



Final Report

---

## **Inquiry into Government Procurement Stage 1**

**17 May 2019**

© Government of South Australia. Published 2019. All rights reserved.

No part of this publication may be reproduced by any process except in accordance with the provisions of the *Copyright Act 1968* (Cth), without prior written permission from the South Australian Productivity Commission.

#### Disclaimer

The views expressed herein are those of the South Australian Productivity Commission and do not purport to represent the position of the Government of South Australia. The content of this draft report is provided for information purposes only. Neither the South Australian Productivity Commission nor the Government of South Australia accepts any liability to any person for the information (or the use of such information) which is provided in this draft report or incorporated into it by reference. The information in this draft report is provided on the basis that all persons having access to this draft report undertake responsibility for assessing the relevance and accuracy of its content.

South Australian Productivity Commission  
GPO Box 2343  
Adelaide South Australia 5001  
AUSTRALIA

Telephone: 08 8226 7828  
Email: [sapc@sa.gov.au](mailto:sapc@sa.gov.au)  
Website: [www.sapc.sa.gov.au](http://www.sapc.sa.gov.au)

An appropriate citation for this publication is:

South Australian Productivity Commission 2019, *Inquiry into Government Procurement Stage 1*, final report, May 2019

## About the South Australian Productivity Commission

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 in regard to this inquiry.

## Terms of Reference

### **SOUTH AUSTRALIAN PRODUCTIVITY COMMISSION INQUIRY INTO GOVERNMENT PROCUREMENT**

I, Steven Marshall, Premier, hereby request that the South Australian Productivity Commission (the Commission) undertake an inquiry to assess the efficiency and effectiveness of South Australian Government procurement processes and practices.

#### **Background**

The purchase of goods and services represents a considerable portion of total government expenditure and is critical to the provision of public services. In 2016-17, the use of goods and services totalled \$4.9 billion on a consolidated, whole of government basis comprising 24 per cent of total expenses from transactions for that year.

The State's public authorities manage and perform their procurement functions via a mix of centralised and decentralised arrangements depending on the organisational structure of the various agencies. While they are required to comply with the State Procurement Board's (SPB) *Procurement Policy Framework* and the Department of 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 small business sector has indicated that the public procurement process for goods and services is too costly and labour intensive and requires too much supporting information for small firms to participate given the likelihood of success in any given tender process.

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

#### **Terms of Reference**

The Commission is to evaluate the effectiveness and efficiency of State Government policies and practices for the procurement of goods and services (not including capital projects) and identify reform options to improve procurement practices and the impact of procurement on local industry output and employment.

In particular, the inquiry should:

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 with government procurement policies, guidelines, principles, standards and directions.

3. Consider the appropriateness of procurement governance and reporting arrangements.
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 procurement of goods and services.

## **Scope**

The procurement of goods and services (not including capital projects).

Procurement, as defined by the State Procurement Board, is a three-stage process including:

- a. acquisition planning;
- b. supplier selection; and
- c. contract management.

All public authorities subject to the *State Procurement Act 2004* are 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.

The Commission is to provide a draft report by 15 March 2019, amended in February 2019 to 22 March 2019, and a final report by 17 May 2019.

Hon Steven Marshall MP

**PREMIER OF SOUTH AUSTRALIA**

31 October 2018

## **Commissioners' Message**

SAPC19D00029

The Hon Steven Marshall MP  
Premier of South Australia  
Level 15 State Administration Centre  
200 Victoria Square  
ADELAIDE SA 5001

Dear Premier

### **SAPC Inquiry into Government Procurement - Stage 1**

In accordance with terms of reference received by the Commission on Wednesday, 31 October 2018 and subsequently revised on Friday, 15 February 2019, we have pleasure in submitting the South Australian Productivity Commission's Final Report on Stage 1 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**

17 May 2019

# Contents

---

Contents .....	7
Key Messages .....	9
Executive Summary .....	10
Recommendations .....	21
Definitions .....	26
Acronyms .....	30
1. Introduction .....	34
1.1 Context .....	34
1.2 Terms of Reference .....	35
1.3 The Commission’s Approach .....	38
1.4 The South Australia Procurement System .....	38
1.5 Stakeholder Feedback .....	39
1.6 Summary of Findings .....	40
1.7 Report structure .....	42
2. Improving the Procurement System in the Short Term .....	43
2.1 Introduction .....	43
2.2 Underpinnings to Drive a Whole-of-Government Procurement System .....	44
2.3 Simplifying the Process .....	44
2.4 Value for Money .....	49
2.5 Market Engagement .....	65
2.6 Metrics .....	76
2.7 Capability .....	83
3. SA Industry Participation Policy .....	102
3.1 The Commission’s View .....	102
3.2 How does the IPP work? .....	105
3.3 Evidence on the Impact of the IPP .....	108
3.4 Analysis of the Commission’s Random Sample of Tenders .....	110
3.5 Issues Raised About the IPP .....	117
3.6 Conclusions and Recommendations .....	117
4. Procuring Social and Health Services from the Not-For-Profit (NFP) Sector .....	125
4.1 Procuring and Funding NFP-Delivered Services .....	125
4.2 Recent Reforms .....	126

4.3 Consultation, Engagement and Identification of the Issues .....	127
4.4 Key Issues, the Commission’s View and Proposed Reforms .....	129
Appendices.....	148
Appendix 1: The Regulatory Environment .....	148
Appendix 2: List of Submissions for the Issues Paper .....	159
Appendix 3: List of Submissions for the Draft Report .....	161



## Key Messages

---

The South Australian Government procurement spend is equivalent to around 10 per cent of the gross state product, of which around half is spent on construction. It has a significant impact on the state's economy, employment and business.

This final report is the first part of a two-stage inquiry into government procurement. It addresses government procurement for the purchase of goods and services other than by prescribed agencies or construction. The second stage of the inquiry will complete the examination of the full procurement system and address some key matters that require a system-level perspective including the architecture of the system, institutional arrangements and some matters especially pertinent to construction.

While South Australia's government procurement system serves the state reasonably well, the capacity to drive the whole-of-government system with authority, accountability and human resources is very limited. Overall, the Commission considers the system is prescriptive, unnecessarily risk averse, and lacks transparency and guidance in key areas. This final report proposes laying some important foundations to lift the capacity to drive the system including:

- streamlining the approval process by adopting the principle that in general and unless otherwise determined procurement decisions should only be authorised once;
- reforming the system-level reporting by agencies on procurement and central collection of data to enable comparative analysis and identification of improvements;
- developing a strategy for capability development in procurement across government, including: reliable information on skills, education, qualifications and experience; capability gaps; and development needs.

These proposals are complemented by recommendations for immediate action that would make a start in these areas.

In addition, the Commission has recommended actions to address some key gaps, including:

- providing practical guidance to procurement staff on how to apply value for money, noting that current guidelines published by the SPB are very high level and leave substantial latitude for interpretation. Other states provide more practical guidance.
- improving the quality and quantity of market information to government agencies about local business capabilities, especially SMEs and better information about procurement opportunities. Clearer guidance from the SPB, in consultation with ICAC, will enable better engagement with the market.

Export growth plays a central role in the South Australian Government's economic growth strategy. The competitiveness of local businesses underpins this strategy, rather than measures to protect local businesses. This has led the Commission to emphasise, for example: greater investment by public authorities in understanding capabilities in local businesses, including SMEs, and NFPs); and better understanding by local businesses of the competitive standards required by the State.

The Commission looks forward to continuing its work in Stage 2 of the inquiry.

# Executive Summary

---

## 1. The Scope of the Inquiry

In late 2018, the South Australian Productivity Commission (the Commission) was tasked to evaluate the effectiveness and efficiency of State Government policies and practices for the procurement of goods and services. The Commission was also asked 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.

Initially, the scope was confined to agencies and matters that fell within the scope of the *State Procurement Act 2004*, and specifically excluded capital projects and prescribed public authorities (e.g. SA Water and the South Australian Housing Trust). On 15 February 2019, the government expanded the scope of the inquiry to include capital spending and prescribed public authorities.

Accordingly, the inquiry has been divided into two stages. The final report into Stage 1 (this final report) addresses the inquiry's original terms of reference. Stage 2, which addresses the expanded scope, will be completed by 31 October 2019.

The Commission has decided that in working through this two-stage structure of the inquiry it will:

- defer to Stage 2 all matters that require final consideration within the full scope of government procurement, including among other matters adjustments to governance and institutional arrangements and disaggregation of contracts which are particularly relevant to construction procurement; and
- use this final report to recommend actions that can be taken in the short term or lay foundations for improvement without pre-empting the recommendations in Stage 2 to provide the South Australian Government the option of an earlier start on reforms to procurement policies and practices.

## 2. South Australian Government Procurement Spending

Government procurement of goods and services for the South Australian Government and its agencies has a substantial connection to the South Australian economy, amounting to more than \$11 billion annually or around 10 per cent of the gross state product (June 2018).

In 2017–18, the agencies in the scope of Stage 1 procured goods and services totalling \$5.1 billion or over 25 per cent of the 2017–18 South Australian Government Budget. These purchases are extremely important to the South Australian economy, underpinning the provision of most public services and having a significant impact on employment, business activity and investment.

For many smaller businesses, government contracts can represent a significant portion of their revenue. The award of a large contract can generate a significant amount of associated

economic activity while, on the other hand, the loss of a government contract can result in the closure of a business and the loss of those jobs.

Clearly the State's procurement system needs to balance the objectives of getting good value from its use of taxpayer dollars while meeting the government's other social, environmental and economic goals.

During the inquiry the South Australian Government adopted an economic growth strategy that incorporates export-based growth as a key component. In the Commission's view, this development has important implications for this inquiry, as the growth strategy is underpinned by the ability of businesses based in South Australia to compete in other markets. The Commission has considered several of its recommendations through the prism of changes that strengthen competitiveness of local businesses, including SMEs, and avoid increasing industry protection. The Commission considers this approach is most likely to contribute to a business environment that fosters 'match fit' businesses that are competitive in markets beyond South Australia as called for by the government's economic strategy.

### **3. The Process**

The Commission has compiled a substantial evidence base on government procurement, including:

- 58 written submissions in response to the issues paper and the draft report, all of which are published on the SAPC website;
- engagement with 112 individuals from industry associations, businesses, not-for-profit organisations and government agencies, including through over 35 meetings with businesses and their associations and meetings with individuals;
- recent surveys by Business SA, the Office of the Industry Advocate and the SA Tenders website, which, while valuable and instructive, were not random samples of experience of businesses;
- a sample gathered by the Commission of the outcomes of 103 randomly selected recent procurements from public authorities to enable the Commission to assess the frequency and materiality of a range of issues;
- responses from agencies to the Commission's information requests;
- roundtables with agency chief procurement officers, businesses and NFPs; and
- a compilation of trends, developments and reforms in Australian and selected overseas jurisdictions.

Analysis of this evidence base and discussions with government agencies, businesses and NFPs has enabled the Commission to identify the key issues and common concerns that it believes should be addressed to improve the efficiency and effectiveness of South Australian Government procurement of goods and services.

### **4. The Issues**

The Commission distilled the evidence from business into ten key themes about their stated concerns with the procurement:

- Lack of transparency by agencies

- Lack of engagement by agencies
- Risk aversion by decision makers
- Red tape costs
- Lack of expertise
- Delays
- Barriers to innovation in the procurement system
- Value for money
- Contract management shortcomings
- Lack of improvement.

The NFPs shared some of the concerns of business. In addition, they identified:

- Market engagement, consultation and collaboration
- Tendering costs
- Funding and pricing
- Contract negotiations, contract management and reporting.

Government agencies also provided advice on the issues identified by businesses and NFPs as well as identifying their own concerns and improvement opportunities. Their responses helped set some of the business and NFP concerns in a wider context, particularly in relation to some process and practices required by SA's procurement regime.

In the Commission's view, these matters point to a range of opportunities to improve the overall value to the State from procurement. This final report will provide recommendations on issues the Commission considers can be addressed now. Most of the system architecture issues will need to be considered in the Stage 2 report once the Commission has had the opportunity to review the exempt public authorities and construction expenditure.

## **5. The Final Report – Stage 1**

As indicated in the draft report, the Commission considers that the South Australian procurement system has limited capacity to drive a whole-of-government procurement system with authority, accountability and human resources, noting also that:

- there is insufficient policy clarity in some key areas including value for money, market engagement and probity;
- the procurement system can be streamlined and simplified to cut costs for businesses (and SMEs in particular), public authorities and NFPs while increasing the efficiency and effectiveness of procurement; and
- better value outcomes in procurement for government seem likely if public authorities in general increase their knowledge of, and appropriate engagement with, the marketplace including local suppliers.

This final report does not address the whole-of-system architecture in view of the need to address that issue in the full scope of the procurement system including the prescribed public authorities and construction in Stage 2 of the inquiry. That said, the Commission has identified several areas where early steps could be taken to make immediate improvements that are not dependent on consideration of the full procurement system.

The final report is structured around three key themes:

- 'no regrets' changes that would strengthen the capacity to drive a whole-of-government procurement system without pre-empting the advice in Stage 2 regarding the system's architecture and institutional arrangements;
- the performance of the South Australian **Industry Participation Policy** (SAIPP) and SMEs in the procurement system;
- addressing matters that apply largely to **not-for-profit organisations (NFPs)** in government procurement of goods and services.

## 6. Improving the Procurement System in the Short Term

### 6.1 Whole-of-Government Procurement System

Following the draft report, the Commission engaged further with agencies and other stakeholders. It also undertook a closer examination of the approach to, and recent reforms in, government procurement in Queensland, New South Wales and Victoria. The additional research confirmed the tentative conclusion formed in the draft report that there is limited capacity for whole-of-system strategic procurement. Indeed, a good case can be made that South Australia significantly lags NSW, Victoria and Queensland.

Based on the research on other states, the basic architecture of a procurement system should start with concurrent decisions about the appropriate allocation of roles between line agencies and the central procurement function, including the extent to which government procurement is to be shaped and driven strategically whilst ensuring effective, accountable and appropriate devolution to line agencies. The appropriate arrangement for South Australia will be considered in Stage 2 of this inquiry once the Commission has considered the capacity of the parts of the system that are not within the scope of this final report.

### 6.2 Simplifying the Process through Delegation

There were considerable concerns with respect to delegation and approval requirements for the procurement process, particularly in relation to the Treasurer's Instructions 8 (TI 8) requirements relating to contracts valued above \$1.5 million. In these cases, the approvals (for both procurement and financial authorisation) are often executed in a sequential process according to the standard procedures rather than concurrently, which the Commission is advised can increase the time taken to complete a procurement by between 30 and 50 per cent. It is also unclear why the additional TI 8 requirements for contracts valued over \$1.5 million are necessary, given public authorities have already been assessed by the SPB through the accreditation and/or assurance programs.

The Commission is persuaded that the misalignment between the TI 8 thresholds and procurement authority delegations imposes an unnecessary delay in the approval process. Further, other states have delegated more authority and accountability to public authorities, their chief executives and ministers than is presently the case in South Australia.

The Commission proposes that South Australia adopt the general principle that procurement decisions should only be authorised once, and from that point the focus should be on

holding public authorities accountable for delivering the outcomes associated with the procurement. It is possible that, in some circumstances, government may want to revisit approvals but in the Commission's view these cases ought to be the exception to the general rule and ought to be identified at the time of the initial approval. To ensure that unnecessary delays are eliminated, the delegations for chief executives and ministers will need to be increased appropriately so that duplicate approvals are not required.

### **6.3 Value for Money**

In summary, the feedback on value for money has indicated that there is neither a shared understanding of, or clarity about, what value for money means in the procurement process. Businesses perceive from their experience that it is overly focused on the lowest price, while public authorities indicated that more guidance on how non-financial objectives should be factored into assessing value for money would be useful.

The Commission observed that most government jurisdictions in Australia (including South Australia) and those overseas provide a very similar high-level definition of value for money in procurement. That said, the other jurisdictions reviewed provide significantly more and better explanatory material to support a shared understanding among procurement functions and business units on what is value for money, and how to measure and apply it. This aspect of the value for money guidance material requires attention. It is particularly important to provide more clarity for officials who do not engage in the procurement process on a regular basis.

The Commission's view is that the current guidance material provided by the SPB on value for money is unsatisfactory and provides limited guidance for officers in public authorities on the practical application of value for money in the procurement process. There are minimal, or no, explanations of life cycle costing, economic outcomes and service delivery standards. This potentially leads to different perspectives on measures of success of value for money within agencies. The absence of sector-wide indicators for value for money results in no benchmarking of performance or opportunities for improvements in procurement processes.

As a result, the Commission has recommended that the State prepare and publish additional guidance on value for money which provides practical guidance on price and non-price factors that should be considered in evaluating value for money. This will not only simplify the process for public authorities but will also provide more clarity to business that tender to provide goods and services to public authorities. Explaining to business and business associations how value for money is applied in practice will help address and dispel some of the perceptions held by business. It will also, in conjunction with other recommendations to improve market information and engagement with local business, particularly SMEs, assist local businesses to better understand the competitive performance needed to be successful in government procurement.

### **6.4 Engagement with the Market**

The Commission observed that detailed research into supplier markets is not commonly undertaken by public authorities and existing knowledge of supplier capabilities is not often

available to a useful degree. In addition, there are varying degrees of skill and experience within and between public authorities. For these reasons, the Commission is recommending that the quality and frequency of engagement between public authorities and suppliers increase to improve the awareness of supplier capabilities (particularly SMEs), the awareness of technological developments, and the capacity for suppliers to meet public sector requirements.

It is evident that the information sources used by public authorities vary across the public sector, with most public authorities utilising their own information sources as well as centrally held sources such as those held by the OIA or the ICN. These databases do not enable the capture of standard business information on suppliers, resulting in businesses being compelled to provide this information to public authorities for every tender process, and do not allow agencies to share critical information on issues such as supplier performance or outcomes of projects. The Commission considers that the consistent use of regularly maintained and relevant information on suppliers and their performance, capability, products and services through a pre-registration system will improve the efficiency and effectiveness of the procurement system and cut red tape.

This direction of improving knowledge within agencies of the capabilities of local businesses is linked closely to the need, in the Commission's view, to clarify the ground rules for engaging with the market without prejudicing probity.

The Commission has also heard of instances where public authority staff are concerned about the consequences of communicating the wrong information to suppliers or the impacts of engaging with suppliers in a way that is not in line with required processes and guidelines. While consultation with ICAC has confirmed that engagement with the market is a necessary part of the procurement process that should not be avoided, the Commission considers that improved clarity and guidance would help guide business unit and procurement staff to more effectively engage with the market.

Stakeholders have emphasised the importance of greater visibility of the forward plan for procurement requirements in public authorities. The business community considers that notifying the market with enough time to take account of possible future work will deliver better value to government and more opportunity for local businesses.

The Commission has found varying levels of information regarding the forward procurement program across the public sector, with most agencies performing poorly in providing notice of procurement ahead of time. While agencies do maintain internal visibility of upcoming contract renewals and extension opportunities, this information often finds its way to suppliers only when the contract is due to lapse.

The Commission has recommended that public authorities be required to publish annual forward procurement plans including a list of the status of current contracts and intentions for extension or market approaches. In addition, the Commission proposes that the SPB actively monitor and evaluate the completeness of the data provided, reconcile the actual performance against plans and report the overall performance of this dimension of the procurement system.



## 6.5 Metrics

A frequently occurring theme throughout the inquiry was the lack of data and information to provide evidence on trends in the procurement system, to support monitoring of performance and to identify areas for improvement. The Commission has heard this from both stakeholders and public authorities.

The Procurement Framework<sup>1</sup> published by the State Procurement Board indicates that performance measures of a procurement system should relate to value for money, the visibility of procurement to all potential suppliers, and ethical standards and fair dealing. The annual report of the State Procurement Board does not adequately report on or reference performance of the procurement system on these elements.

In addition, the Commission has found that information is not reported at a system-wide level on several other important aspects of performance including the:

- performance of panels and whole-of-government contracts;
- impact of procurement on SMEs;
- timeliness and usefulness of the forward plan that is published;
- levels of supplier engagement;
- performance of contract management; and
- resources devoted to procurement functions.

The Commission has concluded that any assessment of the effectiveness of the Act; the procurement framework; and guidance that is formulated under the Act is not possible without a considerable improvement in the collection, dissemination and analysis of system-level information on the information identified above.

The Commission recommends that the government reform the reporting requirements for agencies and central collection of data to ensure greater accountability and better demonstrate outcomes resulting from expenditure of public monies on goods and services. This will establish a key foundation for understanding and analysing whole of government procurement. Moreover, to begin this work in the short term, the Commission proposes gathering existing information that would enable some inter-agency comparisons as well as inter-jurisdictional comparisons, noting that the nature of the procurement activities of government authorities can vary significantly.

## 6.6 Capability

The Commission has observed that procurement and the business transactions involved in the procurement process are becoming increasingly complex. This is in part due to changing expectations of the role of procurement as an instrument for contributing to achieving a number of complex policy objectives, a tendency by public authorities to augment SPB guidance with additional agency-specific guidance, and growth in compliance-related requirements and reporting. Owing to the growth in complexity, the level of education and professional expertise required to effectively manage the procurement process is also increasing.

---

<sup>1</sup> South Australian Procurement Board, *Procurement Framework*, pp. 5-6.



According to advice provided by agencies, there is a very low proportion of procurement staff working in public authorities who are formally trained in procurement (with a higher education diploma or above), and only a handful of employees who are accredited with the Chartered Institute of Procurement and Supply (CIPS). In response to information in the draft report, the SPB advised that there are fewer than 500 procurement staff working across government within the remit of the Act, although the actual number is not known. This is a significant information gap limiting the capacity to drive a whole-of-government procurement system.

The Commission's research and feedback has indicated that most, if not all, jurisdictions have identified procurement capability as a critical focus to ensure successful procurement outcomes in terms of efficiency, effectiveness and value to government. Many have identified it as an area of risk that requires ongoing strategies to mitigate those risks. Based on feedback received and independent reviews of the South Australian procurement system, it is also an area that needs to be strengthened with a focus on the following areas:

- skills to manage stakeholder engagement and influencing of both internal stakeholders and external suppliers;
- translating potential benefits into tangible outcomes;
- tender evaluation;
- negotiation; and
- contract management.

Capability development at all levels and especially at senior professional levels is fundamentally an enabling strategy. Its purpose is to ensure that procurement professionals and other employees involved in the procurement process are sufficiently numerous, appropriately empowered, skilled and motivated to secure and sustain goods and services as efficiently and as effectively as possible. A whole-of-government procurement system cannot be driven without a strategic approach to, and investment in, the capability of South Australia's cadre of government procurement professionals.

Accordingly, the Commission recommends that the Department of Treasury and Finance and the State Procurement Board develop a strategic plan for capability development, coupled with complementary actions by public authorities, an annual review of capability by the State Procurement Board and appropriate performance metrics.

In addition, the Commission recommends as a helpful short-term measure the establishment of a community of practice for procurement professionals to improve practical capability including by sharing best practice, sharing capability and expertise and improving the understanding of relevant government policies including industry participation.

## **7. SA Industry Participation Policy (IPP)**

From the submissions and the meetings held by the Commission, the feedback received from businesses and agencies clusters around five themes:

- red tape (including from filling in an ECT/IPP for each tender when it is unlikely to change over time, or when it is unlikely to change the outcome);
- transparency of ECT/IPP calculation, use and impact on South Australian content;
- compliance (by agencies in the use of the ECT/IPP and by suppliers when filling in the scoring templates);
- scoring issues; and
- measuring impact.

The terms of reference direct the Commission to evaluate the effectiveness of the South Australian Industry Participation Policy (SAIPP) with a focus on the impact on competition between firms, prices and value for money of goods and services procured over time and broader economic effects such as the growth of local industry and employment.

The South Australian Government has adopted an economic strategy to substantially raise the state's economic growth rate. The strategy includes four policy streams: investment and markets; skills and innovation; natural resources; and infrastructure. A key element is a focus on growing exports to help create more jobs; and encourage business investment across all sectors in South Australia.

In considering the government's economic strategy, the Commission considers that procurement and the SAIPP are relevant to the broad task of encouraging the growth of businesses that are competitive not only in South Australia but also 'match fit' in other markets. This is the underlying consideration in the Commission's evaluation of the IPP.

Accordingly, the Commission has made recommendations to give greater support to developing 'match fit' businesses along three broad themes:

- reliable, unbiased and targeted information on the performance of the SAIPP in procurement, including compliance with the policy, to provide a basis for improving its net contribution to the state;
- improving the quality of market information available to government agencies on local business capabilities; and to businesses on the quality of their tenders to improve their subsequent competitiveness and better public market information on the forward program for future procurements; and
- reducing red tape and unnecessary costs to business and agencies by adopting higher thresholds for the ECT, providing specific exemptions where there is a high expectation the good or service will be locally provided and providing preregistration to cut the repetition of standard information by individual businesses for government tenders.

The Commission has not obtained any further evidence about the performance of the SAIPP beyond what was presented in the draft report, and its conclusions on those aspects therefore stand for now. Some more information on the operation of the SAIPP will be analysed in Stage 2 of the inquiry as the scope expands to cover infrastructure procurement and prescribed public authorities.

## 8. Procuring Services from the NFP Sector

The Commission has distinguished the NFP sector from business for the purposes of this inquiry for several reasons including: the type of services they deliver (e.g. for Indigenous, homeless and disadvantaged people); the ways in which those services are funded and administered by public authorities; and the ways in which NFPs operate and deliver those services.

NFP-delivered services are funded and managed primarily by the Department of Human Services (DHS), the Department for Child Protection (DCP) and SA Health.<sup>2</sup>

The procurement of NFP services is covered by the *State Procurement Act 2004*, and the policies and guidelines of the State Procurement Board (SPB). Government agencies must also apply the NFP Funding Policy, a Cabinet directive that requires public authorities to apply specified best practice principles when funding services or administering a grant delivered by an NFP. Under these reforms agencies must now use the *Standard Not For Profit Sector Funded Services Agreement* (the Standard Services Agreement).<sup>3</sup>

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. Participants have raised a variety of issues relating to procurement and grant funding of NFP services. The experiences of NFP organisations and public authorities in funding and delivering a range of social and health services for government, and how those services are managed and evaluated, can be summarised as follows:

- market engagement, consultation and collaboration;
- tendering: time, cost and information requirements;
- funding and pricing arrangements; and
- contract negotiations, contract management and reporting arrangements.

The significant reforms to NFP funding arrangements and associated procurement guidelines and agreements received broad support from stakeholders.

The Commission considers the full adoption of the Standard Services Agreement, Standard Grant Agreements and mandatory indexation<sup>4</sup> to funding arrangements has the potential to address many of the contractual and procedural issues that have been raised by stakeholders in submissions to the Commission and in related consultations.

That said, feedback from NFP organisations about their experiences with the application of the NFP funding policy, which has been in place since mid-2017, suggests public authorities

<sup>2</sup> The Commission acknowledges other public authorities engage NFPs in the provision of services, for example the Department for Education in relation to Out of School Hours Care, among others.

<sup>3</sup> Department of Treasury and Finance, 'Not-for-profit sector funding and contracting' (website accessed 13 March 2019) <<https://www.treasury.sa.gov.au/Our-services/not-for-profit-sector-funding-and-contracting>>

<sup>4</sup> Department of Treasury and Finance, 'Not-for-profit sector funding and contracting' (website accessed 3 May 2019) <<https://www.treasury.sa.gov.au/Our-services/not-for-profit-sector-funding-and-contracting/indexation>>

have inconsistent approaches to undertaking procurement and grant-funded activity with NFPs, and variable uptake and adherence to the NFP Funding Policy best practice principles. To verify the reforms have been fully implemented, the Commission has recommended an independent evaluation of the implementation of the policy in late 2019. Other recommendations identify some specific matters that could be dealt with in that process.

The Commission has also observed issues of capability within public authorities and NFPs that adversely affect aspects of the procurement process. Several of these matters could be addressed by the proposed community of practice of procurement professionals, including acknowledging and accepting relevant accreditation by reputable and accepted agencies that NFPs have achieved.

## 9. End Piece

The Commission has recommended a group of measures that lay some important foundations to enable the State to drive a whole-of-government procurement system with authority, accountability and human resources. In particular, these measures include developing strategies for performance measurement and capability development, together with a key principle of streamlining the process for significant procurement approvals.

Specific short-term actions have been recommended to make a start in each of these areas. In addition, the Commission has recommended early actions to address some key gaps such as clearer guidance on value for money and engaging with the market, together with measures to provide better information regarding market capabilities and opportunities while reducing red tape and unnecessary costs to businesses (especially SMEs), NFPs and public authorities.

The Commission looks forward to continuing its work in Stage 2 of the Inquiry into Government Procurement.

# Recommendations

---

## 2. Improving the Procurement System in the Short Term

**Recommendation 2.1:** To cut red tape in the decision process and eliminate unnecessary delays, the Commission recommends that the government:

- adopt the principle that generally procurement decisions should only be authorised once, and subsequently chief executives and public authorities should be held accountable for the procurement outcomes;
- identify any exceptions where a further confirmatory decision may be required before the commencement of the procurement;
- increase financial delegations for chief executives to the levels commensurate with the business of the public authority such that duplicate approvals are not required to execute contracts; and
- provide ministers with sufficient financial delegation to approve contracts that provide for ordinary business requirements of the public authority for which they have responsibility.

**Recommendation 2.2:** In order to provide greater clarity to procurement staff on the application of value for money in their work, the State Procurement Board:

- replace its existing general guidance on value for money with clear, plain English explanations and guidance for procurement and agency staff in government agencies on how to consider price and non-price factors in the overall value to government from the acquisition of goods and services, including any relevant specific policy requirements;
- in developing this revised guidance, incorporate the best practice approaches in other comparable Australian jurisdictions;
- implement the revised guidance through appropriate training and education for procurement staff; and
- actively communicate and explain the revised guidance to external parties interested in supplying goods and services to the South Australian Government including businesses, business associations and not-for-profit organisations.

**Recommendation 2.3:** To help to address the identified gap in knowledge between potential suppliers and government agencies about local supply capabilities and agency procurement needs and plans, government agencies establish regular opportunities for their business units and procurement staff to engage with local businesses through means such as the Meet the Buyer program to improve:

- the knowledge of potential suppliers about agency needs and procurement plans;
- the awareness of supplier capabilities;
- the awareness of technological and service developments;
- suppliers' level of understanding of public procurement processes; and
- the capacity of suppliers to meet public authority requirements.

This means including business units and procurement staff in such activities.

**Recommendation 2.4:** To make information on the capacity of local businesses more easily available to businesses and to government agencies, the OIA and DIS provide links between the suite of supplier information currently provided by the Industry Capability Network and related information in the Office for Industry Advocate Supplier Database.

**Recommendation 2.5:** To mitigate unnecessarily risk-averse approaches by agencies to engaging with the market and businesses to:

- understand, among other things, supplier capabilities;
- communicate procurement plans; and
- seek intelligence on market trends and technology changes.

The State Procurement Board develop, in consultation with the Independent Commissioner Against Corruption (ICAC), an industry engagement guideline that provides instruction and guidance on:

- principles for engaging with industry;
- planning for engagement and engagement activities throughout the procurement cycle;
- dealing with risks of engagement;
- providing feedback to suppliers; and
- measuring engagement outcomes.

Once developed and reviewed by the ICAC, this guidance be issued by the State Procurement Board to all government agencies, with appropriate training.

**Recommendation 2.6:** In order to increase the amount of reliable information available to prospective suppliers, including SMEs, about future procurement opportunities, each agency be required to meet its obligation by:

- publishing an annual forward procurement program setting intentions and probable timing in the coming 24-month horizon, with some indication of the probability of the intended procurements;
- publishing a complete list of current contracts with planned intentions for extension or market approach on a 24-month moving basis;
- reporting any significant variations to the procurement program in its annual report; and
- reviewing the initiative after two years to assess its effectiveness and administrative cost.

**Recommendation 2.7:** In order to provide the underpinnings for understanding and analysing whole-of-government procurement, the government commit to reform the reporting requirements for government authorities to central procurement and the collection of data to ensure greater accountability and demonstration of outcomes resulting from expenditure of public monies on goods and services. Specifically, 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

- cost of the procurement process.

In the short term, government agencies be required to report annually to the State Procurement Board on the following key metrics that are currently captured in existing information at the agency level:

- supplier expenditure, by location and by size of supplier
- saving created through the procurement function per procurement FTE
- managed spend per procurement FTE

operating cost of the procurement function as a percentage of the managed spend.

**Recommendation 2.8:** In order to lift the overall attention on contract management in agencies:

- the SPB, in consultation with public authorities, provide amended guidance on expectations, methodology and measurement of contract management performance.
- Public authorities monitor and report on:
  - adherence to contract outcomes;
  - result of efforts to mitigate risks throughout the life of the project;
  - management of suppliers and proportion of projects (and by type) where supplier performance is not to the standard required;
  - changes to scope; and
  - number of proof of concept or co-design projects considered in order to encourage innovative solutions and results.

Over time, measures and reporting be standardised to enable monitoring of contract management at a whole-of-government level.

**Recommendation 2.9:** To assist agencies to improve their procurement capability and practice, the State Procurement Board and the Department of Treasury and Finance sponsor a community of practice for the heads of agency procurement professionals that would, among participating agencies:

- share good practice in procurement;
- identify lessons learned on matters of common concern;
- identify opportunities for agencies to share capability and expertise, including areas where experienced and specialist procurement professionals could partner with other agencies to improve procurement outcomes;
- benefit from advice and discussion with the owners of government policies that are relevant to procurement, including the not-for-profit contracting reforms and the Industry Advocate, in order to improve understanding and practice; and
- identify opportunities to reduce unnecessary costs to procurement and business in procurement policy, practice and process.

It may also be worthwhile to establish sub-committees to focus on procurement areas like NFPs.

**Recommendation 2.10:** In order to raise the capability of the South Australian Government's cohort of procurement professionals, the Department of Treasury and Finance



and the State Procurement Board develop a strategic plan for capability development. This plan to include:

- accurate figures on the numbers, role and seniority of procurement staff in agencies
- risk assessment of the cohort of procurement professionals having regard to matters including: the types and sophistication of government procurements being done by agencies; the opportunities for whole of government contracts; implications of technology; and other relevant considerations
- education, qualifications and experience of procurement staff
- skills and training needs analysis
- training and other capability development.

The strategy should consider other jurisdictions and include strategies to develop strategic capability. Reporting on the strategy targets and objectives need to be part of public authority annual internal audit requirements.

**Recommendation 2.11:** In order to assist in managing capability risks in high-risk/high-value procurements, agencies prioritise any assessed development gaps for procurement practitioners in those areas where potential benefits and risks are highest.

**Recommendation 2.12:** To identify new or revised training and other development initiatives in response to emerging trends and current unmet needs and as part of monitoring progress against the strategic plan proposed in Recommendation 2.10, the State Procurement Board undertake an annual review, drawing on the experience and advice of agencies and developments in other Australian jurisdictions.

### 3. SA Industry Participation Policy

**Recommendation 3.1** In order to monitor, assess and improve the SAIPP, the Industry Advocate collect and analyse an annual unbiased sample of information held by all agencies and currently recorded as part of the assessments of individual procurements above the revised threshold value for ECT set out in Recommendation 3.4, including:

- winner and runner-up
  - pricing
  - ECT/IPP scores adjusted to a standardised score of 15
  - labour hours in SA
  - investment in SA
  - sourcing of SA products
  - domicile of business
- Number and locations of the businesses that tendered.

To be useful in identifying across-government improvements, this information needs to be defined and collected consistently.

**Recommendation 3.2:** In order to improve the understanding by businesses of the IPP and raise their capacity to compete in government procurement, the relative IPP and ECT scores of a supplier in individual procurements be made transparent to businesses by agencies when debriefing businesses on their performance in tenders.



**Recommendation 3.3:** To cut red tape to business, especially SMEs, to help manage financial risks in potential suppliers and to improve information in the marketplace for agencies, develop a pre-registration system that allows existing and new users of tenders to pre-load their business and financial details. Participation in the pre-registration scheme include SMEs, business in general and not-for-profit organisations and be on a voluntary basis.

**Recommendation 3.4:** In order to cut red tape and reduce administrative burdens to businesses and government agencies, the IPP be simplified by

- lifting the minimum threshold for which ECT is required to \$550,000 (including GST) to align with the revised threshold for simple procurements; and
- making the ECT optional for prospective suppliers to include in their tender responses for tenders between \$220,000 (including GST) and \$550,000 (including GST).

## 4. Procuring Services from the Not-For-Profit (NFP) Sector

**Recommendation 4.1:** Noting the role of the NFP Funding Policy in the procurement and grants process and its recent introduction, the government independently evaluate in the second half of 2019 the implementation of the NFP Funding Policy and associated operational procurement reforms to identify any impediments to, and opportunities to strengthen, implementation, with the evaluation process to consider the views of public authorities and the NFP sector.

**Recommendation 4.2:** To streamline the tendering process and to support more NFPs to participate in tendering, formal quality assurance accreditation held by NFPs be recognised as part of the tendering process. The State Procurement Board, in consultation with relevant public authorities, to identify the changes required to give effect to this principle, including the development of policies and procurement practices, and provide guidance to public authorities.

