

RESPONSE TO SOUTH AUSTRALIAN PRODUCTIVITY COMMISSION

GOVERNMENT PROCUREMENT ENQUIRY



OFFICE OF THE INDUSTRY ADVOCATE

DECEMBER 2018

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Preamble

In preparing this response to the South Australian Productivity Commission (SAPC) Government Procurement Enquiry, the Office of the Industry Advocate (OIA) has drawn on feedback from businesses operating in South Australia, either through one-on-one discussions or participation in events such as 'Meet the Buyer' forums and 'Supplying to Government' workshops, as well as a significant level of engagement with industry advisory panels, industry associations and State government agencies. Further, the response draws on the OIA'S research which led to the review of the South Australian Industry Participation Policy and the development and application of the *Industry Advocate Act 2017*.

Any assessment of South Australia's procurement policies and practices needs to be considered in the context of the Industry Advocate role. The role was advocated for by business and industry to address a number of challenges that the business community had experienced when seeking or participating in contracts with the Government of South Australia. Since its commencement in 2013 the role has achieved a number of positive changes to procurement policy and practices. While the focus of these reforms has been to increase the number and diversity of local businesses winning government work, the work of the OIA has included recommendations to the government on other more general matters that make it easier for businesses to work with the government (for example, aligning public liability requirements to the level of risk associated with particular contracts).

My office has oversight of the industry participation commitments associated with \$8.3 billion of government projects covering building construction, civil construction, goods and services, ICT, medical devices, manufacturing and distribution, professional and technical services and Aboriginal businesses.

An important feature of the *Industry Advocate Act 2017* and the South Australian Industry Participation Policy (SAIPP) is that they cover all procurement categories, agencies and authorities. This is at variance to the *State Procurement Act 2004* and – more specifically – the *State Procurement Regulations 2015* which exclude construction projects exceeding a cost of \$150,000 as well as the acquisition and installation of fixtures, plant, equipment, appliances and fittings in conjunction with the construction work; and the acquisition of survey, planning, design and other services in conjunction with the construction work.

I have previously made representation to Statutory Authorities Review Committee that I can see no practical reason for these procurements to be excluded. Similarly, I note that the SAPC's inquiry excludes capital projects and prescribed authorities. Given the significant investment made by the Government of South Australia in these areas, I am concerned that their omission will mean a large proportion of the government's procurement is not considered and a large cohort of those businesses who supply to government will not be heard as part of the inquiry.

My submission outlines a number of key concerns including the way that agencies specify requirements in tenders, and the current practice is reflected on page 17 of the SAPC's Issues Paper, i.e. "*Public authorities need to determine which goods and services are required and the specifications of those goods and services*". I continue to advocate an

‘outcomes based’ approach, whereby the tender documentation outlines the problem that needs to be solved, what outcomes need to be delivered and what limitations exist, then allow industry to present a solution for assessment. This approach will encourage innovation and draw on the continual improvement that I observe in many industry sectors. Given the rate of disruptive change occurring in many sectors it is not reasonable or realistic to expect purchasing staff to remain abreast of those changes.

Similarly, it concerns me that ‘least cost’ still pervades decision making throughout the government and this requires a sustained focus to ensure Members of Parliament, Chief Executives and agency staff are committed to the outcomes intended from the *Industry Advocate Act 2017*.

Since the appointment of the South Australian Government’s Chief Entrepreneur, I have worked closely with him on how we might create opportunities for innovative businesses and entrepreneurs through government procurement. We are currently developing a proposal for the development of a ‘Smart Procurement Strategy’ to address the difficulties experienced by small and start-up businesses that have been unable to gain opportunities and/or more widespread acceptance of innovative products and services. A separate, joint submission will be forthcoming to the SAPC in this regard.

While I have included examples and specific feedback throughout this report, I would welcome the opportunity to present additional information to the SAPC to further inform their deliberations, as required.

Ian Nightingale
Industry Advocate

Business views and issues

Stakeholder practical experience, evidence and views

One of the hallmarks of the Office of the Industry Advocate (OIA) has been its heavy engagement with businesses operating in South Australia, by way of one-on-one discussions, participation in events such as 'Meet the Buyer' forums and 'Supplying to Government' workshops, as well as the establishment of industry advisory panels and regular contact with industry associations.

