



Draft Report

Inquiry into Government Procurement Stage 1

25 March 2019

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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 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.

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.

Opportunity for further comment

You are invited to examine this draft report and provide comment on it within the Commission's public inquiry process. The Commission will be accepting submissions commenting on this report and will be undertaking further consultation before delivering a final report to the Government.

The Commission should receive all submissions by **19 April 2019**.

Submissions may be sent by mail or email: in electronic or paper format.

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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 final report by 17 May 2019.

Hon Steven Marshall MP
PREMIER OF SOUTH AUSTRALIA

31 October 2018

Preface

The release of this draft report gives interested participants the opportunity to comment on the Commission's analysis in relation to its inquiry into South Australian government procurement.

The Commission will consider comments received prior to developing and presenting its final report to government.

In preparing this draft report, the Commission invited public submissions and consulted widely with a range of individuals, businesses, organisations and government agencies.

The Commission invites further written submissions on the draft report. These submissions may address any of the issues covered by the terms of reference. In light of the submissions received, the Commission will hold further consultations as necessary.

At the conclusion of consultation on the draft report, the Commission will prepare a final report to be presented to the Government of South Australia by 17 May 2019.

The Department of the Premier and Cabinet (DPC) Circular PC046 states that;

- "the Commission must ensure the final report is available on its website" ... "within 90 days of delivering the report to the [Premier]" and
- "the [Premier] will endeavour to respond ... within 90 days of receiving the report";

The Commission looks forward to receiving feedback on the draft report.

We would like to thank all those who provided input to this inquiry which includes a wide range of businesses, not-for-profit organisations and their associations, as well as acknowledge the assistance and cooperation from the State Procurement Board, Government departments, the Industry Advocate and the Small Business Commissioner. The Commission also note that some of the issues will be addressed in Stage 2.

The Commissioners note the untimely and tragic death of our colleague, Professor Paul Kerin, in December 2018. Paul had an early influence on the approach to this inquiry; we deeply regret his absence.

In addition, we would like to acknowledge and thank the OSAPC staff for their work in researching and preparing this draft report.

Dr Matthew Butlin
CHAIR AND CHIEF EXECUTIVE
25 March 2019

Adrian Tembel
COMMISSIONER

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Key Messages

The South Australian Government's expenditure on goods, services and construction is equivalent to 10 per cent of the State's Gross State Product and has a significant impact on the economy, employment and investment.

This draft report addresses the effectiveness and efficiency of State government policies and practices for procurement for goods and services covering just under half of total procurement spending. This initial scope (Stage 1) was broadened in February 2019 to include all government procurement (Stage 2), to report by end-October 2019.

Business, public authority and not for profit (NFP) participants have greatly added to the Commission's evidence base through their 42 submissions and 102 engagements involving 98 organisations. Their assistance is acknowledged with thanks.

The procurement system is complex. The data available to the Commission are voluminous and, in key respects, less than anticipated. There are wide differences between public authorities in the quantity, complexity and frequency of their procurements and significant differences in capacity. More assessment remains to be done, especially with the broadened terms of reference. This is very much a draft report.

Business participants raised many issues, including views that government procurement lacked transparency; did not engage effectively with the market; tended to be risk averse; red tape; excessive delays; and barriers to innovation. NFPs raised some additional matters.

The Commission is assessing the effectiveness and efficiency of procurement system design and architecture; current practice; the South Australian Industry Participation Policy; and procurement from NFPs. The Commission reached several working conclusions, including:

- The current capacity to drive a whole of government procurement system with authority, accountability and human resources is limited;
- There is insufficient policy clarity in some key areas including value for money, market engagement, probity and non-economic government objectives;
- The procurement system can be simplified and streamlined to cut costs on businesses, public authorities and NFPs and increase the efficiency and effectiveness of procurement;
- Better outcomes in procurement seem likely if public authorities increase their knowledge of, and engagement with, the market place, including local suppliers.

The Commission's evaluation of the IPP is not yet complete. It collected a random sample of 103 recent procurements across public authorities, which showed that IPP is applied in all larger procurements in the sample, and the Economic Contribution Test was applied in most smaller procurements above the threshold. This is consistent with the stakeholder views that IPP changed among suppliers. The sample also indicates IPP changed the ranking of winner and runner up in a very small number of cases (6 per cent).

At this early stage and subject to testing in the remainder of Stage 1 and Stage 2, the Commission sees potential for significant reform recommendations in its two Final Reports.

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 businesses (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. Stage 1 will address the inquiry's original scope and the final report will be delivered on 17 May 2019 in accordance with the initial terms of reference. Stage 2, which addresses the expanded scope, will be completed by 31 October 2019.

2. The draft report

This draft report is intended to engage further with stakeholders and interested parties on the Commission's work, including its analyses, conclusions, information requests and some draft recommendations to date in areas that are largely unaffected by the additional scope in Stage 2.

It is very much a draft. The Commission has found that the South Australian Government procurement system is more complex than expected and the available data are paradoxically both voluminous and less than anticipated. As a result, progress to this point is uneven, remaining preliminary on some of the central issues and significantly more advanced in other areas.

The Commission is grateful for all the assistance received from all participants, especially government agencies, businesses and not for profit organisations (NFPs). With this draft report, the Commission will begin a second consultation process to test its findings and draft recommendations; and to address the information requests in the draft report.

The report is structured around five key themes:

- What the Commission's assembled evidence identified as the **issues**
- The procurement system's **design**, including underpinning legislation, architecture of roles and accountabilities, policies, and delegations, that are relevant to efficiency and effectiveness of State Government policies and practices for the procurement of goods and services
- Current **practice** in the procurement system, focusing mainly on the experience of business, with attention to SMEs

- The performance of the South Australian **Industry Participation Policy** (SA IPP) in the procurement system
- The experience of **NFPs** in government procurement.

3. 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 Gross State Product (June 2018).

Government procurement has been the focus of ongoing comment and complaint from SMEs and their industry associations, and from NFPs contracted by the State to supply goods and services to South Australians as part of government programs.

In 2017-18, those agencies in scope of the Stage 1 report procured goods and services totalling \$5.1 billion, accounting for over 25 per cent of the 2017-18 South Australia Budget. These purchases are extremely important to the South Australian economy in 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. The State's procurement system needs to balance the objectives of getting good value for its use of taxpayer dollars while meeting the government's other social, environmental and economic goals.

4. The Process

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

- 42 written submissions in response to its Issues Paper, all of which are published on the SAPC website
- 102 individual engagement from industry associations, businesses, non-government organisations and government agencies, including 35 meetings with businesses and their associations
- Recent surveys by Business SA, the Office of the Industry Advocate and the SA Tenders website
- While these sources are valuable, the samples on which they rely are not random, which led the Commission to compile a random sample of the outcomes of 103 recent procurements from public authorities
- Responses from agencies to the Commission's information requests
- Roundtables with agency Chief Procurement Officers
- A compilation of trends and developments 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 which it believes should be addressed to improve the efficiency and effectiveness of South Australian Government procurement of goods and services.

5. The Issues

The Commission distilled the evidence from business into nine 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.

These matters have been addressed in the analysis of the design and practice of the procurement system (Chapters 3 and 4 respectively) and, where relevant, in the consideration of the SA IPP in Chapter 5.

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.

These matters are addressed in Chapter 6.

Agencies also provided advice on these issues and identified issues and improvement opportunities. Their responses helped set some of the business and NFP concerns in a wider context, including the requirements of SA's procurement regime. That information is incorporated in Chapters 3, 4, 5 and 6 as part of the consideration of issues raised by private sector participants and NFPs and also as part of the explanation of the current system and practice.

In the Commission's view, these matters point to a range of opportunities to improve the overall value to the State from procurement.

6. System and Design

The starting point is the underpinning legislation as well as the framework of organisations, policies, decision-making and delegated accountabilities, and authorisations and expertise. Setting out the framework helps to understand how the system is designed to work and to begin the analysis of whether this architecture is most appropriate for ensuring and improving efficient and effective policies and practices for procurement.

This part of the Commission's inquiry is a work in progress as previously noted. Nonetheless, there are some aspects of the current structure that require some consideration.

Scope

It is currently difficult for the government to easily obtain a clear understanding of the value and volume of procurement expenditure and contracting activity across government. At least half of the government's procurement expenditure is not within scope of *the State Procurement Act 2004* and not required to comply with the Board's framework.

In addition, suppliers and public authorities have provided feedback on the difficulties of dealing with separate procurement frameworks (applying to goods and services, construction and prescribed public authorities) and the value of having consistent processes and better oversight.

While there may be merit in a central authority having stronger oversight of the whole procurement system, the impacts and costs of requiring exempted agencies and excluded expenditure to be part of a single larger system need to be measured carefully. The potential benefits to flow from greater consistency in policies and required practices across different types of procurement within an overarching governance framework needs to be tested, as does the division of responsibilities between individual public authorities and any central governing body. This issue will be considered in Stage 2 of the inquiry.

Value for Money

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 appears to have raised awareness of IPP and the contribution of local employment and investment to indirect benefits, but the Commission concludes that greater clarity is needed to enable agencies to consider how South Australia's non-financial goals should be incorporated in the evaluation process. Other States have developed more detailed guidance for value for money in their procurement processes.

The Commission believes that it would be helpful for government to provide significantly greater policy clarity on value for money, both to simplify the procurement process for authorities and suppliers and to make clearer the intended balance in the policy objectives included in procurement.

Data

The evidence seen by the Commission indicates that, at the system level, timely data recording and collection is not undertaken in a coordinated manner. There appears to be little across government consideration of information requirements, nor analysis of the total information obtained. There is also, partially owing to the lack of coordination, an inconsistent application of different technological solutions across government which limits the central government's ability to extract information, identify opportunities, trends and undertake strategic planning from a whole of government perspective.

The Commission notes that developing a whole of government data collection system will take time and may represent a significant expense. As such, it will need to consider if the

benefits of increasing the availability of data for central government is worthwhile in the context of the investment required to facilitate the changes. It notes the apparent success of NSW and the intentions of Victoria to extract relevant information from existing collections. Data will be considered as part of the review of the larger system in Stage 2 of the inquiry.

Complex System

There are 86 mandated requirements in the Board's procurement policy framework. It is noted that this does not include mandated requirements under PC013 (annual reporting) which would add another two mandatory requirements (regarding the publication of contractors and consultants engaged by the authority in that year).

These also do not include additional recommendations or suggestions provided in the SPB procurement policy framework (that are not "must" statements).

As the government needs to ensure that the expenditure of public funds is protected, a certain degree of complexity may be expected – particularly relative to the private sector. Nonetheless, based on feedback from stakeholders and relative to other jurisdictions, the SA procurement system appears to be more complex than most. As the Commission studies the broader system as part of the Stage 2 report, it will consider options to reduce the complexity of the system.

Compliance Focus

The Commission acknowledges the efforts of the SPB in responding to the numerous legislative compliance requirements that have developed over time and the recent reforms it has undertaken. The Commission probed, with the SPB's assistance, the pattern of the SPB's work in recent years.

Information provided by the SPB secretariat indicates that there were 60 acquisition plans provided to the SPB for consideration and endorsement in 2018. According to the statistics provided to the Commission, the number of acquisition plans submitted annually to the Board has increased by 20% since 2014.

The SPB is also commenced, in 2018, a new round of public authority reviews for the Accreditation Program and a new round of public authority reviews for the Board's Assurance Program. This work will be completed between 2018-2022.

The Commission observes that the SPB's agenda seems predominately focused on compliance work. It is not clear to the Commission at this point why this is the case given:

- principal officers (typically agency Chief Executives) are delegated procurement authority and are accountable for their procurement processes and outcomes;
- principal officers are required to sign off every year to confirm that their public authority has complied with the Board's procurement policy framework; and
- existing assurance activities are undertaken through other legislative instruments including Treasurer's Instructions, Auditor-General, and SAIPP.

There appear to be no immediate short-term solutions to reduce the compliance focus of the system. As part of the Stage 2 inquiry, the Commission will consider some longer-term options to rebalance the system to provide greater capacity for strategic improvement.

Capability

The Commission's research shows that 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 interest in utilising procurement as a lever to achieve an increasing 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. By extension, the level of professional expertise required to manage the procurement process within and outside of government will continue to increase.

The Commission has been advised it is difficult to attract appropriately educated and experienced procurement staff. It is also hard to retain capable, well qualified and trained procurement professionals as the demand for their skills is increasing their marketability and the relevant labour markets are said to be tight.

As a result, the Commission considers that an investment in training, career paths and a recognition that procurement professionals are strategic assets of the public authority will be needed to build that capability inside government.

Contract Management

There is a recurring theme from business that, in their view, public authorities need to improve their performance in contract management. In particular, the Commission was told that more helpful guidance is wanted from the SPB: notwithstanding that point, public authorities are accountable for ensuring contracts are managed effectively by appropriately trained staff.

The Commission observes that both agencies and suppliers state there are opportunities to achieve benefits to the State from closer attention to contract management. One area of opportunity appears to be in smaller public authorities and agencies that use procurement relatively infrequently: based on feedback from businesses there are likely to be other areas.

7. The Procurement System in Practice

This chapter addresses the compliance by public authorities with policies, guidelines, standards and directions. It also looks at time and costs associated with the operations of procurement; and the application of risk management frameworks.

Planning for procurement

A range of businesses and not-for-profit (NFPs) stakeholders told the Commission that the ability of public authorities to define the scope of projects and the specifications for goods and services needs to be improved. There are examples of tender documentation characterised by seemingly unrealistic expectations on the part of the procuring authority and, in hindsight, a poor understanding of what the government department is asking the supplier to do.

The Commission acknowledges the evidence provided by stakeholders and agrees the ability demonstrated by some public authorities to plan and prepare for a tender process could be improved. That said, the Commission has observed examples of what appear to be leading practice in some public authorities.

It seems that the priority attached to planning for procurement processes by business unit decision makers is a key contributing organisational factor in the value realised by agencies. Close attention to not only what but how to procure raises the value of strategic planning, project performance and measurement of outcomes. There are also implications for better utilising existing tools such as SPB training resources as well as resources that support technical or industry-based knowledge in the government sector.

Approaching the market

The Commission has observed varying degrees of skill and experience within and between public authorities. The varying skill levels seem to relate to the extent to which officers and public authorities engage in procurement processes. The Commission has also observed that the extent of market analysis is sometimes limited, particularly for routine and regular purchasing. The extent of market analysis also seems abbreviated for specialist or high volume purchasing, where decisions are influenced heavily by agency or across government panel arrangements. For high volume low risk purchases, this is not an unreasonable approach, but for high value or high risk procurements, a more intense market engagement strategy is necessary. The Commission will consider this further in Stage 2.

The Commission has received significant feedback that some 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. 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 it very likely that improved clarity and guidance on the subject would help assist staff to more effectively engage with the market.

As part of the Stage 2 inquiry, the Commission will consider how the other exempt public authorities and construction projects deal with the issue of approaching the market. In preliminary discussions, it seems evident that at least some exempt public authorities have more experience with this issue that may lead to insights and recommendations that would improve other parts of the procurement system.

Managing contracts

Contract management within public authorities is variously undertaken by: relevant officers within business units; by central procurement units; and by officers dedicated to singular activities or expenditure, such as category managers. Where the value of the contract is high, or the project is complex in nature, these officers are supported by contract management teams.

Upon acceptance of an offer by suppliers and execution of a contract, public authorities will start a contract management process. The principal officer must ensure that the public authority has a contract management framework in place. The contract management process also includes ensuring any service continuity and transition issues are addressed and to organise the necessary record keeping and payment schedule.

The Commission is approaching the view that the resources in the procurement process are focused towards the market approach and supplier selection phase of process. Once these phases have occurred, the governance and strategic oversight of the system appears to lessen.

The advice from experts in this field suggest that the State may be putting at risk a substantial level of benefits by placing a low priority on the contract management phase. This is a longstanding issue as far as the Commission can judge. As an example, some businesses asserted that companies submit uneconomic bids knowing that they can extract more benefits once the contract is signed through negotiated contract variations. A higher level of attention to contract management as well as more rigorous evaluation of bids would help avoid this scenario.

Risk management and probity

The view amongst the business sector is that risk is passed on to business from government; and government understands that one result of this allocation is that a risk premium is built into the tender price.

Public, media and political expectations around the transparency and accountability of public procurement outcomes are strong incentives for public authorities not only to make the right decision but also to be able to demonstrate that the right decision has been made. Stakeholders have indicated that public criticism of procurement outcomes has created a heightened sensitivity amongst procurement officials towards avoidance of risk, which may lead to inefficiency and delayed decision making.

The Commission has insufficient evidence at this point on the approach to risk management by public authorities, having sighted only a handful of risk management plans. This issue will be explored in more detail in the remainder of Stage 1 and in Stage 2.

Timeliness

Generally speaking, the duration of time to undertake procurement processes will vary considerably between individual projects depending on the nature of the market approach (such as direct, selective or open) and the value and complexity of the project.

The frequency with which agencies and business units within agencies undertake procurement processes can have a large bearing on the time taken to see the process through to contract award. Business units that undertake procurement regularly will be able to cope more readily with the volume of documentation, extract the more relevant information from tender bid documentation and are more likely to have established better relationships with suppliers.

The data seen by the Commission suggests that most tenders are executed in good time, suggesting that long delays are a less frequent event than the experience of some stakeholders might suggest. That said, the Commission notes that the SPB contracting activity data analysed by the Commission has identified a small number of severe cases which apparently took years to resolve. At the other end of the scale, some high value contracts were completed very quickly.

The Commission is aware that a number of other jurisdictions are implementing policies to accelerate the contracting process. The Commission intends to test this further, including the scope to remove low value approvals and non-value adding steps in current processes.

The Commission also observes that the SPB measure of timeliness runs from acquisition plan to contract award. The measure does not include contract execution, which is a better indication of when the work is about to or does commence. This is a key date for both parties but particularly for suppliers as it is also the date when work on the project officially commences.

Value for money

Public authorities undertake value for money assessments at the evaluation stage using mandatory and weighted evaluation criteria. These criteria are based on examples from the SPB guidelines. The criteria include:

- Mandatory, non-subjective criteria answered by yes or no (Capability of suppliers, qualifications and credentials of supplier staff)
- Weighted criteria (Prior performance and demonstrated experience, level of compliance with specifications, price/cost, supplier capability and approach and compliance with the industry participation policy).

Public authorities will apply differing weights to evaluation criteria for similar types of projects. Criteria used to evaluate bids almost always include delivery timeframes, supplier capability and experience and cost.

The Commission observes that the value for money guideline issued by the State Procurement Board offers broad, high level direction. Life cycle costing, economic outcomes and service delivery standards are mentioned but not discussed in much detail. By contrast, the Victorian Government Purchasing Board provides extensive guidance on how to apply value for money in practice.

Capability and capacity

Public authorities advise the proportion of procurement staff working in public authorities who are formally trained in procurement (with a higher education diploma or above) is low, and that only a handful of employees are accredited with the Chartered Institute of Procurement and Supply (CIPS).

Most public authorities also highlighted the lack of technological sophistication and support for managing procurement processes. This has implications for oversight of expenditure, upcoming contracts and engaging with the marketplace, it also has implications for monitoring and benchmarking performance.

According to OCPSE data, the state cohort of public sector staff connected to procurement numbers approximately 3,200 people. Of this group, 43 are supply, distribution and procurement managers, 390 are other information and organisational professionals and the remainder are administrators and clerks. This group is responsible for managing the state's procurement spend of approximately \$5 billion that falls within the inquiry's initial terms of reference.

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.

Panel and aggregated contracts

The SPB guideline for panel contracts provides general advice on the process for establishing a panel contract, with the specifics being left up to the agency within the bounds of general requirements.

The Commission notes that the request for data from public authorities for use of panel contracting arrangements elicited a varied response in terms of data collected and reported. The ability to generate data amongst public authorities remains an issue. It seems that leaving the rules for selecting, adding or removing panel members and the collection and reporting of any data associated with panels to the discretion of the agency is a contributing factor to the limited data made available to advise either suppliers or decision makers on the outcomes and activity levels in panels. It may also contribute to some of the concerns by suppliers about the operation of panels and access to their membership.

The absence of data and lack of standardisation of data collected are consistent themes observed by the Commission through the inquiry. It is likely that collecting and reporting standardised data, including details of secondary purchasing, indicative pricing and a suitable form of supplier expenditure, by all public authorities for all panel contracts, including across government panels, would improve the analytic capacity of the system and improve its transparency.

Options for Improving Practices

A number of the deficiencies observed in practices appear to stem from a lack of capabilities or experience in some public authorities. Some of these issues can be addressed through streamlining processes, training, simplifying SPB requirements and more guidance from the SPB. Potential improvements offered by more significant changes – including greater use of panel or aggregated contracts, the centralisation of procurement using a shared services model and the ability of public authorities to utilise a central source of procurement expertise - could also be considered.

8. SA Industry Participation Policy (IPP)

The SA IPP is the framework designed to deliver the requirements of section 4 of the *Industry Advocate Act 2017* which includes promoting:

- government spend that results in economic development for South Australia;
- value for money in public spend;
- 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 opportunity to tender and participate in government contracts.

The IPP applies to all procurement categories, agencies and authorities (including activities and agencies outside of the scope of this inquiry).

Governments around the world have put in place procurement policies that favour local businesses and employment, often with a focus on SMEs. There are several reasons given:

- 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
- To assist emerging industries to become competitive over time (the 'infant industry').

A review of the literature on these types of programs in several countries suggested that:

- These programs produce market distortions, increase costs to government and reduce competition;
- Providing preferences to local SMEs in government procurement processes usually raises procurement costs;
- It is unclear whether the programs achieve their intended impact;
- There is mixed evidence about whether, once such policies are in place, the exit costs outweigh the benefits; and
- The evidence needed to test the claims about the success of the programs or evaluate them is often not collected by government.

The Commission's task of evaluating the IPP is not yet complete and on current indications it appears unlikely that a definitive answer will be reached, especially regarding the size of impacts. This is largely due to the absence of appropriate system-wide data. The Commission took some steps to remedy this gap by collecting from public authorities a random sample of 103 tenders. This small sample showed that the circumstance where IPP tipped the balance between winner and runner up is comparatively rare. The small numbers mean the results cannot be relied on: this finding needs further testing with a larger sample and with the experience of construction procurement in Stage 2.

The Commission also intends to examine evidence on the extent to which commitments in IPP plans incorporated in contracts have been realised. This will also be addressed in Stage 1 and, having regard to construction, in Stage 2.

That said, it is clear the IPP enjoys broad support among businesses (particularly SMEs) and their industry associations. There is a widespread view that the IPP and the activities of the Industry Advocate have increased the awareness among business and government agencies, especially procurement staff, of the need to consider local employment and business activity when responding to, and evaluating, tenders for government procurement.

The lack of useful data makes it hard to assess robustly the quantitative and detailed impact of the IPP in practice and over time, including the cost to the taxpayer of the jobs and local business activity associated with the IPP. This is compounded by number of changes and adjustments to the policy since it was introduced.

There would appear to be a significant opportunity to assemble better information that would assist the State to better understand its procurement and the impact on local business. Such information and analysis, linked to feedback to businesses, can be expected

to increase the confidence of businesses and agencies that the information being required is actually being put to use.

A recurring theme in the Commission's view – from businesses and government agencies – has been the limited knowledge of many government agencies regarding local businesses and their capabilities. (This is, of course, a more general matter than simply its relevance to the IPP.) 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 raise the likelihood that local businesses bid for procurement opportunities. Such a central information source could also provide a mechanism to enable businesses to provide standard information just once that can be utilised by agencies in successive tenders, so reducing duplication of activity.

Another recurring theme – mainly from businesses – is the low and incomplete visibility in many agencies of their forward procurement program. Departments are required to publish their intended forward procurements for all procurements greater than \$220,000. The Commission has been told 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 this to be likely to be the case, based on some feedback from selected agencies.

The Commission is persuaded at this point that the complementary actions discussed earlier would be effective in incentivising businesses to improve their competitiveness. The Commission has not reached a view on whether weight given to local participation in the procurement process is appropriate. It notes that the current 'standard' 15 per cent weight puts South Australia above the two largest States. It also notes that while the SA unemployment rate is above the national average, it has fallen significantly in recent years.

This matter will be explored further in both Stage 1 and Stage 2 of the inquiry.

9. Procuring Social and Health Services from the NFP sector

The Commission has distinguished the NFP sector from business for the purposes of this inquiry for a number of 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.

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 SA Health.¹

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

¹ 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.

delivered by an NFP. Under these reforms agencies must now use the *Standard Not For Profit Sector Funded Services Agreement* (the Standard Services Agreement).²

Participants (from both the NFP sector and public authorities) raised a variety of issues relating to procurement and grant funding of NFP services, with some common themes emerging, namely:

- Market engagement, consultation and collaboration;
- Tendering: time, cost and information requirements;
- Funding and pricing arrangements; and
- Contract negotiations, contract management and reporting arrangements.

The Commission considers that the effective implementation of the NFP Funding Policy and associated enabling arrangements appears likely to address many of the issues raised by the NFP sector. There are signs of contemporary procurement practice being demonstrated by public authorities including in governance reform, 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 notes the positive experience of the Victorian Government Purchasing Board in establishing a general community of practice for government buyers as part of their capability improvement arrangements.³ The Commission is aware of the South Australian public authorities Heads of Procurement forum but understands there is no established community of practice or other forum covering procurement from NFPs.

Participating NFPs and their associations provided some evidence that the information required 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.

There are efficiencies to be found for both NFPs and public authorities by recognising independent quality assurance accreditation held by NFPs as part of the tender process. The Commission can see this approach being extended beyond the NFP sector to other reputable accreditations held by business supplying to government more broadly.

In addition, the Commission sees value in reducing the amount of information that is duplicated in successive tenders regarding the financial and other characteristics of the tendering organisation; for example, preregistration of NFP organisations with standard information that can be used in tenders to eliminate duplication. This reduces the need for NFPs to provide the information and for public authorities to consider and assess the information. As in the case of businesses in Chapter 5, the Commission considers that greater visibility by NFP organisations of public authorities' forward procurement programs would give NFPs early warning of complex tenders that may require joint ventures or alliances with other partners.

² 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>>

³ Victorian Government Purchasing Board, Annual Report 2017-18, "Workstream 5: Capability and streamlining processes, practices and leading change management", p. 10.

The Commission has been advised that a remedy to the exclusion of NFPs from the Interest Act is being considered. The Commission agrees this is appropriate since it can see no reason to discriminate between currently excluded NFPs and entities – NFPs or private businesses – that are incorporated under the Commonwealth legislation.

10. Conclusions and Next Steps

As previously indicated, the scope of the inquiry into government procurement has been broadened significantly. In completing Stage 1 of the inquiry, the Commission will focus its attention on the matters that fall within the initial scope and will carry over to Stage 2 the matters that require a whole of system perspective, such as the system architecture. It will also compile additional data where possible, as outlined in the draft report.

A key consideration in this inquiry is the role the system's architecture – including governance, authorities, accountabilities, policy clarity and incentives for improvement – plays in shaping the efficiency and effectiveness of procurement policies and practice.

The Commission has formed a number of working conclusions and themes which go directly to the current architecture.

There is a lack of capacity to drive a whole of government procurement system, with respect to authority, accountability and human resources, to drive the achievement of South Australian Government procurement objectives.

Wide differences between public authorities have been observed in terms of capacity, capability, level of procurement activity and how it is structured within public authorities. The Commission has also observed that public servants involved in procurement are guided by good intentions and a desire to do their best for their public authority and the state.

There is a lack of measurement of procurement performance and outcomes.

There is a lack of policy clarity between the South Australian Government objectives of probity, value for money, local economic growth, sustainability and other social objectives.

The Commission considers it likely, based on its work to date, that addressing these matters would contribute to achieving better outcomes for the State including increased economic activity, increased employment and efficient use of taxpayer funds.

In addition to these conclusions and prospects, the Commission considers it is likely there are significant benefits through strategic improvements to the procurement system. It intends to test this proposition, including quantifying potential benefits

These conclusions need to be tested further in Stage 2 with the potential for significant reform recommendations. Notwithstanding opportunities for efficiency gains in procurement processes, some recommendations will be associated with choices for government involving increased cost and risk in the procurement process in return for increased simplicity and potential local economic growth.

Draft Recommendations

5. SA Industry Participation Policy

Draft recommendation 5.1: In order to monitor, assess and improve the Industry Participation Policy, agencies collect and report to the SPB, Department of Industry and Skills and the Industry Advocate information currently recorded as part of the assessments of individual procurements above a threshold value, including:

- Winner and runner-up:
 - Pricing;
 - ECT/IPP scores adjusted to a comparable basis;
 - 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.

Draft recommendation 5.2: In order to improve the understanding by business of the IPP and raise their capacity to compete in government procurement, the relative scoring of IPP and ECT of a supplier be made transparent to it by agencies.

Draft recommendation 5.3: In order to cut red tape and reduce administrative burdens to businesses and government agencies, IPP be simplified including by:

- Moving to annual ECT/IPP scoring for businesses and requiring amended information only where relevant to specific tenders
- Lifting the minimum threshold for which ECT is required.

Draft recommendation 5.4: In order to strengthen the capacity of SMEs and other businesses to compete for government procurement opportunities, the following steps be taken (indicative suggestions for accountable agencies in parentheses):

- Provide training on how to tender for government procurement to SMEs, including consideration of the potential role of industry associations in delivery (SPB, with the DIS and the IA);
- Provide on-line assistance to SMEs on how to complete ECT/IPP templates (DIS with IA);
- Train procurement staff on the economic impact of government procurement, how to search the capabilities of local businesses and how to identify when an ECT/IPP has been wrongly calculated (DIS and IA); and

- Organise forums and other activities that introduce participating SMEs to agency staff in program and procurement areas (all government agencies, with IA).

Draft recommendation 5.5: In order to strengthen the capacity of South Australian businesses, especially SMEs, to compete in government procurement opportunities, each agency be required to meet its obligation to publish a complete forward procurement program setting intentions and probable timing over a 24-month moving horizon.

Draft recommendation 5.6: In order to improve the understanding and use of IPP in the procurement process, a community of practice of procurement staff, DIS and the IA be established. This community of practice could, among other activities share good practice and opportunities to improve the incorporation of local participation in the procurement process.

6. Procuring Social and Health Services from the Not-For-Profit (NFP) Sector

Draft Recommendation 6.1 In order to strengthen the capability and capacity of public authorities to engage with the NFP sector, public authorities establish a Community of Practice of Procurement Professionals to:

- encourage and share model practices and processes; and
- provide a single forum for consistent engagement with the NFP sector; and
- support ongoing and continuous improvement.

Draft Recommendation 6.2: Noting the role of the NFP Funding Policy in the procurement and grants process, the government independently evaluate in the second half of 2019 the implementation of the NFP Funding Policy and associated 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.

Draft Recommendation 6.3: In response to the issues raised by NFPs regarding the need for more time to tender for complex issues and for simpler procurement processes that recognise the complexity of the social issues being targeted by NFP-delivered services, agencies:

- use outcome-based approaches; and
- provide sufficient time in procurements involving NFPs for their internal decision-making processes, and to meet government requirements; and
- reduce to a small number of broad assessment criteria that enable organisations to respond efficiently and creatively during the assessment process.

Draft Recommendation 6.4: In order to improve the tendering process for NFPs and public authorities, the State Procurement Board and public authorities:

- recognise formal quality assurance accreditation held by NFPs as part of the tendering process and investigate the changes required to give effect to this

principle, including consideration of State Procurement Board policies and procurement practices;

- provide pre-registration of NFP organisations with standard organisation information that can be used in tenders, rather than duplicating this material on each occasion;
- increase information about future procurements by agencies; including those relevant to NFPs; and
- provide a consistent approach to giving constructive feedback to unsuccessful participants that will enable them to be more competitive in the future.

Draft Recommendation 6.5: 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.

Information Requests

2. Overview of Issues and Evidence

Information request 2.1: What issues of concern have not been incorporated in Chapter 2? What is their significance?

3. Procurement System and Design

Information Request 3.1: The Board publishes a Value for Money in Procurement Guideline to provide 'information and practical advice to procurement practitioners from public authorities on how to determine and apply Value for Money in a South Australian Government context'.

Does the guideline include appropriate and sufficient information and advice to enable procurement practitioners to determine and apply value for money in government procurement?

What additional information or guidance should be provided to facilitate the application and achievement of best value for money in the procurement process?

Information Request 3.2: With respect to the capture, recording, reporting and analysis of data and information on government procurement:

What information and/or data that is currently captured, recorded and/or reported could be leveraged and used to provide a better understanding and oversight on government procurement?

What information and/or data that is not currently recorded and/or reported should be (and could be) captured, reported and analysed?

Information Request 3.3: Several authorisations / endorsements and associated delegations apply to the procurement process – particularly for those valued over a public authority's procurement authority.

What specific reforms would streamline and simplify the authorisation / endorsement processes without compromising financial integrity?

Information Request 3.4: There are a range of legislative controls and requirements applying to the government procurement of goods and services. The Commission has provided an overview of these requirements and some of the complexities inherent in the governance arrangements and requirements. The Commission asks:

Has the Commission provided an accurate portrayal of the legislative controls and requirements applying to the government procurement of goods and services? What is missing or is open to alternative interpretation?

What changes or reforms could address the complexities with a view to simplifying and reducing unnecessary requirements?

Information Request 3.5: The Commission has formed a preliminary view that the Board's focus, and that of the system itself, is heavily weighted towards compliance which impacts on the capacity of the Board and its delegates to undertake strategic planning and management. The Commission asks:

Has the Commission provided an accurate portrayal of the current focus towards compliance?

What improvements or reforms might address the compliance focus and provide opportunities for the application of strategic planning and initiatives?

Information Request 3.6: The Commission has received feedback, and undertaken research, indicating the importance of having well trained and skilled procurement officers to manage efficient and effective procurements. The Commission asks:

What are considered to be the specific procurement, or procurement-related, skills and/or capabilities that are lacking in the SA public service?

Do public authorities make use of the capability development strategy initiatives offered by the Board? Are the initiatives currently offered meeting the needs of your public authority and/or are other types of initiatives to build capability or training required?

Information Request 3.7: How accurate or sound are the Commission's portrayal or these themes?

What suggestions for reforms to the system could address them and improve the overall contribution of government procurement to the state's performance?

4. The Procurement System in Practice

Information request 4.1: In order to strengthen the communication of public authorities with potential suppliers, what actions, including better understanding of probity requirements, would increase agencies' knowledge of, and engagement with, the market place and potential suppliers in the planning process.

What type of information on supplier capability and performance would be most beneficial to public authorities in their engagement with the market? How helpful is the information in the Industry Capability Network database and information held by the Industry Advocate?

Information request 4.2: Having regard to improvements in innovation outcomes for the state, the Commission seeks further information from all parties on how procurement policy and practice can facilitate more innovative procurement processes and development of innovative proposals from suppliers.

Information request 4.3: Having regard to reducing duplication in the tendering process, the Commission seeks further information from all parties on: best practice examples for the public sector to collect, store and retrieve information on suppliers for broad application and use in the tender process; and best practice examples to enable public authorities to access and verify supplier credentials, with appropriate permissions and controls in place.

Information request 4.4: Having regard to the different types of market approach used in the procurement process, the Commission seeks further information from all parties

on: additional specific examples where the type of market approach was inappropriate or led to sub-optimal outcomes and why; the impacts on suppliers of increased use of direct negotiation or selective tendering; and the benefits to agencies of this approach.

Information request 4.5: Participants are invited to relate their views on what feedback information is helpful to unsuccessful suppliers to improving future performance and their views on good practice models for delivering post-tender feedback to suppliers.

Information request 4.6: Participants are invited to relate their experience in offering, or attempting to offer, innovative goods and services to government.

Information request 4.7: Participants are invited to provide their views on what measures are important for reporting and monitoring of procurement contracts. What sort of information is important in being able to manage contracts effectively? How can this information be used at a system level to inform better contract management in public authorities?

Information request 4.8: Participants are requested to provide examples of inappropriate risks being included in tender documentation or risk allocation not being properly addressed through the period of the contract. Participants are also invited to provide their views on remaining silent in contracts on risk capping and allocation and in the event of a significant loss relying on well-established common law positions for the allocation of risk for torts and breach of contract.

Information request 4.9: Having regard to the measurement of value for money and the practical elements that value for money assessments would need to include, participants are invited to provide their views and experience: on which elements of value for money are important to include in guidance material and processes used by public authorities; and on how to build in elements such as support for local business, sustainable procurement and building social capital into the assessments of value for money.

Information request 4.10: The inquiry seeks information from public authorities about the composition of their procurement professional cohorts, whether they are appropriate in terms of the number of professionals, and whether the skill mix and level of experience is optimal to achieve their respective procurement outcomes.

Information request 4.11: The Commission seeks information on examples of proven technologies supporting procurement and contract management, particularly where an integrated approach has been taken to optimise analytics and an Enterprise Resource Planning approach.

Information request 4.12: The Commission seeks feedback from public authorities regarding: their strategies for attracting and developing the procurement capability they require; the extent of support for procurement professionals undertaking procurement-related training and development, including whether a formal approach is taken e.g. forms part of twice-yearly professional development discussions and plans; and any tangible operational procurement improvements arising from the training of their staff.

Information requests 4.13: The Commission seeks advice on: what information is important to collect to monitor and assess the effectiveness of panel arrangements; under

what circumstances it is efficient and effective to appoint a sole provider from a panel after a second round selection process; and best practice examples of using panels to promote small business growth and value for the State.

Information request 4.14: Having regard to aggregation and disaggregation of goods and services expenditure, the Commission seeks further views and evidence on: opportunities to disaggregate procurement to increase opportunities for local participation of SMEs, without compromising the requirement for value for money; and the implications for public authorities and for competition in the market place of such a policy.

5. SA Industry Participation Policy

Information request 5.1: What do stakeholders consider to be the appropriate thresholds of scoring for, and the appropriate weight given to, ECT and IP Plans in the evaluation of tenders?

Information request 5.2: What would be an appropriate threshold for the ECT to apply, noting the Commission has received feedback from businesses and agencies that the current level is too low? Under what circumstances do ECT scores and/or process not contribute to outcomes? How might this be reflected in exemptions?

Information request 5.3: What is the experience of agencies in meeting the requirement to publish their forward program of intended procurements above \$220,000? How complete is the published program? What is the experience of businesses in these matters?

Information request 5.4: The Commission seeks views and information about what changes to the ECT and IPP scoring would reduce barriers to businesses providing innovative goods and services.

Information request 5.5: The Commission seeks views on how the ECT/IPP process and scoring can better incorporate, in a simple way, a broad estimate of economic impact that includes investment, innovation and productivity and is more relevant to strengthening the capacity of South Australian businesses to compete in markets outside the State.

Information request 5.6: The Commission seeks advice and evidence regarding appropriate weighting of ECT/IPP in procurement supplier selection processes.

6. Procuring Social and Health Services from the Not-For-Profit (NFP) Sector

Information Request 6.1: Having heard the views of stakeholders that NFP procurement reforms have not yet fully materialised, the Commission would like to hear further from all parties on what progress has been made by public authorities in implementing the reforms. What are the impediments? What further steps would expedite implementation?

Information request 6.2: Public authorities are implementing policies and approaches to support co-design and collaboration with the NFP sector. The NFP sector say more can be done. To what extent have public authorities adopted co-design and collaboration in practice when procuring with NFPs? What are the current limitations to further collaboration with the NFP sector?

Information request 6.3: Having heard the NFP sector's views on the benefits of a system-wide approach, to what extent do current public authority procurement practices:

- (a) consider collateral impacts non-government providers across the system; and/or
- (b) have a systemic client-centric or sector-wide approach?

Information request 6.4: In response to the NFP sector's view that tender response times are too short given the complexity of services sought, what is the experience of public authorities with extended market response times? What impediments or considerations are there to moving towards longer market response periods?

Information request 6.5: To understand better the options for reducing cost and time burdens on NFPs, the Commission seeks more information on the experience of public authorities in improving quality of tenders and minimising tendering burdens on NFPs.

Information request 6.6: The Commission would like to hear more from stakeholders on the implications for procurement process having regard to the mandated NFP contract extensions and how the existing procurement thresholds may impact upon the types of procurement process required. The Commission is particularly interested in examples that concurrently balance risk management with moving towards longer NFP contracts to provide the sector with funding certainty.

Information request 6.7: The Commission would like to understand the impact (i.e. how many contracts could potentially be affected) of the late payment interest regime in the event the current statutory exclusion of NFPs is remedied.

Information request 6.8: The Commission seeks views about the proposal from the NFP sector that NFPs be permitted to retain unexpended funds for purposes that increase the future capability of NFPs to deliver services.

Information request 6.9: The Commission seeks data on the time elapsing between contract award and contract execution for NFP contracts to inform its understanding of contract negotiations and the potential to shorten those times.

Information request 6.10: The Commission notes the difference between acquittal reporting and performance reporting and seeks further advice from all parties about how acquittals for NFP contracts can be simplified and streamlined without compromising the public interest.

Information request 6.11: Having regard to the recent introduction of the Standard Services Agreement and Standard Grant Agreements for use with the NFP sector, the Commission seeks further information from all parties about whether:

- those new documents will resolve the issues raised by the NFP sector; and
- there are further opportunities to improve flexibility and reduce disproportionate reporting arrangements, including through risk-based approaches and prequalification

Information request 6.12: To support an appropriate methodology for establishing business costs and overheads, the Commission seeks information on the methodologies or practices public authorities are relying on to establish these costs in NFP service contracts. Are there alternatives to support fair and reasonable funding of these costs?

Information Request 6.13: The Commission seeks further information from public authorities based on their experience in:

- their current capability to negotiate contracts for complex NFP services, and opportunities to improve this capability; and
- the extent to which their policy and program areas work jointly with their procurement and contract management functions in the design, execution and management of complex NFP services;

noting that these elements compliment and underpin the implementation of the Standard Service Agreement and Standard Grant Agreements.

7. Trends and Insights from Other Jurisdictions

Information request 7.1: The Commission seeks feedback on performance reporting and benchmarking in relation to SME-supporting procurement policies and initiatives to assist its understanding of the most effective arrangements.

Information request 7.2: The Commission seeks feedback from the states, territories and private sector on any evaluations of the effectiveness of procurement capability frameworks. Furthermore, the Commission seeks input from organisations on material changes to procurement operations arising from recruitment and development of specialised procurement professionals.

Information request 7.3: The Commission is seeking further feedback on current and emerging procurement models incorporating environmental and social objectives, particularly in relation to reporting and the evaluation of these frameworks.

Information request 7.4: To what extent are social enterprise and organisations like BuyAbility being considered by public authorities in South Australia? What are the impediments to considering these organisations in public sector procurement?

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 market place.

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 the *State Procurement Act 2004*, the following prescribed procurement operations are excluded from the definition of procurement operations in section 4 of the Act:

- 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, comprises 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 delegated 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 those prescribed public authorities 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 to Medium Enterprise (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 will be provided free of charge.

Value for money

The SPB guideline defines it as the optimal use of taxpayer resources to achieve the intended outcome.

Acronyms

ABN – Australian Business Number

AEPP – Aboriginal Economic Participation Policy

ACO – Aboriginal Controlled Organisations

AGD – Attorney-General’s Department

AMA – Australian Medical Association

AMCA – Air Conditioning and Mechanical Contractors’ Association

ANZGPA – Australia New Zealand Government Procurement Agreement

ANZSCO – Australian and New Zealand Standard Classification of Occupation Code

AP – Acquisition Plan

APCC – Australian Procurement and Construction Council

APU – Accredited Purchasing Unit

AUSFTA – Australia – United States Free Trade Agreement

BCSA – Baptist Care South Australia

BTFN – Business Tax File Numbers

CA – Contract Awarded

CAA – Courts Administration Authority

CE – Contract Extended

CEDA – Committee for Economic Development of Australia)

CES – Client Engagement Service

CHAFTA – Chile – Australia Free Trade Agreement

CIPS – Chartered Institute of Procurement & Supply

COAG – Council of Australian Governments

COTA – Council on the Ageing

CSS – Crown Commercial Service (UK)

DCP – Department for Child Protection

DCS – Department for Correctional Services

DE – Department for Education

DEW – 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

JAEPA – 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

NGO – Non-Government Organisation

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 – Work, Health & Safety

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 Australia 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 direction issued by the Board
- Spending on capital projects above \$150,000 is also not covered by the Board.

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, etc), 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 etc). 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 the spend of public money while at the same time meeting the government's other social, environmental and economic goals.

The State manages its procurement through a mix of centralised and decentralised arrangements. While public authorities are required to comply with the SPB Procurement Policy Framework and the Industry Participation Policy, they do 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 with the expanded terms of reference defining 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* (Act), and the *State Procurement Regulations 2005* (Regulations).

1.2 Treasurer's Instructions (TI's)

Under section 41 of the *Public Finance and Audit Act 1987* (Act), 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 TI's 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 (PC's)

PC's 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 PC's 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 TI's.

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:

➤ *The 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:

- *The Australia – United State Free Trade Agreement (AUSFTA)*
- *The Chile – Australia Free Trade Agreement (ACIFTA)*
- *The Korea – Australia Free Trade Agreement (KAFTA)*
- *The Japan – Australia Economic Partnership Agreement (JAEPA)*
- *The Singapore – Australia Free Trade Agreement (SAFTA)*

*Box 1.3***South Australian Government Election Commitments**

The Election commitments on procurement made five commitments and set out 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, non-government organisations and government agencies.

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

With this draft report, the Commission will begin a second consultation process to test its findings and draft recommendations; and to address the information requests in the draft report. The report will then be finalised and submitted to the Government by 17 May 2019.

The Commission considers that, some matters covered in Stage 1 of the inquiry would benefit from further evidence and testing with stakeholders and these matters will be carried over to Stage 2 of the inquiry. These matters are identified in the body of the draft 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 delegated to, and operated by, public authorities.

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 Board'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
- carry out the Board's functions in relation to prescribed public authorities and any other functions assigned to the Board under the Act.

The SPB delegates 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 Board 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; or Tier 3: \$220,000.⁴

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

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

The issues raised by stakeholders – businesses (especially small and medium size enterprises), Not for Profit organisations (NFPs) and government agencies- in the first round of consultation 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 market;
- limited information on 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;
- sub-contractor exposure to head contractor failure;
- requirements of local industry participation policies;

⁴ *State Procurement Board of South Australia, Procurement Authority and Governance Policy, July 2018, p2*

- applying value for money in practice.

These issues are summarised in Chapter 2, along with other evidence coming from surveys and other sources and are addressed in detail in the following Chapters.

1.6 Stakeholder Submissions

The Commission invites further Submissions from interested parties in response to this draft report and also in response to the broadened terms of reference. The Commission expects they will materially improve the Commission's understanding and refine or amend the recommendations going to government.

Transparency is an important part of the Commission's independent process. To that end, the Commission publishes the submissions that it receives on its website unless the stakeholder clearly indicates that the submission should be confidential, or the Commission considers the material to be offensive, potentially defamatory, beyond the scope of the inquiry's terms of reference, or an abuse of process. Submissions will remain on the Commission's website after the conclusion of an inquiry under *Past Inquiries*.

Further information can be found on the Commission's website.

Documents developed and received by the Commission, including confidential submissions, are subject to the *Freedom of Information Act 1991*. That Act gives individuals the legally enforceable right to access documents created and held by the government, subject to some restrictions.

1.7 Report structure

The report is structured as follows: Chapter 2 sets out a framework of the issues that are addressed in detail in the subsequent chapters. These issues include those from: business and NFP stakeholders; public authorities; the Commission's analysis of recent information and research as well previous reviews and inquiries; and trends in other jurisdictions. Broadly speaking, these issues cluster around:

- the design architecture of the current procurement system, especially in relation to roles, accountabilities and authorities for improvement of procurement systems as a whole and within public authorities, and information on the system's performance. These matters are addressed in Chapter 3, together with information requests to assist the Commission in the next phase of the inquiry.
- key aspects of the operation of the procurement system (excluding capital and the prescribed authorities), especially in relation to opportunities to improve practice, skills, risk assessment, engagement with the market place and contract management. These matters are addressed in Chapter 4, together with some information requests.
- as discussed previously, the inquiry terms of reference have been expanded significantly, which will make drawing broad conclusions in Chapter 3 and Chapter 4 difficult. Most of the broader system issues will be considered in stage 2 of the inquiry.
- the design and operation of the South Australia Industry Participation policy, including the economic rationale behind the policy, the issues raised by stakeholders

- and agencies and the effectiveness of the policy. These matters are addressed in Chapter 5, together with some draft recommendations and information requests.
- procurement issues specific to NFPs. While there are many overlaps with business concerns, NFPs have some unique issues in the procurement process. The State's method of procuring the services now delivered by this sector has changed recently. Chapter 6 analyses the remaining issues and other matters identified by the Commission and include several draft recommendations and information requests.
 - Chapter 7 identifies trends and developments in Australian and selected overseas jurisdictions that suggest opportunities to improve South Australia's procurement system and practice.

2. Overview of Issues and Evidence

2.1 Introduction

This Chapter sets out a consolidated overview of stakeholder issues raised with, or identified by, the Commission in the inquiry to date. The issues are variously addressed in Chapters 3, 4, 5 and 6.

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 submission 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.

In total, the Commission received feedback from 42 direct submissions to the procurement inquiry's issues paper. The Commission also held over 100 engagements that included 35 meetings with businesses and business associations, over 50 meetings with agencies and other entities of the Crown, and four meetings with NFP organisations and association. Additionally, the Commission facilitated three business forums, two NFP forums, two agency forums for over 40 participants. The Commission engaged with nearly 100 separate organisations of which 49% were private sector companies and of those, 80% were Small to Medium Enterprises (SMEs).

The three recent surveys of (mainly SME) business regarding government procurement have been examined: the Business SA survey conducted in November-December 2018 with 45 participants; the Office of the Industry Advocate survey conducted between 27 November

and 6 December 2018 with 213 valid responses; and responses provided via the voluntary supplier feedback tool on the SA Tenders website.

The Commission also considered the recommendations of 103 randomly selected procurements from 14 State government agencies; the State Procurement Board (SPB) database of individual contracting activity for the last four years; and the complaints received by the SPB in the last four years.

This evidence covered all three stages of government procurement - acquisition planning; supplier selection; and contract management.

The following sections of this chapter provide a structured summary of the issues identified in this body of evidence. Section 2.2 sets out the key issues raised by SMEs and business in general. Section 2.3 sets out key issues raised by NFP organisations that were not also raised by business and therefore not captured in Section 2.2. Public authorities also raised some key issues, both in relation to process and the capacity of some businesses and NFPs. This identification and grouping of issues provide a road map for consideration of these matters in greater detail in the following chapters.

2.2 Issues raised by businesses, including SMEs

The Commission estimates the information comes from more than 400 businesses (noting there is probably some double-counting). Almost certainly most are SMEs. Wherever possible, the Commission has aggregated a range of specific issues and examples into the key themes to be addressed. Some of these themes are shared with NFP, in which case this is noted specifically.

The following underlying themes have appeared from an analysis of the most cited issues encountered by businesses with government procurement as part of this inquiry. It should be noted that overall, this is not a statistically unbiased sample.

Figure 2.1: Key themes from SAPC business submissions



Source: South Australian Productivity Commission Analysis

Business satisfaction with the government procurement process is usually low in this sample. Businesses have raised particular concerns especially when it comes to being able to demonstrate their capabilities, suggest innovative alternatives and the speed of tender finalisation. Satisfaction is higher for smaller (\$33,000 and below) contracts (OIA survey 2018).