**Recommendation 4.3:** In recognition of the complexity of the social issues being targeted by NFP-delivered services, the adequacy of current tendering timeframes in procurements involving NFPs be considered as part of the review of the NFP Funding Policy and related matters as proposed in Recommendation 4.1.

**Recommendation 4.4:** To streamline, and cut red tape in, the tendering process for health, community and social services procurements where the services being contracted for practical purposes can only be delivered by organisations in South Australia, the Industry Advocate, public authorities contracting such services with NFPs and the State Procurement Board, determine appropriate exemption criteria in the SAIPP.

**Recommendation 4.5:** In order to address the anomaly between some NFPs and entities incorporated under the *Corporations Act 2001* (Cth), changes be made to the *Late Payment of Government Debts (Interest) Act 2013* to remove any disadvantage to NFPs arising as a consequence of the way they are incorporated, or the invoicing system used to facilitate payment.

## Definitions

---

The following definitions represent the Commission's understanding of the 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.

### **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 of 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, 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 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*, s20).

## 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; or
- intellectual property; or
- the management of goods of the authority, including (without limitation) the care, custody, storage, inspection, stocktaking or distribution of goods of the authority; or
- 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* a public authority is:

- *an administrative unit or other agency or instrumentality of the Crown; or*
- *any incorporated or unincorporated body:*
  - *established for a public purpose by an Act; or*
  - *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*
  - *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*
- *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 (SME)

Unless otherwise stated, refers to the Australian Bureau of Statistics' (ABS) 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

---

<b>ABN</b>	– Australian Business Number
<b>AEPP</b>	– Aboriginal Economic Participation Policy
<b>ACO</b>	– Aboriginal Controlled Organisations
<b>AGD</b>	– Attorney-General’s Department
<b>AMA</b>	– Australian Medical Association
<b>AMCA</b>	– Air Conditioning and Mechanical Contractors’ Association
<b>ANZGPA</b>	– Australia New Zealand Government Procurement Agreement
<b>ANZSCO</b>	– Australian and New Zealand Standard Classification of Occupation Code
<b>AP</b>	– Acquisition Plan
<b>APCC</b>	– Australian Procurement and Construction Council
<b>APU</b>	– Accredited Purchasing Unit
<b>AUSFTA</b>	– Australia–United States Free Trade Agreement
<b>BCSA</b>	– Baptist Care South Australia
<b>BTFN</b>	– Business Tax File Numbers
<b>CA</b>	– Contract Awarded
<b>CAA</b>	– Courts Administration Authority
<b>CE</b>	– Contract Extended
<b>CEDA</b>	– Committee for Economic Development of Australia
<b>CES</b>	– Client Engagement Service
<b>CHAFTA</b>	– Chile–Australia Free Trade Agreement
<b>CIPS</b>	– Chartered Institute of Procurement & Supply
<b>COAG</b>	– Council of Australian Governments
<b>COTA</b>	– Council on the Ageing
<b>CSS</b>	– Crown Commercial Service (UK)
<b>DCP</b>	– Department for Child Protection
<b>DCS</b>	– Department for Correctional Services
<b>DE</b>	– Department for Education
<b>DEW</b>	– Department for Environment and Water

**DHS** – Department of Human Services

**DIS** – Department of 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

**EOI** – Expression of Interest

**EFAP** – Emergency Financial Assistance Program

**EPAS** – Enterprise Patient Administration System

**FAM1** – Formal Approach to Market Date

**FAM2** – Market Approach Closed 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

**IA** – Industry Advocate

**ICAC** – Independent Commissioner Against Corruption

**ICT** – Information and Communications Technology

**IP** – Intellectual Property

**IPP** – Industry Participation Policy

**JAIPA** – Japan–Australia Economic Partnership Agreement

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

**LWB** – Life Without Barriers

**MTA** – Motor Trade Association

**NDIS** – National Disability Insurance Scheme

**NFP** – Not for Profit

**NZBN** – New Zealand Business Number

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

**OIA** – Office of the Industry Advocate

**OOHC** – Out of Home Care

**PAC** – Procurement Approvals Committee

**PC** – Premier and Cabinet Circular

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

**PGC** – Procurement Governance Committee

**PGU** – Procurement Governance Unit

**PIP** – Performance Improvement Plans

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

**PoC** – Proof of Concept

**PR** – Purchase Recommendation

**RFDS** – Royal Flying Doctor Service

**ROSMA** – Return on Supply Management Assets

**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

**SAIPP** – South Australian Industry Participation Policy

**SAPC** – South Australian Productivity Committee

**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 Enterprises

**SPB** – State Procurement Board

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

**SRM** – Supplier Relationship Management

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



**TI** – Treasurer’s Instruction

**UCSA** – Uniting Country South Australia

**VGPB** – Victorian Government Purchasing Board

**WHS** – Workplace Health & Safety

# 1. Introduction

---

## 1.1 Context

Government procurement of goods and services for the South Australian Government and its agencies has a substantial connection to the South Australian economy, amounting to more than \$11 billion annually or around 10 per cent of gross state product (June 2018).

Government procurement has been the focus of ongoing comment and complaint from small and medium enterprises (SMEs) and their industry associations, and from not-for-profit organisations (NFPs) contracted by the State to supply goods and services to South Australians as part of government programs. This total spending broadly falls into three groups, each of which is subject to different legal and governance arrangements:

- public authorities that are required to comply with the South Australian Procurement Board (SPB) Policy Framework that is issued by the SPB under the authority provided by the *State Procurement Act 2004*;
- prescribed public authorities that are not required to comply with the policies, principles, guidelines, standards or directions issued by the SPB;
- spending on capital projects above \$150,000.

In 2017–18, the purchase of goods and services by the South Australian Government totalled \$5.1 billion for those agencies within the scope of the Stage 1 report, which is over 25 per cent of the 2017–18 South Australia Budget.

These purchased goods and services underpin the provision of most public services (e.g. office supplies, police cars, hospital equipment), either by enabling public sector employees to do their work or by contracting others to provide public services. As such, they need to be fit for purpose and obtained in a timely and cost-efficient manner.

At the same time, goods and services procured from businesses operating in South Australia have a significant impact on employment, business activity and investment in the State. For many smaller businesses, government contracts represent a significant portion of their business within the State. The award of a large government contract can generate a significant amount of associated economic activity (e.g. building new facilities, hiring additional staff). On the other hand, the loss of a major government contract can result in the closure of a business and the loss of those jobs.

The State's procurement system also needs to balance the objectives of obtaining value in spending public money while at the same time meeting the government's other social, environmental and economic goals that are referenced in relation to procurement.

While public authorities are required to comply with the SPB Procurement Policy Framework and the Industry Participation Policy, they have some flexibility as to how they interpret and apply the guidelines and policy. As a result, there is some variation across government. This inquiry will examine those guidelines and policies and how they are applied within public authorities.

Businesses and NFPs have for several years expressed concern about the cost and red tape (e.g. delays, cancellation of tenders, and too much supporting information) associated with

bidding for government work in the context of uncertain return. These concerns have led to some reforms including simpler administrative arrangements, related policies such as the Industry Participation Policy, and attempts to cut red tape. Notwithstanding these efforts, concerns persist.

Procurement reform offers an opportunity to increase the benefits of the public spend by increasing value for money, improving productivity, supporting local jobs and industry, and supporting the government's other social, environmental and economic objectives.

## **1.2 Terms of Reference**

The South Australian Productivity Commission (the Commission) was originally asked on 31 October 2018 to evaluate the effectiveness and efficiency of state government policies and practices for the procurement of goods and services.

The Commission was also asked to identify options to improve procurement practices and their impacts on local industry, noting concerns expressed by small and medium businesses (SMEs) about the cost of and time expended in tendering for procurement opportunities. The scope at that time was confined to agencies and matters that fall within the scope of the *State Procurement Act 2004*, specifically excluding capital projects and prescribed authorities (e.g. SA Water and the South Australian Housing Trust). These initial terms of reference are set out on pages 5–6 of this draft report.

On 15 February 2019, the government expanded the scope of the initial terms of reference to include capital spending and prescribed agencies, while leaving unchanged the reporting dates for matters in the original scope. For convenience, the initial terms of reference define Stage 1 of the inquiry and the expanded terms of reference define Stage 2.

In doing both Stages 1 and 2 of the inquiry, the Commission is 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**

The regulatory environment.

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

The key regulatory instrument governing procurement operations in South Australia is the *State Procurement Act 2004*, and the *State Procurement Regulations 2005*.

**1.2 Treasurer's Instructions (TIs)**

Under section 41 of the *Public Finance and Audit Act 1987*, instructions are issued by the Treasurer and are administered by the Department of Treasury and Finance (DTF). The Act regulates the receipt and expenditure of public money. The TIs apply to each public authority as defined by the Act (except specified universities), and to all procurement activity including construction (unless specifically excluded in the TI).

**1.3 Premier and Cabinet Circulars (PCs)**

PCs are used to establish whole-of-government policies and will include instructions or requirements to take specific action on the implementation of those policies. The PCs apply to all public authorities, including prescribed authorities, and to all procurement activity (including construction) unless otherwise specifically excluded.

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

The SAIPP is established under the *Industry Advocate Act 2017* (IA Act). The IA Act provides for '*the appointment of the Industry Advocate and to provide for the powers and functions of the Industry Advocate*'.

**1.5 Code of Ethics**

Under the *SA 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 conduct outlined in the code. Delegated authority would include delegations under the *State Procurement Act 2004* and under TIs.

**1.6 Other Procurement-Related Legislation**

There are a number of other pieces of legislation, policies or agreements that have important implications for the operation of the South Australian Government procurement framework.

### Box 1.2

#### **Australian and International Obligations Relevant to Government Procurement**

The South Australian Government is a signatory to the following cooperative government procurement agreement:

- *Australian and New Zealand Government Procurement Agreement (ANZGPA)*

The South Australian Government has agreed to comply as if it were a party to the following free trade agreements, which have specific government procurement chapters:

- *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)*

### Box 1.3

#### **South Australian Government Election Commitments**

The election commitments on procurement included 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 comprise:

- 'Value for money – purchases should deliver an efficient price over the life of the procurement, including both the initial purchase and lifecycle costs ...
- Fit-for-purpose – purchases should consistently deliver on the requirements for which the procurement was made, and;
- 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 The Commission's Approach

The Commission published an issues paper on 16 November 2018 which sets out its initial understanding of the key issues within the Terms of Reference. In response, the Commission received 42 written submissions, all of which are published on the SAPC website. In addition, the Commission consulted through various means with over 160 individuals from industry associations, businesses, not-for-profit organisations and government agencies on the issues paper.

The Commission has examined data from other sources including surveys conducted by Business SA, the Office of the Industry Advocate and the SA Tenders website. The Commission also collected its own random sample of 103 recent procurements across agencies.

The draft report was released on 25 March and initiated another round of consultation with stakeholders on the Commission's research, analysis, information requests and draft recommendations. To this end, the Commission received 58 submissions from stakeholders, met with 112 individuals and organisations and held an additional three roundtables.

Owing to the revised terms of reference, the Commission will need to consider most system design-related issues and some system application issues in Stage 2 of the procurement inquiry as the data concerning exempted agencies may have a significant impact on the Commission's conclusions in those areas. By contrast, the Commission will address most of the issues related to the IPP and NFPs in this report.

### 1.4 The South Australia Procurement System

As with most Australian jurisdictions, the SA procurement system is a hybrid model with a central procurement board that guides policy and practice, coupled with procurement governance and process that are substantially issued or delegated to, and operated by, public authorities. An overview of the regulatory framework is contained in Appendix 1.

The object of the SP Act is to advance government priorities and objectives by a system of procurement for public authorities directed towards:

- obtaining value in the spend of public money
- providing for ethical and fair treatment of participants
- ensuring probity, accountability and transparency in procurement operations

The State Procurement Board (SPB) administers the SP Act. The operations of the SPB are overseen by the Minister for Finance. The SPB has the following functions under the Act:

- facilitate strategic procurement by public authorities by setting the strategic direction of procurement practices across government;
- develop, issue and keep under review policies, principles and guidelines relating to the procurement operations of public authorities;
- give directions relating to the procurement operations of public authorities;
- investigate and keep under review levels of compliance with the SPB's procurement policies, principles, guidelines, standards and directions;
- assist in the development and delivery of training and development courses, and activities relevant to the procurement operations of public authorities;

- provide advice and make recommendations to responsible Ministers and principal officers on any matters relevant to the procurement operations of public authorities; and
- carry out the SPB's functions in relation to prescribed public authorities and any other functions assigned to the SPB under the Act.

The SPB issues procurement authority to the principal officer of a public authority that is appropriate to the size and complexity of the public authority's procurement operations. Based on its assessment, the SPB provides a Tier 1, Tier 2 or Tier 3 procurement authority to each public authority. The tiers are as follows (GST Inclusive) Tier 1: \$15,000,000; Tier 2: \$1,500,000; and Tier 3: \$220,000.<sup>5</sup>

There are thirteen prescribed authorities that are not subject to the SP Act. They are part of the expanded scope of the Stage 2 inquiry.

Capital procurement is also not subject to the SP Act. This also falls within the scope of the expanded terms of reference and will be addressed later.

## 1.5 Stakeholder Feedback

A wide range of available evidence regarding concerns about the South Australian procurement system has been assembled including:

- feedback from small business through submissions and/or direct meetings;
- consultations and submissions from not-for-profit (NFPs) groups and associations;
- consultations and published views from Business SA and the Australian Industry Group;
- submissions and feedback from the Industry Participation Advocate and the Small Business Commissioner;
- agency feedback from a general survey and direct meetings;
- submissions to South Australian and Commonwealth parliamentary inquiries;
- a review of previous reports on the South Australia procurement system;
- surveys on the SA Tenders and Contracts website; and
- meetings with other interested stakeholders.

The issues raised by stakeholders – businesses (especially small and medium size enterprises), not-for-profit organisations (NFPs) and government agencies – fall into the following areas:

- the cost of the tender process;
- delays and lack of transparency of the tender process;
- aggregated contracts;
- restricted approach to the market;
- limited information on the pipeline of future work;
- poor quality of tenders;
- focus on immediate cost instead of whole-of-life cost;
- capacity of public authorities to evaluate tenders;
- free and fair trade;
- delayed payment;

---

<sup>5</sup> State Procurement Board of South Australia, Procurement Authority and Governance Policy, July 2018, p. 2.

- sub-contractor exposure to head contractor failure;
- requirements of local industry participation policies; and
- applying value for money in practice.

Business satisfaction with the government procurement process is usually rated as low. Businesses are particularly concerned when it comes to:

- being able to demonstrate their capabilities;
- suggesting innovative alternatives; and
- the speed of tender finalisation.

It should be noted that satisfaction tends to be higher for smaller (\$33,000 and below) contracts (OIA survey 2018).

The Commission has distinguished the NFP sector from business for the purposes of this inquiry based on the type of services NFPs are contracted to deliver (e.g. for Indigenous, homeless and disadvantaged South Australians), how those services are funded and administered, and how NFPs operate and deliver those complex services.

The NFP sector raised a variety of issues relating to procurement and grant funding, with the common themes grouped as follows:

- market engagement, consultation and collaboration;
- tendering: time, cost and information requirements;
- funding and pricing arrangements; and
- contract negotiations, contract management and reporting arrangements.

While there have been some important recent reforms, public authorities raised a number of issues during the consulting process, mainly relating to opportunities to further improve and streamline the procurement system. In addition, some further explanation of procurement practices by public authorities identified gaps in the current process.

## 1.6 Summary of Findings

Through researching the issues listed above several themes have emerged which will be explored in the following chapters. However, it is useful to summarise the themes at this point.

First, the current capacity to drive a whole-of-government procurement system with authority, accountability and human resources is very limited. The scope of the State Procurement Board's (SPB) authority to manage and guide the systems is limited to approximately half of the State's procurement expenditure. In addition, it's not clear how the groups that undertake procurement expenditure are, or can be, held accountable for maximising the value of that spend as the measurement of the system is focussed on compliance rather than performance. While the majority of these issues will be addressed in Stage 2 of the procurement inquiry, this report contains recommendations focused on starting the improvement process now.

Second, South Australia's procurement system is very prescriptive and risk averse. It could be simplified and streamlined to cut costs to businesses, NFPs, and public authorities while increasing efficiency and effectiveness. In particular, the approval process is cumbersome. While some efforts have been made to simplify the process through the SPB guidelines and



reforms to the Treasurer's Instructions, the number of approvals required to initiate projects is unnecessarily long as they include approvals that do not seem to add significant value. For example, it is still quite common for Cabinet to be asked to approve contracts that provide for ordinary business requirements simply because the contract value is large. In other states, chief executives have much larger financial delegations and it seems quite standard for ministers to approve contracts where the chief executive delegation is exceeded rather than Cabinet. Eliminating unnecessary Cabinet approvals will not only free up its agenda, but it would also reduce the approval time for larger contracts by at least two weeks. The principle should be that decisions get authorised once and then chief executives and public authorities are held accountable for the delivery on the procurement.

Third, at present, there is little practical guidance on how value for money should be interpreted to deliver the State's broader policies (e.g. whole-of-life costs, sustainable development, social inclusion). The guidelines published by the SPB are very broad and leave substantial latitude for interpretation. While this is feasible for some of the larger procurement groups, it makes it difficult for some of the smaller public authorities to incorporate some of the broader policies in their procurement processes. Other states and jurisdictions provide more practical guidance on how to address these policies. It seems reasonable that the SPB should increase its guidance in this area.

Fourth, the Commission's research and the experience of some public authorities clearly indicate that better engagement with the market will improve the outcome of the procurement process. As indicated in the preceding paragraph, the South Australia procurement system has a risk-averse culture. This culture has limited the extent to which public authorities engage with the market which makes it difficult to achieve maximum value throughout the procurement process. The reluctance to engage with the market is partially the result of the lack of policy guidance and partially the result of a perception that ICAC does not support engagement with the market before and during the procurement process. It is evident that clearer guidance from the SPB, reviewed by ICAC, would assist better engagement with the market.

Fifth, South Australia has adopted an economic strategy in which exports play a key role. The SAIPP can support that strategy by encouraging businesses to be able to compete both within and outside the state. Currently, the policy is focussed on ensuring local businesses have the opportunity to compete for government business and encouraging employment and investment in the state. This does help local businesses by ensuring they have opportunities to sustain and grow their businesses. The Commission considers the policy would be strengthened by:

- putting more emphasis on increasing knowledge of local business capabilities in public authorities through initiatives like meet the buyer events;
- ensuring local businesses understand best practice in tendering for government business within and outside the state; and
- ensuring incentives like the evaluation weights for local employment and investment are consistent with interstate programs.

Finally, there have been a number of recent reforms to the procurement process specific to the NFP sector. The Commission supports the reforms. Feedback from the NFP sector and public authorities suggests the reforms will address many of the substantive issues involving

NFP procurement. That said, there are still some concerns with the implementation of the reforms and the State will need to monitor the progress of implementation closely. Other recommendations relevant to the NFP sector are incorporated in broadly based recommendations for pre-registration and forward procurement programs.

## **1.7 Report structure**

The report is structured as follows:

- Chapter 2 sets out the Commission's current thinking on the capacity of the current system to manage whole-of-government procurement objectives. It makes recommendations for action that will improve the effectiveness and efficiency of the system that can be actioned without awaiting the final report for Stage 2.
- Chapter 3 sets out the Commission's conclusions on the South Australian Industry Participation Policy and makes recommendations to reduce red tape for industry and public authorities and increase the effectiveness of the policy in the context of the government's economic growth strategy.
- Chapter 4 reviews the issues associated with procurement involving not-for-profit organisations, and the most recent reforms to the state's procurement processes targeted towards these groups, and makes recommendations that will improve the process for procuring the services provided by them.

## 2. Improving the Procurement System in the Short Term

---

### 2.1 Introduction

In its draft report, the Commission concluded that the current capacity to drive a whole-of-government procurement system with authority, accountability and human resources is limited. Consultation following the draft report, further information from agencies and other stakeholders and a closer examination of the approach to, and recent reforms in, government procurement in Queensland, New South Wales and Victoria have reinforced that conclusion. Indeed, a good case can be made that South Australia significantly lags behind NSW, Victoria and Queensland.

The basic architecture of a procurement system starts with concurrent decisions about the allocation of roles between line agencies and the central procurement function, including the extent to which government procurement is to be driven strategically from a whole-of-government perspective. This final report does not address these matters except indirectly: to do so fully at this point would pre-empt the consideration of the public authorities that are currently exempt from the State Procurement Board and the consideration of construction procurement activity. That awaits Stage 2 of this inquiry.

Chapters 2 and 3 of the draft report identified a range of issues arising from the design of the government procurement system in South Australia and the way it operates in practice. In this chapter of this final report, the Commission addresses a selection of matters coming out the draft report where early action could be taken without compromising the consideration of the full procurement system in Stage 2.

These matters comprise:

- streamlining the procurement process by amending delegations for decision making;
- clarifying the guidance for value for money and the incorporation of government policy objectives relevant to procurement;
- improving engagement with the marketplace by agencies;
- early steps to improve whole-of-government reporting and analysis of procurement; and
- greater effort in building capability in procurement across government, especially human resources and skills.

In considering these issues, it is relevant to take into account the capabilities that would reasonably be required to underpin the capacity to drive a whole-of-government procurement system.

Accordingly, the chapter is organised as follows:

- Section 2 sets out the Commission's view on the capabilities to underpin a whole-of-government procurement system from the centre.
- Section 3 proposes changes to delegations to streamline decision making.

- Section 4 recommends significant improvement and clarification of the definition of value for money and incorporating relevant government objectives in procurement.
- Section 5 provides specific recommendations to improve the engagement with the market, including better guidance sanctioned by ICAC.
- Section 6 recommends an initial set of whole-of-government performance measures and reporting to lift the capacity to identify system-level improvement.
- Section 7 proposes actions to focus on and invest in the development of the State's body of procurement professionals.

## 2.2 Underpinnings to Drive a Whole-of-Government Procurement System

The Commission provides its views on this matter both to provide a context for the following sections of the chapter and to foreshadow its thinking in the lead-in to Stage 2 of the inquiry. The views in this section are consistent with a range of structures and means of delivering or incorporating these underpinnings as the Commission has yet to consider the additional areas that are within the scope of Stage 2.

That said, if the central procurement function is to take a strategic driving role then its capacity to do so rests on five essential elements:

- sufficient seniority, accountability and authority for the function to shape and implement reforms and improvements to the procurement system over several years. Importantly, this includes the capacity to engage with authority at the highest levels of agencies;
- whole-of-government performance monitoring and data analytics, underpinned by robust and relevant whole-of-government performance information;
- the capability to undertake strategic analysis and support whole-of-government improvement;
- assistance to agencies, notably those for whom procurement may not be a mainstream part of their role; and
- capability development for the government's procurement cadre.

The Commission considers that there are currently gaps in capability in each of those elements, notwithstanding some attention and important actions that have been taken to date by the State Procurement Board. There are useful further early steps that can be taken to begin to address those steps without prejudice to final advice and ultimately decisions by government on the overall architecture following Stage 2. The following sections propose such early steps.

## 2.3 Simplifying the Process

As stated in the Auditor-General's annual report,<sup>6</sup> the most direct relationship between a public authority's delegations and other government policy requirements are the limits established in Treasurer's Instruction 8 Financial Authorisations (TI 8) for the approvals of

---

<sup>6</sup> Auditor-General's Department, 'Part A: Executive Summary', *Annual Report of the Auditor-General for the year ended 30 June 2018*, p. 52.

expenditure and contracts. To progress a procurement, the public authority needs to ensure that it has the appropriate:

- procurement authorisation via the SPB's procurement policy framework; and
- financial/contract authorisation via TI 8.

Procurement authority enables the public authority to approve a proposed course of action, strategy or recommendation relating to procurement (i.e. acquisition plan or purchase recommendation) up to a specified dollar amount that is assigned to the principal officer by the SPB. Under the SPB's procurement policy framework, there are three procurement authorities:

- Tier 1 up to \$15 million;
- Tier 2 up to \$1.5 million; and
- Tier 3 up to \$220,000.

Public authorities must seek the SPB's approval for procurements valued above their procurement authority.

TI 8 specifies the conditions and requirements for financial authorisations based on specified thresholds. Financial authorisation is required to: enter into a contract (contract authorisation); make a payment (financial authorisation); and vary a contract where the variation causes the total value of the contract to increase by more than 5 per cent. TI 8 applies to a broader range of public authorities (includes prescribed authorities) and applies to all financial contracts involving expenditure on goods, services, grant funding, leases or rentals.

Under TI 8, contracts (or purchase approvals) valued up to \$1.5 million can be approved by an employee nominated by the chief executive. Approval to execute a new contract (or purchase) above \$1.5 million can be provided by:

- Cabinet, or the minister, or *'an employee nominated by the Minister in writing by specific Ministerial delegation that specifies the employee, the amount and the nature of the contract including the parties'*<sup>7</sup> for procurements valued from \$1.5 million up to \$15 million; and
- Cabinet or ministerial approval if valued above \$15 million.

The following table provides a summary of the approval process up to contract execution for a new procurement (where financial authorisation is not already in place) that is valued above a public authority's procurement authority level.

---

<sup>7</sup> Department of Treasury and Finance, *Treasurer's Instruction 8: Financial Authorisations*, p. 4.

Table 2.1: Summary of approval and endorsements for procurement process

	Identify business need	Approval required	Endorsement required
1	Business proposal finalised	Chief executive	Agency HOP and PGC
2	Financial authorisation (TI 8)	Cabinet (Tier 1 agency) Minister (Tier 2 agency)	
3	Acquisition Plan	State Procurement Board	Agency HOP and PGC and Financial delegate (Tier 1) or Executive delegate (Tier 2)
4	Tender documents	Agency HOP	Agency evaluation team/PGC
5	Purchase recommendation	PGC (as per acquisition plan)	OR and SPB
		SPB	and PGC
6	Contract authorisation/endorsement	Cabinet	
7	Contract execution	Minister or nominated delegate	

Public authorities have provided feedback to the Commission on delegation and approval requirements for the procurement process. According to the feedback provided, the TI 8 requirements relating to contracts valued above \$1.5 million cause the greatest concern:

- As the approvals (for both procurement and financial authorisation) are often
- executed in a sequential process rather than concurrently, this can add significantly to timeframes. According to information provided by public authorities, the approval/delegation requirements can delay the process by 30 to 50 per cent of the time taken for the procurement process – particularly for those procurements valued above a public authority's accredited purchasing limit.
- There is uncertainty about whether the additional TI 8 requirements for contracts valued over \$1.5 million are necessary given public authorities have already been assessed by the SPB through the accreditation and/or assurance programs and, according to some feedback, there have been very few times when ministerial approval has not been provided.

Public authorities have proposed consideration be given to amending and/or aligning the procurement and contract delegations between the SPB's framework and TI 8. Proposals have included:

- Amend TI 8 thresholds or provide more flexibility on how delegations are applied – particularly for those public authorities whose procurement authority is \$15 million. Additional briefing or reporting could be implemented to ensure accountability to the minister.
- Remove or revise the requirement to seek Cabinet approval (for TI 8) for secondary procurement processes – particularly if budgets have been approved previously. The preference would be to advise Cabinet only if considered necessary by the minister.
- Amend the TI 8 requirements regarding approval for contract variations to be consistent with the approach and requirements applied under the SPB's framework (provides more flexibility and guidance).
- Investigate information and communications technology (ICT) solutions that could streamline and coordinate the approvals process within, and between, public authorities.

### **2.3.1 Commission's View**

The Commission considers that the misalignment between the TI 8 thresholds and procurement authority levels imposes an unnecessary delay in the approval process. Aligning the thresholds would remove the problem.

The Commission has consulted with other states on their financial and procurement delegations and acknowledges the overall systems are quite different. However, notwithstanding the differences, South Australia's approval process seems quite restrictive.

The other states reviewed have a greater focus on the accountability of public authorities, ministers and chief executives balanced by systems to mitigate the risks of the additional flexibility in the decision-making process. Essentially, the model is that public authorities are accredited to undertake procurement and the ministers and chief executives have the necessary financial delegations to execute contracts without the need to obtain additional cabinet approvals once the budget for the procurement is in place. The table below provides more detail on the difference between South Australia and the other states that have been consulted by the Commission.

*Table 2.2: Financial and procurement delegations*

	South Australia	Victoria	Queensland	New South Wales
Financial delegation of select chief executives	\$1.5 million	\$10 million	\$8 million	Up to approved budget
Requirement for Cabinet to approve contract	Usually above \$15 million	no	no	no
Procurement delegation	Three tiers	no	no	Two tiers 1. Full budget 2. Risk-adjusted framework with high-risk procurements limited to \$20 million
Agency accreditations	yes	yes	yes	yes

*Source: Office of the SA Productivity Commission*

Several negative impacts result from the number of approvals required in South Australia which include:

- the additional time required to finalise procurements increases the costs to business of holding the resources required to deliver the goods and services procured;
- the delays in obtaining the good and services procured; and
- the dilution of accountability for the decision to negotiate and manage the contract.

The Commission cannot identify any significant benefits associated with the additional steps required. Once the budget for the goods and services being procured is approved, the public authority that developed the business case and that has responsibility for the management of the procurement should be accountable for ensuring the goods and services are delivered according to the outcomes required. Adding other parties to the decision-making process only seems to delay the delivery and obscure the accountabilities.



The Commission acknowledges that there needs to be a process to hold chief executives and public authorities accountable but adding steps to the contract execution phase of the procurement does not seem to be the most appropriate solution. The Commission is inclined to support a periodic review of agency performance as part of the external or internal audit process. The Commission will consider this aspect of the procurement process in more detail in the Stage 2 report when it has considered the operations of the exempt public authorities.

**Recommendation 2.1:** To cut red tape in the decision process and eliminate unnecessary delays, the Commission recommends that the government:

- adopt the principle that generally procurement decisions should only be authorised once, and subsequently chief executives and public authorities should be held accountable for the procurement outcomes;
- identify any exceptions where a further confirmatory decision may be required before the commencement of the procurement;
- increase financial delegations for chief executives to the levels commensurate with the business of the public authority such that duplicate approvals are not required to execute contracts; and
- provide ministers with sufficient financial delegation to approve contracts that provide for ordinary business requirements of the public authority for which they have responsibility.

## 2.4 Value for Money

### 2.4.1 Key Messages

Governments increasingly use procurement as a policy instrument to support other strategic objectives. As a result, achieving value for money is about more than achieving financial benefits and savings.

Businesses expressed the view that value for money is poorly defined and not well understood. Work by the Industry Advocate has raised awareness of the IPP and the contribution of local employment and investment to indirect benefits, but the Commission has concluded that greater clarity is needed to enable agencies to consider how South Australia's non-financial goals could be incorporated in the procurement process. Providing better guidance would simplify the procurement process for public authorities and suppliers by clarifying the intended balance between financial and non-financial goals.

### 2.4.2 Value for Money in the SPB's Procurement Policy Framework

The procurement principles applied under the *State Procurement Act 2004* are aligned to the objects of the Act:

- obtaining value in the expenditure of public money;
- providing for ethical and fair treatment of all participants; and
- ensuring probity, accountability and transparency in procurement operations.

In practice, value for money is defined over the different stages of the procurement process: project planning; supplier selection; contract management; and evaluation of project outcomes.

The identification of the key factors of value for money for a procurement occurs at the planning stage. These factors are intended to remain a consideration throughout the process by guiding the evaluation of supplier bids, management of suppliers and evaluation of outcomes.

The identified factors of value for money are formalised through the selection criteria used for the evaluation of tender responses. The evaluation may involve the use of mandatory and/or weighted criteria. Value for money evaluation criteria may include:

- mandatory criteria – non-subjective responses to capability, qualification and credentials; and/or
- weighted criteria – prior performance, demonstrated experience, price/cost, capability, delivery timeframes, compliance with the SAIPP. These may be mandatory or non-mandatory.

A public authority's determination of the appropriate criteria (including whether they are mandatory and the appropriate weightings to be applied) will be guided by policy objectives and by the public authority's specific requirements. Incorporating various value for money factors can lead to a perception that different projects across different agencies (or even within agencies) may have inconsistent selection criteria.

### **2.4.3 Summary of Feedback on Value for Money**

A key theme of the feedback received from businesses and public authorities was on the issue of value for money and how it applies to government procurement. In summary, the feedback has indicated that:

- Public authorities and business lack clarity, or a shared understanding, of the definition of 'value for money' as it applies in government procurement.
- Value for money is said to be seen through the narrow lens of 'lowest price' rather than against broader government objectives.
- It can be difficult to manage and prioritise value for money within the context of resource constraints and other strategic priorities.
- There is uncertainty on how to apply and measure value for money in the procurement process – particularly where some value for money factors may impact on short-term costs but accrue indirect benefits over the longer term.
- There is a lack of capability to identify, measure and achieve value for money objectives.
- The authorising structure does not reward risk or innovation, making it difficult for procurement officers to justify and obtain approval for indirect outcomes.

## **2.4.4 What is Value for Money?**

The State Procurement Board (SPB) in South Australia (SA) defines value for money as *'the optimal use of taxpayer resources to achieve the intended procurement objectives'*.<sup>8</sup>

The Victorian Government defines value for money as *'the achievement of a desired procurement outcome at the best possible price – not necessarily the lowest price – based on a balanced judgement of financial and non-financial factors relevant to the procurement'*.<sup>9</sup> Value for money underpins Victorian Government procurement and is a key driver in any procurement engagement.

The Queensland Government states that *'value for money means more than just the lowest price and in measuring value for money, it must also advance the government's economic, environmental and social objectives for the long-term wellbeing of their community'*. Queensland does not have 'value for money' as a procurement principle by itself. Instead the first government procurement principle (out of six) is *'putting Queenslanders first when securing value for money'* with the intent of *'ensuring value for money reflects more than just lowest price'*.<sup>10</sup>

For most jurisdictions, the definition of value for money is beyond considerations of price and the achievement of value for money is focussed on the whole procurement process.

## **2.4.5 Value for Money Factors**

As in most other jurisdictions, government procurement spending in South Australia represents a significant proportion of public finances. Consequently, anything that can improve value for money in procurement has an appreciable impact on public finances – particularly in an era of fiscal constraint.

### **2.4.5.1 Cost-Related Factors**

Feedback from public authorities indicates that there is usually a good commercial understanding of 'value for money'. This includes standardisation of product categories, aggregation of volumes to drive efficiencies of scale, and improving and streamlining processes to achieve cost savings and achieve financial 'value'.

Whole-of-life costing takes into account the total cost of a good or service over its lifetime from business case through to disposal. It includes the costs of the purchase, hire or lease, maintenance, operation, training and disposal. It is particularly important where the purchase cost is only a small part of the whole-of-life cost due to high ongoing costs.

As identified in the draft report, businesses do not have confidence that many State tender evaluation processes consider whole-of-life costs. The perception of the prioritisation of lower prices for selected products can lead to higher overall costs and the loss of economic activity associated with the unsuccessful business. In a survey undertaken by Business SA of their members, 42 per cent of the respondents agreed that procurement managers rarely or never considered whole-of-life costs.<sup>11</sup> The issue of 'whole-of-life' value (or lack thereof) was

<sup>8</sup> State Procurement Board, *Value for Money Guideline*, January 2018, p. 4.

<sup>9</sup> Victorian Government, *Achieving Value for Money – Procurement Guide*, updated 24 December 2018, p. 1.

<sup>10</sup> Queensland Government, *Queensland Procurement Policy 2018*, p. 2.

<sup>11</sup> Business SA, Submission to the SAPC Government Procurement Inquiry, December 2018, p. 7.

of particular concern to software vendors who consider that it is poorly understood and applied.

#### **2.4.5.2 Non-Cost Factors**

Based on feedback from agencies and assessment of tender responses, the Commission observes that common non-cost factors that form part of the value for money assessment are quality, previous experience, after-market service, and the IPP.

In addition to the traditional cost and non-cost related factors, broader government priorities, commitments and objectives may be also considered as part of value for money in procurement. These include economic, environmental and social factors. Examples of broader government priorities that may be included in value for money assessments for procurement that are used in South Australia or other jurisdictions are support for Aboriginal businesses, sustainability/environmental targets, ending modern slavery in supply chains, and encouraging participation by small to medium businesses in procurement processes.

Public authorities have provided feedback that other policy objectives can be:

- closely linked to the core business of the agency itself (for example, public health outcomes for SA Health); and
- common to all agencies, or 'whole-of-government' objectives that are not necessarily perceived as being closely aligned to the agency's core business (for example, environmental objectives for SA Health).

#### **2.4.5.3 Interstate Experiences with Non-Cost Factors**

There are significant trends in procurement reform in other jurisdictions including broadening the criteria for value for money for government procurement beyond financial factors. These developments hold lessons and insights for South Australia. It is noted that:

- Many jurisdictions include policy requirements and factors that aim to support SME participation in procurement activity. These objectives influence the value for money factors for the target procurement activity. Examples of application are in the Commonwealth Government, NSW, Victoria and overseas jurisdictions (including the United Kingdom).
- Most jurisdictions have a policy commitment to support local output, employment and SMEs (including South Australia through its SAIPP).
- Most jurisdictions have developed 'social procurement' policies that aim to leverage procurement spending to add social value, and benefit communities and suppliers. Examples of strategies include the Victorian Government's Social Procurement Policy and the Queensland Government's Social Procurement Guide.