There is absolutely no doubt that business and industry wants to maintain the current SAIPP and, in many cases, they want the implementation of SAIPP objectives by agencies to be more responsive and accountable.

I have previously provided evidence to the Statutory Authorities Review Committee that I believed the State Procurement Board should be held more accountable for procurement results and that it was not enough to simply devolve responsibility to agencies. While this situation has improved somewhat in recent years, there is still a need for substantial improvement in the procurement processes and practices of agencies and authorities.

Some agencies continue to struggle with the concept of economic benefits being part of a value for money assessment but others – including Health and DPTI's Civil and Building group – have embraced it fully, often increasing the minimum industry participation score to achieve improved outcomes. If the level of engagement and adoption of the SAIPP we have witnessed with these groups was extended across all agencies the benefits to South Australia in terms of jobs growth, apprenticeships, productivity and other economic development measures would be tremendous.

Health Example:

As a result of a tailored IP Plan a \$420m orthopaedic and cardiovascular products contract achieved \$12m in annual savings, secured over 400 continuing jobs and created nearly 160 new jobs in SA. The IP Plan was evaluated at 25% weighting and identified solutions that delivered both price, quality and industry benefit.

The SAIPP itself, when applied correctly, is highly effective however the feedback constantly received by the OIA is that there is insufficient rigour and research in the early stages of the procurement process. That is, when developing business cases for procurements, agencies do not fully consider the desired outcomes nor do they genuinely engage with the market in terms of potential solutions and local capability. This results in poor acquisition plans, poor tender documentation and confusion or even reluctance of business to tender. The importance of ongoing engagement with industry sectors in achieving positive outcomes for business and government alike is demonstrated in the following feedback from Consult Australia:

Consult Australia's work so far with the Industry Advocate has demonstrated the importance of ongoing government engagement with the private sector. With the Industry Advocate's support we have delivered a policy for smaller projects that is more effective for both government and business. We look forward to continuing to work with the Office of the Industry Advocate well into the future and deliver benefits through fairer terms for larger projects.

Nick Murphy, Chair – Consult Australia

Poor business case development and acquisition planning is likely to contribute to a further issue reported regularly by business, and that is the time from release of tender to commencement of the contract. The OIA has received feedback that the time taken to evaluate tenders or quotes can be excessive, time taken to decide on the award of a contract is too lengthy and the time to commencement (including the time taken for contract negotiation and execution) means business is left hanging and carrying costs, including underutilised staff or deferring decisions to employ people.

Industry feedback – Digital services

We can invest in employment in South Australia but Tender responses have gone fallow and we've witnessed digital based work heading interstate. If industry had been consulted about how the solutions could be delivered prior to it going to the market it would have avoided the very ambiguous and risky tender process. The investment in preparing these bids has cost this company \$400k in time, with 60% of it fallow investment given the stalled bids. The stalled bids represent \$2.4m of yearly Total Contract Value and for these types of contracts we could have retained 6-8 FTE.

It is noted that page 24 of the SAPC's Issues Paper contains a Table demonstrating the median days lapsed from formal market approach to contract award, and that this has improved from 87 days in 2012-13 to 56 days in 2016-17. A more accurate measure might be the time from formal market approach to commencement of work, as this is when employment and other economic outcomes can start to be achieved. The table also does not demonstrate the minimum and maximum times, so a reader cannot ascertain the minimum and maximum times for award of contracts, or the value of those contracts. For example, a low value direct approach may be finalised within a fortnight, while larger tender processes may extend over many months, sometimes without conclusion. 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.

A further concern is the withdrawal of tenders after protracted assessment processes, with little or no feedback:

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?

Additionally, there have been concerns raised by business as to how the Industry Participation Plan process is applied and how SAIPP objectives have been assessed, or are overlooked and poorly reported. This is an area for further improvement across agencies.

In late 2016 my office conducted a number of focus group sessions with a wide range of businesses about their experience with State Government procurement. I have included their feedback as Appendix 1 to this submission.

