recorded by DPTI compared to other public authorities.

The Office of the Industry Advocate has advised the Commission that the historical data it recovered on the use of South Australian labour in government procurement was of poor quality. In the absence of reliable data to determine a baseline from which to assess the

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<sup>36</sup> OECD, *Procurement - Green procurement* (2015b) <[www.oecd.org/gov/public-procurement/green/](http://www.oecd.org/gov/public-procurement/green/)>

<sup>37</sup> OECD, *Going Green – Best practices for sustainable procurement* (2015) <[http://www.oecd.org/gov/public-procurement/Going\\_Green\\_Best\\_Practices\\_for\\_Sustainable\\_Procurement.pdf](http://www.oecd.org/gov/public-procurement/Going_Green_Best_Practices_for_Sustainable_Procurement.pdf)>

impact of the SAIPP, the OIA has provided the following figures regarding the evolution of labour hours committed to South Australia (see Table 3.3).

Table 3.3: Use of South Australian labour in government procurement

Year	SA labour through government procurement (value of employment)
2018-19	89.3%
2017-18	89.7%
2016-17	88.5%

Source: OIA compliance and reporting data

The Commission suggests using this data as a benchmark for future evaluation of the SAIPP.

Another SAIPP requirement, for procurement under \$4 million, is that at least one quote from a business based in South Australia be obtained (or \$1 million for regional procurement). Currently, no data are collected on compliance with this requirement. The only data recorded relates to the location of the winning tenderer.

The Commission suggests data be collected against the 'at least one quote from a business based in South Australia (or in the region for regional procurement)' requirement and an appropriate level of compliance be placed on this requirement (reporting and auditing).

**Recommendation 3.11:** The Commission recommends that the compliance of agencies with the requirement that 'at least one quote from a business based in South Australia (or in the region for regional procurement)' for tenders be measured and incorporated in the performance information received and monitored by the proposed Procurement SA.

### 3.2.5.2 Thresholds and weighting

The government accepted the Commission's recommendation in Stage 1 to increase the threshold for the Economic Contribution Test from \$33,000 to \$550,000 (inclusive of GST). The following comments were received during Stage 2:

*The provision of ICT services can be performed remotely and 'out of country' in most scenarios. Arguably one of the most outsourced procured services. Most ICT services would generally fall under \$550,000. The ECT is different for ICT and removing it for work under \$550K for ICT will decimate our industry (Blue Crystal Solutions, FR2-2).*

*41% of government contracts are under \$220,000 ... a \$200,000 contract for a small business can be quite significant (Business SA, DR1-11).*

The Commission notes these views.

### **3.2.5.3 Compliance**

#### Compliance by agencies

In construction, although 95 per cent of tender evaluations reported the SAIPP scores, agencies only recorded SAIPP results for 11 per cent of contracts in their databases.

In goods and services, 77 per cent of tender evaluations reported the SAIPP scores, with agencies recording SAIPP results for 43 per cent of contracts in their databases.

This finding indicates a high level of compliance with the policy (higher for construction than for goods and services) but a generally low focus on recording scores in a central or easily retrievable location. It was also confirmed that the databases provided by DPTI and SA Water to the OIA were significantly different to the databases provided to the Commission. No reason could be identified, other than a possible system or human error when extracting the data. This, once again, reinforces the need for a centralised data platform to ensure data integrity and to simplify agency reporting requirements.

#### Compliance by suppliers with their SAIPP-related contractual commitments

The OIA conducts random audits of suppliers' compliance with their contractual commitments, with the intention to move to targeted audits in the future.

The first compliance report has not yet been published. The OIA has advised the Commission that the 11 random audits show full compliance with SAIPP. This evidence leads the Commission to discount views of stakeholders that winning bidders do not deliver on their commitments.

#### Red tape

Considerable feedback has been received by the Commission regarding 'completing the ECT or IPP when it won't make a difference'.

The ECT/IPP contributes to:

- selecting the bid with the best combination of price, quality and economic contribution to the state;
- promoting a higher economic contribution from interested suppliers;
- keeping suppliers accountable by incorporating the IPP terms into the contract; and
- generating data regarding the overall economic contribution to the state from its procurement activities.

The Commission's findings indicate that the ECT/IPP impacts 6 per cent of goods and services tenders and 2 per cent of construction tenders (from two samples of 103 and 106 random tenders collected by the Commission). While this impact seems low when considering the added red tape it creates for both businesses and agencies, in an additional 40 per cent of cases, the outcome of the tender evaluation would have been different if the ECT or IP Plans scores had been different.

The Commission considered three options to reduce the administrative burden of the process without affecting the intended result:

- In cases where all the suppliers approached are local, using local labour and goods manufactured locally, an option would be to have a tick-the-box confirming that all the work (labour, goods) will be from South Australia for metro ECT/IP plan (or from the region if regional ECT/IP plan). This would reduce the required ECT/IPP elements to the sourcing of Aboriginal services or goods and recruitment of apprentices, trainees or cadets.
- When all the suppliers approached are from interstate or overseas, using no local labour or goods, a tick-the-box could eliminate the filling in of the ECT/IPP.
- When the public agency goes to a single supplier for a quote, the requirement for an ECT could be eliminated.

The Commission suggests these options be considered in future changes to the requirements for ECT/IPP scoring.

In Chapter 5, the Commission discusses the relationship between the proposed Procurement SA and the IA. In the Commission's view, further streamlining to reduce red tape would be beneficial, and this, and other matters, would be addressed by Procurement SA and the IA, including performance and reporting information.

### **3.3 Aggregated and disaggregated contracts**

#### **3.3.1 Introduction**

The terms of reference of this inquiry include investigating the potential for disaggregation of procurement spending (covering goods and services and construction procurement) and how it might be achieved.

Disaggregation of procurement spending occurs where a project of sufficient size is broken up into a number of individual projects that increases the number of contracts awarded. Disaggregation is more common in construction projects as there are many distinct pieces work that can be identified and offered as separate contracts.

Aggregation of procurement is defined as awarding many similar contracts to a select group of suppliers or awarding a large contract to provide goods and services across an organisation or number of organisations. Categories of expenditure such as ICT, bulk commodities and large-scale service provision are the most common examples of aggregations.

The methods of aggregation used by governments include across-government or agency-specific panels, typically supported by a pre-qualification process as well as across-government contracts.

*Stakeholder feedback – goods and services procurement*

With respect to goods and services procurement, much of the feedback to the Commission from stakeholders has focused on government panels and across-government contracts. Participant views have been mixed, varying with the type of contract and industry circumstances.

While most agree that the panel selection process is a more efficient method for suppliers and agencies in engaging the market in comparison to a full tender process, there are perceived issues raised by suppliers, including:

- the criteria used to make selections are not visible to the market;
- suppliers are not aware of the scope of available procurements other than those for which they have been selected as a candidate;
- the level of business transacted through panels is not published; and
- only incumbent suppliers understand the size and complexity of work and the absence of information at the time of tender puts competitors at a disadvantage.

Other specific comments from businesses included:

- The Australian Medical Association (SA) considered that while the process may be suitable for major bulk contract provision, it was totally unsuitable and hazardous when applied to medical workforce engagement in rural and regional areas.
- Supplier feedback to the Industry Advocate on the Master Media contract and the End User Computer contract observed that these panels suffered from poorly defined commercial scope as well as a misplaced focus on savings to be achieved from the process.
- Feedback to Business SA 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 shared.

#### *Stakeholder feedback – construction procurement*

Feedback to the Commission on construction contracts has expressed some concerns about the tender outcomes as well as decisions to complete multiple projects through a single provider. The Civil Contractors Federation of South Australia (CCF SA) asserted that recent decisions on key projects are not in keeping with the policy intent of disaggregation and do not allow Tier 2 suppliers the opportunity to tender for smaller or niche projects. This assertion is not consistent with the Commission's examination of the issue.

The CCF SA have also observed that successful tendering by Tier 1 suppliers headquartered interstate can result in the supply chain of workforce representing tiers 2 and 3 suppliers being brought in from interstate for the duration of the project. No evidence has been provided to support this claim.

### 3.3.2 Economic theory of aggregation and disaggregation

#### *Economic benefits of aggregated purchasing*

Aggregated purchasing aims to pool public purchasing power to maximise value for money. By aggregating purchases, public authorities, acting as a single entity, can exert buyer power over suppliers to obtain better terms and conditions. Additionally, aggregated purchasing can generate bureaucratic economies of scale as the transaction costs and total amount of tenders are reduced, promoting administrative efficiency to government.

The economic risks of aggregated purchasing are that the government, as sole or dominant purchaser, will exercise its powers to obtain beneficial contract terms, reducing the amount of goods and services produced through a lower purchasing price.<sup>38</sup>

Other potential effects are increased market concentration among a shrinking number of dominant firms and higher exit rates of SMEs due to infrequent and large contracts being offered in the marketplace starving smaller suppliers of tender opportunities. In addition, aggregation reduces competition at the subcategory level, where a specialist supplier may lack the scope to meet all requirements.

Aggregated contracts call for effective contract management. While market power may be exercised by a public authority extracting a low price for a good or service, suppliers may recover their perceived losses through higher prices in other contracts in the marketplace, reducing welfare in the economy.

The administrative risks for aggregated purchasing are:

- increased complex and costly litigation, driven by the lower frequency and larger size of contracts as well as increased professionalism of both buyers and suppliers;
- decrease of autonomy for client public authorities by ceding decision making to a central group, thereby increasing the difficulty of implementing their own objectives; and
- difficulties for client public authorities resulting from the contract negotiator carrying out purchases in its best interest rather than the interests of all parties to the agreement, diminishing value for money for all parties involved.<sup>39</sup>

#### *Economic benefits of disaggregation*

Engaging with SMEs and increasing their participation in the public procurement market increases competition and access to a wider choice of available and innovative solutions.<sup>40</sup> Dividing contracts into smaller pieces of work multiplies the number of contracts for which SMEs can tender. Even though disaggregation is perceived as more costly than awarding a single contract in the short-term, the increased supplier base can generate cost savings in the long-term.

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<sup>38</sup> Z. Chen, 'Buyer Power: Economic Theory and Antitrust Policy' (2007) in *Research in Law and Economics*, (22), Emerald Publishing, Bingley, 17-40.

<sup>40</sup> A. Flynn and P. Davis (2017), 'Explaining SME Participation and Success in Public Procurement Using a Capability-Based Model of Tendering', *Journal of Public Procurement*, 17(3), 337-72.

The level of disaggregation typically depends on the type of industry and the nature and location of the expenditure. Policies to influence disaggregation include local industry targets, partitioning pieces of work for SMEs as well as locating offices and services in regional areas. Such policies need to comply with national and international agreements. Moreover, they also need, in the Commission's view, expressed throughout this inquiry, to increase incentives to develop match-fit SA businesses. Otherwise, they default to protectionism, which is not in the state's interests in terms of economic development, productivity and living standards.

Some of the economic risks associated with disaggregation include:<sup>41</sup>

- transparency concerns from defining tenders narrowly, opening the door to direct awards of contracts, or reserving procurement lots for small business. Either situation entails interference with competition and damage to value;
- increases in time and cost of tender evaluation, along with more complexity of decision making for public authorities, resulting from increased SME participation; and
- bid-rigging by parties involving collusion of suppliers during tender processes. The possibilities for collusion can be prevented by ensuring that the number of tenders is smaller than the expected number of suppliers and that the number of tenders exceeds the number of contracts to reserve work for new entrants.

### *International perspectives*

The OECD has emphasised the importance of balancing the use of SME-specific policies with the other policy challenges that procurement must address. In determining policies that support SMEs, it is important to carry out prior assessments of market structure and government spending to ensure that the use of these programs is balanced accordingly.<sup>42</sup>

EU rules on public procurement provide greater support to suppliers through exerting greater controls on the purchasing power of public authorities and prices achieved during tendering through principles of equal treatment, non-discrimination and transparency.<sup>43</sup>

EU Directive 2014/24 includes a reform to facilitate the participation of SMEs in public tenders by encouraging public authorities to divide contracts into lots. In practice the initiative is not mandatory but provides for a 'divide or explain' mechanism. Experience of suppliers and governments in member countries is that the non-mandatory nature of the directive fails to provide sufficient incentive to divide contracts.<sup>44</sup>

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<sup>41</sup> S. H. Egeberg (2016) *Division into Lots and SME Participation In Public Procurement* (Master's thesis, The University of Bergen), pp. 17-18.

<sup>42</sup> OECD, *SMEs in Public Procurement: Practices and Strategies for Shared Benefits*, 13.

<sup>43</sup> A. Sanchez Graells and I. Herrera Anchustegui, *Impact of Public Procurement Aggregation on Competition. Risks, Rationale and Justification for the Rules in Directive 2014/24/EU*, University of Leicester School of Law Research Paper No. 14-35, 3.

<sup>44</sup> Nicholas Hatzis, 'The Legality of SME Development Policies under EC Law'. in Sue Arrowsmith and Peter Kunzlik (eds), *Social and Environmental Policies in EC Procurement Law – New Directives and Directions*, (2009), 246-67.

EU found that SME success was more likely in public works projects than in goods and services as public works contracts are more often broken down into separate lots. Analysis of centralised purchasing in Europe, prior to the introduction of the directive revealed:

- contracts under central agreements take a third of the time in staff hours to establish. The study noted that there are no staff time savings associated with the ongoing administration of the contract and secondary purchasing off the panel.
- four out of five centralised agreements are implemented using single supplier arrangements or do not involve supplier competition; and
- a significant proportion of suppliers did not think the procurement process for centralised agreements was transparent. The study found that value of contracts rather than type of contract was the most important determinant of SME success.

### 3.3.3 Findings

#### *South Australia – construction procurement*

With respect to aggregation of contracts in construction procurement, the Commission found:

- DPTI has instituted a reform process to its operations to support better procurement outcomes such as capability in the management of contracts, guidance for risk management and efficiency of procurement processes. The reforms also have elements that support the growth and performance of local suppliers.
- Encouraging and facilitating the participation of local business in both the market selection phase and in the performance of the work is an important aspect of DPTI's procurement operations. The Commission has sighted expression of interest documents and communications to major suppliers, issued by DPTI, regarding providing opportunities to local business.
- DPTI's Projects Pipeline and Industry Briefings provide an overview of the state's upcoming and future capital projects, including proposed delivery models, timeframes and information on tendering opportunities for industry. The Commission understands that this information has been well received by industry.
- Decisions on the packaging of projects have been reviewed in the last 18 months to reflect the government's policy. Prior to the policy, DPTI had been exploring opportunities to aggregate construction projects.
- While the promotion and support for the government's policy intent is evident in the discussions that the Commission had with DPTI executives and in a sample of tender documents provided, there are no formal guidelines that help reinforce the policy position with the workforce of the department. As such, the delivery of results currently depends heavily on the performance of individuals.

#### *South Australia – goods and services procurement*

With respect to goods and services procurement, the Commission found:

- In 2017-18, nine of the thirteen across-government panel contracts (where expenditure data was available) awarded 75 per cent or more of the business between three suppliers;
- Four across-government panels had more than 50 suppliers, with the eProjects panel operating with 609 suppliers. This seems very inefficient and potentially costly to panel participants;
- At least one panel awarded single-supplier contracts as part of a secondary procurement process, diminishing the economies of scale in relation to administration costs of tendering and reducing competition;
- Suppliers have pre-qualified for panels when they are not competitive in terms of price or capability. Due to the generic nature of panels, many suppliers with niche capabilities can be mismatched with public authority requirements;
- Across-government contracts where goods are homogenous, such as stationery and fuel, have been well received by public authorities, while others, particularly ICT, have been established with little consultation and are subject to exemptions, thus diminishing the value of the arrangements;
- Data on panels and across-government arrangements are not reported on by public authorities or generated with a standard methodology; and
- Financial outcomes identified at the time of contract negotiation are not validated using agency outcomes achieved in the marketplace.

### 3.3.4 Conclusion and recommendations

#### Principles for disaggregating construction procurement

The CCF SA have recommended that the government enhance their procurement policies and procedures to reinforce the government's commitment to SMEs. The recommendations fall into four broad categories:

#### 1. Expenditure targets and reserving the market for SME participation

Expenditure targets, such as proportion of total government expenditure being awarded to SMEs and setting aside portions of individual projects for SMEs are not considered appropriate by the Commission. Awarding government expenditure based on business type rather than having fit-for-purpose proposals that deliver the goods and services required does not deliver value for money for the government. The adoption of SME targets or expenditure set-asides would also not promote competitive spirit among South Australian SMEs or promote the development of local business to become 'match-fit', capable of winning private sector contracts or contracts interstate.

#### 2. Encouraging growth of SMEs

These recommendations refer to changes in pre-qualification schemes, simplifying procurement processes, tender documents and templates, improving engagement with suppliers and supplier feedback. Apart from the recommendations on abolishing pre-qualification for simple procurements (below \$500,000) and other pre-qualification

reforms, the Commission broadly agrees with the CCF on the need for reform and the mechanisms required to encourage growth of SMEs through procurement.

### 3. Relationship between large and medium-sized enterprises

This recommendation relates to head contractors being required to use a standard form of contract when finalising arrangements with subcontractors, ensuring common terms and conditions for all contractual arrangements. This standard contract would be accompanied by more direct communication mechanisms to be established between head contractor and subcontractors

DPTI have indicated to the Commission that instead of developing a standard contract, it would be more productive to develop principles for development of contracts while ensuring that they are applied to subcontracting by head contractors. When tenders are being awarded, head contractors would be required to demonstrate evidence that subcontracting arrangements comply with the principles. The Commission agrees with this view.

### 4. The role of the State Procurement Board

The CCF raised issues regarding supplier investigations and compliance with state procurement policies and procedures issued by the SPB. The Commission discusses these issues and the future procurement system architecture more broadly in Chapter 5.

The Commission has been advised by DPTI of its processes to ensure civil infrastructure projects are not unreasonably bundled, engagement with the market on the pipeline of future projects as well as mechanisms encouraging local supplier participation in these projects. DPTI is also cognisant of the volume of work being undertaken by key suppliers, the future pipeline of work available for industry to bid for and the capability of suppliers to undertake work.

Organisational reforms have been put in place to support improved procurement outcomes and the achievement of government policies for the growth of local businesses. The progress in achievement of these reforms will need to be monitored. The size of the procurement program undertaken by DPTI underlines the importance not only of delivering on the reforms but also on delivering value for money for the state.

Research undertaken by the Commission has highlighted the importance of accompanying policy with practical incentives, in line with the results achieved in the EU. The Commission discusses here the principles that would most positively reinforce the direction that DPTI is taking with respect to disaggregation of construction procurement. These principles can also be adopted by other public authorities undertaking construction procurement.

#### *Transparency and accountability*

The Commission sees advantages in the EU approach of 'divide or explain'. If procurement is to be disaggregated, there needs to be the possibility of tendering for one, several, or all the pieces of work is to be stated in the tender notice. If a significant or strategic contract is not divided into efficient packages, the main reason for the decision is to be published. This would, in the Commission's view, be a useful addition to DPTI's existing program of industry communication and briefing.

The Commission sees merit in improving data on the extent of disaggregation and local suppliers winning contracts. Such information is important to capture to determine if strategies are effective. Data items that could usefully be collected are:

- the overall proportion of tenders being broken into lots (or bundled into a single contract);
- the number of SMEs pre-registered and being awarded contracts; and
- reporting on business won by contractors from a panel arrangement (above threshold reporting level) including secondary procurement processes.

#### *Formality in the process*

The Commission sees merit in the development of formal strategies to identify categories of procurement suitable for aggregation or disaggregation accompanied by engagement with the market to identify opportunities based on future purchasing requirements. In addition, a comprehensive, accessible marketplace tool for supplier–buyer interaction used for all procurements above a meaningful threshold value will vastly improve communication to business as well as SME accessibility to contracts.

#### *Efficiency of process*

Decisions on size of contract and how the work is divided up, may change the ability of departments to disaggregate and award more work to local suppliers. In this regard, consortia between SMEs on contracts of suitable value is to be encouraged and supported.

The efficiency of the process for unbundling work will also be influenced by considerations of risk and the timeframes in which the projects are to be completed. Considerations of risk for public authorities will include the capacity of key suppliers to undertake work at any given point as well as the viability of suppliers. The capability of suppliers to undertake packages of work will also influence decisions on unbundling work.