The sequence of the themes broadly follows the three stages of procurement: acquisition planning; supplier selection; and contract management.

2.2.1 Lack of transparency

This issue covers transparency in the acquisition, selection and contract management stages of procurement.

- Planning acquisition/supplier selection: suppliers need and expect to know the selection criteria, so they can assess whether it is worth responding to the tender. Low transparency creates a perception that a preferred candidate has been chosen and the tender is simply to satisfy internal processes. While this is not necessarily due to the imputed motives, low transparency is unhelpful.

"The market does not see all the steps and processes that government use in tender evaluation and therefore businesses sometimes have difficulty in responding or 'miss out' because they didn't address a step in the process." (OIA submission)

"There was concern about government favouring existing suppliers with some tenders being viewed as a charade. 'Personally, I support the ability of a government organisation to give preference to a supplier with whom they have a well-established trust/value relationship – but not when they have to go through the charade of tendering – wasting everyone else's time.'" (Small ICT service company, Business SA submissions)

- **Supplier selection/contract management:** the transparency of, and process for, final selections from panels was criticised in some instances. In some cases, the concerns stemmed from a two-step process where agencies, after selecting a panel, were conducting a further round to choose a single provider. The process in getting to the single provider had the appearance of giving a strong advantage to incumbents, compounded by inefficiencies in connecting to agency financial systems. Consequently, businesses in this situation reasonably question the value of the cost and effort in seeking a panel appointment.

"uncertainty about how the work was actually shared... it was argued that not all panels seemed to be used or that the presence of panels within some government departments was not always clear." (Business SA survey)

"Over 70 per cent of businesses reported winning less tenders than expected through panels; Clear preference for certain providers; Too many members on panel; Purchasing off panels; Dormant panels (no work)." (OIA survey)

- The Commission also heard from a few suppliers that there is an issue with rebates and fees being asked for by agencies. This will be investigated as more data is gathered.

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

An issue frequently raised by the businesses, particularly SMEs and NFPs, is inadequate engagement by agencies with their potential suppliers at all stages of procurement, including knowledge of the marketplace and local capabilities when planning the acquisition of goods and services. They believe the lack of engagement leads to suboptimal definition of government requirements resulting in lower quality goods and services, decreases their ability to win contracts and reduces the impact on local industry and employment.

"Communication aspects of tenders were amongst the highest priority issues emanating from the SME community... improving tender communications is critical to improving the tendering experience for local businesses... provide more opportunities for confidential discussions... particularly important for businesses which did not want to discuss matters of IP within earshot of competitors." (Business SA submission)

"70 per cent of SA Businesses would like to engage with government at a greater level." (BDO survey 2016)

Business also believes the lack of engagement leads to several other problems in the South Australia procurement system.

- Acquisition planning: businesses are concerned that, while there are exceptions, many government agencies do not have good knowledge of the local marketplace and the capabilities of local businesses. This lack of knowledge is believed by businesses to produce suboptimal procurement definitions, limit the capacity for innovation, reduce the capacity to assess business plans and reduce the capacity of agencies to manage contracts.
- Forward procurement plans: businesses cite poor information about tender timeframes and poor notice, resulting in higher costs, adverse impacts on other projects; reduced quality; and poor relationships. This matter was also raised by NFPs.

"It is incumbent upon every Victorian Government agency to put forward an expectation for the future 48 months... there is a degree of certainty that the projects would be proceeding within those timeframes and not just potential opportunities." (AIG submission p5)

"An understanding of future tenders with a 5-year timeframe would be beneficial. would allow companies to better manage their resources and capacity." (OIA submission, quoting a business)

- Acquisition planning, market-led procurement and innovation: businesses with a track record of supplying innovation products to Australian and New Zealand jurisdictions believe the lack of engagement makes it difficult to showcase innovative solutions. If project managers don't see an innovative solution in action, they are unlikely to see it as adding value. And if open processes are chosen, then businesses are concerned that proprietary intellectual property (IP) may be placed at risk.

"Little contact with decision makers and no effective capacity 'to show/demonstrate' products/outcomes is seen as a major impediment." (Business quote, OIA submission)

- Selecting suppliers: businesses criticise limited communication by government agencies at the advertisement stage and limited ability to clarify specifications. Businesses consider this practice raises the risk of putting up an uncompetitive bid or taking on a risk that places a supplier in a perilous situation.

"Information gaps related to a tender, such as excluding some details or demands required, which ultimately led to the tendering business not including those costs in their response." (Business SA submission)

- Supplier selection: several businesses consider providing information through “group sessions” or publishing questions to be difficult for innovative businesses, because of the poor protection provided to suppliers’ IP.
- Supplier selection/contract management: many businesses criticise the absence of constructive feedback by agencies, which means that there is no improvement in the capability for businesses to submit successful tenders in the future. This limits the ability for unsuccessful businesses to become “match fit” in the local market.

"The provision of feedback should be a mandatory requirement of agencies. Government may need to provide some protective structure for agencies to prevent such feedback being used as a ground for appeal or gratuitous complaint." (Adept Technology Submission)

"Businesses will not lodge a complaint with either the agency or SBC for fear they will no longer gain access to Government work/supplies. The fear of retribution is very real." (SBC submission)

2.2.3 Risk averse agency procurement culture

The Commission was consistently told by local businesses that South Australian public authorities are generally (very) risk averse. This experience was not uniform across all public authorities but was a predominant view. Risk aversion was considered to affect planning, acquisition and supplier selection in particular:

- Acquisition planning: businesses consider contractual risks are inappropriately assigned to parties that could not reasonably mitigate them. This was identified by businesses in construction and NFPs.

"I'm not convinced they necessarily understand where risks arise from, but they generally agree they shouldn't carry any of it!" (ICT services company, 1-19 employees)

"Businesses also felt they were not always bearing the risks they were best placed to manage" (Business SA submission)

- Acquisition planning and Innovation: Business does not understand why intellectual property must be owned by the State. Further, they consider it an unjustified constraint on businesses.

"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)

"Lack of trust with transferring IP to Government for fear it would not be adequately protected by department staff. Blanket requests for IP ownership from the Government were bullish and met with suspicion." (Personal services company, 1-19 employees, Business SA submission)

"Government condition to own IP stops businesses from being able to raise capital but then isn't used by government. Crown law needs to be challenged. Vic is not doing it (freed it up 10 years ago)." (Leunig Advisory)

- **Supplier selection:** The SPB has implemented reforms to streamline and simplify the procurement risk management process in State government; however, businesses observe that implementation by agencies is slow (e.g. in relation to bank guarantees, indemnity and public liability). Some recent requests for quotes use wording that appears to be inconsistent with the SPB reforms. Businesses do not believe that government agencies understand the cost these additional conditions put on SMEs.

*"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. (Extract from a PIRSA eProjects Panel RFQ released on 21 Jan 2019)*

"20 per cent of businesses found insurance requirements to be a barrier to tendering... \$20 million in Public Indemnity cover for contracts covering relatively simple goods and services was seen as excessive and should be a point for the Commission to explore further, particularly if some agencies/departments are not following the 2016 reforms." (Business SA submission)

- **Supplier selection:** Businesses consider insufficiently informed risk assessments by public authorities unduly influences the choice of suppliers included in limited tenders. Some businesses believe government departments consider Tier 1 businesses to be less risky and consider that agencies purposely put too little information or use vague terms in tender documents to mitigate the agency's risk of poor specification.

2.2.4 Red tape

Over the last two years, the SPB has made significant reforms to the procurement process:

- The SPB procurement practices and documents have now been standardised across government and ensure consistency for suppliers;
- One "Invitation to supply" has now replaced two previous bidding documents (Request for Tender and Request for Proposal documents) and includes provision for alternative offers to encourage innovation;
- The threshold for a simpler procurement process has been increased to \$550,000 from \$220,000;

- In low and medium risk procurements, suppliers are no longer required to provide indemnities, the State is not required to be named on insurance policies or be provided with a copy of the insurance certificate, and a default liability cap has been placed for low to medium risk contracts (between one and five times the value of the contract);
- The contracting process has now been simplified and standardised across government for NFP funded services.

Despite the SPB's efforts to cut down and simplify procurement administration and process, businesses still report high levels of red tape: From the survey conducted by the Office of the Industry Advocate, it takes on average:

- 42 hours to prepare a bid for a contract between \$33,000 and \$220,000;
- 94 hours to prepare a bid for a contract between \$220,000 and \$550,000;
- 167 hours to prepare a bid for a contract above \$550,000;
- 109 hours to prepare a bid for a panel

Most respondents indicated that they believe they should spend 25-70 per cent less time to complete a tender. It is unclear how widely, and to what extent, the SPB reforms are practiced by agencies.

Business considers that red tape could be reduced further in the following areas:

- Absence of a common template: Despite the SPB providing templates for agencies to use, businesses and NFPs report some agencies modify templates, meaning business cannot simply transfer information from one tender to the next:

"Businesses raised having to provide the same sorts of information in varying formats which points to deficiencies in the structure of tender documents if multiple questions are ultimately soliciting the same response. Feedback specific to the IT area indicated that despite there being standard tender templates, often individual departments/agencies were varying these templates." (Business SA submission)

"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. 'Part A' should be 'scheduled' such that there is an invariant component with any variations specifically identified." (Adept Technology submission)

- Duplication of the information requested instead of holding it in a common database. Duplication of information in successive tenders falls disproportionately on SME's as they do not have the same level of corporate resources available as larger firms. NFPs also raised this issue.

"Duplication of information requirements impacted over 83 per cent of businesses surveyed and while Business SA acknowledges that the State Government must balance privacy constraints, tendering businesses rightly expect that some standard information (related to company identification details, work/health/safety (WHS) policies and insurance coverage) can be more readily shared by departments/agencies and that procurement staff should only need to know if something has changed, rather than requesting businesses to resubmit all the

required information (it was suggested this could be a question)." (Business SA submission)

- Failure to recognise existing external accreditation and certification: Business believes that certification and external accreditation of businesses to accepted independent standards (e.g. ISO) from providers and other governments should be recognised as proof of compliance with relevant tender requirements. In most instances, businesses indicate they need to prove compliance in detail as part of each tender. NFPs also raised this issue in connection with external certification of quality processes.
- Too much information required. While business understand the need for government to ensure that services can be delivered to specifications and that goods will be fit for purpose, it has difficulty understanding the rationale for some of the information required as part of the tender process. NFPs also raised this matter.

"Reporting requirements which can be particularly cumbersome for small businesses to comply with and government departments/agencies should carefully consider whether they are asking because they need to know, or just because they are interested." (Business SA submission)

- The SA Tenders and Contracts Website: Businesses consider the website has some deficiencies which contribute to unnecessary red tape. It does not accept large documents, nor documents of certain types, it does not deal with panel recruitments or eProjects, and it duplicates the information required by the government accounts payable.

2.2.5 Lack of Procurement Expertise

Business perceive that there is a lack of specific procurement expertise within public authorities. As a result, businesses consider that:

- tenders do not identify pertinent risks;
- design specifications do not address the need of the public authority;
- there is a lack of market knowledge;
- tenders are not evaluated properly (important information missed from bids); and the overall focus is on process rather than outcome.

"There was a view that specific departments/agencies should need to demonstrate their own competence before being given the privilege of taking a direct negotiation approach to procurement... There was also a call for more industry consultation ahead of tenders being released to avoid issues related to shortcomings in technical understanding from the government's perspective. Businesses also raised the dangers of government relying too heavily on external consultants in the tender formation stage when that may limit the ability of procurement staff to make the final tender decisions/recommendations themselves." (Business SA submission)

"Acquisition plans are written by budget holders (project owners) with little involvement from procurement specialists. Good procurement outcomes start from the initial planning exercise which must be undertaken well and with a commercial perspective in mind,

informed by rigorous market analysis and with a focus on building relationships with the relevant business sectors pre-tender.

Example 1: Data Warehouse/Business Intelligence software acquisition (SA Health): The Health procurement was all about buying a piece of software rather than transforming how we do 'clinical governance'. It totally missed the worldwide move to value-based health care. This procurement could have been a catalyst to a whole new approach to managing healthcare. So, we bought a reporting tool, it would have taken a totally different strategy if there had been advice from the health ICT sector before going to market."

Example 2: End user computer contract - The End user computer contract was more focused on savings and lowest common denominator rather than "how can the government spend get a really innovative technical infrastructure that will power a modern public sector". It would have been such a different outcome if there had been some industry input prior to going to the market, rather than the outcome we got."(OIA submission)

2.2.6 Delay and Lack of Accountability from Public Authorities

Businesses report frustration with delays and lack of communication from public authorities. They consider that public authorities are not motivated to make quick decisions or adhere to original timeframes. They also do not believe public authorities communicate changes to timelines well. The delays impose significant holding costs on businesses as employees need to be available at the start of a project. This is also an issue for NFPs.

'The cost in terms of time and money is amazing, and not respected, understood or acknowledged at agency procurement levels.' (Professional services company, 1-19 employees, Business SA Submission).

"Business is left hanging and carrying costs, including underutilised staff or deferring decisions to employ people." (OIA submission)

"Experience of a recent tender for the delivery of buses to service our public transport system, with an estimated value of \$300 million. Initially released in around October 2017, the contract took many months to be assessed and was eventually withdrawn in September 2018 ... Government indicated job was urgent, 7-8 months passed before tender was awarded...Executive coaching for Agency CE's: Tender was released then after waiting 8 months businesses were told the tender was withdrawn as the funds were no longer available. Why wasn't this picked up before it was released to the market and businesses invited to tender?... One business participated in 8 tenders over past 18 months, \$15million in contract value, 30 jobs. 7 failed to proceed and with the 8th awarded to an interstate competitor." (OIA submission)

"Shared services took 11 months to evaluate and appoint 5 panel members to supply stationary requisites to Government agencies." (ANCOL submission)

The Small Business Commissioner has indicated there has been some improvement in timely payment for goods and services. The *Late Payment of Government Debt (Interest) Act 2013*, was a significant step forward. However, business notes that the NSW government has committed to a 5-day payment from invoice by end of 2019; hence, there still is some room for improvement. In addition, some public authorities still do not seem focussed on

meeting the spirit of shortening payment timeframes. This is also a critical issue for NFP's which relates to the way they are funded.

2.2.7 Barriers to Innovation

Many comments have been received from business stating how hard it is for new entrants to participate in government procurement. Business attribute this to the following factors:

Aggregated contracts, prequalification and panels:

- Aggregated contracts - The Small Business Commissioner and other stakeholders noted that aggregated contracts can adversely affect businesses that are too small to tender for larger contracts. The move to larger contracts can result in smaller local businesses closing, especially where they are unable to be incorporated in a larger business supply chain, or when the government contract represents a significant portion of the revenue base for that business. This may be especially relevant in regional South Australia. Small business believe that this should be considered as part of value for money. It is noted that the Government has an election commitment to allow big contracts to be broken into smaller contracts to allow small business to bid for work.

"Small bites of procurement often lead to a better business outcomes for the Government as each stage can be assessed". Complex tenders need to be broken down, from capturing ideas to small trials, proof and demonstration work before progressing to the next stage...start small and grow the project, rather than having one complex document-based assessment. Private sector (B2B) models use gated trials for procurement to get down to a few with the result of a few businesses ready for the preferred outcome. This is vital on both sides to reduce risk." (OIA submission)

- Prequalification and panels - These arrangements are often closed to new entrants for significant periods of time. Some businesses are concerned that the contract term can exclude new businesses or unsuccessful applicants from joining panels for up to five years. The same can be true of prequalification processes.

Rolling-over of existing contracts

Businesses suggest contract rollovers reduce the opportunity to compete. It is not always clear why some contracts are rolled over. Business believe it may be poor planning and time management by public authorities.

"these runs (taxi runs) were not retendered at the time but just allowed to be rolled over, (Government) needs to understand the ramifications especially in country areas." (Anthony Thus, SA Regional Taxi submission)

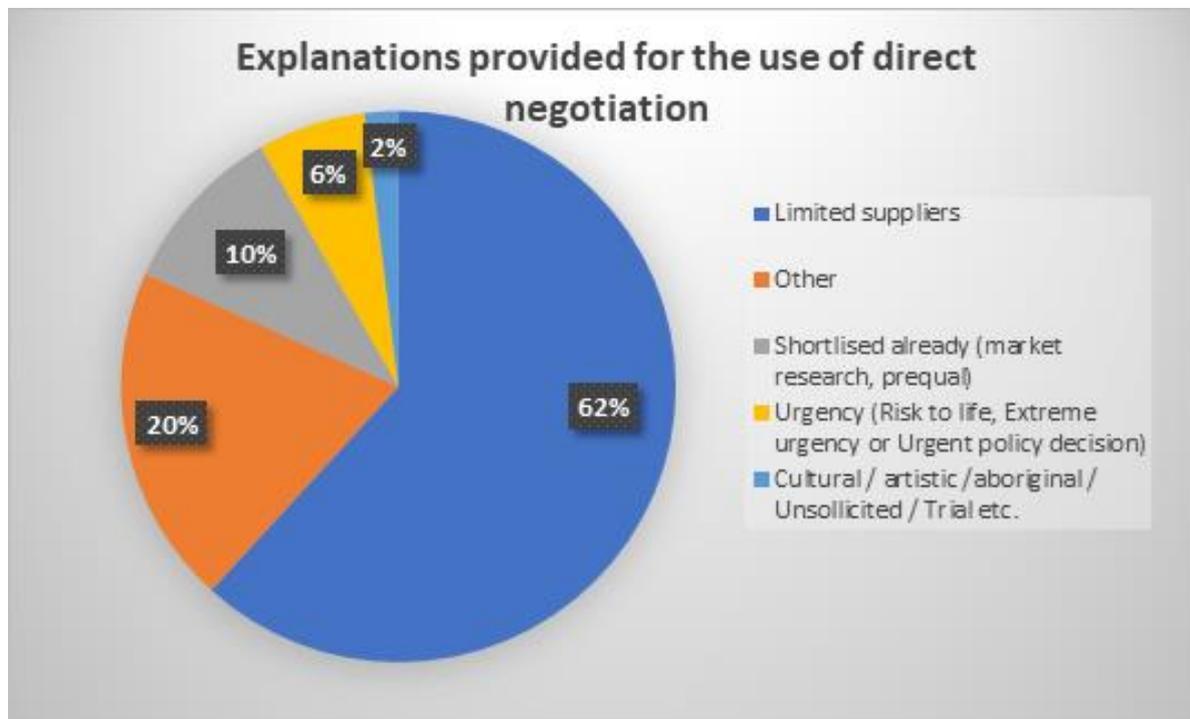
Direct Negotiation

Some businesses are concerned that public authorities do not have an in-depth knowledge of the market place when opting to use direct negotiation particularly with respect to new entrants. Direct negotiation was used for 47 per cent of all tenders above \$33,000 in 2017-18. The three main reasons given by agencies for direct negotiation were:

- limited number of suppliers meeting the requirements (exclusive rights, licencing and patents, need for compatibility with existing system, etc.): 62 per cent.
- other: 20 per cent

- potential suppliers already shortlisted: 10 per cent

Figure 2.2: Agencies reasons for using direct negotiation



Source: State Procurement Board 2017-18; Office of the SA Productivity Commission Analysis

Process to get on to Basware

The issue raised with respect to Basware (government invoicing system) relates to the complex process to have new supplier details added to the system after the supplier has been added to a panel or pre-registration list. When the supplier is not listed on Basware, there is an effective, but temporary barrier to purchasing from the supplier, even if the supplier is on the appropriate panel, until the Basware is updated.

"Registration in each Agencies' Basware procurement software is not automatic for businesses who get a place on a panel. Therefore, if a business is not yet on Basware, it is disadvantaged as it involves a certain timeframe to include new suppliers. Currently procurement personnel, agency management and IT are all involved to add supplier onto Basware program which is problematic and has previously taken 6 weeks to accommodate." (ANCOL submission).

Prescriptive specifications by agencies (as described in section 2.3.1)

Businesses consider the over specification of supply requirements by some public authorities prevents suppliers from presenting innovative bids as they may be judged to be non-compliant:

"We often see businesses offering up 2 tenders – 1 to comply with tender requirements and another which is innovative – the innovative proposal nearly always misses out. Innovative people do exist within government, but they are disciplined to follow strict procurement guidelines which stifles innovation." (OIA submission)

Database of local suppliers

Businesses consider insufficient use is made in the tender processes of information about suppliers held by public authorities. There are currently two databases that contain supplier information. The first is maintained by the Industry Capability Network website (which lists all registered suppliers for a type of service or product) and the second is maintained by the Office of the Industry Advocate website (which focuses on SA suppliers and rates the amount of South Australian labour or jobs associated with each part of the supply chain).

2.2.8 Value for money

Business does not believe that many State tender evaluation processes consider whole of life costs, and 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.

"over half of businesses are experiencing State Government procurement staff that do consider 'whole of life' costs when assessing tenders. However, only 13.2 per cent of businesses found this was 'usually' the case which demonstrates the substantial challenge that still faces the State Government in better equipping its procurement employees to assess tender costs on a more holistic basis." (Business SA survey)

"Multinational submits pricing below cost, wins and then up the price without consequence (no audit to keep them in check). They delete (discontinue) products and reintroduce under new code at 300 per cent above tendered price." (OIA survey)

"the outside competitor had no interest in servicing the local community... and the local community suffered for this... it is important to understand the ramifications especially in country areas." (Anthony Thus, SA Regional Taxi submission)

2.2.9 Contract Management

It has also been noted by business that public authorities pay significantly less attention to contract management compared to selecting suppliers. Businesses and associations consider suppliers are not required to comply with IPP commitments and/or other contract requirements because they are not monitored and enforced.

"There is not enough holding contractors to account. It is easy to present cheaper solution if it doesn't comply with the requirements...at least these taxis (second winners of the contract) had cameras in them which was something not complied with by the previous operator despite... mandatory to have these runs (school runs)." (Anthony Thus, SA Regional Taxi submission)

2.2.10 Surfacing and addressing complaints

The complaint process attracts very few formal complaints despite businesses voicing a number of concerns with the government tender process through the SA Tenders and Contract website, which offers tenderers the opportunity to provide anonymous feedback about the process. Consultation with business, the Industry Advocate and the Small

Business Commissioner indicates there is a real reluctance to complain directly to public authorities for fear of losing future business with public authorities.

2.3 Issues specific to the NFP sector

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 (eg for indigenous, homeless and disadvantaged people South Australians), how those services are funded and administered, and how NFPs operate and deliver those complex services.

NFP procurement and grant arrangements have been subject to significant reform between mid-2017 and January 2019. The overarching view expressed by SACOSS and other NFP's was that, although the reforms have responded to many of the issues raised by the NFP sector, implementation has been imperfect and incomplete.

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.

The issues raised by the sector are addressed in detail and tested where possible with public authorities and NFPs in Chapter 6. The Commission provides its views on those matters together with some draft recommendations and information requests in that Chapter.

2.3.1 Market engagement, consultation and collaboration

The NFP sector believe that although improved market engagement and collaboration is supported in the *Department of the Premier and Cabinet Circular PC044 - South Australian Funding Policy for the Not for Profit Sector* (the NFP Funding Policy), this is not happening in practice. The benefits of improving visibility of the pipeline of work and taking a sector wide perspective to NFP procurement was also highlighted. NFPs raised the need for market approaches to have regard to the complex social and community problem that NFP procurements are trying to address, and that efficiencies could be realised by recognising the interdependency between public authorities and NFPs.

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..." (SACOSS submission)

...every tender response is designed to operate independently of all current and future service responses, thus discounting the benefits of cross-subsidisation that may be possible... (Baptist Care SA submission)

"we are reliant on our sector networks, connections and interpretation of state government budget papers to attempt to predict the work that may be released

across a financial year and resource that accordingly.” (Life Without Barriers submission)

2.3.2 Tendering: time, cost and information requirements

NFPs consider that the time available to respond to a tender is too short, particularly when complex solutions are sought. They also believe that risk management and information requirements are being exercised disproportionately, creating unnecessary burdens for NFPs. The absence of recognition of industry quality assurance accreditation as part of the procurement process is an area of concern.

“...tenders are released with a 4-5 week turnaround for highly complex pieces of work, which would ideally involve community consultation and the establishment of collaborations or partnerships for service responses.” (Life Without Barriers submission)

2.3.3 Funding and pricing arrangements

Perceived underfunding of overheads and business costs was a concern for several NFP organisations, as was short-term contracts and short contract extensions. Late payments to NFPs, and exclusion of NFPs from the *Late Payment of Government Debts (Interest) Act 2013* was identified as an unresolved issue. There was general acknowledgement that the new standard NFP contracts have or will resolve a lot of issues, except for the repayment of unexpended funds which NFPs see as contrary to the fee for services principle in most contracts.

“...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)

2.3.4 Contract negotiations, contract management and reporting arrangements

Insufficient lead time to consider contract renewals, and finalising contracts after existing contract expiry dates were two concerns identified. These practices create unnecessary delays and other pressures. Onerous reporting requirements also featured in NFP feedback, as did inflexible contract provisions and unreasonable terms.

“...scrutiny of our financials of late to a degree of detail that is unreasonably onerous. A recent example was a question over a \$150 payment recorded as ‘other’ in a \$12 million contract. This level of scrutiny does nothing to promote the sense of ‘partnership’ the department states it is trying to achieve and is an increasing expense for the sector.” (Life Without Barriers submission)

Contracts often include specificity to the hour or day of service being provided, with little to no variation allowed from the service recipient (customer). Often little flexibility in contract, yet high level of flexibility required by the customer and demand for detailed acquittal by the funder.” (CARA submission)

2.4 Issues specific to government agencies

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.

2.4.1 Outcome based procurement

The state procurement system has, since 2016, begun to move away from threshold-based procurements to complexity-based procurements; however, some agencies have advised the Commission that the process is still very detailed, and the evaluations and decisions process followed is still very complex.

2.4.2 State Procurement Board

The role of the SPB as defined by its governing legislation is focussed on strategic leadership. The feedback from some agencies suggests that the SPB is more operationally focused rather than on strategic improvement.

2.4.3 Better Data and Reporting

The use of KPIs to help monitor performance and the generation of meaningful data to support the achievement of outcomes is still a significant issue for agencies. While there are some examples of agency best practice, the government sector agrees that it lacks the data necessary to increase benefits associated with more strategic procurement. This information gap relates to:

- Supplier capability and market analysis, including industry trends, regulations and technological developments;
- Impact or influence of procurement on achieving government objectives;
- The impact on business of procurement guidelines, policies, templates and the types of contracts used by government such as panel contracts or across government contracts; and
- The impact of risk management policies on suppliers.

2.4.4 Complex approval processes

Approval processes are very complex, with endorsements and sign-offs occurring at multiple levels within public authorities that are not seen as adding value or supporting effective risk management. The Cabinet process (where required) while vital to the integrity of the system, can be very time-consuming. In addition, thresholds for financial delegation are much lower than in other jurisdictions. Financial delegations and the procurement contract tiers do not line up well such that in some situations financial delegation is often larger than the executive's authority to sign a contract.

2.4.5 Use of Panel Contracts

The use of panel contracts or large scale across government contracts has generated mixed views. The opportunities for economies of scale are obvious for goods and services common to the sector. However, the effectiveness of these contracts appears to be constrained by

factors, such as exemptions from use, secondary evaluation processes and local content considerations.

2.4.6 Probity

Probity is a significant priority for public authorities. Public authorities do not feel that this focus on probity is having a detrimental effect on other aspects of the procurement process; however, the focus on transparency associated with probity does entail a large reporting burden and detailed supplier selection processes for public authorities.

2.4.7 Capability and Capacity

Agencies believe their capability and capacity to deliver procurement outcomes are improving, but still have some way to go. Some agencies train internally on procurement process; this approach complements the SPB programs for procurement practitioners. The main areas of future enhancement are to facilitate agencies attracting and retaining commercially skilled and experienced procurement professionals to ensure that the South Australian public sector has the depth of experience and acumen for large scale and complex procurement projects.

2.4.8 Contract Management

Agencies generally consider that contract management can be improved. For instance, business owners within agencies are not always notified in a timely manner when the contract is about to commence or if a contract requires renewal or variation. As a result, it contracts are rolled over which limit the public authorities' ability to capture more value from the contract.

2.5 Conclusion

The material issues set out in this Chapter are explored in detail in the rest of this draft report. Business issues are considered in Chapters 3, 4 and 5, along with responses and views of government agencies. NFP issues are similarly considered in Chapter 6. In each chapter the Commission sets out its view together with information requests and draft recommendations.

Information request 2.1: What issues of concern have not been incorporated in Chapter 2? What is their significance?

3. Procurement System and Design

3.1 Introduction

The Commission has been asked to evaluate the effectiveness and efficiency of State Government policies and practices for the procurement of goods and services. Stage 1 of the Commission's inquiry excludes capital projects and prescribed authorities.

The Commission's Government Procurement Inquiry Issues Paper, published 16 November 2018, provides an overview of concerns or issues previously raised by business and industry regarding the South Australian (SA) Government procurement of goods and services. Many of those issues may be directly or indirectly related to the current design of the SA Government procurement system. These include:

- An excessively labour-intensive process with disproportionate supporting information required
- Limited visibility as to what opportunities may arise in the future leaving little time to plan and therefore participate
- Inadequate monitoring and measurement of contract performance
- Excessive numbers of approvals and governance considering the size of a project
- Agencies lacking technical expertise, experience or capability to effectively evaluate complex tenders in key markets of responsibility
- Cases where the principle of value for money for the life of the procurement could be applied better.

This chapter is provided in two parts:

- part 1 is an overview of the current system and design of the SA Government procurement system including the regulatory environment, procurement principles, governance arrangements, and compliance requirements
- part 2 explores the issues raised through consultation and research relating to the current design of the government procurement system in SA.

For the purposes of this chapter, the State Procurement Board's (SPB) procurement policy framework consists of:

- the governance structure of state procurement
- requirements of the *State Procurement Act 2004* (the Act)
- key procurement principles that drive government procurement
- the SPB's purpose and functions
- SPB policies, guidelines and user guides that underpin government procurement operations.⁵

3.1.1 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

⁵ State Procurement Board, Board's Procurement Policy Framework, issued September 2018, page 3

procurement process depends on the scope, intent, and prescribed requirements of those instruments.

3.1.1.1 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, in 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 in 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 in 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.

3.1.1.2 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 (TI’s) that are relevant to SA’s government procurement framework are illustrated in table 3.1 below:

Table 3.1 Procurement Related Treasurer’s Instructions

Name	Description
<i>TI 8: Financial Authorisations</i> November 2018	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"> ➤ enter into a contract (contract authorisation) ➤ make a payment (financial authorisation) ➤ vary a contract where that amendment causes the total value of the contract to increase by more than 5 per cent.
<i>TI 12: Government purchase cards</i> March 2016	Chief Executives are responsible for ensuring purchase cards: <ul style="list-style-type: none"> ➤ are only provided to employees with a contract authorisation and the authorised limit does not exceed the contract authorisation limit ➤ can only be used in accordance with the public authority’s established procurement policies
<i>TI 28: Financial Management Compliance Program</i> May 2014	Chief Executives are responsible for ensuring: <ul style="list-style-type: none"> ➤ 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 ➤ reductions in payments are promptly applied in line with contract documentation where there has been supplier failure (performance). Negotiated trade-offs are not to be applied unless approved by DTF and Crown Solicitor’s Office (CSO). ➤ public authorities must develop, document and implement contract management policies and procedures.

3.1.1.3 Premier and Cabinet Circulars (PC's)

PC's are used to establish whole of government policies and will include instructions or requirements to take specific action on the implementation of those policies.

PC's apply to all public authorities, including prescribed authorities, and to all procurement activity (including construction) unless otherwise specifically excluded.

Key Premier and Cabinet Circulars (PC's) that apply to the SA Government's procurement framework are illustrated in table 3.2 below:

Table 3.2 Procurement Related Premier and Cabinet Circulars

Name	Description
<p><i>PC044: SA Funding Policy for the NFP Sector</i> July 2017</p>	<p>Applies to procurement activity within scope of the <i>State Procurement Act 2004</i>. Applies to all public authorities with funding agreements or grants with NFP sector. Specific procurement requirements include:</p> <ul style="list-style-type: none"> ➢ 3+3+3 year contract terms ➢ minimum 6 months notice to NPFs on contract renewal ➢ retain existing NFP supplier at completion of contract without market approach (specific circumstances) ➢ apply standard NFP funded service agreement template when paying upfront
<p><i>PC027: Disclosure of Government Contracts</i> December 2005</p>	<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. Specific requirements apply for non-disclosure.</p>
<p><i>PC013: Annual Reporting</i> Revised August 2018</p>	<p>Chief Executives must include details on all consultants (irrespective of value), and on contractors that were engaged during the financial year.</p>
<p><i>PC028: Construction Procurement Policy Project Implementation Process</i> August 2015</p>	<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>. The Minister for Transport, Infrastructure and Local Government, supported by DPTI has responsibility for policy development and implementation.</p>
<p><i>PC038: Unsolicited Proposals</i> September 2018</p>	<p>Provides a framework and process for the assessment of in-scope unsolicited proposals. Applies to all procurement activity valued above \$3.3 million for infrastructure projects and above \$1.1 million for non-infrastructure (including GST). Goods and service proposals below \$1.1 million are handled directly by public authorities using the SPB's procurement framework (refer guidance provided in the SPB's Market Approaches and Contracts Guideline).</p>

3.1.1.4 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 as "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 Plans (IPP) 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 at chapter 5.

The current SAIPP requirements include:

- Public authorities are required to:
 - include a request that suppliers are to complete an Economic Contribution Test (ECT) or Industry Participation Plan (IPP) 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 Industry Participation Plan (IPP)
 - 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) are 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.

3.1.1.5 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 (policy).

The policy 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.

3.1.1.6 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 with further information 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.

3.1.1.7 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)*

Further information on these regulatory requirements is provided at Appendix 3.1.

3.1.2 State Procurement Board procurement policy framework documents

Part 2, section 12(1)(b) of the *State Procurement Act 2004* (the Act) requires that the SPB *‘develop, issue and keep under review policies, principles and guidelines relating to the procurement operations of public authorities.’*

The SPB’s procurement policy framework *‘sets out the overarching policy for the operation of procurement in the Government of South Australia’*⁶

⁶ *Ibid*, page 2

The SPB's policy documents are intended to provide guidance and resources that can be interpreted and adopted by public authorities in line with their requirements and their procurement authority.

According to the SPB's website (www.spb.sa.gov.au), the SPB's procurement policy document suite includes 75 documents provided under six sections (for goods and services procurement). The documents include policies, guidelines, templates, user guides and handbooks. In summary:

- Procurement process – 49 documents relating to simple procurements (valued up to and including \$550,000), procurements valued above \$550,000, disposal requirements, and relating to the NFP standard agreement
- Governance – 12 documents relating to the Board's accreditation and assurance programs
- Requirements – 6 documents covering other procurement requirements including international trade obligations, emergency procurement, probity and ethical procurement, value for money, sustainability, and contract register
- Reporting – 5 documents regarding public authority annual reporting obligations to the Board
- Supplier complaints – 1 policy on the supplier complaint requirements and process
- Introduction – 2 documents with a procurement policy framework guide and a glossary.

A full list of the documents is provided at Appendix 3.2.

By way of comparison, according to their websites, the NSW Government provides around 42 resources and the Victorian Government provides around 60 resources applicable to goods and services government procurement.

The SPB's procurement policy framework documents are all available on the SPB's website as downloadable pdfs (or word in the case of templates). Training provided through the SPB's capability program may reference relevant policy documents.

The SPB's usual policy review program involves reviewing each policy or guideline every two years. This includes reviewing best practice approaches (related to the specific policy), current trends and forecasts, issues raised (including complaints), and targeted consultation with public authorities. Apart from a two-year review cycle, the policy may be amended on an ad hoc basis if changes are required immediately. Amendments to a policy document are normally required to be considered and endorsed by the SPB before being promulgated to public authorities. Normally a targeted email will be sent to public authorities on the amended policy(s) and training may be updated if appropriate.

Sustainable procurement

The SPB provides a Sustainable Procurement Guideline (guideline) that aims to provide guidance on how to effectively integrate sustainability features and objectives into the

procurement process for goods and services valued at or above \$4.4 million and significant procurements below \$4.4 million (as determined by the public authority).

The guideline refers to the Australasian and NZ Government Framework for Sustainable Procurement (2007). The guideline does not reference the *Climate Change and Greenhouse Emissions Reduction Act 2007 (SA)*.

Board's procurement policy framework guidance for suppliers

The SPB's website provides a web page on 'information for suppliers' that contains the following resources:

- a nine page '*Suppliers Guide to Winning Government Business*' dated April 2015;
- a one page '*supporting local business*' document;
- a website link to the '*Better Customer Charter*' that does not function.

3.1.3 Procurement principles

The procurement principles applied under the *State Procurement Act 2004* (the Act) 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
- Ensuring probity, accountability and transparency in procurement operations.

Part 2, section 12(1)(b) requires the SPB to '*develop, issue and keep under review policies, principles and guidelines relating to the procurement operations of public authorities*'. The two key policy documents in the Board's procurement policy framework that provide specific guidance on the above objects of the Act are:

- Probity and ethical procurement guideline
- Value for money in procurement guideline.

3.1.3.1 Probity and Ethical Procurement

The SPB's Probity and Ethical Procurement Guideline (guideline) defines ethical procurement as relating to '*the conduct of government employees (and/or representatives) in undertaking and managing procurement*'.⁷ The guideline states that ethical procurement also applies to the expectations of government that suppliers will ensure ethical practices in the conduct of their business and in the actions of key providers in their supply chain. Ethical procurement practices may include competitive processes; fairness and impartiality; consistency and transparency; managing conflicts of interest; compliance with regulation; and security and confidentiality of information. The guideline includes the following mandated requirements:

- Employees must strive to avoid actual, or perceptions of, conflict of interest, or of undue influence (page 5)
- Any actual potential or perceived conflict of interest must be identified and managed at the beginning of the procurement process (page 7)
- All participants in the procurement evaluation process must complete a conflict of interest declaration and confidentiality agreement (page 7)

⁷ State Procurement Board, *Probity and Ethical Procurement Guideline*, September 2016, page 3

- If a person has a conflict of interest, and is involved in any aspect of the procurement process, they must declare any actual or potential conflict in the written declaration (page 7)

Requirements regarding ethical behaviour, probity, accountability and transparency in government procurement in SA are included in a number of the SPB's procurement policy framework documents including:

- The disposal method chosen must promote fair and effective competition and must be conducted in an ethical manner⁸
- Actual, potential or perceived conflicts of interest that may unfairly affect or influence the procurement must be identified and mandated in accordance with the SA Code of Ethics⁹
- Public authorities must ensure that an appropriate probity and risk management framework is developed to safeguard the integrity of the selection process (may include a probity plan if the procurement is valued over \$550,000)¹⁰.

In addition to the above, ethical and probity principles are in:

- the obligations of the SA *ICAC Act 2012* and the SA Code of Ethics
- the assurance activities undertaken by the SPB when reviewing and/or accrediting public authorities
- the Board's Supplier Complaint Policy.

3.1.3.2 Value for Money

The SPB's Value for Money Guideline (Guideline) defines it as '*the optimal use of taxpayer resources to achieve the intended procurement objectives.*¹¹'

The Guideline states that the SPB's Procurement Policy framework articulates two principles:

- the achievement of value for money is driven through the procurement process, from acquisition initiation to contract completion
- recognition that lowest price does not always represent the best outcome.

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
- contract management – how to manage the contract to ensure that the intended objectives are achieved.

⁸ State Procurement Board, *Disposal Guideline*, issued December 2017, page 6

⁹ State Procurement Board, *Simple Procurement Policy*, issued January 2019, page 9

¹⁰ State Procurement Board, *Supplier Selection Policy*, issued September 2018, page 7

¹¹ State Procurement Board, *Value for Money Guideline*, January 2018, page 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 value for money in procurement.

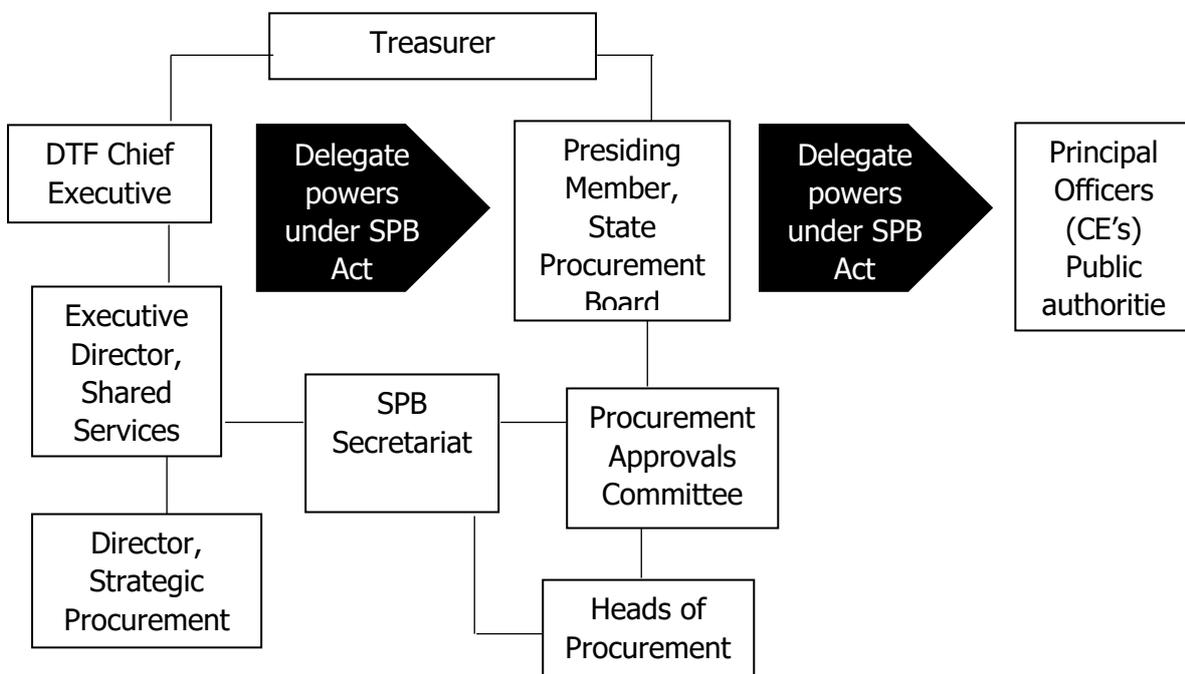
3.1.4 Governance arrangements

As discussed in section 3.1.1.1, the *State Procurement Act 2004* (the Act) prescribes certain functions, delegations and responsibilities to the Treasurer (as the responsible Minister), the SPB and principal officers of public authorities. These requirements provide the foundation for the governance arrangements that underpin goods and service procurement across the SA Government.

The Treasurer oversees the administration of the Act and is responsible for determining the membership of the SPB. The Act prescribes that the presiding member of the SPB be the chief executive of the administrative unit that is responsible for administering the Act, or a nominee of the chief executive. The current presiding member is a nominee of the chief executive of the Department of Treasury and Finance.

The following diagram provides the Commission’s understanding of current governance arrangements.

Figure 3.1: Current SPB (Board) / Strategic Procurement Model



3.1.4.1 Procurement Approvals Committee (PAC)

Pursuant to section 13 of the Act, the SPB has established the Procurement Approvals Committee (PAC) as a sub-committee to assist the SPB in undertaking its functions. The SPB

has delegated to the PAC consideration and approval of acquisition plans and purchase recommendations above the procurement authority of public authorities, including deviations/variations to procurements/contracts resulting from a PAC approval.

This delegation does not extend to procurements that are valued greater than \$15 million and are assessed as being of high risk, unless such transactions are referred by the Presiding Member of the SPB. The PAC can refer a transaction to the SPB if it considers it to be sensitive or high risk or of strategic interest to the SPB.

The PAC Terms of Reference require the scheduling of twice monthly meetings and will consist of three SPB members who attend on a rotating membership basis. A balance of both private and public sector members are supposed to attend, and the Chair is decided at the commencement of each meeting. Staff from the Department of Treasury and Finance attend the meetings in an advisory capacity.

3.1.4.2 Procurement Authority

Part 2, section 14 of the Act states:

14—Delegations

- (1) The Board may delegate any of its functions or powers under this Act other than this power of delegation.*
- (2) A delegation—*
 - (a) may be made to—*
 - (i) a member of the Board; or*
 - (ii) a committee established by the Board; or*
 - (iii) a member of the staff of the Board; or*
 - (iv) any other person engaged in the administration of this Act; and*
 - (b) may be made subject to conditions and limitations specified in the instrument of delegation; and*
 - (c) is revocable at will and does not derogate from the power of the delegator to act in a matter.*

Pursuant to the Act as specified above, as stated in the SPB's Procurement Authority and Governance Policy, the SPB delegates *'to the principal officer of a public authority the authority to conduct procurement operations that is appropriate to the size and complexity of the public authority's procurement operations'*.¹²

Procurement authority is defined as *'the authority to approve a proposed course of action, strategy or recommendation relating to procurement (i.e. acquisition plan or purchase recommendation) to a specified dollar amount as delegated to a public authority's principal officer by the Board'*.¹³ If the value exceeds the procurement authority, the principal officer

¹² Board Procurement Authority and Governance Policy, State Procurement Board, July 2018, page 2

¹³ *ibid*

is required to seek the SPB's approval for the project's acquisition strategy. The principal officer can also approve, without reference to the SPB, secondary purchases off a panel arrangement even if the value exceeds the public authority's procurement authority (unless otherwise specified in the contract).

There are three procurement authority delegation levels, or "Tiers", depending on the size and complexity of the public authority's procurement operations:

- Tier 1: delegated procurement authority of \$15 million – currently provided to: SA Health; DPTI; SAPOL; Department for Education; Department for Human Services; Department of Treasury and Finance
- Tier 2: delegated procurement authority of \$1.5 million – currently provided to 14 public authorities
- Tier 3: delegated procurement authority of \$220,000 – currently provided to 26 public authorities.

The principal officer of a public authority is responsible for the management of the procurement operations of the authority, subject to and in accordance with the policies, principles, guidelines, standards and directions of the SPB. This responsibility also extends to delegates of the principal officer.

New or reorganised public authorities (for example, following machinery of government changes) must apply to the SPB for a procurement authority. The SPB may then request relevant information from the public authority and will decide on the appropriate level of the procurement authority.

Apart from the Tier 1, 2 or 3 public authorities, there are several particularly small public authorities that are under the SPB's procurement policy framework. To enable these authorities to undertake procurement operations, they are aligned under a Tier 1 or 2 public authority's procurement authority. This means that when the small authorities need to undertake a procurement, they can use the resources and expertise of the larger public authority.

3.1.4.3 Governance within public authorities

The SPB's Procurement Authority and Governance Policy (policy) requires that the principal officer establish an effective procurement governance framework. Public authorities are to have appropriate governance processes in place and a 'clear and effective system of delegation and authority for procurement'. Some of the requirements listed in the policy for a governance structure within public authorities are:

- delegations are documented and integrated with other related delegations
- an appropriately constituted Procurement Governance Committee (PGC) be established (otherwise known as an Accredited Purchasing Unit or APU)
- procurement risk management processes are incorporated into the public authority's overall risk management systems
- appropriate systems and processes are in place to monitor and benchmark procurement performance and outcomes
- records are maintained, and confidential information is appropriately managed.

The role of a PGC is to support the principal officer's responsibility for the efficient and effective management of the procurement operations of the public authority in accordance with the policies, principles, guidelines, standards and directions of the SPB by:

- facilitating the development of organisation-wide procurement strategy
- supporting approval processes
- improving procurement outcomes.

The policy mandates the membership structure of the PGC for Tier 1 public authorities including at least one external commercial advisory representative and the Industry Participation Advocate or a delegate. The membership details may be requested by the SPB.

3.1.4.4 Accreditation Program

The SPB's Accreditation Program is intended to *'ensure that Tier 1 public authorities have the capacity and capability to perform procurement in an effective manner'*.¹⁴ A Tier 1 public authority will normally undertake an accreditation review and an assurance review every four years.

The accreditation framework for Tier 1 public authorities is based on five high-level performance categories against which a public authority's procurement capacity and capability is assessed. These categories are:

- leadership and strategy
- organisation and people
- governance and performance management
- processes and systems
- relationships – internal and external.

Each category includes specific procurement principles that define the objectives that each public authority is required to achieve in their individual procurement operations. The accreditation assessment process focuses on assessing the capacity and capability of the public authority's procurement practices.

Tier 1 public authorities are required to complete a self-assessment to evaluate its capacity and capability for each of the procurement performance categories and principles. The public authority completes a report that is then reviewed by an externally appointed 'Lead Reviewer'. Following consultation with the public authority, the principal officer signs off on the final report, and the public authority then presents their report plus a Development Plan to the SPB. The SPB will then inform the public authority of their decision on accreditation, and any conditional requirements, in writing.

The SPB can change a public authority's procurement authority at its sole discretion. Following the 2016 South Australian Fire and Emergency Commission (SAFECOM) Accreditation Review, the SPB amended SAFECOM's procurement authority from a Tier 2 level to \$440,000 as a result of the review.

¹⁴ State Procurement Board, *Procurement Accreditation Guideline*, March 2018, page 3

3.1.4.5 Compliance requirements

Section 19 of the Act requires that public authorities under the Act (including every member or officer of that authority) are bound by directions etc of the SPB and responsible Minister. Section 12 (1)(e) requires that the SPB *'investigate and keep under review levels of compliance with the Board's procurement policies, principles, guidelines, standards and directions.'*

The SPB's Assurance Program (program) reviews whether public authorities are effectively implementing procurement policies, procedures and operational practices. The program also provides a mechanism to identify areas for improvement and establish agreed actions to address the issues identified.

The SPB's Assurance Program Guideline states that the program involves an onsite evaluation of compliance, and for Tier 2 and 3 public authorities it also includes an assessment of their public authority procurement operations to ensure that fundamental organisational requirements are in place for an effective procurement operation. Tier 1 public authorities are not required to undertake this aspect of the assurance review as this is addressed via an accreditation review in line with the SPB's Procurement Accreditation Guideline.

When undertaking the Assurance Program, the SPB's secretariat requests:

- a copy of procurement related internal audit reports issued in the preceding two years
- any procurement related findings raised by the Auditor-General for the preceding two financial years, including the status of actions taken in response to these findings.

The Assurance review process involves an appointed 'Lead Reviewer' selecting a sample of the public authority's procurements for testing against the mandatory requirements of the SPB's policies and guidelines (by reference to Assurance Document 1. The findings of the review are summarised in an Assurance Report and the reviewer liaises with the public authority to draft an Action Plan to address exceptions noted. The final documents (report and action plan) are to be signed off by the principal officer and then forwarded to the SPB for endorsement. Following endorsement, the public authority is required to provide the SPB's secretariat with quarterly updates on the status of their action plan.

The findings and recommendations arising from an assurance review are classified as either a policy issue that may require an amendment to the SPB's procurement policy framework, or an application issue where the policy guidance was sufficient but has not been followed.

To assist with the Assurance Program, the SPB publishes an Assurance Document 1: Mandated Requirements which lists the mandatory requirements (the "must" statements) included in the SPB's procurement policy framework. The SPB seeks assurance by reference to the list that public authorities have complied with all of the requirements and can demonstrate that compliance in their procurement activities.