#### **2.4.5.4 Feedback on Non-Cost Factors**

The Commission has received numerous submissions from organisations discussing social procurement strategies, objectives and approaches. In general, social procurement seeks to integrate social responsibility into procurement activity by using purchasing as a tool to

deliver impacts beyond the goods and services required.<sup>12</sup> This requires a broader interpretation of value for money beyond the cost and non-cost factors that are directly associated with the purchase.

The Commission has been provided with, and researched, examples and case studies on incorporating broader policy objectives into the value for money assessment of procurement. Some of these include:

- the inclusion of criteria for energy efficiency, greenhouse gas emissions, recycled materials, minimal packaging, and other measures to reduce adverse environmental impacts;
- incorporating future economic liability mitigation costs in whole-of-life cost assessments (e.g. cost savings by using products built to withstand future climate impacts);
- procurement strategies that provide opportunities and incentives to employ and protect vulnerable people including (but not limited to) persons with a disability, persons with a mental health disability, and long-term unemployed persons;
- use of accreditation, standards or certifications recognised as evidence of sustainable procurement strategies;
- alternative approaches to, and in, the market including use of competitive dialogue, co-design criteria and enterprise strategies; and
- risk-management strategies that encourage and develop innovative goods and services – including research and development opportunities that may lead to further commercial opportunities in the market.

It is clear from the information obtained throughout the procurement inquiry to date that there are practical procurement strategies and approaches that other jurisdictions and organisations are using to meet broader government objectives.

#### ***2.4.5.5 Including all Factors***

Although achieving financial cost savings through procurement does not necessarily preclude the achievement of other government social or economic priorities, there is some tension between managing and including the different objectives in the procurement process. Some participants commented that maintaining the balance between providing value through least cost and achieving value for money through better outcomes for end users and public authorities remains difficult to achieve.

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) outside of their control. This limits opportunities to achieve higher value outcomes.

Feedback provided to the Commission indicates that there is not a clear understanding on what is value for money, given the government's competing but complementary objectives in a whole-of-government sense, and how to incorporate other government social or economic objectives into their procurement framework and activity.

---

<sup>12</sup> Akina Foundation submission, New Zealand, p. 1.

### 2.4.6 Value for Money in the Procurement Process

A number of decisions or selections that are made during the procurement process can impact on the achievement of value for money. For example:

- market approach – selective market approaches can reduce market engagement and competition which may mean public authorities miss out on obtaining better value from the marketplace;
- supplier selection – narrow specifications or criteria that reduce the number of eligible tenderers and reduce innovation, or specifications with minimal reference to the intended outcome; and
- contract management – application of appropriate key performance indicators and driving continuous improvement to minimise value leakage.

### 2.4.7 Evidence of the Achievement of Value for Money in Procurement in Practice

There are a number of barriers that can impact on the application and achievement of value for money in practice – particularly if value for money incorporates broader policy objectives. Based on research and feedback provided to the Commission these include:

- insufficient data and metrics suitable for measuring and reporting on value for money outcomes;
- focus on short-term costs and benefits and not recognising the potential longer-term efficiencies and benefits (or costs);
- minimal specific requirements directly related to value for money outcomes;
- lack of a shared understanding of government policy priorities and how those are connected to government procurement;
- treating government procurement as a purely transactional/administrative function which therefore limits perceptions that it can be used for more strategic purposes (and limits value for money criteria);
- a lack of consistently applied tools and mechanisms that help counter the dominance of cost elements; and
- lack of clear, and suitably targeted, guidance and training for procurement officers.

It is not possible to determine whether value for money has been achieved unless it can be evaluated and measured in some way. This includes measuring value for money at an individual project level through to value for money at a whole-of-government strategic level. Measuring value for money requires measuring all financial and non-financial criteria and comparing outcomes to stated objectives. Some of the more commonly used value for money evaluation tools that can be applied include:

- cost effectiveness analysis – evaluates two or more alternatives based on their relative costs and outcomes in reaching a particular objective;
- benefits realisation management – identifies and manages potential benefits, measures how the benefits of a purchase will add true value to the organisation;
- cost-benefit analysis – evaluates alternatives by identifying the costs and benefits of each alternative and adjusting for time;

- social return on investment – involves measuring social, environmental and economic costs and benefits;
- rank correlation of cost vs impact – relative measurement of value for money across a portfolio of initiatives; and
- basic efficiency resource analysis – provides a framework for evaluating complex programs by comparing impacts to resources.

A single or combination of the above methodologies, or other tools, may be applied to assess value for money for projects and/or procurements.<sup>13</sup>

## 2.4.8 Application in South Australia

The lack of appropriate data and metrics (see Section 2.6) makes it extremely difficult to measure or quantify value for money at a whole-of-government level in South Australia. Further investigation on this will be undertaken in Stage 2 of the Commission's procurement inquiry.

The Commission has undertaken research and investigation that provides it with an initial indication of the application of value for money in SA.

### 2.4.8.1 Tender Evaluation

The Commission reviewed acquisition plans and purchase recommendations relating to 103 tenders that were provided by public authorities. This analysis included assessing the importance of price as opposed to other evaluation criteria used by public authorities. It was concluded that:

- 30% had a factor other than price that determined the successful supplier such as timeliness of delivery, capability of suppliers and experience in delivering the goods and services;
- 30% had a complex range of factors determining the successful supplier (with price only one component);
- 30% had price as the determining factor and the second-best tenderer had ranked equally on the other criteria; and
- 10% had price as the sole factor in the supplier decision.

The above indicates that, based on the sample provided, public authorities use non-cost factors to determine the successful supplier in the majority of cases. This is, however, based on a limited sample and is not a comment on the quality of the non-price factors. Research and feedback also indicate that value for money factors that are not commonly included in evaluations include whole-of-life costs, environmental impacts and broader economic impacts. Public authorities have confirmed that the SA Industry Participation Policy (SAIPP) is currently the only non-cost factor relating to broader government objectives that is applied across government (refer to Chapter 3).

---

<sup>13</sup> Farida Fleming, *Evaluation Methods for Assessing Value for Money*, Better Evaluation, October 2013, [Better Evaluation Methods](#)



#### **2.4.8.2 Measuring Across-Government Performance of Assessing Value for Money**

The Commission has found that there are very few published methodologies used to measure value for money at an across-government or sector level.<sup>14</sup>

The Commission has taken one methodology that was recently developed by the European Commission (EC) and applied it to the South Australian Government procurement sector to obtain an indication of assessments of value for money at the whole-of-government level. The EC methodology assesses member countries against six indicators of value for money procurement. The indicators relate to the number of bidders for contracts, open advertising of contracts, aggregation of demand, type of award criteria used, decision speed and reporting of contract award information. Countries are assessed as being above average, average, or below average. The EC methodology provides the first systematic assessment of procurement performance and prevalence of value for money practices across Europe.<sup>15</sup>

The results of the Commission's assessment of value for money for goods and services government procurement in South Australia (SA) using the EC's methodology are provided in Table 2.3 below. The results indicate that SA:

- meets the performance threshold for two of the indicators;
- does not meet the performance threshold for two of the indicators; and
- has no appropriate data to measure two of the indicators (i.e. unable to measure).

---

<sup>14</sup> UK Public Sector Audit Agencies, *Value for Money in public sector corporate services*, 2007, pp. 25-28 (procurement indicators).

<sup>15</sup> Anthony Flynn, 'Measuring procurement performance in Europe' *Journal of Public Procurement*, Vol. 18, Issue 1, pp. 2-13 (2018).



*Table 2.3: SA's value for money performance based on the EC's value for money methodology*

Description	Measurement in SA	SA performance
<b>1. One bidder indicator:</b>		
Proportion of contracts awarded where there was only a single bidder in the competition	SA does not collect this information. Closest available information is the number of suppliers approached to bid (reported via the SPB's annual procurement reporting).	35% of contracts awarded in 2017–18 involved a procurement process where a single supplier was approached. <i>SA does not meet the EC performance threshold for this indicator.</i>
<b>2. No calls for bids indicator:</b>		
Proportion of procurement procedures negotiated without being preceded by a published call for tender	Proportion of contracts awarded using a selective market approach (reported via the SPB's annual procurement reporting).	60% of contracts awarded using a selective market approach <i>SA does not meet the EC performance threshold for this indicator.</i>
<b>3. Aggregation indicator:</b>		
Proportion of procurement procedures that involve more than one contracting authority	Data unavailable at a whole-of-government level.	<i>Unable to measure</i>
<b>4. Award criteria indicator:</b>		
Proportion of contracts awarded on the basis of price only.	Commission data from random sample of 103 purchase recommendations from 14 agencies.	A factor other than price was the reason for awarding a contract in 70% of cases. <i>SA meets the EC performance threshold for this indicator.</i>
<b>5. Decision speed indicator:</b>		
Mean time between deadlines for receipt of offers and award of contract.	Data reported on timeframes as per SPB's annual procurement reporting requirements.	Average mean time of 100 days for the period 2014–15 to 2017–18. <i>SA meets the EC performance threshold for this indicator.</i>
<b>6. Reporting quality indicator:</b>		
Proportion of contracts awarded containing no information about contract value.	Premier and Cabinet Circulars 27 and 13 include requirements on the publication of information on contract value. CEs can veto publication of contract information.	It is not clear what proportion of contracts awarded are not published with value information. <i>Unable to measure.</i>

*Sources: Anthony Flynn, 'Measuring procurement performance in Europe', Journal of Public Procurement, Vol. 18, Issue 1, pp 2-13 (2018); State Procurement Board, Board Procurement Annual Reporting data for 2017–2018 (data reported by public authorities)*

The EC applied a triple weighting to the first two indicators in their assessment of each country as they consider those to be particularly important indicators of value for money. With respect to the 'no call for bids' indicator, it is noted that:

- 50% of the EC countries assessed (15 countries) met the 'satisfactory' level of having 5% or less of their procurement procedures involving no public call to tender; and
- 17% of the EC countries were 'average', and 33% of EC countries were 'unsatisfactory', which meant that over 10% of their procurement procedures had no public call for bids.

The above compares with South Australia where, in 2017-2018, of those contracts reported to the Board as being executed (entered into), 60% involved the use of selective market approaches<sup>16</sup>. This proportion is significantly higher than the 'satisfactory' level of up to and including 5% as used in the EC methodology.

The Commission acknowledges that there are circumstances where a selective market approach is appropriate; however, it considers the issue of selective market approaches and achievement of value merits further investigation in Stage 2 of the procurement inquiry.

#### **2.4.8.3 Value for Money and Savings**

One of the key criteria for value for money is the consideration of financial or cost factors. The cost effectiveness of an organisation's procurements is important for any organisation – particularly government organisations.

Most public authorities advised the Commission that they did not apply a savings target or efficiency dividend that is specifically applied to the procurement function or procurement activity in the agency. Two agencies, SA Health and Department of Treasury and Finance, advised that they undertake in-depth spend analytics of categories of expenditure to identify savings opportunities and may work towards achieving those savings.

#### **2.4.8.4 Additional Evidence**

Recent survey responses provided to the Office of the Chief Entrepreneur (SA) and the Office of the Industry Advocate show:

- 80% of respondents do not believe that the current procurement policies align with public policy objectives such as economic, health, environment, energy etc.
- 75% of respondents do believe that procurement practices should consider a sustainability assessment of innovative products and services.
- 85% of respondents believe more consideration should be given to whole-of-life costs when selecting a procurement solution.<sup>17</sup>

<sup>16</sup> State Procurement Board, 2017-2018 Annual Procurement Data – Contracting Activity, based on information reported by in-scope public authorities for that year

<sup>17</sup> OIA and Office of Chief Entrepreneur response to information request 4.2 on value for money.

## 2.4.9 Additional Value for Money Considerations

### 2.4.9.1 Planning and Governance

Participants have suggested that existing governance arrangements do not promote forward planning or strategic oversight in the procurement system. The prevalence of a lack of data or metrics to support the measurement of procurement outcomes across government is a further indication that procurement is often considered as a 'non-strategic' function in government.

Further discussion on data and metrics relevant to benchmarking and measurement of value is provided in Section 2.6.

### 2.4.9.2 Capability

As indicated in the draft report, inconsistency or lack of suitably qualified and skilled public sector officers who undertake procurement processes and/or manage contracts can impact on how value for money is applied in the procurement process. Quantifying and verifying whole-of-life and non-cost factors can be a complex and difficult task – particularly for officers with minimal procurement education, training or experience.

Capability is discussed further in Section 2.7.

## 2.4.10 Value for Money Requirements and Guidance

### 2.4.10.1 Existing Requirements and Guidance in SA

Part 2, section 12(1)(b) of the Act requires the SPB to *'develop, issue and keep under review policies, principles and guidelines relating to the procurement operations of public authorities'*.

The Commission has reviewed the guidance and references currently provided in the SPB's procurement policies, guidelines and tools. An overview of the existing sources of information are provided below.

### 2.4.10.2 Value for Money Guideline

The SPB's Value for Money Guideline (the Guideline) defines it as *'the optimal use of taxpayer resources to achieve the intended procurement objectives'*.<sup>18</sup>

The guideline advises that value for money is to be considered and applied throughout the procurement process:

- acquisition planning – when determining the intended objectives of the procurement and whether those objectives include achievements beyond finance;
- supplier selection – how and when to approach and engage with the market and what criteria and evaluation to apply against the objectives; and
- contract management – how to manage the contract to ensure that the intended objectives are achieved.

---

<sup>18</sup> State Procurement Board, *Value for Money Guideline*, January 2018, p. 4.

The guideline advises that determining whether 'value for money' has been achieved requires measuring and comparing the intended procurement objectives to the outcomes delivered at the completion of the contract.

The guideline does not include additional information on the practical application of the concept of value for money in procurement.

#### ***2.4.10.3 SPB's Disposal Guideline***

Of the 86 mandated requirements listed in the SPB's *Assurance Document 1: Mandated Requirements* document, there is one requirement referencing 'value for money' which is in the SPB's Disposal Guideline. It states that the disposal of goods must achieve value for money and that, in addition to price, the disposal process chosen must include consideration of the government's social, economic and environmental policy objectives.

Apart from the mandated requirement mentioning value for money in the SPB's Disposal Guideline there are general references to 'value for money' throughout SPB documentation with minimal explanation of what it means.

#### ***2.4.10.4 SPB's Supplier Selection Guideline***

The Supplier Selection Guideline provides limited information on evaluating non-cost factors of a supplier's offer including costs over the life cycle of the procurement, sustainability requirements, etc.

#### ***2.4.10.5 Existing Guidance in other Australian Jurisdictions***

Table 2.4 below provides a comparison of the type of information and guidance provided in the different value for money material available in other jurisdictions in Australia.

Table 2.4: Comparison of jurisdictions' guidance on value for money

Key features	Jurisdiction					
	NT	NSW	Qld	SA	Tas	Vic
<i>Design</i>						
<i>Components/drivers</i>						
Planning for procurement	✓	X	✓	✓	✓	✓
Total cost ownership/whole of life cycle costs	✓	✓	✓	X	✓	✓
Non-financial factors	X	✓	✓	X	X	✓
Quality of procurement	X	X	✓	X	X	✓
Contract management and delivery	X	X	✓	✓	X	✓
<i>Scope of application</i>						
<i>Financial factors</i>						
Total project costs	✓	✓	✓	X	✓	✓
CPI/carbon pricing mechanism	X	X	X	X	X	✓
Non-costs: value-added service	X	X	✓	X	X	X
<i>Non-financial factors</i>			X	X		
Risk mitigation	X	✓	✓	X	✓	✓
Local business and SME participation (may include impact assessment on local economy)	✓	X	✓	X	✓	✓
Supplier ethics	X	X	X	X	✓	✓
Competition	X	X	X	X	X	✓
Innovation/intellectual transfer of knowledge	✓	✓	X	X	✓	✓
Economic/market development	X	X	✓	X	✓	✓
Environmental practices/ climate change	✓	X	✓	✓	✓	✓
NFPs/social inclusion and equity	X	X	✓	✓	X	✓
Indigenous employment	✓	X	✓	X	X	X
Disaggregation of procurement	X	X	X	X	✓	X
<i>Guidance</i>						
Non-financial KPIs	X		✓	X	X	✓
Assessment criteria	✓	X	✓	X	X	✓
Cost-benefit analysis guideline	X	✓	X	X	X	X
Value risk matrix	X	X	✓	X	X	X
User guide	X	✓	✓	X	X	✓
Examples provided?	X	X	X	X	✓	X
Total 'X's	16	16	8	21	13	6

Source: Published guidance documentation on value for money on government procurement websites of the above jurisdictions.

The above table provides an opportunity to consider what other key features South Australia may want to include in its guidance material on value for money that is not already provided. Most jurisdictions provide a suite of documentation on value for money in procurement including guidelines, fact sheets, policies and tools that together form a framework or structure that supports the application of value for money in procurement. For example:

- The Victorian Government Procurement Board publishes a Governance Policy that is supported by separate guides on value for money, environmental impact in procurement, and improving access to government business for SMEs, plus tools that assist in applying value for money in contract management and performance management. In addition, the Victorian Government has a 'Social Procurement Framework' with a range of guides (targeted to specific stakeholders), case studies and tools that aim to enable buyers and suppliers to incorporate social, economic and environmental outcomes as part of value for money in procurement.
- The Queensland Government provides documents, guides, and fact sheets on buying Queensland first, optimising opportunities for local suppliers, using outcome-based procurement approaches, local benefits tests, and a social procurement guide and information.

#### **2.4.10.6 Feedback on Value for Money Guidance Material in SA**

The Commission's draft report contained two information requests that sought participants' views on the current quality and type of guidance provided by the SPB on value for money in procurement.

Most respondents to this question consider that the existing guidance material by the SPB on value for money is inadequate and many provided proposals to improve the existing material. The key findings from this feedback were that:

- The public value concept is obscure and vague when applied to the actual marketplace.
- The guidance appears to be targeted at a very high level and offers little practical information for procurement officers.
- Additional or separate guidance is needed that is tailored for officers who are less skilled or experienced in procurement as well as other stakeholders outside of government.
- The guideline assumes detailed knowledge of 'government priorities and objectives'.
- There is inadequate guidance or information on how to support innovation and risk.
- Suppliers are often confused on what is value for money and how the different factors are combined to achieve a result.

The feedback is consistent with some of the findings that were identified in a review commissioned by the SPB in 2018 on the SPB's policies and procedures. That review found that public authorities want further guidance on measuring and quantifying value for money in the evaluation process.

#### **2.4.11 Procurement System Design and Achieving Value for Money**

The Commission has formed the view that considerable value remains untapped in how procurement processes are integrated in strategic outcomes in the public sector. The integration would be better served by the identification of needs, engagement with the business sector, managing projects and maximising value for money in purchasing.

Some agencies have proposed that the use of category management can support the achievement of value for money objectives, both financial and non-financial. Category

management is supported by comprehensive planning aimed at developing procurement strategies based on understanding the needs of stakeholders and the market's capacity. This supports the achievement of value for money over the life of the contract.

The Queensland Government has used category management to group procurement activities into categories of spend and to apply forward planning. Each group is managed by a lead public authority and governed by a category council to oversee the procurement strategy and endorse related plans. Category councils are supported by public authority-led category working groups and category teams who include government representatives from all agencies and industry. This approach facilitates whole-of-government consideration of how procurement can support value for money policy objectives.

A review commissioned for the SPB advised that all leading procurement practice jurisdictions use category management to achieve value for money together with fairness, ethical behaviour and probity.

This issue will be further explored in Stage 2 of the Commission's procurement inquiry.

#### **2.4.12 Commission's Conclusions**

Government procurement has increasingly been used as a tool to support other government strategic objectives or priorities beyond the goods or services that they are contracted to deliver. This is partly in response to an increasingly complex and dynamic economic environment that calls for more sophisticated and multifaceted approaches to address economic and social issues.

In procuring goods and services, public authorities try to ensure goods and services are fit for purpose, can be delivered on time, are competitively priced and generate economic benefits for the State. This concept of value for money drives the evaluation of alternative purchases.

The achievement of best value for money in government procurement can be more than the achievement of financial savings or benefits in the short term. It can be about identifying, measuring and comparing financial and non-financial costs and benefits on a whole-of-life basis. This is often a difficult and complex task for procurement officers and particularly difficult for those officers for whom procurement is not a key part of their role.

The Commission has observed that most government jurisdictions in Australia and overseas provide a very similar definition of value for money in procurement. There are, however, marked differences in the type and quality of explanatory material provided to support a shared understanding on what is value for money, and how to measure and achieve it. The Commission has formed a view that it is this aspect of the value for money guidance material that requires attention.

The Commission's view is that the current guidance material provided by the SPB on value for money is unsatisfactory and provides limited guidance for officers in public authorities on the practical application of value for money in the procurement process. There are minimal, or no, explanations of life-cycle costing, economic outcomes and service delivery standards. This potentially leads to different perspectives on measures of value for money within

agencies. The absence of sector-wide indicators for value for money results in no benchmarking of performance or opportunities for improvements in procurement processes.

There are lessons to be learnt from the approach and the type and quality of guidance material provided in other jurisdictions on value for money. Other government jurisdictions provide a range of explanatory documents and tools to guide both agencies and other stakeholders on value for money in procurement. In particular, many jurisdictions provide information that enables both public authorities and suppliers to understand:

- the different factors of value for money from cost factors (including whole-of-life costs), to non-cost factors; and
- how to identify and incorporate both agency-specific and broader government (whole-of-government) objectives.

The Commission notes that, in responding to the draft report, the SPB advised the Commission that the value for money guideline could be enhanced through simplification, improved clarity on how agencies should take into account non-financial criteria and inclusion of practical examples.

The Commission proposes that better guidance material on value for money be drafted including information, methodologies, tools and case studies on:

- what is value for money and its strategic role for South Australia;
- methodologies to use to identify, assess and measure value for money and when they should be used;
- financial and non-financial factors in value for money;
- value for money and achievement of government objectives that are:
  - closely aligned with the core business of the agency itself; and
  - common to a number of agencies, or 'whole-of-government' objectives and are not necessarily closely aligned to the agency's core business;
- benchmarking and measurement; and
- practical advice on value for money in the procurement process – developing tender documentation, assessment, managing value leakage in contracts and disposal.



The Commission has recommended the establishment of a community of practice (see Recommendation 2.9) and notes that this work may be facilitated by that group. In the Commission's view the development of this guidance is primarily a matter for government that is best done by government. That said, the guidance may benefit from an understanding of the concerns raised by business and NFPs.

**Recommendation 2.2:** In order to provide greater clarity to procurement staff on the application of value for money in their work, the State Procurement Board:

- replace its existing general guidance on value for money with clear, plain English explanations and guidance for procurement and agency staff in government agencies on how to consider price and non-price factors in the overall value to government from the acquisition of goods and services, including any relevant specific policy requirements;
- in developing this revised guidance, incorporate the best practice approaches in other comparable Australian jurisdictions;
- implement the revised guidance through appropriate training and education for procurement staff; and
- actively communicate and explain the revised guidance to external parties interested in supplying goods and services to the South Australian Government including businesses, business associations and not-for-profit organisations.

## 2.5 Market Engagement

Business SA conducted a survey of its members on government procurement to support their input to the Commission's inquiry. The survey results indicate that two of the top five issues faced by the small and medium sized businesses responding to the survey were 'Difficulty understanding the tender process' and 'Poor communication from government departments/agencies'. The clear message is that better communication with suppliers is critical to improving the tendering experience for local businesses.

The discussion in this section covers all market approaches and focusses 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.

### 2.5.1. Public Authority Knowledge of the Marketplace and Supplier Capability

The Commission considers that there are two key aspects to knowledge of the market and potential suppliers:

- the quality and frequency of interaction between public authorities and suppliers; and
- the ability to record, maintain and utilise information generated through engagement with suppliers.

Public authorities can use several approaches to market research and analysis on supplier capability and technological development including:

- obtaining information held by public authorities about suppliers known or understood to offer the good or service being purchased;
- desktop research on suppliers known or understood to offer the desired goods or services;
- using industry capability advice held by the public authority or services provided by other parts of government;
- seeking advice from external advisors and subject matter experts on suppliers and advice on technical specifications and project scope; and
- interviews with several suppliers on what is available in the marketplace from a solutions perspective.

### **2.5.1.1 Issues**

#### Quality and Frequency of Interaction with Suppliers

Submissions to the Commission cited examples of a lack of knowledge on the part of public authorities about the capability of suppliers, particularly local suppliers, in each type of procurement process, including the establishment of panels.

Virtual Ark Consulting highlighted a lack of engagement by the government with the supplier market to clearly understand capacity to supply, encourage participation from possible suppliers and to understand what the market is proposing to meet departmental needs.

The Commission has found that interaction between public authorities and suppliers at the planning for procurement stage or during post-contract arrangements is much less frequent than during tender processes. Most public authorities do not interact with suppliers prior to the tender process or engage with suppliers at a strategic level. The amount of time spent by officers of public authorities in the marketplace or engaging with companies is very low except where it is required.

The frequency of interaction between public authorities and suppliers intensifies during the supplier selection phase of the tender process. This mainly involves discussions on the mechanics of the process, clarification of tender documentation, negotiation on contracts and feedback on tenders if required. The Commission has heard that the feedback on the mechanics of the tender process does not meet the needs of suppliers.

Some large public authorities such as the Department of Planning, Transport and Infrastructure (DPTI) and SA Health engage with suppliers outside of the tender process individually and at industry briefings, site visits and requests for information processes. DPTI ensures, where possible, the use of project key performance indicators is geared towards innovation, with incentives to reward innovation, and in many construction contracts a clause relating to innovation is included.

SA Health use Supplier Relationship Management (SRM) to assess and utilise supplier's innovation potential and suggestions, improve communication with SA Health's suppliers and provide a forum for innovation opportunities. The SRM unit is currently developing a framework to formalise how innovation can be incorporated within SA Health procurement.

DHS engages with businesses or not-for-profit organisations for the purposes of market research or for early engagement in the process on occasion; however, it is not a commonly used strategy.

The Office of the Industry Advocate has previously run the Meet the Buyer program for suppliers to engage with senior project and contract managers from public authorities to promote their products and services. The feedback from business and agencies indicated that, on the whole, this was a useful program that could be strengthened by increasing the involvement of business units from public authorities.

### Information on Supplier Capability

Submissions identified opportunities for reform including developing systems to support information on supplier capability and performance and having the procurement framework actively encourage public authority staff to better engage in the marketplace. An additional area for reform suggested by stakeholders was the improved use of existing state government databases on available suppliers such as the Industry Capability Network.

While public authorities hold some information on supplier capability, the use of this information is often limited by short timeframes in many procurements and the number of contracts individuals within public authorities are expected to manage. Accordingly, business stakeholders have commented that, in their view, public authorities are not devoting sufficient lead-in time to major procurements. Once the decision to procure is made, the expectation is that it has to happen in a very short timeframe, which does not lead to optimal results. Stakeholders comment that this happens regularly in contract renewal periods where arrangements are rolled over until the process can catch up with the contract period.

Relevant reforms currently being considered across the state government relate to the introduction of a single business identifier and improving the functionality and efficiency of the pre-registration process for suppliers to demonstrate that they meet public authority requirements and can be considered for future procurements.

## ***2.5.1.2 Evidence and Conclusions***

### Quality and Frequency of Interaction with Suppliers

The Commission has observed and documented:

- a lack of understanding on the part of both suppliers and public authorities regarding the issues faced and methodologies used by each party across a wide range of procurement processes;
- that detailed research into supplier markets is not commonly undertaken and knowledge of supplier capabilities is not often documented to a meaningful degree in acquisition planning documentation and purchase recommendations that are used by public authorities as a basis for going to market and selecting suppliers respectively; and
- varying degrees of skill and experience within and between public authorities relating to the frequency with which officers and public authorities engage in procurement processes.

While the intensity of interaction between public authorities and suppliers increases during tender processes, the Commission has observed that understanding amongst suppliers about the process is limited. Raising the understanding and capacity of both parties in the tender process through extensive sector-wide engagement with suppliers would be a useful

investment. For these reasons, the Commission recommends that the quality and frequency of engagement between public authorities and suppliers increase to improve engagement outcomes.

**Recommendation 2.3:** To help to address the identified gap in knowledge between potential suppliers and government agencies about local supply capabilities and agency procurement needs and plans, government agencies establish regular opportunities for their business units and procurement staff to engage with local businesses through means such as the Meet the Buyer program to improve:

- the knowledge of potential suppliers about agency needs and procurement plans;
- the awareness of supplier capabilities;
- the awareness of technological and service developments;
- suppliers' level of understanding of public procurement processes; and
- the capacity of suppliers to meet public authority requirements.

This means including business units and procurement staff in such activities.

The recommendation is also geared towards increasing the level of understanding by suppliers, particularly SMEs, of the tender process and their capacity to respond to public tenders.

Clearly, effective communication of stated objectives and needs in a procurement scope such that suppliers can respond effectively and, where relevant, innovatively is critical. In general, better understanding of what the public authority aims to achieve will facilitate better responses from suppliers.

#### Information on Supplier Capability

The Commission has found that the information sources used by public authorities:

- vary across the public sector, with most public authorities utilising their own information sources as well as centrally held sources such as those held by the OIA or the ICN;
- do not enable the storage of standard business information on suppliers, resulting in businesses being compelled to provide this information to public authorities for every tender process;
- do not share critical information between public authorities on issues such as supplier performance or outcomes of projects;
- are very difficult to maintain due to infrequent contact with the marketplace and lack of cohesive systems and processes for recording and maintaining information; and
- are not accessible by the public or other suppliers considering partnering for procurement or other arrangements.

The Commission considers that the consistent use of regularly maintained and relevant information on suppliers, their performance, capability, products and services will be beneficial to the state government.

**Recommendation 2.4** To make information on the capacity of local businesses more easily available to businesses and to government agencies, the OIA and DIS provide links between the suite of supplier information currently provided by the Industry Capability Network and related information in the Office for Industry Advocate Supplier Database.

This recommendation is intended to increase access to information now. The Commission intends to explore other options for increasing the quality of information as part of Stage 2. The proposed community of practice is another means for identifying practical ways to share information between agencies.

## **2.5.2 Information to Suppliers During the Tender Process**

The frequency and consistency of communication with suppliers by public authorities is a critical part of the procurement process. Businesses have highlighted inconsistencies between published key criteria and what public authorities seem to base decisions upon. The factors contributing to poor communication observed by businesses appear consistent with the previous discussions. These factors include time pressures and procurement capability and capacity.

### **2.5.2.1 Issues**

#### Industry Engagement Strategy

For business units that do not engage often in procurement processes or only engage with suppliers on low-risk projects, the prospect of engaging in a complex project or in a marketplace where many purchasing complexities will arise is a daunting one. To address this challenge, it would be useful to enhance the procurement framework guidance on engagement with suppliers.

The engagement model emphasised by the State Procurement Board for use by public authorities in South Australia is the Better Together Principles of Engagement. The principles cover:

- purpose of engagement;
- identification of stakeholders;
- being informed on current and previous engagements;
- partnerships and participation;
- genuine engagement; and
- meaningful engagement.

The guidance contained in the Better Together engagement model is generic, and, while it has some useful application, it does not assist public sector employees to navigate the commercial world. Consultation with both suppliers and public authorities has indicated that in some instances the capability and capacity of officers in public authorities to negotiate with suppliers or to provide feedback to suppliers has been found wanting.

#### Feedback to Suppliers

Submissions have indicated that feedback provided to suppliers is often inconsistent, difficult to obtain and, in some cases, difficult to relate to the outcome of the tender process. Several improvements were suggested including improving the format of feedback, identifying contacts and ensuring the feedback is focussed on improving tender opportunities in the future and other relevant advice.

Submissions to the Commission have also reflected that better feedback to suppliers should give guidance as to how they might become more competitive. A suggestion to help this feedback mechanism would be to give suppliers details of their own scoring against each of the criteria but not the breakdown of the scores of other bidders. They might also be given the rank order the overall scores.

## Market Engagement and Probity

Business stakeholders told the Commission that the complexity of the procurement system and the emphasis on probity has a detrimental effect on outcomes, particularly in understanding what the market has to offer and developing innovative solutions. Stakeholders have reflected that when, officers are presented with a choice between optimising compliance with the process and optimising outcomes, they will almost always optimise compliance with the process.

Some stakeholders commented that the application of the state's intellectual property policy can have an adverse effect on planning for procurement and fostering innovation outcomes. These observations come from business stakeholders that have successfully competed outside South Australia but find winning business inside the State more difficult. This is primarily related to ICT projects and other innovative products or services.

Businesses do not understand the insistence of public authorities that the State should own all intellectual property (IP) developed as they have no capability to exploit it. Instead, this acts as a barrier to business development.

Supplier feedback to Business SA indicated frustration about the general requirements for IP transfer in state government contracts and questioned why the government necessarily had to own businesses' IP. *'Most contracts require IP to be held with the Government. In most instances, this denies the supplier the ability to develop IP and add value when the Government really has few reasons to want to own IP developed.'* (IT company, 1–19 employees) (Business SA Submission, p13)

This is seen to lead to a lack of trust, with businesses reluctant to share IP with public authorities as they are concerned that the public authority staff may share the IP with competitors in the tender disclosure process or through future procurements. In general, blanket requests for IP ownership from the government were not supported by suppliers.

In addition to the SPB policy on probity and ethical behaviour, agencies are also subject to the following:

- internal probity and ethical procurement policies;
- ICAC Directions and Guidelines, which apply to all public officers and are understood to be a minimum obligation for reporting matters to the Office for Public Integrity;
- SA Public Sector Fraud and Corruption Control Policy:
  - designed to assist agencies in prevention, detection and response to activities defined as fraud, corruption, maladministration or other criminal misconduct;
  - applies to all agencies and employees in the public sector;
  - details responsibility and accountabilities for key agency staff, employees and agency Audit and Risk Committees.
- SA Public Sector Employee Code of Ethics – the code of conduct for the purposes of the *Public Sector Act 2009*, binding all public sector employees to the standards contained. The SPB guidelines have been drawn from the code of ethics. Suppliers are also expected to comply with the public sector code.

The Commission sought views from public authorities on the limiting effect that inadequate understanding of the requirements of process and probity rules has on working with suppliers during the planning phase for innovative goods or services. Public authorities did not seem to have an established process to work with businesses to create opportunities for



them to present innovative products or services. However, public authorities expressed a desire to improve capability and capacity within their organisations to facilitate this outcome.

Public, media and political expectations around transparency and accountability of public procurement outcomes have impressed on agencies that they need to not only make the right decision but be able to demonstrate that the right decision has been made. Risk aversion is a predictable consequence leading to inefficiency and delayed decision making. Some agency procurement staff expressed concerns about how to approach the market within the rules for probity.

### **2.5.2.2 Evidence/Conclusions**

#### Industry Engagement Strategy

The Commission found that engagement with industry on procurement is not well served either by the existing guidance material provided by the State Procurement Board or by the engagement model used in the South Australian public sector. The guidance and engagement model essentially reduce the relationship to a contractual level, excluding a relationship from which public authorities can derive high levels of value. The State's current engagement model does not provide for:

- identifying the most effective means of engagement;
- navigating the different engagement processes throughout the procurement cycle;
- mitigating the risks that arise from engagement with industry such as giving feedback and discussions around the use of intellectual property;
- tailored guidance for particular industries, such as ICT, which is a source of higher-complexity industry engagement; and
- measuring the outcomes of engagement and identifying opportunities for improvement

NSW Procurement has issued an Industry Engagement Guide<sup>19</sup> which provides a high-level view of strategies and approaches across the NSW Government. The benefits of this guide are intended to include a broader and deeper view of the capability of suppliers to deliver goods and services, the potential to explore new ways to meet business needs and potentially reduced transactional costs in procurement activity.

The Queensland Government has issued a better practice guide for early market engagement with the ICT industry.<sup>20</sup> The guide enables public servants to gather valuable suppliers' knowledge of markets and trends and understand the capability and capacity of suppliers before developing their procurement strategy and requirements. The document provides practical guidance on the mechanics of various types of market research such as market sounding and market creation.

The Commission sees merit in combining the two approaches and applying them more broadly than ICT so that the reasons for engagement are understood along with providing material that is much more relevant and practical. This would help ensure that industry engagement on procurement is not only accountable but effective.

With respect to supplier debriefs, the Commission heard from both suppliers and public authorities on the circumstances in which debriefs are offered following a tender process

<sup>19</sup> NSW Procurement Board, *Industry Engagement Guide*, June 2018.

<sup>20</sup> Queensland Department of Science, *Information Technology and Innovation, Better Practice Guide for Early Market Intervention in the ICT Industry*, September 2017.

and the value that both parties can potentially derive from them. Public authorities advised that debriefs are a useful process as competition for government tenders could otherwise be reduced by discouraged suppliers. Suppliers will also find the feedback useful to address elements of their proposal or their business that were uncompetitive and can be improved. It is unfortunate that the debrief process is perceived to be, and apparently in some cases is, an administrative exercise that is avoided by busy suppliers or those suppliers who do not understand the potential value.