**Recommendation 3.12:** In order to better deliver on efficient packaging of construction procurement and to respond to concerns expressed regarding aggregated contracts, the Commission recommends that DPTI adopt, and communicate to stakeholders, a formal step that considers:

- opportunities for SME participation to afford local suppliers the opportunity to tender for government work;
- the capacity and capability of industry to undertake the work, considering the risks and timeframes involved;
- an efficient pipeline of work supported by documented planning that is also communicated to, and understood by, stakeholders; and
- transparent and accountable engagement with suppliers during tender processes, including explanations of decisions.

### Planning for goods and services procurement

The Commission has found that the aggregation of expenditure through panels and across government contracts can, in some instances, lead to far too many suppliers participating with little prospect of winning business. In many panels, expenditure is concentrated in a small number of suppliers, with one example where all secondary purchasing occurs through a single supplier. The Commission has found that, in some instances, aggregation of expenditure is being used for purposes unsuitable for common purchasing.

Given the amount of public expenditure involved in agency panels and across government contracts, the Commission considers that there is room for enhancements to the process that could deliver savings and improved outcomes to government.

The Commission sees merit in public authorities enhancing their planning and acquisition processes to better determine the appropriate procurement strategy with respect to goods and services. Planning could involve public authorities categorising their total purchase requirements, identifying portions of procurement expenditure that lend themselves to aggregation and then putting into place panels or contracts involving multiple agencies.

The Commission suggests an early task of Procurement SA is to facilitate a strategic assessment by public authorities of their purchasing requirements for goods and services. The assessment will generate greater information flow on public authority procurement requirements enabling management of categories, and aggregation of expenditure including the development of multi-agency arrangements.

The strategic assessment would be guided by principles similar to those discussed for construction procurement:

- Transparent dealings with suppliers with a focus on accountability. This relates to decisions being communicated to suppliers on tenders as well as engagement with the market in determining procurement that is suitable for aggregation.
- Implementing processes that enable suppliers to have knowledge of current and future opportunities and interact with agencies on current tenders.
- Developing efficient planning processes that account for systematic risks and timelines but also enable suppliers to tender for work that fits their capabilities.

**Recommendation 3.13:** In order to better deliver on efficient aggregation of goods and services procurement, the Commission recommends that Procurement SA facilitate a systematic assessment of public authority procurement programs considering:

- SME participation strategies that afford local suppliers the opportunity to tender for government work;
- the capacity and capability of industry to undertake the work, considering the risks and timeframes involved; and
- transparent and accountable engagement with suppliers during tender processes, including explanations of decisions.

## 4. Commission's assessment of current system governance issues

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In Chapter 4 the Commission considers the system governance issues identified in the Stage 2 inquiry. The focus of the Stage 2 inquiry covers both construction procurement over \$150,000 by public authorities as well as goods and services and construction procurement by agencies prescribed under regulation of the *State Procurement Act 2004* (SP Act).

The topics covered in this section are focused on the issues central to procurement governance issues rather than the procurement process issues covered in Chapter 3. The Commission acknowledges there is some subjectivity in assigning issues to governance or system process issues; however, it found the distinction helpful in working through the issues.

### 4.1 Accountability framework

#### 4.1.1 Introduction to accountability in procurement

One of the key principles underlying government procurement policies and practices across Australia is that of 'accountability'. In South Australia, the object of the SP Act requires the development of a system of procurement that is directed towards 'ensuring probity, accountability and transparency in procurement operations'.<sup>45</sup> The State Procurement Board's (SPB) procurement policy framework advises that to strengthen accountability (probity and transparency), procurement should be undertaken in a manner that encompasses:

- appropriate record keeping and documentation;
- transparency of decisions made;
- adherence to the Code of Ethics for the Public Sector and local codes of conduct;
- identification and management of actual or potential conflicts of interest;
- confidentiality of all commercial information; and
- having public officers accountable for their actions.<sup>46</sup>

Procurement accountability requires a public authority (and its officials) to be responsible for the actions and decisions that are made on procurement, to be responsible for procurement outcomes, and to account for how those outcomes were achieved. Transparency requires having the systems and processes in place to enable appropriate scrutiny of procurement activity. This includes documenting the reasons for decisions and reporting appropriate information to relevant stakeholders and tender participants. Most government procurement frameworks are supported by the interlinked principles of accountability and transparency.

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<sup>45</sup> The Parliament of South Australia, *State Procurement Act 2004*, Part 1, Section 3 – Object of Act, para. (1)(c)

<sup>46</sup> State Procurement Board, *SPB Procurement Policy Framework*, v:4.1, Sept 2018, p. 6.

The following discussion focuses on two conditions, and associated elements, that are necessary to drive accountability in government procurement:

1. The authorising environment – who and how decisions are made including roles, responsibilities and processes for key decisions; and
2. The compliance environment – including information management (records, metrics and disclosure), audit controls (internal and external), and capability and culture.

The discussion provides a brief overview of how other government jurisdictions treat the accountability elements in government procurement, the current approach to procurement accountability in the South Australian public sector and concludes with the Commission’s findings and recommendations on accountability.

#### 4.1.2 Interstate approaches to accountability

Table 4.1 below provides a summary of the key elements of the procurement accountability frameworks employed by some of the other government jurisdictions in Australia.

*Table 4.1: Accountability elements of interstate jurisdictions*

Accountability element	New South Wales	Queensland	Victoria
Scope	One Act covers all types of procurement. Only state-owned corporations excluded.	Procurement policy covers all types of procurement. Nil excluded agencies.	Two separate Acts for goods and services and construction. Most agencies now included.
Type of model	Devolved governance structure and category management. Agency heads responsible for: <ul style="list-style-type: none"> <li>➢ compliance with law and policy</li> <li>➢ agency contracts</li> <li>➢ whole-of-government agreements where agency is allocated category responsibility (by Board).</li> </ul>	Office of the Chief Adviser – Procurement (OCA-P) supports agency-led, centrally enabled procurement model where agencies are responsible for their own procurement. Category management approach, with agencies appointed to lead specific categories in accordance with their expertise and capability.	Centre-led for policy and whole-of-government strategy. Devolved and federated ‘clusters’ with Lead Agencies. A range of whole-of-government contracts negotiated for most purchases with each contract having its own specific rules.
Governance	NSW Procurement Board and Chief Procurement Officer (CPO) Category management working groups Procurement Leadership Group (advisory) Construction Leadership Group (advisory)	OCA-P provides advice and support to agencies and drives consistent and effective outcomes across government. CEO Leadership Board – whole-of-government procurement performance Qld Government Procurement Committee – strategic direction & sponsors whole-of-government activities	VGPB oversight of goods and services and Treasurer oversight of construction. DTF manages across-government contracts. Lead Agencies appointed for seven clusters.

Accountability element	New South Wales	Queensland	Victoria
		Procurement Industry Advisory Group – facilitates coordinated industry advice category councils govern category strategies (agency-led)	
Accreditation/ delegated authority	Separate accreditation schemes for goods / services, and construction. <i>Goods &amp; services:</i> accreditation based on capability and complexity. Accredited agencies self-manage procurement and use whole-of-government / category contracts. Larger agencies assist smaller agencies. <i>Construction:</i> accredited agencies can conduct construction procurement valued over \$1.3m using their own systems. Agencies are required to test regularly compliance with the procurement policy framework.	Nil accreditation scheme. Agencies undertake self-assessment using centrally provided functional maturity diagnostic tool. Category Lead Agencies provide advice, strategic planning, coordination and integration.	Victorian Government Procurement Board (VGPB) accredits mandated agencies based on complexity and capability (no value limits for delegated authority). Accredited agencies self-manage procurement and ensure compliance.
Compliance	Public Works and Procurement Act (PWP Act) and NSW Procurement Board policies apply to all agencies (excluding state-owned corps and local government). Agencies self-assess on annual basis and regularly test their compliance with mandatory requirements.	Office of the Chief Advisor – Procurement sets policies, reviews and monitors compliance although responsibility for compliance rests with agencies who self-assess on an ongoing basis. Recently introduced the Qld Procurement Policy Compliance Unit to ensure successful tenderers meet commitments of the Qld Procurement Policy and Buy Qld approach.	VGPB sets policies, reviews and monitors compliance. If any agency is required follows the VGPB rules, then it must use the whole-of-government arrangements to purchase goods and services. Mandated organisations self-assess against capability and procurement profile.
Records	Records of all procurement-related activities and decisions must be recorded and retained in compliance with an agency's own record management policies and the <i>State Records Act 1998</i> (NSW).	Qld Procurement Policy and supporting policies (probity and integrity, and contract management) provide specific reference to agency responsibilities for accurate recording of procurement process decisions, supplier and market interactions, and	The procurement framework requires Accountable Officers (CE's) to ensure tender and contract management processes are auditable, transparent and accountable by creating and maintaining appropriate records management systems. Must

Accountability element	New South Wales	Queensland	Victoria
		contract management system. Refers to the need to ensure records can be used as a 'single source of truth'.	ensure compliance with <i>Public Records Act 1973</i> .
Reporting (& disclosure)	Accredited agencies must annually report to the NSW Procurement Board: planned procurement activity; annual outcomes report; self-assessment attestation; improvement plan progress report. <i>Government Information (Public Access) Act 2009</i> requires agencies to disclose contracts with the private sector valued over \$150,000 (inclusive of GST) on the eTendering website within 45 days of becoming effective and for a period not less than 20 working days. The Act outlines the type of information to disclose which depends on contract value.	OCA-P manages consolidated data and develops reports. A contract disclosure guideline requires agencies to publish information on awarded contracts valued over \$10,000. Additional information to be disclosed for higher value contracts (\$500,000 and \$10m).	For goods, services and construction: Internal - VGPB manages consolidated data and develops reports. External - mandated organisations report annually on key outcomes and social procurement outcomes.
Performance reporting	Internal - agencies generate data / metrics via self-assessments, data reported centrally to CPO for NSW spend cube / reports. External - KPIs on social procurement objectives published. Developing sector-wide contracting activity reporting.	Agencies required to measure and report on procurement benefits in accordance with whole-of-government procurement performance principles issued by OCA-P. That office is responsible for coordinating whole-of-government procurement performance reporting in accordance with requirements established by CEO Leadership Board.	Accountable officers (CEs) must report annually on procurement performance with suggested metrics provided and frequency of reporting mandated (monthly for CEs, quarterly for other executive). Re construction supplier performance, agencies must monitor and report on contractor performance for contracts valued over a specified value. Completed reports using a mandated template are to be published to a website or system at times specified. Suppliers must be provided with an opportunity to reply to an assessment.

Accountability element	New South Wales	Queensland	Victoria
Complaints	Board’s functions include investigating and dealing with complaints once escalated. International obligations – revised legislation has been enacted to deal with breaches of enacted revised legislation and process to deal with breaches of enforceable procurement provisions relating to international agreements (nil Board involvement except to maintain records).	The QPP sets out specific supplier complaint requirements that must be implemented by agencies which include having appropriate governance mechanisms and systems to manage conflicts of interest.	VGPB requires agencies to have a supplier complaints management system for goods and services. Construction direction 8.3 sets out the complaint management process for construction services. International obligations – a model arbitration clause has been inserted in contracts when international agreements apply in response to recent amendments to requirements for supplier complaints in international agreements.
Supplier codes / compliance	Procurement Board Direction: conduct of suppliers outlines agency obligations to ensure tenderers and suppliers comply with policy framework. Code of Practice for Procurement applies to construction procurement. NSW Industrial Relations Guidelines: Building and Construction Procurement applies to building and construction companies that bid or tender for NSW Government infrastructure work.	Supplier Code of Conduct outlines what is expected of suppliers. Each agency responsible for implementing the code. Application varies depending on value and complexity of agency procurement activity. An agency may ask suppliers to sign a formal commitment letter to abide by the code as part of their response.	Supplier Code of Conduct outlining ethical standards of behaviour that suppliers will aspire to meet. Each agency responsible for implementation. Applies to all contracts, agreements and purchase orders. For large contracts, the mandatory criteria is to include a requirement to sign a commitment letter, lower value / transaction contracts will incorporate commitment in the contract terms and conditions. If requested, suppliers must provide evidence of compliance with the code.
Guidance	All jurisdictions provide guidance on procurement accountability that refers to: <ul style="list-style-type: none"> <li>➢ Record keeping, reporting and disclosure requirements</li> <li>➢ Assurance activities (compliance and auditing)</li> <li>➢ Treatment of confidential information and conflicts of interest</li> <li>➢ Complaint mechanisms</li> <li>➢ Confidential information treatment – legal obligations, guidance, flag in the tender documentation and contract clauses</li> </ul>		

Source: Office of the South Australian Productivity Commission

Leading government procurement practice jurisdictions employ a centrally enabled, devolved procurement model. This type of procurement system model uses shared accountability in an integrated environment. Key elements to support accountability in such procurement models include:

- public authority CEs are accountable for their procurement activity;

- significant purchasing occurs from across-government channels, including category management approaches, except for highly specialised purchases;
- assigning a Lead Agency to a category and/or across-government arrangement in accordance with that agency's particular expertise, knowledge, capability and supply market connections;
- testing compliance through regular self-assessments based on an agency's capability and risk/complexity profile, using centrally provided tools, with assessment results reported to a central authority;
- capturing, recording and reporting procurement data and information from planned procurement activities through to contract outcomes at various levels (from individual project through to whole-of-government);
- adopting ICT systems and other reporting tools that enable the capture and reporting of procurement data and information for analysis, planning and metrics at individual agency, category, and central levels; and
- sharing and reporting of information on procurement activities within the agency and across government for both internal and external purposes.

Leading practice procurement models employed by Australian jurisdictions assign accountability to agency chief executives who report to their respective minister and to a central procurement authority. Chief executives are provided with the necessary authority to commence a procurement process and execute contracts. The agency does not generally need additional external approvals to approach the market or execute the contract if the procurement budget has been approved, for low-risk or less complex purchases, and for purchases from an across-government category or arrangement. Interstate jurisdictions can be faced with some of the same government procurement risks or issues as observed in SA, particularly with respect to contract management and appropriate contract disclosure. Consultation with other Australian jurisdictions indicates that when issues are identified the agency CE is required to address the concerns and report centrally on the remedial action taken. The level of an authority's accountability and ownership of contracts is a crucial element in a centrally enabled, devolved procurement system. System-wide reporting that provides transparency and highlights risk areas (and opportunities) further supports the principles of accountability and transparency.

### **4.1.3 South Australia's procurement accountability framework**

This section provides an overview of current approaches to accountability in procurement in South Australia with respect to the current authorising and compliance environments.

#### ***4.1.3.1 Authorising environment***

##### Current authorising environment

The procurement authorisation environment that currently exists in SA Government reflects existing procurement legislation and the way in which the government has interpreted and implemented that legislation.

Table 4.2 below provides an overview of the three frameworks currently governing SA Government procurement and the associated authorisation requirements that drive accountability in government procurement.

Table 4.2: SA Government procurement accountability

Accountability Element	SA Government Procurement		
	SPB (goods & services)	Prescribed construction	Prescribed public authorities
Scope (& limitations)	Goods, services and construction procurement valued up to \$150,000 (excl. GST). Public authorities as defined in the Act (excluding prescribed)	Construction procurement valued above \$150,000 (excluding GST). Public authorities excluding those prescribed.	Thirteen prescribed public authorities (PPAs) as listed by regulation (noting the Motor Accident Commission ceased operations on 30 June 2019)
Key regulatory tools	<i>State Procurement Act 2004</i> & <i>State Procurement Regulations 2005</i> SPB Procurement Policy Framework Treasurer’s instructions Premier and Cabinet circulars	Premier & Cabinet Circular 028 & DPTI PIP Construction Procurement Policy (building projects) DPTI policies on building and civil projects Treasurer’s instructions Premier and Cabinet circulars	<i>State Procurement Regulations 2005</i> (prescribed authorities) Treasurer’s instructions Premier and Cabinet circulars
Accreditation/ delegated authority	Procurement authority (accreditation) issued to a public authority’s principal officer by SPB with three tiers depending on value. Procurements above authority require SPB approval (or subcommittee) of acquisition plan. Financial authority via TI 8	Construction building – DPTI may accredit agencies to undertake specific projects or programs up to \$1 million. Financial authority via TI 8	Nil accreditation required and operate separately (PPAs are explicitly excluded from the PIP). Different levels of internal governance arrangements depending on the type and size of PPA. All but Legal Profession Conduct Commissioner have their own boards. Financial authority via TI 8.
Governance	Responsible minister - Treasurer SPB and subcommittee – issue accreditation, approve acquisitions, set policy framework Intra-agency governance arrangements include establishment of procurement authority committee (mandatory for Tier 1), plus project steering committees/ groups for high-value/high-risk procurements. Authorised delegations per procurement-related policies (e.g. Treasurer’s instructions)	Responsible minister – Minister for Infrastructure Responsible agency – DPTI governance arrangements vary slightly depending on if the construction procurement is: <ul style="list-style-type: none"> <li>➤ Building construction</li> <li>➤ Civil construction</li> <li>➤ Major projects (significant projects)</li> <li>➤ Minor works (including facilities management)</li> </ul>	Responsible minister – various. Responsible agency – each PPA is responsible for their own procurement activity. Internal governance and audit arrangements vary but are established by their board or governance committee and apply to procurement activity.

Source: Office of the SA Productivity Commission

### Chief Executive accountability

A public authority's chief executive is responsible for the following procurement-related accountability requirements:

- The procurement authority issued by SPB requires that the principal officer (chief executive) ensures that the public authority:
  - has sufficient capability to conduct procurement operations to SPB standards;
  - complies with all 86 mandated requirements in the SPB procurement policy framework; and
  - has an effective procurement governance framework.

In addition, the chief executive will:

- develop and implement a risk management framework specific to the organisation's business and context (as per the SA Government Risk Management Policy Statement 2009);
- ensure compliance with the requirements under PC028 and associated DPTI construction procurement policy: PIP depending on the public authority's role (Lead Agency, DPTI, supporting agency etc.); and
- manage compliance with relevant Treasurer's instructions, including TI 8 Financial Authorisations; TI 11 Payment of Creditor's Accounts; TI 12 Government Purchase cards; and TI 28 Financial Management Compliance Program.

### Public sector employee accountability

Legislative requirements apply to all public servants (i.e. employees that are a 'public officer' as per section 20 of the ICAC Act). Procurement-related responsibilities include:

- exercising delegated authority and performing roles in accordance with the values and standards of the public sector Code of Conduct with delegated authorities including those under the SP Act and TIs; and
- reporting any matter that is reasonably suspected of involving corruption or serious or systemic misconduct and maladministration to the Office of Public Integrity.

#### Across government governance and authority

As indicated in Table 4.2, accountabilities for construction procurement projects vary depending on the type and value of the construction project. In particular:

- DPTI has overall responsibility for implementing the policies, guidelines and processes for prescribed construction procurement by the SA Government, including civil and building (commercial) construction:
  - Civil construction involves several layers of DPTI governance depending on the complexity, risk and dollar value including gateway reviews.

- Governance and accountability arrangements for commercial building projects differ slightly due to the roles and responsibilities of Lead Agencies as per PC028.
- PPAs operate under their own construction procurement arrangements as they are explicitly excluded from the PIP. The level of expertise and sophistication varies considerably depending on the core business of the authority (for example, SA Water has a sophisticated procurement policy framework and significant expertise).

Intra-agency governance and authority

Existing governance and authorising arrangements within most public authorities involve a centrally led, devolved model where a central procurement unit (or officer) provides overall management of the procurement function for that agency. Larger public authorities may have an appointed CPO who is delegated procurement and financial authorisations from the chief executive. The roles, responsibilities and accountability of the central procurement unit/officer vary across different public authorities depending on:

- the level and type of procurement activity required to fulfil the agency’s objectives;
- how the procurement function fits into the overall organisation structure; and
- the availability and capability of procurement resources (both staff and tools).

For example:

- Public authorities with a Tier 1 procurement authority (issued by SPB for purchasing goods and services) are required to set up a procurement authority committee.
- Agencies that deliver services over a geographically dispersed area devolve procurement accountability in order to effectively deliver those services.
- Public authorities that undertake inherently complex procurements may involve teams of experts from across the agency (for example, DPTI construction procurement projects).
- Internal financial value thresholds/delegations are often established to control the degree to which business units can approve and manage procurements.
- ICT systems support procurement approval requirements such as the eGADS delegation framework implemented by DPTI to manage mandated procurement and financial authorisations.