Tier 1 public authorities are required to undertake an assurance review once every four years. A new round of assurance reviews commenced in December 2018. The previous assurance review program ran from 2012 to 2016 and was largely undertaken by an external provider, with an internal SPB secretariat auditor reviewing some of the smaller agencies. The revised Assurance Program for the period 2018 – 2022 also includes an

assessment of Tier 2 (procurement authority of \$1.5 million) and Tier 3 (procurement authority of \$220,000) procurement operations to ensure that fundamental organisational requirements are in place for an effective procurement operation.

In addition to the SPB's assurance and accreditation programs:

- Principal officers must complete an annual certificate of compliance in accordance with the SPB's Procurement Reporting Policy that certifies that procurement activity of the public authority has been undertaken in accordance with SPB requirements
- Are subject to the Auditor-General's audit program which audits compliance with TIs
- Are subject to legislated compliance requirements under the SAIPP.

To facilitate the procurement, the public authority also will have to seek the appropriate financial approvals as required by Treasurer's Instruction 8. This includes seeking the Ministerial or Cabinet approval for a contract authorisation where the value of the contract exceeds \$1.5 million.

3.1.4.6 Capability under the SPBs procurement policy framework

SPB's capability program

Part 2, section 12(1)(g) of the Act requires that the SPB *'assist in the development and delivery of training and development courses and activities relevant to the procurement operations of public authorities.'*

The SPB's Capability Development Strategy is administered by the capability team in the BSPB's secretariat. The strategy consists of a range of capability development initiatives aimed at improving procurement and contract management capability across the SA Government. Initiatives provided through the SPB include:

- a targeted training program consisting of face to face or online training workshops provided by external presenters (nominal fee)
- procurement forum events held for procurement staff once or twice a year on a procurement topic with guest speakers
- the SPB's Procurement Capability Development Products and Solutions panel contract which provides access to professional memberships via the Chartered Institute of Procurement and Supply (CIPS) and the International Association for Contract and Commercial Management (IACCM). Procurement staff are required to register their interest for the vocational education and training (VET) qualifications – a sufficient cohort is required to progress further.
- a procurement qualification support fund of up to \$150,000 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. Officers are required to complete an application form and attach supporting documentation seeking financial support.
- a Procurement Academic Excellence Recognition Initiative to recognise officers who have achieved academic excellence in gaining procurement and/or contract management qualifications.

- a 'Generic Procurement Recruitment and Selection System (GPRS)' to provide guidance material to help public authorities identify and develop an appropriate procurement position description and develop selection criteria.
- documents available from the SPB's website on guidance on building capability, procurement job descriptions, and future procurement skills.

The SPB's capability initiatives are generally only available to procurement staff employed within the SA Government although some Local Government Authorities have attended courses.

Capability requirements

Section 20 (1) of the *State Procurement Act 2004* (the Act) requires that the principal officer 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*'.

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.*¹⁵

In addition to the above:

- the SPB's Accreditation Program includes five performance categories against which the Tier 1 public authority is assessed. One of the five categories is 'organisation and people' which includes ensuring that the public authority has adequate procurement capability and skills to ensure effective performance.
- the SPB's Assurance Program requires Tier 2 and 3 public authorities to be assessed against 12 principles including capability and skills so that the public authority has people with sufficient procurement capability and skills to ensure effective procurement performance.

Apart from the SPB's accreditation and assurance program, the following mandatory requirements ("must" statements) are included in SPB policies¹⁶:

- Acquisition Planning Policy - public authorities must allocate appropriate resources for the procurement process (facilities, information technology, personnel, contractors etc.) to ensure that procurement objectives are achieved, and risks managed. It is important that procurement practitioners from the public authority's central procurement area are consulted for the procurement process
- Supplier Selection Policy - public authorities must ensure that evaluation approaches are fit for purpose and resources are allocated to the process to facilitate timely,

¹⁵ State Procurement Board, *Procurement Authority and Governance Policy*, July 2018, page 3

¹⁶ State Procurement Board, *Assurance Document 1: Mandated Requirements*, December 2018

efficient and effective decision making, consistent with the specified requirements and the procurement objectives.

- Contract Management Policy – for contracts valued at or above \$4.4 million and significant contracts below \$4.4 million (as determined by the public authority), an adequately resourced and skilled contract manager must be appointed. The contract manager must have completed the SPB’s contract management training program (or similar) and undergo refresher training every three years.
- Emergency Situation Procurement Policy – for public authorities who have emergency responsibilities and who are responding to an emergency, the principal officer must ensure that staff awareness and capability related to emergency procurement is developed and enhanced

3.1.5 Procurement framework performance reporting and monitoring

Board Reporting and Monitoring

Part 2, section 12 of the Act refers to the SPB’s functions and states that:

(2) For the purpose of performing its functions, the Board may—

...(e) exercise such other powers as are conferred on it under this Act or as are necessary for, or incidental to, the effective performance of its functions

Part 3, section 23 of the Act refers to the annual report requirements:

23—Annual report

(1) The Board must, on or before 30 September in each year, deliver to the Minister a report on the administration of this Act and the work of the Board during the financial year ending on the preceding 30 June.

Annual reporting

The SPB requires public authorities to report annually to the SPB by:

- Tier 1 and 2 public authorities are required to comply with the SPB’s Procurement Reporting Policy; and
- Tier 3 public authorities are required to comply with the SPB’s Base Level Procurement Reporting Policy.

The SPB’s Procurement Reporting Policy (policy) states that public authorities ‘*must submit specified procurement information as outlined in this policy to enable the Board to monitor and review procurement operations, identify opportunities and provide leadership of procurement across government, as well as fulfilling the reporting obligations to the Minister and Parliament.*’¹⁷

The policy requires Tier 1 and 2 public authorities to complete an excel template and provide information on:

- annual procurement expenditure (by goods and services)

¹⁷ Board Procurement Reporting Policy, State Procurement Board, issued March 2018, page 2

- new contracts that were executed during the reporting period (in that financial year), were valued over \$33,000, and are within the scope of the *State Procurement Act 2004* (the Act)
- formal supplier complaints during the reporting period
- 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).

Information that is not to be reported 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
- contracts that are out of scope of the *State Procurement Act 2004* (construction activity valued over \$165,000)
- contracts valued less than \$33,000
- procurement spend on certain services including internal overheads, water rates and taxes, real estate and building rentals, mandated internal charges and fees where there is no discretion for their usage.

The information required to be reported under this policy is consistent with the information that public authorities are required to record and maintain as per requirements in the Board's Contract Register Policy.

Tier 3 public authorities are required to comply with the SPB Base Level Procurement Reporting Policy by completing and submitting a template to the SPB. Tier 3 public authorities are only required to report annual procurement spend (by goods and services), and a statement of compliance (by the principal officer).

The SPB's annual reporting policies are the key mechanism by which the SPB obtains regular information on procurement spend and contracting activity. Some summary statistics based on the annual information reported are made available via a pdf document on the Board's website.

Other SPB reporting and monitoring obligations

The SPB's procurement policy framework includes other obligations on the development of plans and/or reports for various aspects or phases of the procurement process. In most cases, the plans and/or reports are for internal purposes (to record information and/or for internal approval) and are not required to be provided to the SPB unless:

- the public authority is undertaking a procurement that is valued above its procurement authority – the acquisition plan needs to be provided to the SPB for endorsement (except for purchases of across-government, panel or lead agency contracts)
- the SPB may request a post contract or annual contract review report relating to an acquisition plan that they have approved

- a report or plan is requested by the Lead Reviewer as part of the Assurance Program review or an Accreditation Program review.

Examples of reports or plans that are required to be prepared for internal reporting purposes (within the public authority) include:

- an acquisition plan must be prepared and approved by the appropriate delegate prior to approaching the market
- an evaluation plan must be developed and approved prior to the opening of offers
- contracts valued over \$4.4 million and/or are significant or high risk must:
 - have a Procurement Risk Management Plan and attach this to the acquisition plan
 - have an approved contract management plan
 - complete annual contract review reports and a post contract review report for governance committee or senior managers (or SPB if requested).

1.5 per cent of contracts were valued over \$4.4 million according to the SPB's 2017-2018 annual procurement reporting data. Unless the Board specifically requests this information, it is for the public authority's internal purposes only.

Other reporting mechanisms

Premier and Cabinet Circulars

Since 2017-2018, Premier and Cabinet Circular 13: Annual Reporting (PC013) has required 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 to be reported is 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 2017-2018 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.

South Australian Industry Participation Policy (SAIPP)

The SAIPP requires:

- suppliers to complete an online Economic Contribution Test (ECT) or an Industry Participation Plan (IPP) depending on the value and location of the contract
- public authorities (responsible agencies including prescribed authorities) to annually report on ECT and IPP scores for contracts undertaken during the previous financial year

- work is in progress to develop measurable indicators which would require annual reporting on Aboriginal employment through procurement.

3.2 Issues raised by research and participants

Part 2 of this chapter explores issues raised by participants to the inquiry (from government, private and NFPs) as they relate to the current design of the government procurement system in South Australia. Commission research provides evidence, where available, on those issues.

Issues raised by participants regarding the procurement system and design in SA are:

- Scope (section 3.2.1)
- Value for Money (section 3.2.2)
- Data (section 3.2.3)
- Delegations (section 3.2.4)
- Complexity (section 3.2.5)
- Compliance (section 3.2.6)
- Capability (section 3.2.7)
- Strategic Focus (section 3.2.8)

These issues are explored in the following sections.

3.2.1 Scope

Legislation

Section 3.1.1 provides information on the current scope and application of the *State Procurement Act 2004* (the Act) and *State Procurement Regulations 2005* (the Regulations). As discussed, the Act prescribes the exemption of certain entities and activity by regulation:

- does not apply to local government bodies nor universities
- the interpretation of "procurement operations" as applied in the Act prescribes the exclusion of:
 - grants that are classified as a grant under Treasurer's Instructions
 - construction projects valued over \$165,000 (inclusive of GST)
- certain public authorities are prescribed by regulation and are excluded by regulation.

The Act confers powers on the SPB and/or responsible Minister (Treasurer) with respect to prescribed public authorities:

- one of the SPB's functions stated in section 12(1)(i) is to '*carry out the Board's functions in relation to prescribed public authorities and any other functions assigned to the Board under this Act*'
- the SPB may, with the approval of the Minister (Treasurer), undertake or make arrangements for procurement operations for a prescribed public authority (section 18(a) of the Act;
- a prescribed public authority is required to comply with any directions issued by the Minister (on the advice or recommendation of the SPB) (section 19(2)) of the Act.

There are no references in the Act nor the Regulations regarding directions or powers with respect to prescribed procurement operations.

Process to prescribe public authorities

The SPB has advised that historically, at the time that each public authority was declared a prescribed authority, the process to seek exemption required them to seek the support of the responsible Minister prior to Cabinet approval. The entity would develop their own justification to support their application for exemption and the following criteria would be applied by the responsible Minister (on advice of the SPB) to guide decisions on whether exemption was appropriate or not:

- Does the entity operate as a commercial enterprise and on a commercial basis?
- Can the entity demonstrate the existence of an effective, well-structured internal procurement operation?
- Would the entity be disadvantaged if required to comply with the Act?

Review of prescribed public authorities

In 2018, in support of the government's election commitment to *'review the status of prescribed public authorities to ensure authorities currently operating outside government procurement rules are brought into line with other public sector agencies'*¹⁸, the Treasurer requested additional information on the status of prescribed public authorities. Prescribed public authorities were consulted and provided information on their prescribed status. Following consideration of the information and consultation with the SPB, the Treasurer decided to recommend, and Cabinet agreed, that the scope of the Commission's inquiry be expanded to include prescribed public authorities and construction procurement. A Stage 2 of the Inquiry that includes prescribed public authorities will commence in May 2019.

Size and value of prescribed procurement

An initial desktop review has indicated that a significant proportion of government procurement is not within scope of the *State Procurement Act 2004* (the Act):

- According to information published in the 2017-2018 annual reports or on the SA Tenders and Contracts website (contracts awarded as at March 2019), the value of procurement activity by prescribed authorities is around \$2.3 billion and over 400 contracts.
- According to information in the 2017-2018 Department of Planning, Transport and Infrastructure (DPTI) annual report and goods and services contracting activity reported to the Board, the approximate value of construction contracts engaged by DPTI in 2017-2018 was \$0.8 billion¹⁹
- Purchases of non-financial assets are expected to be \$2.0 billion in 2018-19. The forward estimates contain a major infrastructure investment program of \$8.3 billion in the general government sector over four years²⁰.

¹⁸ Liberal Party of SA, *Government Purchasing – A Strong Plan for Real Change*, 2018, page 3

¹⁹ DPTI, 'Appendix: Contractors engaged by the agency', *2017-2018 DPTI Annual Report* and DPTI annual contracting activity for goods and services reported to the Board for 2017-2018

²⁰ SA Productivity Commission, *Government Procurement Inquiry Notice of Inquiry and Terms of Reference, Stage 2*, February 2019

Participant feedback

There has been feedback from government and industry that the efficiency and effectiveness of government procurement is impacted by:

- different frameworks with different governance and mandatory requirements depending on the type of procurement activity (goods, services or construction)
- different public authorities depending on whether they are within scope of the Act or prescribed.

Suppliers who tender for different types of work and/or with several public authorities are exposed to various frameworks that potentially require different information and have differing processes.

Feedback on the current limitations of the Act includes:

'The exemption of capital projects from the current Government Procurement Inquiry once again denies our sector opportunity to access:

- *collaborative-based approaches to procurement, project management and risk allocation;*
- *promotion of safer and more productive delivery;*
- *best practice on bidding, contracting and procurement streamlined processes and;*
- *reduced costs.*'

(Consult Australia submission, page 1)

'I have previously made representation to Statutory Authorities Review Committee that I can see no practical reason for these procurements to be excluded.' (Office of the Industry Advocate submission, page 2)

*'...inherent limits in the Act, namely excluding local government, and excluding construction projects over \$150,000 from procurement policy have no rational basis when billions of dollars have been and are being spent by federal, state and local governments and when local SMEs are demanding an opportunity to compete.'*²¹

*'The Board seems to not engage in one of the most aggressive and larger procurement areas of State spending and that is building and construction. For this sector to not be oversighted by the State Procurement Board, is difficult for our industry sector to understand.'*²²

Some senior procurement officials have advised that there would be strategic benefits to being able to work across agencies and across all procurement operations. Benefits could include:

- more valuable strategic interactions with businesses that tender to different public authorities and/or operations
- stronger focus on strategic implications rather than the process and immediate business needs

²¹ Civil Contractors Federation SA submission to the SARC Inquiry, [SARC inquiry into SPB submissions](#)

²² AMCA SA submission to SARC inquiry, dated 16 October 2018, [SARC inquiry into SPB submissions](#)

- potential to improve capability by providing opportunities for staff to work on different projects and develop better skills and expertise in procurement through specialisation.

Commission's view

It is currently difficult for the government to easily obtain a clear understanding of the value and volume of procurement expenditure and contracting activity across government as at least half of the government's procurement expenditure is not within scope of *the State Procurement Act 2004* (the Act) and not required to comply with the SPB's framework. In addition, apart from Cabinet, there is no central authority that has oversight or any influence over the total procurement activity across government.

The only consistently applied data recording and reporting mechanisms currently existing are either limited in scope (such as the SPB's annual reporting requirements) or are not consolidated (such as reporting for PC013 for annual reports).

The lack of information and/or oversight on all South Australia government procurement activity limits the government's ability to develop, deliver, measure and evaluate strategic procurement objectives.

In addition to the above, suppliers and public authorities have provided feedback that indicates the difficulties of dealing with two separate procurement frameworks and the preference of having consistent processes and better oversight.

While there is some merit in a central authority having stronger oversight of the whole procurement system, the impacts and costs of requiring exempted agencies and excluded expenditure to be part of a larger system need to be measured carefully. As the South Australia Government has accepted the Premier's recommendation to broaden the scope of the current inquiry to include prescribed agencies and capital projects, this issue will be considered in Stage 2 of the Commission's Inquiry into government procurement.

3.2.2 Value for Money

Section 3.1.3 provides background information on the SPB's Value for Money Guideline developed in January 2018. "Value for money" is defined in the guideline as *'the optimal use of taxpayer resources to achieve the intended procurement objectives'*.²³ The guideline states that:

- value for money is to be considered and applied throughout the procurement process
- determining whether value for money has been achieved requires clearly stated objectives that can be measured and compared to the outcome of the procurement once it has been delivered
- "spending less" may be traded off against "spending well".

The SPB publishes an Assurance Document 1: Mandated Requirements that provides a list all of the mandatory requirements (the "must" statements) included in the SPB's policies and

²³ State Procurement Board, *Value for Money Guideline*, January 2018, page 4

guidelines. The specific term “value for money” is only referenced in one of the 86 mandated requirement statements - in the SPB’s Disposal Guideline which states that:

The disposal of goods must achieve value for money. Public authorities should select a disposal method that will obtain the best possible return for any surplus goods. In addition to price, the disposal process chosen must include consideration of the government’s social, economic and environmental policy objectives.

There are other policy references to the term “value for money” in various SPB policies and guidelines although it is usually a generic reference e.g. ensuring a proposal or process considers value for money. The SPB’s Supplier Selection Guideline does include some advice on evaluating non-cost elements of a supplier’s offer including costs over the life cycle of the procurement, sustainability requirements etc.

The Commission has received feedback from businesses and public authorities on the issue of value for money as it applies to government procurement. The feedback indicates that:

- public authorities and business lack clarity or a shared understanding on what value for money in procurement is
- there is uncertainty on how to apply and measure value for money in the procurement process
- concerns were raised on managing and prioritising value for money within the context of resource constraints and other strategic priorities.

Feedback has also been provided regarding the definition of value for money:

‘Industry and the State don’t appear to have a common understanding of what value for money is. It is suggested that buyers and sellers need to adopt a universal and shared understanding of value for money, otherwise, it is possible utility will be foregone and decision-making processes will be compromised.’ (Bus SA submission, page 9)

‘Some agencies continue to struggle with the concept of economic benefits being part of a value for money assessment.’ (Office of the Industry Advocate submission page 4)

‘There is a “cultural” piece of work which needs to be done in some agencies that accepts there are economic benefits beyond the lowest price outcome’. (Small Business Commissioner submission, page 10)

Feedback from agencies and business indicates that value for money is seen through the narrow lens of “lowest price” as against broader government objectives for example, supporting the development of competitive local businesses and environmental sustainability.

‘over emphasis is given to price, rather than assessing value for money.’ (IT company, 1-19 employees for the Business SA submission, page 7).

'the outside competitor had no interest in servicing the local community, just the \$ the tender delivered and the local community suffered for this' (Anthony Thus submission, page 1)

Business SA undertook a survey of their members on the Commission's issues paper receiving 45 responses. It found that although 45 per cent of businesses surveyed said that, in their experience, SA government agency procurement managers 'sometimes' adequately considered whole of life costs, 42 per cent of businesses said that the managers rarely or never considered whole of life costs indicating an over emphasis given to price factors. Software purchases were particularly raised as a specific example where 'whole of life' costing is particularly important.

In their responses to the Commission's request for information, often public authorities have indicated that they have a good understanding of value for money in the commercial sense. That is, the standardisation of product categories, aggregation of volumes to drive efficiencies of scale, improved and streamlining processes can all drive cost savings and achieve financial "value". However, the inclusion of other government social or economic objectives such as social inclusion, environmental sustainability, and SAIPP, can cause difficulties for public authorities who are managing procurements in the current procurement policy framework. 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.

Specific issues regarding the management of competing priorities that have been raised through consultation and research and include:

- Public authorities are undertaking procurements within an environment of agency savings targets. This naturally strengthens attention to least cost which may lead to "least price".
- Incorporating other government policy objectives into procurements can impact on the direct costs or price of the procurement – for example, local manufacturing is usually priced higher than overseas manufacturing (local labour costs etc). However, the benefits or efficiencies gained by incorporating other government policy objectives in procurement are often difficult to quantify and are indirectly (rather than directly) attributable to the procurement. This makes it harder for procurement officers to justify the higher cost for the indirect outcomes.
- Although the achievement of other government policy objectives can result in substantial benefits for the SA economy, the benefits are generally over the longer term and unlikely to be recognised in the public authority's budget.

The Australian Institute of Architects noted in their submission to the Commission that:

'Value for money can be achieved through socially inclusive procurement by providing participants with meaningful employment, reducing reliance on social welfare and building capacity in marginalised communities/sectors' (page 8)

A review commissioned by the SPB in 2018 on the SPB's policies and procedures noted that although the SPB had published a guideline on value for money, public authorities requested

that further guidance be provided on how to measure and quantify value for money in the evaluation process. The review also stated that public authorities indicated that in some cases, value for money is seen to be directly in conflict with public authority savings targets. Value for money is believed to be a solution that can provide improved service, lower risk and quality outcomes, but that this would likely mean the procurement would cost more.

Commission's view

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 requires more sophisticated and multifaceted approaches to address economic and social issues.

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

Given the feedback provided to the Commission, there does not appear to be a clear understanding on what is value for money given the government's competing but complementary objectives in a whole of government sense.

After considering the feedback provided and research to date, the Commission considers that a policy statement providing clear and consistent advice is required to communicate the government's strategic objectives and how they are to be prioritised to assist with the application of value for money within the context of government procurement. Specific policy guidance and advice on how to factor in government policy targets needs to be consistently communicated across government and throughout the procurement process.

As part of Stage 2 of the Commission's Inquiry, the Commission will investigate policy options which may maximise indirect benefits for the state.

Information Request 3.1: The SPB publishes a Value for Money in Procurement Guideline to provide 'information and practical advice to procurement practitioners from public authorities on how to determine and apply Value for Money in a South Australian Government context'.

Does the guideline include appropriate and sufficient information and advice to enable procurement practitioners to determine and apply value for money in government procurement?

What additional information or guidance should be provided to facilitate the application and achievement of best value for money in the procurement process?

3.2.3 Data

Section 3.1.5 provides an overview of the existing reporting and monitoring mechanisms within the procurement framework. Information is provided on the existing requirements and mechanisms to collect and report on data or information. These include:

- annual reporting requirements
- specific policy reporting requirements
- compliance reporting requirements
- ad hoc reporting.

The information that is collected and reported is obtained for various reasons (including authorisation or to meet mandatory requirements), and is provided to different entities including the SPB, the Industry Advocate, for publication and for internal public authority requirements. There are numerous limitations to the existing mechanisms including:

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

Feedback provided

Feedback from agencies and businesses has indicated several restrictions on the capture, measurement and reporting of information.

'...reporting requirements which can be particularly cumbersome for small businesses to comply with and government departments/agencies should carefully consider whether they are asking because they need to know, or just because they are interested or want to gather the data' (Business SA submission, page 5)

'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, page 8)

Additional feedback provided in relation to data capture, analysis and management included:

- The SPB does not currently receive reporting or other evidence that would enable it to quantify whether public authority panel contracts are meeting their strategic objectives.
- Information is not obtained nor reported on the impact of procurement on SMEs.
- Unless captured by SAIPP reporting or by individual agencies, there is no mechanism via the Board to track non-financial benefits.
- 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), 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). This does not include any separate internal reviews that may be undertaken separately by a public authority.

- No data is collected to measure the efficiency of agencies in completing milestones such as the resources applied to a particular activity.
- Several public authorities are investing in contract management system technologies to streamline and automate processes and improve compliance. There is no across government ICT strategy or management of these individual projects.

Existing data record and report mechanisms

Information and data collection capability varies widely across different public authorities. Part of the reason for this is that there has been no across government ICT digital strategy for procurement. Public authority ICT capabilities and resources may or may not incorporate functionality that is suitable for the procurement process such as systems for contract management, workflow management and database management.

Some public authorities have developed fairly sophisticated ICT arrangements for central procurement management, while others have minimal ICT capability incorporating procurement. Examples of systems or structures implemented by public authorities to capture and measure performance include:

- In January 2019, SA Health implemented a “balanced scorecard” to measure performance against key performance indicators (KPIs) including completion of projects on time, reduction in manual requisitions, payment on time, training, corporate contract management system
- Strategic Procurement unit in DTF uses the ROSMA²⁴ model to track their performance against established benchmarks in terms of financial benefits delivered and the efficiency of delivering an across government procurement function.

Capturing the right information

Limited business feedback

The SPB receives limited direct feedback from business about the fairness or costs of the Government’s procurement process. Some industry or private sector feedback is provided through the:

- Small Business Commissioner SA
- Industry Advocate
- Ministers
- User surveys (when initiated)
- Formal supplier complaints that are referred to the SPB

A review commissioned by the SPB on its policies and procedures in 2018 found that leading procurement jurisdictions often have two reference groups who provide information and advice to agencies and central board authorities. The intent is that the central authority obtains a clearer understanding of the impact and effectiveness of procurement from the perspective of agencies and suppliers, learnings can be shared, and the central authority can develop a better understanding of the procurement objectives and process. South Australia has a Heads of Procurement group (HOP) with representatives from Tier 1 and 2 public

²⁴ <https://www.atkearney.com/procurement/rosma>

authorities, but there is no equivalent established business / industry advisory group for procurement. As discussed, some industry / business feedback is provided via the Industry Advocate, Small Business Commissioner etc.

Planned reforms in data capture and monitoring

Strategic Procurement

Strategic Procurement in DTF have advised that the SA Tenders and Contracts website is currently migrating to a new software platform and will be upgraded with additional functionality during 2019 including:

- panel contract management functionality (rather than having a separate portal)
- supplier pre-registration
- simple procurement online (the ability to openly tender low value procurements)
- a new user interface
- larger file size for uploads.

Strategic Procurement are also investigating:

- a contract management system that will streamline and automate the contract management process and improve compliance overall
- establishment of a Single Business Identifier for businesses to use when tendering for government spend.

Strategic Procurement have advised that a number of different public authorities are in the process of implementing their own contract management systems.

State Procurement Board

The SPB have advised that it is proposing to establish public authority reporting against a regime of performance measures for government procurement under its next strategic plan, which may include demonstrated achievement of procurement objectives. It is intended that the new reporting regime will apply to all procurements. Reporting may initially consider performance measures that are common to agencies, ascertained through the new round of accreditation reviews.

The SPB will consider the merit of seeking reporting from agencies on secondary purchases from significant panel contracts as part of the proposed performance measurement regime.

Commission's view

Overall, data recording and collection is not undertaken in a coordinated manner and there is no cross government consideration of what is required, nor analysis of the existing information recorded.

Appropriate technological procurement solutions that are consistently applied across government are a key enabler to the development and implementation of strategic procurement. The current approach has resulted in an ad hoc and inconsistent application of different technological solutions across government which limits the government's ability to capture information, identify opportunities, trends and undertake strategic planning.

The Commission also notes that developing a whole of government data collection system will take time and may represent a significant expense. The Commission will need to consider if the benefits of simplifying the tender process for business and increasing the availability of data for central government is worthwhile in the context of the investment required to facilitate the change. This will be considered as part of the review of the larger system in Stage 2 of the Inquiry.

Commission Information Request 3.2: With respect to the capture, recording, reporting and analysis of data and information on government procurement:

What information and/or data that is currently captured, recorded and/or reported could be leveraged and used to provide a better understanding and oversight on government procurement?

What information and/or data that is not currently recorded and/or reported should be (and could be) captured, reported and analysed?

3.2.4 Delegations

As stated in the Auditor-General's annual report²⁵, 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 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 delegated 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.

²⁵ Auditor-General's Department, 'Part A: Executive Summary', *Annual Report of the Auditor-General for the year ended 30 June 2018*, page 52

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'*²⁶ for procurements valued \$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. The diagram is based on the Commission's understanding based on information provided by public authorities.

Table 3.3: Summary of approval and endorsements for procurement process

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

²⁶ Department of Treasury and Finance, *Treasurer's Instruction 8: Financial Authorisations*, page 4

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 eight weeks, or add 30 per cent to 50 per cent to the time taken for the procurement process – particularly for those procurements valued above a public authority's accredited purchasing limit
- there is uncertainty 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 Board's framework (provides more flexibility and guidance).
- Investigate ICT solutions that could streamline and coordinate the approvals process within, and between, public authorities.

Commission's View

The Commission agrees that the mismatch between the TI 8 thresholds and procurement authority delegations adds an unnecessary amount of time to the approval process and that the delegations should be aligned.

Other potential reforms, additional to those indicated above, worth investigating are:

- Streamline the various value thresholds applied under the SPB's framework including:
 - Align the simple procurement and procurement authority thresholds
 - Remove the threshold of \$220,000 currently in place within simple procurements.
- Amend the SAIPP thresholds (refer chapter 5).

Other options will be considered as part of the Stage 2 Inquiry.

Information Request 3.3: Several authorisations / endorsements and associated delegations apply to the procurement process – particularly for those valued over a public authority’s procurement authority.

What specific reforms would streamline and simplify the authorisation / endorsement processes without compromising financial integrity?

3.2.5 Complexity

Section 3.1.4 provides an overview of the existing governance arrangements for the structures, systems and processes that influence the operations of government procurement of goods and services in SA.

Mandatory requirements

The SPB publishes an Assurance Document 1: Mandated Requirements which lists all of the mandatory requirements in the SPB’s procurement policy framework. According to this document, there are 86 mandated requirements (or “must” statements), of which:

- 73 are specific to the SPB’s policies / guidelines;
- nine are specific to compliance with the SAIPP; and
- four are specific to compliance with PC027 (disclosure of government contracts).

It is noted that the list does not include mandated requirements under PC013 (annual reporting) which would add another two mandatory requirements (regarding the publication of contractors and consultants engaged by the authority in that year).

Furthermore, it is noted that of the 86 mandated requirements:

- there are 15 mandated requirements for simple procurements (valued \$33,000 to \$550,000); and
- there are 51 mandated requirements for “major procurements” (valued over \$550,000).

The above does not include additional recommendations or suggestions provided in the SPB’s procurement policy framework (that are not “must” statements).

Feedback provided

Feedback has been provided on the complexity of the SPB’s current procurement policy framework requirements and the interactions with other legislative instruments.

Business comments:

‘Procurement officers rarely set the specification, and indeed often see their role to ensure contestability, rather than to promote exclusivity through focusing on solutions which may only have a single source. This is because the role of many procurement staff is not to achieve better outcomes for their department. It is as the

champion of governance, the managers of compliance risk, and the custodians of labyrinthine procurement rules.' (Paul Rogers submission, page 8)

'the impact of red tape and regulation has a disproportionate impact on small businesses as they lack the resources and capacity of larger business to cope with the associated administrative burden which in turn impacts on their ability to grow and succeed... should be explicitly acknowledged in SA Government procurement guidelines' (Restaurant and Catering SA submission, page 2)

'The market does not see all the steps and processes that government use in tender evaluation and therefore businesses sometimes have difficulty in responding or "miss out" because they didn't address a step in the process' (OIA submission, page 21)

In addition to concerns raised via suppliers or businesses, public authorities have indicated that:

- the SPB's accreditation process has changed over time from a high-level review to a very detailed assessment with a 'one size fits all' approach
- the self-assessment process is considered to be onerous, contains duplicative information requests, and insufficient time is provided to complete such an in-depth assessment
- the handbook is very repetitive and detailed.

Public authorities have questioned whether the review process could be amended to be a more streamlined, responsive and flexible review by undertaking more frequent smaller reviews that target specific areas of risk or concern rather than such an in-depth review every few years. Such a targeted and flexible approach allows for a more proactive approach to addressing issues and risk and may reduce repetitive requests for information.

Issues that have contributed to the current complexities in the SPB's procurement policy framework are outlined below.

Varying compliance and reporting parameters

Section 3.1.1 outlines the regulatory environment that provides the "rules" under which goods and services procurement must be conducted. As indicated, public authorities covered by the *State Procurement Act 2004* (the Act) are required to comply with, and report under, several regulatory instruments. The following illustrates some of the differences between the regulatory instruments:

- There are different interpretations of "public authority" that affect which public authorities are required to comply:
 - the SPB's procurement policy framework requires all public authorities as defined under the Act to comply (excluding prescribed authorities)
 - Treasurer's Instructions are instruments of the public *Finance and Audit Act 1987* which interprets public authorities to include prescribed authorities

- Premier and Cabinet circular 13 (PC013 for annual reporting) applies to the “general government sector” as per the budget papers – a different application again.
- There are different value thresholds applying to contracts:
 - contracts valued over \$33,000 are to be recorded and reported for the Board’s Contract Register Policy, the SPB’s annual procurement reporting, and for the SAIPP
 - contracts or procurements valued up to \$220,000 are captured by the Aboriginal Economic Participation Policy
 - contractors who were engaged for contracts of any value are to be reported under PC013
 - contracts valued over \$500,000 and consultants valued over \$25,000 are to be disclosed for PC027 (disclosure of contracts)
 - contracts or procurements valued over \$657,000 are “covered procurements” and required to comply with government procurement requirements in the international agreements to which the SA Government is a signatory.
- The type of contracting activity varies:
 - the SPB’s framework applies to goods and services procurement, and there are specific exclusions for annual reporting (including no secondary purchases off non-perpetual panels)
 - the SAIPP, PC013 (annual reports), PC027 (disclosure of government contracts), and international agreements apply to all contracting activity including construction and secondary purchases.
- Timeframe reporting varies:
 - the SPB requires annual reporting on contracts executed (i.e signed) during the reporting period (financial year), as does PC013 (annual reporting)
 - PC027 (disclosure of contracts) requires disclosure on the SA Tenders and Contracts website within 60 days of the contract being executed and the information must remain on there for either 12 months or the term of the contract (whichever is longer).
- Different information requirements:
 - regarding contracts, the SPB’s reporting policy requires up to 40 different pieces of information across the excel spreadsheet, plus additional reporting requirements relating to other mandated requirements
 - reporting on contracts in PC013 is focussed on the actual contractor or consultant
 - PC027 requires disclosure of the full contract, or information specific to the contract (including reasons for non-disclosure if relevant).

Commission’s View

The above provides an overview of the complexity inherent in the governance and compliance requirements that impact on the procurement of goods and services in SA. As the government needs to ensure that the expenditure of public funds is consistent with the objects of the Act, including accountability and transparency, a certain degree of complexity may be expected – particularly relative to the private sector. This is reflected in the various legislative controls that have been introduced over time.

Nonetheless, based on feedback from stakeholders and relative to other jurisdictions, it appears that the SA procurement system may be at the higher end of the complexity scale. As the Commission considers the broader system as part of the Stage 2 Inquiry, it will consider options to reduce the complexity of the system for all participants.

Information Request 3.4: There are a range of legislative controls and requirements applying to the government procurement of goods and services. The Commission has provided an overview of these requirements and some of the complexities inherent in the governance arrangements and requirements. The Commission asks:

Has the Commission provided an accurate portrayal of the legislative controls and requirements applying to the government procurement of goods and services? What is missing or is open to alternative interpretation?

What changes or reforms could address the complexities with a view to simplifying and reducing unnecessary requirements?

3.2.6 Compliance Focus

The SPB's website advises that meetings that involve SPB members include:

- scheduled SPB meetings once per month throughout the year
- PAC (Procurement Advisory Committee) meetings twice per month which are to include three SPB members who attend on a rotational basis
- in addition to the above, the Heads of Procurement meet every six to eight weeks and a SPB member may attend that meeting as well depending on the agenda.

The SPB's has advised that in 2017-2018 there were 12 SPB meetings and 18 PAC meetings. According to SPB information, members attended an average 18 meetings per annum (SPB and PAC) over the last two financial years (excludes members who left or newly appointed during the year).

The above does not include other unscheduled meetings or SPB member attendance at forums or other events.

Approvals

Information provided by the SPB secretariat indicates that there were 60 acquisition plans provided to the Board for consideration and endorsement in 2018. Of those, the SPB and/or SPB secretariat had 173 queries with 72 per cent of the acquisition plans submitted (or an average of four queries per acquisition plan).

According to the statistics provided, the number of acquisition plans submitted to the Board has increased by 20 per cent since 2014, although the average number of queries has remained relatively constant over that time.

The SPB may request a contract review report on an acquisition plan that was considered by the SPB or the PAC. The SPB advises that over the past three years, the SPB requested a contract review report for about 1 in 6 of the acquisition plans that they considered.

According to the statistics provided, that would equate to around 8 to 10 contract review reports per annum.

Appendix 3.3 provides a table showing the number of clarification requests made on behalf of the SPB, separated into acquisition plan elements.

Policy review

The SPB's policy review program involves a review of each policy once every two years. The SPB's secretariat will study best practice approaches (related to the specific policy) in other jurisdictions or industries, current trends and forecasts, issues raised (including complaints), and undertake targeted consultation with some public authorities. Feedback from outside the public sector is not normally sought.

It is noted that responding to other policy priorities (including the SARC review²⁷) has impacted on the secretariat's ability to undertake a review of each policy or guideline every two years. Various amendments to policies have been undertaken on an ad hoc basis as required.

Accreditation and assurance

Sections 3.1.4 provides information on the SPB's accreditation and compliance programs. The SPB is currently overseeing the following activities:

- A new round of reviews for the Accreditation Program commenced in 2018. An external Lead Reviewer has been appointed by the SPB and all public authorities are to be reviewed for accreditation. Tier 1 public authorities will undergo a review consistent with the process outlined in the SPB's Procurement Accreditation Guideline. Tier 2 and 3 public authorities undertake a modified accreditation review as part of their assurance review.
- A new round of reviews has commenced for the SPB's Assurance Program. Over the period 2018-2022, all public authorities are to be reviewed for compliance against the SPB's procurement policy framework. Tier 2 and 3 public authorities undergo an assurance review that includes a modified accreditation review. Tier 3 public authorities with very few procurements that exceed \$33,000 may undergo a modified review process.

The SPB's secretariat will also undertake ongoing work to ensure smaller public authorities or entities either have their own procurement authority or are aligned to the appropriate public authority. This requires monitoring the Government Gazette, DPC's Boards and Committees website and/or liaising with authorities as required.

The SPB is kept informed and provides endorsement when required on public authority accreditation, assurance and alignment outcomes. For example, between July 2012 and

²⁷ Statutory Authorities Review Committee – State Procurement Board review, SARC State Procurement Board review

March 2016 the SPB was provided with 29 public authority assurance reports and kept informed of progress against the 204 findings / actions identified.

The discussion above indicates that the SPB's key interactions with public authorities are usually through:

- public authority submissions of acquisition plans for approval (valued above the public authority's procurement authority)
- public authority submissions relating to accreditation or assurance reports
- supplier complaints if they have not been resolved at the public authority level.

The SPB's secretariat has advised that the '*Board's principal interactions with agencies (through their PGC where applicable) are submissions for approval or noting, including accreditation and assurance reports.*'

Feedback has been provided to the Commission regarding the focus on compliance by the SPB. Public authorities have indicated that:

- in recent years there has been a tendency for the SPB (and other organisations within government) to go beyond providing a framework and undertaking a high-level strategic assessment of a public authority to mandating specific steps and requirements of individual procurement processes.
- there is insufficient time to complete such a complex and detailed self-assessment
- the reviews are not tailored according to the public authority's size, previous performance or the nature of their procurement – it is one size fits all that takes no account of risk
- the information requests and the handbooks are repetitive and too detailed
- the reviews do not consider a public authority's own assurance review processes and results
- reviewing specific procurements without the appropriate subject expertise can mean the review is more a "process audit" and limits the ability to identify issues that will impact on delivering outcomes.

Commission's view

The Commission observes that the SPB's agenda has been predominately focused on compliance work. Information available on the SPB's website and provided to the Commission indicates that the SPB members:

- attended an average 18 Board and PAC meetings per annum (excluding other meetings or events / forums)
- considered and approved an average of 53 acquisition plans per annum (2014 to 2018)
- considered and noted or approved 29 assurance review reports (2012-2016 Assurance Program)
- approved policy amendments relating the SPB's 75 procurement policy documents
- noted and approved other documentation relating to reviews of procurement activity, supplier complaints, updates on SPB programs (capability, assurance, accreditation).

It is not clear that this is necessary given:

- principal officers are delegated procurement authority and are supposed to have complete accountability for their procurement processes and outcomes
- principal officers are required to sign off every year to confirm that their public authority has complied with the SPB's procurement policy framework
- existing assurance activities are undertaken through other legislative instruments including Treasurer's Instructions, Auditor-General, and SAIPP.

The Commission notes that the SPB's focus and that of the system itself is heavily weighted towards compliance which seems to have an impact on the capacity of the SPB and its delegates to manage more strategically. However, it is acknowledged that they are responding to the numerous legislative compliance requirements that have developed over time. There appear to be no immediate short-term solutions to reduce the compliance focus of the system. As part of the Stage 2 Inquiry, the Commission will consider some longer-term options to rebalance the system.

Information Request 3.5: The Commission has formed a preliminary view that the Board's focus, and that of the system itself, is heavily weighted towards compliance which impacts on the capacity of the SPB and its delegates to undertake strategic planning and management. The Commission asks:

Has the Commission provided an accurate portrayal of the current focus towards compliance?

What specific improvements or reforms would address the compliance focus and provide opportunities for the application of strategic planning and initiatives?

3.2.7 Capability

Part 2, section 12(1)(g) of the *State Procurement Act 2004* (the Act) requires that the SPB 'assist in the development and delivery of training and development courses and activities relevant to the procurement operations of public authorities'.

Section 1.4.6 of this chapter provides an overview of the capability requirements in the SPB's procurement policy framework. In summary:

- The SPB's Accreditation and Assurance Programs are both intended to include an assessment of the public authority's capability and capacity to support effective procurement performance.
- There are a few mandatory requirements in the SPB's list of "mandatory requirements" for the procurement policy framework that are specific to capability – in particular that contract managers for significant and/or procurements valued over \$4.4 million must undergo contract management training.

SPB's Capability Development Strategy

The SPB has developed a Procurement Capability Development Strategy 2017-2019 which is aimed at assisting public authorities with training and development courses and activities to improve the procurement and contract management skills of their staff. The initiatives

include a targeted procurement training program (delivered by contracted procurement trainers); individual skills gap analyses for procurement staff; and procurement forums for public authority procurement staff. The SPB's Capability Development Strategy is administered by the capability team in the SPB's secretariat.

According to data provided by the SPB, the capability initiatives are used by staff employed within the South Australia Government plus some councils.

Devolving capability

A recent review of the SPB's procurement policy framework that was commissioned by the SPB found that there were large variances in the experience and seniority of procurement professionals across government. Such variance can risk compliance and accountability when implementing complex and/or high value procurements.

South Australia Government procurement of goods and services is largely carried out in a devolved environment whereby public authorities have responsibility to undertake their own procurements.

Information provided by public authorities indicates that often it is the authority's individual business units that are responsible for undertaking lower valued procurements. For the larger public authorities, often procurements valued less than \$220,000 are undertaken by individual business units. This will mean that the officer in the business unit may undertake the necessary market research, draft the required documents, undertake market approach strategy and negotiate an outcome as required. The officer may have had very little, to no, experience or capability in procurement.

According to the SPB's 2017-2018 annual contracting activity statistics, 75 per cent of contracts reported are valued \$33,000 to \$220,000. The Commission acknowledges that this represents only four per cent of the total value of reported contracts, but that still equates to \$100 million – a significant amount, particularly as 66 per cent of suppliers servicing contracts valued \$33,000 to \$220,000 are suppliers categorised as in SA.

Given the above, it is expected that suppliers may have experienced different levels of officer procurement capability depending on the value and who managed the procurement.

Commission's view

Recent developments in increasing globalisation, improvements and greater access to ICT and communication solutions, improved logistics and processes, competitive pressures impacting on costs, complex consumer and client requirements, and increasing environmental awareness all impact on procurement. Government procurement officers are required to undertake procurement within this dynamic environment while pursuing government principles of transparency, accountability, fairness and value for money.

Based on the Commission's research, it is clear that procurement and the business transactions involved in the procurement process are becoming increasingly complex. By extension, it is also clear that the level of education and expertise required to effectively manage the procurement process within and outside of government will continue to increase.

Public authorities have confirmed that it is difficult to attract appropriately educated and experienced procurement staff. It is also hard to retain capable, well qualified and trained procurement professionals as the demand for their skills is increasing their marketability.

As a result, the more emphasis that the South Australia Government puts on procurement as a strategic tool to increase the benefits of its procurement spend and to utilise that spend as a tool to deliver its policy objectives will only increase the importance of having well trained employees. This will require an investment in training and a recognition that procurement professionals are strategic assets of the public authority. In some cases, this means that those employees will need to occupy more senior positions in the public authority and take a stronger role in the executive management of the agency.

Information Request 3.6: The Commission has received feedback, and undertaken research, indicating the importance of having well trained and skilled procurement officers to manage efficient and effective procurements. The Commission asks:

What are considered to be the specific procurement, or procurement-related, skills and/or capabilities that are lacking in the SA public service?

To what extent do public authorities make use of the capability development strategy initiatives offered by the SPB? To what extent do the initiatives currently offered meet the needs of public authorities? What other types of initiatives would build capability?

3.2.8 Strategic Focus

The SA Government’s procurement policy framework is described as a “centre-led” model (otherwise known as a “hybrid” model). The central authority (the State Procurement Board) develops and promulgates policies, processes and standards, and public authorities conduct procurements in accordance with the SPB’s procurement policy framework. Strategic procurement in DTF provides a central centre of excellence where some strategic categories of across government spend are managed. Some Tier 1 public authorities also manage strategic categories (through a category management approach) within their public authority.

The SPB’s centre-led procurement framework design is supported by:

- Section 12 of the *State Procurement Act 2004* (the Act) prescribes the SPB’s functions including *‘to facilitate strategic procurement by public authorities by setting the strategic direction of procurement practices across government’*
- Section 19 of the Act prescribes that public authorities are bound to comply with the SPB’s procurement policy framework (and Ministerial directions)
- Section 20 of the Act prescribes that it is the responsibility of the principal officer for the efficient and cost-effective management of procurement operations in accordance with the SPB’s procurement policy framework
- The Accreditation Program whereby the SPB delegates to the principal officer of a public authority the authority to approve an acquisition plan or purchase recommendation to a specified dollar amount.

The benefits of a centre-led procurement framework design are that it is intended to provide sufficient flexibility to enable local managers (or public authorities) with the capacity and authorisation to address specific “local” issues and encourage innovation when undertaking procurements within a consistent policy environment. The centre-led authority may then focus on strategic planning to identify key strategic priorities and, in some cases, to centrally manage certain categories of spend (often homogenous requirements and/or of very high risk or complexity).

Public authorities have advised the Commission that overall, they prefer a procurement framework system that provides them with the flexibility to tailor the procurement function within their public authority to meet the specific strategic objectives and business requirements within their department. In general, the larger the public authority (procurement spend), the more they expressed a commitment to maintain their procurement independence. This reflects the relative maturity of their internal governance arrangements and capabilities.

Feedback to the Commission has been provided on the lack of focus on strategic outcomes for government procurement in SA including:

‘We feel that current processes have often been skewed towards fitting a Treasury / Budget outcome, rather than actually meeting a market, and mostly within a context that is weak on policy and strategic position.’ (Bus SA submission, page 2)

Proposals were put forward at a roundtable facilitated by the Commission with public authority procurement officers that improving procurement in South Australia requires recognising the strategic role of procurement and the value it can drive – that it is not just about scrutiny and compliance.

Strategic Procurement Focus

A centre-led procurement design requires certain conditions to successfully manage and implement strategic procurement. Three of the key elements required to support the SPB’s role in providing a strategic focus are:

- Ensuring adequate and appropriate planning is established and continuously measured and reviewed
- Having the right data or information to develop strategic focus and review outcomes
- Having the appropriate level of authority and influence to set and implement strategic reform

1. Planning

The implementation of a strategic approach to procurement in government cannot take place without adequate and appropriate planning.

Feedback provided on the issue of planning includes:

‘This is a lagging indicator of the quality of planning in a department or agency, and this is not really an issue relevant to the procurement team. It is an indictment of the culture and quality of forward planning of budget holders and the senior leadership

team in the departments and agencies whose forward procurement plan is nothing more than a wish list.' (Paul Rogers submission, page 2-1)

'It is incumbent upon every Victorian Government agency to put forward an expectation for the future 48 months... In putting forward those projects, there is a degree of certainty that the projects would be proceeding within those timeframes and not just potential opportunities that might or might not happen.' (AIG submission, page 5)

'An understanding of future tenders with a 5-year timeframe would be beneficial. Forward procurement plans need more development by all agencies which would allow companies to better manage their resources and capacity.' (OIA submission, page 21)

As discussed in the Commission's issue paper, businesses have expressed concern that there is limited visibility as to what opportunities may arise in the future. This is partly due to inadequate planning by individual public authorities; however, it also reflects a lack of across government strategic planning with respect to procurement.

Feedback from public authorities has indicated that some consider the SPB has become more focussed on its compliance activities and priorities rather than taking a more strategic role. Although public authorities have expressed value in seeking advice and information on policy and process issues, there is uncertainty on what, or if, the SPB currently plays a role on strategic procurement.

There is currently no strategic plan for the SPB and the last strategic plan finished in 2018. It is understood that the SPB has deferred developing a new plan given the current SARC inquiry and the Commission's inquiry.

2. Data

As discussed at section 3.2.1 and 3.2.2, limitations in the scope of the *State Procurement Act 2004* (the Act) and other data limitations and challenges has meant that there is no whole of government oversight of procurement across government.

This impacts on the government's ability to develop whole of government procurement strategic objectives and to manage, control, measure and progress towards those objectives. It also makes it very difficult to manage relationships with suppliers who are required to tender under different arrangements.

3. Authority

From 2013 to 2015, the Statutory Authorities Review Committee (SARC) undertook an inquiry into the practices and processes of the SPB and any other relevant matters, following a number of concerns in the community and the press regarding the Across-Government Stationery Contract. Following consideration of the submissions and evidence presented to them, SARC provided the following recommendation in its final report with respect to the SPB's membership:

Recommendation 1: To avoid a conflict of interest, real or perceived, the Committee recommends that a member of the South Australian Executive Service not serve as the Chair of the State Procurement Board

Currently, the SPB has six members (including the Presiding Member) with five of the six members being from the SA public service.

According to feedback provided by public authorities, it appears that the procurement function is often viewed by senior leadership in public authorities as a corporate process rather than a strategic function that can support the public authority's strategic objectives. This is reflected by how the procurement function is positioned within the overall organisational structure of the public authority.

Procurement practitioners in public authorities are not usually involved in the strategic decision making around expenditure and procurement requirements. Being brought into the procurement process limits the contribution that a practitioner may be able to make to setting the direction and focussing on outcomes.

Commission's View

The Commission acknowledges that the SPB implemented a range of reforms in 2016 including streamlining simple procurements, implementing a standard funding agreement, and simplifying liability requirements. Further reforms to the NFP sector were implemented more recently.

Despite these changes, feedback provided by participants and research indicates that the Board's agenda is focussed on compliance related concerns.

Given this focus and current constraints (e.g. complex compliance requirements, lack of data and lack of influence on the system), it is not surprising that the Board and the system itself is more focussed on compliance rather than managing strategically.

It would seem logical that if the SPB is required to provide strategic leadership to the system, it should have the appropriate tools and authority to provide that leadership. However, this needs to be balanced against the lack of flexibility that a higher level of authority and control would impose on the system. The benefits and costs of such a significant change will be considered as part of the Stage 2 Inquiry.

Conclusion

The first part of this chapter provides an overview of the current regulatory environment, principles, governance arrangements and compliance requirements that underpin the design of the South Australia Government procurement system. The second part explores several issues that were raised through consultation on the current design of the government procurement system in South Australia. The issues identified were scope; value for money; data; delegations; complexity; compliance; capability; and strategic focus. A number of these issues are further explored in other parts of the Commission's draft report, in particular chapter 4 on the procurement system in practice.

