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Dear Dr Butlin

Government Procurement Inquiry Stage 2 Draft Report - Response

Thank you for the opportunity to respond to the "Draft Report – Inquiry into Government Procurement Stage 2" (Report) dated 30 August 2019.

The Office of the Small Business Commissioner (OSBC) is an independent statutory office. The legislation underpinning the OSBC is the *Small Business Commissioner Act 2011* (SBC Act) and a key aim is to resolve disputes or complaints in a timely manner without the need for litigation.

In addition, Section 5 (h) of the SBC Act provides me with the ability to present a submission in response to the Report.

Draft recommendation 2.1 – Support the transition to state-wide category management and improvement of value for money

I do not support the recommendation that prescribed public authorities (PPA's) should adopt relevant whole-of-government goods and services arrangements for their common purchases unless current arrangements achieve superior administrative efficiencies and economic benefits.

As detailed in my submission to the *Inquiry into Government Procurement Stage 1*, it is important that the financial analysis of whole-of-government contracts takes into account the economic impact on small businesses in the same industry excluded from such arrangements, particularly in regional areas.

I remain unconvinced that mandated whole-of-government goods and services arrangements take into account the efficiencies which can be secured when using local suppliers eg time savings. The Whole of Government Stationery Contract is a prime example of the pursuit of cost savings, without proper and fulsome economic analysis, and ultimately at the expense of small business.

From the information included in Table 5.4: Location of supplies by year located on Page 207 of the Report, on the face of it, it is concerning that there appears to be significant drop-off in the location sourcing relating to regional suppliers. As I have stated previously, considerable concern and frustration has been expressed by businesses located in regional areas about the lack of access to State Government supply contracts.



Draft recommendation 3.1 – Strengthen Procurement Capability amongst smaller Prescribed Public Authorities

I understand that this recommendation supplements Recommendation 2.9 from *Inquiry into Government Procurement Stage 1* which proposed the State Procurement Board and the Department of Treasury and Finance sponsor a community of practice for the heads of agency procurement professionals to assist agencies to improve their procurement capability. I support this recommendation.

Draft recommendation 3.2 – Capability development strategy be expanded to construction procurement

This recommendation builds on Recommendation 2.10 from *Inquiry into Government Procurement Stage 1* which has been supported by the South Australian Government in *The South Australian Government's Response to the South Australian Productivity Commission Inquiry into Government Procurement Stage 1*. The Government acknowledged that the capability of agency procurement staff is important in supporting the achievement of its strategic direction.

I note that the State Procurement Board's Capability Development Strategy 2017-2019 is currently due for review. The State Procurement Board has committed to developing a new strategy, together with an operational plan incorporating each of the matters raised by the South Australian Productivity Commission and is due for completion by 31 December 2019.

I will be monitoring the implementation of this new strategy closely to ensure that appropriate training is given to staff undertaking procurement roles so that they have the requisite capabilities to undertake their role proficiently and effectively.

Draft recommendation 3.3 – Better tracking of performance in construction procurement

The Report identified that there were serious issues both in the recording of and access and retrieval of information regarding construction procurement. The Report also found that the Department for Planning, Transport and Infrastructure (DPTI), who play a central role in construction procurement was not able to easily retrieve information on projects it managed on behalf of agencies. I understand that DPTI is currently working on improvements to its processes in this regard.

The Report finding an absence of holistic contract management is most concerning, given that there have been financial collapses of three head contractors on State Government initiated construction procurement in recent years. As detailed in my previous submission of 1 July 2019, these failures have had a significant financial impact on several subcontractors, many of which were small businesses.

It is of utmost importance that contracts are closely managed throughout the construction project, so that problems can be identified early. This allows for any emerging risk to be managed, limiting the likelihood of project failure. This practice would also offer better protection to subcontractors engaged on projects from experiencing the potential financial hardship that follows the collapse of a head contractor.

