



Australian Institute of Architects

**18 December 2018**

**South Australian Productivity Commission**

**Email – [sapc@sa.gov.au](mailto:sapc@sa.gov.au)**

### **South Australian Productivity Commission Inquiry into Government Procurement**

#### **Response from the South Australian Chapter of the Australian Institute of Architects and the Association of Consulting Architects**

The South Australian Chapter of the Australian Institute of Architects (the Institute) and the Association of Consulting Architects (ACA) are pleased to provide a response to the Inquiry into Government Procurement. While the Institute and the ACA are aware that the Inquiry excludes capital works procurement, we believe that there is a high degree of commonality between the information being sought by the inquiry and issues that arise in the procurement of capital works.

As identified in Section 2 – Business Views and Issues, there are opportunities to improve the following in relation to capital works procurement:

**Cost of the tender process** – Consultancy submissions take a considerable time to prepare due to the detailed nature and extent of the information requested. This has been addressed in recent years through a better use of prequalification information and the introduction of limits on the length of responses.

However, review of tender documents to ensure that requested information is pertinent and of a reasonable level of detail is an ongoing requirement to ensure that improvements made to the tender system are maintained. Consultancy tenders for small projects remain disproportionately onerous as compared to the potential fees for the project. Some tenders also require submission of information already captured in the prequalification process or which contradicts prequalification requirements. This requires duplication of information and adds to the time and cost of the tender process for both the tenderer and DPTI. Finally, a recent tender included multiple requests for resourcing information and completion of a highly detailed resourcing spreadsheet, adding significant time to the preparation of the tender without adding useful information.

The introduction of requests for 'early design concepts' within stage two of the tender process in recent tenders is also of concern. This occurred for the Department of Education Capital Works program. Preparation of early design concepts introduces a significant additional cost to the tender process. The real cost of preparing these concepts is in the order of \$100,000, while the honorarium offered is about 1/10<sup>th</sup> of that amount.



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**Delays and lack of transparency in the tender process** – Consultancy tenders for capital works projects are generally well structured and provide a significant level of detail. They have also been delivered through a relatively stable and comprehensive process. Further improvements could be made to the system by simplifying the structure of tender documents so that tender addendums can be clearly tracked.

However, procurement reviews undertaken by DPTI, combined with a loss of experienced staff, have eroded this system and introduced a level of uncertainty that has reduced the efficiency of the tender process and presents increased risk to consultants.

**Restricted approach to market** - There is a perception that some recent consultancy tenders have been structured to achieve predetermined outcomes, with criteria effectively precluding sectors of the prequalified consultant practices. It is recommended that client departments, through DPTI, opt for a selected tender process in these instances, as opposed to an open ROI. Where an open tender process is required by the Government's procedures or the client department, criteria should be written to enable prequalified local consultant practices to have an equal opportunity to bid for the work.

**Limited information on pipeline of future work** – The DPTI briefing held on 28<sup>th</sup> November was welcomed by the construction sector, including architects. The Proposed Tender Program on the DPTI website provides information regarding the pipeline of future work for the following six-month period. An ability to advise the market of future projects further in advance would be valued.

**Poor quality of tender** – Capital works consultancy tenders tend to be released to the market following a considerable period of development. This can result in the detailed information specific to the project – the brief – being out of date.

Project briefs also tend to be lacking in detail and can omit significant information, such as requirements for seismic or services upgrade or removal of hazardous materials. This can significantly increase the risk to the lead consultant preparing the tender.

A loss of expertise in client departments has resulted in poorly resolved briefs and a lack of alignment between DPTI and client department requirements. This can result in a lack of clear tender parameters.

**Focus on immediate cost instead of whole of life cost** – Value for money in relation to capital works projects is generally measured in terms of the cost per square meter for construction. However, the total cost of maintaining and operating a building over its life far exceeds the initial capital cost. Government generally builds assets that it owns and operates over an extended period. Therefore, prudent investment at the capital works phase of the project, which allows for thorough development and testing of maintenance and operational considerations, will result in a better value for money outcome over the life of the building.