The Commission's exploration of the issues in this chapter has identified a number of themes that permeate throughout the chapter. These include:

- In theory, a 'centre-led' procurement framework design provides the central authority with the capability and capacity to plan strategically and identify opportunities. In practice, a devolved procurement framework in SA has presented challenges in how the SPB manages at the centre and how public authorities interpret the SPB's requirements.
- Over time, government procurement operations have been increasingly impacted by numerous regulatory instruments that have been introduced to meet various policy objectives - often with little regard to how the regulatory requirements interact and whether policy objectives have been achieved.
- As procurements are undertaken in a progressively complex environment within and outside of government, it becomes increasingly important and challenging for public authorities to ensure that their procurement function is strategically placed and carried out by procurement officers with the right mix of education, skills, capability and training to manage procurements.
- There is a lack of strategic oversight on procurement across government due to the current limitations of the *State Procurement Act 2004*, a lack of suitable data and information, and a focus on compliance with regulatory instruments rather than strategic outcomes.
- Shortcomings in information available to the central authority to undertake strategic oversight and identify strategic improvements.

Consistent with the terms of reference, which direct the Commission to assess the efficiency and effectiveness of South Australian procurement processes and practices, the identified issues and themes will be further explored in Stage 2 of the Commission's Inquiry.

Information Request 3.7: How accurate or sound are the Commission's portrayal or these themes?

What suggestions for reforms to the system could address them and improve the overall contribution of government procurement to the state's performance?

4. The Procurement System in Practice

4.1 Introduction

This chapter considers the effectiveness and efficiency of the operation of elements of the South Australia procurement system that fall within the scope of the initial (stage 1) terms of reference.

In particular, this chapter addresses:

- time and costs associated with the operations of procurement, including comparisons to other jurisdictions
- compliance by public authorities with policies, guidelines, standard and directions; and the application of risk management frameworks.

In 2017-18 procurement spending on goods and services within the scope of the terms of reference (both type of spending and non-exempt public authority) amounted to approximately \$5.13 billion, an increase of 5.7 per cent on last year. Of that total:

- 40 per cent of the number of contracts and 70 per cent of the value of reported contracts entered into were undertaken by competitive processes
- 67 per cent of the number and 44 per cent of the value of contracts reported were delivered by suppliers located in South Australia, with nine per cent of the number and one per cent of the value being sourced from regional suppliers.

Table 4.1 provides a breakdown for 2017-18 of the procurement spend by public authority (categorised according to their procurement authority tier level) and the split in each agency's spending between goods and services (including consultancies). The information is based on reporting provided by public authorities.

Table 4.1 shows:

- over 75 per cent of the procurement spending was on services (including consultancies)
- Department for Education (DE), SA Health and Department of Planning, Transport and Infrastructure (DPTI) accounted for over 60 per cent of the procurement spending
- very few of the tier two or three public authorities exceed two per cent of total procurement spending.

Table 4.1: Procurement expenditure on goods and services by public non-exempt authority

Agency	Procurement Spend (reported to SPB)			
	Goods \$'000	Services – includes consultancies \$'000	Total \$'000	% of total
Tier One (procurement authority of \$15m)				
DECD (now Dept for Education)	166,882	414,689	581,571	11.3
SA Health	814,074	1,152,510	1,966,584	38.3
DPTI	25,927	728,447	754,374	14.7
DPC*	16,939	219,157	236,097	4.6
DCSI (now Dept for Human Services)	23,523	376,211	399,734	7.8
SA Police	27,361	113,680	141,041	2.7
Tier Two (Procurement authority of \$1.5m to \$15m)				
DTF*	18,329	88,325	106,654	2.1
AGD	24,795	61,594	86,389	1.7
DCP (Dept for Child Protection)	-	99,452	99,452	1.9
DEWNR (now DEW)	13,422	106,600	120,021	2.3
DSD (now DTTI & DIS)	5,730	35,012	40,742	0.8
CAA	3,695	23,377	27,071	0.5
DCS	19,604	67,886	87,491	1.7
SAFECOM	41,446	61,150	102,596	2.0
PIRSA	16,253	32,147	48,400	0.9
SATC	5,324	61,129	66,453	1.3
TAFE SA	24,586	41,558	66,144	1.3
Tier Three	34,178	166,976	201,154	3.9
TOTAL **	1,282,069	3,849,901	5,131,970	100.0

Source: State Procurement Board of South Australia, Annual Procurement Spend data, 2017-18

Table 4.2 sets out for 2017-18 the size distribution of this spending, by number and total value of contracts based on three value 'bands', for each non-exempt public authority. The low band comprises contracts of value from \$33,000 to \$220,000; the medium band comprises contracts in the range \$220,000 to \$550,000; and the high band comprises all contracts over \$550,000 as reported for 2017-2018.

Table 4.2 shows, among other points:

- Department of Premier and Cabinet (DPC) had by far the largest value of contract spend, reflecting it was responsible for several major whole of government contracts;
- SA Health had the largest number of contracts; and
- While DE had a similar number of contracts to SA Health, the average value was much less.

Table 4.2: Size distribution of contracts – number and value

Public authority	Low Value		Medium value		High value		Total	
	% (no.)	% value	% (no.)	% value	% (no.)	% value	Number	Value (\$m)
Tier 1 (procurement authority of \$15m)								
DECD (now Dept for Education)	68	15	14	14	18	71	295	113
SA Health	79	9	13	6	8	85	344	275
DPTI	78	9	11	4	10	87	127	102
DPC*	66	0	10	0	24	100	58	1,630
DCSI (now Dept of Human Services)	75	2	3	0	22	98	36	140
SA Police	83	47	12	24	4	29	92	15
Tier 2 (procurement authority of \$1.5m)								
DTF*	72	22	9	9	18	69	22	8
AGD	62	15	11	7	27	79	55	26
DCP	59	2	19	2	22	97	27	99
DEWNR (now DEW)	88	37	7	13	5	50	113	23
DSD (now DTTI & DIS)	80	39	14	27	6	35	117	24
CAA	73	20	7	10	20	70	15	4
DCS	70	1	13	1	17	98	30	156
SAFECOM	45	6	30	18	25	76	20	13
PIRSA	89	37	2	5	10	58	62	13
SATC	66	16	18	16	16	68	71	26
TAFE SA	65	29	31	49	4	23	49	12

Note: * Since 1 July 2018, DPC is now a tier 2 public authority and DTF a tier 1 public authority.

Source: Derived from State Procurement Board of South Australia, Annual Procurement Spend data, 2017-18 and Annual Contracting Activity unpublished data, 2017-18

The Commission received views on a wide range of issues from stakeholders about the operation of the procurement system in practice. This chapter addresses them in two groups:

- Issues relating to the three operational stages of procurement:

- Planning for procurement (Section 4.2)
- Approaching the market (Section 4.3)
- Managing contracts (Section 4.4)
- Issues that cut across two or more of these stages:
 - Risk management and probity (Section 4.5)
 - Timeliness (Section 4.6)
 - Value for money (Section 4.7). This matter is also considered in Chapter 3
 - Capability and capacity (Section 4.8) This matter is also considered in Chapter 3
 - Panel and aggregated contracts (Section 4.9).

The Commission's next steps in relation to the matters raised in this Chapter are set out in the concluding Section 4.10.

4.2 Planning for Procurement

4.2.1 Requirements and public authority practice

Requirements

State Procurement Board (SPB) guidelines and policies contain multiple requirements for public authorities in the planning phase of the procurement process. Some of the key requirements are to:²⁸

- allocate appropriate resources for the procurement process (facilities, information technology, personnel, contractors) to ensure that procurement objectives are achieved, and risks managed.
- prepare and approve acquisition plans prior to approaching the market.
- undertake a risk assessment for all procurements to determine the appropriate risk treatment to be applied. For procurements considered high in risk and/or valued greater than \$4.4 million, a procurement risk management plan must be prepared and attached to the acquisition plan.
- ensure that financial authorisation is approved by the relevant delegate as well as ensuring the availability of funds prior to the acquisition planning stage. (However, in cases where funding approval cannot be obtained prior to the acquisition planning stage, approval of the acquisition plan by the relevant delegate will be conditional on obtaining the required funding approval before the market approach is undertaken).
- submit their acquisition plans to the Board for approval where the contract value exceeds the procurement authority of the public authority, except when using across government or lead agency contracts.

Practice

The following sections address how public authorities apply the SPB guidelines. The planning for procurement process occurs in three stages – identifying needs, planning the procurement strategy and preparing the acquisition plan.²⁹

²⁸ State Procurement Board of South Australia, *Acquisition Planning Policy*, March 2018

²⁹ *Ibid*, pp4-5

Identifying Needs

The first step is to identify and clearly link justifiable needs for a purchase to agency or government objectives and the procurement strategy. This covers:

- Considering options to best deliver a value for money outcome.
- Identifying and consulting with key stakeholders (internal and external) to determine their needs.
- Defining the expected outcomes and measures of success.
- Determining the total value of the procurement needs and the contract period.

Planning the Procurement Strategy

The market research phase is undertaken prior to formulating an approach to the market and subsequently determining an appropriate course of action. Public authorities choosing to engage in informal discussions with potential suppliers have noted that they act such that no supplier has, or is perceived to have, received information that provides them with an unfair advantage in a subsequent procurement process.

Planning the Acquisition

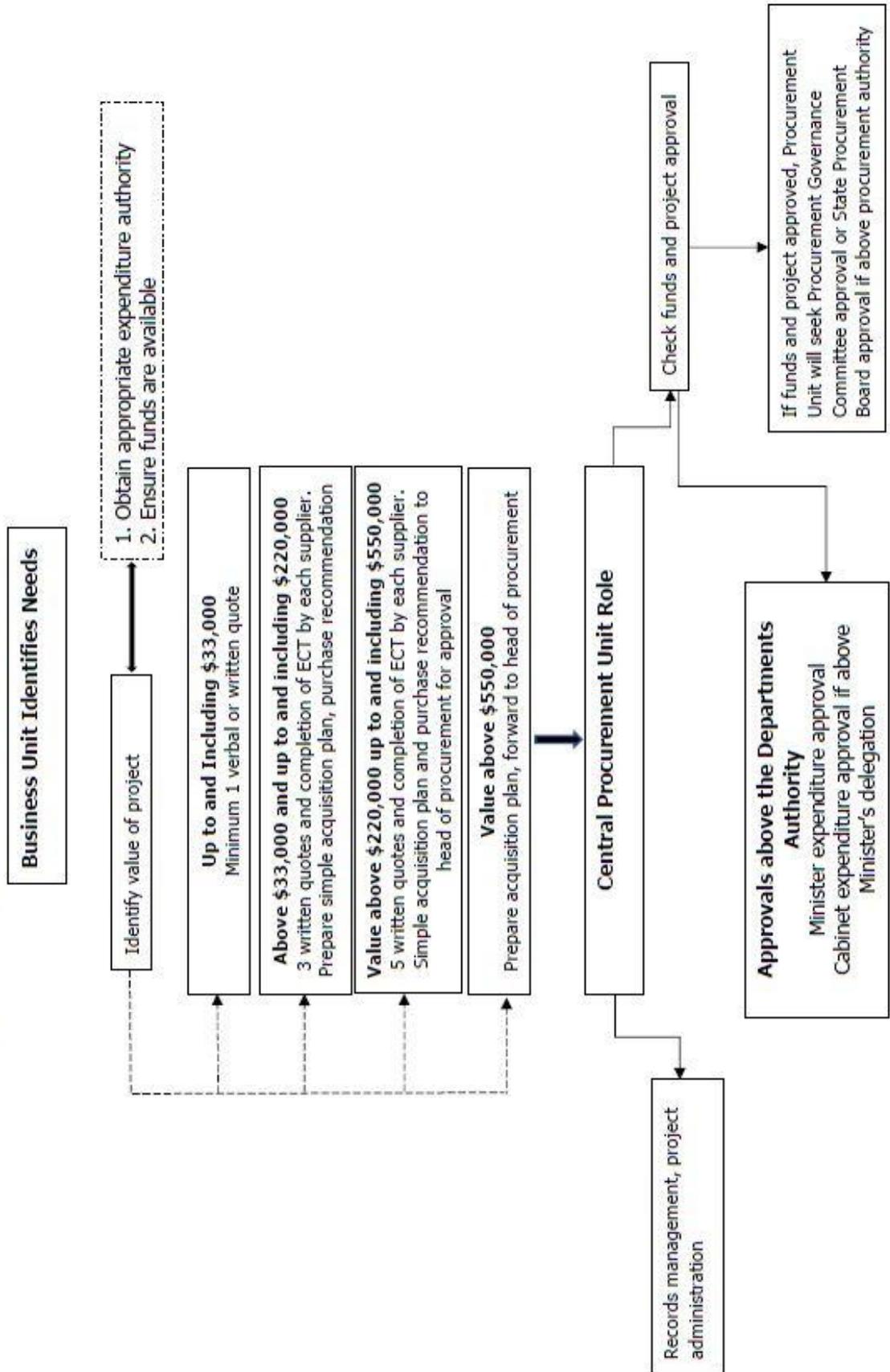
This step entails developing a procurement based on the agency's business needs and including a market approach that reconciles the business needs to the supply market.

The acquisition plan documents the methodology and strategy for procuring the required goods or services. The detail and scope of the acquisition plan varies with the nature, risk and value of the procurement. In practice, public authorities adapt the acquisition planning requirements with their specific needs.

Link between business units and central procurement functions

As described in Figure 4.1, the business units are expected to work closely with the central procurement function in public authorities for both simple procurements and higher value and complex procurements. Figure 4.1 is derived from standard business processes of public authority.

Figure 4.1 – Acquisition Planning Stage for Public Authorities



Business units within agencies are typically responsible in most procurement processes for:

- identifying project needs and project initiation
- market research and supplier consultation
- preparation of the acquisition plan
- seeking the requisite amount of quotes.

Most public authorities require their business units to gain approval from the head of procurement in their agency for acquisition plans for contracts above \$220,000 in value. There are exceptions, such as the Department for Environment and Water (DEW) which uses a threshold of \$110,000. The different values amongst public authorities used to initiate the central procurement role can reflect either a greater element of control over the process imposed by the agency's central procurement function or a lower procurement authority for the agency as a whole.

Central procurement units in the public authority will typically run the process for projects of strategic importance to the public authority, lead agency or across government projects or projects that source goods and services for multiple units of the organisation.

In public authorities such as SA Health and the Department of Planning, Transport and Infrastructure (DPTI), category management teams are established within the central procurement function to manage large amounts of expenditure related to homogenous products or services. Category management teams establish an integrated relationship with the operational units undertaking the expenditure throughout the procurement process from planning through to contract management, supplier relationship and reporting.

Role of procurement in public authority strategy and performance

The types of purchases undertaken by public authorities range from the routine purchase of lower value goods or services right through the spectrum to high value, high risk projects that generate a high level of public and business interest.

In all these cases, the detail justifying the project increases in scale and complexity as the value and complexity of the project increases. The relationship between individual procurements and public authority roles and responsibilities is stated strongly in all procurements sighted by the Commission. The impact of procurement on public authority strategy or on broader government objectives is not identified or measured from the acquisition planning stage to project completion.

Market knowledge and local capabilities

Public authorities in practice use several approaches to market research:

- Obtaining information from within public authorities about suppliers known to offer the good or service being purchased
- Desktop research on suppliers known to offer the desired goods or services
- Using industry capability advice from within the public authority or services provided by other parts of government
- Seeking advice from external advisors and subject matter experts on known suppliers and advice on technical specifications and project scope.

- Interviews with several known suppliers on what is available in the marketplace from a solutions perspective.

For all contracts greater than \$4.4 million, public authorities are to use the SPB's supply positioning and supplier preferencing market analysis models to assist with the development of an appropriate acquisition plan³⁰. This tool helps public authorities to classify the strategic importance of the procurement to the public authority as well as understand its tactical importance to the supply market.

4.2.2 Consideration of Issues

Submissions have identified key issues in the planning and acquisition phase of government procurement processes.

Definition of project scope/specifications

The Commission has been told by a range of business and not-for-profit (NFPs) stakeholders that the ability of public authorities to define the scope of projects and the specifications for goods and services should be improved. They point to examples of tender documentation characterised by unrealistic expectations on the part of the procuring authority and a poor understanding of what the government department is asking the supplier to do.

Business and NFPs cite examples of project specifications, particularly complex projects such as ICT service and supply, that are either very generic leading suppliers to offer a wide range of services or so caught up in the detail of the department's operations that it is very difficult for suppliers to determine what the critical purchasing requirements are. There have been instances of public authorities changing the scope of a tender throughout the project with implications for the budget, timelines and specifications of projects. Highly publicised examples of this issue have been the Enterprise Patient Administration System (EPAS) and End-User Computing projects.

Stakeholders have identified instances where project specifications are incomplete, for example omitting the quality standard the work should attain. In addition, they maintain that very few specifications issued by public authorities define in a measurable way the service level that should be achieved and are almost invariably a description of services rather than the definition of a quality standard.

Paul Rogers commented that where suppliers face an uncertain scope of work combined with the request for a fixed price: "*...situation creates a risk premium which is then built into tenders. There needs to be a mechanism to challenge uncertain scopes combined with the request for a fixed price, perhaps built in to the approval process for acquisition plans.*"

Submissions from business have attributed poor project scope definition to time and budget pressures imposed on agencies, as well as a focus on problems rather than solutions.

Business stakeholders have commented that, in their view, public authorities are not devoting sufficient lead in time to major procurements. Once the decision is made, the

³⁰ *Ibid*, p9

procurement has to happen in a very short timeframe which does not lead to optimal results. These stakeholders comment that this happens consistently in contract renewals where arrangements are rolled over until the process can catch up with the contract period.

These factors not only have implications for individual projects, but, as the Office of the Industry Advocate noted, poor business case development and acquisition planning is likely to contribute to delays in the tender process measured by the time from release of tender to commencement of the contract. Poor project scope and the inability to define requirements also have an impact on public authority and public sector reputation as well as impacting on performance of public authorities over time.

Several stakeholders suggest opportunities to improve public authority outcomes in defining scope and specifications should focus on:

- Supporting the process at decision-maker level within public authorities to allow for a more considered, strategic approach to planning for and undertaking procurement.
- Improving skills and knowledge of staff in developing project scope.

Communication with potential suppliers

The Commission has been told that public authorities' communication with suppliers regarding upcoming or current tenders is not always clear and sometimes leads to confusion in the marketplace. Several of the submissions imply disparity between what business and public authorities consider to be important criteria.

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 being that better communication to suppliers is critical to improving the tendering experience for local businesses.

Business stakeholders have highlighted some specific examples provided by tendering businesses regarding information gaps in a tender such as excluding some details or demands required, which ultimately led to the tendering business not addressing those costs in their response.

The MTA related their experience in this context where advice is provided, typically in market information sessions prior to the commencement of a procurement process, and the quality and consistency of the information supplied varies significantly depending on which public authority is procuring goods or services.

Virtual Ark Consulting highlighted a lack of engagement by the government of 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 need.

The frequency and consistency of communication with suppliers by public authorities is a critical part of the process. Businesses have highlighted inconsistencies between published key criteria and what public authorities base decisions upon. The factors contributing to poor

communication observed by businesses appear consistent with the previous discussions. That is, time pressures and procurement capability and capacity.

For business units that do not engage often in procurement processes or only engage with suppliers on low risk projects, the prospect of engaging on a complex project or with a marketplace where many purchasing complexities will arise is a daunting one.

To address the performance of communication with suppliers, opportunities for reform should consider enhancing the procurement framework regarding engagement with suppliers. Further areas of suggested reform are the adaptation of engagement and communication models. The engagement models used by public authorities are generic, and, while having some useful application, do not assist public sector employees navigate the commercial world.

Link between business units and central procurement functions

The independence given to public authorities to determine operational and functional roles and responsibilities gives rise to variations on the SPB framework for governance and oversight. The variations have implications for:

- Suppliers engaging with multiple public authorities
- Monitoring and reporting of performance across the sector and implementing best practice
- Different scope definition and specification for similar projects across the sector.

Within some public authorities, different approaches of business units in engaging with the central procurement function may contribute to uncertainty regarding governance and oversight of the current profile of procurement as well as future procurement requirements.

Knowledge of market place and capabilities

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

Submissions also identified opportunities for reform include 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 will be to better use existing state government resources on capable suppliers such as the Industry Capability Network.

Innovation

Some participants have stated that the application of the state's intellectual property policy can have on planning for procurement and fostering innovation outcomes. This has also been observed by business stakeholders that have successfully competed outside South Australia but find winning business inside the State more difficult. At this point the information appears mainly to relate to ICT projects and possibly to instances where businesses have brought innovative products to government authorities.

Leunig Advisory asserts that the Intellectual Property rules, even for very simple projects, can be onerous. In a recent procurement process, the State sought unfettered ownership in perpetuity of the intellectual property (IP) even though they did not pay anything of note for the development of unique IP.

Participants did not understand the insistence of the State in ownership of IP as they have no capability to exploit it and instead act as a barrier to business and development.

Supplier feedback to Business SA indicated frustration about the general requirements for Intellectual Property (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 caused a lack of trust with transferring IP to governments for fear it would not be adequately protected by public authority staff. In general, blanket requests for IP ownership from the government were met with suspicion by suppliers.

4.2.3 Commission's View

Project Scope and specifications

The Commission's view is that the ability for some, perhaps many, public authorities to plan and prepare for market a tender process can be improved. The performance in this regard varies with project type and by public authority.

The Commission has sought additional information on these matters in Chapter 3.

Communication with potential suppliers

The Commission has observed 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. It has also heard 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.

Clearly, effective communication of state 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.

Knowledge of market place and capabilities

The Commission has observed that, due to time and budget constraints and the risk averse nature of public authorities, the extent of market analysis can be inadequate. The extent of market analysis is also abbreviated for specialist or high volume purchasing, where decisions are influenced heavily by agency or across government panel arrangements.

Detailed research into supplier markets does not appear to be a commonly used skill and in-depth knowledge of supplier capabilities is not often used in procurement roles of agencies.

Developing systems to retain and extend market information on supplier capability and performance would seem to be a useful improvement.

Information request 4.1: In order to strengthen the communication of public authorities with potential suppliers, what actions, including better understanding of probity requirements, would increase agencies' knowledge of, and engagement with, the market place and potential suppliers in the planning process.

What type of information on supplier capability and performance would be most beneficial to public authorities in their engagement with the market? How helpful is the information in the Industry Capability Network database and information held by the Industry Advocate?

Link between business units and procurement function

The independence given to public authorities to determine operational and functional roles and responsibilities gives rise to variations in how the State Procurement Board framework for governance and oversight is applied in practice.

The Commission has not completed its analysis of the relevant evidence on this matter. It is likely these variations have implications for the way:

- Suppliers engages with multiple public authorities
- Agencies monitor and report performance across the sector and implement best practice
- Agencies differently define scope and specification for similar projects.

The Commission intends to look further, amongst other matters, into the extent and significance of differences between the approaches followed in construction procurement and procurements governed by the SPB.

Innovation

The Commission has not been able to determine how widespread an issue of IP ownership is for businesses: it would clearly seem to be an issue for some ICT procurement. The inclusion of IP is not a mandatory requirement in the procurement process. The issue generally arises where public authorities are purchasing a product or service that is designed wholly for use of the public authority or when suppliers in providing a good or service want to protect their intellectual property applied during the project. It is the intent of the state's policy that only the instances where the entirety of the product and all capital developed are wholly for the use of a public authority where intellectual property transfers to the government.

In such circumstances it is reasonable to consider IP as a part of the contractual arrangements, without accepting the point that the expectations of suppliers should always be met.

As an area of reform, the broader issues of how state government elicits innovative proposals from the private sector and the extent to which government procurement can facilitate better innovation outcomes is a matter the Commission will investigate further.

Information request 4.2: Having regard to improvements in innovation outcomes for the state, the Commission seeks further information from all parties on how procurement policy and practice can facilitate more innovative procurement processes and development of innovative proposals from suppliers.

4.3 Approaching the Market

4.3.1 Requirements and public authority practice

Requirements

State Procurement Board guidelines and policies contain multiple requirements for public authorities in the market approach phase of the procurement process. The key requirements for public authorities include:^{31 32}

- Obtain the requisite minimum number of quotes for contract values below \$550,000 (three quotes for contracts valued between \$33,001 and \$220,000 and five quotes for contracts valued between \$220,001 and \$550,000), with at least one quote from a South Australian supplier (or a supplier based in the region in the case of regional procurement) where possible.
- Use the standard market approach and contract documentation for all procurements valued at greater than \$550,000.
- Use the Standard Goods and Services Agreement for all low to medium risk, standard goods and services government procurements, including procurements of consultancy services and for panel contracts.
- Ensure an evaluation plan is developed and approved prior to the opening of offers
- Ensure that the evaluation criteria are released to the market and that mandatory criteria are outlined clearly in the market approach documentation.
- Document negotiation proceedings to provide a clear audit trail, with the results of any negotiation updating the selection process and scoring model (where relevant) to confirm the preferred supplier.
- Obtain approval for deviations from approved acquisition plans by the appropriate authority, except where the deviation is assessed as low level
- Obtain approval for the purchase recommendation prior to awarding the contract and ensure the purchase recommendation (or evaluation report) is signed by all members of the evaluation team
- Offer a supplier debriefing at the conclusion of a procurement process.

³¹ State Procurement Board of South Australia, *Market Approaches Guideline, January 2019*

³² State Procurement Board of South Australia, *Supplier Selection Policy, September 2018*

Practice³³

When the public authority has estimated the size of the contract, determined the contract value, the contract period and their acquisition plan including the type of market approach, the market approach documentation can be developed and finalised.

A market approach strategy can be undertaken in a single stage or in multiple stages, usually an Expression of Interest (EOI). The types of market approach are:

- Open – invitations to supply are open to all interested suppliers
- Limited – a limited number of suppliers (but greater than one) are invited to supply
- Single – only one supplier is invited to supply.

Open market approaches are publicly advertised invitations for suppliers to submit offers to supply goods and services and are suitable where:

- there are many able suppliers and the complexity of the procurement is not high.
- there is a high level of market interest and a selective approach would be risky.

Single and limited market approaches are used when:

- a limited number of suppliers exist
- there is a prequalified list of suppliers who have met required criteria
- a shortlist of suppliers has been determined through an EOI process
- suppliers are licensed or meet legislated standards required to deliver the requirements.

Public authorities establish governance structures and develop internal and external tender documentation to execute and support the process.

The internal documentation comprises:

- Evaluation plan: this documents the supplier selection process and is tailored to the specific needs and circumstances of the procurement. Public authorities must complete and internally approve evaluation plans prior to the tender going to market.
- Purchase recommendation: this document details the selection process and the relevant findings of the evaluation.

Following the tender process the public authority will reach a decision on the preferred supplier. The public authority has the discretion to make partial or multiple awards of contract for selected portions of the procurement requirement or accept a portion or the whole of any offer at the price(s) agreed.

As part of this process, public authorities are required to undertake a 'post sourcing review' for procurements valued at or above \$4.4 million and for significant contracts below \$4.4 million (self-determined) to formally assess the process undertaken and to identify any improvements for future processes.

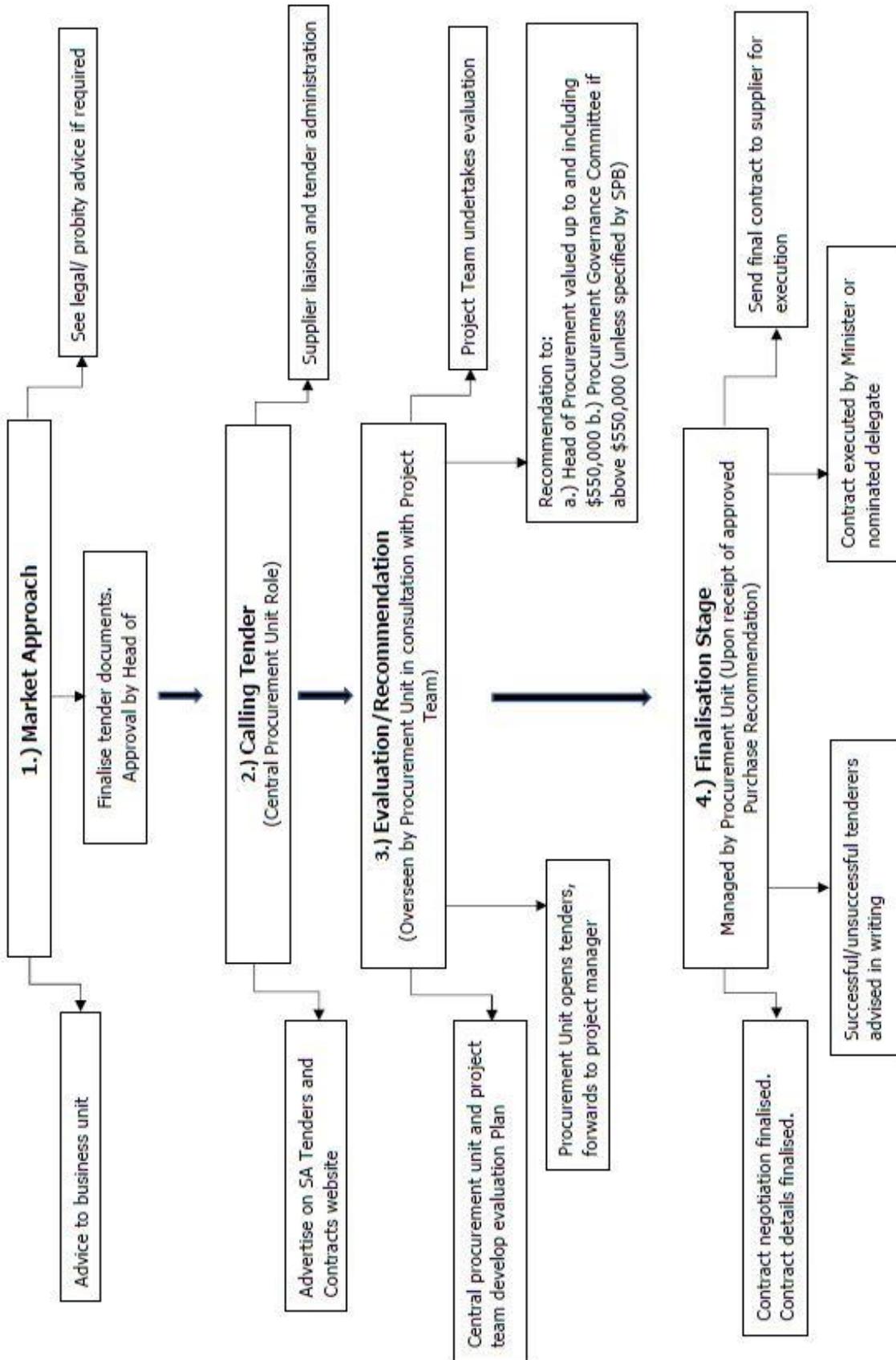
³³ State Procurement Board of South Australia, *Market Approaches Guideline, January 2019*, pp5-7

During the tender process for projects valued at more than \$550,000, public authorities issue external documentation comprising:

- A specification document (for invitations to supply or expressions of interest)
- A response document enabling suppliers to address the requirements set out in the invitation.

Following the selection of a preferred supplier, a standard goods and services agreement is used for all low to medium value, low risk contracts. Changes to higher value and higher risk contracts are permitted provided they are endorsed through the Crown Solicitor's Office.

Figure 4.2 – Supplier Selection Stage for Public Authorities (All contracts above \$33,000)



4.3.2 Consideration of issues

Duplication of information required in tender documents

Participants have provided examples of unnecessary or duplicative requests, which include asking for evidence or accreditation beyond that which is necessary or is already verified by other government agencies, for example work, health and safety records of a business.

"Most documents are asked for multiple times, sometimes by different departments within the same institution. There is clearly no common bank of documents. This is a huge hassle, as supplying these documents with other supporting comments and notes can be time consuming." (Construction company, 1-19 employees)."

Business SA in their submission conceded that in some circumstances related to privacy that information cannot easily be shared between public authorities. There was a sense, however, from Business SA members that a raft of more standard information related to company identification details, work, health and safety (WHS) policies and insurance coverage should be more readily stored and available to procurement staff.

Another source of frustration for suppliers is being asked to provide standard company information to the relevant public authority every time that suppliers go through a tender process. The inability to update details or provide details to multiple departments does add time and cost to the tender process.

The not for profit (NFP) sector also provided instances of duplication in the procurement process. This material is considered in Chapter 6.

Costs to business of tendering

Business stakeholders have said the costs associated with bidding for government work can be too high owing to the time required to read the specification documents and complete the response. The costs, when compared to the value of the contract, can at times seem out of proportion. The costs associated with applying to be on a government supplier panel or pre-qualifying for government business can also be very high relative to the potential increase in business.

As evidenced in the Business SA survey, "Businesses were also quite concerned about the overall costs of the tender process, which included issues related to the amount of supporting information required. 'The cost in terms of time and money is amazing, and not respected, understood or acknowledged at agency procurement levels.' (Professional services company, 1-19 employees)"

There was some feedback regarding the quantification of the costs of completing a tender. The Office of the Industry Advocate through engagement with their supplier member base estimates that "Except for tenders under \$33,000, 43 per cent of all tender or quote submissions take over 20 hours to complete."

The MTA believes that the high costs of tendering come from procurement forms that are too complex and vary across public authorities; more effort should be put into standardising government procurement forms.

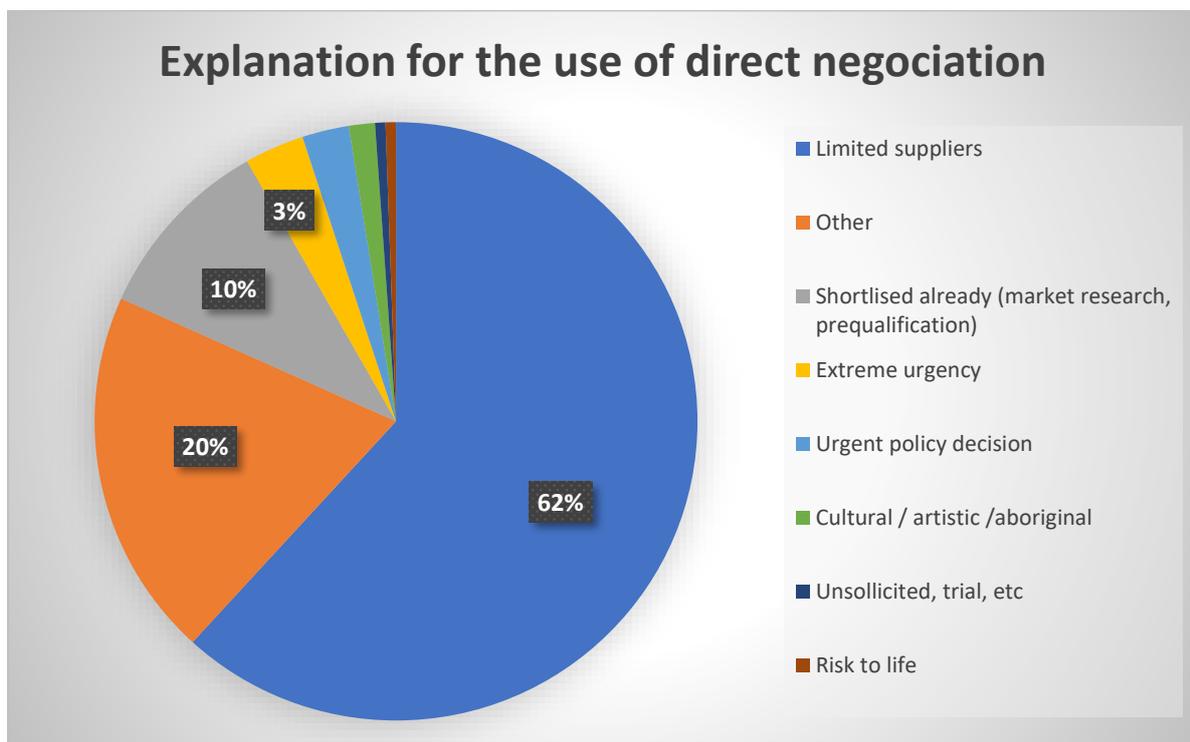
Appropriateness of market approach

Participants provided views on the merits of different procurement approaches, particularly competitive tenders compared with direct negotiation or competitive dialogue with selected suppliers. The concern that has been raised stems from a perception that public authorities are decreasing the use of competitive market processes to minimise the time taken for procurement and to maintain contractual arrangements that are beneficial in terms of price or quality.

State Procurement Board contracting activity data for 2017-18 indicated that 47 per cent of all tenders above \$33,000 (by value) approached the market via direct negotiation. In contract value terms direct negotiation represented 26 per cent of total contracting activity compared to seven per cent in 2016-17.³⁴

In 2017-18, 82 per cent of tenders conducted via direct negotiation were for contracts under \$220,000 noting that contracts below this threshold represent 75 per cent of all contracts. The explanation given for use of direct negotiations by public authorities was limited suppliers for six out of every ten contracts negotiated with 'other' the next most common explanation, accounting for two out of ten contracts (this may reflect the variety of contracts undertaken across the sector). Figure 4.3 provides further information.

Figure 4.3: Reasons for using direct negotiations by public authorities in 2017-18



Source: State Procurement Board of South Australia, Annual Contracting Activity unpublished data, 2017-18

Business SA generally supports the common use of a market approach for tender processes but not for low value contracts.

³⁴ State Procurement Board of South Australia, Contracting Activity data, 2017-18 and 2016-17 unpublished data.

The Industry Advocate considers that public authorities should better market research to support choice of market approach. *"If there is not a good understanding of what the South Australian market has to offer, local opportunities can often be missed because they are not approached to quote."*

In the survey of its members conducted by Business SA, concerns about bias towards other suppliers (actual or perceived) came out in the top five concerns of participants and is a reminder of the need for public authorities to be even handed in their management of tender processes. This is also likely to fall within the general requirement for probity. Public authorities also need to be able to give preference to a supplier with whom they have a well-established relationship – rather than going through an artificial process.

Feedback to suppliers

Participants reflected on feedback to suppliers during the tender process as well as subsequent to the decision being made by the public authority on the preferred supplier. Engagement with suppliers is sometimes seen as inconsistent, difficult to access and difficult to relate in some instances to the outcome of the tender process.

It seems likely that better feedback to suppliers would provide information about how they might become more competitive. A suggestion made in submissions to improve the 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 be given visibility of the rank order in terms of the overall score.

In terms of withdrawn tenders, participants provided examples of tender processes that went as far as being open to the market place but were subsequently withdrawn. An example from the Office of Industry Advocate submission: *"Industry feedback – Executive coaching for Agency CE's: Tender was released then after waiting 8 months businesses were told the tender was withdrawn as the funds were no longer available. Why wasn't this picked up before it was released to the market and businesses invited to tender?"³⁵*

On the information available to the Commission, these withdrawn tenders seem to be relatively rare, although that does not mean they were unavoidable. Information provided by public authorities has indicated that very few tenders are withdrawn after being put out to market. The public authorities contend that the checks and balances put in place have resulted in few instances in practice where they have had to withdraw a public tender. The reasons for withdrawing a public tender are said to have primarily been beyond the agency's control.

In respect of formal supplier complaints, public authorities report annually on the number of complaints they have received throughout the previous 12-month period. A formal complaint is defined as 'one that has been made in writing and referred to a nominated agency officer for investigation'. Over the period from 2012-13 to 2017-18, public authorities reported a total of 31 complaints. Over the same period, the SPB received:

³⁵ Office for the Industry Advocate submission

- four complaints, made directly to the SPB which were forwarded to agencies to manage in the first instance in line with the Supplier Complaints Policy, and which were not referred back to the SPB
- six complaints which were investigated by the SPB.

Innovation

The majority of public authorities responding to the Commission's request for information did not include any indications that innovation policies are integrated into their procurement strategies and practices. This suggests – subject to further information – a limited presence of innovation in the design of procurement policy in a range of public authorities, making it difficult to effect innovative procurement practices on a broad scale or to measure the contribution of innovative proposals to public authorities' outcomes. This does not mean that authorities are unmindful of innovation, rather the possibility may exist to organise more effectively to pursue innovative options.

Examples of better practice in public authorities are:

- SA Health include, where relevant, a section in market approach documentation where innovation and strategy for continuous improvement is requested from the supplier. These aspects are also included as part of the authority's supplier relationship framework.
- The South Australian Tourism Commission (SATC) promotes the use of a facility for suppliers to provide alternative or non-complying product or service offerings where appropriate, with caveats that the proposal may not be taken up.
- The use of Proof of Concept (PoC) procurements in across government contracts, particularly for ICT procurements. Under a PoC, agencies 'trial' a product or service on a small scale before any larger scale procurement is undertaken.

Public authorities have cited the practical nature of administering procurement projects is often dictated by time restrictions, cost concerns and delivery requirements that have an impact on planning and innovation. ICT projects are a good example as these often involve multiple stages and demonstrations – they can also be costly which means business units are reluctant to change specifications or alter arrangements if there are cost implications.

This last point also underscores the responsibility that public authorities have for feasible solutions that are within other constraints of public administration. There is also the related point that it is, in the Commission's view, unreasonable for suppliers with innovative solutions to have their expectations always (or even usually) met.

Public authorities have indicated that the procurement framework does not cater for embedding processes aimed at supporting innovative proposals. For example, the SPB Request for Quote documentation doesn't provide much scope for innovation but the Invitation to Supply documentation does include a section on innovation. Requests for quotes are impacted by probity concerns, as a consequence co-design and innovation doesn't often occur with these processes.

4.3.3 Commission's View

Duplication

Stakeholders have raised pertinent examples of duplication both in terms of frequently requested information and information on credentials and qualifications of suppliers held by other public sector agencies.

The Commission has heard from stakeholders of the potential value of technological solutions to provide storage and access to generic information for existing suppliers to public authorities. The Commission also sees value in the facility for procurement officers, with the necessary controls and permissions in place, to be able to access information on supplier credentials and qualifications to promote efficiency in the procurement process. Both of these areas of reform have resource and system wide administration implications if pursued and would require careful planning.

Information request 4.3: Having regard to reducing duplication in the tendering process, the Commission seeks further information from all parties on: best practice examples for the public sector to collect, store and retrieve information on suppliers for broad application and use in the tender process; and best practice examples to enable public authorities to access and verify supplier credentials, with appropriate permissions and controls in place.

Costs to business of tendering

The scale of costs for business in tendering for government business is difficult to quantify and is information not held by public authorities. Attempts by organisations external to government have offered some insight into the scale of these costs however the permutations of supplier circumstances does not lend itself to a system wide measure.

There is an implied and expected cost for suppliers to tender for government business when a response is based on a considered proposal and business case developed to meet the public authority's needs. This is part of a competitive process where the quality and standard of bids play a large part in determining the winner. This will not be the case for routine purchasing or contracts with low risk.

It is this type of purchasing - low risk and low value – where the costs and tender process may act as a barrier to small business participation. An area of further investigation is for public authorities to address the specification process for routine or high volume purchasing with a view to making the tender process more accessible to small local suppliers. This process could also be complemented by greater engagement with small business on tender writing and planning for future procurements.

In order to alleviate costs to suppliers in the tender process, the Commission is inclined to the view that public authorities reduce the information requirements for routine or high volume purchasing with a view to making the tender process more accessible to local suppliers. It also considers that industry associations may have a larger role in engaging

with small business on lifting their tender writing skills and in planning for future procurements.

Appropriateness of market approach

The SPB contracting activity data reported relatively low levels of tenders conducted via direct negotiation in previous years. The apparent recent sudden increase in the use of direct negotiation by public authorities may be an aberration. If the use of direct negotiation continues to become more prevalent then this may have implications for achieving value for money outcomes for public authorities. The ability to measure value for money may be compromised by not having a reference point when engaging a single supplier.

The Commission will further explore the different types of market approach used and the implications for public authority outcomes.

Information request 4.4: Having regard to the different types of market approach used in the procurement process, the Commission seeks further information from all parties on: additional specific examples where the type of market approach was inappropriate or led to sub-optimal outcomes and why; the impacts on suppliers of increased use of direct negotiation or selective tendering; and the benefits to agencies of this approach.

Feedback to suppliers

With respect to supplier debriefs the Commission can understand the perspective of both supplier and public authority on the circumstances in which debriefs are offered following a tender process and the value that both parties can potentially derive from them.

Public authorities in many instances find the debriefs to be a useful process as competition for government tenders could otherwise be reduced by discouraged suppliers. Suppliers will also find the feedback useful if there are aspects of their response or their business that were uncompetitive. It is unfortunate that the debrief process is perceived to be, and apparently in some cases is, an administrative exercise that cannot be taken up by busy suppliers or those suppliers not understanding their value. The Commission would like to hear from participants about best practice models for delivering feedback to suppliers after tender processes.

With respect to supplier complaints, the Commission has found that the design of the complaints process with respect to: the role of public authorities and the SPB; clarity on the intended outcomes of the process; and addressing supplier concerns on making complaints could benefit from greater clarity. The Commission notes that the SPB has recently reviewed the supplier complaints policy and will be issuing a revised document in the future. As such, the Commission will not be making a draft recommendation on this matter unless the new policy does not provide satisfactory outcomes.

With respect to withdrawn tenders, the Commission was not presented with many examples of tenders being withdrawn and has not been able to infer the circumstances or frequency of public tender processes closing before the market responded. It may be that the general feedback has been based on planned future procurement projects that did not proceed or

initial discussions with suppliers that did not go any further. Public authorities do not

Information request 4.5: Participants are invited to relate their views on what feedback information is helpful to unsuccessful suppliers to improving future performance and their views on good practice models for delivering post-tender feedback to suppliers.

maintain statistical information on instances such as these.

Innovation

The Commission is aware of a paucity in examples cited by public authorities of innovative procurement processes and limited documentation among at least several agencies to support innovation outcomes in the procurement process. This leads the Commission to an initial view that more systemic attention needs to be given, in the appropriate circumstances to innovation. This is a recurring theme elsewhere in the inquiry, including with procurement involving NFPs.

This leads the Commission to an initial view that while more systemic attention needs to be given, in the appropriate circumstances to innovation it is important that this acknowledge the professional expertise of authorities and their accountability for the consequences of procurement selections, not simply meeting the expectations of suppliers in all cases. This is a recurring theme elsewhere in the inquiry, including with procurement involving NFPs.

The SPB has sought to embed the principle of innovation in the policy framework by:

- Encouraging functional and performance specifications instead of technical specifications, which are too prescriptive and limit supplier options for innovation.
- Encouraging alternative processes such as reverse auctions, and competitive dialogue, where buyers focus on outcomes and working with individual suppliers to develop innovative solutions that create optimal value.
- Promoting discussions with key stakeholders as a means by which to create opportunity for innovation through exploration of improved ways of meeting the procurement need, and emerging supply market trends and practices.
- Removing the focus from 'tender' and 'proposal' terminology in market approach documentation to encourage public authority staff to think more openly about how specifications could be developed to achieve the best solution.
- Amending the Invitation to Supply requires public authority staff to identify in the document whether 'alternative offers' will be accepted, encouraging greater consideration of the suitability of alternative, innovative offers in each procurement.

While these changes are important at an operational level, the absence of innovation principles in the procurement process and apparently limited integration of procurement at a strategic level with much of government appear to the Commission to be significant gaps.

Information request 4.6: Participants are invited to relate their experience in offering, or attempting to offer, innovative goods and services to government.

4.4 Contract Management

4.4.1 Requirements and public authority practice

Requirements

Contract management focuses on the activities to be undertaken after the contract has been awarded and executed, but it is strongly influenced by acquisition planning and supplier selection. Some of the key requirements for contract management are:³⁶

- The principal officer must ensure that the public authority has a contract management framework in place.
- All contract variations must be approved in writing in accordance with the contract and be approved by the appropriate delegate.
- Chief Executives must ensure the disclosure of eligible and significant contracts within 60 days of the contract being executed. The information should remain on the South Australia Tenders and Contracts website for the term of the contract or twelve months, whichever is longer.
- For contracts valued at or above \$4.4 million:
 - An adequately resourced and skilled contract manager must be appointed.
 - An approved contract management plan must be developed, implemented and monitored (except for contracts that are of a one-off nature and have minimal management tasks).
 - An annual contract review report must be completed for consideration of the contract governance committee (where established) or senior managers.
 - A post-contract review report must be prepared for the appropriate senior manager (or where relevant, the governance committee).

Practice

The management of contracts within public authorities is undertaken by relevant officers within business units, by central procurement units and by officers dedicated to singular activities or expenditure, such as category managers. These officers are supported by contract management teams where the value of the contract is high, or the project is complex in nature.

Upon acceptance of an offer by suppliers and execution of a contract, public authorities will initiate the establishment of a contract management process. The contract management process consists of appointment of a contract manager, ensuring any service continuity and transition issues are addressed and organising the necessary record keeping and payment schedule.

For projects that are above the value threshold or are classed as significant, a contract management plan is developed. The contract management plan is the primary document used by agencies to facilitate and document key strategies, activities and tasks. The plan provides a methodology to: ensure the fulfilment of contractual obligations; facilitate a performance review of the contract; and monitor achievement of contract outcomes.

³⁶ State Procurement Board of South Australia, Contract Management Policy, July 2017

Once the contract is established and arrangements have been put in place, the contract management process focuses on managing project risks, engaging with suppliers to ensure delivery of outcomes and managing any performance issues and gathering relevant user or stakeholder feedback.

Contract management is measured by public authorities at an individual contract level and the measures typically relate to³⁷:

- 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 the supplier to account
- clarity about the contract scope
- the promotion of innovation and improvement in supplier performance
- improvements in the capability of both the supplier and the public authority.
- achieving the contract outcomes in a timely manner.

Post-Contract Review

Following completion of the contract, a post-contract review report must be prepared for contracts valued at or above \$4.4 million and significant contracts below \$4.4 million – the determination of significant is subject to public authority discretion.

4.4.2 Consideration of issues

Reporting on contract management outcomes

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

- 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.
- apart from category purchasing and some examples of panel arrangements, the assessment of value for money achieved or outcomes at a public authority level is not common practice.
- there does not appear to be an assessment of contract management performance undertaken by public authorities against the metrics described in the agency practice discussion.
- the assessment of indicators does not stem from a consistent methodology, particularly relativities of supplier performance, assessment of risk controls and project outcomes.

Contract payments

Stakeholders have indicated to the Commission the scheduling of payments and the promptness with which payments are made can present difficulty for some suppliers.

³⁷ *Ibid*, p5

Delays in the processing of invoices provided to local health units have been identified as examples where inefficient procedures and processes do not allow for prompt payments to suppliers. This situation presents cash flow issues for contracted smaller suppliers and NFPs. This issue is also prevalent for the payment of contractors in construction projects; this will be addressed by the Commission in the subsequent inquiry into the procurement system with expanded terms of reference.

The state government has a key performance indicator on the promptness of payments to suppliers within 30 days of registration within public sector agencies. The Small Business Commissioner has identified this timeframe as too long in comparison to best practice in other jurisdictions and has recommended that the State Government move to a 20-day payment from invoice as a minimum in the first instance.

4.4.3 Commission's view

Reporting on contract management outcomes

The absence of holistic 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.

It appears to the Commission that effort in the procurement process occurs mainly in phases of market approach and supplier selection. Once they have occurred, the subsequent governance and oversight of the system appears to be weak in design and in practice.

