



# Public Sector Procurement

Life at the coalface

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*"coming together is a **BEGINNING**;  
keeping together is **PROGRESS**;  
working together is **SUCCESS**."*

Henry Ford



4<sup>th</sup> February 2019

Ben Woolford

Business SA

benw@business-sa.com

[RE: Business SA Procurement Round Table 5<sup>th</sup> February 2019.](#)

Dear Ben,

[Adept](#) appreciate the opportunity Business SA has provided us to contribute to the SA Productivity Commission Inquiry into State Government procurement.

I have taken the liberty of preparing a document which sets out some of Adept's views and experiences with SA Government Procurement and I provide this to you to use as and if you see fit.

Regards,

Rob Silva

[Adept Technology](#)

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## I. Introduction & Purpose

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On 31<sup>st</sup> October 2018, the Marshall Government requested that the SA Productivity Commission undertake an “Inquiry into Government Procurement” of goods and services.

Adept did not provide a submission directly to the Inquiry but in late 2018 responded to a survey undertaken by Business SA of its members on the matter. Adept was subsequently contacted to elaborate on some of its free-text survey responses and later invited to participate in a meeting to be held on 5<sup>th</sup> Feb 2019 between Business SA, a number of its members and the Productivity Commission.

This document does not directly address the Inquiry’s terms of reference but instead seeks to outline a range of experiences and observations over the last two decades. These experiences reflect a combination of the author’s personal experiences as well as those of Adept more generally.

### I.1. About Adept

To contextualise the information provided in this paper, we provide some brief information about Adept.

Quoting from the Adept’s website:

*Adept is a professional services company that specialises in accelerating the successful delivery of ICT initiatives and projects.*

*Founded in 2004, Adept fills a need for experienced, mature and proven leadership with ICT, project and software/product expertise.*

*Our pragmatic, hands-on approach reduces risk and increases the certainty of a successful technology outcome; especially where there is significant change, growth or tight deadlines.*

*We work with your team in a flexible and adaptable way to deliver tangible business benefits.*

Adept is a South Australian owned and operated organisation with annual revenues in the \$2m range and employing a small team of highly-experienced consultants to service its client base. Adept’s experience of government procurement arises from:

- Its own business development activities
- Advising/assisting Adept’s clients to undertake their own commercial activities
- Previous experience of its principals and key employees in business development and contract management activities (cumulative experience of approximately 50 years)

## 2. Specific Procurement Issues

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### 2.1. “Window dressing”

There are still instances we see where it is apparent that an approach to market is made for “window dressing purposes” – i.e. to apparently satisfy internal procurement processes when in reality the result is a foregone conclusion.

Adept has experienced two recent examples (within the last 6 months) which have been notified to the Office of the Industry Advocate who has sought and obtained Adept’s permission to provide the details to the Productivity Commissioner in confidence. Details will not be disclosed here. In both cases there were very short timescales for response (3.5 and 5 working days) and in one case the requirement was complex.

Both of the examples referred to above related to a new work task. Adept has also been involved both as witness and beneficiary where small-scale engagements (<\$33k) have been extended in scope and/or time and which have been justified by the agency as special cases to avoid an approach to market, or where there has been an approach to market with an ‘enigmatic’ requirement and a short response time. We will not provide specific details of agencies and it is not suggested that a <\$33k engagement was concocted in order to later extend it, merely that circumstances led to this outcome.

For the avoidance of doubt, Adept believes that agencies should have a legitimate capacity to act in this way without the need to ‘fudge’ the rules. Where an engagement is of a specialist nature, a number of factors come in to play:

- There can be a significant learning curve. Replacing an effective supplier with an equally effective supplier in order to satisfy a procurement process can easily come at the cost of duplicating the learning curve
- It is almost axiomatic that in specialist engagements, the agency procuring the services possesses neither the expertise to evaluate the services it is procuring nor the ability to effectively manage the delivery of those services (this is not an issue peculiar to the government sector) and a successful outcome often relies on the supplier delivering what the client needs, not merely what was asked for. Trust is an important component of successful delivery in these circumstances and needs to be valued.
- Time is frequently of the essence and suppliers can essentially find themselves under pressure to ‘work at risk’ while an approach to market is undertaken, in the expectation they will be successful.

