

Comments by Colin Fullerton on Issues Paper for the Government Procurement Inquiry

1. Purpose of Inquiry

The Small Business Commissioner invited me to provide comments on the Issues Paper issued by the Government Procurement Inquiry (document dated 16 November 2018).

I understand that the South Australian Productivity Commission has been asked to evaluate the effectiveness and efficiency of State Government policies and practices for the procurement of goods and services.

2. My Background

I am a nationally registered and chartered civil engineer. I am currently working as a private consultant practicing in the areas of procurement/contract management and dispute resolution.

I am an accredited mediator, arbitrator, adjudicator, and expert determiner.

During my working career I have held senior positions in procurement and contract/project management in a number of industries (railways, mining infrastructure, water and sewerage, transport services, electricity transmission). This work has included managing staff involved in preparing tender documentation, evaluating tenders, forming contracts, and the administration and management of contracts during the delivery phase for works, goods and services.

I also present training courses in procurement and contract management as a consultant to the University of Adelaide (Professional & Continuing Education).

3. General Comments

The process set out in the Issues Paper describing the South Australian Government Procurement System appears to me to be an adequate system to manage government procurement, and is not dissimilar to the processes used when I was working in government procurement (water, and rail and transport services).

Experience has taught me that it is not just the design of the system that is important - but how the system is used and managed.

The stakeholders and representatives involved in the procurement process have an important role in ensuring that the procurement process is managed in such a manner that it is seen to be efficient, cost effective, and produces an optimum outcome for government and the suppliers of goods and services. On-going effort is needed to achieve the required outcomes.

4. Detailed comment

4.1 Delegation and Accountabilities

I support the design of the current procurement system - where the State Procurement Board administers the State Procurement Act and delegates certain authorities to particular principal officers in each public authority, and provides policies, training and directions etc.

I consider that It is important that the system produces a consistent approach to procurement across Government to achieve the objectives stated in the Issues Paper.

Others who have been 'exposed' to the system will be in a better position to comment on how well the current system is working.

Different government authorities operate in different environments - where different issues need to be addressed.

Full details on how well this system is currently operating is not provided in the Issues Paper. Important procurement matters include:

- the skills of the respective principal officers and their delegates;
- how effectively government groups are communicating with each other and with their suppliers, and stakeholders
- how problems are being resolved

4.2 Performance of parties in achieving successful outcomes, and compliance issues

The Issues Paper provides some business views where business stakeholders have raised issues in specific areas which need to be explored during the inquiry. However further details and examples would be useful.

The issues mentioned by 'business' seem to indicate that communications between government and business need to be improved. My experience as a consultant in contract management and dispute resolution indicates that effective communications are important to avoid differences escalating into disputes, and to ensure that procurement goals are achieved.

My experience has highlighted the following procurement matters:

- risks are not always clearly identified and clearly allocated to the parties
- risks are often pushed down to contractors and subcontractors – it is best to allocate risks to the party who can best manage the risk.
- Training of staff involved in procurement needs to be given a high priority. The Issues Paper states that the Board in 2019 is implementing a course in '*communications and debriefing suppliers*'. I consider that training should be much broader and should also include procurement processes and managing supplier performance. Business has asserted that government agencies do not have '*experience or capability to effectively evaluate tenders*' – this suggests that additional training may assist in this area – see later comment.
- Recent information I have gathered suggests that generally contract/project delivery standards have fallen. Self-regulation has not worked in a number of areas. There is a real need to provide independent inspectors and auditors to ensure that contractors/suppliers meet their contractual obligations. Defective work practices need to be identified early to enable prompt rectification (eg; safety matters). There have been many examples where suppliers and service providers have not met contractual obligations. Certifiers should be used more generally to audit work to ensure that goods and services meet the required standards.
- Recently a number of building contractors and subcontractors have suffered financially. Prompt progress payments will assist in maintaining the necessary cash flow levels. Government has been criticized for delaying payments – this needs to be addressed. Disputes can be avoided between contracting parties if the differences are resolved promptly - and improved skills in negotiation and communications can assist.
- *The process used should match the problem.* My experience indicates that resources should be more focussed on the higher risk areas. 'Red tape' can be reduced for the more routine matters (not always tied to the dollar value of the procurement) and more attention given to the areas where if the risk is not managed effectively - the flow on effect is serious.

(Examples; building cladding not meeting fire protection standards, electrical equipment failing causing power outages).

In response to the '*business concerns*' mentioned in the Issues Paper:

- Tender documents should be 'tailored' to match the scope of work, the risks involved and the nature of the goods and services. Standard tender response schedules, completed by all tenderers, can be useful when comparing different offers from suppliers.
- Government representatives need to have a good understanding of the supplier market available prior to selecting the tendering model, and for selecting companies who will be invited to tender. Suppliers may provide information for Government which may assist in producing more appropriate specifications.
- In response to the business stakeholders comment in the Issues Paper regarding the capacity of public authorities to evaluate tenders; my experience tells me that tender evaluation teams need to be carefully selected so that all the necessary skills required are covered by the team. This will often require technical, commercial/contractual, and financial skills.
- Matters such as confidentiality and probity need to be addressed.
- Evaluation plans need to be developed which are aimed at selecting appropriate evaluation criteria to 'measure' the offers and implement a process that is thorough, efficient, cost effective and transparent.

Yours sincerely

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17 December 2018