Information request 4.7: Participants are invited to provide their views on what measures are important for reporting and monitoring of procurement contracts. What sort of information is important in being able to manage contracts effectively? How can this information be used at a system level to inform better contract management in public authorities?

Timely contract payments

The delays in contract payments have been addressed to a significant degree by the state government. However, it is noted that other jurisdictions are progressing toward even faster invoicing payments.

4.5 Risk Management and Probity

4.5.1 Requirements and public authority practice

Risk Management

Requirements

The Government of South Australia Risk Management Policy Statement 2009 gives accountability to principal officers of public authorities for the development and implementation of risk management frameworks specific to their organisation's business and context, in accordance with the Australian/New Zealand Standard AS/NZS ISO 31000:2009.

Risk treatment involves a cyclical process of:³⁸

- assessing current controls
- deciding whether the residual risk levels (the risk remaining after considering the current controls in place) are tolerable
- if not tolerable, generating a new risk treatment
- assessing the effectiveness of that treatment.

Low to medium risk procurements that use the standard goods and services contract are to include a default liability limit selected at between one and five times the value of the contract. Where the Standard Goods and Services Contract (SGSC) is not appropriate, usually for high risk procurements, the Crown Solicitor's Office is consulted in developing a bespoke contract with appropriate liability provisions.

For procurements valued above \$33,000 up to and including \$550,000 (GST Inclusive), a risk assessment must be undertaken and project risks documented in a simple acquisition plan or a simple procurement report.

Procurement practitioners must undertake a risk assessment for all procurements greater than \$550,000. Where the procurement is assessed as being low or medium risk and is valued at up to and including \$4.4 million, the risk assessment is to be documented in the acquisition plan to an appropriate level of detail. Where the procurement is assessed as high risk or is valued at greater than \$4.4 million, a separate procurement risk management plan must be prepared and attached to the acquisition plan.

Probity

Requirements

The SPB requires agencies to include in their acquisition plans details of how probity will be managed. The SPB probity and ethical procurement guideline covers compliance with:³⁹

- handling official information
- use of government/public resources

³⁸ State Procurement Board of South Australia, *Risk Management Guideline, September 2018*, pp5-7

³⁹ State Procurement Board of South Australia, *Probity and Ethical Procurement Guideline, September 2016*, p5

- conflicts of interest
- acceptance of gifts and benefits
- reporting unethical behaviour.

In addition to the SPB policy, 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 the reporting of 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 – is 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.

Risk Management

Practice

The task of risk management for procurement projects is usually undertaken by business units in consultation with officers in the central procurement units of public authorities. However, for complex procurements, public authorities utilise in-house commercial advice or commercial advisory functions available elsewhere in government as well as Crown Solicitor's advice.

Non-financial risks in a procurement process (as opposed to the use of the product or service once the procurement process is completed) often relate to:

- probity, transparency and accountability issues on the part of the government party;
- poor specification definition resulting in poor product and/or supplier selection;
- a failure by the appointed supplier resulting in an impact on a government agency program; or failure to receive a viable supply option in the procurement process.

The approach to management of these risks by business units within public authorities relies on their own judgement, experience and knowledge to identify risks, impacts, likelihood and mitigating treatment. Officers in business units receive guidance in the form of SPB and internal guidelines as well as a risk matrix to guide assessment of likelihood, impacts and risk types.

Overall, the Commission has received limited information from agencies about their risk management practices. It has requested more and will assess this further, as required by the terms of reference.

Probity

Practice

Feedback from the South Australian Tourism Commission (SATC) provides insight into how public authorities typically manage probity requirements:

- Declare and document conflicts of interest
- Ensure confidentiality and security of supplier documentation
- Limit access to supplier documentation
- Limit the contact points during the open period of a tender
- Evaluation plans are approved prior to opening of responses
- Involve external subject matter or probity experts when required.

In larger agencies, additional controls have been put in place to ensure that independence and process tampering cannot occur such as in SA Health:

- The process of uploading and registering tenders is performed solely by the Policy and Compliance team separately from central procurement operational staff.
- Handover of tender responses is only undertaken once the Policy and Compliance team are advised that the respective evaluation plan has been approved.

4.5.2 Consideration of Issues

Allocation of risk between government and suppliers

The view amongst the business sector is that risk is passed on to business from government and government agencies understand that this reallocation results in a risk premium being built into the tender price.

Consult Australia observed that some public sector clients are using their market power to adopt a position that presents systemic risks to the economy and business confidence. When acting as a purchaser, government entities hold significant market power.

For professional services firms, the professional indemnity insurance premium is one of the largest expenses. Requirements in recent contracts for professional indemnity insurance and public liability insurance amounts are said to have been unreasonably high and bear little relationship to the risk profile of the project.

Consult Australia also highlighted that in some instances public authorities do not acknowledge that technical capability and risk is different from project risk and that a firm's commercial capacity to cover risk is driven by the extent to which the firm can control risk.

Public authorities have reported mixed experiences with the reforms to the generalised liability capping regime based on project value. The view of some public authorities is that the recent reforms do not adequately recognise the unique risk in each project.

The SATC have suggested a preferable policy to the current arrangements would be to remain silent in contracts on risk capping and allocation and in the event of a significant loss

rely on well-established common law positions for the allocation of risk for torts and breach of contract. An alternative would be to return to the previous approach of requiring that certain heads of damage or loss such as personal injury, damage to physical property, intellectual property, fraud and breach of contract are not subject to liability capping arrangements.

Probity issues in procurement

Public, media and political expectations around the transparency and accountability of public procurement outcomes have impressed on agencies the need to not only make the right decision but to be able to demonstrate that the right decision has been made. Stakeholders have indicated that public criticism of procurement outcomes has created a heightened sensitivity amongst agencies towards avoidance of risk, which may lead to inefficiency and delayed decision making.

Public sector agencies have stated they balance the obligations to ensure fair and transparent processes while promoting value for money outcomes. Most public authorities engaged by the Commission do not perceive that probity dominates the procurement process, rather it centrally guides and controls the way agencies operate and take decisions. A few public authorities did indicate that the risk averse nature of the public sector can influence decision making to unreasonable degree.

The SATC observed that procurement probity is a priority in both public and private sectors. In the public sector the expectation to document decisions in a transparent and reviewable format to demonstrate probity is much higher than in the private sector and is central to the public's confidence in government.

There have been very few instances of significant failings to observe probity principles in procurement processes as identified by the Auditor-General through the public sector reporting. The Auditor-General's reporting has not identified consistent failings in developing probity plans for high-value contracts, declaring conflicts interest or any patterns of bias.

The SPB observes that based on transactions seen and on the outcome of complaints investigated, there appears to be a good understanding of probity requirements in agencies, with few incidents of probity breaches (or perceived probity breaches) reported.

Effect of probity on innovation

Business stakeholders have formed the view that the complexity of the procurement system and the focus on probity has a detrimental effect on outcomes, particularly approaching the market and developing innovative solutions. Stakeholders have reflected that when officers are presented with a choice between optimizing compliance with the process and optimizing outcomes, they will almost always optimize compliance with the process.

The Commission sought views from public authorities on the effect that ensuring compliance with established process and probity rules has on working with suppliers during the planning phase as an innovation.

DHS engage with businesses and NFPs for the purposes of market research or for early engagement in the process. Other large public authorities such as DPTI and SA Health

implement this practice individually and at industry briefings, site visits and requests for information processes. DPTI ensure where possible use of project key performance indicators that are 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.

From time to time, public authorities receive unsolicited approaches from suppliers proposing innovative solutions and this is managed via established government processes and SPB policy requirements. The Commission has received view from businesses with experience of these processes suggesting there is potential for improvement that, in their view, has the potential to provide better outcomes for the State in terms of value for money and providing a reference site for these businesses to compete in other Australian jurisdictions and export markets.

Detailed approaches to market prior to a tender process commencing appear not to be a widespread practice amongst public authorities.

Case Study; South Australian Tourism Commission

In the events infrastructure and marketing services sector, the SATC is a significant purchaser of goods or services; the SATC works with suppliers to identify and present innovative products and services.

An example of this type of activity was working with Specialised Solutions, a South Australian based engineering and event infrastructure provider, to revolutionise the way corporate facilities are provided to major events.

In late 2015, the SATC approached the market for the supply of temporary corporate platforms and marquees for the Adelaide (then Clipsal) 500 event from 2016 to 2018 inclusive.

Specialised Solutions identified a potential solution based on using modified shipping containers, rather than platforms and marquees, as the basis of corporate facilities at the event. The SATC in discussions and further concept development with Specialised Solutions refined the concept to a point where it would provide not only equal, but superior accommodation for corporate guests at the Adelaide 500 in a manner which was cost effective over the long term.

SATC engaged Specialised Solutions to supply a premium corporate facility including front balcony, airconditioned internal entertainment space and observation deck. These facilities have been successfully used in the 2016, 2017 and 2018 Adelaide 500 events and have sold out at each event. These corporate facilities represent a step change in the quality of corporate facility and have attracted interest from interstate.

The SATC believes this was possible as a result of providing prospective suppliers with the opportunity to propose innovative solutions within a broad-based functional requirement.

4.5.3 Commission's view

Allocation of risk between government and suppliers

The Commission has insufficient evidence at this point on the approach to risk management by public authorities and has sighted only a handful of risk management plans. Subject to that qualification, some tentative findings are that:

- The outcome of the risk management approach for non-financial risks in particular is not reviewed at a holistic level. Such a review would look at the appropriateness of the approach, gaps in risk identification with those that eventuated; surveys of supplier experience; and appropriate risk mitigation actions;
- The concentration of energies applied to risk management by public authorities appears to occur at the acquisition and supplier selection stages of the procurement processes;
- There is no aggregation or totality of analysis of risks across similar types of procurements or service delivery elements at a public authority level; and
- The application of the risk management framework varies from authority to authority; this may have implications for suppliers transacting with multiple departments and it may also have implications for the differing risk profiles of public authorities. Such practice also has implications for the impact that system-wide reforms can have.

Suppliers have indicated that uncapped liability is neither commercial nor reasonable, and results in an unfair allocation of risk. Public authorities have argued that that all parties will try to limit their risk in transactions such as procurement. Best practice would allocate risk to the party that is best able to mitigate it. In practice it seems the proportion of risk exposure reflects the market power of the parties. However, the impact that such practices have on misallocation of risk and the consequential cost to government necessitates more care in both the understanding and allocation of risk.

The Commission is interested in the actual experience of public authorities and suppliers on the consequences of inappropriate allocation of risks, the impact of financial risks in procurement on small business and the application of agency risk profiles to procurement projects.

Information request 4.8: Participants are requested to provide examples of inappropriate risks being included in tender documentation or risk allocation not being properly addressed through the period of the contract. Participants are also invited to provide their views on remaining silent in contracts on risk capping and allocation and in the event of a significant loss relying on well-established common law positions for the allocation of risk for torts and breach of contract.

Probity issues in procurement

Public authorities have indicated that they have the tools, mechanisms and the confidence in their internal processes to be able to manage routine and low-value contracts in high

volumes and with little incidence 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 a probity advisor, an independent person, to ensure that the department cannot be criticised on the grounds of improper conduct, bias towards a particular supplier or unfairness in the process.

Given the number of government-issued policies, scrutiny of accounts by internal auditors and the Auditor-General's Department, potential investigation by the ICAC and the levels of delegation and approvals that exist within departments, the likelihood of unfair or unethical processes is now far less.

That said, it does not address whether, in managing probity risks, the current regime is increasing other important risks such as poorly defined procurements and missed opportunities for innovation. The Commission considers this outcome is likely.

Several public authorities did not outline the common use or understood strategic value of working actively 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.

Feedback to the Commission indicated that it was difficult to reconcile innovative approaches in 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 there is a choice of conservatively complying with the framework or trying something different and achieving an unknown or risky outcome. Public authorities and agency staff appear to face incentives that favour risk aversion.

4.6 Timeliness

4.6.1 Requirements and public authority practice

Requirements

The State Procurement Board has a policy that requires public authorities to quantify and report on the process duration for procurements valued in excess of \$220,000 (GST inclusive). Projects not in scope for reporting are grants and procurements attached to secondary purchasing, for example for panel contracts.

Timeliness in the tender process is reported by the State Procurement Board as the median time taken from acquisition planning stage through to contract award. The following table outlines the other metrics used to measure timeliness and their definition.

Table 4.3: State Procurement Board Key Timeliness Milestones

AP – Acquisition Plan Approval Received	<i>Records the date the Acquisition Plan was approved by the delegated authority or the date approval was provided to proceed with the procurement process.</i>
FAM1 – Formal Approach to Market Date	<i>Records the start date of the formal approach to market. This may include:</i> <ul style="list-style-type: none"> • <i>the date the invitation documentation was issued to the market seeking responses</i> • <i>or the date of the commencement of formal negotiations (such as for single source procurements or for direct negotiations)</i> • <i>or the date an Expression of Interest (EOI) was issued to the market.</i> <i>Date must be equal to, or after, AP.</i>
FAM2 - Market Approach Closed Date	<i>Records the date the formal market approach was closed. This may include:</i> <ul style="list-style-type: none"> • <i>the date the invitation was closed (closing date for responses)</i> • <i>or the date of the final receipt of offer from a supplier – such as for a single source or direct negotiation approach</i> • <i>or the closing date of the second stage (for multi-stage processes).</i> <i>Date must be equal to, or after, FAM1 date.</i>
PR – Purchase Recommendation Approved	<i>Records the date the purchase recommendation was approved. Date must be equal to, or after, FAM2 date.</i>
CA – Contract Awarded	<i>Records the date the supplier was formally notified that they would be awarded the contract. Date must be equal to, or after PR date.</i>
CE – Contract Executed	<i>Records the date the Purchase Order was issued or the contract was executed (signed by all parties). Date must be equal to, or after, CA date.</i>

Source: State Procurement Board of South Australia

The SPB collects and reports public authority data on these milestones as part of its annual reporting requirements, but only publishes the data from FAM1 to CA, which provides the total median days lapsed from formal approach to market to contract awarded (i.e. the timeframe during which suppliers were engaged in the procurement process).

Practice

Generally the duration of time to undertake procurement processes will vary considerably between individual projects depending on the nature of the market approach (such as direct, selective or open) and the value and complexity of the project. In practice direct approaches and selective Request for Quotations have been reported by agencies as taking less time between advertisement and contract award due to the reduced administration requirements.

The frequency with which public authorities and business units within public authorities undertake procurement processes can have a large bearing on the time taken to see the process through to contract award. Business units that undertake procurement regularly will be able to more readily cope with the volume of documentation, extract the more relevant information from tender bid documentation and have established better relationships with suppliers. Public authorities are also required to incorporate at least one domestic supplier in closed bids. The evidence suggests this often does not occur. The reasons remain to be examined by the Commission.

The factors that dictate the time taken in the procurement process are:

- The planning process; to ensure clearly stated requirements for suppliers to respond.

- The development of measures of success
- Development and identification of risks and the proposed treatment.
- Approvals times and the number of approvals and endorsements.
- Whether it is the purchase of goods or services.
- The extent of the market analysis required for the purchase.
- The type of market approach – open call and whether the purchase is one-off or part of a departmental or across-government contract.
- Legislative or regulatory requirements placed on government such as free trade agreements
- The level of interest of other government stakeholders and its bearing on the achievement of government objectives.

There are several methods by which public authorities ensure that they meet reasonable timeframes for the tender process. These range from recording milestone dates throughout the process for monitoring and reporting internally to communication of expected timelines to the market with active management of timelines to ensure that processes are not being delayed unnecessarily.

As an example, for procurement processes managed centrally by the Procurement Governance Unit (PGU) in DHS, a timetable is developed between the Procurement Adviser and the agency business unit during the planning stage, to map the timetable for the procurement process.

This includes time for further consultation, market research, acquisition planning (including market approach and evaluation plan), tender opening period, evaluation period, approval of purchase recommendation, contract negotiation, contract transition and contract commencement.

Any deviations from this timetable is captured are in the purchase recommendation. The purchase recommendation outlines the reasons why the delay occurred and what, if anything, can be done to prevent a recurrence of the issue. The details in the timetable are also included in the market documents, to flag to the sector when an outcome will be communicated.

The majority of public authorities have indicated that the greatest impact on the process comes at the evaluation stage and the approval stage.

4.6.2 Consideration of issues

Timeliness of the Procurement Process

Business and NFP stakeholders referred to what they consider the unreasonable length of time that some tender processes take to award government work. Some submissions have identified the need to expand the timeliness measure to include pre-tender consultation and planning for procurements to accurately reflect the time involved in the tender process.

The Industry Advocate notes that the minimum and maximum times for award of contracts or the value of those contracts are not published, usually indicating a longer time period the higher the contract value: "*This has certainly been the experience of a recent tender for the*

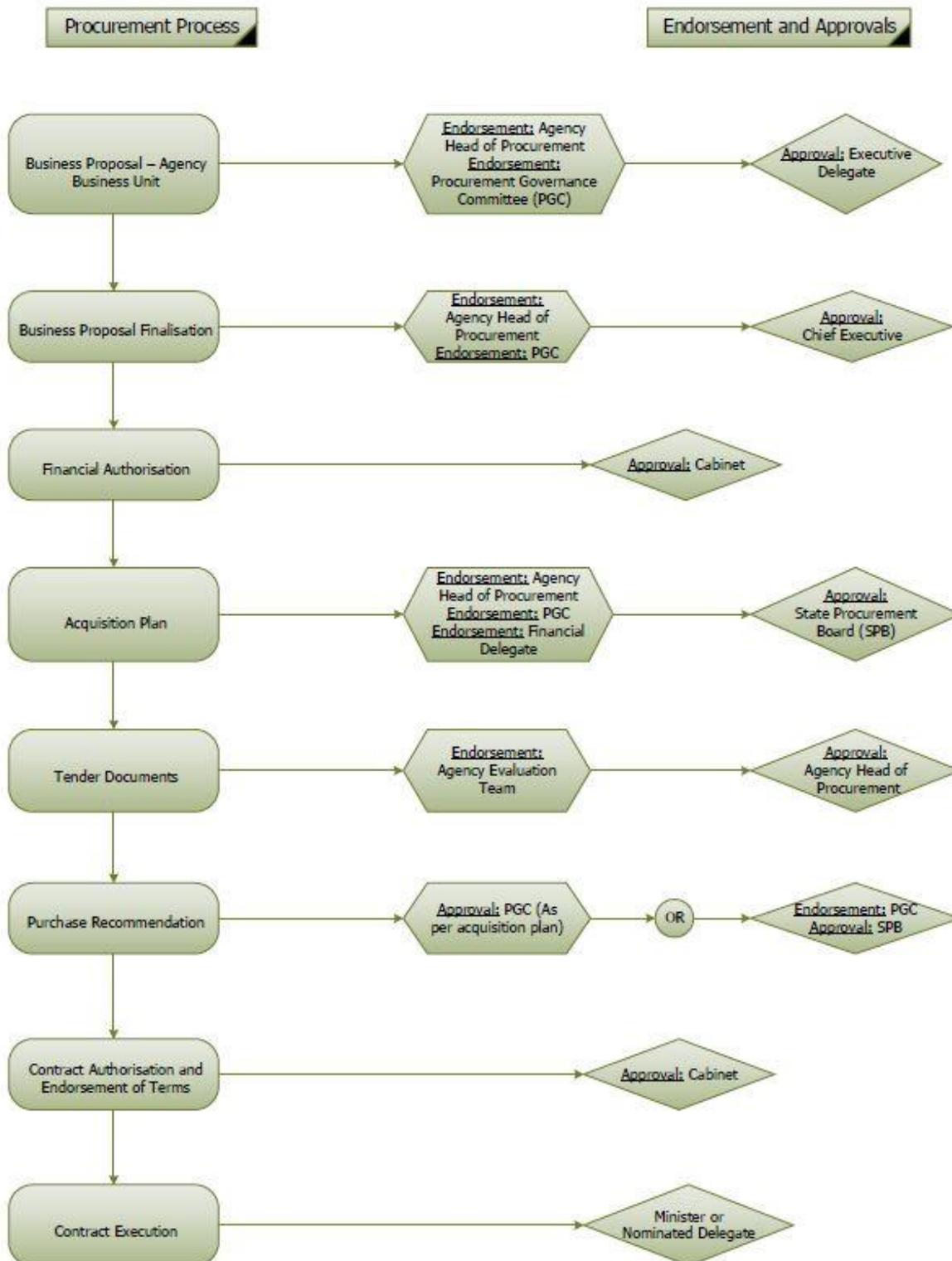
delivery of buses to service our public transport system, with an estimated value of \$300 million. Initially released in around October 2017, the contract took many months to be assessed and was eventually withdrawn in September 2018. A second approach has now been made to market."

Businesses have raised the adverse impacts that a delay in the tender process has had on suppliers. Some of the feedback has been related to instances of delays in award of contract increasing costs for businesses that have hired staff or contractors in anticipation of commencing the contract. It has also been suggested that the amount of time involved in reading bids, asking for clarifications then getting approvals for a tender with many bids is considerable.

The MTA have experienced frequent and significant delays in receiving information regarding the evaluation process and implementation timelines as well as experiencing a lack of transparency around the causes of these delays."

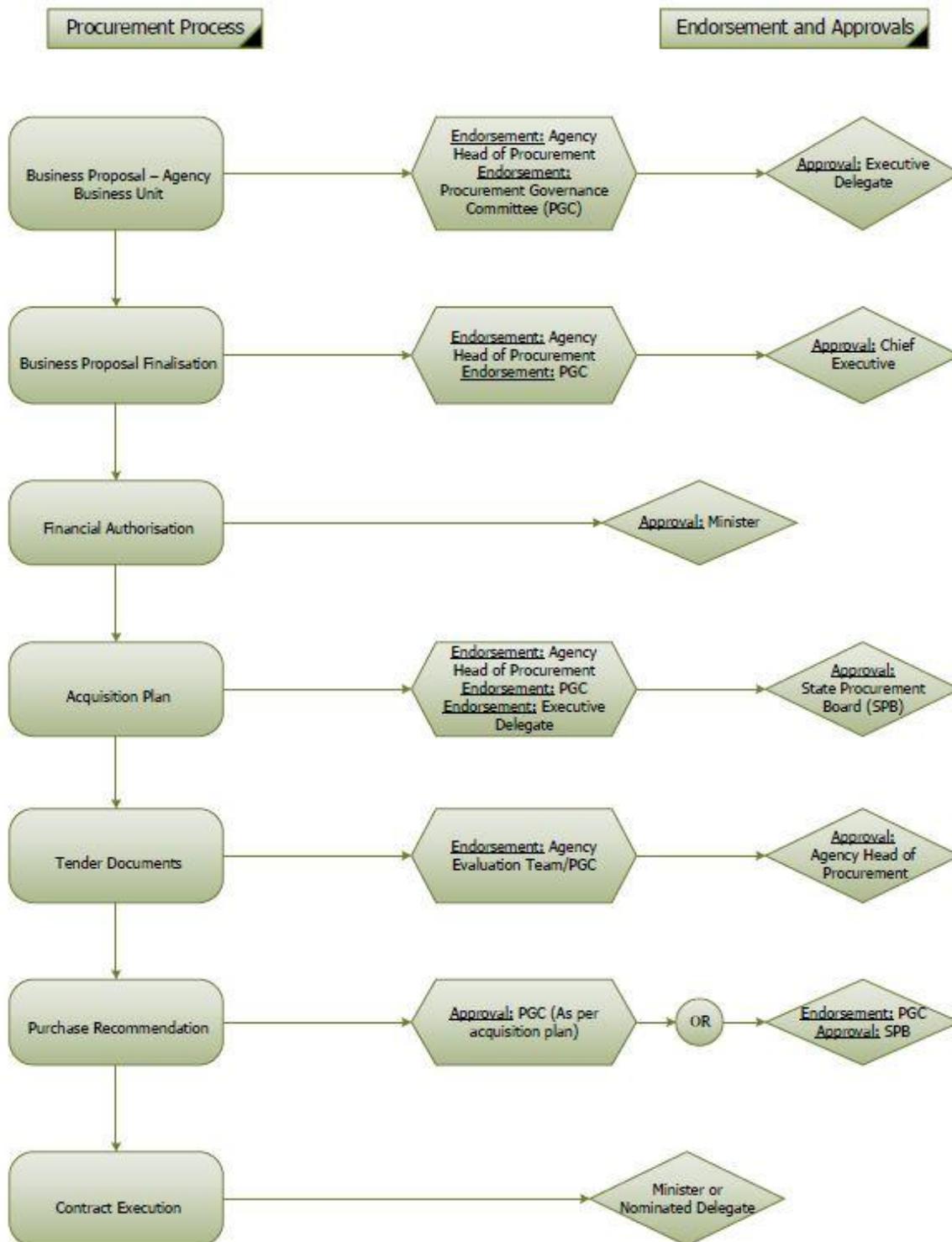
The number of approvals in the process has been examined by the Commission. A typical example for a Tier 1 public authority in gaining approval of a project in excess of \$15 million involves 7 individual approvals and endorsement at 4 different levels across all stages of the procurement process. Figures 4.4 and 4.5 set out the process typically followed by a Tier 1 and Tier 2 public authorities.

Figure 4.4: Procurement Process for Contracts Above \$15 million (Tier 1 Agency)*
 *(Based on SAPC understanding)



- 1.) This flowchart covers the process up until contract execution, with contract management excluded
- 2.) This is representative of new or one-off purchases – the process is abridged where existing financial authorisation is already in place.
- 3.) The Financial Authorisation and Acquisition Plan processes are generally undertaken in parallel.

Figure 4.5: Procurement Process for Contracts Above \$1.5 million (Tier 2 Agency)*
 *(Based on SAPC understanding)



- 1.) This flowchart covers the process up until contract execution, with contract management excluded
- 2.) This is representative of new or one-off purchases – the process is abridged where existing financial authorisation is already in place.
- 3.) The Financial Authorisation and Acquisition Plan processes are generally undertaken in parallel.

4.6.3 Commission's view

The timeliness of projects is clearly a key indicator by which the effectiveness of the system is measured from the perspective of suppliers, agencies and executive government. The Commission has found that the average time taken to run a tender process from the point where an acquisition plan is approved up until the contract is awarded to a supplier increases with the dollar value of the contract. In addition, the type of approaches used by government has a large influence on the average time taken to start and finalise a tender process.

While neither finding is particularly surprising, they make the point that higher value and higher complexity procurements necessarily require more consideration and time. That said, it is not obvious to the Commission why there are as many individual approvals and endorsements for large projects for all tiers of public authorities. The Commission intends to test this further, including in stage 2 of the inquiry which includes construction.

While many tenders are expedited in good time, SPB contracting activity data analysed by the Commission has identified some severe cases which took years to resolve. At the other end of the scale some high value contracts were completed very quickly.

The Commission notes on the use of timeliness as an indicator of the effectiveness of the procurement system that South Australia is the only jurisdiction to publish such an indicator.

There are aspects of the procurement process that form part of the total project, but which are not formally measured and reported on. The preparation of a formal business case for internal approval, approval processes, financial authorisation and market research are critical activities that occur prior to the acquisition plan commencing. It is only at this stage that agencies will register the project as active.

In SA Health all ICT projects are required to submit a business case through the eHealth Steering Committee before funding can be approved.

The Commission observes that the SPB measure of timeliness runs from acquisition plan to contract award. The measure does not include contract execution, which is a better indication of when the work is about to or does commence. This is a key date for both parties but particularly for suppliers as it is also the date when work on the project officially commences. In practice, a significant amount of contract work starts before contract execution date.

The Commission has noted that processes and checks have been put in place to varying degrees by public authorities. These include communication to suppliers at the start of the process of expected timelines and advice to the market when a significant delay has occurred. The Commission does not have a sense of how these measures apply with respect to time elapsed or how effective these measures are.

Delays in contract execution can in some cases cause a great deal of angst and potentially severe costs where the suppliers delay decisions to engage third parties or contractors, incur expenses through purchasing inputs to the product, incur costs for development phase of

the project or lose valuable time in awaiting confirmation of key aspects of the contract. This effect has been observed in the NFP sector.

Timeliness is dependent on level of interest from the market and how many suppliers bid, the type of process, approvals processes and governance and the time that key public authority officers can devote to the process. Some of these can be seen as blockages of much information or responsibility at narrow or single points, others are the volume of checks and balances and documentation and some are structural or systemic.

That said, it appears other jurisdictions are implementing policies to achieve faster contracting. The Commission intends to test this further, including the scope to remove low value approvals and unnecessary steps in current processes. The Commission considers that the State Procurement Board could expand the definition of timeliness to include the period from acquisition plan through to contract execution.

4.7 Value for Money

4.7.1 Requirements and public authority practice

Requirements

Chapter 3 provided a discussion on definition of value for money and the application of the SPB value for money guideline. There are no mandated requirements for value for money; however, it is an embedded objective of the *State Procurement Act 2004*.

Practice

In practice, procurement processes will define value for money for the purposes of four different stages.

- Project planning and outcomes – defining how well delivery will meet the needs of the public authority
- Evaluation criteria – how likely suppliers can deliver what is required and, in the manner required
- Contract management – how well suppliers perform in delivering what is required
- Project outcomes – how well suppliers have delivered what is required.

Identification of the key factors of value for money in a project occurs at the planning stage. These factors will remain a consideration throughout the process and guide the evaluation of supplier bids, management of suppliers and evaluation of outcomes.

Public authorities undertake value for money assessments at the evaluation stage using mandatory and weighted evaluation criteria. These criteria are based on examples from the SPB guidelines. These criteria include:

- Mandatory criteria are non-subjective criteria answered by yes or no (Capability of suppliers, qualifications and credentials of supplier staff)

- Weighted (Prior performance and demonstrated experience, level of compliance with specifications, price/cost, supplier capability and approach and compliance with the industry participation policy).

Public authorities will apply differing relativities to the importance of evaluation criteria for similar types of projects. Criteria used to evaluate bids almost always include delivery timeframes, supplier capability and experience and cost. The following defines criteria used to evaluate specific procurements.

- Projects that are goods purchases or have technical or scientific requirements usually include reference to specifications – design, functionality, maintenance and the like.
- ICT contracts also refer to service support elements, functional requirements and compatibility with departmental systems.
- Service provision includes additional criteria such as client satisfaction, end-user applicability and volume of delivery.

Public authorities generally approach value for money assessments as comprising all the elements in a purchase that will lead to delivery of what is being procured. Elements not included as common practice are calculations relating to whole-of life cost, environmental impacts or broader economic impacts.

4.7.2 Issues for Consideration

Value for money definitions used 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 said that often procurement decisions are being taken by public authorities under the pressures of public sector savings targets or timelines imposed upon them out of their own control, meaning that opportunities for higher value outcomes are ruled out. By and large, public authorities have a different view, having regard to their obligation to achieve value for money in their procurements

Others have characterised procurement as a transactional exercise that can have perverse outcomes on spending, including being locked in with unsuitable suppliers or products or services that do not suit public authority requirements. They also suggest governance arrangements do not promote forward planning or strategic oversight in the procurement system and the lack of information in the procurement system to support measurement of outcomes across government is an indication of a non-strategic role attached to procurement.

Participants have noted that in some cases they have experienced tenders that do not contain all of the requisite and relevant aspects of value for money. Business SA stated in their submission that:

"While this is a commonly raised issue with Business SA, it was a promising result that in at least some instances, over half of businesses are experiencing State Government procurement staff that do consider 'whole of life' costs when assessing tenders. However,

only 13.2 per cent of businesses found this was 'usually' the case which demonstrates the substantial challenge that still faces the State Government in better equipping its procurement employees to assess tender costs on a more holistic basis. Software purchases were raised as a specific example of where 'whole of life' costing was particularly important." (p7)

Green Industries South Australia stated that such approaches to whole of life costing are a future economic liability mitigation strategy. Examples of how this would be applied are the cost savings made in the future by procuring from social enterprises which employ marginalised people, or procurement decisions which support a circular economy and associated creation of local employment. Such an approach was also favoured by the MTA in their submission to the inquiry.

The Commission has observed in the value for money guideline issued by the State Procurement Board that life cycle costing, economic outcomes and service delivery standards are not discussed in sufficient detail. Guidance on accurately specifying requirements in a value for money sense measurement of whether the outcomes have been achieved throughout the life of the contract is not included in SPB materials. By contrast, the Victorian Government Purchasing Board has clear, extensive guidance on how to apply value for money in practice.

Prominence of value for money in procurement decisions

The Commission reviewed 103 tenders recently completed by public authorities to understand the application of value for money in the procurement process (see Chapter 5 for further details). Tender documentation including acquisition plans and purchase recommendations were used to conduct the analysis. The analysis included the importance of price as opposed to other evaluation criteria used by public authorities as well as the impact of industry participation on decision making.

Where the least cost option was chosen for preferred suppliers:

- In 30 per cent of cases, a factor other than price was the determining one in the decision, such as timeliness of delivery, capability of suppliers and experience in delivering the goods and services
- In 30 per cent of cases, the decision was based 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 second-best tenderer had ranked equally on the other criteria
- In the remaining 10 per cent of cases, price was the sole factor in the decision made.

While the majority chose the least cost option, there were only 10 per cent of tenders where price was the only factor clearly spelt out in the purchase recommendation.

Value for money was found on occasion to be a subjective judgement at project level. The Commission was told the biggest problem is when the benchmarks are not well defined, ignore critical factors or are outweighed by other considerations such as risk that achievement of value for money can become uncertain.

4.7.3 Commission's view

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 is, in essence, the concept of value for money that drives evaluation of alternative purchases.

It is the practical application of this principle that needs more guidance to ensure value for money outcomes can be measured properly. The additional guidance relate to methodology and consistency of application and the inclusion of broader policy goals in value for money calculations.

The Commission's view is the State Procurement Board guideline on value for money is unsatisfactory and provides limited guidance for officers in public authorities on practical application in the procurement activities they undertake. The guidance 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.

The Commission considers that greater policy clarity in value for money policy that provided guidance on the government's strategic objectives and how they are to be prioritised would be helpful.

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 better serve identifying of needs, engagement with the business sector, managing projects and maximising value for money in purchasing.

Some agencies had proposed that the use of category management can support the achievement of value for money objectives (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 by grouping procurement activities into categories of spend and applying 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 supports a holistic and coordinated approach and facilitates whole of government consideration of how procurement can support value for money policy objectives.

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

Information request 4.9: Having regard to the measurement of value for money and the practical elements that value for money assessments would need to include, participants are invited to provide their views and experience: on which elements of value for money are important to include in guidance material and processes used by public authorities; and on how to build in elements such as support for local business, sustainable procurement and building social capital into the assessments of value for money.

4.8 Capability and Capacity

4.8.1 Public authority performance

The current capability responsibilities and accountabilities for public authority training and skills in procurement have been discussed in Chapter 3. Chapter 4 discusses current levels of capability in human resourcing in public authorities dedicated to procurement, technological capability to support procurement and capacity building in developing strategic procurement outcomes.

Stakeholder submissions strongly emphasised public authority capability and capacity as not only an indicator of the strength and value of the procurement system but also as a key component of outcomes for the system.

Information is collected by the Office of the Commissioner for Public Sector Employment (OCPSE) on SA government employee numbers and occupations. The occupations are categorised according to the Australian and New Zealand Standard Classification of Occupation (ANZSCO) code.

Table 4.4: Headcount for selected ANZSCO Codes (procurement-related occupations) by Agency⁴⁰

Title	ANZSCO Code	Head Count
Managers	1336 - Supply, Distribution and Procurement Managers	43
Professionals	2249 - Other Information and Organisation Professionals	390
Clerical and administrative workers	5111 - Contract, Program and Project Administrators	2,654
	5911 - Purchasing and Supply Logistics Clerks	121

Source: OCPSE

⁴⁰ The data considered by the Commission was produced by the OCPSE based on the information collected for the Workforce Information Report 2018, current as at June 2018.

This OCPSE data, which should be regarded as indicative as it has not been reconciled with departmental records, indicated:

- that the majority of procurement professionals are concentrated in DPTI, DE, SA Health and DHS;
- public authorities can generally be grouped into one of three categories having regard to the number of procurement professionals they have:
 - the group with the highest concentration of procurement professionals (referred to above);
 - a middle-group with a moderate (in relative terms) number of procurement professionals – this group generally includes the other administrative units of the public sector including, for example, Attorney-General’s Department, DEW, and DIS; and
 - a group with a small number of reported procurement professionals – this group generally comprises statutory authorities.

Other observations include:

- DPTI had the most Managers at 29, with DHW the next closest with seven;
- Seven public authorities registered as having procurement Managers;
- DE had the most Professionals at 83, followed by DPTI with 69 and Return to Work SA with 51; and
- DE recorded the most Clerical and administrative workers at 526 – SA Water had 52.

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).

Building procurement capability is supported by the SPB’s “Building capability to improve government procurement practice” policy⁴¹. That policy emphasises the 70:20:10 approach to development (70 per cent on-the-job training, 20 per cent feedback and observation and 10 per cent from courses).

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 capacity, particularly given recent FTE savings measures implemented.

⁴¹ Building capability to improve government procurement practice”, State Procurement Board (15 March 2019 accessed at <http://spb.sa.gov.au/sites/default/files/Building%20Capability%20to%20Improve%20Government%20Procurement%20Practice.pdf>)

Recruitment

The SPB Generic Procurement Recruitment System⁴² provides guidance 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.

Training

The State Procurement Board offers or facilitates access to a number of training and development programs as part of its obligation 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.”

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 third-party service providers.

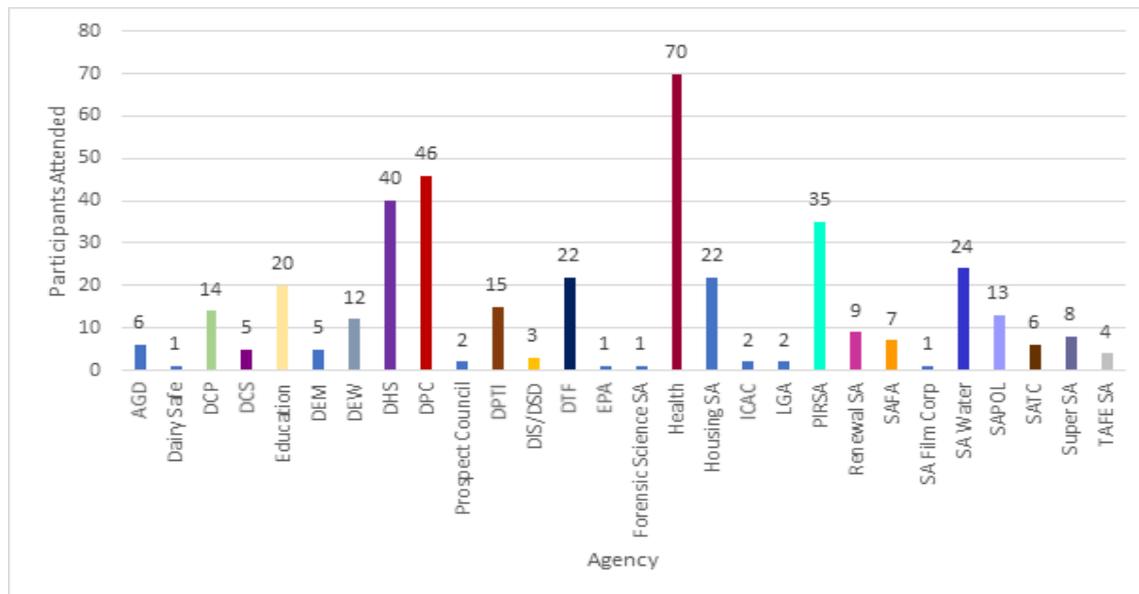
The “Leadership in Action Program” is a five day program spread over six months, providing online facilitator support between workshops. It is a strategic program aimed at more senior procurement professionals covering change management, influencing and building culture. This program is delivered by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

⁴² Generic Procurement Recruitment Guide, State Procurement Board (15 March 2019 accessed at <<http://spb.sa.gov.au/content/procurement-training-development/generic-procurement-recruitment-guide#overlay-context=content/procurement-training-development/generic-procurement-recruitment>>

Figure 4.5: Participants attending SPB training



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

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

Procurement Qualification Support Fund

The SPB has 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.⁴³

Technological Capability

The level of technological sophistication in public authorities varies widely across the sector. Public authorities use the standard (e-procurement) Basware system, however this is mainly an invoicing system and does not possess capability in generating, storing, retrieving or managing information related to tender processes or system-wide reporting. All public authorities primarily use the SA Tenders and Contracts website for the upload and management of open/public tender processes. Some of the larger public authorities, such as DHS use systems to track their procurement and contract management processes. SA Health

⁴³ “Procurement Qualification Support Fund” (15 March 2019 accessed at <<http://www.spb.sa.gov.au/content/procurement-qualification-support-fund>>)

possesses the most sophisticated example of technology to support procurement operations, the Enterprise Resource Planning system. This is a department wide system but has the functionality to generate procurement related reporting and manage process flows.

4.8.2 Consideration of Issues

Current capability of procurement staff

The proportion of expenditure in public authorities related to government purchasing is significant, in some cases half or more of total agency expenditure. The resources dedicated to supporting this function, according to OCPSE data, approximately 3,200 employees predominantly at junior levels, is a small fraction of resources available across the public sector.

It is not just the level of current expenditure that is relevant. Present purchasing decisions will have an impact on future purchasing decisions and therefore the capability and capacity of public authorities to support good decision making as well as effective monitoring of delivery is a critical factor in achieving policy and service delivery goals.

Procurement is recognised as a profession and has coverage over all aspects of purchasing from planning to supplier relationships, contract negotiation and oversight of projects. Stakeholders identified the number and seniority of full-time contract management staff across the state government as an indicator of the lack of capability in critical aspects of the procurement system. A lack of contract managers in the South Australian public sector dilutes contract outcomes and undermines the ability for procurement authorities to get value for money in its purchasing.

Training

Related to the resources allocated to procurement functions in public authorities is the skill type and level possessed by procurement related staff, as well as officers with commercial and industry knowledge and experience in the department being involved in procurement processes.

Qualitative feedback to Business SA from members centred around procurement staff not having the degree of 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, that they would not have adequate skills internally to assess the actual tender responses.

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.

Technological Capability

Most public authorities engaged during the inquiry by the Commission pointed out the lack of technological sophistication and support for managing procurement processes. This has implications for oversight of expenditure, upcoming contracts and engaging with the marketplace, it also has implications for monitoring and benchmarking performance.

Public authorities have identified possible reforms to improve technological capability of the procurement system:

- adopting a whole-of-government system, or at least the ability to access a system that has been proven to fit within existing systems. This would provide opportunities to collaborate with other public authorities on similar procurements, being able to see what contracts other public authorities have and being able to ask about a supplier's performance, which would be beneficial;
- feedback from business units within public authorities commonly suggests an electronic system that included the approval component and automated workflows would create efficiencies and streamline the process;
- better spend analytics for analysing departmental spends; and
- use of supplier log in accounts which would enable standard supplier information to reduce data entry and administration for suppliers who are submitting multiple tenders over the course of a year.

Strategic Procurement

The Commission has not been provided with many examples of broad procurement strategies by public authorities. While category purchasing strategies are developed in agencies such as SA Health and DPTI, the integration of procurement strategies in public authorities is not common practice.

The Commission has observed a paucity in procurement related indicators published by public authorities or a published link between broad agency objectives and procurement activity.

An exception to this apparent paucity is DHS's use of procurement to assist to achieve broader government objectives such as building strong communities, by generating employment opportunities and promoting social inclusion. A social procurement identifies intended social impacts or outcomes as an integral part of developing the procurement scope and objectives.

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
- Estimated date of market approach
- Estimated length of contract
- Contact person from the relevant public authority

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 not publicised on the website and business stakeholders are critical of the incompleteness of the currently provided information.

4.8.3 Commission's View

Current procurement human resource capability

The state cohort of public sector procurement staff connected with procurement is around 3,200 people based on OCSPE data. This 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 large majority of these staff – around 2,600 people – are contract or program administrators. 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, this is likely an area where there are improvement opportunities. The Commission has also been told that some authorities have a pattern of including procurement professionals late in the procurement processes, suggesting there may be work flow changes that could increase the contribution from these senior staff in those authorities.

Information request 4.10: The inquiry seeks information from public authorities about the composition of their procurement professional cohorts, whether they are appropriate in terms of the number of professionals, and whether the skill mix and level of experience is optimal to achieve their respective procurement outcomes.

Technological capability

The use of technology solutions to support public sector procurement is limited at this time. Feedback from both public authorities and the business and NFP sectors indicates there are opportunities to increase process efficiencies and improve connectedness in the tendering process between government buyers and potential and actual suppliers.

Public authorities' feedback emphasised that any technological improvement should be integrated and consider whether the SA Tenders and Contracts is the appropriate interface upon which a more integrated approach could be based.

Information request 4.11: The Commission seeks information on examples of proven technologies supporting procurement and contract management, particularly where an integrated approach has been taken to optimise analytics and an Enterprise Resource Planning approach.

Training

Based on the SPB's advice and the OCPSE data it appears that only 10 per cent of the total state procurement cohort undertook any procurement-related training that is recorded by the SPB. 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.

It is unclear whether there is a correlation between the number of qualified and accredited procurement staff and the 10 per cent uptake of training with the views heard by the Commission from business and industry regarding state procurement professionals' capability. More information is required.

Information request 4.12: The Commission seeks feedback from public authorities regarding: their strategies for attracting and developing the procurement capability they require; the extent of support for procurement professionals undertaking procurement-related training and development, including whether a formal approach is taken e.g. forms part of twice-yearly professional development discussions and plans; and any tangible operational procurement improvements arising from the training of their staff.

Strategic Procurement

Based on feedback from business, the existence of future procurement information does not appear to be particularly accessible on the South Australia Tenders and Contracts website nor does it appear to accurately reflect future procurements. Chapter 5 discusses this further.

4.9 Aggregation of Contracts including Panels

4.9.1 Requirements and agency practice

Panel contracts

Requirements

A panel contract is an arrangement established with at least two suppliers for the anticipated provision of goods or services, as and when required, over a specified period. The decision to establish a panel contract is considered when public authorities develop their acquisition plan. Panel contracts are one of various possible procurement strategies that public authorities can select; in many cases, public authorities will prefer to adopt a sole supplier contract. (However, in some circumstances the panel operates in effect as a sole supplier arrangement).⁴⁴

The key requirements for public authorities to comply with respect to panel contracts are:⁴⁵

- The rules for selecting suppliers from the panel contract and for replacing or removing suppliers must be clearly documented in the acquisition plan.
- All panel contracts must provide a right to remove panel members or goods/services as circumstances arise.

⁴⁴ SPB Panel Contracts guideline

⁴⁵ *Ibid*

- A panel contract must clearly specify the parties to the contract and whether these parties are required to utilise the panel on a mandatory or optional basis.
- The decision to mandate the use of a panel contract must be made by the appropriate authority. This may be Cabinet, the Board or the principle officer of the public authority.
- Procurements undertaken through a secondary procurement process (as outlined in the panel contract) must be approved through the public authority's normal approval processes.

Public authorities establishing a panel contract are required to:

- determine the total anticipated value of the panel contract before obtaining approval to commence the procurement process
- make no commitment to undertake a specified volume of purchases during the panel contract period
- ensure there is verifiable demand for the anticipated goods or services for the life of the panel contract and not raise supplier expectations of a higher volume of work than is actually available
- apply the relevant requirements of the Government's Industry Participation Policy
- inform all relevant users and panel members of the secondary procurement process to be followed
- determine, where relevant, any reporting and data collection requirements and advise relevant parties.

Practice

Panel contracts are used when:

- there are several suppliers who can provide the good or service
- there is a strong and ongoing demand for the good or service
- the procurement requirement cannot be adequately predicted
- support can be secured from sufficient public authorities
- the volume of work may be too large for one supplier to undertake
- there is a business advantage in having a choice of suppliers

A panel contract may be established at a public authority, lead agency or across government level. Public authorities establishing a panel contract are required to ensure the panel contract includes:

- a list of public authorities covered or exempted by the panel contract
- whether use of the contract is mandatory or optional
- the secondary procurement processes to be utilised for buying from the panel contract
- any miscellaneous issues relevant to the utilisation of the panel contract (e.g. regional considerations).

In selecting a supplier from a panel, public authorities subject to the panel contract are required to:

- only purchase goods and services from the relevant panel contract in accordance with the specified secondary procurement process unless their participation has been deemed as optional or they have been granted an exemption by the establishing authority
- ensure relevant procurements are approved through the public authority's normal approval processes
- apply the relevant requirements of the Government's Industry Participation Policy.

Across-government contracts

Practice

Across government contracts are a form of standing offer developed by a lead public authority. The objective of these contracts is to achieve strategic outcomes for the public sector by providing a common methodology to project evaluation, negotiation and contract management:

Centralisation of these processes is intended to deliver savings to agencies by reducing transaction costs and reduces risk associated with repetitive or common purchasing.

4.9.2 Consideration of the Issues

Panel contracts - public authority usage

Public authorities that were able to generate data for use of panels within their organisation in 2017-18 reported the following:

- DEW reported that ten per cent of total goods and services expenditure was on panel contracts.
- The Department for Education reported:
 - Cleaning Contracts – 76 contracts with value of \$31.3 million
 - Out of School Hours Care – 26 contracts with value of \$39.9 million
 - Uniforms – six contracts with value of \$3.1 million
 - Canteen – five contracts with value of \$0.7 million
- SA Health completed 12 procurements relating to panel arrangements or multiple supplier contracts. This constituted three per cent of the total number of procurements completed in the 2017-18 financial year. These procurements resulted in 77 individual contracts with suppliers.
- Strategic Procurement, within the Department of Treasury and Finance reported that approximately 58 per cent of agency spend under across Government Strategic Procurement contracts is to a supplier in a panel arrangement.

Panel contracts - impact on business

Submissions to the inquiry from stakeholders identified a frustration on the part of some suppliers either not being able to access or become part of a panel arrangement as the rules for panels were not understood.

Feedback to Business SA from members on panels was predicated on the type of good or service, with a tendency for businesses to prefer panels where the nature of the procurement was more commodity related. This type of panel alleviated to an extent supplier concerns about panel processes as meeting the quality requirement of goods was preferred to the perceived subjective judgement of meeting requirements for services.

Where businesses were accepting of panels, there was still uncertainty about how the work was allocated in practice. There were calls to allow for more regular opportunities for new market entrants that are suitably qualified to join panels, for example on an annual basis, as opposed to being locked out for several years.

Due to several factors, the quantum of business and distribution of business won among panel members is inherently unknown in advance, not the least because of the competition among panel members that ensures value for money for public authorities. Other factors apply, including suppliers may be interested in certain regions as they work locally or may only have capacity or appetite to bid for a portion of the work. This tends to be the case for small businesses and single person operators. The level and nature of competition of the industry will have a large bearing on the outcomes which do not materialise until the secondary procurement process.

As a rule, business units across public authorities choose a panel supplier based on quality requirements, ability to cover service requirements and ease of use. No public authority consulted by the Commission used an allocation model for distributing expenditure amongst suppliers and as such the amount of business that goes to suppliers can vary greatly.

SA Health also does not guarantee volume or equal distribution of works. Some panels allocate specific goods or service segments on the contract to specific providers, irrespective of the volume of goods or services in each segment. For example, in the Waste Management panel, medical waste is allocated to one vendor and general waste to another, based on each vendor's specialities and there is no similarity in values between medical waste and general waste.