Approved acquisition plans (for goods and services), and project briefs (for construction) will include the governance and accountability arrangements for individual projects (or programs). The plans/briefs are approved by the appropriate authorised officer(s) depending on the value and nature of the procurement.

As discussed in the Commission’s Stage 1 final report, public accountability for the provision of health and social services delivered by NFPs (not-for-profits) is vested with the government, with public authorities responsible for delivering the government’s priorities. The NFP sector is engaged and funded to translate policy priorities into services to be delivered, reflecting an interdependence between the two sectors.

### Recent reforms

The Commission notes that the South Australian Government has recently implemented or is working towards the implementation of reforms to enhance accountability in procurement. In particular:

- DPTI undertook reforms to their internal procurement governance arrangements, including the centralisation of their procurement function and changing to a single Procurement Committee that is accountable to the DPTI Chief Executive for effective governance of procurement across DPTI.
- The South Australia Government has committed to or implemented the following actions in response to recommendation 2.1 in the Commission’s Stage 1 procurement inquiry final report:
  - Guidance will be developed for agencies to specify those circumstances where a confirmatory decision is required (exceptions to the recommended principle that generally procurement decisions should only be authorised once).
  - Treasurer’s Instruction 8 (TI 8) will be amended to increase chief executive financial delegations to \$15m; and ministers will have the authority to sign all contracts that fall within Cabinet-approved funding.

It is important to note that although the Stage 1 report was restricted to goods and services procurement, the TI 8 reforms impact on all public authorities and all procurement activity within scope of the PF&A Act (including for prescribed authorities and construction procurement).

### **4.1.3.2 Compliance environment**

#### Current compliance environment

The following overview describes the existing compliance environment relating to procurement operations and practices in the state government. Compliance refers to obligations regarding the capture (records) and reporting or disclosure (including performance-related) of data and information in addition to the current procurement audit/assurance framework. Obligations can arise via regulatory tools or policies that are internal to an agency/government, or external.

#### *Records*

Current regulatory tools that set requirements around the capture and recording of procurement-related information and data are:

- SPB policies relating to goods and services procurement including:
  - contract register policy — a public authority’s principal officer must maintain a contract register or have a system to record contract information as set out in the policy (contracts valued over \$33,000);
  - policies for supplier complaints and disposal of goods include specific requirements to record and maintain appropriate records; and

- numerous policies refer to mandated obligations to record certain information in procurement documents (e.g. certain information to be recorded in acquisition plans).
- DPTI has policies relating to the capture and recording of information relating to procurement (including construction) on their intranet, including recording of site meetings, recording of contractor daily activities, archiving and disposal of contract documentation, documenting post-tender negotiations and agreements.
- Legislated requirements for record keeping in the *State Records Act 1997 (SA)*.

### *Reporting and disclosure*

Current regulatory tools that set requirements around the reporting and disclosure of procurement-related information and data include:

- SPB policies requiring:
  - various reports to be developed and approved as part of the procurement process, in particular the acquisition plan, and additional reporting obligations for those procurements valued above \$4.4m (reports for risk management, annual contract review, post-contract review); and
  - procurement reporting policies regarding public authorities' obligations for annual reporting to the Board, which vary slightly depending on the level of accreditation.
- SAIPP reporting obligations including those that require reporting centrally on SAIPP statistics and those that impose obligations on tenderers.
- DPTI policies on reporting and disclosure of procurement and contract information (including construction), such as the inclusion of reports of investigations in tender documents, administration of non-conformance (includes reports register and corrective action reporting).
- Across-government policies on reporting or disclosure of procurement-related information including:
  - Premier and Cabinet Circular 27 disclosure of government contracts which requires all chief executives of public authorities' subject to the PF&A Act to disclose information relating to eligible and significant contracts involving government expenditure and sale of government assets within 60 days of contract execution for a period of at least 12 months; and
  - Premier and Cabinet Circular 13 annual reporting, requiring all in scope agencies to include in their annual report statistics on the contractors engaged by that agency in the past year.

The reporting and disclosure of performance-related procurement information and data tends to be limited, as described below:

- SPB publishes some statistical and analytical information based on public authority reported data provided for annual reporting purposes (although publication is not a mandated requirement).
- DPTI has some internal policies regarding performance reporting including performance indicator examples for the contract completion policy, performance rating for major works and for bituminous works, and contract completion and contractor performance rating.
- Other public authorities have their own performance reporting arrangements which may include contract management at an individual contract level with measures typically relating to progress reports (achievement of milestones), and invoicing or payments.

### *Audit/Assurance*

The key mechanisms by which the South Australia Government ensures compliance with procurement-related legislation and policies (including procurement-related policies) are:

- SPB's formalised audit/assurance activities:
  - The Assurance Program reviews whether procurement policies, procedures and operational practices are effectively implemented and maintained in public authorities. Public authorities undertake the review with a 'lead reviewer' (appointed by the SPB) and will also identify areas and actions to improve (and will be required to report to the board on those actions). The inquiry or review is carried out via inquiry, inspection and observation approximately every three years.
  - Public authority principal officers are required to sign an annual certificate of compliance to confirm that their public authority has complied with the SPB procurement policy framework and submit that to the SPB.
- The Auditor-General's Department performs several types of audits annually to meet its obligations under the PF&A Act, including annual performance audits that examine the economy and effectiveness with which a public authority uses its resources. These are tabled in Parliament.
- DPTI provides a policy on its intranet to provide instructions to staff on the process of undertaking audits, including the appointment of a lead auditor and completion of an audit report.

### *Other compliance accountability requirements*

Other compliance related mechanisms by which the SA Government strives to ensure accountability in procurement include:

- Supplier complaints and debriefing management
  - The SPB procurement policy framework includes obligations with respect to supplier complaints (reporting, responses and process), and debriefings (must be offered to suppliers at the conclusion of a procurement process).

- Premier and Cabinet Circular 39 covers complaint management in the South Australia public sector and requires all public sector agencies to establish and maintain an effective complaints management system (CMS) including monitoring the performance of the CMS and recommendations that performance of the CMS be linked to service improvements.
- DPTI supplier guidelines for communication and complaints.
- Conflicts of interest and confidential treatment of information
  - The Code of Ethics for the South Australia Public Sector requires any actual, potential or perceived conflicts of interest that has the potential to unfairly affect or influence the proper outcome of a decision or process to be identified and managed in accordance with the code (does not include obligations on private sector/contractors).
  - The SPB probity and ethical procurement guide requires employees to strive to avoid actual, or perceptions of, conflict of interest, or of undue influence, and supplier selection policy requires supplier offers to be kept secure and confidential.
  - Some DPTI policies on contracts relate to confidentiality, conflict of interest, intellectual property, and information privacy.
- Other obligations relating to the conduct of public officers/public sector employees that can impact on accountability in procurement include those in the *Independent Commission against Corruption Act 2012*, *Ombudsman Act 1972*, and *Freedom of Information Act 1991*.

### Recent reforms

The Commission notes that the South Australia Government has supported almost all of the recommendations put forward in the Commission's procurement inquiry Stage 1 final report. The government has taken the following actions to promote a shared understanding of procurement objectives and outcomes, and improve accountability in procurement across government:

- improving recording and reporting on the effectiveness, cost and value derived from procurement operations, contract management and SAIPP (recommendations 2.7, 2.8 and 3.1); and
- requiring agencies to publish annual forward procurement programs as well as lists of current contracts to be extended or to go to market (Recommendation 2.6).

In addition to the recommendations above, the Commission proposed draft recommendations in its Stage 2 draft report to improve accountability:

- the reform of reporting arrangements (per recommendation 2.7 of the Stage 1 final report) be extended to include construction procurement (draft recommendation 4.1); and

- benchmarking for construction procurement be developed to better track performance in construction procurement, (draft Recommendation 3.3).

The Commission notes that some individual agencies are undertaking work to improve their internal controls and processes to drive greater accountability in procurement.

#### **4.1.4 Commission findings and recommendations**

##### ***4.1.4.1 Existing scope/architecture***

The present procurement authorisation environment reflects the current regulatory framework: the scope and extent of the *State Procurement Act 2004* and supporting Regulations, and the various regulatory tools impacting on procurement that have been introduced over time as a result of new or revised policies.

The Commission acknowledges that sections within the current procurement system contain effective governance and authorisations and provide some assurance that there is accountability in procurement within those areas. However, it is clear from the feedback provided throughout the inquiry, and further backed up by interstate comparisons and analysis, that the areas of good practice are limited to specific parts of the process or areas within government. The current system architecture necessarily limits the ability of the government achieve accountability in procurement across government.

The Commission discusses the limitations of the current procurement system architecture and proposes reforms to address those limitations, including reforms to drive better accountability, in chapter 5 of this report.

##### ***4.1.4.2 Streamlining, improving compliance and reducing risk***

Obligations to record, measure and report procurement information and data perform an important function for government by establishing controls, supporting risk management and driving accountability and transparency. When working well, such compliance measures provide proven, documented evidence and verification on how procurement outcomes are being met by organisations across government. Improved compliance with requirements that promote accountability supports a shared understanding of key roles, responsibilities and authorisations (decisions) and improved accountability reduces the risks of corruption and maladministration<sup>47</sup>.

The Commission has received consistent feedback from the private and public sector that the current procurement policy framework is unnecessarily complex and difficult to navigate and use. In Chapter 3, the Commission discussed the adverse impacts of unnecessary and complex requirements in the procurement process including:

- the multitude of financial value-based thresholds that apply to procurements as a result of the various regulatory policies (refer section 3.1.2);
- the impact on transparency when procurement processes or decisions are not clearly explained or not provided to the supplier market (refer section 3.1.5.4); and

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<sup>47</sup> Bension Siebert, 'Ill Health: Corruption Prosecutions against SA Health Clinicians "thwarted"' *InDaily*, 28 October 2019, <<https://indaily.com.au/news/2019/10/28/corruption-prosecutions-thwarted/>>

- procurement practices and documentation that are not commensurate with the risk of the project and can act as a barrier to SME participation (refer section 3.2.3).

Two recent examples that support this are provided below:

- In 2019 the Auditor-General reported that a review of the AGFMA found that 'Agencies remain unclear on their roles and responsibilities under the AGFMA,<sup>48</sup> which was partly due to a lack of information clarifying roles and responsibilities being reported to relevant stakeholders. As noted by the Auditor-General, 'Transparency in decision making is important to ensure clear accountability for outcomes'.<sup>49</sup> DPTI has committed to a review of the AGFMA.
- The Commission was informed that a recent assurance review undertaken by DTF to determine levels of compliance across government with PC027 highlighted issues of non-compliance, with public authorities advising that non-compliance was usually due to a lack of awareness or misunderstanding their obligations under PC027. Ensuring that public authorities publish appropriate and relevant contract information promotes transparency and shared accountability.

Starting from the premise that regulatory requirements that promote accountability should not be seen as an unnecessary administration overhead, streamlining compliance obligations is about improving compliance by promoting better understanding of obligations and the value created by meeting those obligations. As discussed in section 3.1.2, poorly designed or managed administrative obligations unnecessarily increase the complexity of the procurement process, create barriers that disproportionately impact on SMEs or new participants, and significantly add to procurement timeframes and costs. Compliance obligations that are assigned based on financial value alone also have little regard for risk, complexity and capability and reduce the government's ability to drive transparency and accountability in procurement.

New technologies that incorporate artificial intelligence and automation can help to capture and report on contract and procurement information, which will assist with compliance. To obtain the most value from any investment in such tools, the Commission proposes that the government first commit to a review of current compliance processes and controls/obligations with a view to streamlining and aligning obligations and reducing unnecessary duplicative requirements.

#### **4.1.4.3 Conclusions and recommendations**

Accountability and transparency are key principles for government procurement policies and practices. At its simplest, accountability is taking responsibility for actions and decisions. Transparency enables appropriate scrutiny of actions and decisions and ensures obligations are consistently and clearly understood. In procurement, accountability is being able to explain and demonstrate how procurement outcomes were achieved (or not). Accountability in procurement is a shared responsibility as different participants are involved in the procurement process, particularly at key decision points.

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<sup>48</sup> Auditor-General, *Annual Report 2019*, part C, 276.

<sup>49</sup> Ibid.

Good governance practices must include elements that support and promote accountability and transparency — particularly where the expenditure of public monies is concerned. Corporate governance is the system or framework of rules, practices, and processes by which an agency is directed and controlled. A key challenge is to have a corporate governance system that holds decision makers to account without imposing unnecessary obligations and creating disproportionate complexity.

In the South Australian public sector, a variety of regulatory tools have been introduced over time to procurement governance arrangements in order to support accountability in procurement policies and practices. These include Treasurer's instructions that compel public authority chief executives to establish and maintain appropriate internal controls, plus other regulatory mechanisms to reinforce corporate procurement governance within, and across, public authorities.

Effective compliance mechanisms that hold participants to account are a crucial element to ensure the success of procurement models that devolve procurement decisions and activities. Effective compliance mechanisms include internal and external controls, and appropriate audit and/or assurance activities that apply to participants within and outside of government. Having compliance mechanisms to properly record procurement decisions and actions ensures accountability and transparency in government procurement practices.

The Commission considers that some of the reforms undertaken by leading practice jurisdictions to support and strengthen procurement accountability can be relevant to proposed reforms in South Australia. Of particular note are:

- corporate governance arrangements that drive accountability and transparency in procurement within a centrally enabled, agency-led procurement model;
- publication of performance metrics that align to best practice approaches; and
- streamlining and revision of corporate practice guidelines to help staff to better understanding their reporting and accountability obligations.

The Commission further explores procurement system architecture reforms in Chapter 5.

**Recommendation 4.1:** In order to strengthen the activity of procurement as part of establishing the proposed Procurement South Australia, the government have Procurement SA, in consultation with agencies, establish an accountability framework that sets:

- roles, responsibilities, and authorisations that are appropriately aligned and take into consideration capability and risk assessments;
- sufficient support for key decision makers to afford them with clear and sufficient authority;
- streamlined policy requirements on the capture and reporting of procurement information;
- mechanisms that exploit information and data that is captured and reported as part of the procurement process in order to provide tangible evidence on procurement activity for decision makers and information on actual procurement outcomes and performance;
- an expectation for a shared commitment and understanding of procurement objectives and responsibilities; and
- enables the exercise of discretion by a team of highly capable procurement professionals.

## 4.2 Capability

The Commission has reviewed procurement capability extensively over both stages of this inquiry, having made several recommendations in Stage 1 that have been supported by government. In line with the revised terms of reference for Stage 2 of this inquiry, this section seeks to place an emphasis on procurement capability as it relates to construction and PPAs. Following a brief discussion of construction sector capability from a national perspective, the applicable capability frameworks are revisited, and the key issues summarised.

In this final report, the Commission makes some additional recommendations in relation to capability development in construction procurement and PPAs. The Commission acknowledges that the remit of the SPB's capability framework is statutorily limited through section 12(1)(g) of the SP Act which mandates the SPB is to 'assist in the development and delivery of training and development courses and activities relevant to the *procurement operations of public authorities.*' (emphasis added) In practice, this effectively excludes construction-related procurement above \$150,000, and procurement conducted by PPAs from the SPB's capability development arrangements.

The Commission's recommendations in this section are made with an eye to the future and in the context of the Commission's preferred architectural reform of the state's procurement system: that is, the establishment of Procurement SA. The implementation of those architectural reforms in the form of the 'single-system' would remove the current statutory

limitations referred to above, enabling a unified approach able to respond to fit-for-purpose goods and services and construction procurement capability development needs.

In the interim, it is the Commission's view that its recommendations in relation to capability development are ready to be implemented without delay, depending on the type of reform, either voluntarily by the affected agencies, or subject to direction as provided for in sections 18 and 19 of the SP Act.

#### 4.2.1 A national perspective on capability in the infrastructure sector

The complexity, risks and benefits arising in relation to construction procurements are often more pronounced than those applicable to procuring and contracting for goods and services. State infrastructure can also substantially impact on the state budget and generate significant economic and social benefits.<sup>50</sup>

*Projects are getting larger and increasingly complex, and will require new approaches. How the public sector makes decisions, handles procurement, selects contract models and handles risk will have significant bearing on the functionality and efficiency of our infrastructure.<sup>51</sup>*

The Australian Infrastructure Audit 2019 identified several areas where capability is a pivotal issue, that are also relevant in South Australia, and are broadly consistent with the feedback provided to the Commission:

- poor planning and inadequate scoping can lead to poor business cases and suboptimal procurement outcomes;
- the importance of establishing and maintaining effective longer-term commercial relationships built on trust and mutually beneficial outcomes given the duration of construction projects, particularly for larger infrastructure where the complexity of the project and types of contracts used (e.g. alliance and public-private partnerships) necessitate increased levels of collaboration and 'commercial symmetry'<sup>52</sup> between the public and private sectors;
- the use of subcontractors by prime contractors in major construction projects, which impacts small business participation, economic activity and SME viability;
- the increasingly sophisticated standards by which the success of state infrastructure is measured, and the uncertainty brought by global interdependence and digital disruption demand more effective planning and strategic foresight than ever before;<sup>53</sup> and
- public infrastructure investment has the potential to generate increases in GDP.<sup>54</sup>

These issues will need to be a focus of the Procurement SA capability strategy and form the basis of the ongoing responsibilities of the public sector's central procurement function.

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<sup>50</sup> Infrastructure Australia, *Australian Infrastructure Audit 2019*, '4. Industry efficiency, capacity and capability – market depth and skills', 210

<sup>51</sup> Ibid, 'Executive summary', 19.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid, 2. Future trends', 97.

<sup>54</sup> Ibid, 4. 'Industry efficiency, capacity and capability – market depth and skills', 210.

## 4.2.2 The current procurement capability frameworks

There are several public sector procurement capability frameworks operating that reflect the fragmented way in which state procurement is currently governed. Each of the frameworks is summarised briefly below.

### 4.2.2.1 State Procurement Board capability framework

The SPB capability framework established pursuant to s12(1)(g) of the SP Act includes the following components:

- targeted training programs (Leadership in Action Program and specific online procurement skills training, e.g., contract management, negotiation etc.);
- procurement forums;
- support for vocational education qualifications;
- a Qualification Support Fund and Academic Excellence Program; and
- guidance to develop procurement role descriptors.

The SPB also collects some data in relation to training course attendance, but the Commission understands this is not used for strategic planning purposes with public authorities.

The accountability for the SPB capability framework is effectively split between the SPB and public authority chief executives (as 'Principal Officers' under the SP Act)<sup>55</sup>. This division is demonstrated under the SPB's Accreditation and Assurance Programs which include an assessment of public authorities' ability to support effective procurement performance. In practice, this includes an assessment of public authority compliance with operational procurement policies that specify capability and competency requirements of procurement officers – the SPB's Acquisition Planning, Supplier Selection and Contract Management policies all refer to the requirement for appropriate resources and skills to support procurement activity.

### 4.2.2.2 Construction capability framework

The construction procurement capability framework is established under the construction procurement governance arrangements. Construction procurement governance arrangements are discussed variously in this final report but, in brief, are established by cabinet authority (*Premier and Cabinet Circular PC028 – Construction Procurement Policy Project Implementation Process* (PC028)), and DPTI's Construction Procurement Policy: Project Implementation Process (PIP). Construction capability arrangements as they apply to PPAs are discussed in section 4.2.3.3 below.

DPTI has advised that capability development in construction procurement is structured as follows:

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<sup>55</sup> *State Procurement Act 2004*, s 20(1).

- DPTI's corporate capability framework: This framework does not include procurement or construction capability specifically but is applicable to all DPTI employees.
- On-the-job training: DPTI's strategy is 'to grow our own construction procurement professionals' by creating and actioning opportunities for junior staff in the procurement team or other procurement activity.
- SPB capability development: DPTI leverages training programs offered by the SPB and supports the undertaking of CIPS training.
- Tertiary qualifications: DPTI and UniSA worked together to develop postgraduate courses in project management/contract management to address the needs of the industry. DPTI currently has over 20 officers undertaking these courses.

