



**Small Business
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Dear Dr Butlin

A handwritten signature in black ink, appearing to read 'Matthew', written over the typed name 'Dear Dr Butlin'.

Review into Procurement in South Australia

Thank you for the opportunity to respond to the “*Draft Report – Inquiry into Government Procurement Stage 1 dated 25 March 2019*” (Report).

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.

I am pleased that the State Government has extended the terms of reference to include capital procurement and public authorities prescribed under the *State Procurement Regulations 2005* and note that issues specific to this area will be dealt with in a second stage process. I look forward to making a submission to that section of the review in due course.

I will respond to issues raised in the Report where appropriate to my role and/or where procurement issues have been raised with me.

2.2.1 Lack of Transparency

The issue of transparency and timeliness of the process of procurement is raised with me on a regular basis. Small businesses which go to the effort of lodging a tender become frustrated when there is no response or a refusal to provide any information in relation to the status of a tender process. The internal government process seems to favour silence under the cloak of “probity”.

There needs to be a process when the tender is called which sets out the requirements and timeframes for the decision-making process. The agency then needs to be accountable for delivery against those timeframes and if there are delays, the tendering parties are updated.

2.2.2 Lack of engagement, market knowledge and awareness of local capability.

Previously the “Meet the Buyer” events provided excellent opportunities for small businesses to engage with state government agencies and the decision makers and/or users of goods and services.



These forums went a long way in reducing the mystique of government purchasing and processes.

It is fair to say that we often *'don't know what we don't know'* in relation to procurement. This is in the context of what particular and innovative solutions may exist in the market place.

Resourcing for "Meet the Buyer" events should be reinstated.

The Industry Advocate's Product Register at <https://industryadvocate.sa.gov.au/sa-product-register/> should continue to be developed as a tool to assist the public and private sectors awareness of what suppliers exist in the local market.

The concept has received strong support from small businesses who can cost effectively promote their products on the basis of what is created, manufactured and supplied in South Australia which is another important tool in developing employment and the economy.

The Product Register more comprehensively supports local businesses and potential buyers than the National Industry Capability Network (ICN). The ICN is supposed to provide a digital business connection between procurement opportunities and businesses but there is a distinct lack of awareness from both small and medium businesses and also the SA Government if my recent online search is used as an example. In addition, some tenders, including those from State Government are hidden from view unless a business pays for a "premium" viewing package.

There is an opportunity for the State Government to use its buying power in a properly developed forward procurement planning process to provide visibility to tenders but also for staff to access information on potential suppliers and what they can deliver.

The www.tenders.sa.gov.au website is a very useful tool in terms of current project tendering. But it is noted that in a recent search of "future tenders" only three were listed which reinforces the need for agencies to publish future procurement plans.

While many small businesses need to "sell" themselves better, there is an opportunity for the Government to assist them in connecting better with public sector purchasers.

Smaller agencies, in particular, struggle to adequately define their business needs in some of the more complex procurement areas such as IT.

The expertise to specify requirements in the detail required rarely exists and there needs to be appropriate support mechanisms to these agencies where they can gain expert, detailed and prompt assistance.

2.2.3 Risk averse agency procurement culture

While businesses may be frustrated with the responsiveness in the procurement context in the public sector, equally there is fear within that any potential and inadvertent slip, may lead to criticism or worse from senior management, the Auditor-General, the Ombudsman or the Independent Commissioner Against Corruption (ICAC).

The continued requirement of the State Government to own the intellectual property is questionable and stifles innovation.

Businesses which may be developing particular intellectual property are reluctant to cede ownership to the State, when they believe it may have a much greater value in the open market.

I believe there is an opportunity to undertake a deeper dive into SA Government procurement records to identify contracts where intellectual property was retained by the State and whether, as a result, the State actually capitalised and onsold / marketed the intellectual property.

2.2.4 Red Tape

Notwithstanding the identified reforms the State Procurement Board (SPB) has made to the procurement process, the time involved in preparing a tender still remains a significant burden on business as identified on page 55 of the Report.

The State Government needs to implement as a priority through the Industry Advocate in conjunction with the SPB, a system which allows basic business data to be prepopulated into subsequent tender documents regardless of whether it is the same or different agency.

Balancing this requirement is that of procurement officers to fully understand the information which is being provided eg: financial information.

I am aware of three separate cases where inadequate review of financial data and/or warning signs of financial difficulty from the contracted firm, have ended in financial failure of the party contracted to the Government and this in turn has led to many subcontractors and suppliers facing substantial losses.