Some agencies also stipulate clearly in the procurement process that there is a primary (preferred) provider and secondary providers in their panel arrangements. There have not been any instances of businesses securing all the work for similar products; the split in business has been more along the lines of suppliers providing particular goods and services.

Across government contracts - prevalence and outcomes

The Strategic Procurement Unit in the Department of Treasury and Finance centrally manages across government contracts across 31 categories including ICT, travel, office products, temporary labour, fuel, energy and a range of services including audit, professional services and procurement services. The management of these categories

delivers a range of benefits including financial (cost savings) and non-financial (social procurement, environmental procurement and industry participation).

The Department of Planning, Transport and Infrastructure has the Facilities Management Contract while SA Health manages across government contracts for medical and industrial gases and health network food and beverage sourcing.

Consistent with procurement practice in other jurisdictions, financial benefits for centrally negotiated contracts are intended to be realised through savings in aggregate purchasing. Strategic Procurement has adopted a target minimum financial return of at least five per cent of the spend under management for each category. Below this threshold, Strategic Procurement does not propose undertaking an across government contract.

The benchmarks used by Strategic Procurement to measure across government contract outcomes have been mostly derived from the ROSMA model developed by AT Kearney and CIPS to provide a comparison to the broader procurement function, public and private sector, within Australia and Overseas.⁴⁶

These measures do not include allowance for Government procurement policies that may deliver broader community benefits (such as the Industry Participation Policy) but may potentially have an effect on the operational performance of a procurement function.

Table 4.5 indicates the extent to which the work awarded through government panels is concentrated in a small number of suppliers. In some panels such as cyber security services and temporary staff contracting, the work is relatively widely spread. For many panels, the amount of work is concentrated in the most successful three firms. In many cases this reflects industry structures and the nature of the product.

⁴⁶ https://www.atkearney.com/procurement/rosma/full-report?utm_source=SlideShare&utm_medium=social&utm_term=PAS&utm_content=20161213SS1&utm_campaign=2016GlobalROSMA2016

Table 4.5: Selected Panel Supply Contracts under Management of Strategic Procurement Unit, DTF – Participant Numbers, Panel Duration and Concentration, 2017-2018

Category	Panel Type	Supplier Count	Panel Duration	Total Contract Value (plus extension option)	Proportion of Business to top 3 businesses (unless stated)
Audit and Financial Services	Periodically Open	9	10 years	\$103.3m	72%
Cyber Security Services	Open Pre-Qualification	46	Perpetual	No set value but estimated spend \$0.35m	16%
eProjects (many small projects)	Open Pre-Qualification	609	Perpetual	Not defined	12%
Fuel - Bulk Fuel and Lubricants (Includes Fuel Cards)	Closed Panel	7	5 years, plus 2 optional extensions of 2 years each, Fuel card - 2 years 9 months, plus 3 optional extensions of 1 year each	Initial 5Yr \$61.8M, if all extensions exercised \$125.6M	89%
Network Devices	Closed Panel	5	4yr, plus optional extension of 4yr	Initial 4Yr \$36.4M, if extension exercised \$76.2M	76%
PC and Server Equipment	Closed Panel	7	7 years 9 months	\$532.5m	94%
Printer and Photocopiers	Closed Panel	5	9 years	\$174.7m	89%
Procurement Services Panel	Open Pre-Qualification	82	3 years	\$8.3m	0.2%
Server Hosting	Periodically Open	16	4 yr 10 months	\$65.0m	90%
Server Support services [DCSS]	Closed Panel	2	6 years 2 months	\$267.5m	100% (amongst the 2 suppliers)
Stationery	Closed Panel	5	3yr, plus 2 optional extensions of 1yr each	\$114.2M over 5yr	99%
Temp Staff	Closed Panel	19	3yr, plus 2 optional extensions of 1yr each	Initial 3yr \$261.4, if all extensions exercised \$446.8M	44%

Source: Derived from data provided by Strategic Procurement Unit, Department of Treasury and Finance, South Australia

Public authorities have reported that across government contracts are generally of value, particularly for commodity-related arrangements, as they:

- reduce effort and cost for both government agencies and contracted suppliers,
- enable public authorities to monitor and report on organisation wide data on usage of categories of expenditure and
- they enable central coordination of administration.

With other contracts, such as service delivery and ICT contracts, the view is mixed. Public authorities have found that in some cases, across-government ICT contracts are restrictive in the products and services offered and do not allow for the introduction of new technologies or innovative ideas without significant effort to vary the purchasing agreements.

DPTI has reported in its response to the Commission's request for information that the authority has had a "positive experience with the across government contracts over the past couple years with efficiencies realised through the tender process that is run like a select tender instead of an open market call".

It is often the case that across government contracts are designed for operational or tactical level procurements for smaller agencies and do not cater well for large high volume agencies.

In some cases, public authorities have found that that the performance of these contracts need to be managed intensively, given the criticality of the services provided from them and can be established with limited consultation with the agencies, such as the End-User Computing contract.

Across government contracts - impact on business

Participant views on panels and across government contracts has been mixed, varying with the type of contract and industry circumstances.

In submissions to other previous inquiries, the Australian Medical Association (AMA) South Australia called for a review and the future exclusion of the treasury 'procurement' process from medical workforce contracts in all SA rural and regional areas. The AMA (SA) reflected that while the process may be suitable for major bulk contract provision, it has proven itself to be totally unsuitable, and indeed hazardous when applied to medical workforce engagement.

Supplier feedback to the Industry Advocate on the Master Media Contract and included in his submission asserted this was an example of procurement officers not having the necessary industry knowledge to outline a well scoped commercial tender. The material included in the IA submission stated that in this tender process there were three services being tendered with no clarity on the outcome. The incumbent supplier had the knowledge and experience of running the campaign for the previous contract. However, the IA said there were no historical results nor research information provided to new tenderers which may have provided a more competitive contest.

Feedback was also provided to the Industry Advocate on the End User Computer contract with the process being more focused on savings rather than *"how can the government spend get a really innovative technical infrastructure that will power a modern public sector."*

The examples known to the market place and the experience of local suppliers have prompted the Small Business Commissioner of South Australia to state that in his view the analysis of the across government contracts appears to have failed to take into account the economic impact on businesses which have either been excluded from new arrangements or found the incumbent arrangements difficult to overcome. This view remains to be tested by the Commission with relevant agencies.

Choice of aggregation and disaggregation of contracts

Aggregated contracts are not frequently used in goods and services procurement. These types of arrangements are more prevalent in not-for-profit procurement, maintenance and installation of public assets and construction related procurement. NFP issues around aggregated contracts are discussed later in Chapter 6. Coverage of aggregated contracts is expected to be a feature of stage two of the procurement inquiry.

The terms of reference for the current inquiry include investigating policy designs to facilitate disaggregation of contracts to assist and promote opportunities for growth of small business. This reference must take into account the current trend of public authority spending, which is to investigate ways of aggregating expenditure through common service or product groups and by increasing the amount of procurement expenditure under contract.

4.9.3 Commission's View

Agency panel contracts

The SPB guideline for panel contracts provides general advice on the process for establishing a panel contract - the specifics are left up to the agency within the bounds of particular requirements. The rules for selecting, adding or removing panel members are determined by individual agencies and collection and reporting of any data associated with panels is also left to the discretion of the agency. This discretion appears to contribute to agencies collecting limited data and not being able to advise either suppliers or decision makers, without significant internal effort on the outcomes of panels.

The limited information collected and published about panel contracts and the lack of information in the marketplace at face value would provide incumbent suppliers with an advantage over other little-used panel members or other suppliers trying to get on to the panel. It is not obvious from the panel guidelines or agency practice whether information on volumes of usage, expenditure or pricing from previous contracts is made available to bidding suppliers. The Commission intends to look further into this.

In establishing a panel, agencies will determine from their requirements whether use of the panel will be mandatory or optional. The use of individual agency panels would make the enforcement of the use of the panel suppliers easier, however in the absence of monitoring the use of panel arrangements in across government contracts would be difficult to enforce.

This is further exacerbated by the exemptions from use provision that is available for some across government contracts which are otherwise mandatory, notably for ICT contracts.

The Commission considers a panel may be most appropriate when there are a number of suppliers who can provide the good or service. It is not understood why some public authorities or for central procurement would appoint a single preferred or sole supplier for a panel arrangement. The measurement of value for money with a preferred supplier would be a difficult task without a reference point to how other suppliers deliver on the required goods or services.

The Commission notes that the object of using panel arrangements may include other issues not addressed by the guideline, particularly specialist or technical procurements or sourcing goods and services in regional South Australia.

The Commission notes that the request for data from public authorities for use of panel contracting arrangements elicited a varied response in terms of data collected and reported. Further, the ability to generate data amongst public authorities remains an issue.

The data limitations, including lack of standardisation of data actually collected, is a recurring theme throughout this inquiry. It is likely that collecting and reporting standardised data, including details of secondary purchasing, indicative pricing and a suitable form of supplier expenditure, by all public authorities for all panel contracts, including across government panels, would be beneficial.

Information requests 4.13: The Commission seeks advice on: what information is important to collect to monitor and assess the effectiveness of panel arrangements; under what circumstances it is efficient and effective to appoint a sole provider from a panel after a second round selection process; and best practice examples of using panels to promote small business growth and value for the State.

Across government contracts

The Commission has been told of some unintended effects in the across government contracting process:

- a situation where businesses may be appointed to a panel when they have only niche products for multiple product panels and may only be engaged to provide goods and services once every few years.
- the perception or the possibility that sole suppliers can be appointed through a panel process, which entirely defeats the stated purpose of panel arrangements – in such circumstances a proper tender process should suffice to appoint a sole supplier for the goods and services purchased by government.

From the perspective of across government panels, the greatest variation in outcomes occurs on the open prequalification panels that have the simplest requirements to join and lowest barriers to entry. As the use of some across government panels is mandated or subject to usage rules, the distribution of spend amongst suppliers will also vary widely. The Commission notes that panel types that are open periodically or not open during the period of the contract can in some cases severely limit competition.

Once an across government panel is established, public authorities decide what they buy and from which panel supplier. This highlights that a contract is negotiated by a party separate from the public authorities that have the identified needs and undertake expenditure. While better consultation with agencies in the design of across government contracts can lessen the effect of this separation, having a stake in the process is the critical factor in outcomes for contractual arrangements.

The Commission is still forming its overall view on the financial and economic benefits of across government contracts. The use of panel contracts in proportion to total public authority expenditure is quite high as the contracts involved often involve significant amounts of money. The financial and economic benefits of sourcing homogenous goods and services on a large scale are well recognised. The ability of public authorities to individually (or as small blocs) test the market place for large scale sourcing in the cases where they have differing needs must be explored as a possible enhancement to the operation of the procurement system.

Choice of aggregation and disaggregation of contracts

The Commission has not yet formed a view on the relative merits of aggregating or disaggregating goods and services procurement expenditure, whether these two methods of procurement are mutually exclusive or the design of a framework to support policy goals in this regard. It intends to pursue this further, noting the concerns expressed by a range of SME business stakeholders.

Information request 4.14: Having regard to aggregation and disaggregation of goods and services expenditure, the Commission seeks further views and evidence on: opportunities to disaggregate procurement to increase opportunities for local participation of SMEs, without compromising the requirement for value for money; and the implications for public authorities and for competition in the market place of such a policy.

4.10 Next steps

This chapter has set out some initial conclusions by the Commission, together with information requests for additional evidence and views. There are, deliberately, no draft recommendations.

While the Commission considers the initial evidence, in some cases convincingly, points to significant areas and opportunities for improvement in the operation of the procurement system, the work to date has been confined to the procurement of goods and services that are governed by the State Procurement Board and its delegations. The broader terms of reference since February 2019 mean that some aspects need to be considered in that wider context.

Other matters the Commission intends to address in the next phase of this first stage of the inquiry include:

- clearer and effective arrangements and guidance for engaging with the marketplace and suppliers, especially local suppliers
- risk management by agencies
- effectively defining value for money in a practical way for the procurement function and suppliers to government, incorporating all relevant elements of government objectives
- streamlined decision paths for procurement
- a framework of measures to assist agencies and central government to manage the procurement function at an agency and whole of government level.

5. SA Industry Participation Policy

The terms of reference ask 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.

Government procurement is one of several tools 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 is about industry participation and procurement, similar considerations apply in a range of other areas.

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

- Strengthens the capacity of SA 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.

This chapter sets out the operation and impact of the IPP; analyses implementation issues raised by businesses and agencies; and makes suggestions for further consultation, some possible changes to the IPP, including greater emphasis on complementary activities that are likely to improve the effectiveness and the efficiency of the policy by increasing the information available in the marketplace.

5.1 How does the Industry Participation Policy work?

5.1.1 Objectives

The SA IPP 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 spend,
- the economic development of the steel industry and other strategically important industries for South Australia,

- capable businesses based in South Australia being given full, fair and reasonable opportunity to tender and participate in government contracts.

Further details on the SA IPP are set out in Chapter 3.

Most businesses, their associations and advocates voiced strong support of the IPP.

'Ai-Group has been a strong supporter of the Industry Participation Policy.' (AIG)

'Business SA was delighted to be a major lobbying force behind the creation of the Industry Advocate. We then continued to push for the Industry Advocate to have more 'teeth' and more resources.' (Nigel McBride, Business SA)

'I fully support any steps the government can take to ensure the Industry Participation policy is maintained for the benefit of South Australia and the Industry Advocate's role is given the power it needs.' (Paul Vinton, Vintek)

'Our members have seen the benefits of the industry participation focused on creating opportunities for local business.' (AMCA)

'IPP has made a big difference: we have seen collective improvement and awakening.' (WCF)

'I fully support the current IPP.' (John Chapman, SBC)

5.1.2 Operation of the Industry Participation Policy

The IPP applies to all procurement categories, agencies and authorities (including activities and agencies outside of 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).

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 when evaluating procurement bids, which are both set at a minimum of 15 per cent in South Australia.

The IPP is implemented by:

- the 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 Australia 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.
- Public authorities, that test the data provided by suppliers, take into account the IP scores in their tender evaluations and report 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. As a result of machinery of government changes in March 2019, the Industry Advocate is, as from 1 April 2019, located in the Treasury and Finance portfolio.

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 being changed frequently with little to no consultation. The Commission's review of the evolution of IPP (see box 5.1) 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 focused on labour hours and sourcing of goods (with different scores from local manufacture to local supply) and IP Plans focused on value of labour, sourcing of goods and investment in SA.

Business SA pointed out the current weighting of 15 per cent for ECT and IPP *'sits in the middle of other states and territories'*. The Commission notes that the weighting in the larger east coast states is less than South Australia. Table 5.1 describes the situation in other jurisdictions.

Table 5.1: IPP weighting across Australia

States and Territories	IP weighting
Queensland	No weight but requirement for specific number of local quotes
NSW	Six per cent above \$41 million
VIC	10 per cent for industry development 10 per cent for job outcomes
SA	15 per cent minimum
WA	10 to 20 per cent
Tasmania	20 per cent minimum
Northern Territory	30 per cent minimum

Source: IA submission

Box 5.1 Evolution of the Industry Participation Policy (IPP)

In 2005, the first South Australian IPP was established, aiming to ensure local businesses receive full, fair and reasonable opportunities to tender for major government project work so they become globally competitive. IP Plans were required above \$10 million.

In 2012, the IPP was amended to broaden the range of projects and contracts covered and introduce a tiered approach to reduce compliance costs: from \$5 million (\$3 million in regions), a Statement of Intent was required, from \$10 million, an IP Plan and from \$50 million, a detailed IP Plan. The Industry Capability Network SA (government agency) oversaw the implementation of the policy (provided industry capability information, promoted the IPP, assessed contracts for strategic projects, assisted tenderers with IP Plans, advised agencies on supplier non-compliance, assessed IP Plans for tender evaluation, and reported annually).

The Office of the Industry Advocate (OIA) was created in February 2013, led by an Industry Advocate, to enhance the policy and its implementation. The policy has since been amended five times. The following provides a brief overview of the changes¹:

	\$22k to \$220k	\$220k to \$4m	\$4m (\$1m in region) to \$10m	\$10m to \$50m	Above \$50m
2013	minimum 1 local quote	encouraged to consult ICN database	voluntary IP Plan (scored 0 if not done) with 5% weight	mandatory IP Plan	mandatory tailored IP Plan with 5% weight
2014	as above with ECT required if 2 or more bids sought for regions and certain services	mandatory ECT weighted at 5% for certain services (15% in regions)	as above but 10% weight if key sector	as above with 5% weight (10% if key sector)	as above but 10% weight if key sector
prescribed authorities added to scope					
Jan 2015	as above with ECT required across all sectors	mandatory ECT weighted at 5%	as above		as above
Nov 2015	as above	as above with 15% weight	mandatory IPP with 15% weight minimum		as above with 15% weight
2016	threshold starting at \$33k	as above	as above		as above

The scoring of the ECT and IP Plan evolved in a similar fashion:

	ECT	IPP
2013	N/A	Score out of 42 points: 5 for admin, 1 for gateway registration, 8 for jobs, 2 for skills, 10 for capital, 11 for goods and services, 5 for past IPP performance
2014	Score out of 7 based on % labour hours performed in SA by supplier and subcontractors (out of 10 in regions, with 7 points for regional work and 3 for SA work)	Score out of 40: 1 for gateway registration, 11 for jobs, 10 for capital, 13 for goods and services, 5 for past IPP performance
Jan 2015	Score out of 10 based on % labour hours performed in SA by supplier and subcontractors (in regions, 7 points for regional work and 3 for SA work)	Score out of 50: 35 for jobs, 3 for capital, 7 for supply, 5 for procurement practices
2017	Score out of 15 based on % labour hours performed in SA by supplier and subcontractors and % goods sourced from SA (higher consideration for regional labour hours)	Score out of 100: 80 for Value of labour and sourcing in SA, 20 for investment in SA
2018	Same	Score out of 100: 80 for Value of labour and sourcing in SA, 10 for apprentices/trainees, 10 for investment in SA

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 the 'Supplying to government' workshops,
- Increases engagement between suppliers and agencies for specific tenders through the 'Meet the Buyer' events.

The Industry Advocate noted those last two activities ('how to tender' training for suppliers and 'meet the buyer' events) have been discontinued due to resource constraints. Several businesses mentioned, in their submissions, that those were useful activities.

5.2 Evidence on the impact of the IPP

This section considers the available evidence regarding the effectiveness of the SA IPP 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,
- the information from submissions, meetings and interviews with businesses and agencies collected by the Commission.

The Commission notes the view of the Australia Industry Group (AIG) that:

'whilst the IPP has been in place for a number of years, it is still very early to evaluate its impact.'

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.

5.2.1 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.

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 (metro, 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.

Impact on local participation and competition

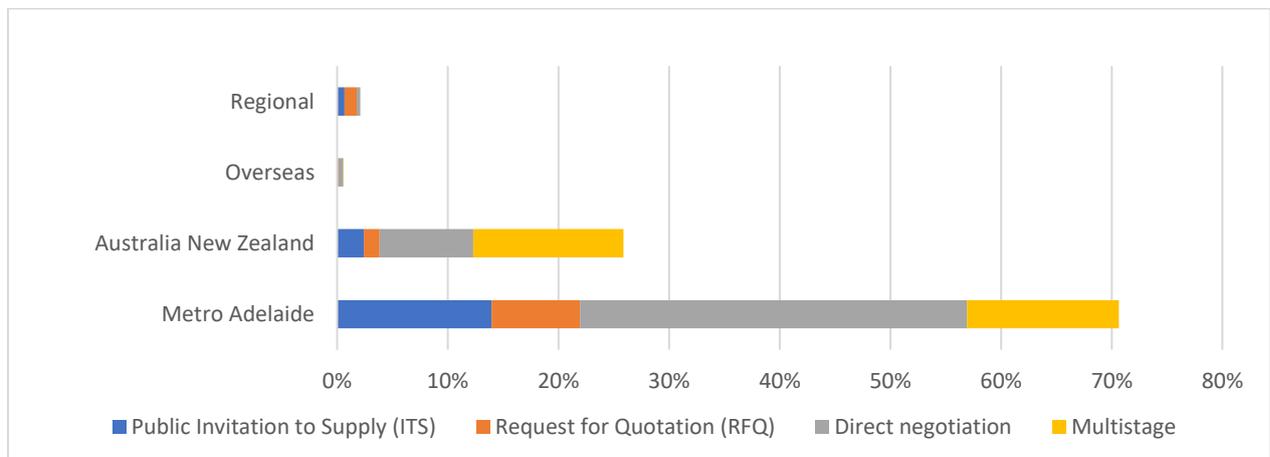
The current data used by the SPB to assess local participation in government contracting activities includes, by agencies, the location of the key supplier (either metropolitan Adelaide; regional South Australia; ANZ = Other Australian States / Territories and New Zealand; or Overseas - excluding NZ). 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;
- 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 (in figure 5.1), excluding the major contract on generation and supply of electricity which distorts the data, show that 71 per cent of government work in value is undertaken by metro 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 5.1: 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 (see box 5.1), and they are recorded on different bases for each contract (scores out of 7, 10, 15, 42, 50, 80, 100), with rare 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 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.

Impact on South Australian employment

The current IPP scores are a mix of labour hours in South Australia, sourcing of South Australia 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 branch 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 has also been provided to the Commission, including:

'IPP commitments made for building and construction of the Adelaide Botanic High School will see about \$7.9 million spent on employing South Australian residents. The value of South Australian products and services will be \$50.8 million out of a total of \$70.5 million, meaning a total of 72 per cent of the dollar spend will be retained in South Australia.' (business cited in the OIA submission)

Impact on price and value for money

The Commission attempted to find information out of the data currently collected at 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.

5.3 Analysis of a random sample of tenders

In light of the shortcomings of the data available and focusing on the impact ECT/IPP 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.

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

- the level of competition for government contracts within open tenders
- the level of compliance, by agency and value of contract, with IPP
- the tendency for agencies to select the lowest price option
- the impact of IPP and ECT on tender selection
- the cost for government of increasing labour hours in SA via IP Policy
- qualitative information on the tender process.

To do so, 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 IPP, it was decided to target contracts awarded in 2018 (after the coming into operation of the *Industry Advocate Act 2017*) and valued above \$33,000 (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 is representative of government procurement.

5.3.1 Results

Competition for government contracts with open tenders

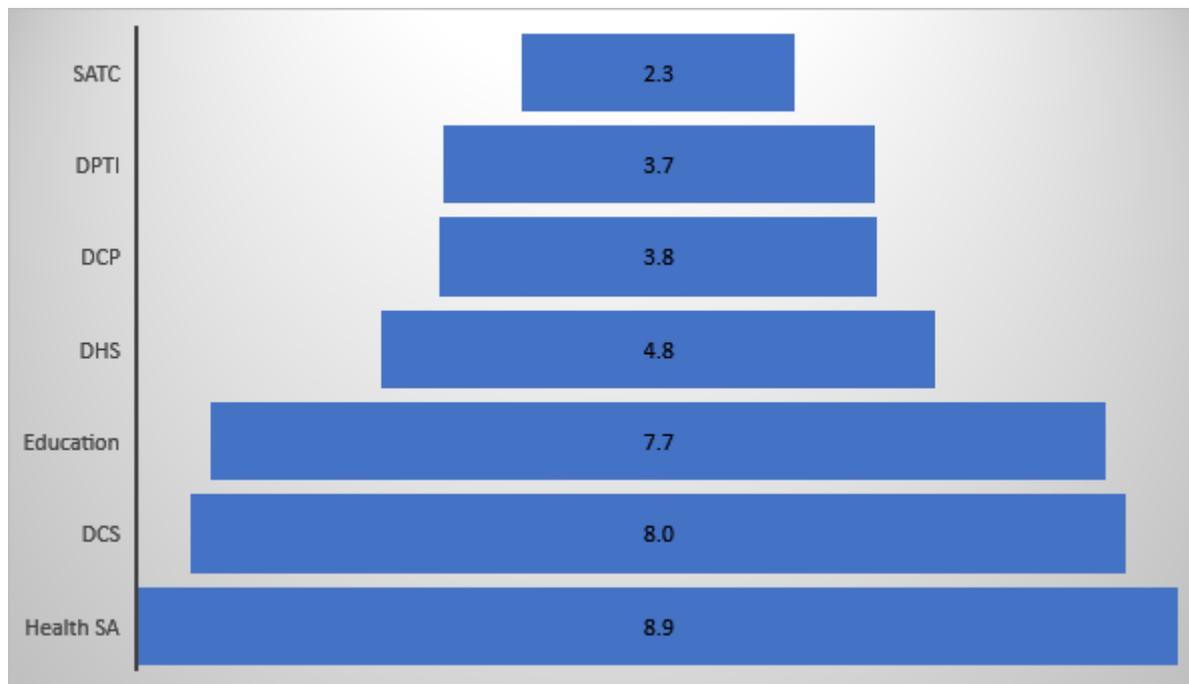
47 tenders out of the 103 had a 'public invitation to supply' market approach. The average number of bids received was 5.7 per open tender, with a greater number of bidders for services (5.8) than goods (5.3), and quite a difference between low value and high value contracts, with 4.7 bidders per contracts valued under \$4 million, and 7.3 bidders for contracts valued above \$4 million.

Looking at agencies' averages, Figure 5.2 shows some agencies attract more bidders than others.

This may be due to:

- Tenderers being briefed before the tender was released and have not tendered 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.

Figure 5.2: 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)

Frequency of selecting the lowest quote

For 20 contracts out of 103, it was not possible to determine the value of the second-best tender from the purchase recommendation, in 60 per cent of cases because those tenders were for the formation of a panel (therefore there is no second best), in 30 per cent of cases it was 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 5.3). Figure 5.3 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 that the runner-up’s price,
- 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.

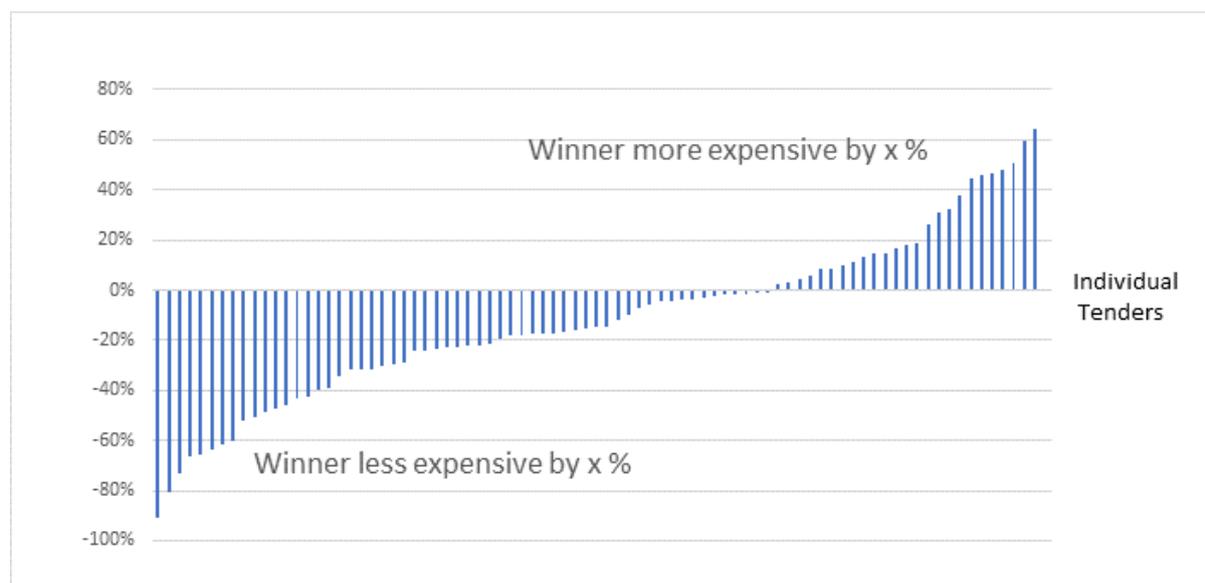
Those numbers vary between the procurement of goods and services:

- around two thirds of services procurements (67 per cent) were won by the lower price offer;
- around three quarters of goods procurements (74 per cent) went to the lower price offer.

Where the lower price option was chosen:

- In 30 per cent of cases, another factor 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,
- In 10 per cent of cases, the price was the only factor clearly spelt out for the choice made.

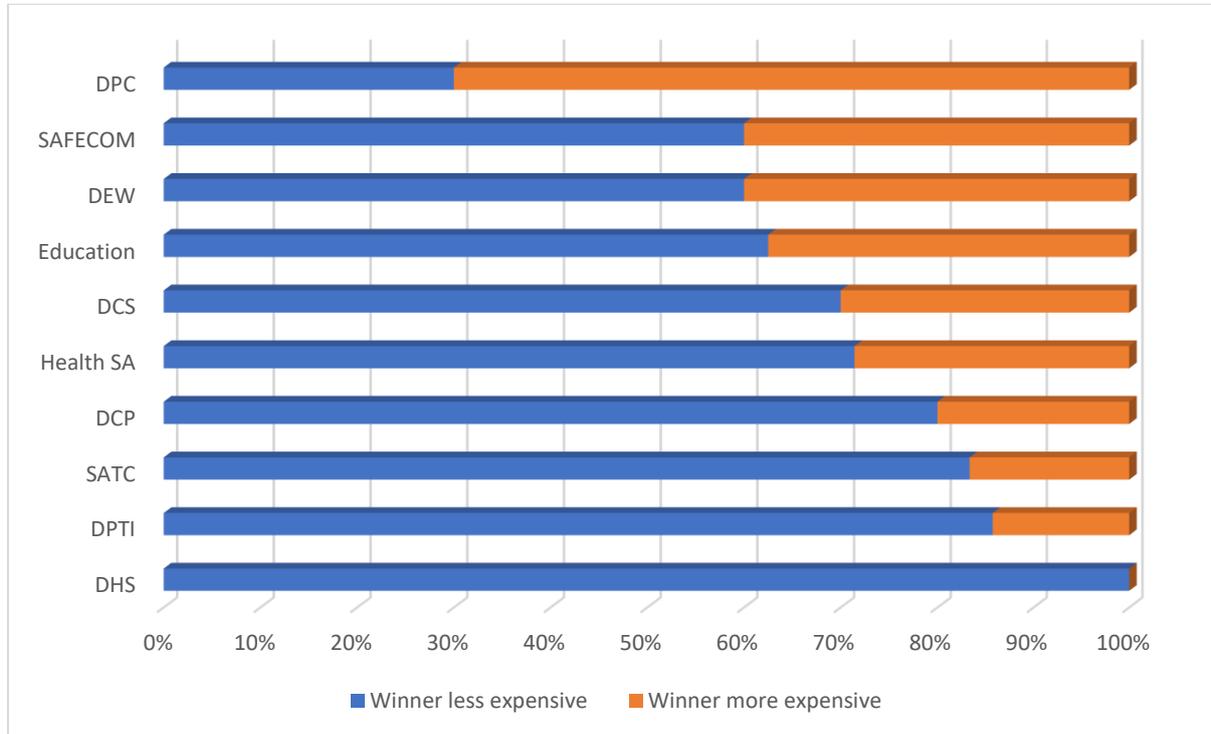
Figure 5.3: Price difference between the winning and second ranked for 83 tenders



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 lower price offer (see figure 5.4).

Figure 5.4: Choice for lower price option

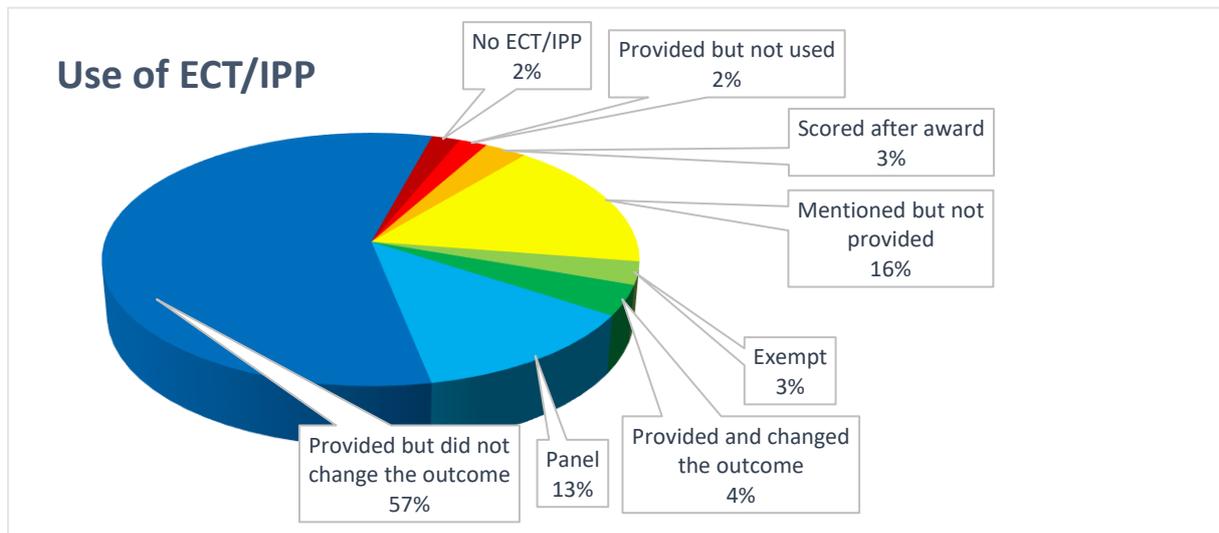


Source: OSAPC analysis of 103 random tenders, March 2019 (removing agencies with 3 or less open tenders)

Compliance with IPP

The information from the 103 random procurements indicated compliance by agencies with IPP in around four out of five procurements (77 per cent). The complying tender evaluations included some where the ECT/IPP was not required and others where the procurement was for forming a panel (see figure 5.5).

Figure 5.5: 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 intends to look further into the apparently non-complying examples.

There was full compliance with IPP for large contracts exceeding \$4 million.

In four (six per cent) of the 63 contracts where an ECT/IPP 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; while in 18 cases (31 per cent) the difference in ECT/IPP was less than five points (out of the maximum 15 points for the ECT/IPP score). Table 5.2 sets out the distribution of the ECT/IPP score differences across this sample of 63 contracts.

Table 5.2: 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 of the second-best bidder was higher than the ECT/IPP from 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. The Commission will be looking into the reasons for this result.

Anecdotally, in a couple of multistage processes, the use of ECT/IPP scoring at the first stage of the evaluation allowed South Australia 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 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.

5.4 Issues raised about the IPP

From the submissions and the meetings held by the Commission, the feedback received from businesses and agencies evolves around 5 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 agency in the use of the ECT/IPP and by suppliers when filling in the scoring templates)
- Scoring issues,
- Measuring impact.

5.4.1 Red tape on business

Several local SMEs raised some concerns about the complexity of filling out the industry participation templates as they do not have the same overhead capabilities as bigger companies. Some businesses have also told the Commission that, when the competition for a tender is among local suppliers, or when the same purchase occurs repetitively, the ECT/IPP scoring is seen as a waste of time.

Moreover, some businesses are sceptical that a meaningful and realistic IPP plan can be established at the start of the procurement process, at a time when many questions are unanswered on the requirements of the tender.

In the special case of panel contracts, the uncertainty about the value of sales for participating business makes the process of preparing an IP plan difficult.

Some form of pre-registration or maintenance of relevant details about businesses has been mentioned as a partial solution to some of these issues. NSW has taken some steps in this direction. The Commission understands a related initiative is being developed by the Industry Advocate.

5.4.2 Transparency

The scoring of ECT/IPP is seen as a "black box" by many businesses who indicated not understanding how the calculation is made. Businesses are confused about what 'local' and 'economic contribution' means noting that a multinational with a presence in South Australia can receive a similar IPP score to a small or medium locally owned and operated business.

There is also confusion about how the weighted criteria work in the selection of a bidder. Some suppliers believe a high score alone for their IP Plan or ECT will secure a contract (correspondence, DTF procurement). In fact, the process requires a balanced assessment across a range of criteria including capability, ability to deliver the specified good or service and price.

5.4.3 Compliance

Compliance issues arise with both agencies and businesses.

Regarding agencies, the Commission was advised in several business submissions that agencies do not understand the benefit to the State of an Industry Participation Policy plan (including SBC, Leunig Advisory, AIA and ANCOL).

There is other evidence on this point. The SPB database 2017-18 contains the comment that "Supplier refused to complete ECT - Agency advised not mandatory for supplier to complete prior to award of contract". The Commission notes that three per cent of the 103 random tenders were in this situation. This suggests some agencies may not understand how to use the ECT/IPP scores as they are supposed to inform the selection of a supplier rather than be done retrospectively. The Commission intends to investigate the causes of the apparent non-compliances.

The Commission was given several examples where apparently the IPP was not used for secondary panel supplier selection. This is at odds with Premier and Cabinet Circular 033 which specifically states that, for panels, an ECT applies to competitive secondary procurement processes above \$33,000, an IPP Plan applies to competitive secondary procurement processes above \$1 million in regions and \$4 million in metropolitan Adelaide, with a minimum weighting of 15 per cent.

Regarding business compliance, some South Australian businesses have suggested that, in effect, some companies may be gaming the ECT/IPP calculation:

'interstate companies setting up an office in South Australia to be considered 'local', or smaller local companies using interstate contractors but not being transparent in the tender process... The extent to which the policies actually favoured genuine local businesses was also raised, with calls for better auditing of actual outcomes in conjunction with an appropriate level of enforcement.' (Business SA submission)

'Awarding a contract to major IT company who commits to call centre and then sends jobs overseas 6 months later is not the way to go.'
WCF indicated: 'More information should be asked on methodology (when and how staff will be made available). Currently, it reads as: 'If 120k job, 760 labour hours', but the project delivery is not asked. There is no audit on what businesses say.'
 (OIA submission)

While noting the limitations of anecdotal evidence, this observation raises the point that agencies need to manage contracts, once awarded, to ensure IPP commitments are met.

SA Water and the Department of Planning Transport and Infrastructure were mentioned several times by businesses as examples of departments that adhered well to the IPP standards and intent and understood their relevant marketplaces and the capabilities of their suppliers.

5.4.4 Scoring ECT and IPP

Businesses raised some issues about the design of the ECT and IPP calculations and the weight given to them in contract evaluation. Leunig Advisory raised in their submission:

'It seems to me that there is an over focus on local "labour-hours" and an under-focus of the benefit of local ownership... locally owned businesses spend money locally on professional services and executives. They employ local accountants, solicitors... Their spend on R & D trickles down here.'

Although South Australia sits in the middle of the range across jurisdictions in terms of weighting of the IPP scores as part of the evaluation criteria, some businesses indicated a higher weight would be appropriate.

'Some members were seeking additional local weightings and more genuine support for local businesses' (Business SA)

5.4.5 Government agencies' views

The Commission obtained information from seven agencies (Department for Education, SA Health, Department for Planning Transport and Infrastructure, Department for Human Services, Department for Environment and Water and SA Water). Apart from SA Water, those agencies were sent an information request regarding different aspects of the procurement system. This section is the summary of the responses related to the questions on the IPP.

Scoring issues

Most of the agencies have referred to cases where the IPP score had been inappropriately calculated and a local business sourcing goods and services locally had a lower score than

an interstate company (see SA Water case study in box 5.2). These occurrences reduce agency and business confidence in the value of IPP scoring.

Box 5.2 Case study – Unexpected IPP scores for SA Water tender (from correspondence with SA Water)

The procurement was for furniture for SA Water’s offices in Victoria Square, Adelaide.

There was little separating the remaining two tenderers for “Sit to stand desks” (“Tenderer A” and “Tenderer B”) and the different interpretations of the ECT had the potential to make a difference as to which company was selected. For this reason, further due diligence into the ECT was undertaken by SA Water.

The first issue was that separate ECTs were needed from the suppliers for each type of furniture that they tendered for, and not just one for the whole tender as the economic contribution was different for each piece of furniture.

The second issue that came to light once the revised ECT’s (for just the sit to stand desks) were received, was the different ways to interpret the labour components of “manufacturing inputs” and “assembly of those inputs”.

Tenderer A took into account the manufacturing time of their inputs (which were imported) whereas Tenderer B did not. The SA Water officers knew that the inputs for both tenders were not manufactured in South Australia, so it was suspected that Tenderer B’s score may have been inflated.

Meetings with both suppliers were conducted to clarify their manufacturing and assembly process and sourcing practices for the inputs. Both suppliers resubmitted their ECTs based on assembly hours only as both of them were importing the inputs and really were only controlling where the assembly was occurring. This put them on an even standing.

In relation to the location of assembly, one tenderer has a factory in SA and always assembles in SA. The second tenderer (a national company) has their assembly facility in Victoria but, to score better on the ECT component, nominated a local sub-contractor to assemble the tables rather than using the company owned factory. This was an example of changed behaviour as a result of the SAIPP.

After the ECT’s had been revised the second time the scores were the same.

NB: This experience was based on the old ECT forms. The updated forms improve the process for tenders that cover goods and services and more clearly defines “manufacturing” versus “assembly” labour components.

The Commission tested the current scoring templates for both ECT and IPP, for goods, services and goods and services combined, and found the process to be straightforward, combining simplicity with an in-depth information request on local content.

Red tape

A few agencies referred to IPP as creating unnecessary reporting and costs in circumstances where local sourcing is either:

- not available; or
- the only option (e.g. canteen services in schools).

Several comments have been made by agencies and businesses about thresholds. One has been that the threshold of \$33,000 for ECT requirements is too low, being at a level where most of the procurement activities are undertaken without guidance from centralised procurement teams and where no weighting is applied.

Information request 5.1: What do stakeholders consider to be the appropriate thresholds of scoring for, and the appropriate weight given to, ECT and IP Plans in the evaluation of tenders?

It should be noted that, in the under \$550,000 category, 52 per cent of the random tenders analysed by the Commission did not provide an ECT for the bidders they evaluated. Most of the purchase evaluations which provided an ECT gave it 15 per cent weight as part of their evaluation. Out of the 48 per cent that provided an ECT, three per cent had a winning bid with a lower ECT score than the second-best bid but were less expensive by between 19–90 per cent. In these three cases, had the second bid been chosen, there would have been a substantial increase in the cost to government.

Lack of information on outcomes

Agencies indicated it would help them to implement the IPP to be able to see the outcomes of the policy in a measurable and practical way, by relating IP scores to the actual activities under a contract over its term and having visibility on compliance by suppliers with their IP plans. This appears in part to be a data and information issue.

Consideration of industry participation during procurement

The evidence available from 103 procurement processes suggests IPP is complied with in all procurements above \$4 million, although there appear to be some instances of non-compliance regarding ECT for lower value tenders. This evidence does not provide insight into how well the IPP Plans are done in practice.

The Industry Advocate raised several issues on this point, including his view that:

- some agencies “struggle with the concept of economic benefits being part of a value for money assessment”,
- the IPP was overlooked, assessed improperly and poorly reported by agencies with least prices still characterising decisions,
- That some agencies engaged poorly with the market regarding potential solutions and local capabilities.

The Industry Advocate, whose role includes reviewing and assisting in the negotiations for industry participation prior to the finalisation of contract conditions, observed that his office is often involved late in the process, when there is much less scope to improve the outcome compared with earlier involvement.

Several actions were suggested to address these issues, including:

- A sustained program of education and awareness for agencies on the economic outcomes and job growth achievable from government purchasing
- A simplified IP Plan template
- The promotion of the SA Product Register to agency staff and others to give exposure to local businesses
- A requirement, when using direct negotiation, to approach the Office of the Industry Advocate or the Industry Capability Network to ensure there is no local business capable of doing the work.

5.5 Complementary actions to make IPP more effective

A few suggestions were made by businesses which are reflected here.

5.5.1 Understanding the market

As mentioned in multiple submissions (Bus SA, Anthony Thus and others), there is a price for a certain quality of service. Once this price is understood by government, lower prices trade off quality. As stated in Bus SA's submission:

'it is also important to understand that the academic research shows little to no benefit from tendering public transport services for more than 3 or 4 rounds – all efficiencies have been garnered and the tender results in a race to the bottom from large players, potentially risking service quality and outcomes... current processes have often been skewed towards fitting a Treasury/Budget outcome rather than actually meeting a market ...within a context that is weak on policy.'

5.5.2 Ensuring regional impact has been measured

Bus SA's submission suggests:

'in the regional context, a tender can put a local operator out of business if they lose, too often resulting in a loss of local employment and economic activity.'

From the 103 random purchase recommendations collected from government agencies, apart from the IPP/ECT score itself, the Commission witnessed little consideration for the impact of tender selection on a region (risk to regional businesses of losing a tender and consequential impacts on the region).

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 Bus SA.

5.6 International evidence on industry participation policies

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
- To assist emerging industries to become competitive over time (the 'infant industry').

In Australia, the Australian Government, 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, preference must be given equally in state jurisdictions to businesses in Australian jurisdictions and New Zealand.

Against that background, the Commission researched the international literature on industry participation policies, reviewing 15 published journal articles, briefing papers and essays. They are listed in the bibliography appended to this chapter.

The evidence comes from a range of countries, policies and research methods. That said, the common findings are:

- The evidence suggests these programs produce market distortions, increase costs to government and reduce competition,
- Providing preferences to local SMEs in government procurement processes usually raises procurement costs, with some estimates of the additional costs being 2 – 3 per cent,
- It is unclear whether the programs achieve their intended impact. One UK study found that over a 20 year period of policies to raise the participation of SMEs in government procurement, there had been very little change in the proportion of contracts obtained by SMEs,
- There is mixed evidence about whether, once such policies are in place, the exit costs outweigh the benefits,
- The evidence needed to test the claims about the success of the programs or evaluate them is often not collected by government.

It is unsurprising that the programs raise the cost of procurement. To achieve their intended outcomes, the policies must, to some degree, increase prices paid by governments and reduce the competition among suppliers, in order to reduce the market share of businesses from outside the jurisdiction or sub-region. This additional cost is effectively a subsidy to the successful local businesses and their employees. As the review of the literature indicates, estimating the size of the subsidy is difficult, partly because of data limitations and also because the impacts depend on the design features of the programs.

Participation policies applied to government procurement generally go beyond simply giving additional weight to local employment or specifying minimum local content requirements. Generally, they also aim to:

- Provide accurate and relevant information about the capabilities and location of local business to encourage businesses from outside the jurisdiction to identify and

- incorporate local partners in their value chains. The Industry Capability Network database is one an example of this; the OIA SA Product Register is another,
- Increase understanding of local businesses, including SMEs, about how to participate in government procurement opportunities,
 - Make transparent the plans for government procurement to enable local businesses to prepare appropriately, including seeking out partners,
 - Ensure SMEs are considered in closed tenders.

Such information-enhancing policies largely improve the operations of competitive markets by reducing information asymmetries and strengthening the capacity of local businesses to compete. As such, they are far less likely to raise costs or distort procurement decisions.

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.

5.7 The Commission's view

5.7.1 Overview of conclusions

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. This task is not yet complete.

For a number of reasons the Commission considers it unlikely that a definitive answer will be reached, particularly regarding the quantum 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. Where the IPP tipped the balance between an external (i.e. not South Australian) supplier and a local supplier, the presumption is that the State pays a higher price for the goods or services and competition is reduced. The 103 random tenders provide some evidence but the sample is small, and it suggests the event of IPP tipping the balance between winner and runner up is comparatively rare – around 6 per cent - even when the IPP and ECT are properly included in the tender evaluation.

The very small numbers in the random sample make it unwise to generalise from them. It would probably be reasonable to conclude that 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 and the overall subsidy for those jobs is likely to be small although the per job subsidy may be high. The Commission intends to delve deeper into this question through further analysis of the information it already holds and by gathering additional data from agencies.

That said, additional observations can be made. It is clear that the IPP enjoys broad support among businesses (particularly SMEs), their industry associations and NFPs. There is a widespread view among business that the IPP and the activities of the Industry Advocate have increased the awareness among business and government agencies, especially

procurement staff, of the need to consider local employment and business activity when responding to, and evaluating, tenders for government procurement. It is also clear 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. 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. This evidence is in no way conclusive because it does not test against the unobservable counterfactual situation of having no IPP in place.

From a broad perspective, although South Australia seems to be collecting more procurement data over time, the 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. This situation makes it hard to assess robustly the quantitative and detailed impact of the IPP in practice, including the cost to the taxpayer of the jobs and local business activity associated with the IPP. This is compounded by a number of changes and adjustments to the policy since it was introduced.

There would appear to be a significant opportunity to assemble better information that would assist the State to better understand its procurement and the impact on local business. 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.

Table 5.3 sets out a suggested information set currently reported for each contract decision that would assist the task of reviewing the contribution of IPP against its objective.

Table 5.3: Possible oversight and management data

Data	Purpose	Source
Second best price	Will allow to monitor agencies attitude towards lowest price option	Agencies could report on this number for the annual SPB reporting on contracting activities
Second best ECT/IPP 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	<p>Will give an indication of the impact of IPP on labour in SA over time.</p> <p>Will give an idea of the cost per labour hour to government, in order to compare the efficiency of this policy over other options</p>	<p>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.</p> <p>If hours are not available, divide the \$ value by the ABS data on average salary for the relevant industry.</p>
Investment in SA by winner and second best	Will give an indication of the impact of 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 IPP on local sourcing overtime	Available in the copy of the ECT/IPP scoring sheet (see above)
Location of ownership of business		
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 IPP	Agencies could report on this number for the annual SPB reporting on contracting activities

Draft recommendation 5.1: In order to monitor, assess and improve the Industry Participation Policy, agencies collect and report to the SPB, Department of Industry and Skills and the Industry Advocate information currently recorded as part of the assessments of individual procurements above a threshold value, including:

- Winner and runner-up
 - pricing
 - ECT/IPP scores adjusted to a comparable basis
 - 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.

Increased transparency of the IPP and ECT scores will increase the understanding of the IPP/ECT scores to suppliers. Combined with an understanding of the overall evaluation criteria of tenders, such transparency is likely to help local businesses better 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 IPP Plans, agencies can also incorporate this ongoing performance information in subsequent supplier selection processes.

Draft recommendation 5.2: In order to improve the understanding by business of the IPP and raise their capacity to compete in government procurement, the relative scoring of IPP and ECT of a supplier be made transparent to it by agencies.

Based on the evidence earlier in this chapter, the Commission considers there appear to be other 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,
- 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.

In terms of red tape, for the cases where an ECT/IPP 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 draft report, where the option of an annual pre-registration of standard information has been discussed and could help reduce such imposts. A further opportunity that appears to be worth exploring is raising the threshold for which an ECT is required.

Information request 5.2: What would be an appropriate threshold for the ECT to apply, noting the Commission has received feedback from businesses and agencies that the current level is too low? Under what circumstances do ECT scores and/or process not contribute to outcomes? How might this be reflected in exemptions?

Draft recommendation 5.3: In order to cut red tape and reduce administrative burdens to businesses and government agencies, IPP be simplified including by:

- Moving to annual ECT/IPP scoring for businesses and requiring amended information only where relevant to specific tenders
- Lifting the minimum threshold for which ECT is required.

A recurring theme in the Commission's view – from businesses and government agencies – has been the limited knowledge of many government agencies regarding 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. 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.

This 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,

Draft recommendation 5.4: In order to strengthen the capacity of SMEs and other businesses to compete for government procurement opportunities, the following steps be taken (indicative suggestions for accountable agencies in parentheses):

- Provide training on how to tender for government procurement to SMEs, including consideration of the potential role of industry associations in delivery (SPB, with the DIS and the IA);
- Maintain on-line assistance to SMEs on how to complete ECT/IPP templates (DIS with IA);
- Train procurement staff on the economic impact of government procurement, how to search the capabilities of local businesses and how to identify when an ECT/IPP has been wrongly calculated (DIS and IA); and
- Organise forums and other activities that introduce participating SMEs to agency staff in program and procurement areas (all government agencies, with IA).