The Commission is not aware of the extent to which Lead Agencies are involved in DPTI's capability arrangements as they may be applicable to Lead Agency roles and responsibilities under the PIP. Lead Agency CEs' accountability for their own procurements is a key consideration in the Commission's recommendations in this final report, and to that end the capability of Lead Agencies is an important consideration.

#### ***4.2.2.3 Prescribed public authorities' capability frameworks***

Given their exempt status, most of the PPAs have developed their own procurement capability arrangements in relation to goods and services and, where applicable, also in relation to construction. The size, scope and detail of those arrangements varies significantly across the PPAs, commensurate with the extent to which they have developed and use procurement-specific policies and systems. The Commission observes that SPB training and capability initiatives also offer learnings for PPAs.

The Commission has identified three procurement operational models that contextualise how capability is managed across the PPAs; they generally reflect the size, complexity and value of their procurement requirements and the specialised nature of their businesses and operations:

1. Dedicated and resourced central procurement functions: resourced with several staff often with procurement qualifications and significant experience who are the custodians of procurement policy and systems, and generally (but not always) have significant influence over organisational engagement with suppliers and the market, purchasing processes, and contract management and evaluation.
2. 'hub-and-spoke' model: a central role provides a service to all parts of the business, supporting business units to effectively conduct their purchasing and providing guidance on contract management; usually has a strong connection with the finance function and acts as the primary or a concurrent adviser to the CEO and board (where applicable) in relation to purchasing goods and services and capital investments.
3. No specific procurement function: purchasing and contract management is undertaken usually by finance staff and is often one of several corporate functions undertaken by a single role.

### 4.2.3 Transactional vs. strategic procurement

There is a strong body of evidence promoting procurement as a strategic lever capable of achieving organisational efficiencies; accomplishing government's economic, sustainability and social policy objectives and delivering improved services and infrastructure.<sup>56</sup> At the core of this philosophy is recognition that procurement as a discrete function must be elevated in public organisations. The Commission has previously suggested that this transition necessitates a move away from a default transactional approach, to an integrated and whole-of-government perspective, often referred to as 'strategic procurement'.<sup>57</sup>

While low-value/low-risk purchasing may continue to be managed by routine transactions and non-specialist procurement staff, the growth of more complex procurement, particularly in the construction and NFP realms, requires an understanding of an increasing number of variables, and proficiency in associated skills and attributes including but not limited to:

- assessing and managing risk — determining where the procurement activity sits on the risk/complexity spectrum;
- market intelligence, supplier engagement and relationship management;
- assessing and choosing the optimal procurement model;
- detailed category knowledge and management, and applying other VFM strategies;
- achievement of policy outcomes beyond the specific transaction e.g. government social policy outcomes;
- fostering innovation and supporting SMEs; and
- sophisticated negotiation, contract management and contract evaluation.

The Commission notes the government's support for improved procurement capability in its response to the Stage 1 final report,<sup>58</sup> specifically in relation to a new Capability Development Strategy, an improved community of practice, and improved procurement metrics, among other things.

The Commission envisages the scheme of future procurement capability development will require an effective execution of centrally established capability standards and benchmarks; public sector agencies effectively applying those standards and matching roles, skills and

<sup>56</sup> See for example the work of the Australasian Procurement and Construction Council on Future Procurement Skills requirements online at: <<http://www.apcc.gov.au/Procurement%20Publications/APCC%20Future%20Procurement%20Published%20Version%202016%20August%202018.pdf>>, the work of the UK Commissioning Academy <<https://www.gov.uk/government/publications/the-commissioning-academy-brochure/commissioningacademybrochure-2016#the-academy-programme>>, and the Victorian Government Purchasing Board, Complexity and Capability Assessment Policy, Capability Framework, <<http://www.procurement.vic.gov.au/files/f57852e9-a0f8-422e-aa7c-a60f00bf4438/VGPBVPSCcapability-framework.pdf>>.

<sup>57</sup> South Australian Productivity Commission, 'Inquiry into Government Procurement – Stage 1 Final Report' [2.7.7] and South Australian Productivity Commission, 'Inquiry into Government Procurement – Stage 1 Draft Report' [7.4].

<sup>58</sup> 'The South Australian Government's Response to the South Australian Productivity Commission Inquiry into Government Procurement Stage 1', Recommendations 2.10, 2.9 and 2.7, pp. 9 - 12 (web page, 7 October 2019) <[https://dpc.sa.gov.au/\\_\\_data/assets/pdf\\_file/0009/109845/SAGov-Response-Procurement-Inquiry-2019.pdf](https://dpc.sa.gov.au/__data/assets/pdf_file/0009/109845/SAGov-Response-Procurement-Inquiry-2019.pdf)>

expertise to where they are needed most; and analysis, evaluation and continuous improvement guidance emanating from the centre on statewide procurement capability performance.

**Recommendation 4.2:** To strengthen procurement capability among smaller prescribed authorities and support construction-specific capability development and information sharing, the Commission recommends that the Heads of Procurement Community of Practice approved by the South Australian Government in its response to the Stage 1 final report (Recommendation 2.9), be expanded to include:

- prescribed public authorities; and
- a standing construction procurement subgroup for both public authorities and prescribed public authorities.

There is scope to further develop construction procurement capability, and to lift the capability of several of the PPAs. The Commission discusses some of the key areas for consideration in the next section. The Commission acknowledges that DPTI and the constructing PPAs will have an important role, and that some of the PPAs are already sector leads in relation to aspects of procurement capability, making their contribution to reform and improvement in this area an important one.

#### 4.2.4 Meeting the challenge

*Despite meaningful progress in key jurisdictions and large agencies, the public sector is inadequately skilled and resourced to undertake a high volume of sophisticated procurement activity, including the oversight of projects during the delivery phase. Inadequate public sector procurement expertise can result in the taxpayer being exposed to inappropriate risks or costs, and compromising the capability of projects to achieve user outcomes.<sup>59</sup>*

The Commission has discussed the importance of the central procurement function having an increased focus on statewide performance and adopting a 'state-first' philosophy — capability development is no different. It will be important to all public sector procurement stakeholders that there is a strategic, planned and transparent approach to procurement capability.

The Commission sees the benefit of the centre being the custodian of capability development policy and strategy, including construction, acknowledging the expertise of DPTI in building construction and civil works, and the sector expertise of the constructing PPAs. DPTI has made several beneficial suggestions in response to the Commission's proposed strategic approach to construction capability development which are discussed in this section. DPTI is also supportive of a collaborative approach in this regard.

An effective and transparent construction capability strategy will give confidence to suppliers and the market where it demonstrates how the state is improving its capacity to engage with them and is investing to achieve efficiencies in procurement operations saving time and

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<sup>59</sup> Infrastructure Australia, *Australian Infrastructure Audit 2019*, 'Executive summary', Challenge #30, 45.

money for business. The private sector must have the opportunity to input into government procurement reform, including capability development aspects.

The Commission also envisages an increased focus on the capability of Lead Agencies who, under the current policy paradigm, are required to collaborate with DPTI in relation to prescribed construction activity. It has been made clear to the Commission that there are divergent views in relation to the appropriate scope of the DPTI/Lead Agency model. In addition to improvements in their respective technical procurement capabilities, a better understanding of each of the parties' expectations has the prospect of improving outcomes.

The size and importance of construction undertaken by PPAs warrants equal consideration under a single-system model. Given the specific types of construction undertaken by the PPAs, their participation in capability development is necessary, not only to provide for collective ownership of capability development reforms that may affect them, but also to harvest their best practices, principles and expertise that may be applicable more broadly to construction procurement. As has been discussed variously by the Commission during Stage 2, and in response to PPA feedback, PPAs will retain the agility and flexibility they require to meet their statutory and commercial obligations. Capability development reforms, whether in relation to goods and services or procurement, are not excluded from this principle.

The Commission explores some of the key issues in relation to construction procurement and procurement conducted by the PPAs, arising from its consultations, in the following sections.

#### **4.2.4.1 Improving professional standards and competencies**

The Australasian Procurement and Construction Council's (APCC) 2018 work on capability explores the transitioning of procurement from transactional to strategic, the underpinning drivers, and illustrates how 'current procurement skills' compare to 'emerging procurement competencies'.<sup>60</sup>

The APCC has suggested that the generic emerging competencies will need to be contextualised to suit particular procurement categories.<sup>61</sup> The Commission supports this principle and envisages contextualisation of strategic construction procurement competencies to reflect the diversity of procurement portfolios across the sector. For example, contextualised construction competencies would be developed to reflect the specialisations of construction undertaken by agencies (e.g. DPTI: civil works, Housing SA: residential development etc.). These competencies would be equally applicable to both technical (engineering) and procurement staff, who work together to support a rigorous and efficient procurement process in the construction context. Further, contextualised construction competencies would also be developed for Lead Agencies to ensure they can fulfil their role in accordance with the PIP, or any future iteration thereof, to ensure project accountability to and on behalf of their chief executive.

The Commission sees defining strategic competencies as a practical joint task led by Procurement SA in conjunction with agencies and the Office for the Commissioner for Public

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<sup>60</sup> Australasian Procurement and Construction Council, *Future Procurement Skill Requirements: A More Strategic Procurement Approach – Strategies for Recruiting, Engaging and Retaining Staff*, August 2018.

<sup>61</sup> *Ibid*, 18–20.

Sector Employment. Input from the private sector would add depth and contemporary perspectives. The Commission notes the recent work of the SPB in capability development, and DPTI's collaboration with the University of South Australia. These respective investments can be built upon and further developed over time to ensure public sector procurement professionals can attain and retain their expert competencies. Monitoring the procurement professions capability will be a key task for Procurement SA.

The Commission has observed common themes in relation to the contemporary skills and qualifications required to perform in a 'strategic procurement' context and those applicable to construction procurement.<sup>62</sup> Those observations are consistent with those found in a 2015 report commissioned by Consult Australia:

*...given the mixture of expertise required to undertake a successful procurement, governments should consider restructuring procurement teams to encourage the key players to work collaboratively. Together, legal experts that understand contracting, insurance specialists, practitioners with project experience and procurement experts can evaluate value for money and appropriately tailor procurement processes, contracts and delivery models to the objectives of a project.<sup>63</sup>*

The strategic procurement competencies recommended by the Commission will need to reflect the professionalisation of procurement, including but extending beyond procurement-specific qualifications (e.g. MCIPS) to encompass the variety of professions envisaged as forming part of the high-performing, multidisciplinary teams that will be required to conduct complex future procurement. An assessment of interstate work in this area during development of the competencies would be prudent. The Commission touched on other jurisdictions in its Stage 1 final report referencing, for example, Queensland's critical skills boost and 'Skills2Procure' programs, and how those programs were deployed as part of the transition to a centre-led agency-enabled model.<sup>64</sup>

Consistent with the strategic approach and reflecting the spirit of collaboration required in multidisciplinary teams, DPTI has indicated support for a construction project placement program to be jointly developed with Procurement SA. The Commission supports this and proposes that placements could extend across public sector agencies to support the sharing of best practice principles across different construction procurement specialisations. Consideration could also be given to placements between Lead Agencies and DPTI to support an improved level of understanding of each organisation's requirements, promoting sustainable relationships capable of avoiding unnecessary delays that can arise from competing priorities.

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<sup>62</sup> See for example House of Representatives Standing Committee on Infrastructure, Transport and Cities, Parliament of Australia, *Building Up & Moving Out - Inquiry into the Australian Government's role in the development of cities*, Chapter 13 (September 2018).

<sup>63</sup> Deloitte Access Economics (commissioned by Consult Australia), *Economic benefits of better procurement practices, 2015*, 59.

<sup>64</sup> South Australian Productivity Commission, *Inquiry into Government Procurement: Stage 1 final report*, 97–98.

**Recommendation 4.3:** To ensure all key areas of procurement capability in the South Australian public sector are supported, the Commission recommends that the Capability Development Strategy approved by the South Australian Government in its response to the Stage 1 final report (recommendation 2.10) be expanded to cover construction procurement, and in consultation with constructing public authorities and prescribed public authorities:

- develop construction-specific procurement competencies for technical (engineering etc.) staff, procurement professionals and Lead Agencies to ensure each group can effectively and collaboratively fulfil their role during a construction procurement; and
- develop a program of sponsored placements and exchanges within and between public sector agencies to foster competency development and information sharing, possibly as a program of the Heads of Procurement Community of Practice.

#### **4.2.4.2 Contract management**

Capability and contract management performance has been the subject of extensive consideration and comment by the Commission. The Commission received significant feedback from public sector agencies, business and industry representatives, making several recommendations in Stage 1 of the inquiry, all of which were supported by government. Those recommendations covered contract management policy reform, improved contract management reporting, and associated arrangements such as lifting financial delegations for chief executives to enter into contracts.

In Stage 2, the Commission has observed a strong focus by agencies on the market approach and supplier selection phases of the construction procurement process. However, once they have concluded, the subsequent governance and oversight of the framework for construction procurement appears to attract less attention. Feedback received covered:

- the impact on suppliers in terms of payment, risk and due diligence of head contractors;
- transactional approaches to contract management by public authorities that miss realising the full value; and
- shortcomings in the quality and collection of data and the use of systems to support management of contracts.

DPTI has proposed development of a standard by Procurement SA to support contract management. Proposed areas for coverage include contract management and administration, the principles applicable to ensuring effective and appropriate contractor/subcontractor arrangements, and procurement planning. The Commission is supportive of this proposal which would need to be assessed by Procurement SA as it establishes its procurement policy framework reform priorities.

While a standard will provide new and focused guidance on contract management matters, it will be critical to effecting change that procurement staff possess the commensurate capability to execute and adhere to that standard.

#### **4.2.4.3 Risk management**

The Commission has examined procurement risk management capability in Stage 2 of this inquiry with a practical consideration of the approaches of DPTI and SA Water in construction. The Commission acknowledges the open and candid approach taken by DPTI and SA Water in this regard, and their views about where improvements may be able to be achieved.<sup>65</sup> The Commission also considered risk management by the PPAs in terms of oversight by their governance and board arrangements, which was the form of the response from the PPAs on this issue.

The Commission identified the good practices and contemporary methodologies present in some constructing agencies, in particular the high priority which DPTI and SA Water give risk management. The issues identified for improvement more broadly across construction procurement were similar to those for goods and services procurement. Improving risk management capability systemically across public sector construction procurement will come from reforms aimed at addressing some common issues: they include improved data collection, analysis and reporting; better contract model selection; evolved supplier engagement and market intelligence; and better contract model choice, design and content. Without oversimplifying the issues, the Commission has observed that improvements in managing construction procurement risks will be a consequence of the move towards adopting methodological approaches enabling procurement practitioners to better allocate, mitigate and manage risk on a project-by-project basis.

The Commission acknowledges that PPAs have risk management frameworks, policies and procedures in place that form part of the mandated requirements of their establishing legislation. Generally, the Commission found that PPAs effectively applied their organisational risk management arrangements to their procurement strategies and practice, negating the need for separate procurement-specific risk management policies. The structural governance arrangements of public corporations, the financial corporations in particular, require sound risk management strategies and practices.

The Commission supports DPTI's proposal that a risk management standard form part of Procurement SA's procurement policy simplification process. It is the Commission's view that it would be beneficial for DPTI and some of the PPAs, SA Water in particular, to contribute to the development of such a standard. As a precursor, it would be advantageous for the SPB to consult with PPAs given their commercial approaches to risk management as it goes through its revision of the Capability Development Strategy, to identify competencies and training needs having regard to the PPAs' risk management capability.<sup>66</sup>

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<sup>65</sup> South Australian Productivity Commission, *Inquiry into Government Procurement – Stage 2 Draft Report*, 56-58 and 117-118.

<sup>66</sup> See Recommendation 2.10 and the government response from Stage 1 of this inquiry.

#### **4.2.4.4 The right people — attraction and retention**

The Commission considers that raising procurement to a strategic and high-value function will help to attract and retain high-performing procurement people. The APCC has identified strategies to support recruiting and retaining procurement professionals, recommending embedding recruitment and retention into ongoing management activity, career management frameworks and rotational programs aimed at mentoring high-performing procurement professionals. The Commission considers these strategies can be adapted to the South Australian context.

Looking to the private sector in terms of recruiting new staff may assist with necessary cultural change, injecting commercial thinking to support improved accountability and achieving efficiencies. This may also contribute to the professionalisation of the multidisciplinary teams that will be required to undertake complex future procurement by targeting those professions most in need by public sector agencies, depending on their talent profile.

#### **4.2.5 Conclusion**

The Commission has found common themes in procurement capability covering both goods and services and construction procurement. The complexity of construction procurement, the prospects of it supporting wider government policy outcomes, and the diversity of construction sectors in which public authorities and PPAs are involved warrants the development of dedicated capability development strategies.

Consistent with the 'state-first' philosophy argued by the Commission, the proposed Procurement SA would be the custodian of these capability development strategies. This would be complemented through high-level collaboration with agencies and, in particular, would be best done in conjunction with construction agencies, who can inject expertise, best practice, and share common principles across the diverse construction sectors in which those agencies are key players. There is an important, independent role for OCPSE to play in the development of professional competencies.

Importantly, the Commission has not made explicit recommendations in relation to some of the thematic issues examined in this section. Those comments are intended for later consideration by SPB and/or Procurement SA in their development of the Capability Development Strategy in the context of streamlining the existing procurement policy framework.

### **4.3 Measurement**

A frequently occurring theme throughout the Stage 1 and Stage 2 inquiries has been the lack of data and information, with some exceptions, at agency level, to provide evidence on trends in the procurement system, to support monitoring of performance and to identify areas for improvement. The lack of measurement and data collection is problematic for several reasons and is indicative, in the Commission's view, that procurement is predominantly considered a 'non-strategic' function in government.

Stakeholders have indicated that current requirements for the capture, measurement and reporting of information are cumbersome for business, particularly small business, to comply with especially as much of the information collected does not inform decision making, describe performance or support improvement in outcomes.

'There is no centralised data management. This can create security and confidentiality issues whereby there are many and varied storage locations across government' (DR1-32 – Small Business Commissioner submission, p. 8).

In the Stage 1 report, the Commission recommended that the government commit to reform requirements for public authorities to report centrally to ensure greater accountability and demonstrate outcomes from expenditure on goods and services. Specifically, it was recommended that the reporting and data collection at a state level include metrics for:

- capability;
- value for money;
- fairness of process;
- supplier feedback on the process and supplier engagement; and
- cost (direct and indirect) of the procurement process.

This recommendation was accepted; however, the scope of the investigation for Stage 1 was for goods and services procurement only.

Throughout this inquiry the Commission has engaged with agencies and searched extensively for data, information and reports. Information availability and data collection capability has varied widely across public authorities. The Commission has collected and examined:

- examples of internal reports, data sets and summary information on procurement supplied by public authorities and prescribed authorities;
- its own random sample of 103 recent goods and services procurements and 106 recent construction procurements across agencies; and
- data from other sources including surveys conducted by Business SA, the Office of the Industry Advocate and the SA Tenders website.

The Commission has also heavily used information collected and published by the SPB in its annual report and annual procurement activity reports of public authorities.

Published procurement reports and internally generated reports presented to the Commission by the SPB and public authorities, for both goods and services and construction procurement, encompass:

- total purchasing expenditure and contracting activity across the sector;
- location of supplier and type of engagement with the market;
- timeliness of the procurement process;

- supplier complaints against public authorities;
- disclosure of contracts; and
- number of acquisition plans examined by the SPB.

The Commission has found that:

- there are insufficient data and metrics suitable for measuring and reporting on value for money outcomes (including financial and non-financial factors) from a whole-of-government perspective;
- reporting of key performance indicators on government objectives is limited;
- performance of agencies in completing milestones in contracts and effectiveness of contract management by agencies is not collected or reported to the SPB;
- reporting on contracts occurs only at the individual project level; reporting on indicators common to contracts at an aggregate level is not a sector-wide practice;
- agencies cannot provide aggregate expenditure information by supplier or by type of purchase without significant time and effort, particularly for panel arrangements;
- current indicators make it difficult to compare supplier performance, and to assess risk controls and project outcomes due to inconsistent methodology;
- there is an inability to extract supplier and contract data from Basware, which makes it difficult to track prices for government purchasing and financial outcomes or savings; and
- feedback provided to suppliers is not recorded by public authorities.