2.2.6 Delay and Lack of Accountability from Public Authorities

Timeliness in the decision-making process and management of contracts is essential to small businesses which often do not have the ability to shuffle resources because commitments by Government buyers have not been met or decisions have been delayed for whatever (and usually unknown) reasons. This comes at a considerable financial cost to the business and can also lead to a loss of faith in the project partners which further damages the project.

Comments on payment times in the Report are noted. 30 days should be seen as the outside with a better outcome being 15 days from invoice as a first step. It is noted that NSW is moving to a 5 day payment cycle by December 2019 and it would be beneficial for the SA Government to monitor these developments with a view to quickly replicating them under a new payment system.

It should be incumbent on all agencies to ensure not only are payments made according to the terms and conditions agreed in the contract, but that payments are also made in a timely fashion down the contractual chain to subcontractors and suppliers.

Simply, the State Government should not deal with parties which do not pay their suppliers in accordance with agreed terms. If that means some companies missing out on future government work, so be it.

There appears to be no penalty for businesses which do not engage in fair payment practices and continue to seek to enjoy the benefit of using small businesses as their banks.

I will have more to say on this particular issue in my response to the Stage 2 of the Procurement Inquiry which will consider issues surround capital works procurement.

2.2.7 Barriers to Innovation

The aggregation of contracts has emerged more as a convenience to government rather than a system which delivers benefits to business and its government partner/s.

Aggregation further limits the ability of small to medium businesses to offer innovative solutions to particular supply needs.

There has been a tendency, from my observations, to roll over contracts because of convenience and lack of procurement planning (and accountability for same).

Interestingly there is also evidence that familiarity (and possibly complacency) works against new businesses which may secure a position on a panel contract.

The Stationery Contract was, and remains, an example where there seems to have been little change to buying patterns due to the ease in which purchasing officers can obtain products from large suppliers who they have been familiar with for quite some years as opposed to testing a new supplier and their products.

It is also noted that the Basware system requirements appeared to work against some of the new suppliers in the Stationery Contract due to the requirements for the new supplier and purchasing agency to "load" information into the system.

I have an ongoing matter with a Government agency whereby a small business had been offering to supply a potential service to the agency and had been communicating at various levels including to the Minister for more than four years.

Of great concern, is that the agency recently decided to provide the service "inhouse" using underutilised resources without exploring the opportunity provided by the public sector.

This has left the small business which commenced providing the service privately in September 2018 in fear that its business model is going to be destroyed as the agency concerned advances its pilot project.

This matter appears to be in serious breach of the Government's objective for greater private sector involvement in the delivery of services to the community.

2.2.8, 3.1.3.2 and 3.2.2 Value for Money & Information Request 3.1

As noted in the report, there is a deal of uncertainty as to what constitutes "Value for Money" which should be clarified.

The cheapest cost is not necessarily the best. In particular, there is strong evidence in regional South Australia that whole of government contracts have not taken into account the loss of employment at community level.

As such, while the headline savings of a large statewide contract may appear attractive, when studied in closer detail, there has been no full economic analysis which would take into account, for example, the loss of employment locally as part of the contract appraisal.

It is a hidden cost which has some very real and negative results for small businesses and the communities in which they reside.

The relevant SPB Policy "Value for Money in Procurement Guideline" does not, in my view, adequately explain the concept of "Value for Money".

The Public Value concept is obscure and vague when applied to the actual market place. It requires a detailed knowledge of "government priorities and objectives" which change on a regular basis.

Simply the priorities need to be a strong economy which encourages business growth and employment and State Government procurement processes should adhere to these goals.

I question the usefulness of the current concepts:

Economy: utilising the cheapest resources on a total cost of ownership basis to achieve the required procurement objectives – "spending less".

Efficiency: using the least amount of resources to achieve the required outcome – "spending well".¹

¹ Value for Money in Procurement Guideline – State Procurement Board Issue Date January 2018

It is not always about “spending less”. Too often in my role, I see the results of Government seeking the lowest cost without adequately understanding the risks of potential failure to deliver. As to whether this is being exacerbated by the need to achieve agency budget savings targets may warrant further research.

Secondly, as Government moves to encourage entrepreneurship and expansion of existing SA businesses, procurement needs to be adaptable to support innovation as proposed by the Industry Advocate and Chief Entrepreneur under a “Smart Procurement Policy”.

There is some evidence that, particularly in the building and construction sector, Government opts for the cheapest tender which on the surface may seem a reasonable approach. But in some cases, the tenderer is desperately seeking work to ensure cashflow and will “low ball” the tender so as to get the work with the hope of making up the shortfall at a later point in variations.