The Commission is of the view that better feedback to suppliers would provide information about how they might become more competitive. As such, the Commission recommends that the guidance on industry engagement includes instructions and practical examples on giving more meaningful feedback on tenders to suppliers.

The Commission found that data regarding feedback provided to suppliers is not recorded or acted on by public authorities. The Commission is making separate recommendations on reforming the use of data and information in the procurement system; meaningful measurement of feedback provided to suppliers will assist the improvement of the process, providing a greater benefit to suppliers in the long run.

#### Market Engagement and Probity

The Commission was told of instances where public authority staff are concerned about the consequences of communicating the wrong information to suppliers or the impacts of engaging with suppliers in a way that is not in line with processes and guidelines.

Public authorities indicated that they have the tools, mechanisms and the confidence in their internal processes to manage routine and low-value contracts in high volumes. In these instances there is a low risk of improper behaviour or lack of adherence to the code of conduct/code of ethics and the other government probity policies.

When the complexity of the project and the value increases, the Commission is advised that agencies will often appoint an independent probity advisor to ensure the agency cannot be criticised for improper conduct, bias towards a particular supplier or unfairness in the process.

The Commission was told by businesses that it was difficult to generate interest in innovative approaches under the current procurement framework and that limited understanding by public sector employees of probity can result in a reluctance by employees to engage with vendors on innovation.

For procurement officers of public authorities, if there is a choice between a risk-averse approach complying with the framework or trying something different and achieving an unknown or risky outcome, the incentive framework for public authorities and agency staff drove risk-averse behaviour.

The Commission concluded that this environment leads to adverse outcomes and inhibits the development of innovative products for use by government. As such, it is ultimately detrimental to both the receiver of public services and to business investment and employment.

Consultation with ICAC has confirmed that engagement with the market is a necessary part of the procurement process that should *not* be avoided. The Commission considers that improved clarity and guidance would assist staff to more effectively engage with the market. The following advice has been agreed between ICAC and the Commission:



*ICAC acknowledges that it is sometimes necessary for procurement officials to engage with potential suppliers to ensure that the best value is obtained through the procurement process. In fact, it may be a core function in a procurement professional's job description. Sometimes the procurement process cannot be conducted without a reasonable understanding of the market and its suppliers. Of course, communication with potential suppliers must be strictly regulated during a tender process and these comments ought not be seen to detract from the strict probity obligations surrounding those processes.*

*That said, ICAC understands the concerns of public authorities that there are some risks regarding potential corruption allegations of inappropriate interaction with potential suppliers. ICAC has received numerous reports of alleged corruption with respect to procurement activities. In almost all these cases, there were no grounds for the claims; nevertheless there is a high level of reporting.*

*In its investigations, ICAC has noted that record keeping is an issue that needs more attention. As stated previously, ICAC agrees that market engagement may be a necessary and normal part of the procurement function; however, documenting any discussion a public officer has with potential suppliers must also be a normal part of the procurement function. It ensures that the public authority knows of the interaction of its public officers with potential suppliers and it also provides a safeguard against any allegations of corruption.*

Accordingly, the Commission recommends that guidance and training material be developed to support more certain and effective probity and industry engagement outcomes.

**Recommendation 2.5** To mitigate unnecessarily risk-averse approaches by agencies to engaging with the market and businesses to:

- understand, among other things, supplier capabilities;
- communicate procurement plans; and
- seek intelligence on market trends and technology changes.

The State Procurement Board develop, in consultation with the Independent Commissioner Against Corruption (ICAC), an industry engagement guideline that provides instruction and guidance on:

- principles for engaging with industry;
- planning for engagement and engagement activities throughout the procurement cycle;
- dealing with risks of engagement;
- providing feedback to suppliers; and
- measuring engagement outcomes.

Once developed and reviewed by the ICAC, this guidance be issued by the State Procurement Board to all government agencies, with appropriate training.

### 2.5.3 Better information on forward procurement

The SA Tenders and Contracts website publishes planned procurement activity for the South Australian Government on an annual basis, with updates every six months. The future activity document describes intended procurement activity of public authorities estimated at a value of over \$220,000 (GST inclusive). The information presents:

- the title of the planned procurement;
- a description of the planned procurement;
- the estimated date of the market approach;
- the estimated length of the contract; and
- the contact person from the relevant public authority.

#### 2.5.3.1 Issues

The planned activity information is available via a log-in page for suppliers who have previously registered on the SA Tenders and Contracts website. The existence of the information is publicised on the news section of the website; however, access to the information is difficult and not intuitive.

Stakeholders have emphasised the value to business of forward planning for procurement requirements in public authorities and the signals that this sends to the business community for understanding and planning for future government work. The businesses have told the Commission that advising the market with sufficient lead time will enable better outcomes. Public authorities have cautioned that the nature of budgeting and project planning does not allow for strategic oversight and substantiation of future procurement needs.

The Australian Industry Group, the Office for the Industry Advocate and Andrew Leunig identified the need for the government to provide more transparency and as long a lead time as possible in advising of expected future procurement opportunities. Businesses indicated that poor information about tender timeframes and poor notice is resulting in higher costs, adverse impacts on other projects, reduced quality, and poor relationships.

#### 2.5.3.2 Evidence and Conclusions

The Commission concluded that there were varying levels of information regarding the forward procurement program across the public sector. Most agencies perform poorly in providing notice of procurement ahead of time. While agencies do hold internal information about upcoming contract renewals and extension opportunities, this information often finds its way to suppliers shortly before the contract is due to lapse.

Greater visibility of agency forward procurement programs would give suppliers (particularly smaller suppliers and/or NFPs) advice of complex tenders on which they can act. This may lead to joint ventures or alliances with other partners or planning for potential work involving recruitment, upskilling or increase in capability.

Agencies are currently required to publish all intended procurements greater than \$220,000. In practice, the information on forward tenders published on the SA Tenders and Contracts website is a small proportion of all the tenders above \$220,000 that are ultimately put to market.

The Commission analysed the forward program for 2014–15 and tested this intended program with what eventuated in the following three financial years, in line with SPB requirements. The analysis indicated that 986 contracts of value \$220,000 or over were executed between 2015–16 and 2017–18. This contrasts with the quantum of planned

procurements of 198 projects listed in the 2014–15 forward program (approximately 20 per cent of the eventual procurement program). Around 80 per cent of procurement contracts that were executed were not advised to the marketplace in advance.

The caveats on this data are that projects may have changed in scope or may have been merged or separated at the project stage. It is possible that the projects identified in 2014–15 proceeded within that financial year. A sizeable proportion of contracts executed related to contract extensions or panel arrangements. The lack of advice of planned contract extensions confirms the lack of information provided to suppliers about upcoming opportunities.

The Commission has concluded that this is another systemic weakness in the procurement system relating to data collection, resources supporting procurement and the strategic planning process. The ability to track procurement projects from planning stage through to completion will be discussed in the next section of this chapter.

Public authorities have indicated to the Commission some of the issues and challenges in undertaking the forward work program, including:

- creating expectations in the marketplace that may not be realised if the agency decides not to proceed with a procurement;
- creating difficulty for public authorities that have a high percentage of uncontracted expenditure to be certain about planned activity; and
- an increase in supplier complaints increasing risk aversion in public authorities, which increases reluctance to vary the scope of planned procurements, potentially resulting in less than ideal outcomes.

The Commission considers improved strategic planning and development of procurement strategies linked to annual budgets would address the first two concerns. Change in scope is inevitable in the lead-up to procurement processes coming to market – early and meaningful engagement with suppliers prior to the planning and acquisition stage will minimise the potential for complaints or sub-optimal outcomes in the delivery of goods and services.

Other jurisdictions publish their forward procurement programs over 12-month moving horizons. Queensland and Victoria publish such programs; however, the information published is not uniform, with each agency publishing its own version, reflecting the devolved nature of procurement in those jurisdictions. These forward work programs do not list planned extensions for current contracts, which should be a feature of South Australia's reforms.

Some overseas jurisdictions, such as Scotland, do publish planned contract variations and extensions for all their current contracts.

The Commission has 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.

**Recommendation 2.6:** In order to increase the amount of reliable information available to prospective suppliers, including SMEs, about future procurement opportunities, each agency be required to meet its obligation by:

- publishing an annual forward procurement program setting intentions and probable timing in the coming 24-month horizon, with some indication of the probability of the intended procurements;
- publishing a complete list of current contracts with planned intentions for extension or market approach on a 24-month moving basis;
- reporting any significant variations to the procurement program in its annual report; and
- reviewing the initiative after two years to assess its effectiveness and administrative cost.

## 2.6 Metrics

### 2.6.1 Module 2: Measurement of the Procurement System

A frequent theme throughout the inquiry has been that there is a lack of data and information to provide evidence on trends in the procurement system and to support monitoring of performance and identifying areas for improvement. The Commission has heard this point from both stakeholders and public authorities.

*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.* (Small Business Commissioner submission, p8)

The Commission notes that information and data collection capability vary widely across public authorities. This is partly driven by insufficient attention to measurement and the absence of an across-government ICT digital strategy for procurement. As a result, public authority ICT capabilities and resources may or may not incorporate functionality that is suitable for the procurement processes such as systems for contract management, workflow management and database management.

Some public authorities, such as SA Health, have developed relatively sophisticated ICT arrangements for central procurement management, while others have minimal ICT capability with respect to managing the procurement process. The Commission will consider opportunities to improve technical capability for procurement in Stage 2 of this inquiry.

That said, the Commission has concluded that the lack of information available on procurement matters reflects the priority given to the procurement function and diminishes the accountability for optimising value from the purchasing of public goods and services.

## 2.6.2 Reporting Against System-Wide Metrics

### 2.6.2.1 Issues

#### Reporting on Objectives of the State Procurement Act

The Procurement Policy Framework<sup>21</sup> published by the State Procurement Board indicates that performance measures of a procurement system, as defined by the *State Procurement Act 2004*, should relate to:

- Value for money: a number of price and non-price factors can be measured including, but not limited to: fitness for purpose, whole-of-life costs, fair market prices, timely delivery and post-delivery support.
- Competition: government procurement is required to be visible and accessible to all potential suppliers.
- Ethical standards and fair dealing: measures are developed to ensure that procurement is conducted in a fair and reasonable manner with decisions able to stand up to scrutiny.

The SPB considers that timeliness and adequacy of information, independent action, absence of bias or favouritism, and ease of market entry for new or small suppliers are also key aspects that inform the efficiency and effectiveness of a procurement system.

The SPB in its annual report, annual public authority procurement activity report and ad hoc reporting publishes:

- annual procurement expenditure (by goods and services for Tier 1 and 2 public authorities);
- new contracts that were executed during the reporting period (in that financial year), valued over \$33,000, and within the scope of the *State Procurement Act 2004* (this information is presented publicly by agency, by type of market approach and by the geographical source of the supplier);
- timeline data to quantify the typical duration of procurement processes;
- reporting of complaints as requested by the State Ombudsman;
- planned procurement activity that is valued over \$220,000 and anticipated to be undertaken in the next three financial years;
- contracting activity information relating to the SA Industry Participation Policy (which is then passed onto the relevant unit administering the SAIPP); and
- information on whether public authorities have completed a Certificate of Compliance (the certificate indicates the extent to which the SPB's policies and guidelines have been adhered to by the public authority during the reporting period).<sup>22</sup>

Information not considered to be within the scope of the Act for reporting purposes includes:

- contracting activity relating to secondary purchases off panel arrangements that have a specified term;
- contracting activity relating to extensions or variations if they were not included in the approved acquisition strategy; and

<sup>21</sup> South Australian Procurement Board, *Procurement Framework*, pp. 5–6.

<sup>22</sup> South Australian State Procurement Board, *Public Authority Procurement Activity 2016-17*, p. 12.

- contracts that are outside the scope of the *State Procurement Act 2004* (construction activity valued over \$165,000).

Since 2017–18, Premier and Cabinet Circular 13: Annual Reporting (PC013) requires public authorities (including prescribed authorities) to list all contractors as well as consultants that were engaged by the authority during the financial year. The information includes the name of the contractor, a description of the contract and the value. The information is included in their published annual report. A late amendment to the 2017–18 reporting requirements meant that reporting on contracts was restricted to those valued over \$10,000; however, it is unclear at this time whether that restriction will continue to apply as the circular has not been amended.

Premier and Cabinet Circular 27: Disclosure of Government Contracts (PC027) requires chief executives of public authorities (including prescribed authorities) to ensure all defined 'eligible' and 'significant' contracts are disclosed or published on the SA Tenders and Contracts website within 60 days of the contract being executed for 12 months or the term of the contract (whichever is longer). Disclosure is required on all contracts including construction.

#### Collection and Reporting of Financial Metrics

The level of technological sophistication in the collection and reporting of financial metrics for procurement in public authorities varies across the sector. Generally, public authorities use the standard (e-procurement) Basware system; however, this is mainly an invoicing system and does not possess capability with respect to generating, storing, retrieving or managing information related to tender processes or system-wide reporting. There are some other systems like the Enterprise Resource Planning System used by SA Health which combine the functionality of financial management with contract management.

The e-procurement system (Basware) facilitates linkages to organisational general ledgers via purchase orders raised in the procurement process. Payments to suppliers are recorded against these orders which are then linked to standard business information on suppliers, such as ABN, address, and business type. Conceptually, the type of information on suppliers could be enhanced, as has been done in NSW, to include information for instance on employment size of the business.

The products and services being purchased are categorised in Basware according to the standard chart of accounts classification. This data can be translated or mapped into a procurement classification that groups commonly purchased items or categories of expenditure. Both NSW and Queensland governments have mappings to extract data from existing systems. The mapping process is complicated and time intensive. Both NSW and Queensland indicated that the exercise was a multi-year process for them. However, both states also indicated that the use of machine learning technologies, which have improved substantially over the past few years, may substantially reduce the time involved. Nonetheless, the mapping is only as good as the initial classification of the data.

The SPB had, up until 2016–17, mandated the collection by all public authorities of procurement contracting activity data by UNSPSC (United Nations Standard Procurement Sourcing Code). This classification, whilst useful, was generated and reported separately to the invoicing system.

Similarly, the invoicing system currently cannot provide aggregate information by supplier or by type of purchase without significant time and effort. The Commission experienced this first hand as its requests for data on panel arrangements, in the case of some public authorities, could not be extracted without weeks of work.

The absence of the ability to extract useful data from Basware makes it difficult to get an understanding on the evolution of prices for government purchasing or to support analysis of financial outcomes or savings. That said, the efforts of other Australian jurisdictions chart a feasible path that South Australia can pursue.

### **2.6.2.2 Conclusion**

#### Reporting on Objectives of the *State Procurement Act 2004*

Information collected and reported on the objectives of the Act is for various purposes (including authorisation or to meet mandatory requirements), and is provided to different entities including the SPB and the Industry Advocate for publication and for internal public authority requirements. This information has limitations including:

- SPB's annual procurement reporting is confined to the scope of its Act;
- data reporting and measurement of non-financial objectives such as those that are described in the acquisition plan is limited to data captured and reported for the IPP which is limited to local employment and/or investment; and
- the online survey tool provided through SA Tenders and Contracts does not include questions on the fairness of the process.

The annual report of the State Procurement Board does not report on or reference performance of the procurement system in terms of:

- value for money;
- competitiveness; or
- transparency and probity matters.

In addition, the Commission has found that information is not reported at a system-wide level on:

- indicating whether public authority panel and whole-of-government contracts are achieving the identified financial benefits or non-financial outcomes;
- the impact of procurement on SMEs (e.g. the amount of government procurement opportunities being taken up by small businesses);
- the timeliness and usefulness of the forward plan for future procurement projects to be undertaken by public authorities;
- the levels of supplier engagement and the outcomes of engagement as well as contract management; and
- the resources (human and financial) devoted to procurement functions.

A comparison of published information in South Australia with published information in the annual reports of the Victorian Government Purchasing Board highlights the gaps in information for reporting performance of the procurement system (see Table 2.5).



*Table 2.5: Performance measures contained in jurisdictional reporting*

	SA	Vic
Measure		
Value/value for money	X	✓
Procurement capability	X	✓
Cost of procurement resources	X	✓
Strategic purchasing/across-government contracts	X	✓
Supplier satisfaction	✓	✓
Planned procurement activity	✓	✓

*Source: Office of the SA Productivity Commission*

The Commission considers that any assessment of the effectiveness of the Act, the procurement framework and guidance that is formulated under the Act is not possible without a considerable improvement in the collection, dissemination and analysis of information relating to performance of the procurement system. Improvements in the availability of appropriate statistical information are critical in demonstrating accountability for public spending, developing appropriate purchasing strategies to support the achievement of government outcomes and maximising the value of the procurement spend.

Developing a whole-of-government data collection system will take time and may require significant expense. The Commission will need to consider the benefits of simplifying the tender process for business and increasing the availability of net data for central government against the cost of investing in the change.

### Collection and Reporting of Financial Metrics

The Commission consulted within South Australia and with other jurisdictions to assess what could be done to improve reporting on procurement expenditure and contracting activity. The system reforms put in place in NSW are significant and have taken many years to develop and refine. South Australia can benefit from this experience and accelerate improvement.

The NSW Government has developed a dashboard for internal monitoring and reporting purposes to present system-wide and public authority-based analytics on the performance of the procurement system. The dashboard is based on mapping general classification financial codes into procurement-related expenditure and covers the following major items:

- quarterly reporting on clusters of expenditure (program areas across government such as health, education, transport and the like) as well as categories of expenditure by type of product and service;
- monthly information on supplier expenditure;
- strategic information on different tiers of suppliers and location of suppliers, including interstate and overseas vendors; and
- key performance indicators on government objectives such as Indigenous employment.

The Queensland Government is currently undertaking similar reforms whilst the Western Australia Government also publishes agency expenditure data, common use arrangement data (across government contracts) and contracting activity every financial year. The Commission would like to acknowledge the contribution of interstate officers in providing the information to date.



Professionals within South Australia believe that some effort should be made to measure the value of the procurement function consistent with the Return on Supply Managed Assets (ROSMA) measures which are also supported by the Chartered Institute of Procurement and Supply (CIPS). The basic measures would include:

- saving as a percentage of sourced/managed spend;
- saving per procurement FTE;
- managed spend per procurement FTE;
- operating cost as a percentage of managed spend; and
- return on investment.

The benefit of using these measures is that they are supported by CIPS and, as a result, training is available to support the development and implementation of the measures.

The Commission has deliberately remained understated in its recommendation for this aspect of data collection and reporting. Nonetheless, the interviews with officers of agencies interstate has impressed upon the Commission the possibilities and breadth of data that can be presented.

**Recommendation 2.7:** In order to provide the underpinnings for understanding and analysing whole-of-government procurement, the government commit to reform the reporting requirements for government authorities to central procurement and the collection of data to ensure greater accountability and demonstration of outcomes resulting from expenditure of public monies on goods and services. Specifically, 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
- cost of the procurement process.

In the short term, government agencies be required to report annually to the State Procurement Board on the following key metrics that are currently captured in existing information at the agency level:

- supplier expenditure, by location and by size of supplier
- saving created through the procurement function per procurement FTE
- managed spend per procurement FTE
- operating cost of the procurement function as a percentage of the managed spend.

Interstate counterparts have indicated that there are no technical barriers to linking purchase orders and invoicing to types of contracts (for example panels or across government contracts) or individual contracts. The discussions with interstate counterparts also suggest that there may be no need to build new systems. The data currently collected provides a complete range of reporting options; the choice of additional system fields and user design can be informed by public authority needs.

## 2.6.3 Reporting on Contract Management

### 2.6.3.1 Issues

Contract management is measured by public authorities at an individual contract level and the measures relate to<sup>23</sup>:

- the achievement of value for money outcomes, the contract performance measures, timeframes and expected deliverables;
- minimisation of risks to the public authority, government and clients;
- how well the public authority holds suppliers to account;
- clarity about the contract scope;
- the promotion of innovation and improvement in supplier performance;
- improvements in the capability of both suppliers and the public authority; and
- achieving the contract outcomes in a timely manner.

### 2.6.3.2 Evidence/Conclusions

With respect to public authority reporting on the contract management phase of procurement, the Commission concluded:

- 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.
- The assessment of value for money achieved or outcomes at a public authority level is not common practice, apart from category purchasing in SA Health and some infrequent examples of panel arrangements.
- Current indicators make it difficult to compare supplier performance, and to assess risk controls and project outcomes due to inconsistent methodology.
- Once a contract has been executed, central reporting requirements on that contract are normally limited to post-contract reviews (if valued at or above \$4.4 million, as mandated by the SPB), or if a contract has been requested for review as part of an external review (via the SPB's assurance program or the Auditor-Generals).
- No data is collected to measure the efficiency of agencies in completing milestones such as the resources applied to a particular activity.

There is evidence in the material that has been presented to the Commission of inconsistent performance management; and a general over-reliance on suppliers self-reporting their performance with insufficient verification checks being performed by the department. This issue requires further investigation and will be considered in Stage 2 of the report.

The Commission concluded that there are no meaningful incentives in the contracts to strongly encourage either the department or the supplier to innovate and make service improvements. It found financial penalties for performance failures are not significant enough to encourage suppliers to address poor performance. There is also evidence of a disposition of departments not to change the original terms of the agreement even when some additional benefits are possible.

The Commission also concluded that the procurement process is focussed disproportionately on market approach and supplier selection. Beyond these stages of the process, the subsequent governance and oversight of the system is weak in design and in practice. Improved guidance on contract management to address issues such as the measurement of

---

<sup>23</sup> State Procurement Board of South Australia, *Contract Management Policy*, July 2017, p. 5.

contract outcomes, reporting on mitigation of risks and supplier performance would facilitate better outcomes.

Public reporting of outcomes of procurement by public authorities focuses on contract management dates, status of project risks and financial metrics such as expenditure to date and contract leakage (the volume of purchases with suppliers other than the contracted suppliers for a given product or service).

The Commission noted that data measuring how well contract management is done by public authorities is not collected or reported to the SPB. The Commission considers that mandated reporting of contract management performance would encourage improved contract management by public authorities. Further, the Commission will recommend that the SPB, in consultation with public authorities, should better define the expectations and measures associated with contract management and that agencies need to collect information on these measures.

The absence of end-to-end contract management reporting and performance measures means there is no common basis by which public authorities can assess relative performance across similar types of contracts or across service delivery elements. This also presents an obstacle for public authorities in benchmarking themselves against sector-wide performance.

**Recommendation 2.8:** In order to lift the overall attention on contract management in agencies:

- the SPB, in consultation with public authorities, provide amended guidance on expectations, methodology and measurement of contract management performance.
- Public authorities monitor and report on:
  - adherence to contract outcomes;
  - result of efforts to mitigate risks throughout the life of the project;
  - management of suppliers and proportion of projects (and by type) where supplier performance is not to the standard required;
  - changes to scope; and
  - number of proof of concept or co-design projects considered in order to encourage innovative solutions and results.

Over time, measures and reporting be standardised to enable monitoring of contract management at a whole-of-government level.

## 2.7 Capability

### 2.7.1 Introduction

Capability underpins an organisational workforce's ability to execute work processes through the knowledge, skills, attributes and competencies of its people. Capability includes the creation of roles, recruitment, managing performance, capability development, and career planning.

One key theme raised by participants is capability in procurement including:

- human resource capability;

- ICT or system capability; and
- supplier capability.

The focus of this section is on South Australian public service human resources capability in procurement. Discussion and recommendations on ICT or system capability is included in Section 2.6 'Metrics', and on supplier capability in Section 2.5 'Market Engagement'.

Given procurement capability affects procurement beyond goods and services, further exploration of capability will be undertaken as part of the Commission's expanded terms of reference in Stage 2.

### **2.7.2 Key Messages**

Procurement and the business transactions involved in the procurement process are becoming increasingly complex. There are several factors driving this growth in complexity including:

- government use of procurement as a policy tool to achieve an increasing number of complex policy objectives;
- a tendency by public authorities to customise SPB guidance with additional agency-specific guidance;
- competitive pressures impacting on costs; and
- growth in compliance-related requirements and reporting.

By extension, the experience, formal education and professional expertise required to effectively manage the procurement process in this environment and pursue government principles of transparency, accountability, fairness and value for money are also increasing.

There are wide differences between public authorities in their capacity, capability, level of procurement activity and internal structure. The Commission also observed that public servants involved in procurement are guided by a desire to do their best for their public authority and the state.

Investment in areas including attracting and retaining commercially skilled and experienced procurement professionals, capability development through training and other on-the-job opportunities, and structured career paths will be needed to build procurement capability inside government.

Strategies to improve capability in procurement will need to consider 'supplier capability' in addition to the capability development for the buyer (i.e. government). Based on research and feedback to date, supplier capability issues are generally about inadequate knowledge of the capability of the market, lack of knowledge about future procurement projects, and the capacity/ability of suppliers to participate in the procurement process. These issues disproportionately impact on suppliers who are SMEs, local and/or new to government business.

### **2.7.3 Capability in the SPB's Procurement Policy Framework**

#### ***2.7.3.1 Legislative Environment***

Part 2, section 12(1)(g) of the *State Procurement Act 2004* prescribes that one of the nine functions of 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’.*

Part 3, section 20(1) of the Act prescribes that the principal officer of a public authority *‘is responsible for the efficient and cost-effective management of the procurement operations of the authority subject to and in accordance with the policies, principles, guidelines, standards and directions of the Board’.*

### **2.7.3.2 SPB Definition, Policies and Initiatives**

The SPB defines capability as *‘an individual’s ability to perform tasks for activities effectively. Procurement capability matches the person(s), resources, systems and processes to the requirements of a procurement activity. Procurement officers working with suppliers require distinctive capabilities that are sometimes labelled as “commercial awareness”’.*<sup>24</sup>

The SPB’s Procurement Authority and Governance Policy (policy) states that *principal officers issued with a procurement authority are required to:*

- *ensure that there is capability in the public authority to conduct procurement operations to standards required by the Board*
- *exercise the procurement authority through appropriately skilled staff but responsibility and accountability for compliance with policies issued by the Board remains with the principal officer*
- *establish an effective procurement governance framework in accordance with the requirements outlined in this policy.*

In addition to the above:

- the SPB’s Accreditation and Assurance Programs include an assessment of the public authority’s capability and capacity to support effective procurement performance; and
- the SPB has a list of ‘mandatory requirements’ for the procurement policy framework that address capability including:
  - Acquisition Planning Policy – public authorities must allocate appropriate resources for the procurement process including personnel;
  - Supplier Selection Policy – public authorities must ensure that resources are allocated to the evaluation to facilitate timely, efficient and effective decision making;
  - Contract Management Policy – an ‘adequately resourced and skilled’ contract manager must be appointed for contracts valued at or above \$4.4 million and significant contracts below \$4.4 million (as determined by the public authority) and the contract manager must have completed the SPB’s contract management training program (or similar) and undergo refresher training every three years.

The SPB provides a range of capability development initiatives that are aimed at improving the procurement and contract management capability of the SA Government workforce. The SPB’s existing capability initiatives are discussed at Section 2.7.6.

---

<sup>24</sup> State Procurement Board, *Glossary of Procurement Terms*, issued September 2016, p. 2.

## 2.7.4 Procurement Capability in South Australian Government

### 2.7.4.1 Capability Governance

As discussed in section 2.7.3.1, one of the SPB's functions under the Act is to assist in developing and delivery of training, development courses and activities relevant to procurement operations. Furthermore, principal officers that are issued with a procurement authority are required to ensure there is sufficient capability in their public authority to conduct procurement operations to the SPB's standards.

The governance arrangements for procurement under the Act imply that responsibility for overall capability development across government is with the SPB, and individual agency-level responsibility for capability development rests with the principal officer of each agency. The SPB periodically reviews capability around every 3–4 years (unless required through a restructure) as part of its Accreditation and/or Assurance Programs through the engagement of an external reviewer(s).

Comparisons with capability governance arrangements interstate indicate that, due to different accreditation and functional arrangements (including perpetual accreditation and self-assessments), other jurisdictions tend to rely on each chief executive/chief procurement officer to manage and implement procurement capability in their own agency. Information and data are usually reported on a regular basis on capability performance to a central procurement authority which provides them with an across-government perspective. In most other jurisdictions each agency self-assesses their capability levels and needs using centrally provided tools. Most central procurement authorities offer various capability training and development options to address identified capability gaps.

In mid-2017, the SPB approved a Capability Strategy structured around five key areas. The key areas are: leadership; targeted learning; next-generation training solutions; talent attraction identification and retention; and improving data analytics. The offerings and initiatives made available through the SPB website are updated to reflect identified needs and the SPB's priorities. The strategy is not a publicly available document.

Other jurisdictions' experiences with procurement capability are discussed in Section 2.7.9.

## 2.7.5 Data on Procurement Capability in SA

### 2.7.5.1 Number of Procurement Staff

The Commission's procurement inquiry draft report included a table showing a headcount of SA government employees and occupations in 2017–18. The Office of the Commissioner for Public Sector Employment (OCPSE) provided data on procurement occupations categorised according to procurement-related Australian and New Zealand Standard Classification of Occupation (ANZCO) codes.<sup>25</sup>

The OCPSE information indicated that there was a head count of 3,208 in procurement-related occupations across government, with the majority concentrated in DPTI, DE, SA Health and DHS.

---

<sup>25</sup> SA Productivity Commission, *Government Procurement Inquiry Stage 1 – Draft Report*, p. x.

The Commission sought feedback from public authorities to validate the OCPSE headcount data on procurement staff. All of the agency responses stated that the headcount numbers were in excess of the actual number of staff they would classify as being in procurement/contract roles. Examples of discrepancies included those in the table below.

*Table 2.6: Comparison of procurement staff numbers*

Agency	OCPSE head count	Agency-advised procurement FTEs
<b>Attorney-General's Department</b>	127	3
<b>Department for Correctional Services</b>	88	27
<b>SAFECOM</b>	14	2
<b>SA Tourism Commission</b>	11	6

*Source: Office of the Commissioner for Public Sector Employment and information provided by agencies*

Based on feedback provided, the larger discrepancies in the number of procurement staff may be due to:

- a misinterpretation of the ANZSCO codes by agencies as some codes capture a wide range of roles that would not normally be associated with procurement activity; and
- the data headcount including procurement and contract management staff working on construction procurement.

The SPB advised the Commission that they have a working list of procurement and contract management staff from public authority heads of procurement, capability development participants and other sources. Based on that list, it is estimated that there are approximately 500 staff whose core role is procurement and/or contract management within the scope of the Act. The SPB acknowledges that this number does not include those staff who will occasionally undertake a procurement process or manage a contract.

In any event, accurate information on the numbers, skills, education and experience of procurement staff is an essential foundation for development of the capability of the cohort of procurement professionals.

#### **2.7.5.2 SPB Training Statistics**

As part of the Capability Strategy 2017–19, the SPB provides capability development initiatives including a targeted training program, procurement forums, and a vocational education and training qualifications panel.

The Commission sought and obtained data from the SPB on attendances at courses provided through the board. The spreadsheet shows attendances by individual for each course and whether they attended or not for the last 5 years. The information is on a calendar year basis. The SPB also collects information on whether the course was face to face or online (noting provision of online courses is fairly recent).



The table below is based on the information provided and shows the number of different courses attended and number of individual participants by agency for the last two calendar years and the average over those years.

Table 2.7: State Procurement Board training statistics 2018 and 2019

Agency	2019*		2018		Average (over 2 yrs)	
	No. courses attended	No. Individual participants	No. courses attended	No. individual participants	No. courses attended	No. individual participants
<b>Tier One (procurement authority up to \$15m)</b>						
DE	8	4	17	13	12.5	8.5
SA Health	109	29	69	32	89	30.5
DTF	5	3	25	8	15	5.5
SA Police	0	0	14	14	7	7
DHS	17	5	43	27	30	16
DPTI	10	5	15	9	11.5	7
<b>Tier Two (procurement authority up to \$1.5m)</b>						
AGD	3	3	5	5	4	4
DCP	3	3	14	12	8.5	7.5
DEM	3	3	5	5	4	4
DEW	11	7	12	9	11.5	8
DPC	5	4	46	22	25.5	13
PIRSA	23	17	29	19	26	18
SATC	3	3	6	4	4.5	3.5
SAFECOM	0	0	0	0	0	0
DCS	0	0	5	5	2.5	2.5
CAA	0	0	0	0	0	0
TAFE SA	0	0	4	2	2	1
DIS & DTTI	0	0	1	1	0.5	0.5
<b>Total</b>	<b>198</b>	<b>86</b>	<b>310</b>	<b>187</b>	<b>254</b>	<b>136.5</b>

\*note: DPC's high numbers for 2018 were because they were a tier 1 public authority until machinery of government changes later that year. 2019 includes expected training numbers to September.

Source: State Procurement Board

It is noted that:

- the above data may not include all of the procurement-related training undertaken by each agency if that agency engaged or undertook procurement training that was not through or with the SPB;
- as would be expected, in general, Tier 1 public authorities attended more courses and had more participants than Tier 2 agencies except for SA Police and PIRSA;
- according to the data:
  - the top five agencies that have, on average, attended the most procurement capability training courses over the past two years are SA Health, DHS, PIRSA, DPC and DTF; and



- the top five agencies who, on average, had the largest number of individual participants attending SPB training over the past two years were SA Health, PIRSA, DHS, DPC and DE.

The SPB advised the Commission that statistics on the number of courses run and/or cancelled/deferred are reported to the SPB quarterly. According to the data provided, it is very rare for a course to be cancelled (a new debriefing course was cancelled and will be rescheduled in 2019). The SPB advises that there has been a lower take-up of the newer courses and they are seeking feedback from the heads of procurement on this issue.

### ***2.7.5.3 Education/Skills Levels***

The SPB advised the Commission that in 2018 a whole-of-government procurement and contract management capability assessment was undertaken that indicated opportunities for improvement and compared SA's performance to other jurisdictions. According to the indicative data from a survey associated with the assessment, 27 per cent of procurement and contract management staff in public authorities hold a procurement or contract management specific qualification, nine have MCIPS (Member of the Chartered Institute of Procurement and Supply) and one has an IACCM (International Association of Contract and Commercial Management) formal accreditation.

Strategic Procurement in DTF advise that they assist and advise agencies on specific procurements or review specific procurement matters that are referred to it. This has included managing the procurement process on behalf of agencies or assisting the agency to undertake complex procurements. Strategic Procurement has advised that this is limited by their resources, particularly given recent FTE savings.

In conclusion, although the Commission has consulted with public authorities and other key stakeholders to obtain data or information on procurement capability in SA, it has been difficult to obtain and therefore analyse reliable and consistent data on procurement human resource capability. The Commission considers that this reflects the following:

- Data or information on human resource procurement capability is not collected nor 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.
- The 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.

Although the SPB has some data on training attendance and a list of procurement officers, the information does not appear to be widely available for strategic planning purposes with agencies. The use of KPIs to benchmark and monitor capability performance is a significant issue for agencies.

As discussed, the SPB has advised that there are approximately 500 procurement staff working across government who are responsible for the state's procurement spend of approximately \$5 billion (within the remit of the Act). In their feedback to the Commission

on the draft report, Business SA advised that they considered the previous OCPSE number of 3200 procurement staff to be inadequate.

Having regard to public authorities' views on the small number of qualified and accredited procurement professionals, taken in the context of the feedback from business and industry regarding capability, the Commission considers there are improvement opportunities in developing in-house capability including raising skills through staff training. Moreover, there appear to be opportunities to deploy expertise to procurement groups that lack expertise both to assist with specific complex tasks and also to transfer skills and expertise.

The Commission acknowledges the work undertaken with the SPB in 2018 on a whole-of-government procurement and contract management capability assessment indicated opportunities for improvement and compared SA's performance to other jurisdictions.

There are several possible long-term approaches that may be appropriate to address the twin needs of growing capability in the procurement functions across the South Australian Government and deploying capability to the right tasks at the right time. The Commission will address these matters in Stage 2.

In the short term, the Commission sees merit in establishing a community of procurement practitioners actively sponsored by the SPB and Treasury to accelerate learnings and good practice across government procurement, create opportunities to partner with experienced specialist procurement professionals and improve understanding of relevant government policies in connection with industry participation and NFPs. Such a community of practice would be a useful complement to any long-term approach.

**Recommendation 2.9:** To assist agencies to improve their procurement capability and practice, the State Procurement Board and the Department of Treasury and Finance sponsor a community of practice for the heads of agency procurement professionals that would, among participating agencies:

- share good practice in procurement;
- identify lessons learned on matters of common concern;
- identify opportunities for agencies to share capability and expertise, including areas where experienced and specialist procurement professionals could partner with other agencies to improve procurement outcomes;
- benefit from advice and discussion with the owners of government policies that are relevant to procurement, including the not-for-profit contracting reforms and the Industry Advocate, in order to improve understanding and practice; and
- identify opportunities to reduce unnecessary costs to procurement and business in procurement policy, practice and process.