More recently, my office engaged the University of South Australia's School of Management to undertake a user survey on the South Australian government's procurement process and their report has just been delivered (December 2018). Their key findings are summarised as:

- Except for tenders under \$33,000, 43% of all tender or quote submissions take over 20 hours to complete;
- Most tender or quote submissions come from businesses that employ 20-100 employees;
- The two predominant industries that report involvement in the SA Government procurement process is the construction industry and the professional, scientific and technical services;
- Businesses are most dissatisfied with their lack of ability to demonstrate their capability beyond the tender documentation or to provide government with innovative alternatives;
- Over 70% of businesses reported winning less tenders than expected through panels;
- Over 50% of businesses indicated that they did not think that the government's objective of innovative was being achieved, however 43% indicated that cost objective was being achieved;
- The two highest rated features of a streamlined end-to-end procurement system were receiving constructive feedback for unsuccessful submissions and having pre-tender interaction with government agencies; and
- Industry recognises the necessity for most of the requested tender information, with the exception of industry trends, salary details and approaches to innovation.

Changes to the South Australian procurement system in response to criticisms

One of the early tasks given to the OIA was to review and reform the state's industry participation policy.

Deloitte was engaged to develop a new framework and methodology, having particular regard to economic benefit, rather than least cost. Prior to this there were no meaningful measures and therefore no way of measuring its effectiveness. While the OIA has used this information as a basis for its work, our observation is that 'least cost' still pervades decision making within many agencies, including Treasury, and that decisions are made to reduce immediate costs wherever possible to meet budget constraints. A more strategic approach to procurement could achieve similar reductions in cost (eg carefully considering the need for – and type of – procurement). Further, a sustained program of education and awareness is required to achieve the cultural shift necessary to recognise the economic development outcomes and jobs growth that can be achieved from government purchasing. It is my view that accountability for this should rest at the Chief Executive and Ministerial level.

The OIA established seven industry advisory panels which were used to receive feedback and to 'road test' new policy ideas. This feedback resulted in the Industry Advocate making a number of reform recommendations to Cabinet which sat outside the scope of the SAIPP, but were impacting on the ability of business to gain work with business, such as limitation of liability in contracts and having one pre-qualification process.

These early reforms did result in some changes to the buying behavior of agencies and principal contractors, and as a result many SME's in the State felt that their chances to winning government work – either directly or indirectly – had improved.

Further reforms to the SAIPP incorporated provisions relating to the procurement of steel for government projects, Aboriginal economic participation and other sections on industry development, such as the use of design and tender specifications to deliver more positive economic outcomes to the State.

The application of economic benefit measures demonstrate how effective the policy is when genuine value for money assessments are undertaken.

The effectiveness of the SAIPP is particularly strong in the building and construction sector but, as outlined in the preamble to this submission, this is not included in the current scope of the SAPC's enquiry.

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% of the dollar spend will be retained in South Australia

The South Australian government procurement system

Objectives

It is noted that page 14 of the SAPC's Issues Paper refers only to the objectives of the *State Procurement Act 2004*, however the objectives of the South Australian government's procurement system also need to be considered in the context of the *Industry Advocate Act 2017*, which requires that:

- (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.*

The Act goes on to outline the functions of the Industry Advocate as:

- (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 finalization 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.*

Delegation and thresholds (accountability for performance) for public authorities

It is noted that the SAPC's Issues Paper (Figure 1, page 15) does not indicate a governance role for the Industry Advocate, however – as outlined on the previous page – there is clearly a role for the Industry Advocate in receiving and investigating complaints about the SAIPP's application, and to take action to promote and ensure compliance. The Act outlines penalties that may be recommended by the Industry Advocate to support these functions.

The introduction of the *Industry Advocate Bill* to Parliament followed a significant level of lobbying from business and industry groups. In supporting the Bill, their objective was to have confidence and certainty the SAIPP would continue and there would be a mechanism to ensure compliance. The Bill received the support of the vast majority of members who acknowledged the benefits of the SAIPP and the broad support it had from industry groups and business, resulting in the commencement of the *Industry Advocate Act 2017*.

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 - Chief Executive Officer, Business SA

To ensure objectivity in the development and application of the SAIPP and the Industry Advocate's advocacy and compliance functions, a decision was made in 2017 to separate the policy development and Industry Participation Plan assessment functions from the Office of the Industry Advocate and this group moved to the (then) Department of State Development.

The procurement process

As outlined earlier in the 'Stakeholder practical experience, evidence and views' section of this submission, most of the frustration and inefficiencies reported to my office relate to the procurement process itself, ranging from the development of business cases, acquisition planning through to the commencement of contracts.