The bottom line is that public authorities have limited capability in the design and capture of information related to procurement performance. Moreover, the information currently held within agencies is not open to scrutiny. Improving the design of the system architecture to capture and demonstrate performance will maximise the value of procurement expenditure as the measurement of the system is currently focused on compliance rather than performance.

In order to undertake the reporting necessary, information will need to be collected and organised in a form that can be retrieved and analysed by public authorities. As indicated above there are critical elements of measurement and reporting for which South Australia does not collect data and, on balance, significant reform is required.

The following measurement framework is based in part on best practice examples found by the Commission and in part on the findings of the inquiry to date. The framework applies to both goods services and construction procurement and covers four areas:

1. Procurement performance and outcomes (success, failures and issues)
2. Procurement process
3. Continuous improvement
4. Capability.

### 4.3.1 Procurement outcomes

The Commission considers that summary information on procurement activity in South Australia does not demonstrate where and how public expenditure on goods and services occurs. This is in sharp contrast to established practice or current reforms in other jurisdictions. Notably, New South Wales and Western Australia have statewide dashboards across all forms that can be interrogated and used for reporting purposes; Queensland is currently implementing an expenditure and contracting activity dashboard.

New South Wales collects for internal purposes information on:

- suppliers (supplier groupings include by sector or categories of purchasing);
- categories of purchasing;
- locality of supplier; and
- business type or size.

Western Australia publishes annual expenditure by region, department and by commodity and services along with annual contracting activity data by department. The Queensland Government has initiated a reform for agencies to develop a procurement plan (or strategy) on an annual basis. The plan includes areas of expected expenditure by category and by key projects as well as key corporate metrics for the agency, including capability development.

The benefits of better information collection and use of expenditure data are:

- using information on suppliers to manage procurement strategies and expenditures, to understand key suppliers in the industry and the supply chain for key projects;
- creating an efficient process for generating reports for decision makers and to meet agency and whole-of-government reporting requirements;
- determining the proportion of procurement spend under contract and where opportunities lie for disaggregation or aggregation of expenditure; and
- determining the future basis for categories of expenditure aligned to key corporate and government objectives.

The Commission has therefore identified a gap in terms of best practice of outcome measurement if we compare what has been implemented in other jurisdictions with what is done in South Australia. Information on procurement outcomes is a fundamental building block for continuous improvement and the procurement system is deficient in the absence of this information.

The Commission acknowledges that to collect and use this type of information in the future at the level required will need an investment of resources by the government.

In terms of key government and agency contracts, only whole-of-government expenditure on key contracts is currently collected. No usage (volume) or pricing data is collected. The consolidated expenditure data collected does not track contract leakage (expenditure related to the commodity or service through a supplier not part of the panel arrangements).

Currently, no data is collected on the outcomes of pre-qualified businesses (in terms of contracts won); neither is data collected on the number of tenders related to business capabilities for which subsets of pre-qualified suppliers apply. This gap in data collection, needs to be addressed to ensure that a large proportion of pre-qualified businesses are not competing for small amounts of procurement contracts and to ensure a better understanding of the capabilities of the supplier market.

A further finding has been the system’s inability to demonstrate the contribution of procurement to broader government objectives: competition and participation, involvement of local SMEs in the procurement process, sustainable procurement, innovation and the proportion of government procurement supporting better social outcomes.

The Commission sees the merit of improved measurement and reporting against broader government objectives:

- *Competition and participation:* the amount of interest, on average, of suppliers in tender processes is an important indicator to monitor and influence. The level of interest as determined by the number of bids gives an indication of the intensity of competition and may provide further information about types of firms applying.
- *Sustainable procurement:* the SPB framework mandates the assessment of impacts of significant procurement proposals on measures such as emissions, recycling and energy costs. These measures need to be quantified and reported on where impacts are assessed as relevant. In addition, where the evaluation criteria of a procurement project relate to sustainable procurement, not only as a stated objective but also forming critical elements of supplier decisions, then data related to these projects should be captured (and similarly for social procurement objectives).
- *Innovation:* the number of approaches to suppliers or approaches from suppliers outside the normal procurement process that progress to a pilot concept or co-design with the public authority is considered important for measuring innovation. Such a measure can enable a comparison across periods and between public authorities of the intensity of innovation outcomes involving procurement.

Table 4.3 summarises the information the Commission has identified as emerging and best practice from other jurisdictions for key elements of measuring procurement outcomes.

*Table 4.3: Measurement matrix for procurement outcomes*

Criteria	What to report/measure	Benefits	Across government	Agency level	Data currently collected
Expenditure on goods and services	Expenditure by: <ul style="list-style-type: none"> <li>➤ Supplier or supplier groups</li> <li>➤ Commodities or service groups (categories)</li> <li>➤ Locality of supplier</li> <li>➤ Business size</li> </ul>	<ul style="list-style-type: none"> <li>➤ Improved supplier management</li> <li>➤ Efficiency in reporting</li> <li>➤ Procurement planning</li> <li>➤ Category management</li> </ul>	×	×	Some data is collected on suppliers and categories in a small number of agencies. All agencies collect some form of

Criteria	What to report/measure	Benefits	Across government	Agency level	Data currently collected
					supplier location data.
<i>Across government and agency panels</i>	<ul style="list-style-type: none"> <li>➤ Whole-of-government or whole-of-agency expenditure</li> <li>➤ Contract volumes and pricing</li> <li>➤ Contract leakage<sup>67</sup></li> <li>➤ Outcomes</li> <li>➤ Number of contracts won by pre-qualified suppliers for each contract by service area/commodity</li> </ul>	<ul style="list-style-type: none"> <li>➤ Greater information for market on key government contracts</li> <li>➤ Better information for agencies to support strategy for common purchasing</li> <li>➤ Greater transparency and effectiveness in use of panel contracts and better matching of supplier capabilities to organisation need</li> </ul>	×	×	Totals of data for most but not all contracts is collected but not published. Agency information and usage data not available.
Contracting activity	<ul style="list-style-type: none"> <li>➤ Contracting activity by department, by category and location of supplier</li> </ul>	<ul style="list-style-type: none"> <li>➤ Efficiency in reporting</li> <li>➤ Procurement planning</li> <li>➤ Category management</li> </ul>	×	×	Yes for contracting activity. However, up until 2017–18, commodity data collected by SPB. Category management approach not used currently.
Competition and participation	<ul style="list-style-type: none"> <li>➤ Average number of bidders per tender (possible variables by industry, business size and by complexity)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Enables measurement of extent and interest in tendering as well as competitive nature of individual industries.</li> </ul>	×	×	No
Sustainable procurement	<ul style="list-style-type: none"> <li>➤ Number of tenders pursuing environmental or social objectives in addition to primary objective</li> </ul>	<ul style="list-style-type: none"> <li>➤ Quantifies extent to which sustainable outcomes are being considered in tender processes.</li> </ul>	×	×	No
	Impacts on environment by key assessment metrics:	<ul style="list-style-type: none"> <li>➤ Enables whole-of-government quantification of</li> </ul>			No

<sup>67</sup> Expenditure related to the commodity or service through a supplier not part of the panel arrangements.

Criteria	What to report/measure	Benefits	Across government	Agency level	Data currently collected
	<ul style="list-style-type: none"> <li>➤ energy costs</li> <li>➤ use of recycled materials</li> <li>➤ emissions</li> </ul>	environmental impacts.			
Innovation	<ul style="list-style-type: none"> <li>➤ Proportion of pre-market approaches that progress to purchasing or proof of concept.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Enables assessment of level of innovation facilitated by agencies.</li> </ul>	x	x	No

Source: Office of the SA Productivity Commission

### 4.3.2 Process measures

In Stage 1 of the inquiry, the Commission concluded that the governance arrangements do not promote forward planning or strategic oversight in the procurement system and the lack of information on future opportunities is a symptom of the lack of strategic oversight.

The Commission recommended that in order to strengthen the capacity of SA businesses, especially SMEs, to compete in government procurement opportunities, each agency should be required to meet its obligation by publishing a forward program of planned projects and intentions for current projects on a 12-month moving basis. The government has accepted this recommendation.

The Commission has engaged extensively with procurement units and officials in other jurisdictions and has gathered the following information on the features and performance of procurement processes interstate.

#### *Timeliness*

In South Australia, only one measure, timeliness, is reported at an across-government level. This measure is the median time taken to complete the procurement process from sign-off of the acquisition plan through to contract award. South Australia is the only jurisdiction to report on this measure.

While the Commission understands the reservations of other jurisdictions regarding publishing nominal timeliness metrics, it sees merit in agencies reporting on whether they have met the expected timeframes and, where overruns have occurred, whether time to undertake the process has gone beyond an acceptable margin of time (this margin would necessarily be higher for complex projects). Chapter 3 discusses timeliness in more detail.

#### *Acquisition planning*

Another aspect of the tender process not adequately captured in terms of measurement relates to the effectiveness of the acquisition planning process. Currently, only acquisition planning that involves the SPB is recorded in South Australia. This does not provide an indicator of the appropriateness of the market approach or the extent and accuracy of the market research on the project.

The Commission considers that it would be useful for the numbers of and reasons for variations to the scope of projects to be recorded to assist with continuous improvement in the planning for procurement process.

*Contract management and risk management*

With respect to contract management, the Commission found that the tracking of contracts within agencies, particularly renewal or expiry dates and outcomes, the tracking of variations to contracts and the reasons for variations occurs sporadically and in an uncoordinated manner within agencies and across the government sector.

In terms of risk management, there are gaps in reporting by agencies on: common risks; outcomes of risk treatment when risks materialise; and where the responsibility for risk lies. The failure to track risks by types of procurement, by types of contract and across an agency’s expenditure profile does not allow for improvements in how the organisation treats risks and may also lead to ill-informed decision making or process changes.

To enable better treatment of risks and assessment of risk management processes, the Commission considers it useful in the future for information to be collected and used by agencies on the owner of the risk by business size for key strategic or high-risk projects; and outcomes of risk treatment by contract type where the risk has materialised.

The information presented in Table 4.4 represents emerging and best practice from other jurisdictions identified by the Commission for key elements of measuring procurement processes.

*Table 4.4: Measurement matrix for procurement process*

Criteria	What to report/measure	Benefits	Across government	Agency level	Data currently collected
Procurement strategy	➤ Development and regular update of planned procurement projects	➤ Publishes list of future procurement projects	×	×	Yes. Value of information can be improved
Timeliness	➤ The time taken for agencies to process tenders relative to published timeframe	➤ Accountability for service standards of agencies for low-risk tender processes		×	Median time taken is published. Published service standards or time expected for process not mandatory.
<b>Phases of Procurement</b>					
<i>Acquisition planning</i>	➤ Variations to plans ➤ instances of mis-specification of tender documents	➤ Helps identify common causes in process and improve capability in specifications		×	No

Criteria	What to report/measure	Benefits	Across government	Agency level	Data currently collected
		writing and market research.			
<i>Contract management</i>	<ul style="list-style-type: none"> <li>➤ Supplier performance</li> <li>➤ tracking of contract renewal dates</li> <li>➤ tracking of variations of contract and reasons for variation</li> </ul>	<ul style="list-style-type: none"> <li>➤ Improves contract management performance and performance of suppliers.</li> </ul>		×	Tracking of contract renewals is piecemeal across agencies. Reasons for variations and tracking not done currently.
Risk management	<ul style="list-style-type: none"> <li>➤ Owner of risk by key projects</li> <li>➤ outcome of risk treatment where risk materialised</li> </ul>	<ul style="list-style-type: none"> <li>➤ Better treatment of risk and improved risk management processes</li> </ul>		×	No

Source: Office of the SA Productivity Commission

### 4.3.3 Continuous improvement

With some exceptions among the public and prescribed authorities such as SA Water, the use of continuous improvement strategies for procurement is not commonplace. SA Water has developed a continuous improvement process that reviews their internal quality management system at regular intervals. This process is supported by comprehensive audits, data gathering and governance arrangements that are fully integrated into the organisation’s business processes.

The Commission has observed better practice examples interstate, notably in Victoria, where the government has continuous improvement metrics as part of its complexity and capability framework.

The objectives of indicators for continuous improvement are to assess the extent to which government agencies have processes to support and monitor their performance and to formulate and implement improvement plans. This requires among other things the availability of information systems, a capacity for analysis, feedback mechanisms and planning capacity for implementation of improvements. These improvements are designed to support efficient and effective processes to address shortcomings in procurement and to maintain high organisational standards once they have been achieved.

The two key groups that provide measurement and feedback of procurement processes and performance are the two participants inherently involved in the system: suppliers and agency procurement staff. Regular feedback from both suppliers and agency staff on how the system is performing and feedback on how reforms are progressing is critical in measuring performance and making the necessary reforms in the future.

The Commission sees merit in collecting information on queries regarding the tender process from potential suppliers, rather than specific responses on project-related matters, and

suggests they be recorded to monitor supplier understanding of procurement processes and rules.

The Commission has reviewed the survey of suppliers conducted by SPB and has concluded that the survey is overly long, can be subject to bias from respondents and does not allow for analysis of key outcomes. The Commission considers it will be useful for supplier engagement to be reconstituted to steer away from the outcomes of the tender process itself and to elicit more meaningful feedback from suppliers on:

- areas of tender processes that can be improved;
- dialogue on the specifications and government requirements of tenders; and
- reflections on key aspects of evaluation.

The measurement of outcomes of supplier engagement and identifying opportunities for improvement are key components of ensuring that procurement processes and outcomes remain pertinent and up to date.

The Commission considers that the information described in Table 4.5 is needed at an operational level for agencies to manage, describe and improve their performance.

*Table 4.5: Measurement matrix for continuous improvement*

Criteria	What to report/measure	Benefits	Across government	Agency level	Data currently collected
Benchmarking performance		Enables comparison across the sector, with previous performance and with similar organisations	×	×	No
<b>Organisational capability</b>					
<i>Guidance, tools and policies</i>	Proportion of documents up to date (or lapsed) and proportion assessed as relevant by staff	Ensures staff knowledge is up to date and that guidance is keeping pace with business needs		×	No
<i>Induction for new staff</i>	Proportion of staff receiving appropriate level of induction	Ensures staff receive requisite information sources and procedural documents		×	No
Supplier engagement	Tender process seminars offered and attendance	Facilitates building of supplier capacity in understanding state government processes		×	No
Supplier feedback	<ul style="list-style-type: none"> <li>➤ Survey on key aspects of tender process</li> <li>➤ Number of queries on tender process and tracking of common issues</li> </ul>	Provides indication of how agencies plan and execute processes, complexity of tender documents and contracting issues		×	Yes, SPB survey. However, this is overly long and needs to be focused.

Criteria	What to report/measure	Benefits	Across government	Agency level	Data currently collected
Compliance monitoring and reporting	Staff use of established policies and tools (or alternatively instances where process not followed)	Ensures staff demonstrate knowledge and use of agency procurement processes		×	No

Source: Office of the SA Productivity Commission

### 4.3.4 Keeping track of capability

During Stage 1 of the inquiry, the Commission consulted with public authorities and other key stakeholders to obtain data or information on procurement capability in South Australia. This data has been difficult to obtain, reflecting that:

- Data or information on human resource procurement capability is not collected or reported as it is not considered to be a strategic priority.
- Position descriptions for roles where procurement is a part of their responsibilities often do not include any reference to procurement or contract management and therefore this information is not captured at the agency level.
- Development and implementation of mechanisms to analyse and report on procurement capability metrics is not a strategic priority, or existing mechanisms (including ANZSCO) are inadequate or inaccurate.

Accurate information on the numbers, skills, education and experience of procurement staff is an essential foundation for development of the capability of procurement professionals. Further investigation and request of agencies by the Commission indicates that the numbers of full-time procurement staff can be large or small depending on how it is defined. To enhance development of procurement staff and capability of organisations, the capture and generation of information at agency level needs to improve markedly. At a basic functional level, there is merit on information being collected:

- on position descriptions for roles that include procurement, with an assessment on whether the procurement role is at a basic, intermediate or advanced level for each type of officer (the Commission suggests the key categories of procurement professionals are decision maker, manager and officers);
- regarding the skill levels and experience of current staff in relation to key procurement competencies and the needs of the organisation;
- on the level of training requirements across business units and the organisation related to procurement competencies; and
- regarding integration of performance measures of procurement staff with key corporate objectives and procurement strategy KPIs.

Recommendation 4.1 on the establishment of a procurement accountability framework includes streamlined policy requirements on the capture and reporting of procurement

information as well as mechanisms that can capitalise on information and data that is captured and reported.

*Metrics on procurement staff development*

The Commission has engaged with SA Water on their comprehensive staff development and procurement capability strategies, this example is one of few encountered by the Commission in the course of the inquiry. The Commission has, however, been made aware of an initiative in DPTI to invest in the capability of construction procurement staff. Apart from those developed by SA Water, the information available to the Commission indicates that there is a gap at a system level, and likely within many agencies, on metrics for procurement staff development.

The Commission considers it will be useful in the future to collect information on:

- baselines of capability assessments for procurement staff. This is essential for future assessment of not only how staff are performing but also the type and levels of staff development required;
- performance reviews to quantify future training requirements and identify areas of staff training or qualifications; and
- quantum of training undertaken and quantum of staff with professional qualifications and accreditation. This provides the agency with stock and flow of training requirements and training interventions required.

Table 4.6 summarises the information the Commission has identified as emerging and best practice from other jurisdictions for key elements of measuring procurement staff capability.

*Table 4.6: Measurement matrix for procurement capability*

Criteria	What to report/measure	Benefits	Across government	Agency level	Data currently collected
<b>Current levels of agency staff capability</b>					
<i>Position descriptions</i>	➤ Stocktake of procurement staff by decision maker, manager and officer level	➤ Supports gap analysis and recruitment		×	No
<i>Key competencies</i>	➤ Stocktake of key competencies for procurement roles based on skill/ experience by business unit	➤ Supports gap analysis and identifies training requirements		×	No
<i>Training requirements</i>	➤ Benchmarking of agency staff that meet minimum requirements for each competency	➤ Supports capability development and can be integrated into performance development		×	No
<i>Performance development</i>	➤ Gap analysis and training			×	No

Criteria	What to report/measure	Benefits	Across government	Agency level	Data currently collected
	requirements with support for key corporate objectives				
<b>Procurement capability development</b>					
<i>Assessment of capability</i>	➤ Establish baseline for future assessment	➤ Supports continuous improvement in capability		×	No
<i>Review of performance</i>	➤ Identifies areas for intervention	➤ Identifies future training requirements		×	No
	➤ Reviews achievement of corporate objectives	➤ Identifies areas of corporate performance where capability can support improvement			
<i>Training and qualifications</i>	➤ Quantum of training undertaken and quantum of staff with professional accreditation	➤ Provides agency with stock and flow of training requirements and interventions		×	No

Source: Office of the SA Productivity Commission

### 4.3.5 Conclusion and recommendations

#### Data

The Commission has observed gaps in the information available to assist agencies in demonstrating performance, identifying areas for future improvement, managing contracts and developing the capability of procurement staff.

The Commission therefore sees merit in agencies measuring and reporting on procurement benefits in accordance with whole-of government procurement performance principles issued by Procurement SA. Implementation of the reporting framework would be overseen centrally to ensure best practice and meaningful reporting of performance using a standard methodology.

The establishment of a measurement and reporting framework is proposed, with the initial task of baselining agency and across-government performance, using available information to provide a reference point for future measurement of progress. Chapter 5 makes recommendations in this regard.

Reporting at a systemic level in the future will likely require an investment by government into a central platform or functional environment to support the capture, storage and retrieval of data. The platform would need to facilitate information flows between Procurement SA and public authorities in consistently derived and usable formats and would also need to provide a mechanism to generate reports for both internal and external use. The Commission considers that the information system architecture of such a platform has merit to:

- support agencies to satisfy their operating requirements;
- enable an extraction of whole-of-government information; and
- be designed in such a way that data can be consistently recorded and reported on.

Undertaking such a reform removes the potential for double-entry of data by agencies, manual extraction of data, the existence of parallel systems and the capacity for information inconsistencies between agencies.