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.

Another recurring theme, mainly expressed by businesses, is the low and incomplete visibility in many agencies of their forward procurement program. One consequence can be 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 told 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 this to be likely to be the case, based on some feedback from selected agencies.

The Commission notes that, in general, early engagement by agencies with the IA in the process of developing industry participation plans is more likely to ensure consideration of local capacity and participation than engagement at the final stages of the procurement.

Information request 5.3: What is the experience of agencies in meeting the requirement to publish their forward program of intended procurements above \$220,000? How complete is the published program? What is the experience of businesses in these matters?

Draft recommendation 5.5: In order to strengthen the capacity of South Australian businesses, especially SMEs, to compete in government procurement opportunities, each agency be required to meet its obligation to publish a complete forward procurement program setting intentions and probable timing over a 24-month moving horizon.

5.7.2 Other possible adjustments to the IPP

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.

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

Information request 5.4: The Commission seeks views and information about what changes to the ECT and IPP scoring would reduce barriers to businesses providing innovative goods and services.

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 appear 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 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 IPP in procurement

Information request 5.5: The Commission seeks views on how the ECT/IPP process and scoring can better incorporate, in a simple way, a broad estimate of economic impact that includes investment, innovation and productivity and is more relevant to strengthening the capacity of South Australian businesses to compete in markets outside the State.

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 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, DIS 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.

Draft recommendation 5.6: In order to improve the understanding and use of IPP in the procurement process, a community of practice of procurement staff, DIS and the IA be established. This community of practice could, among other activities share good practice and opportunities to improve the incorporation of local participation in the procurement process.

From a supplier perspective, compliance measures are now in place above \$4 million and the Commission considers it timely that the data collected by OIA be analysed. Below this threshold, the Commission suggests the agencies investigate the data about the marketplace and suppliers that they hold (or need to gather) to be better placed to challenge and verify the IPP data presented to them by suppliers, both in the procurement process and in contract management stages.

Information request 5.6: The Commission seeks advice and evidence regarding appropriate weighting of ECT/IPP in procurement supplier selection processes

5.8 End piece

The government has set a goal of lifting the State's annual rate of economic growth to 3 per cent, based in part by a larger contribution from successfully exporting to markets overseas and to Australian jurisdictions. These goals have important implications for the competitiveness of the South Australian economy, the South Australian business environment and South Australian businesses. Sustained success in markets outside South Australia will be built on businesses that can compete, including for government business.

The Commission has heard directly from several such businesses in this inquiry to date and has gained from their insights. Their evidence is persuasive about the relative difficulty of winning business, especially for innovative goods and services, in government procurement in South Australia compared with other Australian and New Zealand jurisdictions. The Commission's term for such successful businesses is they are demonstrably 'match fit', shown to be capable of successfully competing in other jurisdictions, either in their own right, or as part of a larger value chain. The State needs more businesses like that.

This consideration is directly relevant to the future of IPP in government procurement. The Commission proposes that the IPP and relevant aspects of government procurement (and related activities) be framed towards strengthening the competitive capacity of local business and not to reserving a portion of government business to a sector without incentives to improve. This has implications for improving the IPP, simplifying aspects of the procurement system and complementary actions along the lines proposed by the Industry Advocate among others.

In suggesting this, the Commission notes there are areas where such an approach would be quite inappropriate, such as in regional and remote parts of the State where local access to services is a key requirement.

The Commission has not reached a view on the appropriate weighting given to IPP in the procurement process. The current 'standard' 15 per cent weight puts South Australia above larger States. It also notes that while the SA unemployment rate is above the national average, it has fallen significantly in recent years.

An approach to building match fit businesses could, in connection with government procurement, combine: lifting the knowledge of agencies about the local market capabilities; engaging with the market on a forward program of procurement; and ensuring, as other states do, that local suppliers be considered in closed tenders; with a phased reduction of the 'standard' IPP weighting (except for specific areas for reasons of policy) to the level of the eastern states.

This matter will be explored further in both Part 1 and Part 2 of the ongoing inquiry.

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6. Procuring Social and Health Services from the Not-For-Profit (NFP) Sector

The preceding chapters have focused on the experience of “for profit” businesses with public sector agencies, principally Small to Medium Enterprises (SMEs). This chapter deals with the experience of NFP organisations that are contracted and funded by SA Government public authorities to deliver a range of services and the government procurement processes used to contract, manage and monitor them.

The Commission has distinguished the NFP sector from business for the purposes of this inquiry for reasons including the type of services they deliver (i.e. for aboriginal, homeless and the disadvantaged people, among many others), 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 6.1: South Australian Public Authority primary NFP spend

	Total Contract Value ⁴⁷	FY2018/19 Spend ⁴⁸
DHS	\$375 million ⁴⁹	\$107 million
DCP⁵⁰	\$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.

This chapter examines:

- What the NFPs are, the main public authorities that contract them, and the frameworks regulating those arrangements (section 6.1);
- *Department of the Premier and Cabinet Circular PC044 - South Australian Funding Policy for the Not for Profit Sector* (the NFP Funding Policy), and associated reforms supporting and facilitating its implementation (section 6.2);
- Participants views on how the frameworks applicable to NFP procurement and grants processes operate in practice (section 6.3); and

⁴⁷ Whole-of-life value including procurement and grant funding (where both funding sources are being used) as at 5 March 2019.

⁴⁸ Progressive spend as at 5 March 2019.

⁴⁹ DHS advise 98 of the 678 contracts have been awarded but not yet executed as at 5 March 2019.

⁵⁰ Estimated Out of Home Care figures only - DCP advise Out of Home Care represents the departments primary NFP spend.

- Opportunities to improve how public authorities and the NFP sector work together to deliver more efficient and effective services to those in the community who need them (section 6.4).

6.1 Where does the NFP sector fit in?

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 a 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 (SA Health).⁵¹

DHS advised the Commission it has 678 NFP contracts under management with a total value in excess of \$375 million.

For DCP, Out of Home Care (OOHC) services delivered by NFPs accounts for approximately 34 per cent of their annual (2018/19) budget at a cost of approximately \$182 million – this is DCP's primary spend on NFPs. OOHC is managed through 73 contracts covering services including commercial, residential and family-based care, advocacy and support services, family preservation/reunification and supported independent living. Family-based and residential care accounts for 49 contracts, amounting to a whole-of-life value of approximately \$640 million (or approximately \$101 million annually). DCP's total annual (procurement) contracted spend is approximately \$253 million (around 47 per cent of DCP's annual budget).

SA Health advised the Commission it manages approximately \$373 million in NFP procurement contracts and \$130 million in grant funding.

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 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).⁵² These reforms were made after

⁵¹ 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, among others.

⁵² 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>>

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 s5(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. The key tests are:

- if the expenditure is for the public authority's own undertaking (procurement) or for the undertaking of the recipient (grant);
- who receives the predominate benefit of the funding (if the public authority = procurement, if a third-party = grant); and
- whether the public authority receives approximate equal value of goods and services in exchange for its expenditure (if it does = procurement).

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 of acquiring services.

SACOSS notes the balance of funding for NFP services has shifted from grants to procurement. In the process, SACOSS considers there has often been "a failure to recognise the role, independence and expertise of the sector." This has raised questions about whether the procurement process has struck an appropriate balance between the delivery of quality services, risk management, value for money and governance arrangements.

The Commission will consider this perspective and:

- the way the relationship between the parties is established and managed (market awareness and understanding);
- how the funding is allocated (acquisition planning and evaluation); and
- how the funding and the service being provided is administered and managed (contract and performance management).

The NFP Funding Policy and associated reforms may help to clarify these issues.

6.2 Recent Reforms

There have been significant reforms to NFP funding arrangements. Box 6.1 sets out the key elements of the reforms. Submissions broadly indicated support for the NFP Funding Policy, and its guidelines and agreements.

The Commission considers it is likely that the full adoption of the Standard Services Agreement, Standard Grant Agreements and mandatory indexation 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 there has been limited collaboration with NFPs and variable adherence by agencies to the NFP Funding Policy best practice principles.

Box 6.1 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*.

Information Request 6.1: Having heard the views of stakeholders that NFP procurement reforms have not yet fully materialised, the Commission would like to hear further from all parties on what progress has been made by public authorities in implementing the reforms. What are the impediments? What further steps would expedite implementation?

6.3 Issues raised by participants

Around a quarter of the submissions received by the Commission came from the NFP sector.⁵³ Participants (from both the NFP sector and public authorities) raised a variety of issues relating to procurement and grant funding of NFP services around four key themes:

- Market engagement, consultation and collaboration (section 6.3.1);
- Tendering: time, cost and information requirements (section 6.3.2);
- Funding and pricing arrangements (section 6.3.3); and
- Contract negotiations, contract management and reporting arrangements (section 6.3.4).

They are addressed in the following sections.

6.3.1 Market engagement, consultation and collaboration

Submissions covered:

- Collaboration and co-design of services with the NFP sector;
- Taking a system-wide approach to procuring for social and health services; and
- Supporting targeted market and “collective impact” approaches for social and health services.

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 best practice principles around collaboration have also been given effect in the SPB Simple Procurement Policy and include guidance in relation to NFP stakeholder engagement and market research.⁵⁴

⁵³ Baptist Care SA, CARA, COTA SA, Life Without Barriers, Royal Flying Doctor Service, SACOSS (original and supplementary submissions), Uniting Country SA, Volunteering SA & NT, and Social Change HQ.

⁵⁴ State Procurement Board, ‘Simple Procurement Policy’, Version 6.3, December 2018, p. 6.

The sector considered while these mandated processes should occur before commencement of acquisition planning, this had not happened in practice.⁵⁵

The DHS advised the Commission it is in the process of implementing these reforms. For example, the department is 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 operationalises the NFP Funding Policy and offers complete guidance for procurement practitioners, contract managers, and business and program leaders on giving effect to the best practice principles.

Although not opining whether public authorities are specifically applying the NFP Funding Policy "Community development principles"⁵⁶, the Royal Flying Doctor Service (RFDS) said:

...health consumer participation in health service planning and delivery is key to aligning service relevance to community need. Health procurement should favour health consumer participation in organisational governance, service planning and service monitoring. Organisational participation of First Australians as health consumers where First Australians are key service users should be a mandatory feature of procurement assessment. (RFDS submission)

Baptist Care SA (BCSA) also observed "...relational trust, with both clients and staff, cannot be simply turned on and off at will to suit contract requirements." (BCSA submission)

DHS exemplified its approach to collaboration, engagement and supporting client input into services through the Services to Aboriginal Youth (STAY) program. DHS Community Services has undertaken a consultative and holistic performance review of that program encompassing needs analysis, client fora, consultation with internal government stakeholders, and market analysis, among other things. The review has informed program guidelines, the evaluation plan, and program targets and outcomes. The next evaluation panel will have Aboriginal representation. DHS has suggested this approach could form the basis of a Commissioning Framework for these types of services.

UCSA raised its partnership with Flinders University's Australian Centre for Community Services Research to develop a best practice client engagement and assessment protocol. The Fast Track Intake Tool, one of the outcomes of the project, is aimed at supporting holistic assessment and seamless referral to services. (UCSA supplementary submission, "Changing Goal Posts", 28 February 2019)

The Commission notes these types of emerging NFP operating models may support integrated service delivery with potentially better outcomes for clients. Consideration of

⁵⁵ 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..."

⁵⁶ The Community development principles include "Where possible, and particularly in relation to health and community services, funding should reflect a community development approach which builds resilience in the community and the capacity to respond to change and crisis and empowers individuals in the process of development and service delivery".

such models and the ways in which NFPs work by public authorities during early market engagement and service design may support more seamless client outcomes.

DCP stated that it is taking steps to improve meeting the needs of children and young people through collaboration, co-design and capability development in the child protection sector, including:

- Reviewing service models as part of the 2019/2020 Procurement Program;
- Strengthening or improving co-design opportunities and sector engagement; and
- Reviewing and analysing demographic data of children in care to identify current and future service needs.

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.⁵⁷

Information request 6.2: Public authorities are implementing policies and approaches to support co-design and collaboration with the NFP sector. The NFP sector say more can be done. To what extent have public authorities adopted co-design and collaboration in practice when procuring with NFPs? What are the current limitations to further collaboration with the NFP sector?

Systemic broad approaches

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..." This is supported by the "collective impact" guidance in the SPB Simple Procurement Policy.⁵⁸ 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 and the complexity of 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." (RFDS submission)

⁵⁷ 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 of a value-for-money quote. Aboriginal business and enterprise pre-qualification lists are also supported.

⁵⁸ State Procurement Board, 'Simple Procurement Policy', Version 6.3, December 2018, p. 12.

BCSA supported agencies' giving more information about their future work program:

Limited knowledge of future tenders discourages agencies from factoring in increased economies of scale. Subsequently, every tender response is designed to operate independently of all current and future service responses, thus discounting the benefits of cross-subsidisation that may be possible in a more portfolio-based approach. (BCSA submission)

DCP advised the Commission it is increasing its engagement with NFPs that can offer services in support of child protection. 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 indicated it can now undertake tender briefings by web conference, supporting improved access to information. Further, DCP's inaugural industry day on 24 September 2018⁵⁹ engaged current and potential future service providers on its extensive reforms, including procurement and contract management, highlighting its level of sector engagement and supplier-specific resources.⁶⁰

RFDS raised the importance of "procurement decisions being taken in the context of health system wide risks and benefits", observing that "...a decision in one part of the health system can have either positive or adverse impacts on decisions in another part". They cited an example from 2016 where the procurement of new stretchers by the South Australian Ambulance Service (SAAS) which "...ended the use of a single stretcher platform across SAAS and RFDS Central Operations". The incompatibility of the new SAAS stretchers led to "...avoidable patient lifting...", which RFDS reduced by investing "...\$1.4 million from its own reserves on R&D and engineering in order to modify its aircraft to commence use of the same stretcher procured by SAAS." (RFDS submission)

RFDS further considered direct market approaches to be "...even more suited to rural and remote markets, where a combination of vulnerable consumers and thin markets exist." They see procurement having "...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. Conversely, "...procurement can similarly disrupt capacity development by frequent competitive processes and regular change in service provider arrangements." (RFDS submission)

Information request 6.3: Having heard the NFP sector's views on the benefits of a system-wide approach, to what extent do current public authority procurement practices:

- (a) consider collateral impacts on non-government providers across the system; and/or
- (b) have a systemic client-centric or sector-wide approach?

⁵⁹ "2018 Department for Child Protection Industry Day", (website accessed 28 February 2019) <<https://www.childprotection.sa.gov.au/service-providers/industry-day>>

⁶⁰ "Service Providers", (website accessed 28 February 2019) <<https://www.childprotection.sa.gov.au/service-providers>>

6.3.2 Tendering: time, costs and information requirements

Submissions covered:

- Timeframes and the investment required by NFPs to tender to government;
- Information requirements as part of the tendering process and their proportionality to the work being tendered for; and
- NFPs views of public authority experience and expertise in managing the tender process.

Time to respond to tender

Several submissions (Uniting Country SA (UCSA), BCSA, Life Without Barriers (LWB) and SACOSS) considered 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 – is insufficient time to respond to tenders which may require NFPs to develop complex service models, program logic, budgets, negotiate collaborations or subcontracts, and respond to expansive selection criteria. (UCSA submission) BCSA shared these views, as did SACOSS.

LWB also noted that "...tenders are released with a 4-5 week turnaround for highly complex pieces of work, which would ideally involve community consultation and the establishment of collaborations or partnerships for service responses." Moreover, it noted "industry briefings" that can "...at times be 2 weeks into the tender process...further reduce our ability to respond accurately to what government is hoping to achieve within the required timeframe." (LWB submission)

DHS has encouraged market response times for high-value NFP-related procurements to be between 8 and 12 weeks and acknowledges that these longer periods are desired by the NFP sector.⁶¹ DHS advised that they are proposing extended market call periods of up to 8 weeks in relation to upcoming high value and complex tenders.

DCP noted that although the department has not been active in the market in the last year, it has observed the 30-day minimum tender call period in line with the State Procurement Board International Obligations Policy.⁶² DCP also drew the Commission's attention to a current tender (Agency Child and Youth Worker Temporary Staff Services) which demonstrates the department's approach to extended tender process timeframes.

⁵¹ 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".

⁶² "International Obligations Policy", State Procurement Board, Version 4.2 September 2016, p. 7.

Figure 6.1: 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.

Information request 6.4: In response to the NFP sector’s view that tender response times are too short given the complexity of services sought, what is the experience of public authorities with extended market response times? What impediments or considerations are there to moving towards longer market response periods?

Cost to tender, quality of tender specification and tender evaluation

UCSA advised that responding to tenders take approximately 150 - 200 hours in total and \$10,000 per tender, with these amounts escalating where partnerships are negotiated. (UCSA submission)

BCSA raised concerns about the quality of tenders and the capacity of public authorities to evaluate tender responses, including:

- Underpinning research and evidence supporting service specifications and/or data relevant to service provision not being made available;
- Key Performance Indicators (KPIs) not being commensurate with the timeframe of the service and/or level of resources available; and
- The duration and value of the tender needing to recognise the complexity of the social issues to be addressed.

In its view BCSA also considered excessive attention to probity and the capacity of procurement functions limited opportunities for co-design, collaboration or innovation; and that there is a tendency to prioritise rigid procurement processes over achieving improved outcomes for target groups. The organisation provided a chronological summary of a 13 month-long procurement for a large and complex service. That summary sets out BCSA’s view of unrealistic KPIs, service specification amendments, the public authority commencing a co-design process and then withdrawing from that process, risk transfer concerns and finally the program being withdrawn following the state election. (BCSA submission)

CARA was also concerned about inconsistent process, noting that “there are inconsistent processes and formats for both procurement and acquittals across various government agencies for the same service types”. (CARA submission)

There is some evidence of agencies responding to these concerns. DCP is taking a client-centric approach to their procurement reforms. The DHS Procurement and Grants Unit advise its communication plan emphasises improving internal stakeholders' understanding of reforms and best practice. The strategy also proposes engaging government suppliers and peak bodies broadly and making available FAQs and other media advising on tendering successfully.

Information request 6.5: To understand better the options for reducing cost and time burdens on NFPs, the Commission seeks more information on the experience of public authorities in improving quality of tenders and minimising tendering burdens on NFPs.

Proportionality, information requirements and duplication

SACOSS considered the detailed requirements for governance and risk management create unnecessary administrative burdens for service providers. It noted that proportionality is one of the key funding principles in PC044, 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.

DCP indicated that its Contract Management Framework provides flexibility about using performance and administrative-related aspects of the contract management process depending on the value (high/low) and risk (routine/strategic) of each 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."⁶³

SACOSS raised concerns about risk and proportionality in relation to procurement thresholds and the total value of a procurement over its total contract duration. It opined that "...with a 3+3+3 year policy applying, the whole total should be considered...This would put SACOSS above the threshold requiring a Standard Industry Participation Plan – for funding that allows for the employment of 3 staff". SACOSS suggests a more appropriate approach would be for the government to monitor performance through appropriate contract management and negotiate changes or even cancel the funding if there are serious problems identified. SACOSS put the view that "the risk is only ever one year (or technically less given the funding in advance is usually done quarterly and the government can cancel the contract with limited notice)." (SACOSS submission)

The Commission notes there appears to be some imprecision in the SACOSS view between efficient risk management and the way thresholds are measured that triggers the requirement for an IPP. It will seek further clarification on the matter.

UCSA noted the Australian Government's *GrantConnect* program, and its provision of a unique identifier that holds relevant information about a registered organisation (e.g.

⁶³ DCP Contract Management Framework, Version 1.3, 5 September 2018, p. 10.

incorporation status, principal office address etc). This preregistration data pre-populates application forms saving NFPs time. (UCSA submission)

Information request 6.6: The Commission would like to hear more from stakeholders on the implications for procurement process having regard to the mandated NFP contract extensions and how the existing procurement thresholds may impact upon the types of procurement process required. The Commission is particularly interested in examples that concurrently balance risk management with moving towards longer NFP contracts to provide the sector with funding certainty.

Case Study 6.1 - Grant application process for multi-site services – Commonwealth and South Australian approaches

UCSA provided examples of contrasting administrative requirements for Commonwealth and South Australian grant applications. UCSA cited a grant process facilitated through the Commonwealth government's central grant information system, *GrantConnect*. That process required 3 assessment criteria be addressed for a 4.5-year contract for grants of between \$300,000 and \$1.1m. The assessment criteria guidance indicated the information provided should "...be relative to the project size, complexity and grant amount requested." This grant was open for almost 6 weeks. Organisations could use one application to apply for grants at up to 40 service locations.

That example was contrasted against a South Australian Request for Proposal (RFP) for an Aboriginal youth program delivered in six regional locations for 3 years (with a 3 year extension option), with funding of \$80,000 per location available with one mandatory (budget-related) criteria and 25 weighted criteria. A new RFP was required when applying for each site and was open for approximately five weeks.

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 UCSA who cited an example of a tender that required a response for Work Health and Safety and sustainability. UCSA contended that these questions were not necessary because the criteria "...are covered in the Australian Service Excellence Standards, our Quality System that is approved by the State Government. We are independently audited to ensure we comply with these standards every 3 years." The public authority that asked for these criteria to be addressed in the tender process also administers the Australian Service Excellence Standards. (UCSA submission)

CARA proposed that accreditation gained under a recognised accreditation process (e.g. NDIS Quality and Safeguards Commission or ISO 9001, etc.) be accepted as part of the procurement process without further detail being required. (CARA submission)

LWB supported this view, observing also that "...most departments require their providers to be registered on a Provider Panel. To meet the requirements of registration, substantial information and documentary evidence is provided to ensure government can have confidence in those contracted to provide specialist social support services." But in LWB's

experience this information needs to be provided again when responding to a tender. (LWB submission)

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".

6.3.3 Funding and pricing arrangements

Submissions traversed:

- Operational and strategic perspectives on funding NFPs and service delivery;
- Funding terms and the government's late payment interest arrangements;
- Pricing.

Funding arrangements, delayed payments and strategic investment

The issue of service delivery costs and overhead costs was raised by the BCSA, UCSA, COTA and LWB among others. Their views included:

- organisational sustainability is undermined when limited or no provision is allowed for NFPs to 'claw back' tender and establishment costs; (BCSA submission)
- funding for the delivery of particular services can be unrealistic given geography, complexity of services, and the requirement for NFPs to form partnerships to deliver complex requirements, especially when public agencies require a fast response; (UCSA submission)
- legitimate project overhead costs are not routinely or adequately included in funding, citing an example where the amount applied for was \$49,565 and the amount approved was reduced to \$36,525 "...with all overhead costs (and some others) excluded"; (COTA submission)
- short (six month) contracts for long term problems substantially complicate retaining capable employees because of the uncertainty; (UCSA submission)
- the requirement for NFPs to absorb the costs of running a business such as finance departments, human resource costs, recruitment and retention of staff, injury management, health and safety, management of data bases and systems required for reporting and compliance, quality assurance programs, staff training/learning systems, senior staff not directly associated with the service (e.g. State Director) and office accommodation has led to "...increasing pressure to reduce these costs to an unsustainable level"; (LWB submission)
- NFPs that rely heavily on public authority funding to deliver their services feel constrained from raising concerns about funding arrangements "...for fear of being penalised in the next funding round." SACOSS indicated that "this is one of the reasons SACOSS put so much time and effort into the negotiation of the SANFRAG

standard contract terms and conditions – because with no money on the table in those negotiations, it was possible to more robustly discuss the issues of concern.” (SACOSS submission)

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. CARA suggest when state agencies contract the same services as funded by Commonwealth and/or other States, they should pay market rates. (CARA submission)

Late payments and automatic payment of interest arrangements

The Government’s *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 consider that the state government created an incentive for public authorities to make timely payments to service providers by enacting the Interest Act, which provides for penalty interest to be paid automatically to government suppliers where public authorities are late in paying their invoices. However, amendments to the Interest Act in late 2018 have had the effect of excluding NFPs from the amended regime.

The Commission has been advised by relevant government authorities that an amendment to the *Late Payment of Government Debts (Interest) (Automatic Payment of Interest) Amendment Bill 2018* changed the scope and application of the Interest Act. The amendment changed the definition of a “qualifying body” in the Interest Act by removing “any other body corporate constituted under the law of the Commonwealth, the State or another State or Territory” from that definition.

The effect of this amendment is that any organisation not incorporated under the *Corporations Act 2001 (Cth)* is no longer subject to the Interest Act. SACOSS pointed out that many NFPs are incorporated under the state *Associations Incorporation Act 1985*. (SACOSS submission) NFP’s may also be registered with the Australian Charities and Not-for-profit Commission (if they are a registered charity).

The Commission understands the amendment was intended to avoid the state government making late interest payments to other entities of the Crown. It is not obvious to the Commission why NFPs should be excluded from the benefit of the amendment.

SACOSS also observed that where an agency issues its own invoices (under the Recipient Created Tax Invoice agreement) “... the trigger would not be available as the penalty provision was triggered by the date of issue of the invoice.” (SACOSS submission) The Interest Act provides that late payment interest is payable where a “default event” occurs, which requires an invoice is sent or a claim is made by the supplier under the qualifying

contract⁶⁴ and the claim is rendered to the public authority⁶⁵. On the face of it, a Recipient Created Tax Invoice does not satisfy the requirements of the Interest Act.

Where NFPs are neither registered under the *Corporations Act 2001 (Cth)*, nor render an invoice, they are not covered by the Interest Act. However, "...where an invoice relating to a prepayment is received and processed by the public authority for payment, the Invoice Received at Agency date will be used to calculate any late payment interest due..."⁶⁶

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)

Information request 6.7: The Commission would like to understand the impact (i.e. how many contracts could potentially be affected) of the late payment interest regime in the event the current statutory exclusion of NFPs is remedied.

LWB have experienced "...disparity in relation to payment terms for the delivery of contracted services across departments", noting that services can be paid quarterly in advance or in arrears; and that "this disparity can also exist within single contracts, making it very difficult for agencies to continue to fund services." (LWB submission)

DCP accepts the need to manage service growth and its potential impacts on contracted NFPs while improving services available to target client groups. The agency has taken action to grow foster and kinship care placements, which includes the use of incentivised growth payments to NFPs that provide family-based care services. DCP indicated there has been substantial growth in OOHC placements which presents a challenge given the needs of these young people and children are unpredictable, complex and require consideration of individual circumstances.

According to DCP the complexity and growth in demand for these services can create process challenges where the value of that growth exceeds five per cent of the existing baseline contract. Where growth numbers exceed five per cent of the baseline contract *Treasurer's Instruction 8 – Financial Authorisations* (TI8) requires approval from the relevant delegate.⁶⁷ 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.

⁶⁴ Late Payment of Government Debts (Interest) Act 2013, s5(1)(b).

⁶⁵ Late Payment of Government Debts (Interest) Act 2013, s5(1)(c).

⁶⁶ Late Payment of Government Debts (Interest) Act 2013 – Frequently Asked Questions, Shared Services SA, Department of Treasury and Finance (website, 26 February 2019), <<http://www.sharedservices.sa.gov.au/sites/default/files/ap/LPI%20FAQs%20vF.pdf>>

⁶⁷ Treasurer's Instruction 8 – Financial Authorisations, s8.11A.2.

Unexpended Funds

While acknowledging that the new Standard Services Agreement has improved provisions regarding repayment by NFPs of unexpended funds⁶⁸, SACOSS suggested some aspects of the new provisions remain problematic for NFPs because:

- *the basic idea of recouping unexpended funds goes against the logic of the tender process (that the government has agreed to pay \$X for the provision of a service),*
- *it treats NFPs and for-profits companies differently in that for-profit providers can bid, agree a price and take whatever money is not allocated to services as profit, while NFPs cannot,*
- *it creates considerable red-tape and compliance costs for NFPs, particularly when done annually where it may capture funds not expended simply for timing or sound contract management reasons, and*
- *it is a barrier to innovation by providing a disincentive for innovation and efficiency improvements as any money saved will be required to be handed back to government, rather than invested in better services or organisational sustainability. (SACOSS submission)*

In SACOSS's view, these recouping arrangements may create 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. It suggests unexpended funds only be recouped "...where services are not being delivered and/or outcomes not being achieved and where that money was not being spent on the services as per the contract". SACOSS propose that "...accounting for and potential repayment of unexpended funds only be done at the completion of a contract term (i.e. not annually), and that the standard NFP contracts be altered accordingly." (SACOSS submission)

CARA considers returning unexpended funds reduces incentives to innovate and create greater value and efficiency, suggesting instead that unexpended funds be permitted to be invested into assistive technology. (CARA submission)

The Commission notes while such arrangements would have an obvious benefit to the NFPs, they clearly conflict with the general requirement that governments manage their finances responsibly and achieve value for money in procurement. The Commission does not accept the sector's premise at this point but seeks further information.

Information request 6.8: The Commission seeks views about the proposal from the NFP sector that NFPs be permitted to retain unexpended funds for purposes that increase the future capability of NFPs to deliver services.

⁶⁸ 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.

6.3.4 Contract negotiations, contract management and reporting arrangements

Submissions covered:

- Timing, delays and constraints in negotiating contracts;
- Contract management, reporting and performance; and
- Contract construction and content.

Contract negotiation challenges: timing, delays and constraints

SACOSS identified the timing of procurement processes and contract duration as being "...of critical importance to the NFP sector and the services we provide". (SACOSS submission)

While acknowledging recent reforms in the State Procurement Board's Simple Procurement Policy, SACOSS said it knew of "...several instances of failing to offer 3 year or 3+3+3 year funding as recommended by the policies." SACOSS are concerned that the flexibility afforded by the language in the Simple Procurement Policy will enable public authorities to operate to the exclusion of the NFP Funding Policy and the Simple Procurement Policy, rather than in support of them. It suggested that "...the policies could be improved by tighter wording to ensure the principles are complied with, although the current wording might suffice if there was an independent NFP advocate/process to hold agencies to account..." (SACOSS submission)

The Commission considers the proposal for an advocate is outside its Terms of Reference.

SACOSS instanced a new funding contract that was not offered until two days after the existing contract had expired. The contract required clarification of "...serious contract issues..." and was not finalised for five months during which time SACOSS was required to "...pay staff and continue services using its own resources." SACOSS stated it still receives complaints about short periods for contract negotiation "...which do not allow NFPs with volunteer boards that meet once a month time for due diligence and a proper consideration of contracts." (SACOSS submission)

UCSA provided additional evidence of short periods for contract negotiation, with the example of the tender for the DCP pilot program for Transition to Adult Life Intensive (TALI) that was negotiated in mid-2018. UCSA stated "...2 months were lost in a 24-month program due to delays in contract negotiations and sign off. Much time could have been saved if the original tender documentation had a set budget, as do most State Government tenders in our sector." (UCSA submission)

The Commission has limited information on the time elapsed between contract award and contract execution for NFP contracts.

Information request 6.9: The Commission seeks data on the time elapsing between contract award and contract execution for NFP contracts to inform its understanding of contract negotiations and the potential to shorten those times.

DCP's Contract Management Reform project aims to standardise and improve the departments approach to managing and administering contracts. The intended reforms cover governance arrangements, technology, policies and practices, performance management and change and engagement arrangements. That project also responds both to the *Child Protection Systems Royal Commission Report (August 2016)*⁶⁹ recommendations, and to stakeholder experiences including unclear roles and responsibilities and disconnected relationships with DCP.

DCP expects the project to deliver improvements including: better value for money, alignment of service, practice and contractual requirements; and improved partnerships through ethical and fair treatment of all participants by the agency.

The project is a significant undertaking being implemented in stages through to 2020-21.

Performance and reporting arrangements

LWB provided their experience of a recent example of increased levels of scrutiny in relation to a DCP contract:

...scrutiny of our financials of late to a degree of detail that is unreasonably onerous. A recent example was a question over a \$150 payment recorded as 'other' in a \$12 million contract. This level of scrutiny does nothing to promote the sense of 'partnership' the department states it is trying to achieve and is an increasing expense for the sector. (LWB submission)

LWB noted that "these (and many of state government) contracts are now required to provide audited financial statements annually, which should alleviate any concerns around financial mismanagement, rather than quarterly scrutiny of acquittals." (LWB submission)

SACOSS concurred with LWB's comments noting "...contract management meetings which go beyond performance against KPIs and drill down into FTE levels and individual budget line items in multi-million dollar contracts (rather than the key questions of whether the services are being delivered in budget)." (SACOSS submission)

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. That is, there is an obligation on the department to ensure that the money has been spent as was intended in line with the applicable contract. Fee for service arrangements are more akin to general goods and services contracting where payments are made to suppliers on provision of a properly rendered invoice once the service has been delivered.

DHS provided examples of where acquittal analysis led to improved outcomes.

In the first example, acquittals revealed poor accounting by an NFP provider that was subsequently addressed once identified. A service was tendered for provision of services/advice with a total cost of just over \$400,000 per year. The tendered budget confirmed no more than 18 per cent of the budget would be allocated to non-service

⁶⁹ "The life they deserve", Child Protection Systems Royal Commission Report Volume 1: Summary and Report, the Hon Margaret Nyland AM Commissioner, August 2016.

delivery administrative costs. Acquittal by the organisation showed almost 40 per cent allocated to administration in practice. Through contract management, following performance review and data analysis a performance improvement plan was developed and corrected expenditure was managed in line with requirements.

In the second example, 30 per cent of expenditure under the Emergency Financial Assistance Program (EFAP) was reported as "other". Through consultation with NFP service providers this category was broken down into specified expenditure areas such as education related expenses and household support purchases. This refinement was welcomed by NFPs as it supported their third-party purchasing arrangements, potentially achieving savings for those organisations.

The Commission is not persuaded that the NFP sector's complaints acknowledge the need to improve financial reporting by some NFPs.

Information request 6.10: The Commission notes the difference between acquittal reporting and performance reporting and seeks further advice from all parties about how acquittals for NFP contracts can be simplified and streamlined without compromising the public interest.

Inflexible contract provisions

SACOSS considered the extent of prescription of contract provisions including stipulations such as:

- *not just that persons performing the service be suitably qualified, but the level of staff;*
- *the amount/per cent of contract allowed for administration costs; and*
- *the sorts of policies required by the organisation (beyond quality accreditation).*

SACOSS submitted that many of these terms are not part of the Standard Services Agreement, noting "...there remains the general possibility of government departments interfering with how NFPs do their work by the requirements under the clause 4.4(d) [of the Standard Not-For-Profit Sector Funded Services Agreement] which requires services be delivered "in accordance with any policies and government directions". (SACOSS submission)

The Commission notes that this section of the Standard Services Agreement requires such policies and directions to be provided in writing at the commencement date of the agreement.

SACOSS also raised an example of how contract performance arrangements are being used as a "...problematic way of imposing extra conditions on NFPs beyond those in the agreed terms and conditions." They cited examples where ICAC reporting requirements "... were being imposed..." on NFPs subject to DHS Performance Improvement Plans (PIP), which SACOSS understand "...appear to be part of contract reporting requirements." (SACOSS submission)

DHS advise that funded service providers are considered 'public officers' for the purposes of *Independent Commissioner Against Corruption Act 2012*, and that improvement plans are

used to manage performance arrangements that prevent contractual requirements being met. The focus of a PIP is on continuous improvement strategies. PIP actions must include a timeframe and control that reflects the seriousness of the issue, and actions must be measurable.

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)

CARA generally supported the SACOSS position and offered a generic example of where contractual arrangements may not provide for optimal service outcomes:

Contract for customer specifies hours of support to be provided every weekend, however customer wishes to use hours of support on a weekday, or occasionally every second weekend, but has no flexibility under contract. Cost of supports may actually be cheaper if flexible, but restricted to fixed, recurring supports that incur penalty rates on weekends. (CARA submission)

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)

UCSA gave the example of the three Supported Residential Care contracts they have with DCP that covers 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)

At face value this suggestion appears to have some merit. The Commission is interested in further views from stakeholders.

Information request 6.11: Having regard to the recent introduction of the Standard Services Agreement and Standard Grant Agreements for use with the NFP sector, the Commission seeks further information from all parties about whether:

- those new documents will resolve the issues raised by the NFP sector; and
- there are further opportunities to improve flexibility and reduce disproportionate reporting arrangements, including through risk-based approaches and prequalification.

Matching contract duration and market timing with service outcomes

The RFDS asserted that:

Short-term contracting for complex health service delivery results in service disruption and cost inefficiency. This is more so the case in rural and remote areas where new service providers are required to build trust with local communities before their service is able to be fully utilised. (RFDS submission)

RFDS also suggested long term contracting is necessary for aeromedical capital development and cost-efficient services. (RFDS submission)

BCSA considered that meaningful change in response to complex, entrenched and intergenerational challenges cannot be achieved within a three year contract. (BCSA submission)

UCSA exemplified BCSA's view drawing the Commission's attention to their Client Engagement Service (CES) that "...was established to provide a holistic approach to supporting people resolve their immediate crisis and ensure they are connected to support services to address underlying issues." The continuity afforded by UCSA's CES methodology has yielded results by unpacking complex social issues of clients and ensuring appropriate referrals. (UCSA supplementary submission, "Changing Goal Posts", 28 February 2019)

This type of service model aligns with the preference for longer contract periods and funding certainty commensurate with the time required for service providers to "unpack" client needs.

6.4 The Commission's View and Opportunities for Improvement

The Commission considers that the effective implementation of the NFP Funding Policy and associated enabling arrangements appears likely to address many of the issues raised by the NFP sector. There are signs of contemporary procurement practice consistent with the Policy by public authorities including in governance reform, 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, notwithstanding the reforms that have been 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 – that may support provision of better services to disadvantaged South Australians without compromising government procurement principles.

The opportunities appear to include market engagement and the tendering process, the negotiation of contracts, their timing and duration, the ability to manage program arrangements flexibly through contracts, and generally taking a more deliberate, holistic and outcomes-based approach to client service delivery. Recognition of the interdependence between the public and NFP sectors, and the need for sustainable relationships must be the lens through which these opportunities will materialise.

The Commission also considers that, as with government procurement of goods and services in other areas, greater focus on outcomes could be incorporated in procuring complex human services from NFPs. It is inclined to agree with the view that moving away from a transactional approach better suited to the acquisition of commodities towards a more strategic approach seems likely to enable better outcomes for clients, reduce excessive complexity for both government agencies and NFPs inherent in the current multiplicity of contracting arrangements, and reduce the administrative burdens on both NFPs and public authorities. The DCP procurement reform project appears to be one current example of strategic reforms both to services and the underpinning approach to procurement.

The Commission notes the benefits obtained in the Victorian Government Purchasing Board establishing a general community of practice for government buyers as part of their capability improvement arrangements.⁷⁰ The Commission is aware of the South Australian public authorities Heads of Procurement forum but understands there is no established community of practice or other forum dedicated to NFP procurement and grants management.

Some of the Commission's key observations from the themes addressed in this chapter are set out below, as are draft recommendations on which the Commission seeks feedback and comment.

Draft Recommendation 6.1 In order to strengthen the capability and capacity of public authorities to engage with the NFP sector, public authorities establish a Community of Practice of Procurement Professionals to:

- encourage and share model practices and processes; and
- provide a single forum for consistent engagement with the NFP sector; and
- support ongoing and continuous improvement.

Market engagement, consultation and collaboration

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.

Better understanding is required by public authorities of the costs on NFPs as a consequence of protracted, incomplete or changing tenders going to market. This invites better

⁷⁰ Victorian Government Purchasing Board, Annual Report 2017-18, "Workstream 5: Capability and streamlining processes, practices and leading change management", p. 10.

collaboration with service providers. Better service design, getting services in place more quickly, and more opportunities for continuous improvement are some of the mutual benefits that may be realised through more efficient tendering processes with a duration that reflect the complexity of the service sought and improved NFP/public authority relationships. Reducing red tape and achieving administrative efficiencies, balanced with appropriate risk-management will benefit both NFPs and public authorities.

Collaboration between the NFP sector and public authorities should be construed widely and beyond service development and delivery. It should extend to consultation with service providers about capital projects or other significant purchases that may impact upon NFP service delivery models, and their ability to deliver the services public authorities are seeking. Integration of public authority infrastructure with NFPs, and alignment of 'ways of working' is expected to support seamless service delivery and may avoid unnecessary investment by either party to ensure services can be provided effectively and efficiently to those in need.

Recent amendments (December 2018) to the State Procurement Board's Simple Procurement Policy support public authorities to consider limited market approaches where appropriate. These opportunities may arise when a "collective impact" opportunity is identified, or where the market is thin either in relation to a specified service or in a specified location.

Draft Recommendation 6.2: Noting the role of the NFP Funding Policy in the procurement and grants process, the government independently evaluate in the second half of 2019 the implementation of the NFP Funding Policy and associated 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.

Tendering: time, costs and information requirements

It is open to public authorities to improve their tendering arrangements. The Commission envisages there will be increased emphasis on an outcomes-based approach and use, for example, of Expressions of Interest that set out the desired outcome and resources rather than a detailed specification without budget detail. This approach may see a better understanding of the market emerge, better delineation of market niches, and the development of refined service specifications reflecting contemporary and best practices. Investing this time upfront in market engagement is intended to save time later in design specification re-writes, and may also achieve better value for money.

The extent of information requested 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. The Commission sees a commensurate investment in public authority's procurement professionals' capability to support this approach.

Consistent with the predominate view of the NFP sector, public authorities generally accept that tenders should be out to market for longer periods. Anecdotal feedback provided to the Commission indicated that there appears to be some tension between the policy approach

emanating from a public authority's central procurement function and a department's business unit's ability or preparedness to support longer periods that tenders are open to the market. In any case, it appears there is an inclination towards longer open tender periods for complex and higher value/higher risk social and health services, and recognition that this is wanted by the NFP sector.

The Commission concludes that in the NFP area of government procurement – as experienced elsewhere and noted in other chapters of this draft report – concerns by agencies and NFPs regarding probity are inhibiting public authorities from engaging with the market to a greater and more constructive extent.

Draft Recommendation 6.3: In response to the issues raised by NFPs regarding the need for more time to tender for complex issues and for simpler procurement processes that recognise the complexity of the social issues being targeted by NFP-delivered services, agencies:

- use outcome-based approaches; and
- provide sufficient time in procurements involving NFPs for their internal decision-making processes, and to meet government requirements; and
- reduce to a small number of broad assessment criteria that enable organisations to respond efficiently and creatively during the assessment process.

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. The Commission can see this approach being extended beyond the NFP sector to other accreditations that may be held by business supplying to government more broadly.

A consistent format for tender feedback across departments, matched to the tender criteria and applied consistently by public authorities will support NFPs in developing not only their understanding of specific service requirements, but improve their understanding of the procurement process more broadly and build their capability. This approach may also benefit public authorities by NFPs improving their service offerings in response to feedback.

In addition, the Commission sees value in reducing the amount of information that is duplicated in successive tenders regarding the financial and other characteristics of the tendering organisation; for example, pre-qualification of NFP organisations with standard information that can be used in tenders to eliminate duplication. This reduces the need for NFPs to provide the information and for public authorities to consider and assess the information. It also considers that greater visibility by NFP organisations of forward work programs of agencies would reduce time pressures on NFPs in responding to complex tenders that may require joint ventures with other partners.

Draft Recommendation 6.4: In order to improve the tendering process for NFPs and public authorities, the State Procurement Board and public authorities:

- recognise formal quality assurance accreditation held by NFPs as part of the tendering process and investigate the changes required to give effect to this principle, including consideration of State Procurement Board policies and procurement practices;
- provide pre-registration of NFP organisations with standard organisation information that can be used in tenders, rather than duplicating this material on each occasion;
- increase information about future procurements by agencies; including those relevant to NFPs; and
- provide a consistent approach to giving constructive feedback to unsuccessful participants that will enable them to be more competitive in the future.

Funding and pricing arrangements

There were contrasting views from the NFP sector and public authorities on the issue of recognising business running costs and overheads as part of NFP funding arrangements. The NFP sector conveyed that these costs are effectively not included or insufficiently funded. The experience of public authorities included NFPs acquitting administrative costs double that provided for in the applicable contract and confirmed the ongoing requirement for authorities to be vigilant in not wasting public resources.

In resolving this dilemma, other options that provide for an efficient level of funding for administrative costs while imposing an efficient level of oversight are worth investigating. In the public sector, for example, efficiency dividends are one method for setting an incentive finding administrative efficiencies.

A one size fits all approach (i.e. applying a standard percentage rate for overheads) may not recognise the costs associated with delivering a specific service, particularly state-wide services delivered in remote locations. Whether a service requires an NFP to recruit and maintain staff, or is an “add-on” service can affect running costs.

This issue is inextricably linked to the NFP sector’s views about late payments.

Information request 6.12: To support an appropriate methodology for establishing business costs and overheads, the Commission seeks information on the methodologies or practices public authorities are relying on to establish these costs in NFP service contracts. Are there alternatives to support fair and reasonable funding of these costs?

The Commission has been advised that a remedy to the exclusion of NFPs from the Interest Act is being considered. The Commission agrees this is appropriate since it can see no reason to discriminate between currently excluded NFPs and entities – NFPs or private businesses – that are incorporated under the Commonwealth legislation.

The Commission understands this amendment would leave unresolved the position of NFPs that are block funded. In this situation the further complication arises that the NFP does not directly invoice the “procuring” public authority but instead the public authority creates a Recipient Created Tax Invoice. Under this arrangement the NFP does not provide an invoice pursuant to the Standard Services Agreement or Standard Grants Agreement⁷¹, creating the circumstance where the NFP has no direct control over the payment mechanism. The Commission notes an appropriate principle is that penalties for late payment should apply irrespective of the funding mechanism.

Draft Recommendation 6.5: 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.

Contract negotiations, contract management and reporting arrangements

Public authorities’ approach to contract management and reporting varies widely and is an area for improvement. However, the very recent introduction of the Standard Services Agreement and grant funding equivalents, along with the amendments to the State Procurement Board’s Simple Procurement Policy are expected to address a variety of issues.

The requirement to establish a 3+3+3 year contract (where there is funding certainty) will be an area to watch, not only in terms of compliance by public authorities, but its effect on the market and public authorities’ ability to respond flexibly to emerging needs. Nine years is a long time to potentially “lock out” other service providers from competing, particularly where new service models are emerging, and innovative suppliers are entering the market.

Public authorities provided useful examples of where contract reporting not only enables them to meet obligations in relation to accounting for the expenditure of public monies, but informs service analysis and has led to improved outcomes. Concerns expressed by the NFP sector about the extent of reporting required should be considered from this perspective.

It is too early to tell the extent to which the recent introduction of the Standard Services Agreement and Standard Grant Agreements will lead to improvements in the process of contract negotiations.

⁷¹ Clause 8.1 of the Standard Services Agreement and clause 4.1 of the Standard Grants Agreement.

Indications from some public authorities that they are taking increasingly holistic and consultative approaches to evaluating their services and service requirements is encouraging and is expected to positively impact on future market approaches and tender processes.

Information Request 6.13: The Commission seeks further information from public authorities based on their experience in:

- their current capability to negotiate contracts for complex NFP services, and opportunities to improve this capability; and
- the extent to which their policy and program areas work jointly with their procurement and contract management functions in the design, execution and management of complex NFP services;

noting that these elements compliment and underpin the implementation of the Standard Service Agreement and Standard Grant Agreements.

7. Trends and Insights from Other Jurisdictions

The Terms of Reference require the Commission to “consider examples of contemporary procurement policies and practices from interstate, overseas and the private sector and their effectiveness in:

- generating local output and employment;
- building industry capacity; and
- promoting innovation.”

This Chapter addresses this part of the Terms of Reference directly. In so doing, the Commission examined information from several Australian jurisdictions, trends in other countries and some examples from the private sector. Relevant specific insights have been incorporated as appropriate in preceding chapters.

There are significant trends and priorities in procurement reform in other jurisdictions:

- using technology to simplify access, register interest, view and lodge tenders and reduce rework and duplication through prequalification and centralised information on tenderers;
- strengthening requirements to include local SMEs in closed tenders along with other capable businesses;
- reforms to contracts and contracting, including simpler, fit for purpose contracts, especially for NFP, faster payment and payment obligations in relation to sub-contractors;
- broadening the criteria for value to government in evaluating bids, including criteria for social procurement, environmental objectives complementary to economic and financial assessment;
- attempts to foster innovative solutions from businesses, including through staged procurement processes and separate streams for considering market-initiated offerings;
- increased use of whole-of-government contracts, including assigning accountability to agencies with specialist knowledge;
- focused attention to strengthening and deepening the skills, experience and capability of procurement professionals.

Each of these trends has lessons and insights for South Australia.

The overarching trend is simplifying the contractual end of the procurement process while also shifting procurement to a more strategic function that is well beyond the generally operational and transactional emphasis apparent in South Australia.

This Chapter is structured as follows:

- Approaches to supporting local businesses, especially SMEs, to tender for government business (section 7.1)
- Supporting local output and employment (section 7.2)
- Improving the efficiency and effectiveness of procurement practice (section 7.3)
- Strengthening and deepening procurement capability (section 7.4)
- Strengthening innovation through procurement (section 7.5)
- Incorporating environmental and social objectives in procurement (7.6)

Several information requests are included to increase the Commission's understanding of the effectiveness and practical value of these trends.

7.1 Supporting Business to Tender with Government

Most jurisdictions aim to provide fair access to opportunities to tender for government business by SMEs. Key themes are to:

- ensure access to SMEs;
- include at least one local business in restricted tenders;
- increased thresholds for tender types for agencies.

The following is a sample of these approaches. The Commission has not been able to locate evaluations of these measures.

Australian Government

The Australian Government's *Department of Finance Commonwealth Procurement Rules* require Commonwealth procurement to:

...ensure that Small and Medium Enterprises (SMEs) can engage in fair competition for Australian Government business, officials should apply procurement practices that do not unfairly discriminate against SMEs and provide appropriate opportunities for SMEs to compete.⁷²

Officials should consider barriers to SMEs from competing, and SME's commitment to local markets, among other things. The Rules also specify "...non-corporate Commonwealth entities [source] at least 10 per cent of procurement by value from SMEs"⁷³. In 2018, the

⁷² Department of Finance, *Commonwealth Procurement Rules*, p. 14. Accessed at <https://www.finance.gov.au/sites/default/files/commonwealth-procurement-rules-1-jan-18.pdf> on 22 October 2018.

⁷³ Ibid.

commitment lifted to at least 35 per cent of contracts valued up to \$20 million from SMEs.⁷⁴

The Australian Government has investigated adopting a Single Business Identifier (SBI), similar to the New Zealand Business Number (NZBN), which is discussed later in this chapter.

The SBI would have replaced Australian Company Numbers (ACNs) and Business Tax File Numbers (BTFNs) with the Australian Business Number (ABN). The study concluded that the Government could pursue its objectives through its digital transformation agenda. As such, the Government will not abolish company numbers and instead progress measures to improve the way it connects with business through the digital transformation agenda.⁷⁵

Other Commonwealth government procurement policies supporting participation in government tendering, including the Indigenous Procurement Policy, are discussed below.

Victorian Government

The Victorian Strategic Sourcing function in the Department of Treasury and Finance provides whole of government procurement and strategic solutions to achieve best value for the Victorian Government. Strategic Sourcing also advises the Victorian Government Purchasing Board (VGPB) on system improvement.