Clearly the purpose of State Government tendering processes is to ensure transparency, accountability and equity for participants in the expenditure of public money. The burden of such processes is that the cost of participating can be very high for both government and bidders. The challenge for government is to strike a balance between the two competing interests; general-public interest in the expenditure of public monies versus more efficient and cost-effective procurement processes that will encourage higher levels of participation by smaller, innovative local businesses.

For example, direct negotiation and panel contract arrangements can create serious barriers to new entrants and can have the effect of limiting 'import replacement' opportunities where local businesses could expand their operation or diversify to meet the buyer demands of government.

As I have outlined earlier, I recommend and continue to advocate for a more outcome driven approach to procurement rather than the traditional and very prescriptive procurement process. This would go a long way to minimising some of the barriers for business and would create a purchasing environment more conducive to finding innovative solutions and creating opportunities for new entrants to the market.

Industry feedback – Master Media Contract

This is another example of people in Government Agencies not having the necessary industry knowledge to outline a robust or lucid commercial tender. While there were three services being tendered there was no clarity on the outcome. The incumbent has the experience of running the campaign for the last several years. They know what works and what doesn't. However, there was no historical results nor research information provided to new tenderers which would have provided a more level playing field. If someone with industry knowledge had been engaged early they would have realised how important this was.

Providing more flexibility as to how a business might want to perform a contract and what terms would make that contract performance excel should be considered in any procurement design, especially when compared to the risk of contract failure.

Businesses' experience with procurement is often that processes can dominate the tender, rather than the strategic goals of the purchase being clear.

Given that government procurement is largely carried out in a devolved environment, agencies are largely responsible for their own processes and practices. There is need to clarify the roles in procurement because in many public authorities, 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.

Industry feedback – 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.

One of the constant criticisms I hear from business is with respect to the type of market approach used. 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.

To this end my office has recently developed a SA Product Register which is an online tool providing exposure for local businesses that supply goods and services, and rates the amount of South Australian labour or jobs associated with each part of the supply chain. This will be promoted to agency staff, the design fraternity and others to ensure locally based businesses are recognized and given every opportunity so supply government's buying requirements.

Particularly in the case of smaller and more innovative businesses, the availability of forward procurement plans enables businesses to understand what opportunities may arise in the future and for them to be able to respond in the future.

One further matter that is raised with me constantly is the lack of constructive feedback given to businesses that were not successful, and this is reflected in user feedback received in December 2018 (and summarised earlier in this submission).

Requirements for private business participants

I receive significant feedback from businesses indicating they are overwhelmed with the amount of information required during tendering and quoting processes. The same information about the company, insurance, financials, capability and compliance to standards such as quality, diversity, safety, employment contribution test is asked for time and time again, and it is often required in varying formats which creates additional work for the tendering business. My office has been working towards the introduction of a single business identifier to address this issue and reduce red tape.

If a business is to operate as a partner in the delivery of government requirements, then it should have a more equal commercial relationship. The satisfaction of business with contract terms will help improve the experience of business with State Government tenders.

What is required is to ensure the commercial terms are not excessively punitive or unnecessary to achieve the outcomes required or address the risks of the contract.

In this regard, it is worth noting that the policy changes that reduced the level of required liability insurance on contracts of lower value and lower risk were received well by business and industry, however in many cases agencies have been slow to make the necessary changes to their procurement procedures and contract conditions.

Complaints process and statistics

It is noted that Table 1 on page 20 of the SAPC's Issues Paper records a very low number of complaints being received by agencies and the State Procurement Board.

As outlined in the 'Objectives' section above, the Industry Advocate does have a role to receive and investigate complaints received in relation to the application of the SAIPP.

Businesses have reported to me that they are reluctant to take participate in formal complaints processes because of the potential for negative repercussions, such as bias and/or exclusion from future tendering and contracting arrangements. I therefore caution

the SAPC to consider a full range of feedback in determining the satisfaction (or otherwise) that business and industry has with existing procurement processes.

Industry Participation Policy

I have provided detail with respect to the requirement for an SAIPP in the 'Objective' section of this submission, and changes made to the SAIPP in the 'Changes to the South Australian procurement system in response to criticisms' section. Various other references are made throughout the submission.

I do, however, note with interest the comment on page 22 of the SAPC's Issue's Paper that *"Value for money remains the prime consideration in evaluating tender bids. However, when assessing value for money, the broader impact of the contract to South Australia on a whole of life basis, including the benefits to local industry, as well as fitness for purpose and contribution to government priorities, can be considered"* (own emphasis added).