**Recommendation 4.4:** To improve accountability and demonstration of performance in all government procurement, the Commission recommends that the proposed Procurement SA oversee and develop, in conjunction with agencies, the design of the information architecture required to collect, store, retrieve and report on data at a whole-of-government level. The possible strategies for designing the information architecture are:

- investing in the current whole-of-system arrangements, including SA Tenders, to improve data collection and information flows from agencies;
- enhance the functionality of systems currently used by agencies to meet whole-of-government requirements; and
- investing in a new whole-of-government system to meet data and reporting requirements.

### *Reporting*

The greatest source of value, and indeed the main purpose of the reporting, is the strategic use of information for improving business performance. A striking aspect of the analysis to date has been the low use of reporting to demonstrate accountability of outcomes. This implies a low level of strategic importance attached to the procurement function.

The Commission notes that there are processes and projects currently occurring that will improve the quality and availability of data and the capacity of the system to collect and report on procurement (e.g. reform to the SA Tenders website, introduction of a single business identifier and agency rollout of contract management and workflow systems).

The need for coordination and central strategic oversight of these reforms and similar processes in the future will be important to:

- ensure as much uniformity and therefore comparability as possible in the administrative data supporting the reports;
- ensure consistency in the methodology for collating and analysing the data;
- develop standards of reporting and benchmarks for agencies and whole-of-government to publish performance; and
- promote development of information and performance benchmarking at agency level to meet, where relevant, agency needs.

Two key messages for the case for change are, first, reporting on a procurement framework must account for all procurement activity undertaken by the public sector and currently this does not occur. Second, that the information is used to support better outcomes, more capable organisations, more efficient procurement processes, better engagement by suppliers, improved outcomes for businesses supplying to government and a more strategic approach to purchasing by agencies in the interests of achieving better value for money.

#### **Recommendation 4.5**

In order to strengthen the South Australian Government's capacity to understand, analyse and improve whole-of-government procurement in line with its support for Recommendation 2.7 of the Commission's final report into Stage 1, the Commission recommends that the reform of the reporting requirements and the related short-term actions previously approved in relation to goods and services be extended to cover construction procurement.

## 5. A better architecture for government procurement

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### 5.1 Introduction

Over the past year the Commission has: assembled and considered a large body of evidence; met with many stakeholders including business, SMEs, not for profit organisations and public authorities; issued two issues papers, two draft reports (that generated 79 submissions) and one final report (for Stage 1).

In summation, the South Australian Government's procurement system needs reform. Notwithstanding the committed efforts of procurement professionals working on the state's behalf, the current efforts to improve and some impressive areas of excellence – all of which the Commission respectfully acknowledges – there are systemic shortcomings. Moreover, other Australian jurisdictions have been reforming their procurement efforts, particularly in the use of information, in better understanding the marketplace and in strategic investments in the professional capability applied in government procurement.

The systemic reform opportunities for government procurement lie in three broad areas:

- Goods and services, where the strategic direction is weak, the system and process are overly complex, experienced and qualified staff are few in number and the tendency is for operational practice to focus on process compliance rather than best value. There is unnecessary red tape on businesses competing for the government's business, especially SMEs. The Commission sees this area as the largest and most immediate opportunity.
- Construction where, by contrast, process, risk management and understanding of the market, including the capacity of local and national industry participants, are more disciplined on a project by project basis. Professional expertise is high, but in limited supply, and the construction procurement system contains rigidities whose partial, risk-managed relaxation would, in the Commission's view, benefit the state in better value for money, simpler process and greater flexibility. The Commission sees this as a large opportunity over time and notes the changes and reform processes currently under way, including the work of the recently established Infrastructure SA.
- Prescribed public authorities (PPA) that by design stand outside the rules that apply to other agencies. In practice, most PPAs have regard to the principles of those rules and have procurement practices, the best of which are highly professional and tightly aligned with the strategy of the PPA. That said, there is a very wide range of capability among them.

Stepping back from the current framework, it is obvious there is no focused, purposeful strategy for, and ongoing scrutiny of, lifting the value to South Australia from the whole of government procurement spending over the long term. The Commission calls this 'hunting value'. Nor is there any agency with that role. At best, the uncoordinated elements sit with individual public authorities whose focus on procurement varies from strategic to

operational. This is a point of major difference between South Australia and other comparable Australian jurisdictions.

The result of the uncoordinated approach is a complex system of rules that focus on defining a process and ensuring compliance with that process. South Australia would benefit through greater efficiency and effectiveness from moving to the best practice in other jurisdictions of shifting the focus away from narrow compliance with process rules towards managing procurements based on their complexity and risk profile. This needs to include a focus on continuous improvement based on better supplier feedback as discussed in section 4.3.3.

**Recommendation 5.1:** In order to improve the efficiency, effectiveness and value of the state's procurement spending, the Commission recommends that the government moves the procurement system to one that is strategically focused, complexity and risk-based and applies strong professional capability, noting that to do so calls for:

- Fit-for-purpose central capability to shape and advise on the strategy for the procurement system
- Better performance information reporting and analytics, including improved supplier feedback;
- Fit for purpose standards, policies and guidance; and
- Building the capacity of the government's procurement profession.

Reforming South Australian Government procurement would, over time, provide significant benefit to the state by ensuring consistent, clear, strategic and disciplined pursuit of direct and indirect value across all the areas of the state's procurement; and by cutting red tape for businesses – especially South Australian SMEs – and public authorities.

Establishing an entity (Procurement SA) with the strategic role of lifting the value of government procurement sits at the centre of the Commission's recommendations to the South Australian Government. The key direction of reform is, over several years, to effect a large change in government procurement that is:

- built on a profession of highly capable procurement practitioners working closely with their business unit colleagues;
- based on applying this 'horsepower' and expertise, in a system that is simpler and far less reliant on outdated financial thresholds rather than risk and complexity measures;
- applies data, evidence and analytics both in its operations and in its search for improvement and new opportunities;
- systemically focused on achieving the direct and indirect value for money the state expects, including support for building more 'match fit' South Australian businesses; and

- forward-looking, engaged with the marketplace and transparent in its actions.

This final chapter sets out the Commission's recommended architecture for a whole of government system for government procurement. This architecture is built on clear accountabilities for doing and improving procurements at an operational level by agencies on the one hand and for devising and implementing (with agencies) strategic – multi-agency and multi-year – improvement to the procurement system on the other hand. The structure is intended to support the active hunt for additional value from government procurement, cut red tape and address the key tasks for improving the system described in previous chapters.

The next section sets out a modified version of the Commission's Option C contained in the Draft Report for Stage 2 of the inquiry. The changes reflect the consideration by the Commission of the advice and evidence provided by stakeholders following the release of the Draft Report, including detailed interactions with DPTI regarding construction procurement. They also provide greater detail on the relationship between the proposed Procurement SA and public authorities (including PPAs).

Section 5.3 sets out the proposed Procurement SA in greater detail, while Section 5.4 identifies a set of key initial tasks. Section 5.5 provides some views on a staged implementation of the changes and Section 5.6 flags some key caveats and considerations.

## 5.2 The proposition: a single system architecture

The Stage 2 draft report set out three options for proposed architectural reform of the state's procurement system. Those options were:

- Option A: Optimise the current framework under the *State Procurement Act 2004* (SP Act) and the State Procurement Board (SPB), maintaining the status of prescribed public authorities, and confining reform to goods and services.
- Option B: Extend the scope of the SPB to goods, services and construction (i.e. all procurement), remove the power to prescribe public authorities, and boost the resources and capability of the SPB.
- Option C: Repeal the SP Act and abolish the SPB and replace it with Procurement SA covering all procurement that would be led by an appropriately qualified Chief Executive reporting to a Minister. The new organisation is to have scope to revise and implement a new procurement policy framework and initiatives. Its mission will be to lift the overall performance of public sector procurement by driving a shift, over time, from the current compliance-heavy procurement culture to a professional, judgement-based model.

The Commission preferred Option C, subject to further consultation with stakeholders. A detailed discussion of the Commission's consultation arrangements is at Chapter 2.

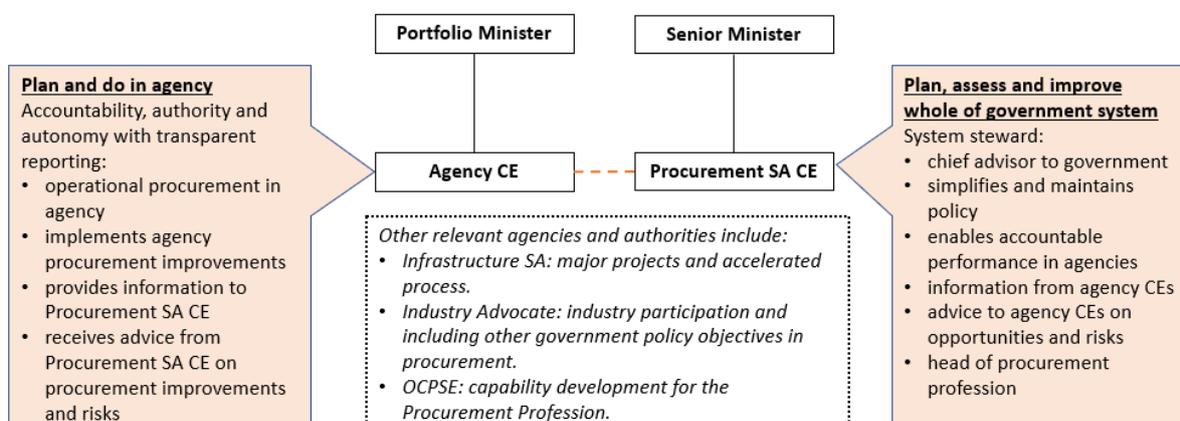
The Commission's views about the value of establishing a new organisation were largely validated during its Stage 2 draft report consultations. The Commission sees the benefits of the proposed architectural reforms as:

- Evidenced-based decision-making: a significantly improved data and analytical capacity to identify, unlock and deliver new and sustainable improvements to the procurement system;
- Scope: whole-of-government focus on system improvement and revised fit-for-purpose governance arrangements, with appropriate authority to obtain information deemed necessary to support Procurement SA’s functions;
- Simplification and devolution: simplifying procurement policy, re-establishing agency accountability for procurement activity; and
- Relationships with agencies: enabling relationships between Procurement SA and agencies, business and industry, complemented by up to date standards, developed over time, to optimise procurement outcomes.

The Commission’s consultations indicated no support for Option A, nor any variant thereof (including Option B). Much constructive and practical feedback was received, especially from agencies. It generally supported – often with qualifications – Option C or a variant of it. The Commission notes that the Statutory Authorities Review Committee report on the State Procurement Board reached a similar conclusion.

Figure 5.1 shows the basic division of work in this revised Option C between Procurement SA and line agencies, as well identifying other key institutions involved in aspects of the procurement system.

Figure 5.1: Proposed Procurement SA and agency accountabilities for procurement



Source: Office of the SA Productivity Commission

The revised Option C incorporates:

- A sharp distinction between accountability for doing procurements (the role of public authorities) and improving the whole of government procurement system (led by the proposed Procurement SA). Procurement SA would have no role in conducting individual procurements. They would be the singular responsibility of the line agency (including currently prescribed public authorities) and its chief executive, and, in the case of whole-of-government goods and services contracts, the Strategic Procurement group in DTF;

- Procurement SA would be the South Australian Government's chief advisor on the state's procurement system, and the strategist for substantially improving the direct and indirect value from the state's government procurement;
- The accountability and performance expectations of agencies would be made transparent and reported on by agencies to their ministers and by Procurement SA, as part of monitoring the ongoing performance of the public sector procurement system and identifying improvements;
- Procurement SA would focus from the outset on the following initiatives, developed in consultation with public sector agencies, business and industry:
  - developing, in its first six months, a multi-year strategy for improving the state's procurement system and extracting additional value;
  - establishing and embedding a whole-of-government performance reporting strategy, including performance indicators and a standard methodology for collection and reporting of procurement data;
  - establishing leadership of the procurement profession in the South Australian public sector, actively building procurement capability in collaboration with public sector agencies;
  - reassessing and simplifying the existing procurement policy framework, replacing it over time with standards and methodologies; and
  - developing value-adding relationships with public sector agency chief executives to underpin Procurement SA's mandate to improve the overall performance of public sector procurement.

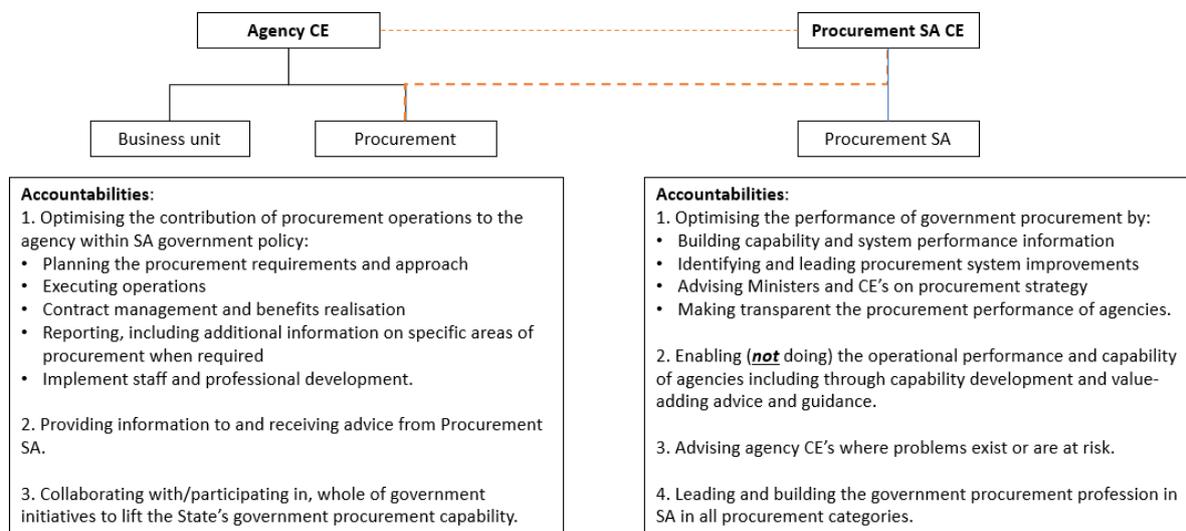
The Commission considers the proposed reforms, which build on the government's response to Stage 1 of the inquiry,<sup>68</sup> have the potential to transform the government procurement function and to enhance, potentially greatly, the value generated for the state. Achieving the proposed change will not be easy or rapid.

This chapter has several connected recommendations that, with the earlier recommendations in Chapter 3 and 4, are best thought of as a package. The Commission's view is the best value will come from doing all the elements concurrently with a central procurement function that is deliberately pitched at a very senior level with the capability and standing within the public service that is appropriate to its task. Accordingly, the first recommendation is that the Government simultaneously establish Procurement SA and abolish the SPB and the SP Act.

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<sup>68</sup> The South Australian Government's Response to the South Australian Productivity Commission Inquiry into Government Procurement Stage 1 (9 August 2019)  
<[https://dpc.sa.gov.au/\\_\\_data/assets/pdf\\_file/0009/109845/SAGov-Response-Procurement-Inquiry-2019.pdf](https://dpc.sa.gov.au/__data/assets/pdf_file/0009/109845/SAGov-Response-Procurement-Inquiry-2019.pdf)>

Figure 5.2: Proposed accountability framework - agency-led/central chief advisor



Source: Office of the South Australian Productivity Commission.

The remainder of this chapter sets out the Commission's views in support of a new unitary system architecture, the preferred way to achieve the reforms, and the preferred structure, authority and functions to deliver it.

**Recommendation 5.2:** To establish a unit to give drive and direction to strategic reform of the state government's procurement, the Commission recommends the SA Government concurrently repeals the *State Procurement Act 2004* and establishes Procurement SA as an administrative unit of the public sector with a chief executive having authority to improve the overall performance of government procurement by:

- simplifying the procurement policy framework;
- establishing and embedding a data and reporting strategy to provide for evidenced-based procurement decision-making and reduce reporting requirements; and
- establishing and maintaining effective, value-adding relationships with public sector agencies, business and other government procurement stakeholders.

Key Performance Indicators (KPIs) be established by the Minister responsible for Procurement SA to assess its performance and report on at regular intervals.

## 5.3 Procurement SA in further detail

### 5.3.1 Purpose

The purpose of the proposed Procurement SA is to create additional value to South Australia as the government's chief advisor on whole of government procurement and to lead the procurement profession in the South Australian public sector.

Its role is both to enable agencies by building capability and practice across government procurement and to lead strategy for improving the system, built on its analytical strengths and use of data, high levels of expertise and experience, and engagement with the most senior levels of public authorities, their chief executives and government ministers.

Procurement SA is also charged with building the procurement profession, leading the work to fundamentally lift the quality of reporting, streamlining process and developing capability.

To be able to add the greatest value at this level, the Commission considers the leader of the proposed Procurement SA needs to be able to engage with the chief executives of agencies as an equal with deep expertise, insight and experience that can add value to the procurement work of their agencies.

### 5.3.2 Functions

The SP Act establishes the SPB and provides for its powers and functions. The SP Act also establishes the regime of public authorities (those organisations subject to the SPB policies and directions) and PPAs (those organisations not subject to the SPB policies and directions).

Simultaneously repealing the SP Act and establishing the proposed Procurement SA gives rise to a need for new governance arrangements that establish the organisation, the authority of its chief executive to support and improve the government procurement system, and the accountability of line agencies to work with Procurement SA in that broad task.

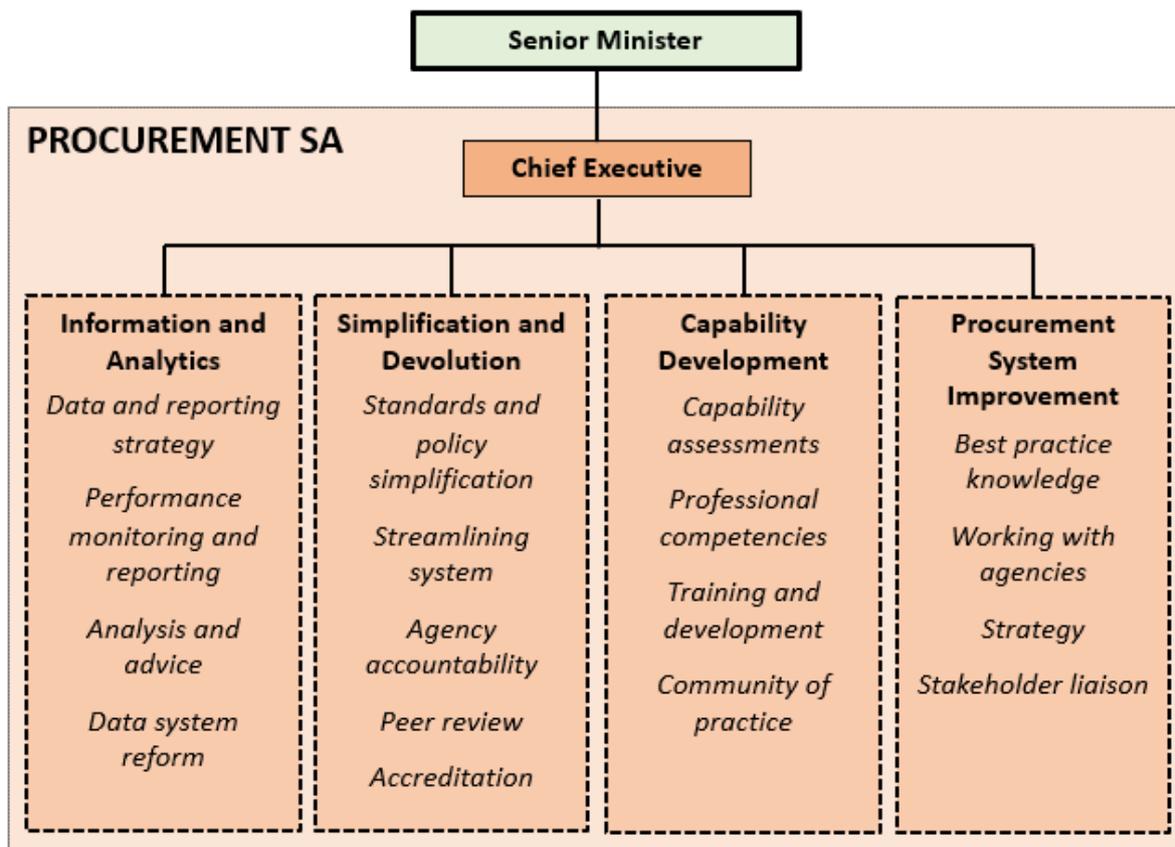
The proposed Procurement SA is conceived as a small, high powered unit that is would be organised into four key areas to support its key accountabilities:

- evidence, performance, analytics and hunt for additional value;
- policy simplification, streamlining the system and accreditation;
- professional and capability development; and
- agency assistance and establishing best practices.