However, the cost of consultancy services for capital works projects is heavily scrutinised and fee benchmarks have been steadily decreasing over time. This places consultants under considerable pressure to provide a suitable level of service for the fee at which they can win a project. This in turn limits the consideration given to long term criteria, which are not critical to the immediate delivery of the project, such as the maintenance and operational impacts of the design.



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**Capacity of public authorities to evaluate tenders** – DPTI has significant expertise and capacity to evaluate capital works tenders. While this has been reduced to an extent in recent times through loss of experienced staff, sufficient capacity remains at a State Government level.

Local Government has limited capacity to evaluate capital works tenders. For many Councils, there is insufficient volume of capital works projects to justify a staff member with expertise in capital works procurement. People with experience in other forms of procurement may be asked to undertake this role without understanding the complexities of capital works procurement or construction sector protocols. This can be addressed through Councils engaging LGA Procurement or with support from a suitably qualified external consultant. However, Councils are not required to do so, and many proceed without suitable in-house expertise.

**Delayed payment** – Payments to consultants involved in government capital works programs is generally made within a reasonable timeframe. However delayed payments do occur, and as the majority of architectural practices in South Australia are SMEs, this places them under significant financial pressure. Delayed payments can result from:

- Delays in agreeing fees for later stages of a project. It is common for consultants to submit a fixed fee for the concept design stage and indicative fees for the documentation and construction stages. Consultants are also commonly asked to continue to work on these later stages of the project before the actual fee is agreed. In cases where the final fee is not agreed in a timely manner, this leads to delays in invoicing and payment.
- Inclusion of a variation to a consultant's fees. As above, it is a common expectation that the consultant will continue to work on the project while a fee variation is under consideration. This can delay payment or result in work being undertaken that cannot be charged for. The recently proposed amendments to consultant contract AS 4122 included a clause that required the consultant to continue working prior to approval of a variation. Should such a clause be included this would entrench the current situation and increase the risk to consultants of delayed payment or under-payment for work undertaken during fee negotiations.
- Changes in procurement methodology. This occurred in the Transforming Health projects, with consultants expected to continue work while the projects were transferred from a managing contract to a design and construct contract. While this took place – a period of some months - no payments were made to the consultant team. There was also a risk to the consultants that full payment would not be recoverable, with work undertaken during the transfer exceeding the amount contracted by DPTI and responsibility for payment passing from government to the contractor, who may not have honoured the work done while the contract was being finalised.
- Novation to the contractor. Where consultants are novated to the contractor, payments can be significantly delayed as compared to payments from government. Statutory declarations by contractors to the effect that they have paid all of their subcontractors do not prevent this from occurring, with some contractors either submitting false declarations or overlooking the fact that the architect is their subcontractor once novated.



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**Requirements of local industry participation policies -**

South Australian Industry participation policies in the construction sector are currently focused on procurement of goods and contractor services. Increased application of IPP to procurement of consultancy services would be welcome.

Tender requirements are structured so that South Australian SMEs with capability and expertise to undertake projects are effectively excluded from consideration unless they partner with external organisations. This is generally the result of the requirements for previous experience being limited to projects that exceed the value of projects recently delivered in South Australia.

A detailed response to the questions included in the issues paper is attached. We would be happy to provide further information should this be required.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Mario Dreosti'.

Mario Dreosti  
SA President  
Australian Institute of Architects

A handwritten signature in black ink, appearing to read 'John Held'.