I would argue that, in order to meet the objectives of the SAIPP set out in the 'Objectives' section of this response, value for money assessments must consider a range of factors in making a procurement decision, including employment, investment, innovation and industry development. This represents a shift away from price as the critical or major factor driving decision making.

Industry feedback – 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.

Public authorities risk management framework for evaluating supplier bids

I support the use of the *Australian/New Zealand Standard AS/NZS ISO 31000:2009, Risk management – Principles and guidelines*, however as with other policies it is important that procurement staff are appropriately skilled in its application. That is, the principles and guidelines as published do not advocate the avoidance of risk – rather, a risk management approach based on the likelihood and consequence of a particular risk transpiring needs to be applied.

We have already seen this approach with respect to aligning the requirement for liability insurance to the value and level of risk involved in particular contracts (although, as noted, some agencies have been slow to adopt these changes into their policies, processes and documentation).

I do believe that any risk management framework for evaluating supplier bids needs to be structured in a way that does not discourage innovation in procurement practice, or innovation in the goods and services that are purchased by government. An example of this might be an agency using an outcome-based procurement approach rather than seeking to minimise risk by detailing the specifications of the product or service.

Performance of system in practice

At the risk of repetition, the current measures contained in the SAPC's Issues Paper preclude a large part of government's procurement spend (that relating to capital projects and prescribed authorities). Business and industry do not make the same distinction as the State Procurement Act regulations, therefore excluding these purchases may distort the *actual* experience of South Australian business and industry with respect to government procurement.

As my office has already demonstrated, the SAIPP is an effective means by which to achieve government's commitments regarding industry development in northern Adelaide, the steel industry and Aboriginal economic development and other specific objectives. Accordingly, any measures of performance should take a broader view about whether procurement practice is delivering against broader objectives, rather than a focus on process-driven performance measures.

The Industry Advocate is required to prepare an Annual Report for tabling in Parliament, and it may be useful to provide both sets of information to Parliament at the same time to provide context on the overall performance of the system. It is understood that the Auditor General of South Australia publishes annual reports incorporating assessment of procurement issues and it may be appropriate for that commentary to be incorporated into the Industry Advocate's annual report so that there is a single source of information about the State's procurement performance.

Insights from other jurisdictions

Supporting business to tender to government

Other Australian jurisdictions have looked to South Australia to understand the comprehensive approach taken by the Industry Advocate to support businesses to tender for government contracts. While the program of Meet the Buyer events and Supplying to Government Workshops is currently on hold due to budget constraints, both were widely recognised by business and agencies as an excellent means for businesses to engage with procurement staff, to raise awareness of product offerings within the state and to effectively present those offerings to government. I also received feedback from smaller businesses that the networking opportunities afforded by these events was invaluable, with new connections and partnering opportunities being forged as a result.

A total of five meet the buyer events were held between July 2016 and May 2017, including two events specifically for Northern Adelaide with total attendance number so f over 1,300. Meet the Buyer events provide a platform for local businesses to profile their products and services to the State Government agencies.

A total of sixteen Supplying to Government workshops were held between July 2016 and June 2017, with total attendance of 243. The workshops are designed to assist business operators learn how to be successful when tendering for specific government procurement. Supply to government workshops

The AIIA recommends businesses engage with the Office of the Industry Advocate to learn the skills and knowledge needed to successfully bid for Government contracts. The Office of the Industry Advocate works on behalf of businesses to recommend procurement reform changes to Government, to assist businesses to grow, build a financially viable South Australian economy.

Suzanne Campbell
[Former] Chief Executive Officer- Australian Information Industry Association

Supporting local output and employment

Local output and employment is primarily achieved through the application of industry participation weightings (or measures). Increasing the local industry participation score can have significant benefits for local businesses that are creating local jobs.

The SAIPP provides the flexibility to vary these weightings to meet government employment and economic objectives and – where applied - this approach has proven successful in terms of boosting regional economic development, Aboriginal participation and employment/ apprenticeships, amongst others. I often hear complaints that there are no jobs in Adelaide for our university graduates, and the local participation score could also be used to provide greater opportunities in this respect.