Clearly there is a need to balance the needs of the agency with a requirement to provide genuine opportunities to suppliers. However, in the current ‘equilibrium’ suppliers can waste significant resources developing responses to RFQ/RFPs for which there is no realistic prospect of success. Seasoned suppliers who have their ear to the ground will know not to waste their time – but this essentially relies on an inappropriate level of inside knowledge.

### 2.2. Tier 1 Firms

Adept are aware of situations where Agency management have sought the provision of services from a Tier 1 Firm (PwC, EY, BDO, etc.) where they want a report or assessment to be prepared by an organisation “that no-one will question” – this seems particular to apply where a report is likely to be reviewed by the Auditor-General.

Adept makes no criticism of Tier 1 firms and the quality of their work. Nevertheless, this behaviour represents an implied exclusion of providers of equal skill in the particular area of expertise on totally arbitrary grounds.

## 2.3. Panels

There is a plethora of panel arrangements in place across a range of agencies (e.g. Health ICT Professional Services Panel) and across groups of agencies (e.g. eProjects Panel) or across government (e.g. Provision of Temporary Staff Services Contract).

For the purposes of this discussion, I draw a distinction between ‘panel contracts’ and ‘qualified supplier’ panels (such as eProjects Panel)

### 2.3.1. Panel Contracts

This describes the case whereby a contract is let for a period of time and a number of respondents are admitted to a provider panel.

From a procurement perspective, these are undoubtedly convenient for the agencies using them. However, it needs to be understood that these contracts are exclusive – while there may be many members on a panel, new or emerging suppliers in the marketplace can be excluded from participation for several years.

In the case of the Temporary Services Contract Panel, it was last let in 2016 with an initial two year term, with up to three extensions of twelve months allowed. One of the selection criteria is typically the length of time the supplier has been in business (e.g. 3 years). A prospective supplier with 2 years and 11 months experience could potentially be locked out of supplying such services to government for up to five years.

In the spirit of supporting the development of local suppliers, panels should either provide for continuous intake or, at worst, annual intakes.

### 2.3.2. Qualified Supplier Panels

The eProjects, Low Risk ICT and eProjects Plus panels are examples of what we could characterize as ‘qualified supplier’ panels. They feature continuous intake – meaning any supplier which meets the minimum requirements can register on the panel at any time.

Part of the registration process is a characterization of the services offered by the supplier and, in theory, an agency seeking to procure services can identify suitable prospective suppliers and issue an RFQ, RFP, EOI, etc. to those suppliers.

However, it needs to be understood that these panels are neither open nor transparent. Agencies have no obligation to issue invitations to all suppliers capable of meeting their requirement. In this environment, suppliers need to conduct traditional business development activities to make themselves known to agencies and being registered on the panel is reduced simply to a ‘ticket to play’. Which is to say, registration on the panel provides little benefit to the supplier.

Clearly there is a balance to be drawn between the cost to an agency of dealing with potentially large numbers of responses and providing a marketplace fair to suppliers. However, in the current situation, there is a lack of transparency. By contrast, in the TendersSA environment, it is generally possible for suppliers to see who has bid for particular work, who was successful and information on the final price. All of this information is valuable to suppliers seeking to improve their competitiveness in the marketplace. It also serves to ‘keep agencies honest’ because it quickly becomes apparent if the agency has undeclared preferences for particular suppliers.

## 2.4. Withdrawn RFQs

From time to time, RFQs are withdrawn from the market. The most recent example in Adept’s experience was Dept of Energy & Water “WMS Program – Program Assurance”.

This was withdrawn \*after\* responses had been received and \*after\* clarifications were sought by the agency:

*“Thank you for your response to the recent WMS Program – Program Assurance Request for Quotation (RFQ) (Project No 985) and the additional information you provided.*

*Following a review of the quotations received, further advice on the program assurance scope and consideration of the program’s needs, it has been determined to discontinue this RFQ process. An alternative approach to the program assurance services has been developed. Please be advised a new RFQ will be released on the eProjects Panel in the near future.”*

This is admittedly quite an unusual scenario and we can only speculate as to why the RFQ was discontinued at such a late stage, particularly considering that programme assurance processes are reasonably well established and the need clearly remains. Given the investment made by respondents, we would expect a more candid explanation of the Agency’s decision.

More broadly, Adept’s experience is that one RFQ/RFP might be withdrawn every year or two (say ~2-5% of instances) and usually this occurs early enough in the process that suppliers do not waste resources responding.