John Held  
SA and National President  
Association of Consulting Architects



## RESPONSE TO FEEDBACK REQUEST

2.1	The issues raised are directly relevant to the procurement of architectural services as detailed in the covering letter and the responses below.
2.2	Lack of resolution regarding the construction procurement methodology at the time the tender request is released to market.
2.3	<p>Ensure that information required for prequalification is not requested within project tenders and that project tender requirements do not contradict prequalification criteria. Exclude requests for detailed financial statements from consultancy tenders. This is not relevant in relation to the services being provided and is not commensurate with the level of risk presented by these contracts.</p> <p>Ensuring that previous project experience requirements can be met through projects delivered recently in South Australia. Project value is not the only measure of capability, with complexity and project type being important considerations.</p>
3.1	DPTI provides comprehensive information regarding the process for the procurement of capital works projects.
3.2	<p>The application of the capital works procurement process is generally consistent and well managed. Ensuring that people involved in procurement and delivery of contracts are well informed of DPTI policies and procedures is important given the current mobility of staff and reliance on external contractors.</p> <p>Additional guidance regarding different construction procurement methodologies is recommended. Selection of the procurement method should be made with a clear understanding of the contractual obligations for all parties and the ability of that form of contract to deliver quality and value for money outcomes.</p> <p>This does not necessarily result from selection of a contract that places all of the risk, but also all of the decision-making capacity, in the control of one party. In the case of social infrastructure projects the loss of the independent role of the architect through novation to the Builder is a significant concern given the limited resources within government to effectively and comprehensively manage brief and the detail of projects during design development and construction.</p> <p>The Institute and ACA note that DPTI stated at the Future Work Briefing that it would not preference any particular procurement method over another but select the most suitable procurement method for each project. This is welcomed by the architectural profession.</p>
3.3	The thresholds for capital works projects as defined in the pre-qualification criteria are set at an acceptable value. However, the amount of information requested from consultants for small project tenders can be excessive, leading to an unacceptably high cost of tendering in relation to the fee.
3.4	<p>Feedback on consultancy tenders generally has to be requested by the consultant. It is not offered as an automatic follow-up service. When feedback is gained, it tends to be brief and lacking in specific information.</p> <p>Architects have also reported that in some instances external criteria have been used by DPTI to explain an unsuccessful tender outcome – for example a poor response to IPP criteria. However further follow up with the agency responsible for that component of the tender assessment has resulted in a contradictory debrief. This devalues the process.</p>
3.5	DPTI has gone through a period of restructure and staff reduction. The level of staffing and the experience of staff in procurement of building projects has been negatively



	<p>impacted as a result. Many DPTI staff, a number of whom are external contractors, have a limited understanding of DPTI methodology, systems and contracts.</p> <p>There have also been recent examples where DPTI projects managers and client department representatives have not understood the contractual obligations inherent in various contracts and have had unrealistic expectations in relation to consultants. For example, where architects are novated to the contractor they are no longer employed by Government. It is therefore unreasonable to expect them to report on contractor (employer) performance or to represent the client post novation.</p>
3.6	<p>We are not aware of formal complaints being made in relation to the procurement of consultancy services for capital works projects. Where the Institute and the ACA have made collective submissions to DPTI in relation to the conditions of a tenders, a response has been provided but action has been limited.</p>
3.7	<p>Limited complaints may be the result of a culture that equates complaints to reduced opportunity to be invited to bid for future projects. This is certainly the feeling within the architecture profession, where practices are concerned that they will not be considered for future projects if they raise concerns regarding procurement methodology, contract conditions or project management.</p>
3.8	<p>IPP appears to be being applied more directly in the context of supply contracts as opposed to services contracts at the current time. Some recent consultant tenders have effectively precluded South Australian practices from tendering in their own right, which limits the economic benefit to the state, both through limiting the opportunity for local consultants and by reducing the input of local consultants in the preparation of specifications which in turn influence the opportunities available to local material suppliers, fabricators and contractors.</p>
3.9	<p>Economic contribution in relation to consultancy tenders should capture the level of professional engagement and development provided to South Australian practitioners as well as the number of local practitioners involved in the team. South Australian consultants should have the opportunity to learn new skills and develop expertise through partnerships with interstate or overseas practitioners where this is deemed necessary. This will enable South Australian practice to build capacity and to retain experienced staff in South Australia.</p>
3.10	<p>IPP is currently focused on contracting and supply outcomes. Current requirements for measuring consultancy performance in relation to IPP are adequate.</p> <p>Architects employed under a contract that enables them to provide independent superintendent services would be able to effectively monitor IPP compliance and increase the effectiveness of IPP outcomes achieved through construction. This is the component of capital works projects where the majority of the project funds are expended and where the biggest benefit can be realised.</p> <p>Non-compliance on capital works projects tends to be the result of product or system substitution. In contracts where the construction contractor is responsible for delivery within strict time and cost parameters but is permitted to achieve these parameters by reviewing construction methodology and materials selections without oversight by the client or an independent superintendent, there is an increased likelihood that IPP objectives will be compromised.</p>
3.11	<p>A balanced understanding of what constitutes risk in relation to capital works procurement is currently not evident. The recent DPTI review of consultant contracts has considered some options that unfairly attribute risk to consultants. This includes levels of insurance that exceed the actual financial risk to the client and removal of established</p>