Figure 5.3 sets out an indicative structure for the proposed Procurement SA. Each of these elements underpins the role of Procurement SA's chief executive and the organisation. The detail is a matter to be determined by the Procurement SA chief executive once he or she has been appointed.

One key function of Procurement SA is to collect, catalogue and analyse procurement data that provides a comprehensive and timely picture of whole-of-government procurement activity. This information, the scope of which will be significantly wider than the SPB's data and reporting arrangements, will be used by Procurement SA to report on procurement performance, identify performance improvements, and drive proposals for new opportunities to be considered by government. This data and the value-adding analysis undertaken by Procurement SA would be considered a state-wide capability, available to public sector agencies to enable them to 'hunt' additional value and optimise agency procurement operations and outcomes.

Figure 5.3: Procurement SA functions



Source: Office of the SA Productivity Commission

Another key function is to establish, implement and uphold a simpler policy framework for procurement with less red tape for businesses, especially SMEs, and public authorities. As noted in the introduction, the most immediate priority for this task is goods and services.

The existing policy framework for goods and services arose from the SPB’s statutory functions that are based on statutory definitions of, for example, ‘procurement operations’ and ‘public authorities’. Those definitions will need to be revisited and redefined as part of the proposed abolition of the SPB and establishment of the Procurement SA.

The construction procurement policy framework is separate from goods and service procurement. As noted elsewhere in this report there are reasons for this based on the different processes, professional skills and suppliers. There is currently ongoing work led by DPTI to improve and reform key aspects of construction practice, systems and policy. That said, the Commission considers that this essential work needs to be brought into a larger government procurement framework that incorporates not only the distinctive differences between the procurement streams and the distinctive common skills, values and training of the procurement profession, but also drives insights and lessons learned in all areas of procurement across the procurement profession and practice.

In addition, there are some system roles – such as accrediting agencies for their capacity and competence to undertake classes of procurement, including minor construction work –

that would structurally best sit with Procurement SA in conjunction with the relevant specialist line agency where appropriate.

The Commission concludes it will be important to incorporate in current improvement activity the pathway to a unified government procurement framework. The Commission sees no merit at all in delaying changes being pursued by DPTI until Procurement SA is established. The task for Procurement SA is to develop an overarching framework of system and policy that makes the best use of the changes being made and, with DPTI, builds further on them. This is a work in progress at this point.

The Commission discussed capability development extensively in chapter four of this final report and made recommendations that built on those made in Stage 1. Procurement SA would be responsible for developing the profession of government procurement and the chief executive would be the head of the procurement profession in the SA public sector. Capability development would necessarily be an ongoing and joint undertaking with agencies, with the views of the market and businesses expectations also contributing.

### **5.3.3 Staff**

In the Commission's view, Procurement SA needs a small team of capable and expert staff that collectively have deep expertise in procurement, data analytics, human capability and process design and simplification, among other areas.

This type of organisation is inherently team based. Moreover, as some of the key tasks are, in effect, projects, the unit needs to be able to bring together small teams drawn from other agencies and external expertise to work together effectively.

It is important that this group be small because its core task is building procurement foundations and improving the whole of government procurement system, not to do procurement.

### **5.3.4 Working together – agencies and Procurement SA**

Procurement SA, as proposed, would have a mandate to add value to whole of government procurement activities through strategy, capability development, analysis and advice. It will depend on being well informed about procurement across government and maintaining the ongoing liaison necessary to do that. Moreover, it will be expected to be practical and helpful by agencies. This requires the establishment of a collaborative culture that works with, and provides assistance to, public sector agencies. The focus of its work will be on ensuring that the state derives the most benefit from its procurement spend.

It will also be essential that agencies engage constructively with Procurement SA and that their chief executives model and encourage such behaviour in their agencies.

Creating a new, fit-for-purpose central organisation is the structural enabler to overcoming the existing limitations of the multiple and fragmented procurement frameworks. At the same time, it creates an opportunity to establish new values and cultural settings in the centre to support improved, value-adding relationships with public sector agencies, business and industry. The development, sharing and embedding of strategic procurement capability will be a key feature of that cultural reform.

Concurrent with the shift from a compliance focus, it will be necessary for the existing central procurement functions to be re-organised and, where appropriate, form part of the new architecture. This provides the opportunity to retain and capture the best practice, innovations and high-performing cultures that currently exist.

The chief executive of Procurement SA would be expected to build an engaging, enabling and expert culture in the organisation, including the injection of new thinking from across the public, private and NFP sectors, and by drawing on the best of its predecessors' legacies. It would be executed by highly-skilled, experienced, motivated and professional staff who have a 'state-first' mandate. At all times, agencies are accountable for their procurement operations and it is a matter for them to consider any concerns or advice that Procurement SA may raise.

The Commission considers the best arrangement is the Procurement SA has the authority to provide advice to agencies that must be considered, but that Procurement SA will not do any procurement activity, and cannot direct the agency to change or stop its procurement operations in any circumstances, even for very serious matters. Profound disagreements between agencies and Procurement SA may occur – such circumstances are likely to be infrequent but need to be considered. Where there is significant disagreement between Procurement SA and public sector agencies on serious matters, Procurement SA would be expected to refer the matter to ministers for resolution.

### 5.3.5 Organisation options

The capacity and influence of the proposed Procurement SA needs to match the aspiration for the proposed changes to lift the contribution to the state from the government's procurement system. The Commission's view is that this is most likely to be achieved through a small, expert team led by a capable individual whose natural peer group is the chief executives of public authorities.

Among the organisational options of which the Commission is aware, the model of an Attached Office has attractions, especially given the likely compact size of the organisation. A separate Department seems unnecessary given the size and specialised functions of the group.

The benefits of an Attached Office include:

- the relative ease of establishment, not requiring legislation (pursuant to ss24(a) and 26 of the *Public Sector Act 2009*);
- transparency – it will be subject to annual reporting and parliamentary oversight;
- it would have a chief executive pursuant to Part 6, Division 3 *Public Sector Act 2009*;
- that chief executive would be responsible to a Minister pursuant to s28 *Public Sector Act 2009*; and
- its staff will be public servants subject to Part 7 *Public Sector Act 2009*, and would be covered by existing industrial instruments.

The Commission is advised this is a feasible and practical approach.

Further detail is provided in Section 5.5 below.

## 5.4 The key early tasks

There are at least four early tasks for Procurement SA:

- define the initial strategy and workplan, focusing on the pathway to a single procurement system including the sequence of steps to incorporate goods and services, construction and the PPAs;
- establish a strategy to determine and capture performance information, reporting parameters, and associated analytics supporting the hunt for additional value;
- develop fit-for-purpose policies, standards and guidance; and
- build capability development for the procurement profession in the SA public service.

### 5.4.1 The initial strategy and work program

The Commission has deliberately not sought to over-specify the initial work of Procurement SA as that is properly left to the individual chosen to lead the organisation. That said, there are several areas where early decisions and basic choices will be needed that will set the path to a staged multi-year reform process.

The most pressing area is goods and services, where the support for reform is highest among agencies, the need is clear and, in the Commission's view, greatest. Decisions will also be needed on how to treat the current PPAs: the Commission considers one feasible approach is to consider them on a case-by-case basis with priority given to those areas where the returns to improvement are highest. For construction, there are some early points of beneficial engagement, including the potential to add value to, and to complement, existing reforms being pursued by DPTI.

Another pressing area is to establish a benefits realisation framework for reforms, including specific guidance on the probable payoff to government in the various areas of reform. The Commission has deliberately not made such estimates because it lacks the expertise to do so, because some of the changes such as much better performance information and reporting are necessary steps for wider improvement and governance of the procurement system. However, the Commission has observed well-managed procurement delivering annual returns of the order of five per cent or more (a figure some other jurisdictions also attempt to achieve). Currently, measuring returns on procurement is the exception in South Australia.

The benefit framework will be an important piece of work. It will assist with measuring both the real progress achieved in making the directional change proposed by the Commission and providing the government with information needed to make decisions on moving to subsequent stages of the change process.

### 5.4.2 Performance information, reporting and analytics

Creating the evidence base to identify new system improvements and procurement opportunities is a fundamental foundation to a strategic focus for procurement. The data that will be collected and its analysis will also assist in the roll-out of the other reforms.

The Commission considers early oversight of all public organisations, including the PPAs and construction procurement, is the best approach to building a whole of government system. Based on its assessments, the Commission is of the view that some of the PPAs will add significant value to the development of a performance information and data strategy based on their own proficient information management arrangements. As the development of the strategy will not impact directly upon public authority or PPA procurement operations, it will have limited disruptive effect and work can commence before the repeal of the SP Act.

#### What information?

A key early priority will be to establish, in collaboration with public sector agencies, fit-for-purpose performance indicators and benchmarks, and a standard methodology for defining and collection of that data. Given the differences in current agency reporting capacity and the type of information they capture, an interim strategy to standardise procurement information will need to be undertaken. The Commission is aware of comparable work undertaken through a collaboration between Office of the Industry Advocate, Office of Digital Government and Strategic Procurement that could be leveraged. Procurement SA would be responsible for developing the strategy proposal for government approval.

#### Data system reform

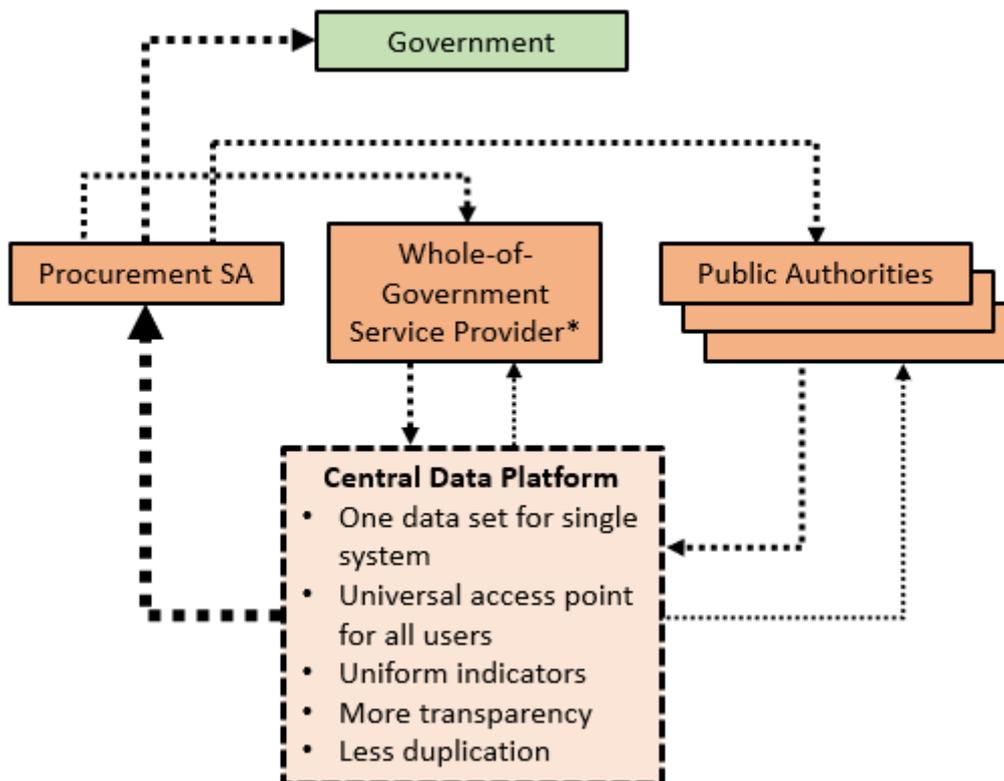
Agencies consider the performance information and data strategy needs to include a single data platform that provides a central point of access to input once and extract data for both Procurement SA and agencies. This would be intended to simplify reporting and preferably aggregate and decrease the reporting impost on agencies, avoiding duplication and having regard to existing reporting requirements (e.g. PC027 – Disclosure of Government Contracts and industry participation). Such an approach seems highly desirable. That said, some temporary work arounds may be needed to make some initial progress.

Procurement SA could draw on the experience and learnings from other Australian jurisdictions. For example, NSW's Spend Categorisation Tool Project ('Spend Cube') which, complemented with artificial intelligence, developed standard categories of transactions and, by reducing duplication, improved value. The use of dashboards and advanced analytics such as data visualisation tools or equivalent would lift the functionality of the performance information and data strategy. Input from business, industry and consideration of best practice data analytics will be necessary in this formative process. Procurement SA would be responsible, in consultation with at least the larger public sector agencies, for the business case and seeking early government support.

Figure 5.4 illustrates the suggested flow of information from public authorities and the whole-of-government service provider (presently Strategic Procurement (DTF)) into and out of such a data platform. Procurement SA would draw on that data in its analytical work. Public authorities and the whole-of-government service provider would draw information

from the centralised data to optimise their own procurement opportunities and operations.

Figure 5.4: Possible Central Data and Reporting Platform



\*Currently performed by Strategic Procurement (DTF)

Source: Office of the South Australian Productivity Commission.

Public reporting of whole of system procurement performance will assist transparency, accountability and improvement.

Getting the balance right

A key consideration in the development of the performance information and data strategy will be the information public organisations need to provide to Procurement SA to achieve its mandate. There are several considerations including but not limited to supporting Procurement SA’s whole-of-system analytical requirements, agency procurement operation improvement, and absorbing existing reporting requirements.

By way of an example, it would be an option for Procurement SA to set a value threshold for individual procurements that are caught by the reporting regime. This approach would see public organisations conducting high value procurements having a more significant reporting obligation than organisations who conduct less frequent and less complex procurements. There is existing oversight dealing with general transactional compliance for organisations in the form of internal and external auditing, including by the Auditor-General. Procurement SA will be focussed on whole-of-system procurement performance. While this is an indicative example only, it will be very important that the business rules apply consistently to all public organisations to enable Procurement SA to fulfil its state-wide role as steward and chief

government advisor on the state's procurement system.

**Recommendation 5.3:** As part of establishing a Performance Information and Data Strategy, the Commission recommends that the proposed Procurement SA lead a whole-of-government project in conjunction with agencies to develop options for a whole of government data platform featuring a single access point, dashboards, and options for access to and use of that data to support Procurement SA's functions and agency procurement operations.

This project to include the development of a business case for government consideration, focus on large agencies initially and expand the scope of Government's decision in responding to Recommendation 2.7 in the Commission's Stage 1 report to include construction and PPAs.

In addition, Recommendations 3.3, 3.7, 3.9, 4.4 and 4.5 are part of the package for creating a balanced stream information that will enable oversight and analysis of the performance of the procurement system.

#### 5.4.3 Fit-for-purpose standards, policies and guidance

The Commission received consistent feedback from stakeholders, both public sector agencies and suppliers, that the current procurement policy framework is unnecessarily complex and difficult to navigate and use. Another significant challenge for Procurement SA will be the simplification of the existing policy framework including standards, policies and guidance, and expanding its scope to incorporate construction.

Issues of complexity in the existing procurement policy framework have been addressed in both stages of this inquiry, including specific areas for attention. While the challenges presented by procurement policy reform are considerable, it is necessary, entirely capable of being achieved and that the potential outcomes in terms of achieving efficiencies, greater clarity for practitioners and a significantly improved stakeholder experience in cutting red tape and unnecessary burdens, are likely to be very significant.

The accountability of agency chief executives for their own procurement activity within the limits of approved authority is a central plank of the policy framework, together with the system improvement role of the proposed Procurement SA. The Commission has made a start on the necessary changes through the recommendations in Stage 1 that were supported by the government.<sup>69</sup>

The Commission considers this broader task of simplification would be best led by the proposed Procurement SA in consultation with agencies and selected external expertise. Input from other Australian jurisdictions would assist this process, given that several have recently completed a similar task and there may be useful insights from their experience.

It is also intended that, where there is net benefit in doing so, the current procurement

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<sup>69</sup> See stage one recommendation 2.1 regarding the 'one approval' approach and increasing chief executive financial delegations.

policies of the PPAs and constructing agencies will become more closely aligned with the improved state-wide standards, whilst retaining the flexibility to conduct specialised procurement activity.

The Commission considers replacing the current prescriptive policies with a smaller, fit-for-purpose suite of simplified and clear standards and methodologies is an essential element of moving to a procurement system that is capability-based, streamlined, accountable and strategically focused. The new standards will be enabling without prescribing the specific method that must be used for a specified type of procurement, except when justified.

The onus will rest with agency and delegate to consider the relevant standard in context and execute the procurement appropriately. It is intended that the procurement standards are developed corresponding with the overall improvement in system capability. It is the Commission's hope that the new standards and methodologies adopt the rigor, efficiencies and best practice that can be found in the commercial and risk management approaches used by the highest performing PPAs and public authorities.

#### Construction Procurement

Whilst it is suggested that DPTI engage with Procurement SA early in relation to data and reporting, and goods and services-related reforms, it is proposed that PC028 and the PiP continue in operation as an interim arrangement. The Commission sees Procurement SA taking a partnership approach to the evaluation of construction procurement policy with DPTI and the constructing PPAs.

The Commission notes there are other reforms currently on foot that Procurement SA would need to consider and avoid unintentionally frustrating. For example, a review of the AGFMA is currently being undertaken by DPTI to look at the operating model. Further, Infrastructure SA is developing the Project Assurance Framework that will provide oversight to projects of \$50 million and over. Procurement SA's policy simplification efforts in relation to construction procurement will necessarily need to consider these types of reforms and ensure its proposed scope of reform complements existing work.

That said, without pre-empting the work of Procurement SA, existing construction procurement policy will necessarily need to be considered given the repeal of the SP Act would remove the \$150,000 (GST exclusive) cap for construction work that is currently covered by the SPB. In addition, it is the Commission's view that there is a prospect of best practices being distilled from a broad assessment of construction policies used by all constructing agencies, and potentially for consistent approaches to risk management and value for money to be derived. Conversely, the unique aspects and attributes of the construction undertaken by, for example, SA Water as compared to DPTI's role in building construction on behalf of Lead Agencies, may well validate additional distinctions in any new construction procurement standards.

#### Prescribed Public Authorities

Whilst PPAs would also need to be engaged early in relation to the data and potential capability reform streams, the Commission suggests they initially retain their 'prescribed status' in terms of procurement policy in the post-SP Act environment. One option is that

Procurement SA could engage with each PPA to determine the extent to which net value can be derived by more closely aligning their procurement policies with what will be the goods and services and construction standards, and associated arrangements. This will be a deliberate and staged process with an emphasis on managing risks arising from the transition from the status quo to Procurement SA standards and methodologies. Ensuring PPAs retain the agility they require to get to market quickly and achieve the best value for money possible would be the lens through which Procurement SA sees PPA procurement policy reform.

Recommendations 3.1, 3.2, 3.4, 3.5, 3.6, 3.11 and 3.12 are all elements of the approach to simplify policies, standards and directions.

#### **5.4.4 Building capability in the government procurement profession**

Early assessments of the procurement capability and needs of agencies will set the scene for whole-of-government capability development requirements in the post-SPB environment.

To establish benchmarks and build a picture of the current procurement capability across the sector, the proposed Procurement SA would make an initial capability evaluation, building on existing information held by the SPB. This initial evaluation would assess public organisations procurement capability from several perspectives including human resources (skills, experience and qualifications), governance, and operational efficiency and effectiveness (market engagement, acquisition planning and process, and contract management and evaluation). The core business of the agency and its procurement requirements will drive the assessment of actual and necessary procurement capability. The outcomes of the evaluations would assist Procurement SA to prioritise its capability building initiatives and the development of professional procurement standards in collaboration with the OCPSE.

Procurement SA's analytical competence would identify capability requirements and acknowledge the points of difference and specific requirements for specialisation across the streams of procurement (goods and services, the various construction streams and specialised procurement e.g. financial services). The data-driven approach would inform initiatives and the sourcing of training and development opportunities as part of the broader transition from transactional and process driven procurement to strategic and judgement-based methodologies.