## **2.5. Conflicts of Interest – real and imagined**

Adept is aware of a common view that a supplier which has been responsible for the development of requirements for a procurement should be precluded from bidding for any subsequent implementation contract. Adept does not understand why this should be the case, providing of course that there is a fair and transparent procurement process.

Conversely, Adept is aware of situations where a supplier has been contracted to undertake a post-implementation review of a project they were contracted to deliver. This is an area, much like project assurance, where one would expect to see the work undertaken by a supplier independent of the implementation work.

### 3. Things that strike fear into the heart

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This section identifies issues that, from experience, Adept knows to be a cause of consternation particular to small businesses and inexperienced suppliers to government. With experience we can consider these as minor but to the extent they discourage prospective suppliers or result in overinflated risk premiums being applied, they should be eliminated.

#### 3.1. Allocation of Risk

The following statement or a variant of it is common in RFQ/RFPs (this example from a PIRSA eProjects Panel RFQ released on 21 Jan 2019):

*“In accordance with Department of Treasury and Finance requirements, the Agency expects that there will be no limitation of liability in any contract, which may result from this Invitation except where the respondent is a person or body to whom a scheme approved under the Professional Standards Act 2004 applies.*

*You are required to state whether you are prepared to agree with the Agency’s position or not.*

*If you are not prepared to agree with the Agency’s position, then you must include in your bid full details of the position on limitation of liability that you propose.*

*Any details provided by you in response to this requirement will be taken into account in the evaluation of your bid.*

*Where a scheme approved under the Professional Standards Act 2004 applies to you, you must include in your bid full details of such a scheme.”*

It is Adept’s understanding that the Stage Government has moved to remove clauses such as this but clearly they are still present.

Seasoned bidders will respond with details of their professional indemnity/liability policy in the full expectation that it is highly unlikely to prejudice their bid. Novice bidders may well find this to be a daunting requirement and feel they have little choice but to agree to it if their bid is to be considered, perhaps applying a risk premium which renders them uncompetitive. Alternatively they may decide that it is too risky to submit a bid.

#### 3.2. Warning – State Supplied Information

*“The Agency makes no promise or representation that any factual information supplied in or in connection with this process is accurate. Information is provided in good faith”*

Clearly a bidder should be entitled to rely on information provided by the State in the formulation of their bids, both with regard to its accuracy and its completeness, particularly where such information is material, not readily available to the bidder and cannot reasonably be independently verified by the bidder.

The remainder of the clause essentially places the burden on the prospective supplier to seek clarification and explain why it needs more accurate information. In the author’s experience (in relation to provision of services to Domcare and DCSI as they then existed), there have been instances where the agency has either refused or been unable to provide information critical to determining a price offer.



We can only imagine how a statement like this provided by the supplier would be considered:

*“The Supplier makes no promise or representation that any factual information supplied in or in connection with this response is accurate. Pricing is provided in good faith”*

Apart from presenting as a daunting prospect to a novice bidder, this provides the Agency with a device to either procure unreasonably low bids (because the bidder is not fully informed) or to provide advantage to bidders who have access to information not generally available to the market.

There is of course room for an appropriate disclaimer and the State should make clear what its approach will be if information is found to be incomplete or inaccurate during the bidding process and after award.

### **3.3. Fear itself**

Given the lack of transparency around panels and the letting of contracts, there is a general fear of speaking out because of a concern that it may prejudice future business opportunities. While the Industry Advocate provides a vehicle for speaking out in confidence, the fact that these issues cannot (in reality or by perception) be discussed openly speaks to a procurement culture that does not support continuous improvement.

## **4. Opportunities for Improvement**

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### **4.1. 360° Evaluation**

Adept is of the view that optimum results are achieved when there is an engagement between a good supplier and a good customer and that each should be seeking to improve themselves in this regard.

Accordingly, we would like to see that at the completion of each engagement, there be an evaluation of the supplier by the agency, that there be an evaluation of the agency by the supplier and that these evaluations be performed in a manner which allows for meaningful comparison (i.e. in principle, one agency’s evaluation of a supplier should be meaningful to another agency).

Prospective suppliers should have visibility of the contracting Agency’s rating and the contracting Agency should have visibility of the ratings of prospective suppliers.