Industry feedback – South Australian Tourism Commission’s advertising contract

The contract was awarded to TBWA an international advertising business replacing the South Australian business KWP. There was no consideration given to increasing the industry participation weighting when the acquisition plan was developed and it was too late to rectify this problem once the tender had been released to the market. Early input in the development of the acquisition plan could have picked this up which would have resulted in a more balanced evaluation process.

My office has recently undertaken a review of interstate government websites pertaining to tender evaluation weightings allocated via industry participation policies to foster local employment. Note that the minimum weighting in South Australia is 15%, which places us around ‘the middle of the field’, with the Northern Territory requiring a minimum weighting of 30% and Tasmania requiring a minimum weighting of 20%.

The results of this research are summarised below:

Victoria – Local Jobs First Policy – October 2018

Tender Evaluation Weightings

The Act requires the following minimum weightings to be applied in evaluating tenders for Local Jobs First projects:

- 10% for industry development, including commitments made in relation to the VIPP
- 10% for job outcomes, including, if applicable commitments made in relation to the MSPG

New South Wales

Source: NSW Government Tendering Guidelines

Procurement action of \$4 million or more must include tender evaluation criteria for industry participation plans weighted at a minimum of 6%. Industry Participation Plans for SMEs only are required where NSW international obligations such as Free Trade Agreements are in place.

Tenderers for larger contracts are required to submit an industry participation plan that includes quantitative information on employment, investment and other impacts and comment on their local industry engagement in supply chains.

Northern Territory

Source: Northern Territory Government – Bidding for Government contracts

“The NT Government works to build the capability and competitiveness of businesses in the Territory in many ways. In government procurement activities, all procurement must include the local content assessment criteria with a minimum weighting of 30%.”
In responding to the local content questions, you will have the opportunity to demonstrate the local content and benefits of your proposal in areas such as

- employment
- up-skilling - including apprenticeships, formal and informal training
- local industry participation - as contractors and part of the supply chain
- local industry development
- Indigenous development
- regional development.

Tasmania – Guidelines on Tender Evaluation using Weighted Criteria for Building Works and Services.

Page 8. 4.3 Weighting

When assigning weights, the Project Manager must ensure that:

- criteria weightings are within the ranges outlined below;
- at least 20 per cent (20%) is allocated to the Local SME Industry Impact criterion;

The weighting range for chosen Selection Criteria could be within the following:

Local SME Industry Impact 20% (minimum)

- Relevant Experience 5 – 20%
- Past Performance 5 – 20%
- Technical Skills 0 – 20%
- Resources 0 – 20%
- Management Skills 0 – 20%
- Methodology 0 – 20%
- Price 40-70%

Western Australia

Source: Page 4 Western Australian Industry Participation Strategy (WAIPS)

Plans will be weighted at either 10% or 20% of the qualitative evaluation for both the core and full participation plans based on the issuing agency’s judgement.

Improving organisational procurement efficiency and effectiveness/ Investing in organisation and procurement capability

New Zealand Government Procurement has invested in a comprehensive website for procurement officers and businesses (www.procurement.govt.nz), which effectively provides a 'one stop shop' for procurement including:

- Guide to procurement
 - *Learn how to effectively perform procurement within government agencies*
- Government Property
 - *Guidelines and tools for the effective management of the Crown estate*
- Browse available tenders
 - *Use the Government Electronic Tender Service to apply for government tenders*
- Rules of Sourcing
 - *The Government Rules of Sourcing help agencies to make procurement decisions*
- Contracts Register
 - *Search the list of government contracts. Agencies can log in for additional pricing and info.*
- Broader Outcomes
 - *Achieving wider social, environmental and economic benefits from government procurement.*

The site includes comprehensive information and valuable tools for agencies and businesses alike and the consolidation of all of these resources in one place promotes transparency in the system. Such a platform may warrant further investigation if South Australia is genuine in its desire to achieve sustainable improvements in practice and to meet economic and other outcomes through government procurement. Of course, investment in such a system needs to be considered in the context of those broader outcomes and my office is currently making preliminary enquiries in this regard.

Promoting innovation, inclusion and ecological sustainability

As I have mentioned elsewhere in this submission, the SAIPP is an effective means by which to achieve a range of government priorities, and areas that can be further explored include meeting the government's target for apprenticeship, the employment of veterans and retaining professional services in South Australia, for example.