It may also be worthwhile to establish sub-committees to focus on procurement areas like NFPs.

### 2.7.6 Current capability development

The SPB's current capability development actions are aligned with its obligations under the *State Procurement Act 2004*, 'to assist in the development and delivery of training and

*development courses and activities relevant to the procurement operations of public authorities*<sup>5</sup>. That framework comprises the following components:

### **2.7.6.1 Training Programs**

The Targeted Procurement Training Program is available to public authorities to support improved capability and develop the skills and understanding of public authority officers involved in procurement activities. The 2019 program offers up to 23 workshops across the spectrum of procurement activities covering:

- communication, engagement and conflict resolution;
- business acumen, finance and negotiation;
- procurement-specific skills (e.g. evaluation and tender debriefing); and
- contract and risk management-related training.

The workshops in this program are delivered by external service providers.

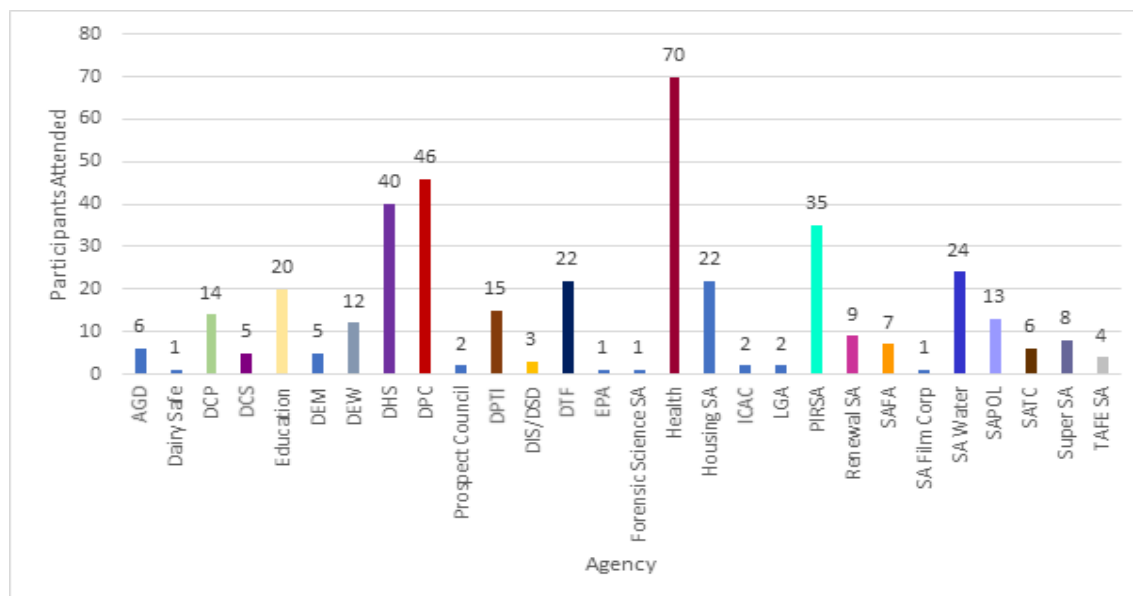
The Leadership in Action Program is a five-day program spread over six months, providing online facilitator support between workshops. It is aimed at senior procurement professionals covering change management, influencing and building culture. This program is delivered by a third-party service provider.

The SPB's suite of online training offers procurement-specific modules that can be undertaken over a 12-month period. Online courses include:

- managing supplier relationships;
- negotiation and commercial skills;
- developing and writing specifications;
- evaluating tenders and quotes; and
- contract management.

The training is offered face-to-face and online. In 2018, 367 people undertook face to face training. The SPB also facilitates exclusive training in contract management, and 29 people attended this type of training in 2018.

Figure 2.2: Participants attending SPB training



Source: State Procurement Board of South Australia, Procurement Capability – Targeted Training Program, unpublished data 2018

### 2.7.6.2 Procurement Qualification Support Fund

The SPB established this fund to ‘encourage staff to undertake a procurement or contract management qualification, and support attraction and retention strategies within the profession’. The fund was established in response to identification of cost as a barrier to ‘developing procurement skills at both agency and individual levels’, and in line with the SPB’s Capability Development Strategy.

This Procurement Qualification Support Fund is established for the period 1 July 2018 to 30 June 2023 to provide financial support to SA public authority procurement and contract management employees who successfully complete a procurement qualification. Funding of up to \$150,000 is available over this period.

### 2.7.6.3 Recruitment

The SPB Generic Procurement Recruitment System provides guidance on developing appropriate position descriptions based on AQF and industry standards and developing recruitment and selection processes in line with ‘Commissioner for Public Employment standards and whole of government recruitment practices’.

A Job Description Matrix, guides and the Australasian Procurement and Construction Council’s (APCC) August 2018 ‘Future Procurement Skills Requirements’ are available on the SPB’s website.

### 2.7.7 Capability

The Commission considers public sector procurement capability development needs to incorporate:

- transactional capability;

- strategic capability.

### **2.7.7.1 Transactional Capability**

Public authorities require an appropriate level of capability from their specialist procurement staff and other staff involved in procurement activity to support current and future procurement requirements. This type of capability refers to having people with the right 'competence, confidence and motivation'<sup>26</sup> undertaking the right procurement tasks in the right place at the right time.

This approach to capability development extends beyond public authority staff identified as specialist procurement practitioners to those technical or business area staff who are involved in procuring goods or services as part of their role.

Information provided by public authorities indicates that often the authority's individual business units are responsible for undertaking lower valued procurements. For larger public authorities, procurements valued less than \$220,000 are often undertaken by business units. This means that the accountable officer in the business unit may undertake the market research, draft the required documents, undertake the market approach strategy and negotiate an outcome as required. It is possible that this officer may have limited experience or capability in procurement. As such, suppliers may experience different levels of procurement capability depending on who managed the procurement.

Feedback from public authority central procurement functions indicates that procurement capability for these technical and business function staff is an area for development.

### **2.7.7.2 Strategic Capability**

South Australian Government procurement of goods and services is largely carried out in a devolved environment whereby public authorities have responsibility to undertake their own procurements. In practice, this devolved approach has presented challenges in how capability is managed from the centre.

There are several existing strategic and sector-wide approaches to procurement in SA, for example the whole-of-government contracts and panel arrangements managed by the Strategic Procurement Group and SA Health. However, these approaches to procurement *activity* do not reflect a sector-wide approach to *capability* as, although the Strategic Procurement Group collaborates with public authorities, the relevant skills and experience are largely confined to and contained in one small area of the public sector.

Examples of opportunities to improve strategic capability include:

- more valuable strategic interactions with businesses that tender to different (multiple) public authorities; and
- providing opportunities for staff to work on different projects and develop wider skills and expertise in procurement in other public authorities, on project teams comprised of several public authorities, or in a central procurement function (either within their public authority or in the Strategic Procurement Group).

---

<sup>26</sup> The 3 dimensions of capability as defined in 'Diagnosing procurement capability across government - 2018 Evolution Report', Comprara, 30 July 2018, p 4.

Other jurisdictions have recognised the potential value of a strategic approach to developing procurement capability. The AI Group have recommended that the State Procurement Board implement successful initiatives from other jurisdictions to promote the spread of best practice throughout the range of SA authorities engaged in procurement.

The UK Commissioning Academy provides a *'development program for senior leaders from all parts of the public sector ... designed to equip a cadre of professionals, progressive in their outlook on how the public sector uses its resources to tackle the challenges facing public services, take forward new opportunities and commission the right outcomes for their communities'*. The academy takes a perspective broader than traditional goods purchasing procurement and includes a wider cohort of public servants who would benefit from its offerings. It aims to equip attendees to *'have the confidence to challenge the status quo, take on radical change, collaborate effectively with external stakeholders, gain a deep understanding of the need and target resources effectively to meet those needs'*. Participants' reflections indicate the academy encourages efficiency, innovation and improved outcomes for the community by enabling public servants to take a consumer's perspective, understand and support the markets with which they interact, and challenge the status quo.<sup>27</sup>

The VGBP launched its Procurement Capability Framework in 2016, underpinning the board's strategic priority to develop procurement capability across government. The VGBP Procurement Capability Framework is intended to provide a consistent baseline of skills and attributes for procurement practitioners to ensure the board's policy objectives are met. This particular framework can be applied flexibly, recognising that each organisation has a unique procurement profile and developmental requirements. The framework is not mandatory.<sup>28</sup>

SA Water has developed and implemented a capability framework that identifies required technical skills for its procurement team members, assesses current capabilities and identifies priority areas to develop, and considers the behavioural capabilities required to complement the technical framework. Assessments are conducted on an annual basis as part of the performance management framework (including as part of employees' individual performance development arrangements).

### **2.7.7.3 Future Capability**

The APCC recently published *Future Procurement Skills Requirements – A More Strategic Procurement Approach* (August 2018). This report *'examines how procurement is changing, how this is likely to impact future skills requirements and how governments can use this information to invest in new professionalisation initiatives to better recruit, engage and retain procurement staff for the next five years'*.

The report compares the attributes of the current transactional procurement approach with strategic procurement perspectives. Key drivers affecting procurement are identified, and

<sup>27</sup> Commissioning Academy: 2016 brochure, Cabinet Office (UK). Accessed from <https://www.gov.uk/government/publications/the-commissioning-academy-brochure/commissioning-academybrochure-2016#the-academy-programme> on 22 October 2018.

<sup>28</sup> Victorian Government Purchasing Board, Complexity and Capability Assessment Policy, Capability Framework, accessed at <http://www.procurement.vic.gov.au/files/f57852e9-a0f8-422e-aa7c-a60f00bf4438/VGPB-VPSCcapability-framework.pdf> on 25 October 2018

the corresponding emerging procurement competencies are linked, reflecting the capability transition from transactional to strategic procurement. The report provides a capability standard that can be delivered through frameworks developed by the states and territories.

Implementation of the emerging competencies is also considered in the report from a 'centre-led organisational approach' which 'seeks to manage procurement policy requirements at the highest appropriate level to deliver certainty and reduce duplication and inconsistency'.

*for governments to achieve greater procurement value within a smaller workforce, they will need to invest more in workforce professionalisation, increasingly considered a strategic lever of change. Organisations will need to develop a comprehensive procurement workforce strategy for recruiting, engaging and retaining staff, and a greater commitment to specialist training, education and career management through more procurement-focussed graduate, management and leadership development.<sup>29</sup>*

## 2.7.8 Advice to the Commission

The Commission has received feedback from suppliers, public authorities' observations and third-party independent reports and evaluations of public sector procurement capability. The common themes include:

- Market research: requires more than desktop research; understanding the importance of the public authority in relation to the market is a key attribute of an informed buyer.
- Commercial acumen: approaches to market need to be aligned to the needs and expectations of industry, increasing the likelihood of securing better outcomes.
- Market awareness: lack of engagement with the market and public authorities not understanding suppliers' offerings and what they can deliver limits opportunities to showcase innovative solutions, and the frequency and consistency of communication with suppliers.
- Acquisition planning: procurers need to go beyond formulaic/template approach with content derived from other background documents, and need to demonstrate how to engage with the market to achieve the required outcome.
- Tendering: there may be insufficient expertise to evaluate complex or technical tenders.
- Negotiation: officers participating in negotiations need to be appropriately trained in probity so they don't avoid opportunities because they fear subsequent audit – intensive post-offer dialogues with suppliers can be conducted legally and effectively to deliver value for money.
- Contract management: lack of active contract management by public authorities and insufficient numbers of contract managers impact on achieving outcomes.

---

<sup>29</sup> Future Procurement Skills Requirements – A More Strategic Procurement Approach (August 2018) accessed at <http://www.apcc.gov.au/Procurement%20Publications/APCC%20Future%20Procurement%20Published%20Version%202016%20August%202018.pdf> on 7 March 2019



- Procurement basics for business and technical staff: staff need to develop a basic understanding of the process as it pertains to their requirements. Currently there are insufficient training options targeting this cohort.
- Graduate program: there is no sector-wide graduate program, and no procurement specialisation.
- Online training: public authorities do not have input into SPB online training content. The frequency or availability of SPB offerings do not provide sufficient flexibility to achieve increased participation.
- Professional qualifications and memberships: the number of staff working in public authorities who are formally trained in procurement (with a higher education diploma or above) is low. There is also a need to increase take-up of professional accreditation as certification processes validate that members have all of the key procurement skills as defined by the broader procurement profession (only nine people hold MCIPS certification in the SA public sector).
- Attraction, retention and succession planning: attracting appropriately educated and experienced procurement staff is a challenge, as is retaining them given the market is said to be tight for procurement professionals, and there is an absence of succession planning and the passing on of experience.

The SPB advised in its response to the Commission's draft report that its '*investment in the capability development of the state government's procurement and contract management workforce is vital for attraction and retention of appropriately skilled staff to meet current and future agency requirements. The Board strongly agrees that the State Government's procurement professionals need to be recognized as strategic assets that add value. It further believes that value can be maximized through a depth of experience and leaders who are members of the senior leadership teams of the Departments/Agencies.*' <sup>30</sup>

Additional capability-related feedback received by the Commission in relation to NFPs can be found in Chapter 4.

The recent independent comprehensive review of procurement capability across the SA public sector delivered to the SPB in July 2018 identified the following key themes:

#### Soft skills

- A combination of technical skills training and soft-skills training will address the need to improve knowledge in the areas of opportunity analysis, negotiation and contract implementation.

#### Contract management

- The disparity in contract management capability between 'high-end' (highly knowledgeable and confident) and 'low-end' (lack of capability) procurement practitioners could be addressed through upskilling 'low-end' practitioners under the guidance and responsibility of the more experienced.
- The focus to be on increasing the sophistication of contract management to reflect the transition from a goods to a services economy.

---

<sup>30</sup> State Procurement Board submission to the Commission's draft report.



- Improvement in measuring performance of those undertaking contract management activities is required.

#### Commercial awareness

- There is work to be done to support an outcome-focussed approach to procurement – the strong focus by practitioners on managing risk may be detracting from achieving optimal value. Further, there is opportunity for practitioners to develop their understanding of and conduct procurement activity with a broader interpretation of value.

### **2.7.9 Experiences in Procurement Capability from other Jurisdictions**

The Commission's research and feedback has indicated that most, if not all, jurisdictions consider procurement capability to be essential to successful procurement outcomes. Many have identified it as an area of risk that requires ongoing strategies to mitigate those risks. Risks include, but are not limited to, lack of procurement capability and contract management skills, attracting and retaining skilled staff, and managing capability in centre-led devolved procurement frameworks. Some of the approaches taken to address procurement capability are summarised below.

#### **2.7.9.1 Victorian Government**

The Victorian Government refers to procurement capability as matching person(s), resources, systems and processes to the requirements of a procurement activity – ensuring sufficient expertise is in place to carry out the procurement successfully.<sup>31</sup>

The Victorian Complexity and Capability Policy (and the supporting Guide to Capability) requires that the head of an organisation must ensure the organisation has an appropriate level of procurement expertise, resources, systems and processes to carry out procurement activity successfully. This is supported by the agency undertaking an annual procurement planning process which includes an assessment of capability at the organisational level (and possibly business/individual level). The agency can use a capability assessment structure that assesses capability at the organisational, business unit, and/or individual procurement personnel level. The assessment identifies current procurement capability and capability gaps.

A number of tools and templates are provided on the Procurement Victoria website which are used by the agency to determine their capability score.

Capability can be developed internally through training and process/system changes, or externally via engaging external procurement specialist contractors.

#### **2.7.9.2 Queensland Government**

The Queensland Government defines capability as a '*service, function or operation that enables the Agency to exploit opportunities*'.<sup>32</sup>

<sup>31</sup> <http://www.procurement.vic.gov.au/Buyers/Policies-Guides-and-Tools/Complexity-and-Capability-Assessment-Policy>

<sup>32</sup> <https://www.qgcio.qld.gov.au/publications/qgcio-glossary/capability-definition>

When Queensland Government procurement moved to a centre-led, agency-enabled model in 2015, one of the risk areas identified was procurement capability. The mitigation strategy involved the individual accreditation of capability and agency accreditation which is confirmed through agency self-assessment.

One of the six procurement principles applied by the Queensland Government is 'leaders in procurement practice', which aims to build procurement capability to ensure better outcomes. Queensland Government's 'critical skills boost' is part of their 'Skills2Procure' program<sup>33</sup> – a whole-of-government training and development initiative aimed at people in all parts of the procurement process including:

- procurement staff;
- contract management staff;
- staff who help with contract management and procurement (i.e. it is not their key role); and
- agency executives.

Training and initiatives are provided on category management, contract management, sourcing and procurement leadership. Initiatives include face-to-face and online training/workshops, tools to identify individual training needs, networking events and on-the-job mentoring and coaching. It is noted that the eLearning opportunities are free of charge to Queensland government employees.

### **2.7.9.3 NSW Government**

The NSW Government has an accreditation program that determines an agency's authority to procure according to its assessed procurement capability and capacity. Once accredited, agencies comply with an annual self-reporting process/audit under the program. A balanced scorecard approach and metrics are used for the annual outcomes reporting to track year-on-year performance. This includes a Government Procurement Capability Assessment Tool to determine the agency score for the 'capability uplift' metric (one of five outcome metrics applied). The assessment tool enables accredited and unaccredited agencies to assess their procurement capability on an ongoing basis, identify strengths and opportunities in individual teams, provide reports to executives, and benchmark performance (following the first year of assessment).

A 2017 review of public service capability in NSW identified procurement capability as an area to focus on. The NSW Procurement Board put in place a program to address capability weaknesses in consultation with agencies and through working groups. Although agencies are responsible for their own capability development, a range of capability initiatives are offered through their procurement board including a community of practice, webinars and role description templates.

NSW Government has a range of procurement training options, but agencies are responsible for their own procurement capability development programs. Initiatives and tools available include tools to determine an individual's professional development needs, e-procurement training (online) and face-to-face training.

---

<sup>33</sup> <https://www.forgov.qld.gov.au/critical-skills-boost>

### 2.7.10 Improving Capability

Although the size of the state cohort of public sector procurement staff is uncertain, the group is responsible for managing the state's procurement spend of approximately \$5 billion (that falls within the inquiry's initial terms of reference). The potential impact of this cohort on the effective and efficient expenditure of taxpayers' money is substantial. Their competence and performance are very important to the State.

The SPB's existing capability development activities provide training offerings and incentives to support development such as the Qualification Support Fund. However, without a published and unifying capability development strategy, public authorities do not have a clear plan for building procurement capability. This is compounded by an inadequate accountability and authority framework to drive improvement in capability in the cohort of procurement professionals.

In conclusion, the Commission considers that, although the SPB has existing capability development initiatives in place and records some baseline data, there are presently no public targets or objectives in place in terms of capability development outcomes. A published, transparent overarching capability development strategy would drive capability outcomes by providing:

- an authoritative basis to determine and regularly report on procurement capability across the public sector, identify gaps and provide an evidenced-based approach to prioritising areas for development;
- for both transactional and strategic capability development, recognising and prioritising the benefits of leveraging procurement resources, skills and experience across the public sector; and
- an augmented program of capability development initiatives that emphasise the need for more development in the soft skills to underpin and augment technical procurement training and associated initiatives (e.g. mentoring programs, and public/private/NFP sector knowledge-sharing opportunities).

**Recommendation 2.10:** In order to raise the capability of the South Australian Government's cohort of procurement professionals, the Department of Treasury and Finance and the State Procurement Board develop a strategic plan for capability development. This plan to include:

- accurate figures on the numbers, role and seniority of procurement staff in agencies
- risk assessment of the cohort of procurement professionals having regard to matters including: the types and sophistication of government procurements being done by agencies; the opportunities for whole of government contracts; implications of technology; and other relevant considerations
- education, qualifications and experience of procurement staff
- skills and training needs analysis
- training and other capability development.

The strategy should consider other jurisdictions and include strategies to develop strategic capability. Reporting on the strategy targets and objectives need to be part of public authority annual internal audit requirements.

Based on feedback received and independent reviews assessed by the Commission, the following focus areas for training opportunities need to be addressed:

- 'Soft' and enabling skills: Stakeholder engagement and influencing of both internal stakeholders (i.e. business units within a public authority working jointly with central procurement functions) and external suppliers is a priority area for development. Optimal procurement activity requires all parties in the process to demonstrate good practice and a reasonable level of capability (i.e. to participate and be competitive in a tender process, suppliers need to be proficient in, for example, responding effectively to RFPs).
- Benefits realisation and outcome focus: The formulaic approach to acquisition planning does not support translating potential benefits into tangible outcomes as part of the procurement process. The benefits of improvements in this regard will transfer to effective contract management and maximising the value (for money) achieved.
- Tender evaluation: Qualitative feedback to Business SA from members centred around procurement staff not having sufficient technical understanding of the product or service they are procuring. Many procurement managers understand policy, and often not the services that are being tendered. Often gaps in knowledge or technical understanding in public authorities are filled by the use of external advisors. Concerns were raised by stakeholders that, if the government relied too much on external consultants in the tender formation stage, they would not have adequate skills internally to assess the actual tender responses.
- Negotiation: Broad training in negotiation for all practitioners will support both high- and low-value procurements and is an integral part of building capability and

confidence of junior practitioners, which will provide dividends in other areas of procurement capability.

- **Contract management:** A holistic approach is required including joint working between procurement and service delivery areas within public authorities, continuation of the uptake of technical contract management training for contract managers and service delivery areas involved in establishing services subject to contract, increased mentorship of junior contract managers by senior and experienced contract managers, and soft-skills development to support effective contract management meetings with suppliers.
- **Professional qualifications and membership:** Public authorities indicate that the number of staff with formal procurement-related qualifications or accreditation is very low. There appears to be an asymmetry between the relatively small numbers of staff that are trained or have recently undertaken procurement-related training and the training and development offerings made available through the SPB.

**Recommendation 2.11:** In order to assist in managing capability risks in high-risk/high-value procurements, agencies prioritise any assessed development gaps for procurement practitioners in those areas where potential benefits and risks are highest.

### **2.7.11 Translating capability to improved performance**

Capability development is fundamentally an enabling strategy. Its purpose is to ensure that procurement professionals and other employees involved in the procurement process are appropriately empowered, skilled and motivated to secure goods and services as efficiently and as effectively as possible. Capability in and of itself does not necessarily translate to improved performance or outcomes.

**Recommendation 2.12:** To identify new or revised training and other development initiatives in response to emerging trends and current unmet needs and as part of monitoring progress against the strategic plan proposed in Recommendation 2.10, the State Procurement Board undertake an annual review, drawing on the experience and advice of agencies and developments in other Australian jurisdictions.

The final piece of translating capability development to improved procurement performance and outcomes is establishing capability performance measures. The Victorian Government Purchasing Board has developed, as part of its broader Performance Measure Methodology, a measure to monitor 'Increase in procurement capability'. Each indicator is measured annually to assess 'the improvement in departmental procurement capability year on year'. The Commission will explore these measures further in Stage 2 of the inquiry.

## 3. SA Industry Participation Policy

---

The terms of reference direct the Commission to evaluate the effectiveness of the Industry Participation Policy (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.*

This chapter addresses that part of the Commission's task, taking into account further consultation, submissions and a roundtable with stakeholders following the release of the draft report.

Government procurement is one of several instruments that state governments can use to foster stronger employment and activity in SMEs. Procurement is often used as a means of achieving value for money in government purchases of goods and services while contributing to socially important objectives such as Indigenous employment and environmental outcomes.

Reconciling these objectives within an overall construct of value for money that can be applied by procurement staff is a challenging task. While this chapter specifically addresses the interaction between industry participation and procurement, similar considerations apply in other areas of government policy where procurement is specifically expected to have regard to government objectives and policies.

It is important to ensure that the combination of the IPP and government procurement:

- strengthens the capacity of South Australian businesses to be competitive internally and externally;
- is administratively simple;
- provides value for money;
- selects suppliers that are fit for purpose; and
- complies with all legal requirements.

### 3.1 The Commission's View

The Commission has benefitted from the further round of consultation with stakeholders, roundtables and further submissions in refining and amending its conclusions and recommendations regarding the SA Industry Participation Policy (SAIPP). The Commission notes, in particular, the submission by the Industry Advocate.

The further information has modified and clarified the Commission's understanding of the intent and approach of the SAIPP, including the distinction between local industry preference and local industry participation schemes. Broadly speaking, participation schemes aim to broaden the opportunity for local businesses to be considered in procurement, but do not mandate minimum outcomes. Looking further at the elements of participation programs

in Australian jurisdictions, aspects of the design of the programs have the effect of reinforcing minimum local content. An example is the program in Victoria. Comparisons with the limited information on schemes in other countries that mandate local content also have some relevance.

It is clear that the SAIPP is intended to operate as an industry participation scheme.

### **3.1.1 Two economic mechanisms**

Industry participation schemes contend with two economic mechanisms that shape the potential benefits to a state:

- imperfections and asymmetries in knowledge and information within the marketplace, especially by government agencies and by potential interstate suppliers in relation to local capabilities and businesses in complex procurements of goods and services; and
- competition to ensure the best value for money (not necessarily lowest price) for government agencies and ultimately the South Australian taxpayer.

Improving knowledge and better informing the marketplace can be expected to improve the quality and value of government procurement and increase opportunities for local businesses to compete. Where this knowledge includes some capacity for engagement and innovation by public authorities, the benefits to South Australia and overall efficiency will be greater. A key requirement is that the costs of better engagement and information do not exceed the benefits. Typically, this calls for proportionality and minimising unnecessary regulatory burdens.

As a general proposition, reducing competition leads to higher prices and less efficient allocation of resources. There are circumstances where explicit restrictions and reservations may be appropriate, such as in providing services for regional and remote parts of the state and where particular regions are undergoing structural adjustment. This is recognised in both state policies and in the national agreement. Those circumstances aside, the net benefit from industry participation policies that embrace competition is higher than those that don't. A competitive framework is also a central element of government procurement contributing to South Australia developing a larger population of 'match-fit' local businesses that can export to other markets, including in Australia and New Zealand. This consideration is highly relevant to the South Australian Government's economic strategy as outlined later.

### **3.1.2 Additional Evidence**

With the benefit of further information about the operation of industry participation policies in other Australian jurisdictions, the Commission notes that several features of the SAIPP place it broadly in the ballpark, including the weightings given in tender evaluation. The thresholds for the application of the SAIPP are lower than in NSW and Victoria, and the Economic Contribution Test applies at a very low level in South Australia (noting it is optional between \$33,000 and \$220,000). The Commission concludes the SAIPP is within the ballpark of those states.

The Commission has not obtained any further evidence about the performance of the SAIPP beyond what was presented in the draft report, and its conclusions on those aspects therefore stand. Some more information on the operation of the SAIPP will be received in Stage 2 of the inquiry as the scope expands to cover infrastructure procurement and prescribed public authorities.



### 3.1.3 Government Strategy for Economic Growth

The South Australian Government has adopted an economic strategy to substantially raise the state's economic growth rate. The strategy includes four policy streams: investment and markets; skills and innovation; natural resources; and infrastructure. A key element is growing exports to lift growth, create more jobs, and encourage business investment across all sectors in South Australia.

In the Commission's view, a consequence of the government's strategy is that procurement and the SAIPP play a role in the policy conditions and business environment that encourage the growth of businesses in South Australia that are competitive not only in South Australia but in other markets. The underlying consideration, in the Commission's view, is that, while increasing opportunities and knowledge of South Australian businesses and their capabilities and testing them in competitive procurement is aligned with the government's economic strategy, restricting competition in government procurement is not, as a general proposition.

### 3.1.4 Directions for Improvement

Accordingly, this chapter makes recommendations to give greater support to developing 'match-fit' businesses along three broad themes:

- *improving SAIPP performance information* that would enable better analysis and compliance oversight for the program based on a robust and randomised evidence base;
- *improving the information in the marketplace* to government agencies and businesses that is intended to increase their capacity to participate in government procurement such as:
  - information about the capacity and capabilities of local suppliers by both government purchasers and by interstate and overseas suppliers that could improve the value through engagement of capable local businesses;
  - feedback to business participating in government procurement opportunities – both successful and unsuccessful – to enable them to improve their performance;
  - information to assist business to participate in government procurement including forward procurement plans and engagement with government agencies; and
  - increasing the links between existing databases that contain information on local business.
- *reducing unnecessary costs to business and agencies* by cutting red tape and making the SAIPP and related activities proportionate through measures, such as:
  - adopting higher thresholds together with better information on the policy's performance;
  - providing specific exemptions where there is a high expectation the good or service will be locally provided; and
  - providing pre-registration to cut the repetition of standard information by individual businesses for government tenders.

The final section of the chapter sets out the Commission's conclusions and final recommendations. Some of the issues have implications for procurement beyond the SAIPP and are addressed in other chapters. Where this is the case, the recommendations are referenced to the relevant chapters.



## 3.2 How does the IPP work?

### 3.2.1 Objectives

The SAIPP is the framework designed to deliver the requirements of section 4 of the *Industry Advocate Act 2017*, which include promoting:

- government spend that results in economic development for South Australia;
- value for money in public spending;
- the economic development of the steel industry and other strategically important industries for South Australia; and
- capable businesses based in South Australia being given full, fair and reasonable opportunities to tender and participate in government contracts.

### 3.2.2 Operation of the IPP

The IPP applies to all procurement categories, agencies and authorities (including activities and agencies outside the scope of this inquiry). It is established and maintained by the minister, through the Department of Innovation and Skills (DIS). The policy development and application of the IPP falls under DIS, while the advocacy and compliance functions sit with the Office of the Industry Advocate (OIA).

As noted in the above Commission's view, the South Australian Government has adopted a South Australian Growth Agenda which gives effect to the machinery of government changes implemented in March 2019. Accordingly, this led to some minor changes relative to the discussion.

The main elements of the IPP are:

- scoring the Economic Contribution Test (ECT) for contracts between \$33,000 and \$4 million (\$1 million in regions), to calculate the employment, investment and supply-chain impacts of the bid in South Australia;
- scoring the Industry Participation Plan (IP Plan) for contracts between \$4 million (\$1 million in regions) and \$50 million, to calculate the economic impacts on South Australia based on the aggregated value of individual components of the bid;
- developing tailored IP Plans for contracts above \$50 million; and
- weighting, for contracts above \$220,000, the ECT and IPP scores when evaluating procurement bids, which are both set at a minimum of 15 per cent in South Australia.

The IPP is implemented by:

- DIS, which develops the templates for the ECT and IP Plans, assesses IP Plans, establishes tailored IP Plans and responds to queries from suppliers or agencies;
- the Industry Advocate, who is accountable for:
  - building the capacity of South Australian businesses to tender for government work;
  - reviewing and negotiating IP Plans;
  - receiving, investigating and making recommendations to resolve complaints about the IPP;
  - investigating and monitoring compliance by suppliers with the IPP;

- ensuring compliance with the IPP, including by issuing directions to suppliers and reporting non-compliance to the minister (this activity came into operation at the beginning of 2018); and
- taking action to further the objectives of the SAIPP
- public authorities that test the data provided by suppliers, taking into account the IP scores in their tender evaluations and reporting to both the OIA and SPB on IP scores for the winners of their tenders.

The Industry Advocate engages with businesses directly and through industry advisory panels, which are organised on a sectoral basis. These panels provide input into the development of new initiatives by the Industry Advocate and provide feedback on the delivery of the IPP objectives.

Businesses, beyond filling in the ECT and IP Plan template when tendering for government contracts, must also report annually (biannually for contracts above \$50 million) to the OIA against the IP Plan commitments that are incorporated into their contracts with the government.

Feedback to the Commission by some of the biggest purchasing agencies in government points to some implementation issues with the IPP.

Some agencies considered the policy had suffered from initial complexity and associated implementation challenges that were compounded by frequent changes with little to no consultation. The Commission's review of the evolution of the IPP confirms the complexity of the policy in its early iterations and the high rate of subsequent changes. That said, the current online scoring system tested by the Commission's staff is user friendly, with the ECT focussed on labour hours and sourcing of goods (with different scores from local manufacture to local supply) and IP Plans focussed on value of labour, sourcing of goods and investment in SA.

Business SA pointed out that the current weighting of 15 per cent for ECT and IPP scores '*sits in the middle of other states and territories*' (see Table 3.1).

*Table 3.1: Industry participation weightings in other jurisdictions*

States and territories	IP weighting	Applies to	Definition of local
<b>Queensland</b>	Up to 30%	Significant procurement (complex definition of significant – no threshold)	Within 125 km radius of delivery
<b>NSW</b>	15% for economic, ethical, environmental and social priorities with min. 10% for SME participation	Above \$3m	ANZ SMEs
<b>VIC</b>	10% for industry development <i>and</i> 10% for job outcomes. For strategic projects, local content set at no less than: - 90% for construction - 80% for service or maintenance - 80% for maintenance or operation of strategic projects	Above \$3m (\$1m in regions). Strategic projects: above \$50m.	Producing Victorian, Australian or NZ goods or services
<b>SA</b>	15% minimum	Above \$220k	Labour from SA, sourcing of goods from SA and investment in SA
<b>WA</b>	10 to 20%	Goods and services: above \$1m (\$500k in regions). Housing and works: above \$3m (\$500k in regions).	Suppliers of goods produced or services provided in WA, Australia or NZ
<b>Tasmania</b>	20% minimum	Above \$50k	Labour from Tas, sourcing of goods from Tas
<b>Northern Territory</b>	30% minimum	All	Operates in Northern Territory, has significant permanent presence, employs NT residents

*Source: Office of the SA Productivity Commission*

In addition, with DIS, the Industry Advocate:

- based on regular exchanges with its industry advisory panels, makes recommendations to improve the procurement system;
- provides, with the Industry Capability Network, advice on market approach, potential solutions and local capability;
- increases the tendering know-how of local suppliers through 'Supplying to Government' workshops; and
- increases engagement between suppliers and agencies for specific tenders through 'Meet the Buyer' events.

The Industry Advocate noted those last two activities ('Supplying to Government' training for suppliers and 'Meet the Buyer' events) have been discontinued due to resource constraints. Several businesses mentioned in their submissions that they were useful activities.

### 3.3 Evidence on the Impact of the IPP

This section considers the available evidence regarding the effectiveness of the SAIPP including:

- the Business SA survey conducted in November–December 2018 with 45 participants;
- the OIA survey conducted in November–December 2018 with 213 responses;
- the Commission's analysis of the State Procurement Board (SPB) database of contracting activity for 2014–18; and
- the information from submissions, meetings and interviews with businesses and agencies collected by the Commission.

Given the *Industry Advocate Act 2017* came into effect in 2018 and has been in place for around a year, this caution is particularly relevant to the most recent changes.

#### 3.3.1 Existing Data

On a general note, the Business SA survey indicates that:

- 13.9 per cent of the participating businesses find the IPP helpful;
- 25 per cent find it unhelpful; and
- 61 per cent are either unsure or unaware of the IP policy.

##### 3.3.1.1 Impact on the Selection of Suppliers

The current data collected by SPB through the central procurement function includes the type of IP Plan or ECT being scored (metropolitan, regional or tailored), the score of the winner, the total estimated value of the contract and the number of suppliers approached at the advertisement of tender. There is no data collected on the other bidders. Therefore, it is difficult to assess the impact of the IPP scores on the selection of a supplier.

##### 3.3.1.2 Impact on Local Participation and Competition

The current data used by the SPB to assess local participation in government contracting activities includes, by agencies, the location of the key supplier (either metropolitan Adelaide; regional South Australia; ANZ = other Australian states/territories and New

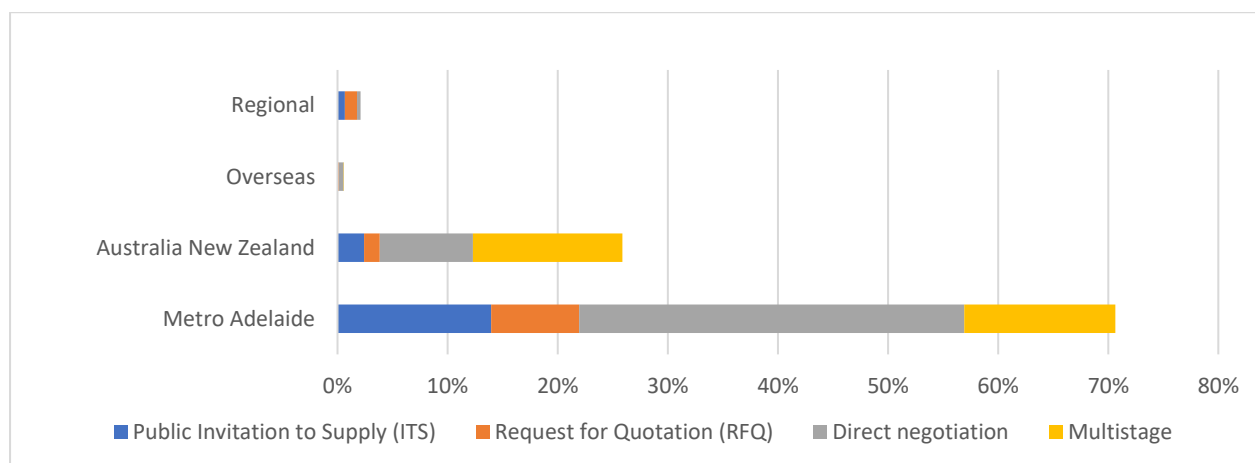
Zealand; or overseas excluding NZ). The two key factors considered when determining the location of the suppliers are:

- the location of the office of the supplier who is undertaking the work to service the contract; and
- the location where most of the employment activity under the contract is being undertaken.