For an agency to use the ratings to filter out prospective suppliers would prejudice the opportunities available to newer suppliers. However, it would be entirely reasonable and sensible to require a different level of information be provided by suppliers depending on their rating.

Separately, education, mentoring or assistance could be provided to suppliers with low ratings or not-yet established ratings to help them improve their performance and make clear what was expected of them.

Agencies should have the resources, processes and skills available to them to consistently rate highly, so low ratings would imply a need for urgent remedial support.

### **4.2. Risk Assessment**

For major procurements, agencies typically conduct a risk assessment and identify a range of strategies to mitigate risks. However, mitigation of risk is not the same as elimination of risk. It is rare to see a risk assessment that identifies strategies to deal with risks that eventuate.

In a large software implementation, it is common that risks relating to inadequacy of requirements, unexpectedly complex data migration, etc. are in fact realised. Adept is aware of situations where,

for example, a milestone has been ‘fudged’ in order to meet the cashflow requirements of the supplier – when in fact a restructured contract would be more appropriate (or indeed a different form of contract would have been more appropriate).

### **4.3. Standardisation of “Part A”**

The format of RFQ/RFP is reasonably well standardised. The ‘Part A’ component is very similar from one RFP to the next. However, they are not guaranteed to be the same.

Adept’s view is that ‘Part A’ should be ‘scheduled’ such that there is an invariant component with any variations specifically identified. This would avoid the need to review the entirety of the conditions on each occasion and reduce the risk of missing subtle differences.

In a large software implementation, it is common that risks relating to inadequacy of requirements, unexpectedly complex data migration, etc. are in fact realised. Adept is aware of situations where, for example, a milestone has been ‘fudged’ in order to meet the cashflow requirements of the supplier – when in fact a restructured contract would be more appropriate (or indeed a different form of contract would have been more appropriate).

### **4.4. Supplier ID**

Adept proposes that suppliers be provided with a unique identifier to which all relevant information can be linked in a centralised supplier portal and made available as necessary to Agencies.

In responding to RFQ/RFPs the supplier should then never be asked to repeat any information already provided to the supplier portal. This mechanism would also allow government to link other information that it holds about suppliers (e.g. history of engagements, licenses held, fit-and-proper-person status, payroll tax compliance, RTWSA status, etc.) which may usefully contribute to decision-making or identifying suppliers to be approached.

The use of such an ID should facilitate a reduction in the number of panels and the establishment of a one-stop-shop for supplier information.

### **4.5. Market Development**

Clearly it can be difficult for smaller suppliers and new market entrants to establish a position in the marketplace. Some mechanisms already proposed (e.g. 360 degree evaluations) can help.

The use of panel structures such as the eProjects panel also provide better opportunities for an unsuccessful supplier to obtain feedback as the decision makers are closer to the procurement (as distinct from TenderSA, for example, where the supplier may only have contact with the procurement staff who themselves may have no insight into the reasons behind a decision).

Adept’s view is that the provision of feedback be a mandatory requirement of agencies. Government may need to provide some protective structure for agencies to prevent such feedback being used as a grounds for appeal or gratuitous complaint.

In any case, there are opportunities for purposeful activity to assist suppliers to become better suppliers and agencies to become better customers.

#### 4.6. Outcomes-based Tendering

There is a tendency for RFQ/RFPs to be prescriptive about the solution being sought or to assume a particular solution. This tends to limit the potential for innovation in responses. If Agencies better clarified their business needs and outcomes sought, suppliers would be better able to offer solutions to deliver the outcomes. Aside from which, it requires the Agency to properly consider exactly what outcomes it is seeking. It is Adept's understanding that the Industry Advocate is seeking a similar outcome and Adept is entirely supportive of that endeavour.

#### 4.7. Large Supplier vs Small Supplier

An observation drawn from experience in the public school sector is that government frequently seeks to let system-wide contracts to large suppliers.

Taking the example of school maintenance, an organisation such as Spotless may be contracted to provide maintenance/facilities management services to all schools.

Any school community will include local businesses which can provide similar services and these businesses are those the school seeks to engage with to provide work experience opportunities for students and to assist with fundraising. Yet this procurement policy serves to isolate the school from its community.

This is a specific example for a general issue. Clearly from a procurement perspective, many departments prefer to deal with a small number of large suppliers (typically national or multinational corporations) rather than manage a larger number of smaller local suppliers. The author is simply calling for a different balance.