As outlined in the Report, whilst the State Government often does not have a direct contractual relationship with the subcontractors engaged on a construction project, given the substantial investment of the State Government in infrastructure projects, it has an interest in the stability of the construction industry and a moral responsibility to operate at the highest standards.

Draft recommendation 4.1 – Reform of reporting requirements and actions to strengthen SA Government’s whole-of-government procurement be extended to cover construction procurement

Following the findings of *Inquiry into Government Procurement Stage 1* where the Commission found that South Australia’s reporting of goods and services procurement activity and performance was inferior when compared to other jurisdictions, the State Government in *The South Australian Government’s Response to the South Australian Productivity Commission Inquiry into Government Procurement Stage 1* supported recommendation 2.7. This recommended that the government commit to reform of 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.

This recommendation builds on Recommendation 2.7 from Stage 1 to include construction procurement.

The State Procurement Board has committed to work with the largest government agencies to develop a reporting regime at state level which will include metrics for:

- capability;
- value for money
- fairness of process
- supplier feedback on the process and supplier engagement; and
- cost of the procurement process.

I understand that this process is due for completion by the end of February 2020, and is proposed to take effect from 1 July 2020.

I would expect to be kept informed of the work being undertaken in this regard by the State Procurement Board due to its potential impact on small businesses eg “value for money”.

I support this recommendation as I believe the requirement to report on the metrics listed above across government will result in improved record keeping, tracking performance, accountability and responsibility. Such assessment will also offer valuable information for future procurement and offer opportunities for continuous improvement of the procurement process. Collection of this data will also facilitate comparisons of South Australia’s procurement activities with other jurisdictions.

Draft recommendation 4.2 – Policy and practice amendments to encourage innovative procurement offerings in government procurement including acceptance of inherent risks involved in procuring innovative products; procedures to support innovative tendering; and identification of areas that would benefit from innovative purchase practices

The Report acknowledges that there is limited guidance material available from the State Procurement Board for agencies to draw upon to encourage innovation through procurement. Engaging in innovative procurement practices and proper assessment of innovative procurement proposals may also be impeded by the requirement for adherence to policies on probity, ethical behaviour.

The mandate needs to be clear from Government where there is a greater level of risk in Government procurement there is a greater risk of failure. Both the Government and the Auditor-General must be prepared to find this risk acceptable and acknowledge that there is an increased risk of failure. Failure not attributable to negligence should not be punished, but learnings taken from it. This must also be accompanied by a greater level of oversight to mitigate the risk of failure and identify any difficulties at the earliest opportunity.

Draft recommendation 4.3 – To reduce the impediment to innovation and improvement that aspects of current contracting arrangements may impose, it is proposed that a clearer set of arrangements be put in place including improved guidance on the State Government Intellectual Property Policy; greater flexibility in contract provisions; and guidance on managing intellectual property through the procurement process

I note that concerns were raised in the Report from Business SA from supplier feedback regarding the requirements for Intellectual Property ownership by the Government. There will certainly need to be a major shift in this area as it was reported as a major barrier to supplying goods and services to government.

The *State Government Intellectual Property Policy* needs to be a living document that can be updated quickly in response to an ever-changing environment.

Finally, in relation to the overall future state procurement framework referred to under 6.3, my preference is for Option C - Procurement SA.

It is my strong view that the current existing architecture under the State Procurement Board has run its course.

For me, effective and positive change will only emerge from a new entity which will have a very specific charter of change and accountabilities should the State Government agree to the final recommendations of the Productivity Commission Stage 2 review.

Given procurement is one of the major expenditures of the State Government, it does warrant the establishment of a body which has greater authority across Government and the resources to properly assess and advise the Government of the true economic impacts of its procurement plans.

The coverage of the Procurement SA should include public authorities in terms of policy and oversight to ensure there is a genuinely whole of government approach to procurement.

I trust you will find this information useful and should you have any queries, please do not hesitate to contact me on 08 8303 2026.

Yours faithfully

A handwritten signature in black ink, appearing to read 'John Chapman', with a long horizontal line extending to the right.

John Chapman
Small Business Commissioner
20 September 2019