Conclusion and recommendations

This submission highlights a number of areas for improvement, some of which can be achieved through ongoing engagement, while others need a systems-based approach. My office is already working on some of these, while others will be subject to resource availability.

In terms of system improvements, I recommend the following:

- implement a pre-registration system that standardises all generic or non-contract specific information that is required from businesses, and establish a system which allows businesses to upload this data to a secure central location that is accessible only by authorized government staff (in order to protect privacy, the system would have a traceable search history so that it is possible to see who has viewed information and when);
- enable data on a pre-registration system capable of pre-populating tender documents;
- establish realistic targets for time from release, evaluation, award and commencement;
- simplify the standard Industry Participation Plan format into only two sections, being Industry Development and Employment and score these separately;
- for tenders below \$4 million (that are managed within agencies, rather than having regular oversight by the OIA), require agencies to regularly report when the contract is awarded to businesses outside of South Australia and why;
- require the Economic Contribution Test for any secondary procurement (eg panel contracts); and
- where an agency proposes direct negotiation, the Office of the Industry Advocate or Industry Capability Network must be contacted to determine whether (and how many) local businesses exist that may provide the services being sought.

A number of other activities are outlined in the Industry Advocate Annual Report 2018-18 [<https://www.parliament.sa.gov.au/HouseofAssembly/BusinessoftheAssembly/RecordsandPapers/TabledPapersandPetitions/Pages/TabledPapersandPetitions.aspx?TPSelectedView=2&TPProperties=3124&TPParliamentSession=54%2c>]

Vintek Pty Ltd is an information technology firm which we founded in South Australia in 1988 and currently employs 35 South Australians.

I am pleased that the South Australian Industry Participation Policy acknowledges that one of the most important things to drive innovation and growth is the 'ideas flow' and this is where Government procurement can be so important; encouraging and incentivising the private sector to collaborate and co-invest with Government.

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, Director - Vintek

Appendix 1 – Procurement Reform Focus Group Commentary

In late 2016 the Office of the Industry Advocate conducted a number of Focus Group sessions with a wide range of different businesses about their experience with State Government Procurement.

The concerns raised were grouped into seven different categories:

- Time
- Communication & Engagement
- Process
- Commercial Acumen
- Accountability
- Cost
- Innovation

TIME

1. There is often a message of urgency with Government tenders with a requirement for a 2 week turnaround, then we wait to hear only to find the tender did not proceed (with cost to business being reported up to \$450k + man hours), or alternatively the tender takes many months to assess.
2. Tenders have been cancelled, sometimes 18 months later.
3. Designing the tender with local participation being considered is good, but other parts of the process still need to be improved (especially timeliness).
4. Government indicated job was urgent, 7-8 months passed before tender was awarded. Leaves companies competing for the tender reluctant to take on other opportunities and contracts due to holding equipment and resources with the expectation they'll be successful.
5. If process was simplified the time taken to prepare tenders would not be so much of an issue.

COMMUNICATION/ENGAGEMENT

6. Lack of communication and face to face meetings once RFP released. No opportunity to meet and discuss Government's process, which seems to be not outcome driven.
7. The lack of early engagement and discussion flows through to end of contracts often causes disputes, results in too many variations of contracts, extended timeframes and increased cost. For example, the EPAS project, commenced 7 years ago, \$30 million contract and now \$450 million contract.
8. Early engagement/ collaborative approach would reduce the time and cost of tender process and result in better outcomes.
9. Little contact with decision makers and no effective capacity 'to show/demonstrate' products/outcomes is seen as a major impediment.
10. Limited opportunities to demonstrate capability of the business tendering. There seems to be a lack of understanding within government to assess business opportunities.
11. Agency officers seem reluctant to engage with businesses - ICAC seems to have spooked people, with people feeling that it's 'risky' to talk with businesses prior to award of contract.

PROCESS

12. Small bites of procurement often lead to a better business outcome for the Government as each stage can be assessed.
13. Complex tenders need to be broken down from capturing ideas to deliverables.
14. Tenders are far too detailed. Smaller trials work for large tenders before progressing to next stage...start small and grow project.
15. There was a strong view that 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.
16. Trials and demonstrations is vital on both sides to reduce risk, e.g. trials for ICT, proof and demonstrations, rather than a document-based assessment, would result in better outcomes.
17. A demonstration model which also connects with short tender documents and which are outcome focussed, not specified detail/processes.
18. Quantity of material isn't relevant to a good tender, it is the quality.