Anecdotal evidence from both agencies and businesses indicates that the location of the head office is often used as a proxy for those two factors.

The SPB results for 2017–18 (see Figure 3.1), excluding the major contract on generation and supply of electricity which distorts the data, show that 71 per cent by value of government work is undertaken by metropolitan South Australian companies, 26 per cent by interstate or New Zealand companies, two per cent by South Australia regional companies and one per cent by overseas companies.

*Figure 3.1: Share of the value of government work per market approach and supplier location in 2017–18*



Source: SPB database 2017–18

This is a very limited perspective on local participation. Additional information is available from suppliers and held by agencies on labour hours, investment and sourcing of goods.

The Commission considered investigating the evolution of IPP scores over time, as those scores are the result of in-depth information gathering from suppliers. However, the ECT and IPP have been scored differently over time and they are recorded on different bases for each contract (scores out of 7, 10, 15, 42, 50, 80, 100), with rarely any indication of the base to which they refer. Consequently, the entries in the SPB database are of limited value, except for the zero value. Between 2014 and 2018, on annual average, 15 per cent of interstate or overseas suppliers were scored against the ECT/IPP. Zero scores, meaning no level of local content in the tender response, were recorded in 30 to 50 per cent of those contracts.

The SPB collects information on the number of suppliers approached by agencies, but not the locations of those suppliers, nor the number and location of the suppliers that submitted a tender. These gaps make it difficult to assess whether, in accordance with the IPP rules, at

least one quote is sourced from a local supplier and the strength of, and trends in, competition for government procurement opportunities from local, interstate and overseas businesses.

### ***3.3.1.3 Impact on South Australian Employment***

The current IPP scores are a mix of labour hours in South Australia, sourcing of South Australian goods and investment. A large effort would be required to correlate the IPP scores with the number of proposed labour hours in South Australia. Even for services, many contracts include a portion of goods and investment. Also, the calculation method used to score the ECT and IPP has changed over time. Therefore, the value cannot be compared from one year to the next.

The Strategic Procurement Unit of DTF recorded, in relation to ECT and IP Plans, the following results in their 2017–18 reporting:

- reported hours for ECT were 23,300 in South Australia out of a total of 23,450 (99.4 per cent);
- reported jobs for IPP plans were 751 South Australian jobs added out of a total of 755 jobs. Investment was reported at \$338 million.

If this type of reporting continues, the government will be able to observe trends. An increase could have a range of explanations:

- more local businesses winning tenders;
- interstate and overseas businesses making a conscious choice to source more of their staff and goods in South Australia; or
- potential gaming of the scores provided in tender documents by suppliers from outside South Australia: to ensure this is not happening, the compliance data which is currently being gathered by the OIA will be important.

Anecdotal evidence was provided to the Commission.

### ***3.3.1.4 Impact on Price and Value for Money***

The Commission attempted to find information out of the data currently collected at the central government level. The absence of extractable data from Basware (the South Australian government financial processes software) makes it very hard to get an understanding of the evolution of price for government common purchasing.

## **3.4 Analysis of the Commission's Random Sample of Tenders**

In light of the shortcomings of the data available and focusing on the impact the ECT/IPP scores have had on individual cases, the Commission compiled a random sample of 103 recent purchase recommendations from 14 agencies. Their cooperation in providing this information is greatly appreciated.

### **3.4.1 Objectives**

Through this research project, the Commission's objective was to examine:

- the level of competition for government contracts within open tenders;
- the tendency for agencies to select the lowest price option;

- the level of compliance, by agency and value of contract, with the IPP;
- the impact of IPP and ECT scores on tender selection;
- the cost for government of increasing labour hours in SA via the IPP; and
- qualitative information on the tender process.

### 3.4.2 Methodology

To achieve the objectives of the inquiry, the Commission needed detailed information on the winner and runner-up for given tenders. Agencies usually summarise this type of information in their tender purchase recommendations, where they are making the case for the selection of a supplier over others.

Given the focus on the IPP, it was decided to target contracts awarded in 2018 (after the *Industry Advocate Act 2017* came into operation) and valued above \$33,000 (the threshold for the Economic Contribution Test), for which a competitive market approach had been chosen.

In order to assess the impact of both ECT and IP Plans, and given the low number of contracts requiring IP Plans (mostly contracts above \$4 million), agencies were asked to provide all their 2018 purchase recommendations related to contracts above \$4 million.

To obtain a sample representative of government purchasing, the Commission approached 14 agencies for their ten most recent purchase recommendations. 146 recommendations were received, of which 103 received more than one bid.

Those 103 purchase recommendations represent a total of \$824 million of government purchases. The average annual government expenditure over the last three years is \$4.8 billion (of which \$2 billion was spent on contracts where a competitive market approach was used and more than one bid was received). Therefore, the Commission's sample represents 17 per cent of the annual government spend (and 41 per cent of the average \$2 billion annual government competitive purchase).

The number of competitive tenders above the value of \$33,000, for which more than one bid was received, is on average 816 a year over the last three years. The Commission's sample therefore represents around 13 per cent of the average 816 annual government competitive tenders in number.

In terms of value of contracts, the 103 random tenders are split as follows:

- 41 per cent were under \$220,000;
- 38 per cent were between \$220,000 and \$4 million;
- 21 per cent were above \$4 million.

Overall, the Commission considers this sample in relation to spending is representative of government procurement.

### 3.4.3 Results

#### **3.4.3.1 Competition for Government Contracts with Open Tenders**

47 tenders out of the 103 had a 'public invitation to supply' market approach. The average number of bids received was 5.7 per open tender, with a greater number of bidders for services (5.8) than goods (5.3). There was quite a difference between low-value and high-



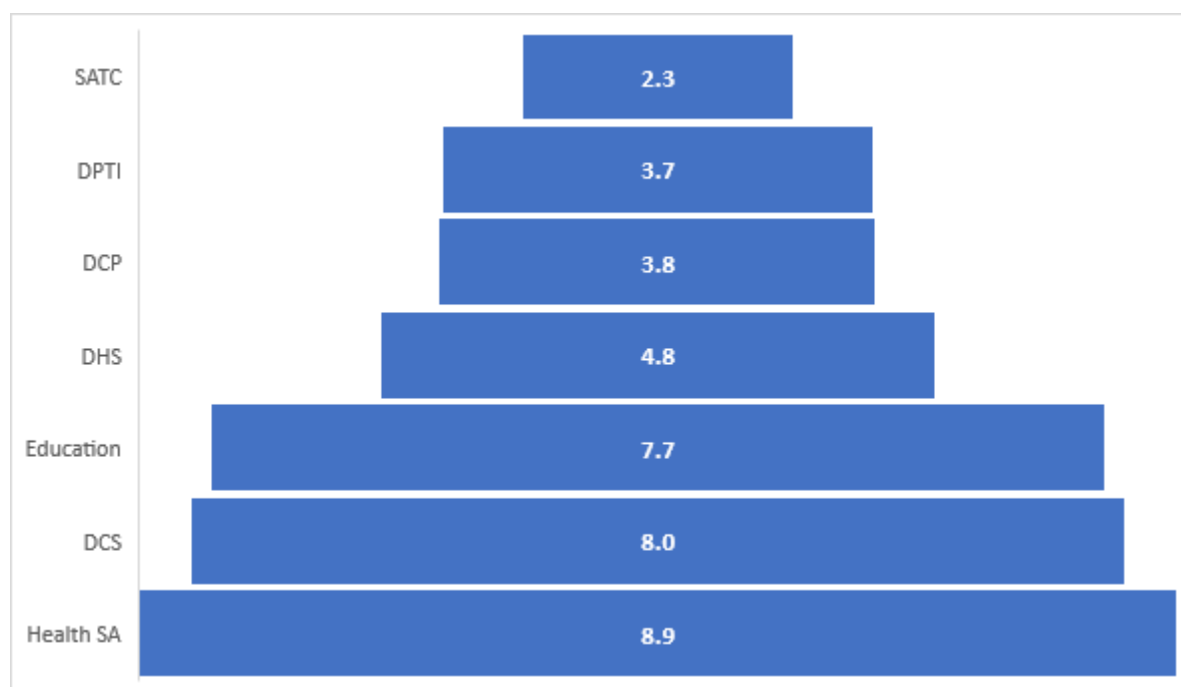
value contracts, with 4.7 bidders per contracts valued under \$4 million, and 7.3 bidders for contracts valued above \$4 million.

Looking at agencies' averages, Figure 3.2 shows some agencies attract more bidders than others.

This may be due to:

- tenderers being briefed before the tender was released and not tendering if they could not meet the requirements;
- tenderers staying away from certain agencies;
- certain agencies having more specialised activities for which the number of capable suppliers is low; and
- narrow tender specifications, rather than outcome-based approaches.

*Figure 3.2: Average number of bids received per open tender per agency*



*Source: OSAPC analysis of 103 random tenders, March 2019 (removing agencies with less than 3 open tenders)*

### **3.4.3.2 Frequency of Selecting the Lowest Price Option**

In some contracts it was not possible to determine the value of the second-best tender from the purchase recommendation. For 20 contracts out of 103 (60 per cent), because those tenders were for the formation of a panel there is no second best, in 30 per cent of cases it was simply just not mentioned and in 10 per cent of cases several contracts were bundled.

For the 83 purchase recommendations which recorded the price of the other bids, the range of price differences was very wide (see Figure 3.3). Figure 3.3 also shows:

- for 25 contracts (30 per cent), the winner was more expensive than the runner-up;
- for 58 contracts (70 per cent), the winner's price was less than the runner-up's price; and

- for 55 per cent of cases, the government chose an option where the winning price was at least 10 per cent cheaper than the runner-up.

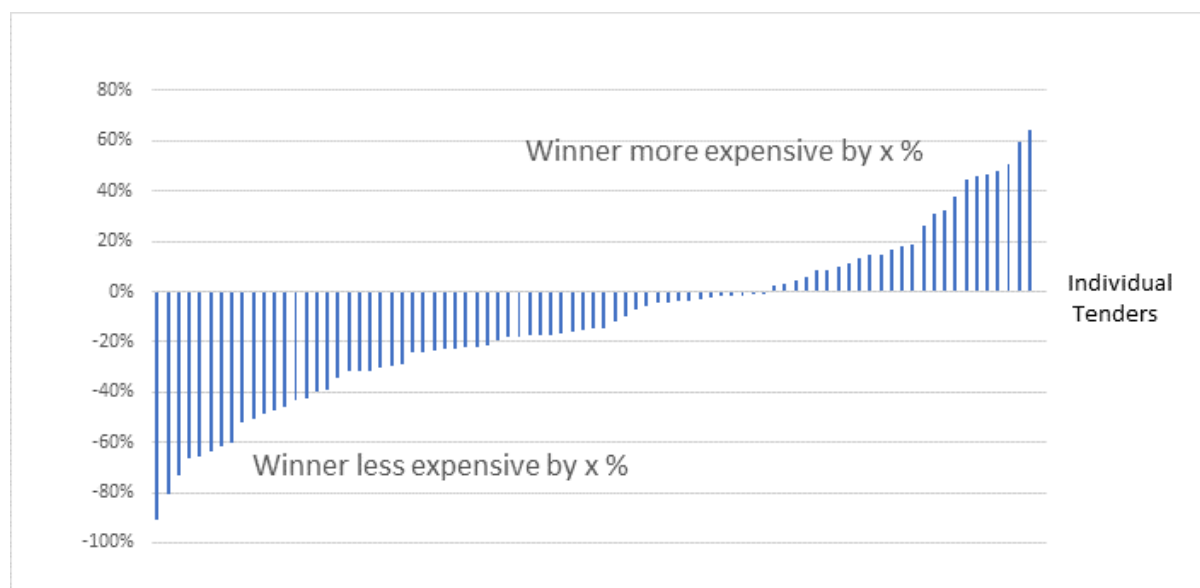
Those numbers vary between the procurement of goods and services:

- around two thirds of services procurements (67 per cent) were won by the lowest price offer; and
- around three quarters of goods procurements (74 per cent) went to the lowest price offer.

Where the lowest price option was chosen:

- in 30 per cent of cases, a factor other than price was the determining factor (timeliness, capability, etc.);
- in 30 per cent of cases, the choice was made on a complex range of factors and price was only one component;
- in 30 per cent of cases, the price did determine the outcome; however the runner-up had ranked equally on the other criteria; and
- in 10 per cent of cases, the price was the only factor clearly spelt out for the choice made.

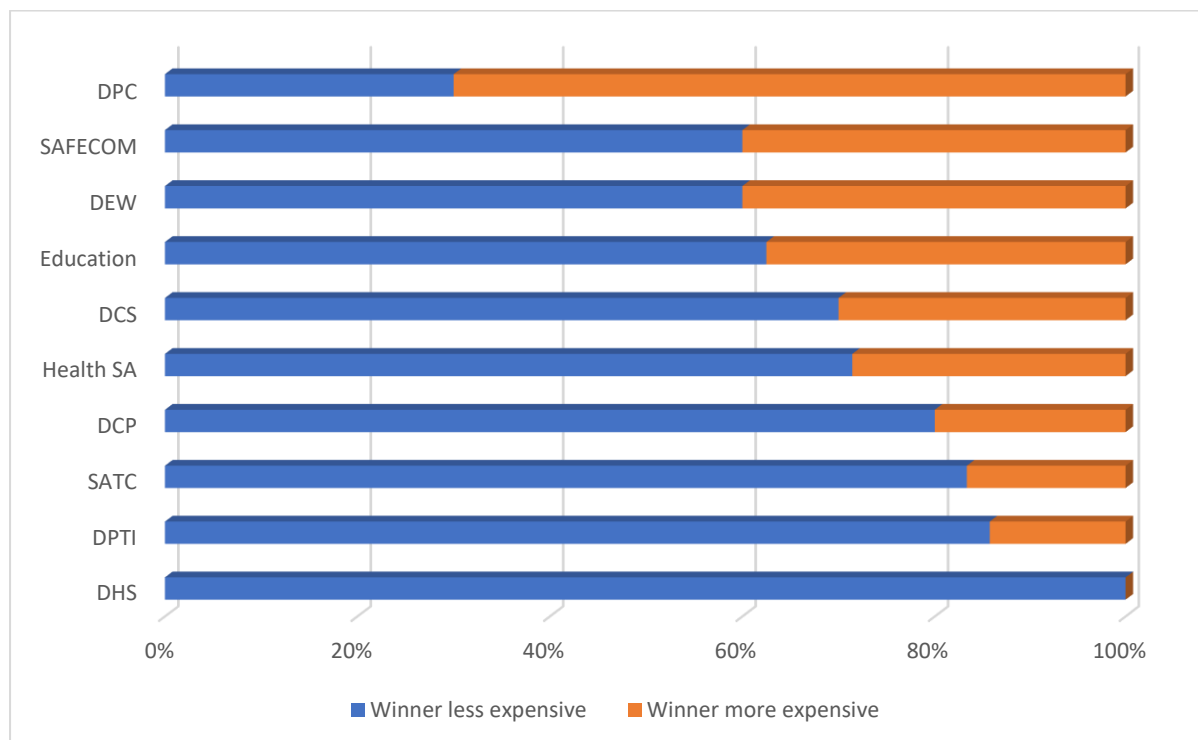
*Figure 3.3: Price difference between the winning and second ranked for 83 tenders*



*Source: OSAPC analysis of 103 random tenders, March 2019*

There were also differences in the propensity of agencies to select the lower price option. In practice, from 30 per cent to virtually 100 per cent of purchases went to the lowest price offer (see Figure 3.4).

Figure 3.4: Choice for lower price option

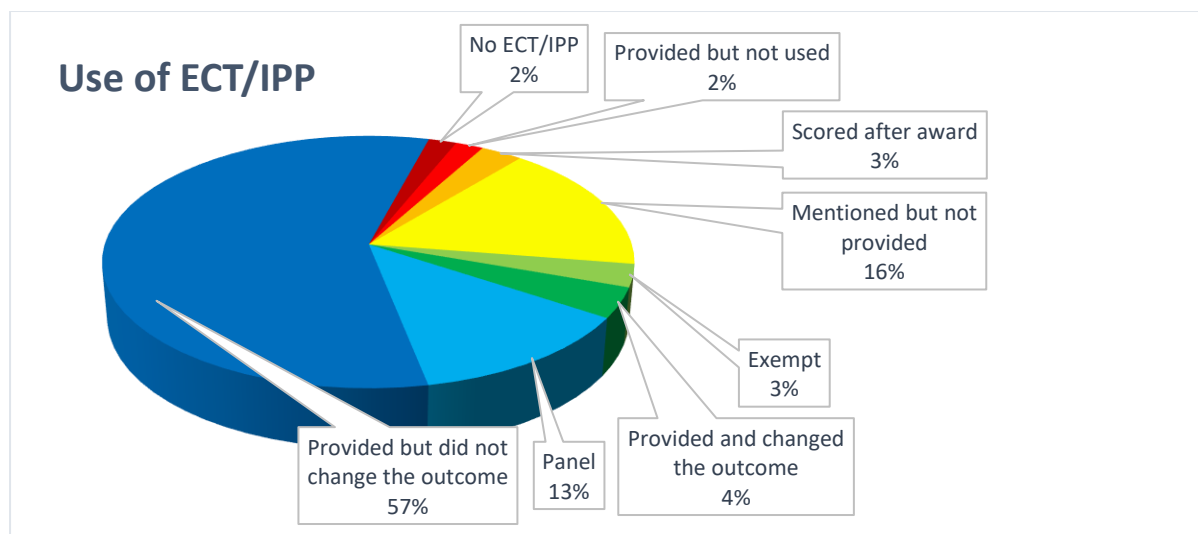


Source: OSAPC analysis of 103 random tenders, March 2019 (removing agencies with 3 or less open tenders)

### 3.4.3.3 The Level of Compliance with the IPP

The information from the 103 random procurements indicated compliance by agencies with the IPP in around four out of five procurements (77 per cent). The complying tender evaluations included some where ECT/IPP scores were not required and others where the procurement was for forming a panel (see Figure 3.5).

Figure 3.5: Level of compliance by agencies with applying the ECT/IPP scores



Source: OSAPC analysis of 103 random tenders, March 2019

Among the 23 per cent of purchase recommendations that did not provide an ECT/IPP score or use it in the evaluation:

- 16 per cent of the sample mentioned the ECT/IPP but did not provide a score;
- three per cent appear to have been scored after the award of the contract;
- two per cent did not mention the ECT/IPP; and
- two per cent provided the ECT/IPP scores but did not mention it in the evaluation.

The Commission looked further into the apparently non-complying examples. It is satisfied that these are not institutional practice and the introduction of Recommendation 3.4 will act to reduce noncompliance.

There was full compliance with the IPP for large contracts exceeding \$4 million.

#### **3.4.3.4 The Impact of ICC and ECT Scores on Tender Selection Process**

In four (6 per cent) of the 63 contracts where an ECT/IPP score was taken into consideration in the evaluation, it changed the outcome (that is, it changed the ranking between winner and runner-up). Of the 59 contracts where it did not change the outcome, in 33 of the cases (56 per cent) the winner and second-ranked bid had an identical ECT/IPP score; while in 18 cases (31 per cent) the difference in ECT/IPP scores was less than five points (out of the maximum 15 points for the ECT/IPP score). Table 3.2 sets out the distribution of the ECT/IPP score differences across this sample of 63 contracts.

*Table 3.2: Difference of IPP/ECT scores, out of 15, between winning tender and second best*

Points difference	Per cent of tenders
0 to 5 (out of 15)	82
5 to 10 (out of 15)	13
10 to 15 (out of 15)	5

*Source: OSAPC analysis of 103 random tenders, March 2019*

The ECT/IPP score of the second-best bidder was higher than the ECT/IPP score of the winner for 11 tender processes out of 63 (17 per cent). Four of those were more than 40 per cent above the winner's price; two were 19–24 per cent above the winner's price. For the rest, there was no specific determining factor, but a range of criteria was used as part of the value for money calculation.

The sample also suggests that, in a small number of cases, a lower price but higher local content bid was not selected. There are several possible explanations for this, including the possibility that the bid may have carried higher risks compared with the winner. Overall, these results suggest some consideration by agencies of how value for money is determined in practice.

Anecdotally, in a couple of multistage processes, the use of ECT/IPP scoring at the first stage of the evaluation allowed South Australian businesses to make the first cut when their written proposal was not among the strongest. Once the second cut occurred (presentation of product or service), those local businesses ranked first, not based on their ECT/IPP

scoring, but on the quality of their product or service. Such businesses that were awarded the contract are not counted as 'ECT/IPP changed the outcome' because the ECT/IPP score was not the determining factor at the final stage of the evaluation.

The direct experience from eight South Australian businesses that regularly successfully compete in government tenders in other Australian and overseas jurisdictions is that South Australian government procurement is the hardest market to penetrate. *'It is harder to tender for the South Australia government and win a contract today, when they have known us for more than 10 years, than it is to tender and win contracts in New Zealand, as complete new-comers.'* These businesses, while not constituting a large sample, include manufacturers and innovative businesses ranging from furniture production to ICT.

Regarding the cost for government of increasing labour hours in SA via the IPP and qualitative information on the tender process, the Commission concluded that it was not practical to make further conclusions in Stage 1 of the final report. The issues will be explored further in Stage 2.

### **3.4.3.5 International Evidence on Industry Participation Policies (Review)**

Governments around the world have strong incentives to put in place procurement policies that favour local businesses and employment, often with a focus on SMEs. There are several reasons:

- to stimulate local employment and business activity, including in specific areas such as remote or regional locations, or in response to an economic slowdown or high levels of unemployment;
- as part of a response to structural adjustment, such as in response to the closure of a major sector of the economy; and
- to assist emerging industries to become competitive over time (the 'infant industry').

In Australia, the Australian Government and State and territory governments' industry participation policies must abide by the rules of the Australian New Zealand Government Procurement Agreement (ANZGPA) and the various free trade agreements to which Australia is a signatory. In practice, these agreements mean that, except in certain circumstances, participation must be given equally in state jurisdictions to businesses in Australian jurisdictions and New Zealand.

An ongoing question for all governments is how to make the best choice – one that is effective and efficient – of policy instruments having regard, among other matters, to all the demands on government resources.

The further information received has modified and clarified the Commission's understanding of the intent and approach of the SAIPP, including the distinction between local industry preference and local industry participation schemes. Broadly speaking, participation schemes generally aim to broaden the opportunity for local businesses to be considered in procurement, but do not mandate minimum outcomes. It may be the case that aspects of the design of the individual program have the effect of enforcing minimum local content. Where that is the case, comparisons with the international evidence on schemes in other countries that mandate preference to local content or minimum local content have some

relevance. As noted in the draft report, that limited evidence suggests that those types of programs may have raised procurement costs by two to three per cent.

The Commission is satisfied that the SAIPP is intended to operate as an industry participation scheme in accordance with the national agreement on such industry participation and there are opportunities to reduce unnecessary costs to business and procurement from it.

### **3.5 Issues Raised About the IPP**

From the submissions and the meetings held by the Commission, the feedback received from businesses and agencies revolves around five themes:

- red tape (from filling in an ECT/IPP for each tender when it is unlikely to change over time, or when it is unlikely to change the outcome and regarding thresholds);
- transparency of ECT/IPP calculation, use and impact on South Australian content;
- compliance (by agencies in the use of the ECT/IPP and by suppliers when filling in the scoring templates);
- scoring issues; and
- measuring impact.

After seeking further clarification none of the submissions or information gathered led to the Commission modifying its views on these issues.

### **3.6 Conclusions and Recommendations**

The Commission has been asked to evaluate the effectiveness of the IPP, particularly with respect to: competition between firms; prices and value for money; and broader economic effects including the growth of local industry and employment. Following two rounds of consultation with agencies and key procurement stakeholders the Commission considers it unlikely that a definitive answer will be reached, particularly regarding the size of any effects.

The principal reasons are the absence of reliable, system-wide data that enable conclusions to be drawn about what determined successful procurement outcomes for suppliers and the absence of a counterfactual case of no IPP to contrast with the current situation. The appropriate analytical tool is a general equilibrium model for the state, which was not available to the Commission.

From the Commission's random sample of procurements, in the instances where the IPP tipped the balance between an external (i.e. not South Australian) supplier and a local supplier, it would be reasonable to expect that the State paid a higher price for the goods or services and competition was reduced. However, the evidence from the Commission's sample is weak and suggests the IPP tipping the balance between winner and runner up is comparatively rare – around 6 per cent of cases – even when the IPP and ECT are properly included in the tender evaluation. The numbers of jobs affected was very small. In some cases, the information from the tenders made it impractical to estimate the cost per job, especially where the tender included both goods and services. It might be concluded that, at the margin, the number of jobs going to South Australian residents that might have gone to

others (including visitors working in South Australia for government contracts) is likely to be small, as is any implicit subsidy for them.

That said, the very small numbers make it unwise to generalise from them on this point in particular; however, other observations can be made. The SAIPP enjoys broad support among businesses (particularly SMEs), their industry associations and NFPs. There is a widespread view among business that the SAIPP and the activities of the Industry Advocate have raised the awareness among business and government agencies, especially procurement staff, of the need to consider local economic impact – defined by local employment and business – when responding to, and evaluating, tenders for government procurement. It is also clear that the path to the current point has involved many changes and some confusion.

Business observers and some procurement staff assert there have also been changes in the behaviour of businesses from interstate or overseas that bid for South Australian government procurement opportunities. The role of the IPP and ECT scores in the procurement process, when applied as the policy requires, creates an incentive to identify and recruit local suppliers and partners where possible. This is consistent with the thrust of creating opportunity without directly requiring local content. The Commission notes a pattern among interstate suppliers, in the 103 random tenders, of paying close attention to local participation in their bids as part of their ECT or IP Plan scores. That said, this evidence is not conclusive because it has not been tested against the unobservable counterfactual situation of having no IPP in place.

From the Commission's random sample, apart from the IPP/ECT score itself, the Commission saw little consideration of the impact of tender selection on a region (risk to regional businesses of losing a tender and consequential impacts on the region). This finding may relate to the sample size and the Commission intends to examine this further in Stage 2 of the inquiry. The Commission notes that regional considerations are an important matter and they can be addressed in a number of ways in procurement, including through a regional impact statement as suggested by Business SA.

### **3.6.1 Improving Performance Information for the SAIPP**

The Commission considers the insights from its random sample have been useful and illustrate the practical value of better information on the performance and use of the SAIPP in procurement. This information, gathered regularly, would assist the ongoing assessment of the performance of the SAIPP against its objectives and compliance by agencies with the policy. Such information and analysis, linked to feedback to businesses, can be expected to increase the confidence of businesses and agencies that the information being submitted is actually being put to use.

The Commission notes from a broad perspective, this is a specific example of where South Australia has relevant and potentially valuable information but where the whole of government insights and information from it are not being gleaned. Central reporting appears to concentrate on a small portion of the information and avoidable data issues appear to be present.

The Commission made a draft recommendation to improve the data on the SAIPP in procurement in the draft report, as set out in Table 3.3 below.



*Table 3.3: Data that would assist the ongoing assessment of the performance of the SAIPP*

Data	Purpose	Source
Second best price	Will allow monitoring of agencies' attitude towards lowest price option	Agencies could report on this number for the annual SPB reporting on contracting activities
Second best ECT/IPP score out of 15	Will give an indication of choice for highest local participation option	Agencies could report on this number for the annual SPB reporting on contracting activities
Labour hours in SA for winner and second best	Will give an indication of the impact of the IPP on labour in SA over time. Will give an idea of the cost per labour hour to government, in order to compare the efficiency of this policy over other options.	The copy of the ECT/IPP scoring sheet would have to be requested by agencies from their suppliers and reported by agencies to the SPB. If hours are not available, divide the \$ value by the ABS data on average salary for the relevant industry.
Investment in SA by winner and second best	Will give an indication of the impact of the IPP on investment in SA overtime	Available in the copy of the ECT/IPP scoring sheet (see above)
Sourcing of SA products by winner and second best	Will give an indication of the impact of the IPP on local sourcing overtime	Available in the copy of the ECT/IPP scoring sheet (see above)
Number of suppliers who tendered	Will give an indication of interest for government work	Agencies could report on this number for the annual SPB reporting on contracting activities
Location of the suppliers who tendered	Will give an indication of the competitiveness of the market and the compliance with the 'minimum one local quote' requirement of the IPP	Agencies could report on this number for the annual SPB reporting on contracting activities

*Source: Office of the SA Productivity Commission*

While most responses supported or did not oppose the draft recommendation, SA Health suggested an alternative approach that would, in its view, reduce the costs of compliance to agencies. In particular, it suggested that the Industry Advocate conduct a dedicated audit along the lines conducted by the SAPC on a regular basis with a larger sample. In addition, the agency suggested that a centralised platform operated by the Industry Advocate be developed through which suppliers could enter the data in parallel with their ECT/IPP responses. It noted that a centralised platform would ensure consistency of the data and enable it to be used by the IA for analysis as required. The Commission sees some merit in SA Health's suggestions and has reflected them in the approach in Recommendation 3.1. The Commission considers such information should be collected at least semi-annually.

**Recommendation 3.1:** In order to monitor, assess and improve the SAIPP, the Industry Advocate collect and analyse an annual unbiased sample of information held by all agencies and currently recorded as part of the assessments of individual procurements above the revised threshold value for ECT set out in Recommendation 3.4, including:

- winner and runner-up
  - pricing
  - ECT/IPP scores adjusted to a standardised score of 15
  - labour hours in SA
  - investment in SA
  - sourcing of SA products
  - domicile of business
- Number and locations of the businesses that tendered.

To be useful in identifying across-government improvements, this information needs to be defined and collected consistently.

### 3.6.2 Improving Information in the Marketplace

A recurring theme among businesses and government agencies has been the limited knowledge of many government agencies about local businesses and their capabilities. The Commission considers that strengthening measures to lift the knowledge and awareness of the marketplace within government agencies and their understanding of local capacities would complement the IPP and the likelihood that local businesses bid for procurement opportunities or are included as part of larger bids. Moreover, such actions would respond directly to the view expressed by businesses that activities such as Meet the Buyer were helpful in introducing potential suppliers to government agencies.

Another issue raised, mainly by businesses, is the low and incomplete visibility in many agencies of their forward procurement program. One consequence can be the very limited time for businesses to respond to requests for tender. Sometimes this can lead to apprehensions that the winner has already been selected. More broadly, awareness of the forward procurement program improves the capacity of businesses to tender, especially against incumbent suppliers, by enabling businesses to adapt or strengthen capabilities, partners and skills to compete for known opportunities.

Departments are required to publish their intended forward procurements for all procurements greater than \$220,000. The Commission has been informed by businesses that in practice the information on forward tenders published on the SA Tenders and Contracts website by agencies is a small proportion of all the tenders above \$220,000 that ultimately are put to market. The Commission considers that this is likely to be the case, based on feedback from selected agencies. This issue is broader than just the SAIPP. As a result, further discussion can be found in Chapter 2 Recommendation 2.6.

To help public authorities address concerns regarding raising expectations with suppliers, the Commission suggests using probability weightings to describe the likelihood of procurements progressing in the event that plans, circumstances and priorities change. The idea is to give suppliers as much information about upcoming opportunities with the best information regarding whether the procurement is likely to proceed. As this suggestion is conceptual, the Commission also suggests that the approach be reviewed with suppliers after one year and modified if necessary.

The Commission recognises that the information asymmetry needs to be addressed in a way that does not compromise probity. Some agency procurement staff expressed concerns about how to approach the marketplace within the rules for probity. Some further guidance from the SPB and, desirably, the ICAC on this point seems likely to help in clarifying how this can be done in an acceptable way. Much better knowledge about local supply capabilities will also help to underpin efforts by South Australia to increase the contribution to economic growth from exports to interstate and overseas.

The Commission considers that increased transparency of the IPP and ECT scores will increase the understanding among suppliers of how the IPP work. Combined with an understanding of the overall evaluation criteria of tenders, such transparency is likely to help local businesses assess their chances of winning a contract, shape their tender offer and reduce their risks in tendering for government work. The risk of businesses gaming this transparency, while real, can be addressed by appropriate compliance measures. If the IA assesses the compliance of successful suppliers with commitments under their IP Plans, agencies can also incorporate this ongoing performance information in subsequent supplier selection processes. In increasing transparency, the Commission sees this as an opportunity to increase competition amongst suppliers, as strong clear and concise feedback is not only valuable to business in that it increases their ability to compete, it also reduces performance gaps in the industry.

The Commission has noted the evidence provided and has given weight to the views of businesses that are winning contracts interstate and overseas but cannot readily access the SA government market.

**Recommendation 3.2:** In order to improve the understanding by businesses of the IPP and raise their capacity to compete in government procurement, the relative IPP and ECT scores of a supplier in individual procurements be made transparent to businesses by agencies when debriefing businesses on their performance in tenders.

Their experience suggests that, in the case of innovative goods and services, jurisdictions that provide clear, simple but demanding paths for unsolicited proposals are far easier to deal with. When the offer is more generic, these businesses have experienced issues with

either the procurement process or the current IPP. The reasons mentioned evolve around culture, including perceptions that small business offers are inherently riskier than offers from Tier 1 suppliers and that innovative goods and services are more likely to come from outside the State.

The topic of simplifying the templates so the scoring is more straightforward and leads to less errors is also important. The direct experience of Commission staff with the new ECT and IPP templates (developed mid-2018) is that they are straightforward to use. That said, the Commission notes the ECT heavily weights employment in the calculation and does not address other elements of contribution including historical investment and innovation, both of which improve productivity over time.

The Commission has heard various views about the IPP from procurement staff in government agencies. They range from 'the IPP never changes the outcome' to being supportive of the policy objective of encouraging local participation by incorporating the IPP into procurement evaluations. The evidence on non-compliance with the requirements of the IPP in the sample of the 103 tenders analysed by the Commission is consistent with this range of views. It may be appropriate for agencies to review the extent of non-compliance and identify appropriate remedial actions, including training in the use of the IPP, its contribution to the State's priorities and current good practice.

The Commission suggests that it may be helpful to establish a community of practice among procurement staff and the IA to propagate better understanding of the role and importance of industry participation and to share good practice. This could be part of a larger community of practice of procurement professionals and engagement with the Industry Advocate to ensure best practice. Further conclusions can be found in Chapter 2 Recommendation 2.10. Post-draft report consultations indicated agencies generally support initiatives to increase the knowledge and skills of their staff in this area.

### **3.6.3 Cutting Unnecessary Costs and Red Tape for Business and Agencies**

Based on the evidence presented earlier in this chapter, the Commission considers that there are opportunities to improve the policy's operation, including:

- cutting red tape to business and agencies by making the requirements proportionate and cutting duplication and rework;
- sharpening the measure of economic contribution beyond local employment and sourcing, especially when there is a business-initiated opportunity with innovative products and services; and
- increasing compliance by agencies to the policy, noting a few examples in the 103 tenders that suggested the possibility of non-compliance. Cutting red tape for agencies is likely to improve compliance rates.

The option of SMEs pre-registration of standard business and financial information has been raised by procurement stakeholders to cut red tape and to manage risk, especially financial incapacity or potential insolvency. The intention is to deal with prequalified suppliers where practical, and hence meet the first stage of probity. Prequalification provides potential access to tender opportunities which are not available to suppliers who are not prequalified. This will reduce the cost of submitting tenders and allow businesses to focus on selling their value proposition. The Commission notes that some steps towards pre-registration have already been undertaken and considers the further development of this capability would help cut red tape to business, especially SMEs.

**Recommendation 3.3:** To cut red tape to business, especially SMEs, to help manage financial risks in potential suppliers and to improve information in the marketplace for agencies, develop a pre-registration system that allows existing and new users of tenders to pre-load their business and financial details. Participation in the pre-registration scheme include SMEs, business in general and not-for-profit organisations and be on a voluntary basis.

In terms of red tape, for the cases where an ECT/IPP score will not be useful to the tender process, it seems that agencies are not using the exemption option as often as they could. The possibility of business providing IPP-related information once a year rather than for each tender is very similar to the issue raised elsewhere in this report, where the option of an annual pre-registration of standard information has been discussed and could help reduce such imposts. Feedback during consultation following the draft report indicated this suggestion may not be helpful in that ECT and IPP calculations generally are specific to the particular procurement being pursued. Accordingly, the Commission has not pursued this further.

Lifting the threshold above which the ECT is required is a matter of judgement. Currently the ECT is optional between \$33,000 and \$220,000 and mandatory above that point. The State Procurement Board has recently lifted the threshold for simple procurement from \$33,000 to \$550,000 including GST. The current requirement from the SPB is that forward procurement plans above \$220,000 (including GST) must be published. The Commission considers that a reasonable position consistent with a proportionate approach and linking with additional information in the marketplace, as contained in Recommendation 2.3, is to:

- make the ECT optional for prospective suppliers to include in their tender responses between \$220,000 (including GST) and \$550,000 (including GST); and
- Make the ECT mandatory above \$550,000 (including GST).