The *Buying for Victoria* website is the single access point for government procurement and provides guidance and explanatory material for business that includes "How government buys", "how to get known", and "how to submit a tender".⁷⁶ Agencies publish their Procurement Activity Plans for a 24-month period on the website, providing suppliers significant lead times about opportunities.⁷⁷ Business can register and view current tenders and lodge responses electronically through the portal, and can access a User Reference Guide and Manual.⁷⁸ The website also gives access to procurement policy and frameworks, and other key documents.

Further reforms afoot to improve the tender process include standardising Request for Tender documents and contract templates; and upgrading the tender system to improve efficiencies and reporting. The aim is to avoid the duplicating information required from tenderers.

⁷⁴ Department of Finance, Commonwealth, Estimates of Small and Medium Enterprise (SME) Participation, accessed at <https://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/> on 15 February 2019. *Note: An SME is defined by the Commonwealth Procurement Rules as an Australian or New Zealand firm with fewer than 200 full-time equivalent employees. A small business is defined as a business with fewer than 20 full-time equivalent employees.*

⁷⁵ Streamlining Business registration, accessed at <https://www.business.gov.au/for-government/Streamlining-business-registration> on 7 March 2019.

⁷⁶ Buying for Victoria, accessed at <https://buyingfor.vic.gov.au/> on 18 February 2019

⁷⁷ Organisations Procurement Activity Plans, Victorian Government Purchasing Board, accessed at <http://www.procurement.vic.gov.au/Suppliers/Organisations-Procurement-Activity-Plans> on 24 October 2018.

⁷⁸ Welcome to Buying for Victoria, accessed at <https://www.tenders.vic.gov.au/tenders/index.do> on 18 February 2019.

New South Wales

NSW recently released the *NSW Government Small and Medium Enterprise and Regional Procurement Policy*⁷⁹ which supports local businesses, start-ups and innovation and aims to build SME capability and make it easier to supply to government.

The initiatives supporting the policy include:

- "SME First": a government agency can directly purchase goods and/or services from a supplier, or directly negotiate with a supplier to provide goods and/or services – the agency must first consider purchasing from an SME, including from prequalification schemes and panels, up to a maximum value of \$250,000;
- the small business exemption: agencies can buy goods or services up to \$50,000 directly from a small business, even where the goods or services are available on a whole-of-government arrangement;
- technology and e-solutions: including creating a suite of "simple online resources to assist SMEs to bid for contracts...", enhancements to buy.nsw and ProcurePoint, the NSW government's central procurement portal, and e-invoicing functionality;
- faster payments: after 31 December 2019, payments within five business days of receipt of a correctly rendered invoice, unless an existing contract or standing offer sets an alternative time period.⁸⁰ The threshold for Purchasing Cards is being lifted to \$10,000 so low value goods and services can be bought more easily from SMEs;
- government agencies must make all reasonable efforts to obtain a quotation from a small or medium sized employer when procuring goods or services valued up to \$1 million dollars from specified prequalification schemes⁸¹; and
- improved SME reporting: including analysis of direct spending with SMEs by government agencies; and for engagements over \$3 million monitoring the SME participation commitments made by suppliers through the tendering process.

The NSW government eCatalogues assist "...buyers and suppliers across NSW in the advertising and buying of goods and services"⁸² by listing suppliers and their products and prices (the latter only for registered users). Suppliers can provide up-to-date information about the products and services they offer through the Supplier Data Portal, and buyers can search catalogues using various fields, including by existing contracts for both goods and services.

⁷⁹ NSW Government Small and Medium Enterprise and Regional Procurement Policy, accessed at https://www.procurepoint.nsw.gov.au/system/files/documents/sme_and_regional_procurement_final_r7_lowres.pdf on 7 March 2019.

⁸⁰ NSW Small Business Commissioner, Faster Payment Terms Policy, accessed at <https://www.smallbusiness.nsw.gov.au/faster-payment-registration/policy> on 18 February 2019.

⁸¹ NSW Procurement Board Direction, PBD-2014-02 Access to government contracting opportunities by small and medium sized enterprises, accessed at <https://arp.nsw.gov.au/pbd-2014-02-access-government-contracting-opportunities-small-and-medium-sized-enterprises>, on 18 February 2019.

⁸² ProcurePoint, Buying, Procurement Systems, eCatalogues, accessed at <https://www.procurepoint.nsw.gov.au/buying/nswbuy-buyers/ecatalogues-0> on 18 February 2019.

Queensland

The Queensland Government targets support to ICT SMEs through its ICT SME participation scheme policy, which provides "...effective engagement with the ICT industry and specifically to SMEs...and ensure[s] SMEs gain greater access to the Queensland Government market."⁸³

The scheme requires "...at least one responding SME capable of delivering will automatically be short listed in the evaluation of ICT offers", and that "...government can directly engage SMEs in the provision of innovative solutions up to \$500,000 which demonstrates value for Queensland in addressing government priorities."⁸⁴ The SME Participation Scheme Calculation provides that "Prime Contractors who are not SMEs but include a SME contribution will receive proportional weighting in the evaluation of their offer".⁸⁵

New Zealand

The New Zealand Business Number (NZBN) is a globally unique identifier, available free to every business. The NZBN can minimise transactions time as it links to core business information (known as Primary Business Data), including things like trading name, phone number or email. Anyone a business has contact with (whether suppliers or customers) can access all the details they need, removing the need for a business to repeatedly provide this information for every transaction or tender. Some SA businesses have benefitted from this.

The NZBN allows users to sign up to get automated updates about businesses and agencies they work with. It is envisaged that e-Invoicing will be available in the future to enable exchange of invoices directly between financial systems instead of via email.

The New Zealand Government also promotes the business analytics potential of the NZBN, with bulk data available to all businesses. This information can assist NZBN users to link together sales, delivery and customer complaints information.⁸⁶

United Kingdom (UK)

The UK's *Public Contracts Regulations 2015* sets out procurement procedures and thresholds for specified activities and measures to enhance SME access to government procurement, including by encouraging officials to disaggregate projects into smaller contracts.⁸⁷

The legislative framework is supported by the Crown Commercial Service (CCS) to develop and implement government's commercial policy priorities. The CCS develops:

⁸³ ICT SME participation scheme policy, accessed at <https://www.qgcio.qld.gov.au/documents/ict-sme-participation-scheme-policy> on 26 October 2018.

⁸⁴ Guidelines for working with SMEs, accessed at <https://www.forgov.qld.gov.au/guidelines-working-smes> on 26 October 2018.

⁸⁵ SME Participation Scheme Calculation, accessed at <https://www.forgov.qld.gov.au/sme-participation-scheme-calculation> on 26 October 2018.

⁸⁶ New Zealand Business Number, More Business Less Work accessed at <https://www.nzbn.govt.nz/> on 26 October 2018.

⁸⁷ *Buying into our Future*, Review of amendments to the Commonwealth Procurement Rules, Joint Select Committee on Government Procurement, June 2017, pp. 93 – 94.

...commercial solutions for the procurement of common goods and services, informed by deep subject matter and commercial expertise in relevant supply markets, to support the public sector in achieving value for money from spend with suppliers.⁸⁸

The CCS reports against the British Government's target of 33 per cent of Central Government procurement spend going to SMEs, directly or via the supply chain, by 2022.⁸⁹

The CCS has also been "...leading work across central government on increasing spend with SMEs and supporting SMEs through prompt payment". The British Government's strategic suppliers have been signing up to the Prompt Payment Code. The CCS report that in 2017-18 CCS paid 94 per cent of supplier invoices within five days and 100 per cent (2016-17: 100 per cent) of payments due within 30 days.⁹⁰

Measures recently announced by the CCS to further support SMEs include:

- proposals to exclude suppliers from major government procurements if they cannot demonstrate fair and effective payment practices with their subcontractors;
- support for subcontractors' access to buying authorities to report poor payment performance, signalling the government's commitment to further improving payment practice in the UK; and
- requirements on large government suppliers to advertise subcontracting opportunities via the Contracts Finder website, and to provide the government with data showing how businesses in their supply chain, including small businesses, are benefiting from supplying to central government.⁹¹

SMEs tend to be vulnerable to cash flow-related risks. The CCS reports all 32 of the British Government's biggest suppliers are signatories to the Prompt Payment Code, accounting for £10 billion pounds of total government spend.⁹² They undertake to "...pay suppliers within a maximum of 60 days, to work towards adopting 30 days as the norm, and to avoid any practices that adversely affect the supply chain."⁹³

United States (US)

The *Small Business Act* provides for the creation of the Small Business Administration whose function is to "aid, counsel, assist and protect ... the interests of small business concerns".

The *Small Business Act* also provides for 'not less than 23 per cent of the total value of all prime contracts for each fiscal year' to be awarded to small businesses. Furthermore, it specifies that agencies should seek to engage small businesses from a wide variety of industries.⁹⁴ The Commission does not have further details at this point.

⁸⁸ Crown Commercial Service, *Annual Report and Accounts 2017-18*, p. 18.

⁸⁹ Crown Commercial Service, Transparency Data, *Central Government spend with SMEs 2016 – 2017*, accessed 9 October 2018.

⁹⁰ Crown Commercial Service, *Annual Report and Accounts 2017-18*, pp. 18 – 23.

⁹¹ Crown Commercial Service, *Annual Report and Accounts 2017-18*, p. 18.

⁹² Crown Commercial Service, Transparency data - Prompt Payment Code Signatories, [website], <https://www.gov.uk/government/publications/prompt-payment-code-signatories>, (accessed 2 November 2018).

⁹³ Department for Business, Energy and Industrial Strategy, Prompt Payment Code, [website], <http://www.promptpaymentcode.org.uk/>, (accessed 2 November 2018).

⁹⁴ *Buying our Future*, p. 104-105.

Information request 7.1: The Commission seeks feedback on performance reporting and benchmarking in relation to SME-supporting procurement policies and initiatives to assist its understanding of the most effective arrangements.

7.2 Supporting Local Output and Employment

The principal purpose of encouraging SME participation in government procurement opportunities is to support or increase local output and employment. While there is little evidence supporting the effectiveness of such programs in terms of their outcomes, there is a clear pattern across most jurisdictions of government interventions to support such outcomes.

Queensland

The Queensland Government's Charter for Local Content "...has the core objective of maximising local content through greater participation of capable local industry in major government procurement activities."⁹⁵ It has value for money as a primary driver for procurement, but adds it is:

...not a matter of mandating that government agencies use local suppliers. Rather, it is about providing a mechanism for government agencies to effectively and efficiently consider a wide range of potential suppliers when making decisions relating to major procurements.⁹⁶

The Charter for Local Content is made pursuant to section 6 of the *Queensland Industry Participation Policy Act 2011*.⁹⁷

The Charter for Local Content "Best Practice Guidelines for Agencies" sets out the 5 principles that underpin the policy, namely Full, fair and reasonable opportunity; Value for money; Regional and industry development; Transparency of process; Compliance with international obligations. The principles are intended to "...promote industry capability and maximise local industry participation in major procurement opportunities".

Value for money is defined holistically in the Guidelines as:

...giving consideration to more than price alone. It requires an assessment of cost and non-cost factors as well as the overall aims of government, the procurement, the category and the outcomes being sought.

Value for money is also the value over the life of the contract. Unbundling projects to support competition and opportunities for SMEs is encouraged.

⁹⁵ Department of State Development, Manufacturing, Infrastructure and Planning, Queensland Charter for Local Content, [website] <http://www.statedevelopment.qld.gov.au/resources/policy/queensland-charter-for-local-content.pdf> (accessed 26 October 2018).

⁹⁶ Ibid.

⁹⁷ That section of the *Queensland Industry Participation Policy Act 2011* provides that the Minister must "...develop and adopt a policy (the *local industry policy*) about participation by local industry in projects, developments, procurements and other initiatives undertaken or funded, whether wholly or partially, by the State", and that guidelines may also be produced in support of that policy.

United States

The *Buy American Act 1933* requires the US government to preference US made products in its purchases.

The *Buy American Act 1933* is given effect through the Federal Acquisition Regulations System which provides for uniform procurement policies and procedures for acquisition by all executive (Federal) agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR.⁹⁸

The FAR provides a price preference for domestic products. When the cheapest supplier bid for a government procurement is deemed not to be "domestic", the procuring agency must add a certain percentage to the lowest tender price before determining which offer is the lowest priced or "best value" for the government.⁹⁹ This regime has been widely reported as problematic for businesses to comply with. Complicated legal and factual questions have arisen in terms of determining the scope of the regime and its application to products and their origins.^{100 101}

*Agency officials may rely upon representations by vendors regarding their products and need not inquire further into the origins of particular products or components unless they have reason to believe that the contractor might have misrepresented whether its products are mined, produced, or manufactured in the United States, as required by the Act.*¹⁰²

Services are generally not subject to the *Buy American Act 1933*, nor does the *Buy American Act 1933* restrict purchases from foreign persons so long as their products are mined, produced, or manufactured in the US, as required by the Act.¹⁰³ There are prescribed exceptions to the Act, including where acquiring domestic products is not in the public interest, are unavailable, or the costs are unreasonable. The procuring agency determines whether an exception exists.

Any potential tensions between the preferencing of US products and free trade agreements are mitigated by the provisions of the *Trade Agreements Act 1979*. That Act "...authorizes the waiver of 'any law, regulation, procedure, or practice regarding Government procurement' that would result in 'eligible products' from countries with which the US has a trade agreement, or that meet certain other criteria being treated 'less favourably' than domestic products and suppliers."¹⁰⁴

⁹⁸ Code of Federal Regulations, Title 48 – Federal Acquisition Regulations System, Section 1.101 – Purpose. Accessed at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title48-vol1/xml/CFR-2017-title48-vol1-sec1-101.xml> on 17 October 2018, p. 2.

⁹⁹ Kate M. Manuel, Legislative Attorney, The Buy American Act - Preferences for "Domestic" Supplies: In Brief, Congressional Research Service, 26 April 2016, p. 2.

¹⁰⁰ Ibid.

¹⁰¹ Deloitte, The Buy American Act – New focus on government contract compliance, [website], 19 July 2017, <https://www2.deloitte.com/us/en/pages/regulatory/articles/2017-the-buy-american-act-new-focus-on-government-contract-compliance.html>, (accessed 17 October 2018).

¹⁰² Ibid, p. 10.

¹⁰³ The Buy American Act - Preferences for "Domestic" Supplies: In Brief, Kate M. Manuel, Legislative Attorney, 26 April 2016. Accessed at <https://fas.org/sgp/crs/misc/R43140.pdf> on 17 October 2018.

¹⁰⁴ Ibid, p. 9.

Canada

The *Canadian Content Policy* is confined to competitive procurement administered by Department of Public Services and Procurement's Acquisitions Branch valued at \$25,000 or more and that is not subject to an exemption. For example, the Policy does not apply to procurement conducted by other government agencies or government procurement subject to international trade agreements. Suppliers must certify the goods or services they offer are Canadian.

The *Canadian Agreement on Internal Trade* provides for procurement evaluation criteria to be weighted to favour Canadian goods to support trade between Canada's provinces and promote harmonisation.¹⁰⁵

Rio Tinto

Rio Tinto identify and report on procurement as part of reporting on sustainability indicators including Communities, Economic Contributions, and Value Chain.¹⁰⁶

The company emphasises supporting local communities where it operates by procuring goods locally, or where required goods and services are not available locally, by offering "...training and development programmes to help local communities take advantage of employment and procurement opportunities." In remote and less-developed parts of the world Rio "...share tools and knowledge with local suppliers to increase supply chain reliability and encourage good social and environmental practices."¹⁰⁷

All Rio operations report locally on an annual basis and are expected by 2020 to achieve "Progress against a locally defined target that demonstrates the local economic benefits of employment and procurement of goods and services." The Rio Tinto Annual Report 2017 indicates that 42 per cent of managed operations are on track to meet their 2020 targets, with the remaining operations being provided with additional assistance to achieve their targets. The 2018 sustainable development priorities include "Improve the local employment and procurement content in our neighbouring communities."¹⁰⁸

7.3 Improving the efficiency and effectiveness of procurement practice

A further theme across domestic and international comparators is how to achieve efficiencies through improved operations, organisation and use of technology.

United Kingdom

The CCS claims spend savings through optimised commercial agreements for common

¹⁰⁵ Buying our Future, pp. 106-107.

¹⁰⁶ Rio Tinto 2017 Sustainable development report, accessed at http://www.riotinto.com/documents/RT_SD2017.pdf on 25 October 2018 pp. 13-14.

¹⁰⁷ Rio Tinto 2017 Sustainable development report, accessed at http://www.riotinto.com/documents/RT_SD2017.pdf on 25 October 2018, pp. 51-53.

¹⁰⁸ Rio Tinto Annual Report 2017, accessed at http://www.riotinto.com/documents/RT_2017_annual_report.pdf, pp. 29-30.

goods and services across the public sector. The CCS put in place 28 new agreements in 2017-18 and reports they achieved better rates through those agreements (compared to market rates) and administrative efficiencies of £601 million pounds in 2017-18. Business change-related commercial benefits come from joint initiative-based action with central government departments to reduce prices and costs.¹⁰⁹

The benefits from the CCS approach go beyond expected savings from a centralised model. The CCS reports they are "...developing more sophisticated approaches to the market, working across our strategic categories to manage, lead and shape markets to support the current and future needs of the public sector."¹¹⁰ These initiatives are yet to be evaluated.

New South Wales

In 2018, the state introduced a new accreditation program for public authorities procuring goods and services. It is described as a risk-based, devolved approach with oversight (compliance) in the form of "annual self-reporting responsibilities". It is claimed to be a clear and transparent accreditation process with clear responsibilities of both accredited and non-accredited public authorities.¹¹¹

A key principle of the government's procurement reforms was that, where appropriate, some whole-of-government contracts would be devolved to agencies with specialist knowledge of a category, the best understanding of opportunities to make savings, and incentive to drive better value and innovation.

Victoria

In Victoria, State Purchase Contracts (SPCs) are used for the purchase of common use goods and services. These agreements achieve value for money by aggregating demand.

SPCs can be mandatory (unless an exemption is provided), are constituted as either sole or multiple panel suppliers and may be open (able to accept new providers) or closed (confined to suppliers engaged at commencement of the contract).¹¹²

There are 34 SPCs for commonly purchased goods and services under 22 spend categories, with a total annual spend estimated to be about \$1.5 billion.¹¹³

Importantly, the VGBP are proactive in seeking to expand the economies of scale, leverage and efficiencies offered through SPCs. They review quarterly SPC reporting and procurement activity plans to identify more opportunities to achieve these aggregated, value-for-money arrangements.¹¹⁴ For example, VGBP report that a joint agency initiative to develop a language services SPC will aggregate demand for buyers and establish a minimum standard for engaging providers.

¹⁰⁹ Crown Commercial Service, *Annual Report and Accounts 2017-18*, p. 19.

¹¹⁰ Crown Commercial Service, *Annual Report and Accounts 2017-18*, p. 19.

¹¹¹ Accreditation Program for Goods and Services Procurement, accessed at <https://www.procurepoint.nsw.gov.au/policy-and-reform/accreditation-program-goods-and-services-procurement> on 7 March 2019.

¹¹² Victorian Government Purchasing Board, *State Purchase Contracts*, accessed at <http://www.procurement.vic.gov.au/state-purchase-contracts> on 25 October 2018.

¹¹³ Victorian Government Purchasing Board, *Annual report, 2017-18*, pp. 25.

¹¹⁴ Victorian Government Purchasing Board, *Annual report, 2017-18*, pp. 28-31.

7.4 Strengthening and deepening procurement capability

Australian and overseas jurisdictions are making strategic investments in building the strength of their procurement professionals reflecting the transition from transactional to strategic procurement models. The focus is on developing commensurate skills, experience and capability.

United Kingdom

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."¹¹⁵

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."¹¹⁶ Participants' reflections indicate the Academy encourages potential 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.¹¹⁷

Victoria

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 each organisation has a unique procurement profile and developmental requirements.

The Framework is not mandatory.¹¹⁸

New Zealand

The New Zealand Government has reinvested in its capability development by upgrading its Procurement Capability Index (PCI) to an online tool, providing for a faster and easier to use solution with improved reporting capabilities.

The PCI is an agency self-assessment tool that supports organisations to develop excellence

¹¹⁵ Commissioning Academy: 2016 brochure, Cabinet Office (UK). Accessed from <https://www.gov.uk/government/publications/the-commissioning-academy-brochure/commissioning-academy-brochure-2016#the-academy-programme> on 22 October 2018.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ 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-VPSC-capability-framework.pdf> on 25 October 2018.

in procurement practice. It also enables monitoring and evaluation functions, supporting development pathways in four capability categories: strategy, systems, delivery and talent. Agencies will be able to benchmark against previous results providing for enhanced reporting across the public sector.¹¹⁹

Australasian Procurement and Construction Council (APCC)

The APCC is "...the peak council whose members are responsible for procurement, construction and asset management policy for Australian State and Territory Governments." The APCC drives change through its collective and collaborative values, and through the project outcomes from its member-driven Working Groups.

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 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. The APCC does not benchmark states and territories against one another; they are expected to benchmark their own capability against the emerging competencies.

The report is intended to provide strategic direction and to influence universities, the tertiary sector and Registered Training Organisations in terms of supporting professional procurement offerings.

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-focused graduate, management and leadership development.¹²⁰

¹¹⁹ New Zealand Government Procurement, News, "New online tool opens doors for data analysis", accessed at <https://www.procurement.govt.nz/about-us/news/new-online-tool-opens-doors-for-data-analysis/> on 25 October 2018.

¹²⁰ *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%2016%20August%202018.pdf> on 7 March 2019.

Information request 7.2: The Commission seeks feedback from the states, territories and private sector on any evaluations of the effectiveness of procurement capability frameworks. Furthermore, the Commission seeks input from organisations on material changes to procurement operations arising from recruitment and development of specialised procurement professionals.

7.5 Strengthening innovation through procurement

The Australian Government Competition Policy Review found there is scope for encouraging innovation by "...tendering with a focus on outcomes, rather than outputs, and trials of less prescriptive tender documents could encourage bidders to suggest new and innovative methods for achieving a government's desired result".¹²¹

Most jurisdictions have this as an objective, but exhibit wide differences in practice. A key step is to move beyond the statement of objective to organising to be innovative. To procure new or substantially improved goods and services that provide significant benefits to government and citizens. Such outcomes, over time, may contribute to higher productivity in the state.

*An overwhelming focus on value for money considerations, and concerns about risk minimisation, in public sector procurement can stymie innovative solutions to public problems.*¹²²

Acknowledging that "...responsibility for innovation resides with business and not government..." but that "...government can act as a catalyst for change..." CEDA has recommended funding SME innovation through an exploration of research and development focused public procurement programs like the US Small Business Innovation Research (SBIR) program.¹²³

Queensland

The Queensland government runs its own SBIR program. The program is based on the successful US and UK equivalents, releasing challenges and funding the development of innovative solutions through a staged procurement process. The five stages see challenges issued to the market, proposals assessed, successful propositions funded (for up to six months) for feasibility. Feasible solutions are funded for up to 12 months for proof of concept.

Successful applicants retain all intellectual property they develop within the SBIR program, and have the potential to secure a government lead customer for a tried and tested product which is ready to attract further investment.¹²⁴

The *Testing Within Government* program borrows from the SBIR principles. This program

¹²¹ Australian Government Competition Policy Review, Final report, March 2015, p. 52.

¹²² *Australia's Economic Future: An Agenda for Growth* (June 2016), CEDA, p. 18.

¹²³ Ibid, p. 13.

¹²⁴ Small Business Innovation Research, Advance Queensland, Queensland Government, accessed at <https://advance.qld.gov.au/entrepreneurs-and-startups-industry-small-business/small-business-innovation-research> on 7 March 2019.

supports ICT SMEs "...to improve the positioning of their products by working collaboratively with Queensland Government on a number of business problems." Successful applicants are funded for a 12 week program, at the end of which products are showcased to government and industry representatives "...improving the potential to access broader commercial opportunities in Queensland, Australia and internationally."¹²⁵

The Queensland government has acknowledged that "Adopting less prescriptive, outcome-based approaches where appropriate, can support increased market innovation". The recently released *Using An Outcome-Based Procurement Approach* Guide issued by the Office of the Chief Advisor – Procurement sets out what an outcome-based specification is, when it is suitable to be used, and evaluation and reporting guidance. It includes a "readiness assessment" which supports agencies to determine if an outcome-based approach is appropriate for a specific procurement.¹²⁶ The outcome-based approach is underpinned by the Queensland Procurement Policy.¹²⁷

The Queensland Department of Housing and Public Works has indicated innovative ways of engaging with business are encouraged. Practices supporting co-design (within appropriate probity settings); and systems development in consultation with service providers that will assist procuring agencies to identify service providers with accreditations and policies in place that support government policy outcomes are being explored.

New South Wales

The NSW Government has drawn on the underpinning principles of the SBIR model in its Procurement Innovation Stream. In support of start-ups and innovative business, the Procurement Innovation Stream:

...allows procurement-accredited agencies to directly engage an SME on short term contracts valued up to \$1 million and to do proof-of-concept testing or outcomes-based trials. The test or trial should be designed to demonstrate the feasibility of a good and/or service to solve a specific problem or improve government service delivery.

Agencies can then award a contract following a successful test or trial, subject to procurement rules. SMEs retain ownership and can potentially derive ongoing value from their innovative products and intellectual property.¹²⁸

In terms of evaluation, *the NSW Government Small and Medium Enterprise and Regional Procurement Policy* provides a general commitment to improving participation of local business more broadly, including analysis of "...direct spending with SMEs by government agencies to monitor the number and value of SME engagements and how many regional

¹²⁵ Advance Queensland, Testing Within Government, accessed at <https://advance.qld.gov.au/entrepreneurs-and-startups-small-business/testing-within-government> on 8 March 2019.

¹²⁶ Using an outcome-based procurement approach - Office Of The Chief Advisor – Procurement, accessed from <http://www.hpw.qld.gov.au/SiteCollectionDocuments/UsingOutcomebasedProcurementApproach.pdf>, 8 February 2019, p. 4.

¹²⁷ *Queensland Procurement Policy* 2018, Principle 4.3.

¹²⁸ NSW Government Small and Medium Enterprise and Regional Procurement Policy, accessed at <https://procurepoint.nsw.gov.au/policy-and-reform/goods-and-services-procurement-policies/nsw-government-small-and-medium-enterprise> on 18 February 2019, p. 10.

businesses supply directly to government.”¹²⁹

New Zealand

New Zealand’s social services procurement arrangements demonstrate a progressive approach to procuring complex human services, underpinned by recognition of the special considerations of working with the non-government sector.

New Zealand’s approach in this distinguishable area of procurement reflects some of the improvements sought by the NFP sector raised with the Commission during this inquiry and set out in Chapter 6. For example, acknowledging the non-commercial motivations of human service providers complemented with flexible contractual arrangements supporting continuity of care and customer-centric outcomes.

Permeating the policy is a recognition that solving complex and interrelated issues invite collaboration, partnerships and client input into services.

The interrelated nature of human services provision, and the need to involve multiple public sector agencies in delivering complex services is manifest in New Zealand’s acknowledgement that “Social sector procurement will increasingly take place within a broader commissioning framework...[and]... commissioning is a broader concept than procurement and is defined as ‘a set of inter-related tasks...to turn policy objectives into effective social services.’”¹³⁰

Contract management and performance is centred around effective relationships with providers and monitoring client-centric outcomes. “The wellbeing of the clients after receiving the service is more important than the number of sessions delivered.”¹³¹

Complementing the empathetic perspectives aimed at supporting procurement with the non-government sector is a suite of social service documents that are structured around the “Outcome Agreement” – a non-government-specific procurement contract template. An “integrated” Outcome Agreement is also available that enables more than one purchasing public sector agency to enter into contractual arrangements with a single NGO. In addition to capturing policy and program collaboration between public sector agencies contractually, this contract format removes the need for NGOs to manage multiple single-agency contracts and funding arrangements (siloeing) for the same or similar services.

New Zealand’s social services procurement is innovative in its approach to distinguishing of the non-government sector’s cultural and operational requirements from simple commercial goods and services procurement. The innovative perspective is translated into practice through NFP-specific contracts and the emphasis on measuring outcomes.

¹²⁹ Ibid, p. 13.

¹³⁰ New Zealand Government Procurement, Social Services Procurement, accessed at <https://www.procurement.govt.nz/procurement/specialised-procurement/social-services-procurement/> on 8 March 2019.

¹³¹ Ibid.

7.6 Incorporating environmental and social objectives in procurement

Most jurisdictions include several objectives for procurement that extend beyond a narrow interpretation of “value for money”. Putting these objectives into practice is challenging because it increases the complexity and sophistication of assessments that procurement professionals are required to make.

Where value for money is narrowly defined in terms of “economic benefit” this may lead to lowest price (for given quality) continuing to win proposals. It has been proposed that social and environmental factors need to be given explicit consideration as part of the value for money assessment, which may mean that achieving positive social outcomes in a specific context may be priced higher than would otherwise be the case for a specified procurement.¹³²

As a general proposition, the Commission considers much more can be done to provide better guidance where Government expects these complex outcomes to be incorporated.

Information request 7.3: The Commission is seeking further feedback on current and emerging procurement models incorporating environmental and social objectives, particularly in relation to reporting and the evaluation of these frameworks.

Victoria

Victoria’s new *Social Procurement Framework 2018* is intended to give all Victorians an opportunity to participate in the economy and to secure sustainable, equitable and inclusive outcomes for the Victorian Government. It is structured around 10 social procurement objectives that traverse inclusion of aboriginal people, people with a disability, disadvantaged people; supporting women’s equality, safe and fair workplaces; and ecological sustainability. It applies to all Victorian Government departments and agencies, and to the procurement of all goods, services and construction.¹³³

The Framework enables direct benefits in terms of purchasing goods from businesses supporting social procurement outcomes, and indirect benefits by seeking social and inclusive outcomes contractually from suppliers.¹³⁴ This approach is expected to “...generate social value above and beyond the value of the goods, services, or construction being procured”.

In terms of process and planning the Framework prescribes specified “activity requirements” based on spend thresholds, effectively increasing the obligation to achieve social procurement objectives the higher the spend.¹³⁵

¹³² See Australian Small Business and Family Enterprise Ombudsman [submission \(19.1\)](#) to the [Buying into our Future](#), Review of amendments to the Commonwealth Procurement Rules, Joint Select Committee on Government Procurement, June 2017.

¹³³ Victoria’s social procurement framework, accessed at <https://buyingfor.vic.gov.au/social-procurement-framework#social-procurement-framework> on 7 March 2019.

¹³⁴ Ibid, p. 11.

¹³⁵ Ibid, p. 19.

Examples of the access to supplying government or participating in government contracts and projects already include sub-contracting opportunities for construction workers from a construction company majority owned by Traditional Owners, nursery services from a nursery providing employment to people with a disability, and construction employment opportunities for service veterans and women, among others.¹³⁶

Embedding these practices will require a shift in procurement practices so decisions are based on an evaluation of social and sustainability outcomes as well as price, quality, and risk. Victoria has a plan to align social procurement with government and departmental procurement processes, set targets and measure outcomes, and give effect to an implementation plan for the framework.¹³⁷

Agencies will report against the Framework in their annual reports commencing in 2019. Reporting is expected to be provided on a contract and agency basis in relation to specified measures, with aggregated outputs and benefits published for the whole sector.¹³⁸

Queensland

Principles 1 and 2 of the Queensland Procurement Policy include environmental and social targets and commitments, including procuring Australian-sourced environmentally accredited paper products; achieving net zero emissions by 2050, increasing spend with genuine, quality, social enterprises; providing pathways to mainstream employment for disadvantaged Queenslanders; and taking into account workplace policies and practices aimed at ending domestic and family violence as part of supplier evaluation and selection.¹³⁹ In addition, Principle 2.2 provides that:

Agencies will use best endeavours to do business with ethically, environmentally and socially responsible suppliers, and will seek to influence the supply chain in this regard. As part of this commitment, agencies will not procure dumped goods.

These principles are translated into practice through guides published by the Office of the Chief Advisor – Procurement. The “Integrating sustainability into the procurement process”¹⁴⁰ and “Social procurement guide – Adding social value when buying for government”¹⁴¹ provide guidance to procuring public sector agencies on integrating sustainability and social outcomes into planning, tendering and contract negotiation and management stages.

¹³⁶ Victoria’s social procurement framework case studies and highlights, accessed at https://www.content.vic.gov.au/sites/default/files/2018-08/Case-Studies-and-Highlights-report_0.PDF on 25 October 2018.

¹³⁷ Victoria’s social procurement framework, accessed at <https://www.content.vic.gov.au/sites/default/files/2018-08/Victorias-Social-Procurement-Framework.PDF> on 25 October 2018, p. 18.

¹³⁸ Ibid, p. 36.

¹³⁹ Queensland Procurement Policy 2018 accessed at <http://www.hpw.qld.gov.au/SiteCollectionDocuments/QLDProcurementPolicy.pdf> on 8 March 2019.

¹⁴⁰ Integrating sustainability into the procurement process, Office of the Chief Advisor – Procurement, accessed at <http://www.hpw.qld.gov.au/SiteCollectionDocuments/ProcurementGuideIntegratingSustainability.pdf> on 8 March 2019.

¹⁴¹ Social procurement guide – Adding social value when buying for government, Office of the Chief Advisor – Procurement, accessed at <http://www.hpw.qld.gov.au/SiteCollectionDocuments/SocialProcurementGuide.pdf> on 8 March 2019.

New South Wales

Non-price evaluation criteria that consider how potential suppliers support the government's economic, ethical, environmental and social priorities now form part of the SME and Regional Procurement Policy.

For procurements over \$3 million over the life of the arrangement, including single supplier standing offers, agencies must include a minimum 15 per cent of the non-price evaluation criteria which considers how the government's economic, ethical, environmental and social priorities will be supported, of which at least 10 per cent (ie two thirds of the 15 per cent weighting) must be allocated to SME participation...¹⁴²

Supplier commitments must be incorporated into the contract and compliance monitored. The initiative is intended to ensure local businesses and the government's social priorities are supported through major procurements.

United Kingdom

The *Public Services (Social Value) Act 2012* requires UK officials to consider the economic, environmental and social benefits that can be secured through procurement before a procurement process commences. It compels officials to consider consulting relevant communities and suppliers to design procurement processes that secure goods or services while maximising benefit to the community.

A review of the *Public Services (Social Value) Act 2012* after its first two years found that where it has been taken up, "...it has had a positive effect, encouraging a more holistic approach to commissioning which seeks to achieve an optimal combination of quality and best value". But the review also noted that "...despite its growing awareness amongst public bodies, the incorporation of social value in actual procurements appears to be relatively low when considered against the number and value of procurements across the whole public sector."¹⁴³

NGO Sector - BuyAbility

The Australian non-government sector is creating socially responsible procurement opportunities for the public (and private) sectors. BuyAbility "is an initiative of National Disability Services (NDS) aimed at growing supported employment to give people with disability the opportunity to participate in the workforce...offer[ing] government and private business buyers channels to do business with Disability Enterprises nationally."

BuyAbility make the connection between delivering employment opportunities for people with a disability and government savings arising from people with a disability earning, learning and leading an ordinary life. The BuyAbility "Impact Tool"¹⁴⁴ provides the opportunity to Disability Enterprises to enter their organisational and supported employee data to deliver national social and impact metrics of the supported employment sector. The methodology used in the Tool to calculate the economic and social benefit of supported

¹⁴² NSW Government Small and Medium Enterprise and Regional Procurement Policy, accessed at <https://procurepoint.nsw.gov.au/policy-and-reform/goods-and-services-procurement-policies/nsw-government-small-and-medium-enterprise> on 18 February 2019, p. 15.

¹⁴³ Social Value Act Review, Cabinet Office report, February 2015, p. 4

¹⁴⁴ BuyAbility Impact Tool, accessed at <https://buyability.org.au/about-impact-tool/> on 8 March 2019.

employment has received third party verification.

...government departments and agencies have been valuable clients of BuyAbility for many years and have been instrumental in building the solution. BuyAbility's long standing experience and deep understanding of the specific needs of Government procurement professionals means we are able to effectively source quality suppliers and manage the contract end to end.¹⁴⁵

Information request 7.4: To what extent are social enterprise and organisations like BuyAbility being considered by public authorities in South Australia? What are the impediments to considering these organisations in public sector procurement?

Social Change HQ has drawn the Commission's attention to the emerging social enterprise economy which "...uses innovative commercial enterprises to solve complex social problems, which in turn reduces costs to the government in health, welfare and housing." (Social Change HQ submission). Citing a SACES report¹⁴⁶ which "...assesses the value of engaging social enterprise to facilitate job creation for socially and economically disadvantaged populations..." and the *Victorian Social Enterprise Strategy*¹⁴⁷ as examples of where procurement can potentially support social outcomes and provide economic value.

7.7 Conclusion

The review of trends and changes in jurisdictions in Australian and other jurisdictions has identified several apparent opportunities to develop further and strengthen South Australia's government procurement system and practice.

Further information is sought from stakeholders – especially those with experience in some or all of the other jurisdictions – regarding the most valuable opportunities to be taken up by the South Australian Government.

¹⁴⁵ Who Uses Disability Enterprises, BuyAbility, accessed at <https://buyability.org.au/who-uses/> on 8 March 2019.

¹⁴⁶ Stretton Fellowship – The Value of Social Enterprise: Two Case Studies, Final Report, South Australian Centre for Economic Studies, accessed at <https://www.adelaide.edu.au/saces/docs/publications-reports/StrettonFellowship-Value-of-Social-Enterprise.pdf> on 13 March 2019.

¹⁴⁷ Social Enterprise Strategy, Victorian State Government, accessed at https://economicdevelopment.vic.gov.au/_data/assets/pdf_file/0008/1435868/10371_DEDJTR_EDEI_Social_Enterprise_Brochure_A4_WEB_FINAL.pdf on 13 March 2019.

Appendix

Appendix 3.1 Additional regulatory instruments impacting on government procurement operations

The table below provides a summary of other regulatory instruments that may impact on the operations, efficiency and effectiveness of SA government procurement.

Name	Description
<i>Independent Commissioner Against Corruption Act 2012 – SA (ICAC 2012)</i>	Applies to all public authorities and to all procurement activity undertaken by the SA government. Section 20 obliges all public officers (unless otherwise stated) to report to the Office of Public Integrity (OPI) any matter that is reasonably suspected of involving corruption or serious or systemic misconduct and maladministration in public administration. This includes activity undertaken as part of the procurement process – including contract management.
<i>SAICORP Government Contracts</i>	'Government Contracts: A Guide to the Insurance and Liability Issues' - designed to assist public authorities with most contracts involving both contractors and consultants (except for leasing and property matters).
<i>Code of Ethics - SA Public Sector Act 2009</i>	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 includes delegations under the State Procurement Act 2004 and under Treasurer's Instructions.
<i>Competition Principles Agreement 1995 (competitive neutrality policy)</i>	Applies to the business activities of publicly owned entities (government business enterprises or GBEs) who produce goods or services for sale in the market place. GBEs must ensure their pricing is adjusted in line with competitive neutrality guidelines when responding to tender opportunities. DTF reports on compliance with the policy to DPC and Heads of Treasury (COAG).
<i>Climate Change and Greenhouse Emissions Reduction Act 2007 (SA)</i>	To provide measures to address climate change including setting greenhouse gas emission reduction targets, promotion of renewable sources of energy, promote business and community understanding on climate change and facilitate development of policies and programs to address climate change.
<i>Supply Chain Management requirements</i>	<i>Modern Slavery Act 2018</i> (Cth) and (ISO20,400) <ul style="list-style-type: none"> • Requires medium to large companies and government agencies to report annually on risks of modern slavery in their operations and supply chains and steps taken to address the risks. The reports form mandatory statements that are stored on a register that is publicly accessible. Minister can serve notices on an entity that has not complied and can ultimately list that organisation on the register as non-compliant (risking reputational damage). • State governments are also introducing similar legislation (NSW has already such an Act).

Name	Description
	<p data-bbox="528 304 1401 371"><i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> (Cth)</p> <ul data-bbox="576 376 1374 546" style="list-style-type: none"> <li data-bbox="576 376 1374 546">• Compliance and reporting requirements for “politically exposed persons” – those in positions that hold specific powers in relation to approving government procurement processes, budget spending, development approvals and government grants.

Appendix 3.2 List of State Procurement Board procurement policy framework documents

Category & Document name		Description
1	Procurement Policy Framework	Overview of the Board's procurement policy framework
2	Glossary of Procurement Terms	Glossary of procurement terms used in the framework
Procurement Governance		
3	Procurement Authority and Governance Policy	Policy to define the procurement authority approach, methodology, and outlines principal officer requirements.
4	Procurement Accreditation Guideline	Supporting information on implementation of the Board's Accreditation Program for Tier 1 public authorities.
5	Accreditation Handbook	Information to assist Tier 1 public authorities with the accreditation process.
6	Accreditation Document 1 – Accreditation Assessment Report (template)	Template to be completed by public authority via self-assessment and Lead Reviewer. To be submitted to Board.
7	Accreditation Document 2 – Lead Reviewer's Report (template)	Template for lead reviewer to complete based on accreditation review.
8	Accreditation Document 3 – Public Authority Letter (template)	Template – principal officer sign off to confirm agreement with final Accreditation Assessment Report
9	Assurance Program Guideline	Guidance on Board's Assurance Program - purpose and approach.
10	Assurance Document 1 – Mandated Requirements	List of mandated requirements contained in the State Procurement Board (Board) policies and guidelines (and SAIPP).
11	Assurance Document 2 – Assurance Report Template	Template for Lead Reviewer for results of assurance review.
12	Assurance Document 3 – Covering Letter by Lead Reviewer	Template for Lead Reviewer – cover letter to accompany final Assurance Report.
13	Assurance Document 4 – Covering Letter by Public Authority	Template for principal officer to confirm agreement with Assurance Report and Action Plan.
14	Assurance Handbook	Assists Tier 2 and 3 public authorities with the assurance process – principles, outputs and evidence expected.
Procurement Reporting		
15	Board Procurement Reporting Policy	Sets out the annual procurement reporting requirements to the Board for public authorities with procurement authority above base level.
16	Annual Procurement Reporting Template	Template to be completed by public authorities subject to the policy.
17	Annual Certificate of Compliance template	Template to be completed by principal officers of public authorities (above base level) to confirm compliance with Board's procurement policy framework for that year. Includes non-compliance report template.

Category & Document name		Description
18	Base Level Procurement Reporting Guideline	Sets out annual procurement reporting requirements to the Board for base level public authorities.
19	Base Level Procurement Reporting Template	Template to be completed by base level public authorities subject to the Base Level Procurement Reporting Guideline.
Government Requirements		
20	International Obligations Policy	Sets out the basic requirements to enable public authorities to comply with government procurement obligations arising under Free Trade Agreements (FTAs) to which the SA Government is a signatory (or agreement).
21	Emergency Situation Procurement Policy	Sets out the requirements for public authorities to ensure practices are in place for the procurement of goods and services under an emergency.
22	Sustainable Procurement Guideline	Provides guidance on integrating sustainability features and objectives into the procurement process.
23	Probity and Ethical Procurement Guideline	Provides information and advice on probity and the ethical procurement of goods and services.
24	Contract Register Policy	Sets out the Board's requirements for the establishment of contract registers within all in-scope public authorities
25	Value for Money in Procurement Guideline	Provides information and advice on how to determine and apply Value for Money in a South Australian Government context.
Procurement Process		
26	User Guide: Procurement Operation or Grant	Advice on how to determine if a contracting arrangement is a procurement, or a grant (and therefore which framework applies).
27	Goods and Services or Construction Checklist	Advice on determining if the procurement activity involves the purchase of goods or services, or is construction activity that is prescribed and therefore outside the scope of the Act.
Simple Procurement (valued up to and including \$550,000)		
28	Simple Procurement Policy	Outlines the State Procurement Board's (Board) mandated requirements and advises on the procurement of simple goods and services.
29	Simple acquisition plan template	Documents the simple procurement process to be undertaken (including reasons for limiting number of suppliers approached). Used to seek approval from delegate before approach to market.
30	Simple purchase recommendation template	Documents the evaluation process undertaken and is used to seek approval from the delegate once the preferred supplier has been chosen.
31	Simple procurement report template	Documents the evaluation process undertaken and used to seek approval from the delegate once the preferred supplier has been chosen.
32	Request for Quote template	Used to invite suppliers to bid on goods and services. Outlines the purchaser's requirements, terms and conditions, the proposed contract and a response form.
33	Minor Works Agreement template	Used for low risk minor construction projects up to \$165,000.
34	Standard Purchase Order Terms and Conditions	Used for low risk procurements up to \$220,000

Category & Document name		Description
35	Simple Evaluation Plan template	Used, where required, for more complicated and multifaceted simple procurements.
Procurement valued over \$550,000		
36	Acquisition Planning Policy	Outlines the Board's mandated requirements and advises on acquisition planning.
37	Acquisition Planning Template	Must be completed for procurements valued above \$550,000 by addressing the requirements set out in the Acquisition
38	Risk Management Guideline	Provides information and advice regarding risk management in the procurement of goods and services.
39	Risk Management Plan Template	Separate risk management plan must be completed for high risk and/or valued greater than \$4.4 million – template may be used.
40	Market Approaches and Contracts Guideline	Provides advice on market approaches when procuring goods and services and sets out requirements for using standard market approach and contract templates.
Standard Market Approach & Contract Templates		
41	User Guides - Market Approaches Templates	Information on how to select a procurement strategy and how to use the ITS and EOI.
42	User Guides – Developing Specifications	Information on an optional format for a specification and suggested content.
43	Part A – Invitation to Supply – Process Guidelines	Documents the instructions to potential suppliers and the rules that govern the way that invitations will be conducted.
44	Part B – Specification (same for ITS and EOI)	A statement of requirements to be procured from suppliers which clearly and accurately describes the goods and services and is the basis of the offers that are received from suppliers.
Part C		
Standard Goods and Services Agreement		
45	User Guide - Goods and Services Agreement	Provides information on the contract and how to use it.
46	Standard Goods and Services Agreement template	To be used for all low to medium risk, non-complex (i.e. standard) goods and services government procurements.
47	Execution Block Bank	Execution blocks for the Government Party and the Supplier are listed in the Execution Block Bank.
48	Special Conditions Clause Bank	Additional terms to those included in the can be included – lists some of the more commonly required terms.
Standard NFP Funded Services Agreement templates		
49	User guide – NFP funded standard agreement	Provides information on the agreement and how to use it.
50	Standard NFP Funded Services Agreement template	To be used for all low to medium risk, non-complex government procurements of services from the not for profit (NFP) sector, where up-front block funding is provided to NFP organisations.
51	NFP FSA Execution Block Bank	Execution blocks for the government party and the NFP organisation are listed in the Execution Block Bank.
52	NFP Sector Funded Services Special Conditions Clause Bank	Some DTF approved additional terms that can be inserted if needed.
53	Part D – Invitation to Supply – Response template	Enables suppliers to respond to the requirements set out in the Invitation.

Category & Document name		Description
Invitation for Expressions of Interest (EOI) templates		
54	Part A – Invitation for EOI – Process Guidelines	Details instructions to potential suppliers and the rules that govern the way that invitations will be conducted.
55	Part B – Specifications (same as ITS)	Describes the goods and services required from suppliers, is the basis of the offers that are received from suppliers.
56	Part C – Invitation for EOI - response	Enables suppliers to respond to the requirements set out in the Invitation.
57	Market Analysis Guideline	Provides information and advice, in addition to outlining the specific mandated requirements, for undertaking market analysis for goods and services.
58	Request for Information template	Document that can be used to gather supply market information and intelligence as part of the market analysis phase.
59	Panel Contracts Guideline	Provides information and advice for public authorities when establishing panel contracts or selecting suppliers from a panel contract
60	Supplier Selection Policy	Outlines the Board’s mandated requirements and advises on the selection of suppliers that represent best value for money.
61	Negotiation Plan Template	Provides a clear audit trail, with the results of any negotiation updating the selection process and scoring model (where relevant) to confirm the preferred supplier.
62	Evaluation Plan Template	Documents the supplier selection process and is tailored to the specific needs and circumstances of the procurement being undertaken.
63	Deed of Confidentiality	Used in procurements where respondents (or other external parties) are provided with sensitive information.
64	Purchase Recommendation Template	Details the selection process and the relevant findings of the evaluation. Must be approved prior to awarding the contract
65	Letter Acknowledging Receipt of Responses	Used to acknowledge receipt of offers.
66	Letter Preferred Respondent	Used to advise respondent once the Purchase Recommendation has been approved.
67	Letter Unsuccessful Respondent	Used to advise unsuccessful respondent once the Purchase Recommendation has been approved
68	Contract Management Policy	Outlines the State Procurement Board’s (Board) mandated requirements and advises on the management of contracts with suppliers of goods and services.
69	Contract Management Plan Template	An internal document outlining key strategies, activities and tasks required for managing a contract
70	Contract Extension Letter	Used to extend the contract for a further period subject to the agreement of both parties.
71	Annual Contract Review Template	Completed for annual contract review reports (all contracts valued at or above \$4.4 million and significant contracts below \$4.4 million)
72	Post Contract Review Template	Completed for appropriate senior manager for contracts valued at or above \$4.4 million and significant contracts below \$4.4 million

Category & Document name		Description
73	Disposal Guideline	Provides information and advice regarding the disposal of surplus goods and provides an understanding of the disposal process, including methods of disposal.
74	Disposal Plan Template	Prepared to seek approval to proceed with the disposal from the appropriate delegate within the public authority
75	Supplier Complaints Policy	Provides direction and guidance to public authorities in establishing an effective complaint management process and resolution system for handling complaints made by suppliers.

Appendix 3.3 Acquisition Plan activity reviewed by the Board

The table below shows the number of clarification requests made on behalf of the Board, separated into acquisition plan elements. The Board only sees acquisition plans valued above a public authority's procurement authority. The Board indicates that those agencies that engage with the secretariat early in the process (i.e. provide drafts for comment) have fewer queries on their final submissions.

Table 3.4 Acquisition Plan Clarification Requests

Nature of Clarification Information Sought	2014		2015		2016		2017		2018	
	no.	%	no.	%	no.	%	no.	%	no.	%
General	3	1.4	8	6	5	5	2	2.4	1	0.6
Acquisition Details	29	13.4	24	18	26	26	19	23.1	36	20.8
Governance	14	6.5	7	5.3	8	8	9	11	3	1.7
Market Analysis	56	26	38	28.6	19	19	14	17	30	17.3
Risk Analysis	10	4.6	1	0.7	0	0	3	3.7	10	5.8
Liability and Insurance	-	-	-	-	-	-	3	3.7	5	2.9
Acquisition Strategy	39	18	27	20.3	21	21	18	22	35	20.2
Probity	5	2.3	2	1.5	0	0	0	0	1	0.6
Evaluation	50	23	26	19.5	20	20	8	9.8	46	26.6
Timeframes	4	1.8	0	0	1	1	5	6.1	4	2.3
Approvals	6	2.8	0	0	0	0	1	1.2	2	1.2
Total Queries	216		133		100		82		173	
Total Number of Acquisition Plans	50		45		50		49		60	
Number of Acquisition Plans with Queries	40		32		25		28		43	
% of Acquisition Plans with Queries	80%		71%		50%		57%		72%	
Ave. Queries Per Acquisition Plan with Queries	5.4		4.2		4		2.9		4	
Ave. Queries Per Total Acquisition Plans	4.3		2.9		2		1.7		2.9	