	limits for liability. The Institute and ACA are continuing to work with DPTI to address these concerns.
3.12	Consideration of the impact of compressed programs and partial documentation on the procurement of capital works projects needs further consideration. These factors present significant risk to the delivery of buildings, which are complex, one-off projects. Time taken to consider the unique parameters and develop a coordinated and well resolved solution enables management of this inherent risk. Clear and comprehensive documentation allows this intent to be effectively communicated throughout the whole construction team, including the client, subcontractors and end users. Current procurement of consultant services for capital works projects does not sufficiently recognise these risks, prioritising low fees over the capacity to provide a suitable quality of service.
3.13	DPTI collect a range of data in relation to capital works projects. However, this is not accessible and appears to be rarely utilised to test the effectiveness of capital works procurement processes. Post occupancy evaluations of capital works projects are not routinely undertaken at the current time. This would provide a valuable set of performance data to test the effectiveness of projects against key parameters articulated in the brief. Evaluation of consultant performance is sometimes undertaken at the end of a project, whereas a continuous feedback system would be far preferable. In recent times the consultant prequalification evaluation system has been under-resourced and inconsistently applied, which reduces its value to both government and consultants.
4.1	Making effective use of prequalification information and ensuring that payment of invoices occurs in a timely manner would be of great benefit to consultants involved in capital works projects. The vast majority of architects are employed in SMEs. Initiatives that reduce tendering costs and improve cash flow are essential to the effective operation of SMEs.
4.2	Establishing agreed fee benchmarks for design services, including feasibility and master-planning, would be beneficial. The extent of services required for these stages of a project can be quantified to a reasonable degree, enabling consultants to be selected on the basis of expertise and experience. This would reduce the time and cost associated with tendering. Fee benchmarks have been effectively utilised in the procurement of consultancy services for education construction projects in Victoria.
4.3	Procurement of different types of goods and services is highly varied. While some level of consistency and commonality may provide efficiencies to the whole of government procurement it is important that the specific requirements of each procurement sector are also recognised and captured in procurement systems.
4.4	Policies that enable local consultants to upskill and gain recognised experience to improve their capacity to bid for future projects in their own right. Regular review of performance throughout a contract, not just at the end. Architects undertake a range of activities over an extended period of time, and the quality of service is best recorded progressively to provide accurate and meaningful records.
4.5	Improving the skill level of procurement practitioners and their access to consistent and well-developed resources is vital to achieving improved procurement outcomes. This is particularly relevant given the current mobility of staff, engagement of external consultants and rate of change to systems, which results in reduced levels of corporate knowledge and increased risk of inconsistent or ineffective procurement practices.



4.6	<p>As noted in 4.2 above, low fee for services does not provide good value outcomes. Other jurisdictions have moved to a more sophisticated valuation of services provided against total project value.</p> <p>There needs to be more emphasis on technological change in the construction industry and, in particular, adoption of Building Information Modelling. Progress at a government level has been slow, and as the biggest procurer of buildings in SA DPTI needs to be at the forefront of adoption of this technology. Changes to procurement methodologies are also required to best take advantage of these technologies.</p> <p>We also note that SA is not currently a member of the Australasian Procurement Construction Council, a body which enables sharing of procurement methodologies and experiences.</p>
4.7	<p>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. Ecologically sustainable procurement will assist in managing environmental impacts into the future and strengthen our reputation as a clean and healthy producer/supplier, providing long term value to our economy. Innovation enables alternative pathways and methodologies to be considered which may provide improved value outcomes. It is important when pursuing an innovation agenda to understand and accept that in the process of innovation some level of failure will occur. Allowing for this and having procedures to analyse and learn from successes and failures will enable value to be achieved in the long term.</p>
4.8	