In increasing the threshold, the Commission acknowledges the concerns of Business SA regarding SMEs' access to the market but considers that the balance of this and the other recommended changes strikes a reasonable balance between increasing opportunities to compete, cutting red tape and increasing information in the marketplace that will increase the capacity of SMEs to be more competitive in government procurement opportunities.

**Recommendation 3.4:** In order to cut red tape and reduce administrative burdens to businesses and government agencies, the IPP be simplified by

- lifting the minimum threshold for which ECT is required to \$550,000 (including GST) to align with the revised threshold for simple procurements; and
- making the ECT optional for prospective suppliers to include in their tender responses for tenders between \$220,000 (including GST) and \$550,000 (including GST).

## 4. Procuring Social and Health Services from the Not-For-Profit (NFP) Sector

### 4.1 Procuring and Funding NFP-Delivered Services

The Commission has distinguished the NFP sector from business for the purposes of this inquiry for several reasons including the complex social and health services they deliver, the ways in which those services are funded and administered by public authorities, and the ways in which NFPs operate and deliver those services.

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.

*Table 4.1: South Australian public authorities' primary NFP spend*

	Total contract value <sup>34</sup>	FY2018/19 spend <sup>35</sup>
DHS	\$375 million <sup>36</sup>	\$107 million
DCP <sup>37</sup>	\$801 million	\$182.3 million
SA Health	\$502.2 million	\$152.2 million

*Source: information provided by public authorities to Commission on request on 15 January 2019*

Recent reforms have mandated changes in the way that public authorities must engage with, fund, plan and manage their relationships with the NFP sector. These changes fall within the scope of the Commission's terms of reference, Stage 1.

The NFP sector delivers, for the State, the Commonwealth and local government, a broad range of human, community and health services to vulnerable people in the South Australian community. These include community services projects and programs, disability services, child protection accommodation arrangements (commercial, residential and family-based care), and primary health services, among many others.

The Commission has adopted an inclusive and broad definition of an NFP, including NFPs that deliver human, community and health services. In South Australia, NFP-delivered services are funded and managed primarily by the Department of Human Services (DHS), the Department for Child Protection (DCP) and the Department of Health and Welfare (DHW).<sup>38</sup>

<sup>34</sup> Whole-of-life value including procurement and grant funding (where both funding sources are being used) as at 5 March 2019.

<sup>35</sup> Progressive spend as at 5 March 2019.

<sup>36</sup> DHS advise 98 of the 678 contracts have been awarded but not yet executed as at 5 March 2019.

<sup>37</sup> Estimated Out of Home Care figures only. DCP advise Out of Home Care represents the department's primary NFP spend.

<sup>38</sup> The Commission notes other public authorities engage NFPs in the provision of services, for example the Department for Education in relation to Out of School Hours Care.



NFPs are funded by public authorities to deliver services in one of two ways:

### 1. Procurement

The procurement of NFP services is covered by the *State Procurement Act 2004*, and the policies and guidelines of the State Procurement Board (SPB). Government agencies must also apply *Premier and Cabinet Circular 044 – South Australian Funding Policy for the Not For Profit Sector* (the NFP Funding Policy), a Cabinet directive that requires public authorities to apply specified best practice principles when funding services or administering a grant delivered by an NFP.

As part of recent reforms public authorities must now use the *Standard Not For Profit Sector Funded Services Agreement* (the Standard Services Agreement).<sup>39</sup> These reforms were made after extensive consultation with the NFP sector and resulted in significant simplification and standardisation of contracts.

### 2. Grant funding

Grant funding of NFPs is covered by *Treasurer's Instruction 15 – Grant Funding* (TI15). Grants as defined in TI15 are excluded from the definition of 'procurement operations' of the *State Procurement Act 2004* pursuant to section 5(1)(b) of the recently amended *State Procurement Regulations 2005*. The NFP Funding Policy also applies to grant funding arrangements.

Grants are administered through either the Standard Grants Agreement or the Low Value Grant Letter templates (Standard Grant Agreements), depending on the value of the grant.

The SPB provides guidance through its *User Guide – Procurement Operation or Grants* about whether the funding is a procurement or a grant. In practice, making a determination is not straightforward and more complex cases may require advice from the Crown Solicitor's Office.

The Commission notes that, while procuring services through grant funding is outside its terms of reference, it is relevant to the present discussion as an alternative method that is often used to acquire services through the NFP sector.

## 4.2 Recent Reforms

There have been significant reforms to NFP funding arrangements. Box 4.1 sets out the key elements of the reforms. Submissions broadly indicated support for the NFP Funding Policy, and associated procurement guidelines and agreements.

The Commission considers it is likely that the full adoption of the Standard Services Agreement, Standard Grant Agreements and mandatory indexation<sup>40</sup> to funding arrangements has the potential to address many of the contractual and procedural issues that have been raised by stakeholders in submissions to the Commission and in related consultations. That said, feedback from NFP organisations about their experiences with the

<sup>39</sup> Department of Treasury and Finance, 'Not-for-profit sector funding and contracting' (website accessed 13 March 2019) <<https://www.treasury.sa.gov.au/Our-services/not-for-profit-sector-funding-and-contracting>>

<sup>40</sup> Department of Treasury and Finance, 'Not-for-profit sector funding and contracting' (website accessed 3 May 2019) <<https://www.treasury.sa.gov.au/Our-services/not-for-profit-sector-funding-and-contracting/indexation>>

application of the NFP Funding Policy, which has been in place since mid-2017, suggests there have been inconsistent approaches to the ways in which public authorities undertake procurement and grant-funded activity with NFPs, and variable uptake and adherence to the NFP Funding Policy best practice principles.

#### **Box 4.1: Summary of NFP Procurement and Grant Reform**

The NFP Funding Policy, *Premier and Cabinet Circular 044 – South Australian Funding Policy for the Not For Profit Sector*, came into operation on 1 July 2017 and applies to ‘all public authorities that establish and manage the funding of service agreements and the provision and management of grants, and arrangements with the NFP sector, but does not include funding arrangements with schools, universities and churches’.

The funding models include ongoing and one-off funding arrangements, funding for services to the public authority directly, or to a third party, and grants that use a formal contractual agreement, regardless of dollar value.

Since 1 July 2017, mandatory indexation applies to all multi-year funding agreements between public authorities and NFP organisations (subject to specified exemptions).

From 1 January 2019, public authorities must use the *Standard Not For Profit Sector Funded Services Agreement* when providing upfront payment to NFP organisations (procurement). Updated *Treasurer's Instructions 11 – Payment of Creditors Accounts* allows up-front payment to a maximum of 25 per cent, where appropriate, to NFP organisations when using the Standard Services Agreement.

Grants as defined in *Treasurer's Instructions 15 – Grant Funding* have been excluded by regulation from ‘procurement operations’ under the *State Procurement Act 2004*.

The State Procurement Board has developed the *User Guide: Procurement Operations or Grants* to assist public authorities to classify funding as either a procurement or a grant to ensure the appropriate policy framework is utilised.

The reforms have been incorporated into the *State Procurement Board's* policy framework as applicable, including the *Simple Procurement Policy*.

### **4.3 Consultation, Engagement and Identification of the Issues**

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. Participants have raised a variety of issues relating to procurement and grant funding of NFP services. The experiences of NFP organisations and public authorities in funding and delivering a range of social and health services for government, and how those services are managed and evaluated can be summarised as follows:

- Market engagement, consultation and collaboration:

- The complex social and health services NFPs are asked to deliver are distinguishable from most commercial and consumable procurements, requiring additional or different tendering, contractual and funding considerations.
  - The best practice principles in the NFP Funding Policy are not consistently being applied by public authorities as part of the acquisition process.
  - Public authorities are working to fully implement the NFP Funding Policy and operationalise associated procurement-specific policies.
  - There are examples of public authorities collaborating and codesigning with NFPs on service design and delivery – although there is scope for broader cooperation on matters pertaining to probity, the changing relationship between participants from collaborators to purchaser/supplier over the course of a procurement, and procurement policy compliance continue to influence the procurement process.
  - An NFP-specific community of practice for applicable public authorities would support a system-wide approach to procuring these services, improving intra- and inter-agency collaboration, and coordinating engagement with the NFP sector.
- Tendering: time, cost and information requirements:
- Market response times need to better reflect the complexity of the service being sought from the market – longer periods for complex social services and potentially shorter periods for commodity and consumable purchases.
  - To support consistency and proportionality in tendering requirements, there is scope to more broadly adopt a value/risk-based approach to tender evaluation criteria.
  - There is broad support from public authorities and NFPs for recognition of formal quality assurance accreditation as part of the tendering process, creating administrative efficiencies for both parties.
  - There are a number of operational issues that can be adopted more broadly and consistently to improve the tendering process including better publication of future procurements, pre-registration arrangements, and provision of consistent and constructive feedback.
- Funding and pricing arrangements:
- The funding made available to NFPs to deliver social and human services is not always commensurate with the outcomes sought by public authorities, or comparable services operating in, or funded by, other jurisdictions.
  - There are inconsistent approaches to the way NFP business costs and overheads are funded as part of government contracts to deliver services.
  - Most NFPs are block funded to deliver services – block funding arrangements are generally not subject to the government's late payment interest arrangements, creating both perceived and real differences in the way NFPs are treated in terms of late payment of funding.
  - There are tensions between the NFP sector's views about retaining unexpended funds and the requirement for public authorities to manage their

- finances responsibly and achieve value for money – the focus should be on driving increased efficiencies and service performance.
- The way NFP services are funded influences NFP organisations' preparedness to provide feedback to public authorities about their concerns and challenges.
- Contract negotiations, contract management and reporting arrangements:
  - Negotiations and contract management by public authorities were cited by the NFP sector as inefficient and creating unnecessary delays and burdens on NFP organisations.
  - Public authorities' acquittal reporting requirements are often considered by NFPs to be onerous and excessive – effective acquittal reporting is a necessary part of block (up-front) funding arrangements.
  - Inflexible contract provisions have impacted upon the ability of NFPs to provide flexible service solutions during the life of a contract.
  - There is inconsistent application of the 3+3+3 NFP contract extension arrangements, having regard to what 'funding certainty' means, and how or whether the Industry Participation Policy applies to these contracts.

#### **4.4 Key Issues, the Commission's View and Proposed Reforms**

The Commission considers that the effective implementation of the NFP Funding Policy and associated procurement policy and practice appears likely to address many of the issues raised by the NFP sector. There are signs of contemporary procurement practice by public authorities consistent with the recent reforms including in governance, effective market engagement, contract performance and analysis, and holistic service evaluation. These model practices need to be encouraged, shared and implemented more widely than is currently the case.

The Commission considers that, notwithstanding that the reforms are generally welcomed, there may be further opportunities to streamline and simplify all three areas of procurement of services from NFPs – acquisition planning, supplier selection and contract management – which may support provision of better services to disadvantaged South Australians without compromising government procurement principles.

**Recommendation 4.1:** Noting the role of the NFP Funding Policy in the procurement and grants process and its recent introduction, the government independently evaluate in the second half of 2019 the implementation of the NFP Funding Policy and associated operational procurement reforms to identify any impediments to, and opportunities to strengthen, implementation, with the evaluation process to consider the views of public authorities and the NFP sector.

The public accountability for the provision of health and social services delivered by NFPs remains with the government and public authorities responsible for delivering the government's priorities. The NFP sector is engaged and funded to translate those policy priorities into services delivered to those who need it most in the community. This interdependence is not always recognised or effectively represented in the way the two sectors work to deliver these services. An optimal environment reflecting an appropriate approach invites:

- *A refreshed perspective:* it is extremely important that the interdependence between the public and NFP sectors in successfully delivering the right social and health services is mutually acknowledged by both sectors. Recognition of each sector's role and obligations, and developing a better understanding of each sector's ways of working will form the foundation for the relationships required to support efficient and effective delivery of these important services to the community. The reform agenda being implemented by DCP demonstrates the approach required.
- *Implementation of recent reforms and consideration of new strategies:* the full implementation of recent NFP procurement reforms will address most of the issues raised by both public and NFP sectors. Specific new strategies will improve relationships, operationalise policy into procurement practice, and address specific areas for improvement.

In this context the Commission has focused its recommendations on the following areas where short and medium-term improvements can be realised:

- Capability (Section 4.4.1);
- A relationship with the market – better engagement and improving the tendering process (Section 4.4.2);
- Collaboration and codesign of services – how to best meet needs (Section 4.4.3);
- Funding determination and accountability – enabling effective service delivery (Section 4.4.4);
- Contract construction, management and performance – supporting and sustaining efficient service delivery (Section 4.4.5).

#### **4.4.1 Capability**

Matters of capability, within both public authorities and NFP organisations, permeate several aspects of the procurement process. Focus areas for capability development in relation to NFP procurement include market development and engagement, the ability to effectively collaborate and co-design, developing and responding to tender documents, determining funding and acquittal reporting, contract negotiations and contract construction, and effective contract management and service evaluation.

Examples of where there is scope to improve capability are discussed throughout this chapter and throughout this report. This section identifies the systemic issues regarding capability with respect to procuring and funding NFP-related services.

##### ***4.4.1.1 Improving capability and taking new approaches***

NFPs and public authorities considered that complex health and social service procurement activity requires capability commensurate with the level of risk and size or value of each procurement, and that this is not always the case in practice. High-risk and high-value procurements require higher levels of experience and capability on the part of both the public authority and the NFP (NFP Roundtable).

Systems approaches may be able to better support a focus on and the achievement of intended outcomes, and avoid the limiting influence of organisational structures (Wicked Lab submission).

RFDS believes that procurement has 'a role to play in fostering service capability outside of government; in complex health service delivery', especially through direct negotiation in thin or rural and remote markets (RFDS submission).

DCP recognises the relationship between market maturity and the achievement of desired service outcomes, and acknowledges that development of the market is both a public sector and NFP responsibility. DCP indicated that it is important for public authorities to clearly articulate and communicate service requirements and expectations. DCP has embarked on this process through its recent contract reform activity through the standardisation and publication of Service Provision Requirements, Service Specifications and Key Performance Indicators, thresholds and performance management actions (NFP Roundtable).

DHW acknowledged that negotiating contracts for complex NFP services is challenging, and there is opportunity to improve. At the moment effective joint working across policy and program areas, procurement functions and contract management functions is largely dependent upon individual staff having good relationships with their peers in order to collectively design, manage and evaluate complex NFP services.

Public authorities expressed the view that the most senior procurement roles in their agencies are generally not afforded the same status, or have the same level of influence, as the organisation's Chief Financial Officer or Chief Operating Officer. The Commission notes that in some public authorities, such as SA Water, procurement leads are located in the senior leadership group and do possess significant delegated authority. This issue is expected to be considered in more detail in Stage 2 of this inquiry (NFP Roundtable).

The capacity of the SPB to offer specialised assistance to support particularly complex procurements when requested by public authorities was queried. Public authorities indicated that, where advice had been sought, the SPB response could be characterised as a common-sense or logical approach to the challenge presented, but generally did not offer any specific innovative or technical procurement advice or practice suggestions (NFP Roundtable).

DCP, DHW and DHS have indicated in-principle support for the Commission's draft recommendation to establish a community of practice of procurement professionals relating to NFP procurement. Suggestions to ensure the success and sustainability of such a group revolved around it being pragmatic and outcome-focused, and ensuring it maintains momentum to achieve its mandated purpose, with specific suggestions including:

- It must have an appropriate level of authority and resources to ensure its ongoing effectiveness.
- It must be led by a single public authority with the capacity to coordinate and host the group's operation (DHS indicated a preparedness to lead the group).
- It must have terms of reference and appropriate governance structures.
- It is an opportunity to bring uniformity, leverage opportunities and successes of other public authorities, and implement consolidated and streamlined approaches.
- Early issues for consideration by the group include:
  - a whole-of-sector approach to consultation, validation, negotiation and practice implementation;



- change and engagement platforms;
- mechanisms and strategies to share learnings, standardise practices, seek feedback and communicate with the NFP sector; and
- mandating that public authority procurement professionals are required to become a member of a relevant professional body.

In conclusion, the Commission considers a community of practice would be a useful addition and that chief executives of the agencies should assess and, where necessary, improve the interaction between business units and the procurement function.

#### **4.4.2 A Relationship with the Market – Better Engagement and Improving the Tendering Process**

The public sector's connection with the market of NFP service providers can be developed further. This can be facilitated through both specific reforms (e.g. publication of forward programs of procurement and consistent use of two-stage procurement processes), and by ensuring public authorities are using all existing arrangements to more effectively engage the market. The latter will require addressing residual concerns about meeting probity requirements and procurement policy compliance, and necessitates consideration of capability development, succession planning, and retention of experienced procurement professionals.

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. By adopting fewer and more open evaluation criteria that allow NFPs to respond more creatively, efficiencies can be realised in terms of the time and costs invested by NFPs in responding to tenders.

Public authorities and NFPs generally support the principle that complex tenders should be out to market for longer periods – there is an inclination towards longer open tender periods for higher value/higher risk social and health services.

There are efficiencies to be found for both NFPs and public authorities by recognising the quality assurance accreditation held by NFP organisations as part of the tender process.

Investing time upfront in market engagement is intended to save time later in design specification re-writes, and to achieve better value for money more efficiently.

##### **4.4.2.1 Market Engagement**

NFP organisations and public authorities have both acknowledged the importance of their relationships in the development and delivery of complex health and social services. Effective relationships support engagement that enables judgements and assessments that achieve the best outcomes. Public authorities acknowledged that in some parts of their business cultural reform would support better and sustainable relationships with NFPs. Concurrently, developing proficient levels of experience and retaining that capability are key to enabling public authority procurement professionals to manage those relationships effectively.

Baptist Care SA (BCSA) supported public authorities giving more and earlier information about their future work program, noting that at the moment potential benefits from



economies of scale are lost because every tender is managed and operates independently. Better predictability and consistency from public authorities in their advice about when tenders are put to market is necessary. This would support NFPs to manage their workloads and respond more effectively (BCSA submission).

DCP is responding to this, significantly increasing its engagement with the child protection market. Its 2019–20 procurement program will improve the use of technology and engagement mechanisms to communicate upcoming tenders, support information sharing and encourage feedback. DCP is taking a whole-of-market approach, exemplified by its inaugural industry day on 24 September 2018,<sup>41</sup> and its more recent Sector Briefing on 21 March 2019.<sup>42</sup>

To better support early market engagement, three-stage tendering processes featuring a pre-registration process, a market sounding process, followed by the formal tender to market were canvassed. An NFP suggested this approach would enable feedback to public authorities about capability and experience in the market having regard to the type of service being sought, and how that service could best be tendered for, i.e. as one consolidated service or broken up into discrete elements tendered for separately (NFP Roundtable).

Public authorities indicated that existing procurement arrangements appropriately support a two-stage processes, which can be just as effective as a three-stage process which can become protracted. The challenge is for public authorities to determine what it is they are seeking from the market earlier and to make that clearer during the tendering process. This can be achieved by better connecting strategic procurement functions of public authorities with their policy and service delivery areas, and through earlier market sounding (NFP Roundtable).

In conclusion, the Commission considers a number of changes in procurement practice available to public authorities within the existing procurement framework would better support engagement with the NFP market.

The Commission also acknowledges that the following issues were raised in the context of NFP procurement which have wider application as part of this inquiry. Accordingly, the Commission has recommended the following elsewhere in this report:

- pre-registration arrangements that allow existing and new users of tenders to pre-load their business and financial details on a voluntary basis (Recommendation 3.3);
- increasing the amount of information about future procurements by agencies, including those relevant to NFPs (Recommendation 2.6); and
- a consistent approach to giving constructive feedback to unsuccessful participants that will enable them to be more competitive in the future (Recommendations 2.5 and 2.7).

---

<sup>41</sup> '2018 Department for Child Protection Industry Day', (website accessed 28 February 2019) <<https://www.childprotection.sa.gov.au/service-providers/industry-day>>

<sup>42</sup> 'Procurement and Contracting Sector Briefing 1', (website accessed 2 May 2019) <<https://www.childprotection.sa.gov.au/sites/default/files/sector-briefing1-presentation.pdf>>

#### ***4.4.2.2 Recognising Existing Accreditation and Standards***

Public authorities not recognising NFP quality accreditation as part of the tendering process was raised by several NFPs, including SACOSS and Uniting Country SA (UCSA). UCSA cited an example of a tender that required responses to questions that were already covered as part of their Australian Service Excellence Standards accreditation, which is audited and approved by the State Government (UCSA submission).

CARA proposed that accreditation gained under a recognised accreditation process (e.g. NDIS Quality and Safeguards Commission or ISO 9001) be accepted as part of the procurement process without further detail being required (CARA submission). Life Without Barriers (LWB) supported this notion.

DHS supports this approach and indicated that for its attendant care services procurements organisations that were industry accredited did not have to provide detailed information on general organisational policies/procedures. That same approach could be taken more broadly if NFPs are accredited under Australian Service Excellence Standards (or equivalent). Information such as quality, workplace health and safety (WHS), recruitment, training and screening would not be required as part of the tender process.

In conclusion, it is the Commission's view that recognising quality accreditation as part of the procurement process will provide process efficiencies for both public authorities and NFPs, and can form part of the pre-registration process.

**Recommendation 4.2:** To streamline the tendering process and to support more NFPs to participate in tendering, formal quality assurance accreditation held by NFPs be recognised as part of the tendering process. The State Procurement Board, in consultation with relevant public authorities, to identify the changes required to give effect to this principle, including the development of policies and procurement practices, and provide guidance to public authorities.

#### ***4.4.2.3 Time to Respond to Tender***

Several submissions (UCSA, BCSA, LWB and SACOSS) argued that the time available to respond to a tender is too short, particularly when complex solutions are sought. UCSA considered 20 days – the typical duration that a tender is open – insufficient time to respond to tenders which may require NFPs to develop complex service models, partnerships and budgets (UCSA submission). BCSA shared these views, as did SACOSS.

DHS has encouraged market response times for high-value NFP-related procurements to be between eight and 12 weeks and acknowledges that these longer periods are desired by the NFP sector.<sup>43</sup> DHS advised that it is proposing extended market call periods of up to eight weeks in relation to upcoming high value and complex tenders.

DCP is also open to extending call periods for more complex tendering processes. The 2019/2020 Procurement Program is looking to realign strategic contract bundles of like services to allow for:

---

<sup>46</sup> The 8–12 week market call period is encouraged for procurements with NFPs with a value greater than \$550,000 in the Procurement and Grants Unit's 'Procurement Instructions'.

- targeted review and commissioning of models of care; and
- smoothing procurement workload to manageable volumes from the current state where more than 80% of DCP contracts are due to expire in 2019.

This approach will allow for more proactive procurement planning that can allow for increased lead times in:

- communicating DCP's Forward Procurement Plan (inclusive of proposed tenders);
- scheduling pre-tender and tender briefings;
- tender call periods; and
- providing co-design opportunities as part of commissioning service models before the tender process commences.

DCP also drew the Commission's attention to a current tender (Agency Child and Youth Worker Temporary Staff Services) that demonstrated the department's approach to extended tender process timeframes.

*Figure 4.1: Agency Child and Youth Worker Temporary Staff Services tender timeline.*



Source: Tender briefing presented by DCP on 19 February 2019 via web conference; also available on the SA Tender and Contracts website, Tender Code DCP044802.

DHW is supportive of longer market response periods, observing that to effect change commitment from the central procurement team, business units and finance team is necessary; and that a combination of policy and cultural changes will also be required.

In conclusion the Commission considers the issues submitted by the NFP sector are sustained and warrant changes in practice by public authorities tendering for NFP-delivered services.

**Recommendation 4.3:** In recognition of the complexity of the social issues being targeted by NFP-delivered services, the adequacy of current tendering timeframes in procurements involving NFPs be considered as part of the review of the NFP Funding Policy and related matters as proposed in Recommendation 4.1.

#### **4.4.2.4 Cost, Proportionality and Quality of Tenders**

UCSA advised that responding to tenders takes approximately 150–200 hours in total and \$10,000 per tender, with this escalating where partnerships are negotiated (UCSA submission).

Exemplifying its views with a chronological summary of a 13-month-long procurement for a large and complex service, BCSA raised concerns about the quality of tenders put to market and the capacity of public authorities to evaluate tender responses (BCSA submission).

SACOSS noted that proportionality is one of the key funding principles in the NFP Funding Policy, but *'our sector has seen little change since this policy was mandated'*. BCSA and CARA concurred, as did UCSA, which cited the tender for the Emergency Financial Assistance Program that required the same effort to bid on the service for each of the 12 regions, despite significant differences in the funding amounts in each region: \$181,177.20 for Northern Adelaide and \$15,229.47 for Fleurieu and Kangaroo Island.

There is evidence of agencies responding to these concerns.

DCP is taking a client-centric approach to its procurement reforms. DCP's Contract Management Framework provides flexibility around the number of administrative requirements in a procurement process depending on the value (high/low) and risk (routine/strategic) of a procurement. While observing the SPB's requirements, *'this value/risk approach to contract management recognises (for example) that strategic contracts which are high risk and high value require a lot more rigour, and experienced resources, to manage than a routine contract'*.<sup>44</sup>

The DHS Procurement and Grants Unit advise its communication plan emphasises improving internal stakeholders' understanding of reforms and best practice, including a strategy to engage government suppliers and peak bodies broadly, and information on tendering successfully.

DHW acknowledged it has not tackled proportionality and tender quality systemically, but some work is being done to align assessment criteria to National Safety and Quality Service Standards.

DCP observed that the Office of the Industry Advocate has proposed an initiative that would enable a proportion of tender response information to be pre-populated, reducing data requirements on the organisation submitting an offer via the SA Tenders and Contracts website. DCP is supportive of this approach, but believes that broader consultation needs to occur before conceptual design and implementation of a system can commence. The issue of pre-registration is dealt with in the context of the IPP in Chapter 3.

DCP commented that its recent assurance review process conducted under the auspices of the SPB suggests that the SPB require a Purchase Recommendation to be prepared for all procurements, regardless of the strategy being used. DCP expressed concern that this requirement, if required for low value procurements, represents a marked increase in red tape and may affect procurement process timeframes, detracting from an agile approach to low-value procurements. The Commission has not considered this specific matter in detail; however, as a general rule the Commission is supportive of improvements to procurement process efficiency that achieve a balance with the objects of the *State Procurement Act 2004*, in this example accountability and transparency.

In conclusion, while it is not clear to the Commission how widespread these problems are, it considers they should be addressed by the relevant public authorities and is a matter that could also be addressed by the community of practice proposed in Recommendation 2.9.

---

<sup>44</sup> DCP Contract Management Framework, Version 1.3, 5 September 2018, p. 10.

#### 4.4.2.5 Tender Feedback

LWB acknowledged that feedback on unsuccessful tenders *'forms an important element of our quality improvement processes and is very much appreciated' and 'helps us understand the elements that need improvement'*. They suggested that *'there is a level of disparity in relation to how this feedback is provided'*.

#### 4.4.2.6 NFP Procurement and the Industry Participation Policy

SACOSS raised concerns that public authorities are considering the total value of NFP 3+3+3 contract options for the purposes of the IPP, potentially requiring a Standard Industry Participation Plan. SACOSS' view is that this is not appropriate, and it is sufficient to monitor performance through contract management arrangements (SACOSS submission).

Public authorities have indicated that they are applying the IPP to NFP procurement processes, but there remains significant ambiguity as to how it should be applied.

The SPB Simple Procurement Policy identifies the IPP as one of several evaluation criteria that *'may be appropriate'*. Not-for-profit procurements under the *State Procurement Act 2004* are captured by the SA Industry Participation Policy Procedural Guidelines – January 2018.<sup>45</sup>

The Industry Advocate has indicated a preparedness to clarify and amend the application of the IPP to NFP procurements on the basis that complex social and health services are necessarily delivered locally.

**Recommendation 4.4:** To streamline, and cut red tape in, the tendering process for health, community and social services procurements where the services being contracted for practical purposes can only be delivered by organisations in South Australia, the Industry Advocate, public authorities contracting such services with NFPs and the State Procurement Board, determine appropriate exemption criteria in the SAIPP.

#### 4.4.3 Collaboration and Codesign of Services – How to Best Meet Needs

Representatives from public and NFP sectors have indicated that their relationships are particularly important to support the effective delivery of complex health and social services. Recognition of the interdependence between NFP and public sectors, along with clarification around probity arrangements, is expected to unlock broader collaborative efforts in support of improved service design and delivery.

Although public authorities have demonstrated examples of applying the NFP Funding Policy, and collaboration with the NFP sector, the Commission considers there is scope for further improvement. Some public authorities, or parts of public authorities, are still working to give effect to the NFP Funding Policy, while others are developing examples of emerging best practice. The necessary change in the nature of the relationship between participants from collaborators early in the procurement process, to purchaser and supplier later in the procurement and contract management processes, has been identified as a challenge.

<sup>45</sup> SA Industry Participation Policy Procedural Guidelines – January 2018, Department for Industry and Skills, p. 5.

#### **4.4.3.1 Direct Negotiation, Sole Providers and Addressing Complex Needs**

SACOSS contended the social problems that many NFPs are engaged in *'need to be tackled in conjunction with other issues/responses – rather than as a stand-alone service'*. In SACOSS's view the *'requirement to contract specific NFPs in particular areas recognises the importance of social capital held by many NFPs and ... if that relationship to the community is severed as a result of changed funding, vulnerable people may be adversely effected and/or simply drift away'* (SACOSS submission).

RFDS drew a distinction between straightforward goods purchasing and the complexity of delivering complex health services, considering *'low risk health care commodities ... warrants full market competition of large numbers of vendors'*, whereas *'Procurement of specialist and large-scale health services, involving known but regulated and mitigated patient safety risk, best suits targeted and direct sourcing methods.'* Further, direct market approaches are *'even more suited to rural and remote markets, where a combination of vulnerable consumers and thin markets exist'*. Conversely, *'procurement can similarly disrupt capacity development by frequent competitive processes and regular change in service provider arrangements'* (RFDS submission).

DHS noted that in other service areas, such as domestic violence services, the market is diverse and the limiting of suppliers is neither warranted nor appropriate in line with SPB policy.<sup>46</sup>

In conclusion, the Commission considers the matters addressed are sufficiently recognised in the SPB Simple Procurement and Acquisition Planning Policies in terms of guidance regarding limiting the number of suppliers.<sup>47</sup>

#### **4.4.3.2 Collaboration and Co-design**

NFP submissions consider that social and health services grapple with highly complex socio-economic problems that require complex solutions. In their view, the best practice principles contained in the NFP Funding Policy provide the policy framework to support such solutions, including public authorities and the NFP sector planning and developing funding together to achieve shared outcomes. The NFP sector considered that, while these mandated processes should occur before commencement of acquisition planning, this had not happened in practice.<sup>48</sup>

The best practice principles around collaboration have also been given effect in SPB policy and include guidance in relation to NFP stakeholder engagement and market research.<sup>49</sup>

Agencies are working to operationalise the NFP Funding Policy best practice principles.

<sup>46</sup> For example see Statement Procurement Board – Simple Procurement Policy, section 10 – Limiting the number of suppliers, pp. 12-13.

<sup>47</sup> State Procurement Board, 'Simple Procurement Policy', Version 6.4, January 2019, pp. 12-13, and 'Acquisition Planning Policy', Version 10.5, April 2019, p. 15.

<sup>48</sup> In its submission SACOSS recommends supporting 'co-design at the earliest stages' and 'collaborative service investment planning to identify community need and how to best tackle the issues' when dealing with 'complex long term social issues'.

<sup>49</sup> State Procurement Board, 'Simple Procurement Policy', Version 6.4, January 2019, p. 6, and 'Acquisition Planning Policy', Version 10.5, April 2019, p. 7.



As indicated in the draft report, DHS exemplified its approach to collaboration, engagement and supporting client input into services through the Services to Aboriginal Youth (STAY) program encompassing needs analysis, client fora, consultation with internal government stakeholders, and market analysis, among other things. DHS has suggested this approach could form the basis of a Commissioning Framework for these types of services.

DHS is also in the final stages of developing a comprehensive South Australian Not for Profit Rules and Guidelines (SANFRAG) Implementation Guide, which brings together NFP Funding Policy, procurement legislation and policies, and applicable Treasurer's Instructions into one authoritative document. That guide offers complete practical guidance for procurement practitioners, contract managers, and business and program leaders on giving effect to the best practice principles.

DHW exemplified collaboration with the NFP sector in its work in managing high demand in the public hospital system and presentations to emergency departments. The Deputy Chief Executive of DHW worked with four NFPs who had previously been engaged through a competitive process to solve the high-demand 'problem'. The providers came back with proposals and worked with Local Health Networks in co-designing a model of care. The resultant proof of concept projects have been co-designed with public hospitals, which are providing evidence of reductions of demand on the public health system. More broadly, DHW is working to embed a systemic client-centric approach to its procurement processes. It is engaging consumer representatives in the drafting of service models and the design of procurement documentation.

DCP gave an example of how it is reflecting consumer involvement in their services. The department recognises Aboriginal Community Controlled Organisations (ACCO) are often best placed to provide Aboriginal services to Aboriginal people. DCP has introduced a competitive dialogue model (as opposed to traditional tender), selective tendering for Aboriginal services, commitment to exceeding government Aboriginal spend targets, and raising awareness of existing Aboriginal economic participation through procurement.<sup>50</sup>

DCP also observed that, whilst its approach to the commissioning (market engagement) and procurement (acquisition) processes affords opportunities to co-design and collaborate in relation to service design and delivery, there are necessary (probity and procedural) limitations on the extent that that can occur. DCP observed that there is not a 'universal understanding' across the NFP sector about when the roles of public authorities and NFPs must change from collaborators and partners to a conventional purchaser and supplier relationship. DCP suggested *'establishment of cross government commissioning and co-design models for human services would significantly improve the capability of government agencies to partner more effectively with NFPs, and clarify roles and responsibilities of all parties'*.

RFDS raised the importance of taking a system-wide approach, observing its experience from 2016 where the procurement of new stretchers by the South Australian Ambulance Service (SAAS) *'ended the use of a single stretcher platform across SAAS and RFDS Central*

---

<sup>50</sup> See 'SA Industry Participation Procedural Guidelines' (January 2018), 4.5 Aboriginal Economic Participation, p. 8: Public and prescribed authorities can directly engage an eligible Aboriginal business up to \$220,000 subject to obtaining a value-for-money quote. Aboriginal business and enterprise pre-qualification lists are also supported.



*Operations', requiring RFDS to invest '\$1.4 million ... to modify its aircraft to commence use of the same stretcher procured by SAAS' (RFDS submission).*

In conclusion, the Commission sees merit in formalising a framework for commissioning complex social and health services from the NFP sector. This is a major policy undertaking beyond the scope of this inquiry.

#### **4.4.4 Funding Determination and Accountability – Enabling Effective Service Delivery**

There were contrasting views from the NFP sector and public authorities on service funding levels, reasonable funding of business running costs and overheads, and retention of unexpended funds by NFPs. The NFP sector is seeking funding for services matched to expected outcomes, consistency and reasonableness in funding running costs, and retention of unexpended funds by NFPs where they can demonstrate efficiencies aligned with annual or end-of-contract acquittals. Public authorities have mixed approaches to all three of these issues, demonstrating the inconsistency NFPs are faced with.

##### **4.4.4.1 Funding for service delivery**

CARA considered there is '*little alignment [of state pricing] with national frameworks for disability services*' and there are cases of procurement and contracting not taking into consideration parallel contracting or projects underway. CARA cited examples of public authorities' prices being higher and lower than market rates, suggesting when state agencies contract the same services as funded by Commonwealth and/or other states, they should pay market rates (CARA submission).

DHS indicated that it publishes the funding quantum for a particular service as part of the tender process. Contrastingly, DHW indicated it has increasingly (over the last two years) been tendering on a fee-for-service basis.

DCP is also examining the use of fee-for-service arrangements as part of a response to the challenges being experienced in relation to managing growth places in Out of Home Care programs (OOHC).

If a service is tendered on a fee-for-service basis by an NFP, the extent to which the overhead costs are included in the tender response is up to the NFP. The Commission acknowledges that the choice of block funding or fee-for-service arrangements can be determined by the types of services and products being tendered for.

##### **4.4.4.2 Business Costs and Overheads**

The issue of service delivery costs and overhead costs was raised by several NFPs. Views focused on legitimate project overhead costs that are not routinely or adequately included in funding (COTA submission), and unrealistic funding quanta to deliver services (UCSA submission).

An NFP noted that business costs should be considered organisationally, that is, the public authority and the NFP entering into a specific contract should have regard to business and overhead funding provided to that NFP through other existing contracts with that public authority (or possibly from the public sector). This can only be achieved through dialogue

between the parties, and through a mature approach to ensuring the NFP is sufficiently funded to meet its overhead and business costs (NFP Roundtable).

DHS advised that the Community Services Directorate uses an overhead rate of between 18 and 22 per cent subject to where the service is being delivered (18% for metropolitan services, 20% for state-wide services, and 22% for regional services). This methodology was developed in close consultation with NFP organisations that shared their actual business cost information with DHS.