19. SA conditions are unique, like firing a gun, closing your eyes and hoping you hit the target.
20. 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.
21. Tendering is about a business process - procurement practices seem inconsistent between what is wanted from the tender
22. SA Health often go to market without an ability to specify volumes of what is required.
23. Must be a clear reason to enter in a tender process – what are the expected outcomes? Otherwise it makes it extremely difficult to assess what is on offer.
24. 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.
25. It seems the approach now is to have a catalogue of services rather than a forward procurement plan.
26. Often tenders have contradicting conditions or outcomes.
27. Complex tendering process – it should be outcome focused and incorporate pre-tender process to harvest ideas from industry which informs outcome based tendering.
28. Procurement process is outdated, old fashioned and therefore costly.
29. Procurement should be more than a point of audit. Leave the door open for negotiated innovation and Industry Participation process needs to be mandated.
30. Procurement in SA is onerous.
31. Suggest exploring opportunities through centralised EOI process or pre-tender proposal.
32. Worked with SATC for TDU promotion – great process, understand what is expected 2 years out. Tender to contact process 7 weeks, clear outcomes and consultative approach.
33. Procurement and delivery are very different, in these cases, governance is hugely important.
34. An increased Industry Participation weighting would be good. Job component of Industry Participation needs to be more granular.
35. 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.

- 36. Centralised procurement process is preferred and business outcomes to be separate
- 37. Businesses identified a need to maintain critical mass to sustain operations in SA
- 38. One business participated in 8 tenders over past 18 months, \$15m in contract value, 30 jobs. 7 failed to proceed and with the 8th awarded to an interstate competitor.

COMMERCIAL ACUMEN

- 39. Outsource crown law advice to ensure commercial expertise and quick turnaround times. Experience with Crown Law – very slow and lack of understanding and commercial acumen leads to poor and untimely advice.
- 40. Commercial acumen is required rather than procurement expertise
- 41. Good commercial decisions are not procurement led but business led.
- 42. Commercial acumen is severely lacking in procurement processes but also among senior staff in State Government who hold decision making positions

ACCOUNTABILITY

- 43. Government staff should have benchmarked timelines to complete tendering processes and should be reporting to the Premier in a similar vein that vendors are reported to ensure their bills are paid on time – this would provide the necessary accountability in terms of timeliness.
- 44. Measuring the steps and process would be useful for procurement staff. Agency staff are not rewarded for doing the right thing. (Referenced a seminar attended pre Shared Services SA and discussion around developing a website to track and measure tender process and estimated completion for each stage).

COST

- 45. Measure the cost of the tender – measuring how many hours spent to tender and government to measure how long spent preparing and evaluating the tender will help government to understand the loss of productivity (for government and business) through tenders that don't proceed, as well as identifying opportunities to improve efficiency.
- 46. Cost of going through legal avenues for a contract. Treasurer's instruction for payment of debt, building education revolution, multitude of projects delivered, value for money and widespread – not bundled.
- 47. Involvement in T2T and Darlington: innovation and ideas for design construction are good but very expensive for industry to develop concepts.

48. Public-Private Partnerships projects – expense and effort required doesn't match the outcome.
49. Cost and price impacts tendering when it is ambiguous, missed opportunities in the health sector as tendering seems to be disruptive with a high level of ambiguity.
50. No thought given or forward thinking – particularly in health for care cost vs upfront cost.
51. A need to structure a market approach on how to get value (not price) was proposed.
52. State Government often view business people as those wanting to make an excessive profit and agency staff then become guardians of the public purse, with poor value for money outcomes.

INNOVATION

53. State Government agencies often seek validation from interstate or overseas for products or services rather than looking at what is available in SA.
54. Businesses feel that there is a mentality that innovation can only be sourced from interstate - not directly from SA companies. Culture change is required.
55. Businesses ok with sharing Intellectual Property in early conversations so long as ethical and confidentiality agreements are in place.
56. If government needs to save money - let businesses provide innovative solutions to do so – long term vision, rather than least cost.
57. Often seeing businesses offering up 2 tenders – 1 to comply with tender requirements and another which is innovative – the innovative proposal nearly always misses out.
58. Innovative people do exist within government but they are disciplined to follow strict procurement guidelines which stifles innovation.