Procurement SA would, through its liaison and practical connection with agencies, identify, and be a repository of, best practice and act as a conduit for the sharing of that practice to improve overall system performance. The Heads of Procurement Community of Practice will be an integral part of this process.

The Commission suggests an early focus on goods and services capability development, concentrating on the development of universal procurement competencies and contextualised competencies for specific streams and specialisations. Cooperation with agencies will be important, as will be the role for OCPSE. Evolving construction capability in close collaboration with constructing agencies will come later, with the capability of Lead Agencies an included consideration.

Over time, Procurement SA will be the custodian of a whole-of-government strategy for

procurement capability, including goods and services, construction and specialised procurement requirements. Investment in developing the capability of agency procurement staff would be the accountability of line agencies.

Recommendations 3.8, 4.2 and 4.3 are elements of the strategy to lift capability in the South Australian Government's procurement profession.

## 5.5 Implementation

This section considers several issues relevant to the implementation of the proposed Procurement SA

The first task is to find and appoint an appropriately qualified chief executive of the proposed Procurement SA and to appoint the team shortly thereafter. The planning for the commencement could then begin, along with the key tasks previously identified.

At an appropriate point, the next steps would be taken simultaneously:

- repeal the *State Procurement Act 2004*, abolishing the State Procurement Board;
- establish Procurement SA with its full scope; and
- put in place the governance framework for the whole-of-government procurement system.

### 5.5.1 Procurement SA Chief Executive and team

The SP Act will need to be repealed to make way for Procurement SA. On repeal of the SP Act the SP Regulations will no longer have effect. The Commission understands there are several options to make this change.

Procurement SA's ability to achieve its mandate will significantly depend on its effectiveness in engaging, influencing and adding value to public sector agencies that undertake the state's procurement at all levels, especially at the top.

Agencies are already subject to various forms of compliance scrutiny including the Auditor-General's requirements, the powers of the Independent Commissioner Against Corruption, the budget process through Treasury, and the Industry Advocate and his statutory powers in relation to industry participation. The role of the Procurement SA chief executive will be to collaboratively improve overall system performance, develop and retain capability, and to develop and update simplified procurement standards and policies. The chief executive's role as proposed would not overlap with line agency chief executives.

To achieve these aims the chief executive would need to ensure the following:

- Productive relationships with agencies: Procurement SA must be open, transparent and engaging in its dealings with public sector agencies, demonstrably adding value both systemically and with individual agencies in the context of its overarching 'state-first' philosophy.
- Capability: The functions of Procurement SA will require a high-performing team with

a skill-mix including procurement, business analysis, law, policy development and data analytics. They will be expected to identify evidence-based procurement reforms that will benefit the state's overall procurement performance, and supporting agency procurement operations. This will include attention to direct and indirect value, cutting red tape and leading practice in procurement in other jurisdictions.

- **Authority:** Procurement SA's functions will require its chief executive to engage with other chief executives to identify needs and improvement opportunities, to facilitate the work of Procurement SA in areas such as professional development for procurement staff, request information, provide access, and traverse performance issues. The Procurement SA's chief executive would need both the formal and personal authority to do these things: conversely, the chief executives of public authorities would be accountable for collaborating with the Procurement SA.

The following options are available to establish the powers of the chief executive to execute the proposed functions of the organisation:

#### Treasurer's Instruction

- The *Public Finance and Audit Act 1987* ('PFA Act') is "An Act to regulate the receipt and expenditure of public money; to provide for auditing the receipt and expenditure of public money and for examination of the degree of efficiency, economy and effectiveness with which public resources are used; and for other purposes."
- The PFA Act provides for the making of Treasurer's Instructions ('TIs') at s41 that require "public authorities" (as defined in the PFAA) to maintain records, follow procedures for financial administration and to regulate other matters relating to the expenditure or investment of money, among other things.
- Failure to comply with a TI is an offence (PFA Act s41(2)).
- The PFA Act establishes a definition of 'public authority' that may be suitable to assist in establishing the scope of Procurement SA in the absence of the public authority and PPA regime provided for under the SP Act.

#### Premier and Cabinet Circular

- Premier and Cabinet Circular's (Circulars) are the formalisation of Cabinet decisions as a policy of the government.
- Circulars must be followed by 'all government departments'.
- The current suite of Circulars deal with a variety of issues and include public sector agency annual reporting requirements, disclosure of government contracts, the Construction Procurement Policy, and Industry Participation Policy.

#### Premiers Direction

- The *Public Sector Act 2009* s10 ('PS Act') provides the Premier may give directions to public sector agencies about the implementation of specified whole-of-Government objectives and the sharing of information and collaboration required for that purpose (but is not binding on a public sector agency to the extent it would impede or affect

the performance of a quasi-judicial or statutorily independent function of the agency).

- Existing Premier's Directions relate exclusively to human resource matters (e.g. public sector employment, mobility etc).

A TI could be used to establish the role and functions of Procurement SA, including the requirement of public authorities to comply with Procurement SA's standards and other guidelines (subject to those instruments falling within the remit of s41(1)(f) of the PFA Act as the power upon which the TI will be established).

The chief executive would, in the ordinary course, be engaged under section 34 of the PS Act. That contract would include Key Performance Indicators (KPI) to achieve the aims of Procurement SA as approved by government.

That said, at the end of the day, much of the success of Procurement SA will depend on the developing an effective combination of: a clear, practical plan and action that adds demonstrable value to agencies and cuts the cost of tendering for government business; practical expertise; a productive, enabling and team-based culture; and a high capacity to engage and work with agencies.

### **5.5.2 Some transitional issues**

In the normal course of events, due diligence would be done before repealing the SP Act. That process will need to deal with winding up the SPB and identify the operational and other consequential issues arising from the repeal of the SP Act and ceasing of the SP Regulations. This step is essential to ensure a well-managed transition from the SP Act to Procurement SA.

In terms of the SPB any assets, rights and liabilities will need to be identified and actions to manage those planned. The due diligence process would also need to consider, for example, how it is intended to approach any reference in other existing legislation to the SP Act, and other consequences on existing legal obligations of repealing the Act. They include meeting the independent review requirements for specified government procurements under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.<sup>70</sup>

### **5.5.3 Achieving other government objectives through procurement**

Government procurement is widely used in other jurisdictions to support and achieve government policy outcomes, which the Commission terms indirect value. If government were to decide to achieve indirect value through conditions on government procurements, the proposed Procurement SA would be the appropriate vehicle to develop and implement, in conjunction with public sector agency chief executives, a procurement strategy and policies to achieve this policy objective. For example, the strategy might include:

- allocating variable targets to agencies most capable of delivering the outcomes;

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<sup>70</sup> See for example Department of Foreign Affairs and Trade, 'Chapter Summary: Government Procurement', *Trans-Pacific Partnership Agreement* (web page 17 October 2019) <<https://dfat.gov.au/trade/agreements/in-force/cptpp/summaries/Documents/government-procurement.PDF>>

- identifying specific projects in the future pipeline of procurement work able to support achievement of the government policy;
- engaging, in partnership with relevant public sector agencies, with the market on potential alternative supply for existing products; and
- monitoring the progress of agencies against those targets, reporting to government, and promoting any action necessary to achieve the target if required.

This type of strategy would appropriately be developed and led by Procurement SA based on the performance information and data strategy, effective agency partnerships and strong connections with suppliers and industry representatives. Procurement SA's visibility of best practice notionally through its connections to interstate central government procurement functions, and its knowledge of contemporary procurement practice would also increase the prospects of these strategies delivering the intended government policy outcome.

#### **5.5.4 Assisting agencies**

The previous section 5.4 addressed the key tasks Procurement SA will need to address in its first year (and beyond).

In addition, the shift to the proposed strategic direction and higher value from procurement throughout government will be a stretch for some, perhaps many, agencies. The implementation plan needs to anticipate the need of at least some agencies for assistance in making the change.

The Commission does not suggest that Procurement SA permanently be resourced with 'flying squads' to support agencies directly with their procurement activity to lift their capability. There are other options that make more efficient use of scarce resources. Procurement SA could temporarily be given some capability building resources to assist agencies. This approach may be an efficient way to allocate capability building resources across the sector on prioritised basis. In addition, the Heads of Procurement Community of Practice could also assist in partnering or sharing resources for a specified period.

In short, there are several possible actions, including: sharing temporary resources through the Community of Practice endorsed by the government in its response to Stage 1 of the inquiry; matching up an agency needing assistance with another agency that has the requisite capability and experience; establishing a resource of qualified practitioners and intellectual property that other agencies have found temporarily useful and effective; and providing temporary additional resources to Procurement SA to directly assist individual agencies and to case manage them.

The Commission considers the last action – temporary addition of consulting resources – the least desirable option because it runs the risk of enlarging Procurement SA beyond an efficient size that ensures the organisation does not detract from the line agency's accountability for its own procurement activity.

#### **5.5.5 Peer reviewed acquisition plans**

During consultations some agencies considered that, were the SPB to be abolished, that its review function would disappear. The government – in response to a recommendation by

the Commission in Stage 1 – provided agency chief executives with the authority and accountability for approving acquisition plans in line with their approved budget. The agency will still obtain relevant ministerial and cabinet approvals for initiatives, but once the applicable approval is obtained, the development and approval of the acquisition plan will follow the agencies internal process, unless the applicable approval requires otherwise.

Some agencies suggested a peer review process could provide assurance to ministers and the chief executive on the risk and quality of non-standard or complex procurements in the post-SPB environment. The Commission sees merit in this approach which could be supported by the proposed Procurement SA.

Procurement SA could develop a panel of reviewers to evaluate acquisition plans that require additional scrutiny. Alternatively, agencies could develop their own panels in categories in which they procure more often or retain some expertise. Those panels could potentially be made available to other agencies where their procurement is in that category. There are several permutations of how a panel review process could be established. The views of agency chief executives would be sought as part of exploring this as an option. In any case, Procurement SA could develop, in consultation with agencies and industry, a procurement standard to provide consistency to and support transparency in the peer review process.

The Commission sees advantages in a peer review panel having several participants. This might include experts in the field relevant to the procurement, and other participants of significant professional standing chosen from a field other than the technical field relevant to the procurement to provide a separate perspective and avoid 'group think'. Panel participants may be sourced from other South Australian public sector agencies, agencies in other jurisdictions with particular expertise, and the private and NFP sectors. A representative from Procurement SA could form part of the peer review panel to provide the view in relation to adherence to procurement standards.

A necessary output of the peer review process, in the Commission's view, would be a report to the procuring agency's chief executive, identifying the panel's observations that may relate to managing risk effectively, improving value for money, ensuring innovation and best practice are being considered, and any other views to support an effective procurement process. Following the receipt of the peer review report, the chief executive, would need to develop a response to the report that would accompany other tender documentation.

These reports would be important information for Procurement SA.

## 5.6 Caveats

The path proposed by the Commission has some important caveats. Recruiting a capable team for Procurement SA, especially the chief executive, is essential. The search for this individual needs to be broad, looking beyond the South Australian public sector.

If the desired capability for the chief executive cannot be found, then the strategy can be pursued at a lower level of expectation. This might include, as suggested by some agencies, pitching Procurement SA as a substantial division within, say, the Department of

Treasury and Finance. Pitching Procurement SA at this level reduces its capacity to interact with and influence agencies, ministers and businesses.

The Commission has been unable to quantify the overall benefit of the proposed strategy. Moreover, it deliberately decided not to do so beyond being satisfied that there are current disciplined practices in procurement that consistently pursue ongoing improvements in direct and indirect value. In addition, there are examples of what the Commission considers very good practice in parts of the South Australian public sector, some of which it has referenced in its reports.

While it is very likely the benefits are large in relation to the costs, such assessment needs to be done by Procurement SA as part of developing the strategy and work plan. The calculation of these benefits and the strategy to realise them, including staging the key tasks, is an early key task of Procurement SA.

The second caveat is about keeping the purpose of the proposed reforms in mind when considering the Commission's recommendations and, in particular, the institutions and the capability needed to give effect to them. The recommendations are not directed to the narrow task of replacing one organisation by another but to put in place an overall framework for South Australia government procurement that establishes reciprocal obligations and constructive working relationships between line agencies and Procurement SA to:

- achieve higher value for the state from its procurement;
- instil ongoing improvement in the procurement system; and
- develop procurement in SA into a competitive advantage to the state while increasing the population of 'match fit' SA businesses.

## Appendices

### Appendix 1: Submissions in response to the Government Procurement Inquiry Stage 2 draft report to support the final report

Number	Organisation name	Submission Number
1	<u>Australian Information Industry Association SA Chapter</u>	FR2-1
2	<u>Blue Crystal Solutions</u>	FR2-2
3	<u>Business SA</u>	FR2-3
4	<u>Civil Contractors Federation SA</u>	FR2-4
5	<u>Colin Fullerton</u>	FR2-5
6	<u>Consult Australia</u>	FR2-6
7	<u>Mark Ogden</u>	FR2-7
8	<u>Office of the Industry Advocate</u>	FR2-8
9	<u>Small Business Commissioner</u>	FR2-9
10	<u>Social Traders</u>	FR2-10
11	<u>TC Pinpoint</u>	FR2-11
12	<u>Tutti Arts</u>	FR2-12

**Appendix 2: Submissions in response to the Government Procurement Inquiry Stage 2 issues paper to support the draft report**

Number	Organisation name	Submission Number
1	<u>AIIA.pdf</u>	DR2-1
2	<u>AMCA SA</u>	DR2-2
3	<u>Business SA</u>	DR2-3
4	<u>Consult Australia</u>	DR2-4
5	<u>O'Connors</u>	DR2-5
6	<u>SA Chapter of the AIA and the ACA</u>	DR2-6
7	<u>SACES</u>	DR2-7
8	<u>Small Business Commissioner</u>	DR2-8
9	<u>Specialist Contractors SA</u>	DR2-9
10	<u>Top Right Medical</u>	DR2-10

### Appendix 3: Submissions in response to the Government Procurement Inquiry Stage 1 draft report to support the final report

Number	Organisation name	Submission Number
1	<u>Akina Foundation</u>	FR1-1
2	<u>ANCOL SA</u>	FR1-2
3	<u>Business SA</u>	FR1-3
4	<u>Buyability</u>	FR1-4
5	<u>Community Capacity Builders</u>	FR1-5
6	<u>Office of the Industry Advocate - Submission 1</u>	FR1-6
7	<u>Office of the Industry Advocate - Submission 2</u>	FR1-7
8	<u>Paul Rogers</u>	FR1-8
9	<u>SACOSS</u>	FR1-9
10	<u>Small Business Commissioner</u>	FR1-10
11	<u>Social Change Headquarters</u>	FR1-11
12	<u>Social Traders</u>	FR1-12
13	<u>The Stretton Centre</u>	FR1-13
14	<u>VendorPanel</u>	FR1-14
15	<u>Wicked Lab</u>	FR1-15

## Appendix 4: Submissions in response to the Government Procurement Inquiry Stage 1 issues paper to support the draft report

Number	Organisation name	Submission Number
1	<u>Adept Technology</u>	DR1-1
2	<u>Air Conditioning and Mechanical Contractors' Association of SA (AMCASA)</u>	DR1-2
3	<u>Antony Thus</u>	DR1-3
4	<u>Associated Newsagents Co-operative (SA) Ltd</u>	DR1-4
5	<u>Australian Industry Group (AiGroup)</u>	DR1-5
6	<u>Australian Institute of Architects and Association of Consulting Architects</u>	DR1-6
7	<u>Australian Medical Association SA</u>	DR1-7
8	<u>Australian Medical Placements</u>	DR1-8
9	<u>Baptist Care</u>	DR1-9
10	<u>Bus and Coach Association SA</u>	DR1-10
11	<u>Business SA</u>	DR1-11
12	<u>Cara</u>	DR1-12
13	<u>City of Victor Harbor</u>	DR1-13
14	<u>Colin Fullerton</u>	DR1-14
15	<u>Consult Australia</u>	DR1-15
16	<u>COTA SA</u>	DR1-16
17	<u>Department for Industry and Skills</u>	DR1-17
18	<u>Don Dunstan Foundation - includes Attachments 1 to 3</u> <u>Don Dunstan Foundation - includes Attachments 4 to 5</u>	DR1-18
19	<u>Engineers Australia</u>	DR1-19
20	<u>Green Industries SA (GISA)</u>	DR1-20

Number	Organisation name	Submission Number
21	<u>Industry Advocate and Office of the South Australian Chief Entrepreneur</u>	DR1-21
22	<u>Leunig Advisory</u>	DR1-22
23	<u>Life Without Barriers (LWB)</u>	DR1-23
24	<u>Liz Higgins</u>	DR1-24
25	<u>Mark Parnell MLC</u>	DR1-25
26	<u>Mike Ford</u>	DR1-26
27	<u>Motor Trades Association of South Australia (MTA SA)</u>	DR1-27
28	<u>Office of the Industry Advocate</u>	DR1-28
29	<u>Paul Rogers</u>	DR1-29
30	<u>Restaurant and Catering Industry Association</u>	DR1-30
31	<u>Royal Flying Doctor Service (RFDS)</u>	DR1-31
32	<u>Small Business Commissioner South Australia</u>	DR1-32
33	<u>Social Change Headquarters</u>	DR1-33
34	<u>South Australian Council of Social Service (SACOSS)</u>	DR1-34
35	<u>South Australian Council of Social Service - Supplementary</u>	DR1-35
36	<u>South Australian Country Womens Association Association (SACWA)</u>	DR1-36
37	<u>Tindo Solar</u>	DR1-37
38	<u>Uniting Country SA Ltd</u>	DR1-38
39	<u>Uniting Country SA Ltd - Supplementary</u>	DR1-39
40	<u>Volunteering SA &amp; NT</u>	DR1-40
41	<u>Wildcatch Fisheries SA</u>	DR1-41
42	<u>Your Nursing Agency Pty Ltd</u>	DR1-42

## Appendix 5: Assessment of different tender evaluation methods

Method	Comments	Scenario where it works	Examples found in
Price only with compulsory quality conditions (Lundberg et al., 2011): bidders not meeting requirements are out: lowest price wins	Absolute method. Straightforward bid that adds value is undistinguishable from bid only meeting minimum requirements.	Simple procurement, no emphasis on quality beyond requirements <b>or</b> highly competitive markets and no risk of choosing bad supplier	SA (1%), Canada (Mak, 2012)
Quality only (Stilger, 2012): The price is fixed and the best quality wins	Straightforward	Not critical to achieve certain quality and cost of extra quality rises steeply	Scotland (Public Contracts, 2015)
Quality-to-price scoring: quality in excess of minimum requirement is subtracted from bid price	Fair. Used by assigning monetary values to quality that can be added	Uncertainty about price/quality achievable and quality can be verified	Queensland (DHPW Qld, 2018) New Zealand (Lundberg et al., 2011)
Price-to-quality scoring: <u>Relative scoring</u> : price is transformed into a score which is added to the quality score by: <ul style="list-style-type: none"> <li>➤ Being compared to lowest price</li> <li>➤ Being compared to highest and lowest price</li> <li>➤ Being compared to mean or average</li> <li>➤ Being compared to reference price</li> </ul>	Not transparent. Not fair. Encourages aggressive pricing (Dimitri et al., 2006). Assigns score to bid price in relation to other bids instead of being evaluated on own merit (Stilger, 2012, Chen, 2008, Kiiver et al., 2015, Stilger et al. 2017).	Should not be used (Stilger, 2012) Banned in Portugal (Fabien, 2016), Discouraged in France (Moreau, 2014)	Singapore (BCA, 2018), Tasmania (DTF Tas, 2019), Canada (Mak, 2012), SA (76%)
<u>Absolute scoring</u> : the price is divided by the quality score	Fairer	Accurate reference pricing	Renewal SA
<u>Cost-Benefit ratio</u>	Straightforward Lowest price often wins	Price more important than quality	In SPB guidance, Canada (Mak, 2012) SA Water
<u>Complex formulas</u> : Adjusted Value of Offer Comparative Price-quality Best value score (Quinn, 2002)			SA (16%): Renewal SA DPTI civil Qld (DPW 2012 & DTMR 2019) New Zealand World Bank (2016)

Source: SA Data comes from the Commission review of 106 random construction tenders

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