There is an argument that in major tender processes the lowest bid should be automatically excluded if it was percentage factor (to be determined) less than the next lowest tender as my rationale is that would eliminate “low ball” tenders.

The SA Productivity Commission may wish to inquire further with agencies and evaluate tender outcomes to verify this proposition.

2.3 Issues Specific to the Not for Profit Sector

There is increasing concern within the Not for Profit (NFP) sector that they are being subjected to different rules in terms of the provision of services to the Government.

I have been advised that contracts have been drawn up which have a right of recovery for unspent funds to be returned to the agency where expected use of services has fallen short of forecasts as opposed to a failure to deliver the services.

Such a process makes it difficult for NFPs to continue to provide services to Government.

NFPs have their own internal and often significant cost structures and there appears to be a view within some quarters of Government that they have an unlimited financial capacity when the opposite is true.

2.4.7 Capability and Capacity

It is noted that agencies concede there is still some way to go in terms of procurement capability and capacity.

In my view to further advance this area, there should be mandated training at an executive level on procurement requirements in Government. Such training would assist in lifting the ability of those who are ultimately key decision makers in the procurement process to deliver projects efficiently, effectively and with a true view on what is “value for money.”

3.2.3 Data

There is a significant opportunity for the State Government to improve its capture of procurement related data.

From the Report, it is clear that there is no co-ordinated approach to reporting.

As such, the State’s biggest business ie. the Government, does not have a consolidated view of procurement and, in particular, key performance benchmarks. It is noted that SA Health has commenced an approach to performance measurement which encompasses items including completion, payment times and contract management.

It is my view that the State Procurement Board has a role in implementing a whole of government approach to data management and analysis which should be reported on a timely and public basis.

From the Report, it appears this lack of data analysis is having an impact on the ability to properly assess the effectiveness of the Industry Participation Policy (IPP).

Effective analysis of such data would provide the Government with better opportunities to identify best practice in procurement.

I note and support that amendments may be required to the *State Procurement Act 2004* and *State Procurement Regulations 2005* to improve data capture, analysis and management.

Information Request 3.6

One of the regular complaints which I come across is that there appears to be little understanding within the public sector of the operating environment for small businesses when it comes to tendering for Government work.

While Government has significant resources at its disposal, small businesses do not have that capacity and what may seem like a simple change to the public sector to a tender process can have a significant impact on a business which has to decide whether it will (or can afford to) continue to commit to trying to win Government work when there is a serious lack of definition of a project due to a lack of knowledge within the public sector on either the project itself or the procurement process.

This reinforces the need for the Government to continue to provide training on tendering to small businesses.

Information Request 4.14

It is of concern that there appears to be a continuing tendency towards aggregating contracts.

This directly impacts small businesses who simply do not have the resources or capital to compete for large contracts with their inherent risks and benefits.

This has compounding effects in regional areas where aggregation of contracts results in larger metropolitan or interstate based companies moving into areas at the expense of local contractors and suppliers.

In recent times, I understand that DPTI is aggregating the \$90m Port Wakefield overpass and duplication project with that to the \$200m Joy Baluch Bridge duplication at Port Augusta.

This approach potentially limits the number of head contractors which have the financial and resource capacity for such work.

Information Request 6.7

The *Late Payment of Government Debts (Interest) Act 2013* needs to be urgently amended to ensure that Not for Profit entities are not excluded from the Act.

In many cases Not for Profits are in effect small businesses and to exclude them as a result of their Not for Profit status is not appropriate.

Concerns have been raised with me by small businesses and NFPs delivering in the social services sector that they often have great difficulty in securing timely payment.

The most recent amendments to the *Late Payment of Government Debts (Interest) Act 2013* were designed to pay interest on accounts not paid within 30 days.

This standard should apply to all businesses and NFPs dealing with the State Government.

Draft Recommendations

In relation to the draft recommendations provided in the Report:

- Draft Recommendation 5.1 – Supported
- Draft Recommendation 5.2 – Supported
- Draft Recommendation 5.3 – Supported
- Draft Recommendation 5.4 – Supported
This is an extremely important area where the Government has a role in helping small businesses build their procurement capacity. The current system favours larger businesses which have internal procurement management resources.
- Draft Recommendation 5.5 – Supported
- Draft Recommendation 5.6 – Supported
A meaningful forum for the exchange of information on procurement within the public sector is long overdue.
- Draft Recommendation 6.2 – Supported
- Draft Recommendation 6.3 – Supported
- Draft Recommendation 6.4 – Supported
- Draft Recommendation 6.5 – Supported

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



John Chapman
Small Business Commissioner
16th April 2019