DHW does not have a consistent approach to determining business cost funding, but 15 per cent of the total contract value is used a general benchmark. For fee-for-service models NFPs provide a price incorporating their business and overheads costs (NFP Roundtable).

DCP aims to increase the financial viability of its service providers, citing an example of a pricing formula adopted for a current tender under which suppliers were afforded the opportunity to reflect their direct employee payment costs along with any service provider overheads required to deliver the services.

NFPs noted that not all NFPs are proficient at calculating their overheads and business costs (NFP Roundtable).

In conclusion the Commission considers the views expressed by NFPs about taking an organisational approach to funding overheads, and DHS' methodology established in fact and implemented through consultation represent appropriate, fair and reasonable approaches to determining overhead and business costs in the context of block funding arrangements. This issue would logically be one of the first issues for consideration by the public authorities of the community of practice of procurement professionals recommended by the Commission.

#### **4.4.4.3 Late Payments to some NFPs**

The *Late Payment of Government Debts (Interest) Act 2013* (the Interest Act) was raised as a significant issue by SACOSS. They noted that *'late payment remains an issue for NFPs who are forced to find money from elsewhere to fund services until payment is made. For many NFPs whose major funding sources do not allow for accumulation of funds, this has long been identified as a problem'* (SACOSS submission).

SACOSS' concern is that amendments to the Interest Act in late 2018 have had the effect of excluding NFPs from the amended regime which provides for penalty interest to be paid automatically to government suppliers where public authorities are late in paying their invoices.

This issue was covered in detail in the Commission's draft report. The key issue is, even if the scope of the Interest Act is amended to cover NFPs who are registered other than under the *Corporations Act 2001* (Cth), those organisations that are block funded and subject to Recipient Created Tax Invoices (RCTIs) will continue to be excluded from the late payment interest regime.

SACOSS proposes *'the Late Payment of Government Debts (Interest) Act 2013 be amended to ensure that interest on late payments is automatically payable to all NFPs regardless of their incorporation status or invoicing system'* (SACOSS submission).

Only eight per cent of DCP's current NFP OOHHC contracts are currently fee-for-service, with the remaining 92 per cent block funded. DCP has taken action to grow foster and kinship care placements, including through incentivised growth payments to NFPs that provide family-based care services. This is critical to supporting the realisation of Recommendation 128 of the *Child Protection Systems Royal Commission Report*<sup>51</sup> to phase out the use of commercial carers in any rotational care arrangements except in genuine short-term emergencies. DCP advises that South Australia is the first jurisdiction to implement this approach. Other jurisdictions generally wait until contract review dates to vary the contract to adjust for any increase in placements or additional payments for services beyond those contracted.

According to DCP the complexity and growth in demand for these services can create process challenges where the value of that growth exceeds 5 per cent of the existing baseline contract. Where growth numbers exceed 5 per cent of the baseline contract *Treasurer's Instruction 8 – Financial Authorisations* (TI8) requires approval from the relevant delegate.<sup>52</sup> DCP has raised the possibility of governance arrangements where this growth could be managed flexibly across multiple contracts within the approved family-based care services budget to support procedural efficiency. Issues regarding delegations and TI8 specifically are set out at Section 2.3 and in Recommendation 2.1.

DCP has seen an improvement in payment processing times from the receipt of the NFP return, and continue to improve their process each quarter. DCP is also currently working with family-based care providers to provide better solutions to fast track growth payments for placements above contract requirements, including reducing the reporting and reconciliation period (reducing the time period between quarter end and acquittal return date), and moving to fee-for-service arrangements.

DHW indicated that as soon as an RCTI is generated it is actioned for payment immediately. DHW estimates that approximately 55 per cent of NFP payments are actioned through RCTIs and 45 per cent of NFP payments are actioned on receipt of invoices (fee-for-service contracts). DHW acknowledged that timeliness of payment is affected by public authority staff involved in the payment process.

**Recommendation 4.5:** In order to address the anomaly between some NFPs and entities incorporated under the *Corporations Act 2001* (Cth), changes be made to the *Late Payment of Government Debts (Interest) Act 2013* to remove any disadvantage to NFPs arising as a consequence of the way they are incorporated, or the invoicing system used to facilitate payment.

#### 4.4.4.4 Unexpended Funds

While acknowledging that the new Standard Services Agreement has improved provisions regarding repayment by NFPs of unexpended funds,<sup>53</sup> SACOSS suggested some aspects of the new provisions remain problematic because recouping arrangements create red tape

<sup>51</sup> 'The life they deserve', *Child Protection Systems Royal Commission Report*, Volume 1: Summary and Report, The Hon Margaret Nyland AM - Commissioner, August 2016, p. xi.

<sup>52</sup> *Treasurer's Instruction 8 – Financial Authorisations*, s 8.11A.2.

<sup>53</sup> *Standard Not For Profit Sector Funded Services Agreement*, Version 1, January 2019, Clause 10 – Repayment of unallocated or misused funds. The *Standard Grants Agreement* includes a similar unexpended funds provision at Clause 6 – Repayment of unallocated funds.

and a perverse incentive for NFPs to ensure that all funding is spent in a given year, which is not supportive of efficient, value-for-money outcomes (SACOSS submission).

In the draft report the Commission noted that, while allowing NFPs to retain unexpended funds could provide incentives for efficiency and investment by efficient NFPs, it did not accept the proposition at that point. Post-draft report consultation provided additional advice.

DHS indicated it generally approves retention of unexpended funds where the intended expenditure of those funds is aligned with delivery of services, or specific service improvements relating to the types of services that an NFP is already providing to government.

As DHW is moving towards fee-for-service models the issue of unexpended funds is less of an issue. DHW advises that fee-for-service models enable service providers to consider all costs for the provision of a service and to negotiate their best price. This has been successful, enabling providers to manage their financial position and risks more closely. Financial expenditure is monitored through contract management meetings, with ongoing open dialogue ensuring both parties are aware of the rate of expenditure.

DCP indicated that to enable dynamic and flexible funding options to meet the individual and client-centric needs of the children and young people in care and coming into care, it is vital that funding is expended in the areas that meet those needs as those needs arise. From DCP's perspective, recouping unexpended funds supports reinvestment into areas of demand that best support immediate needs.

In conclusion, the Commission notes that, while retention of unexpended funds would have an obvious benefit to the NFPs, this should be considered in terms of achieving efficiencies and improvements in the delivery of services. The existing construction of the Standard Services Agreement provides the parties can specify a 'Block Funding Reconciliation Date', providing the flexibility for unexpended funds to be considered at the end of a contract, where that may be appropriate. DHW and DCP are using or exploring fee-for-service arrangements, negating the need to consider this issue altogether. There are sufficient options and flexibilities available to the parties under the current arrangements to address the issue of unexpended funds in a practical way.

#### **4.4.5 Contract Construction, Management and Performance – Supporting and Sustaining Efficient Service Delivery**

Effective negotiations, timely contract execution, and a cooperative approach to contract performance reporting and service evaluation are key to unlocking improved service delivery. Public authorities' approach to contract management and reporting varies widely and is an area for improvement. However, the recent introduction of the Standard Services Agreement and grant funding equivalents, along with the amendments to the State Procurement Board's Acquisition and Simple Procurement Policies are expected to address a variety of issues.

Public authorities provided useful examples of where contract reporting not only enabled them to meet obligations in relation to accounting for the expenditure of public monies, but

informed service analysis and led to improved outcomes. Concerns expressed by the NFP sector about the extent of reporting required should be considered from this perspective.

A unified and integrated approach by public authority business units and procurement functions, both during acquisition and the ongoing life of the contract, will see service outcomes contracted effectively, minimise amendments, and enable effective evaluation.

A better understanding of the intended operation of the 3+3+3 NFP contract arrangement should achieve the complementary outcomes of service continuity and value for money.

#### ***4.4.5.1 Contract Negotiation Challenges: Timing, Delays and Constraints***

During the NFP Roundtable diverse views were expressed regarding the still relatively new 3+3+3 year contract arrangements for NFP procurements:

- Effective management, reporting and evaluation of these contracts will be important to ensure intended outcomes are being met, necessitating effective contract management and service evaluation.
- The opportunity to contract for up to nine years enables service providers to plan effectively and with certainty to work on entrenched and complex social issues that take long periods of time to address.
- The size, depth and maturity of the market is an important consideration in terms of whether the services required by a public authority are capable of being delivered by a contracted NFP for up to nine years.

The NFP sector considered that public authorities must effectively construct and manage their contracts with NFPs to accommodate longer or shorter-term relationships subject to, for example, the public authorities' requirements and the NFPs' ability to desired deliver solutions. The emphasis should be on building relationships with providers and being clear at the outset about the potential or need for changes over time, working collaboratively over up to nine years to ensure mutual outcomes are met (NFP Roundtable).

DCP considers that it can effectively manage longer NFP contracts under its Contract Performance Management Framework. That project responds to the Child Protection Systems Royal Commission Report (August 2016)<sup>54</sup> recommendations, and to stakeholder experiences including unclear roles and responsibilities and disconnected relationships with DCP. DCP noted that market maturity and service providers' ability to deliver the different types of services required by DCP over time will be a key consideration.

DCP identified concerns regarding the six-month notice period prescribed within the NFP Funding Policy, particularly where DCP enters into arrangements to leverage contracts between another agency and an NFP service provider. This situation can require notifications by DCP to the other public authority as to their intentions as soon as six months after a contract has commenced where it is short term (i.e. one-year duration). It is the Commission's view that the use of longer contract option periods (i.e. the NFP Funding Policy 3+3+3 format) would mitigate this challenge, where applicable.

---

<sup>54</sup> 'The life they deserve', Child Protection Systems Royal Commission Report Volume 1: Summary and Report, the Hon Margaret Nyland AM Commissioner, August 2016.

DHW acknowledged the effect of capability and experience again, indicating that each contract manager can have a different view on what they require from NFPs in terms of financial acquittals. Adoption of a standard approach would be beneficial. This could occur through either a standard template or through a guideline that provides agencies with the factors to consider when seeking acquittals from NFPs, accepting that one size will not fit all.

As a guide, DCP advised that from 1 January 2018 to 31 December 2018 the time taken from contract award to contract execution for the two NFP-related projects completed was above the average time (39 calendar days) to complete (52 and 62 calendar days). Both these agreements arose from competitive tender processes and necessitated elongated contractual negotiations. The introduction of DCP's Contract Management and Licensing System (CMLS) in the second half of 2019 is expected to be able to improve these timeframes with automated workflows and digital execution of contracts between DCP and the service provider.

DHS noted that seeking approvals from delegates, including chief executives and ministers can add up to eight weeks to contract execution timeframes. The need to post contracts to regional or remote service providers can also add time to the process; however, the use of electronic signatures is expected to reduce delays (where internet services are available).

In conclusion, the Commission considers these matters are best addressed in the recommended evaluation of the implementation of NFP reforms (Recommendation 4.1).

#### ***4.4.5.2 Performance and Reporting Arrangements***

NFPs indicated they had observed a disconnect between public authority central procurement functions and service delivery functions. This was evident from a contract management perspective where central procurement functions were involved in the development of the contract but then stepped away, leaving business units to manage the contract. Inconsistent processes and formats for acquittals across public authorities for the same service types was also observed. Public authorities indicated that within their agencies there are differences in the level of expertise and organisation business units have in managing contracts for services (NFP Roundtable).

DCP highlighted that different reporting arrangements are used, having regard to the applicable funding model. As block-funded arrangements are paid in advance acquittal reporting is required to ensure that the money has been spent as was intended in line with the applicable contract. DCP advised that the introduction of the Standard Services Agreement will provide a level of standardisation and clarity that is currently not present in DCP's existing contractual agreements.

In terms of scrutiny, DCP noted that ensuring accurate and reliable financial reporting is critical to identifying anomalies and opportunities that can improve service outcomes and value for money. As part of DCP's CMLS an online portal will be made available to service providers to submit their acquittals, streamlining and simplifying the reporting process. Acquittal reporting is also an important tool to benchmark cost of service delivery across like service types. Acquittal data can be utilised to understand how different NFPs fund and construct services, which can be used to recognise best practice and share ideas with NFPs that may need assistance to improve their financial viability.



As noted in the draft report, DHS provided examples of where acquittal analysis led to improved financial management and better outcomes. DHS is also reviewing the acquittal process, and is looking to move to a standard process where acquittal is aligned to contracted budget so NFPs will know in advance what is expected.

As noted in the draft report, SACOSS summarised their position regarding contract management as:

*the contract should mandate that services be provided to a relevant standard (as per clause 6 of the new contract template) and the contract management should focus on whether the contract outcomes are achieved. Beyond that, as a general rule the government should let the NFP work out how best to provide those services.*

And recommended:

*the Productivity Commission endorse an outcomes focus in procurement and make recommendations around training of procurement staff to ensure that micromanagement and invasive requirements are kept out of NFP funding. (SACOSS submission)*

In conclusion the Commission is not persuaded that the NFP sector's complaints appropriately acknowledge the need to improve financial acumen and reporting by some NFPs. However, the Commission considers the work currently being undertaken by public authorities has the capacity to acknowledge the impost on NFPs to meet reporting requirements, and the current and proposed further reforms aimed at streamlining the acquittals process.

#### **4.4.5.3 Service Evaluation and Contract Flexibility**

SACOSS considered the extent of prescription of contract provisions, including stipulations such as the level of staff required, administration cost allowances, and policies required by the organisation (beyond quality accreditation).

UCSA gave the example of the three Supported Residential Care contracts they have with DCP that cover five houses. UCSA noted reporting is required for each house. They suggested they could better achieve '*economies of scale that would allow more flexible and better care for young people*' by managing this service through one contract with applicable contract provisions to reflect house-specific issues (e.g. minimum or maximum numbers of residents in each house) (UCSA supplementary submission, 'Changing Goal Posts', 28 February 2019).

CARA suggested taking an alternative approach based on '*the flexibility offered in some NDIS funded services within the same support categories. This would allow flexibility of service delivery within a set budget*' (CARA submission).

To improve flexibility, clarify roles and responsibilities, and maintain standards of care, DCP is streamlining by providing a hyperlink to service specifications and service provision requirements that will be publicly available within the dedicated service provider area of DCP's website. This will enable better engagement about service specifications and provision for Out of Home Care services, and support co-design opportunities.



Standardising agreements will also support exploring opportunities as part of DCP's 2019/2020 procurement program to consider alternate contract structures and arrangements, like those suggested by UCSA in their response, to provide improved flexibility and reduced administration in delivering the required contracted services.

In conclusion, the Commission considers that the new Standard Services Agreement, and the work public authorities are currently undertaking in relation to service evaluations informing subsequent contractual arrangements, will combine to improve the flexibility and sustainability of social and health service contracts.

# Appendices

---

## Appendix 1: The Regulatory Environment

Procurement of goods and services by the SA Government operates within the context of various legislative and policy instruments. The impact of those instruments on the procurement process depends on the scope, intent, and prescribed requirements of those instruments.

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

The principal regulatory instrument that governs goods and services procurement operations in the SA Government is the *State Procurement Act 2004* (the Act), and the *State Procurement Regulations 2005* (Regulations).

#### Purpose and Object of the Act

The Act is established to '*regulate the procurement operations of public authorities; and for other purposes.*'

Section 3 of the Act prescribes the objects of the Act:

#### 3—Object of Act

- (1) *The object of this Act is to advance government priorities and objectives by a system of procurement for public authorities directed towards—*
  - (a) *obtaining value in the expenditure of public money; and*
  - (b) *providing for ethical and fair treatment of participants; and*
  - (c) *ensuring probity, accountability and transparency in procurement operations.*
- (2) *The Board and the Minister must, in administering this Act, have regard to and seek to further the object of this Act.*

#### Interpretations/Definitions in the Act

Part 1, section 4, of the Act states that:

***procurement operations***, in relation to an authority, means—

- (a) *the procurement of goods or services required by the authority for its operations, including (without limitation) the procurement of—*
  - (i) *a supply of electricity, gas or any other form of energy; or*
  - (ii) *intellectual property; or*
- (b) *the management of goods of the authority, including (without limitation) the care, custody, storage, inspection, stocktaking or distribution of goods of the authority; or*
- (c) *the management of the authority's contracts for services; or*

*(d) the disposal of goods surplus to the authority's requirements,  
but does not include operations excluded from this definition by the regulations.*

And:

***public authority*** means—

- (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, but does not include a prescribed public authority;*

And:

***principal officer***, in relation to a public authority, means—

- (a) if the authority consists of a single person (including a corporation sole but not any other body corporate)—that person;*
- (b) if the authority consists of an unincorporated board or committee—the presiding officer;*
- (c) in any other case—the chief executive officer of the authority or a person declared by the regulations to be the principal officer of the authority*

### State Procurement Board

Part 2, section 7 of the Act prescribes the composition of the SPB:

*(1) The Board consists of the following members:*

- (a) the presiding member, being the chief executive of the administrative unit that has, subject to the Minister, responsibility for administering this Act or a nominee of the chief executive; and*
- (b) 8 members appointed by the Governor, of whom—*
  - (i) 4 must be members or officers of public authorities or prescribed public authorities; and*
  - (ii) 4 must be persons who are not members or officers of public authorities or prescribed public authorities.*

- (2) The membership of the Board appointed under subsection (1)(b) must include persons who together have, in the Minister's opinion, practical knowledge of, and experience or expertise in, procurement, private commerce or industry, industry development, industrial relations, information technology, risk management, environmental protection and management, community service and social inclusion.*
- (3) At least 1 appointed member of the Board must be a woman and at least 1 must be a man.*

Part 2, section 12 of the Act prescribes the 9 functions of the SPB:

- (1) The Board has the following functions:*
  - (a) to facilitate strategic procurement by public authorities by setting the strategic direction of procurement practices across government;*
  - (b) to develop, issue and keep under review policies, principles and guidelines relating to the procurement operations of public authorities;*
  - (c) to develop, issue and keep under review standards for procurement by public authorities using electronic procurement systems;*
  - (d) to give directions relating to the procurement operations of public authorities;*
  - (e) to investigate and keep under review levels of compliance with the Board's procurement policies, principles, guidelines, standards and directions;*
  - (f) to undertake, make arrangements for or otherwise facilitate or support the procurement operations of public authorities;*
  - (g) to assist in the development and delivery of training and development courses and activities relevant to the procurement operations of public authorities;*
  - (h) to provide advice and make recommendations to responsible Ministers and principal officers on any matters relevant to the procurement operations of public authorities;*
  - (i) to carry out the Board's functions in relation to prescribed public authorities and any other functions assigned to the Board under this Act.*

### Delegations

Part 2, section 14 of the Act deals with the SPB's delegations, stating that:

- (1) The Board may delegate any of its functions or powers under this Act other than this power of delegation.*

### Prescribed Public Authorities

Part 1, section 4 of the Act provides the following interpretation of a prescribed public authority:

***prescribed public authority*** means a person or body that has been declared by the regulations to be a prescribed public authority for the purposes of this Act;

The Act's interpretation of a public authority in part 1, section 4 includes (c) '*... person or body declared by the regulations to be a public authority for the purposes of this Act but does not include a prescribed public authority*'.

Part 1, section 4 of the Regulations states that '*each of the bodies specified in Schedule 1 is declared to be a prescribed public authority for the purposes of the Act.*' Schedule 1 of the Regulations currently lists the following prescribed bodies:

*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*

Part 2, section 12(1)(i) of the Act states that the functions of the SPB include '*to carry out the Board's functions in relation to prescribed public authorities and any other functions assigned to the Board under this Act.*'

Part 3, section 18 of the Act refers to arranging procurement operations for prescribed public authorities and other bodies:

*The Board may, with the approval of the Minister, undertake or make arrangements for procurement operations for—*

- (a) a prescribed public authority; or*
- (b) a body other than a public authority or prescribed public authority.*

Part 3, section 19 of the Act prescribes that:

- (2) A prescribed public authority (including every member or officer of the authority) is bound to comply with any directions given by the responsible Minister on the advice or recommendation of the Board.*

### Prescribed Procurement Operations

Part 1, section 4 of the Act interprets the meaning of procurement operations and states that it *'does not include operations excluded from this definition by the regulations.'*

Part 1, section 5 of the Regulations refers to the above exclusions in the Act's interpretation of procurement operation and states that:

- (1) *For the purposes of the definition of procurement operations in section 4 of the Act, the following are excluded from the definition:*
  - (a) *a prescribed construction project of a cost exceeding \$150 000;*
  - (b) *the provision of funding to a third party by a public authority that, in accordance with Treasurer's instructions, is classified as a grant.*

### Local Government and Universities

Part 1, section 5 of the Act states that: *'This Act (other than section 18) does not apply in relation to a local government body or a university.'*

As indicated above, section 18 of the Act states that the SPB may, with the approval of the Minister, undertake or make arrangements for procurement operations for a body other than a public authority or prescribed public authority.

### Directions

Part 3, section 19 of the Act prescribes that public authorities are bound by 'directions etc' of the SPB and the responsible Minister:

- (1) *A public authority (including every member or officer of the authority) is bound to comply with—*
  - (a) *any applicable policies, principles, guidelines, standards or directions issued or given by the Board; and*
  - (b) *any directions given by the responsible Minister on the advice or recommendation of the Board.*

Part 3, section 21 of the Act prescribes the Ministerial directions to the SPB:

- (1) *The Minister may give general directions in writing to the Board about the performance of its functions.*
- (2) *A direction may require the Board to take into account a particular government policy or a particular principle or matter.*
- (3) *The Minister must, within 6 sitting days of giving a direction, cause a copy of the direction to be laid before both Houses of Parliament.*
- (4) *The Board must comply with a direction given by the Minister under this section.*
- (5) *Except as provided by this section, the Board is not subject to Ministerial control or direction.*

## Principal Officer Responsibilities

Part 3, section 20 of the Act prescribes the responsibility of principal officers in relation to procurement operations:

- (1) The principal officer of a public authority is responsible for the efficient and cost-effective management of the procurement operations of the authority subject to and in accordance with the policies, principles, guidelines, standards and directions of the Board.*
- (2) In subsection (1), a reference to a principal officer includes a reference to a delegate of the principal officer.*

## **Treasurer's Instructions (TI's)**

Under section 41 of the *Public Finance and Audit Act 1987* (the PF&A Act), instructions are issued by the Treasurer and are administered by the Department of Treasury and Finance (DTF). The PF&A Act regulates the receipt and expenditure of public money.

Unless otherwise specified, Treasurer's Instructions apply to all public authorities as defined under the PF&A Act including prescribed public authorities (except specified universities) and construction procurement activity.

The key Treasurer's Instructions (TIs) that are relevant to SA's government procurement framework are illustrated in Table A.1 below:

*Table A.1: Procurement-related Treasurer's Instructions*

Name	Description
<b><i>TI 8: Financial Authorisations</i></b> <b>November 2018</b>	Applies to public authority financial contracts involving expenditure on goods, services, grant funding, leases or rentals.  Specifies conditions and requirements for financial authorisations based on specified thresholds to enable public authorities to: <ul style="list-style-type: none"> <li>➤ enter into a contract (contract authorisation)</li> <li>➤ make a payment (financial authorisation)</li> <li>➤ vary a contract where that amendment causes the total value of the contract to increase by more than 5 per cent.</li> </ul>
<b><i>TI 12: Government purchase cards</i></b> <b>March 2016</b>	Chief executives are responsible for ensuring purchase cards: <ul style="list-style-type: none"> <li>➤ are only provided to employees with a contract authorisation and the authorised limit does not exceed the contract authorisation limit</li> <li>➤ can only be used in accordance with the public authority's established procurement policies.</li> </ul>
<b><i>TI 28: Financial Management Compliance Program</i></b> <b>May 2014</b>	Chief executives are responsible for ensuring: <ul style="list-style-type: none"> <li>➤ contractor/supplier performance against orders, contracts, service level agreements are regularly monitored and reviewed to ensure services are being received, payments made in line with the agreed arrangements</li> <li>➤ reductions in payments are promptly applied in line with contract documentation where there has been supplier failure</li> </ul>



	<p>(performance). Negotiated trade-offs are not to be applied unless approved by DTF and Crown Solicitor's Office (CSO).</p> <ul style="list-style-type: none"> <li>➤ public authorities must develop, document and implement contract management policies and procedures.</li> </ul>
--	---

## Premier and Cabinet Circulars (PCs)

PCs are used to establish whole-of-government policies and will include instructions or requirements to take specific action on the implementation of those policies.

PCs apply to all public authorities, including prescribed authorities, and to all procurement activity (including construction) unless otherwise specifically excluded.

Key Premier and Cabinet Circulars (PCs) that apply to the SA Government's procurement framework are illustrated in Table A.2 below:

*Table A.2: Procurement-related Premier and Cabinet Circulars*

Name	Description
<b>PC044: SA Funding Policy for the NFP Sector</b> <b>July 2017</b>	<p>Applies to procurement activity within scope of the <i>State Procurement Act 2004</i>.</p> <p>Applies to all public authorities with funding agreements or grants with NFP sector. Specific procurement requirements include:</p> <ul style="list-style-type: none"> <li>➤ 3+3+3 year contract terms</li> <li>➤ minimum 6 months notice to NPFs on contract renewal</li> <li>➤ retain existing NFP supplier at completion of contract without market approach (specific circumstances)</li> <li>➤ apply standard NFP funded service agreement template when paying upfront.</li> </ul>
<b>PC027: Disclosure of Government Contracts</b> <b>December 2005</b>	<p>Chief executives are to ensure all defined 'eligible' and 'significant' contracts are disclosed on the SA Tender and Contracts website within 60 days of the contract being executed.</p> <p>Specific requirements apply for non-disclosure.</p>
<b>PC013: Annual Reporting</b> <b>Revised August 2018</b>	<p>Chief executives must include details on all consultants (irrespective of value), and on contractors that were engaged during the financial year.</p>
<b>PC028: Construction Procurement Policy Project Implementation Process</b> <b>August 2015</b>	<p>Relates to responsibility for construction procurement policy and application of the Project Implementation Process which is applicable by all agencies to every 'prescribed construction project' as defined by Regulations under the <i>State Procurement Act 2004</i>.</p> <p>The Minister for Transport, Infrastructure and Local Government, supported by DPTI has responsibility for policy development and implementation.</p>
<b>PC038: Unsolicited Proposals</b>	<p>Provides a framework and process for the assessment of in-scope unsolicited proposals.</p>

<b>September 2018</b>	<p>Applies to all procurement activity valued above \$3.3 million for infrastructure projects and above \$1.1 million for non-infrastructure (including GST).</p> <p>Goods and service proposals below \$1.1 million are handled directly by public authorities using the SPB's procurement framework (refer to guidance provided in the SPB's Market Approaches and Contracts Guideline).</p>
-----------------------	--

## South Australian Industry Participation Policy (SAIPP)

The SAIPP is established under the *Industry Advocate Act 2017* (the IA Act). The IA Act provides for '*the appointment of the Industry Advocate and to provide for the powers and functions of the Industry Advocate*'.

Part 2, section 4 of the IA Act establishes the SAIPP:

- (1) *The Minister must establish and maintain a policy relating to industry participation in government contracts of a class, or classes, determined by the Minister and specified in the policy (the South Australian Industry Participation Policy).*
- (2) *The Minister must, in establishing and maintaining the SAIPP, seek to promote—*
  - (a) *government expenditure that results in economic development for South Australia; and*
  - (b) *value for money for public expenditure; and*
  - (c) *the economic development of the steel industry and other strategically important industries for South Australia; and*
  - (d) *capable businesses based in South Australia being given full, fair and reasonable opportunity to tender and participate in government contracts.*
- (3) *The SAIPP may operate by reference to, or incorporate, any guidelines.*

The SAIPP applies to:

- all public authorities as interpreted in the *State Procurement Act 2004* plus prescribed authorities (named 'Responsible Government Agencies')
- private parties or suppliers who are contracting to the Government of SA
- all procurement operations as interpreted in the *State Procurement Act 2004* including construction procurement
- the delivery of a service by a third party on behalf of a public authority.

Part 1, section 4 of the IA Act prescribes that the SAIPP does not apply to:

- (e) *the provision of funding to a third party by the authority that, in accordance with Treasurer's instructions, is classified as a grant; or*
- (f) *operations excluded from this definition by the regulations;*

It is noted that there currently are no Regulations under the IA Act.

Part 3, section 6 of the IA Act prescribes 11 functions for the Industry Advocate:

- (a) to take action to further the objectives of the SAIPP (including, without limitation, by building the capability and capacity of businesses based in South Australia to participate in government contracts);*
- (b) to receive and investigate complaints by and on behalf of business and their industry representatives about the SAIPP;*
- (c) to make recommendations (taking into account requirements under any other law) to responsible officers for procurement and principal officers of public authorities to resolve complaints, remove impediments or improve procurement practices and processes;*
- (d) to refer unresolved complaints and issues to the Minister for consideration;*
- (e) to review, and assist in the negotiations for, Industry Participation Plans to ensure they comply with the SAIPP prior to the finalisation of contract conditions;*
- (f) to investigate and monitor compliance with the SAIPP by participants in government contracts;*
- (g) to take action to promote and ensure compliance with the SAIPP, including by issuing directions to participants in government contracts requiring them to comply with their contractual obligations in respect of the SAIPP and reporting to the Minister in relation to non-compliance where appropriate;*
- (h) to encourage the adoption of industry participation policies by local government;*
- (i) to investigate and monitor compliance with local government industry participation policies by participants in contracts to which such policies apply;*
- (j) to take any other action considered necessary for the purpose of exercising the functions conferred on the Industry Advocate;*
- (k) to exercise other functions conferred on the Industry Advocate by the Minister or under this or any other Act.*

The SAIPP was first established in 2005 and required Industry Participation Policy Plans (IPP Plans) to be developed for procurements valued over \$10 million. In 2012, the SAIPP was amended to broaden the scope of projects and contracts covered and introduced a tiered approach with different compliance requirements. In February 2013, the Office of the Industry Advocate (OIA) was created and in 2017, the *Industry Advocate Act 2017* was introduced. Since 2013, the SAIPP has been amended five times with changes to thresholds, weightings and scoring. Further information on the amendments is provided in Chapter 3.

The current SAIPP requirements include:

- Public authorities are required to:

- include a request that suppliers are to complete an Economic Contribution Test (ECT) or IPP Plans in their invitation to supply documentation for tenders valued over \$33,000
- include the weighted (or non-weighted) ECT or IPP score when completing their evaluation of the tender responses
- seek at least one quote from a business based in the region for procurements valued over \$33,000
- report annually on ECT/IPP scores applied to contracts executed during a financial year.
- Suppliers who are bidding for a contract are required to:
  - complete an online Economic Contribution Test (ECT) or an IPP Plan
  - provide information on the level and value of locally sourced labour and/or local physical inputs that are estimated to be used by that supplier to deliver the contract.
- Department of Innovation and Skills (DIS) is required to:
  - review the completed ECT/IPP and calculate a score based on the information provided. A 15 per cent+ weighting is applied to the score if the project is valued over \$220,000
  - provide the score to the public authority to include in their evaluation.

Responsibility for the SAIPP is assigned to:

- Treasurer – the responsible minister for the *IA Act 2017*
- Industry Advocate – advocacy, compliance and directions as per the *IA Act 2017*
- Department for Innovation and Skills (DIS) – administers the application of the SAIPP.

### **Aboriginal Economic Participation Policy**

The Aboriginal Business Procurement Policy was developed in 2014 to cut red tape and support SA Aboriginal-owned businesses. In 2017, the policy was merged with the Industry Participation Policy and called the Aboriginal Economic Participation Policy.

The policy's aim is to increase the number and diversity of Aboriginal businesses successfully winning SA government contracts and provide incentives for lead contractors to create opportunities for Aboriginal employment and enterprise.

Under the policy:

- Government agencies can procure directly from businesses listed in SA's online Aboriginal business register up to the value of \$220,000.
- For tenders greater than \$220,000, the Industry Participation weighting in tenders can be increased to provide Aboriginal businesses, and businesses with high Aboriginal employment or subcontracting, with more opportunity to win tenders.

### **International Obligations**

The South Australian Government is a signatory to, or has agreed to comply with, various free trade and government procurement agreements. Principal officers are required to ensure that their public authority complies with the procurement obligations included in those agreements that contain a government procurement (GP) chapter.

Currently, agreements that include a GP chapter to which SA is a participant are:

- Australia New Zealand Government Procurement Agreement (ANZGPA)
- Australia–United States Free Trade Agreement (AUSFTA)
- Chile–Australia FTA (CHAFTA)
- Korea–Australia FTA (KAFTA)
- Japan–Australia Economic Partnership Agreement (JAEPA)
- Singapore–Australia FTA (SAFTA).

The government procurement obligations in the above agreements apply to:

- public authorities that are included in the SA Government’s market access offer and listed in each FTA (generally consistent with those public authorities that are within scope of the *State Procurement Act 2004*)
- procurement activity that is valued over a specified value threshold inclusive of GST: \$657,000 for goods and services; and \$9,247,000 for construction (except the ANZGPA which has no minimum value threshold).

Specified exemptions or exclusions from the agreements can vary according to each agreement. Further information is available in Appendix 3 of the SPB’s International Obligations Policy.

Most agreements include specific requirements or obligations with respect to:

- limited procurement (including direct negotiation)
- prequalified or panel type arrangements
- tender call timeframes.

The SPB has embedded the specific free trade agreement requirements (such as the conditions for limited tendering) in the SPB’s procurement policy framework.

### **Other Regulatory Instruments that Impact on Government Procurement**

Other regulatory requirements that can impact on the operation of the SA Government’s procurement of goods and services include:

1. The *SA Independent Commissioner Against Corruption Act 2012*
2. SAicorp’s ‘*Government Contracts: A Guide to Insurance and Liability Issues*’
3. SA Code of Ethics under the *Public Finance and Audit Act 2009*
4. Competitive neutrality policy and principles for government business enterprises
5. *Climate Change and Greenhouse Emissions Reduction Act 2007*
6. *Modern Slavery Act 2018 (Cth)*
7. *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*

## Appendix 2: List of Submissions for the Issues Paper

Number	Organisation Name
1	<u>Adept Technology</u>
2	<u>Air Conditioning and Mechanical Contractors' Association of SA (AMCASA)</u>
3	<u>Antony Thus</u>
4	<u>Associated Newsagents Co-operative (SA) Ltd</u>
5	<u>Australian Industry Group (AiGroup)</u>
6	<u>Australian Institute of Architects and Association of Consulting Architects</u>
7	<u>Australian Medical Association SA</u>
8	<u>Australian Medical Placements</u>
9	<u>Baptist Care</u>
10	<u>Bus and Coach Association SA</u>
11	<u>Business SA</u>
12	<u>CARA</u>
13	<u>City of Victor Harbor</u>
14	<u>Colin Fullerton</u>
15	<u>Consult Australia</u>
16	<u>COTA SA</u>
17	<u>Department for Industry and Skills</u>
18	<u>Don Dunstan Foundation - includes Attachments 1 to 3</u> <u>Don Dunstan Foundation - includes Attachments 4 to 5</u>
19	<u>Engineers Australia</u>
20	<u>Green Industries SA (GISA)</u>
21	<u>Industry Advocate and Office of the South Australian Chief Entrepreneur</u>

Number	Organisation Name
22	<u>Leunig Advisory</u>
23	<u>Life Without Barriers (LWB)</u>
24	<u>Liz Higgins</u>
25	<u>Mark Parnell MLC</u>
26	<u>Mike Ford</u>
27	<u>Motor Trades Association of South Australia (MTA SA)</u>
28	<u>Office of the Industry Advocate</u>
29	<u>Paul Rogers</u>
30	<u>Restaurant and Catering Industry Association</u>
31	<u>Royal Flying Doctor Service (RFDS)</u>
32	<u>Small Business Commissioner South Australia</u>
33	<u>Social Change Headquarters</u>
34	<u>South Australian Council of Social Service (SACOSS)</u>
35	<u>South Australian Council of Social Service - Supplementary</u>
36	<u>South Australian Country Womens Association Association (SACWA)</u>
37	<u>Tindo Solar</u>
38	<u>Uniting Country SA Ltd</u>
39	<u>Uniting Country SA Ltd - Supplementary</u>
40	<u>Volunteering SA &amp; NT</u>
41	<u>Wildcatch Fisheries SA</u>
42	<u>Your Nursing Agency Pty Ltd</u>



### Appendix 3: List of Submissions for the Draft Report

Number	Organisation Name
1	<u>Akina Foundation</u>
2	<u>ANCOL SA</u>
3	<u>Business SA</u>
4	<u>Buyability</u>
5	<u>Community Capacity Builders</u>
6	<u>Office of the Industry Advocate - Submission 1</u>
7	<u>Office of the Industry Advocate - Submission 2</u>
8	<u>Paul Rogers</u>
9	<u>SACOSS</u>
10	<u>Small Business Commissioner</u>
11	<u>Social Change Headquarters</u>
12	<u>Social Traders</u>
13	<u>The Stretton Centre</u>
14	<u>VendorPanel</u>
15	<u>Wicked Lab</u>