

## **Submission to South Australian Productivity Commission**

### **Government Procurement Inquiry**

**December 2018**

#### **2.1 To what extent are the issues and examples mentioned in this paper relevant to your experience of public procurement?**

The issues raised in section two of the issues paper include:

##### **Costs of the tender process.**

My own experience is that submitting even relatively low value tenders for example, less than \$100,000, can cost me two days' time, the opportunity cost of which would be approximately \$4,000 to \$5,000, which given the chance of success is 20% or less is a demotivator to participate at all. This is made worse by my ECT score being zero!

However, an obvious issue that is not addressed in the issues paper is the obligation placed on most public sector procurement practitioners to observe probity standards, implying a level of fairness and objectivity in the procurement process, which does not appear to be recognized by the business community. This can drive a focus upon transparency and equity which drives up the cost of bidding.

My perspective is that government officers try their very best to be fair and objective and sometimes this can prolong the procurement process. Similarly, tender documents can require significant amounts of information precisely because the officers are seeking to understand and manage the risks involved in either the acquisition phase or the contract management phase of the procurement process.

##### **Delays and lack of transparency of the tender process**

In terms in terms of delays and lack of transparency of the tender process, there is no question that the overwhelming majority of procurement projects in the Australian public sector take longer to evaluate than the procurement team anticipated. Quite why procurement teams are so poor at planning the evaluation process is not clear.

One reason for this may be the scrupulous fairness that officers adopt in ensuring that tenders are evaluated in as rigorous and objective a manner as possible. Another reason is delays in getting approval from the officer with appropriate delegated authority for the acquisition. However, as somebody who has advised upon tender evaluation in a large state government department, there is no question that the process is disproportionately complicated and could be simplified.

In particular, there is no evidence that spending two weeks on evaluation doubles the likelihood of reaching the optimum outcome compared to spend one week on tender evaluation. My recommendation is that delays are driven by a desire to be fair, and lack of transparency is driven by

a desire to avoid aggrieved suppliers delaying the process still further. Successful suppliers rarely complain. Assuming a three-person evaluation panel and four bids received evaluated against 10 criteria, with 30 minutes per criterion that is 60 hours work (or 4% of a single person's annual available time). The problem is not the reading and scoring of bids, it is often the clarifications, approvals and sign offs that delay the process

### **Aggregated contracts**

In terms of aggregated contracts, there is no question that government procurement officers have been taught to worship at the altar of aggregation. The implied logic is that if you go shopping in a supermarket with a big trolley, you get better deals than if you go shopping in a local store with a shopping basket. Of course, this depends upon how you define value for money. An obvious recommendation is that for whole of government panel contracts which rely upon aggregation to deliver 'value for money', there is explicit provision for disaggregating the procurement. A proportion of the total volume is separated into a quarantined quantity that is set aside for small to medium sized businesses. This implies deliberately disaggregating scale in order to optimize the opportunities for small and medium sized businesses.

The reason why this will be challenging for the public sector is that there are no mechanisms to measure the value achieved by engaging small and medium sized businesses. This might be an opportunity for the commission to promote through the Office of the Industry Advocate

### **Restricted Approach to the Market**

In terms of restricted approach to market, the reality is that there are some instances where tenders are invited giving the illusion of competition where in fact, the contract is always going to be awarded to the preferred bidder. Most taxpayers would rather that direct negotiation was approved in circumstances where it could be justified and was more prevalent rather than less prevalent.

In respect of agencies lacking technical expertise or skills in key markets or responsibility causing poor market analysis and approach to market there's no question the lack of significant private sector industry in Adelaide means that the ability of the public sector to poach experienced procurement practitioners trained in market analysis is low. Most research into markets is done on a desktop basis. This is a key need for government procurement officers in Adelaide, as it is in Darwin, but less so in Sydney, Brisbane, Perth or Melbourne.

The reality is more consideration is given to ensuring probity, to fairness, to transparency than to understanding the supply market. This is why multiple suppliers are invited in order to give the illusion of competition rather than adopt a more pragmatic approach and directly negotiate with the preferred supplier.

### **Limited information on the pipeline of future work**

The reason why there is limited information on the pipeline of future work is because of the inability of some officers outside the procurement team to plan. It is clear that some government departments in other jurisdictions, (you will find that Victoria Police is held up as a model example) are capable of giving forward notice of future acquisitions, whereas others have no visibility at all.

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.

### **Poor quality of tenders**

In terms of tenders, many tenders that I have seen in SA are relatively straightforward compared to some other jurisdictions, especially federal government departments. The main issue that I see again and again and again, is the use of an uncertain scope of work combined with the request for a fixed price. This creates a risk premium which is then built into tenders.

It is my view that the officers who evaluate tenders either do not care about the risk premium, or else they care more about fixing the price in order to give certainty to decision making. It's my experience that some (naïve) suppliers take a risk tolerant position and submit a low price the first time that they bid. Then they realize that the fixed price cannot be varied even though the scope might change or was different to that which was represented in the tender documents. The supplier learns not to do this again.

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

### **Focus on immediate cost instead of the whole of life cost**

In terms of a focus on immediate cost instead of the whole of life cost of course this is true, but this is no worse in South Australia than in other jurisdictions. The challenge is to model the whole of life cost in a more systematic way. My observation is that procurement officers fully understand the needs to focus on a whole of life cost, what they fear is challenge as to why a decision was reached on the basis of supposition, estimates, assumptions and projections rather than on the responses in the tender document.

The source of those fears, at least in my experience, is critical reviews by auditors and probity officers. If the Productivity Commission wishes to promote greater willingness to focus on total life costs, there's no point developing total cost models to support procurement staff if auditors and officers responsible for probity advice are not first trained to understand that modelling total cost is not a science. It relies on assumptions, judgments, projections and estimates. It is critical reviews by these officers which are the source of fear that drives a focus upon initial purchase price instead of total life costs. I write this as somebody who has trained staff in the Auditor General department in South Australia in auditing procurement and contract management.

### **Capacity to evaluate tenders**

In terms of the capacity of public authorities to evaluate tenders, the reality is that public sector procurement is inherently complex. And one of the challenges that public sector procurement brings is that adopting increasingly complex mechanisms to evaluate tenders does not reduce the complexity of the evaluation process, and can add a new level of complexity.

My opinion is that some of the evaluation models in use in larger departments are unnecessarily complex, and that the evaluation process is simply beyond the capacity of evaluation teams to deal with multiple tenders and reach a defensible decision. Again, what is driving the duration of the evaluation process and the attempts to include multiple variables in the decision-making process is fear of criticism, fear that the judgments that have to be made will not be defensible to subsequent internal or external review. The Freedom of Information Act creates a new layer of transparency that

is focused on justifying decisions (not necessarily making better decisions). And as a consequence, more and more information is requested from tenderers, and this information has to be evaluated in qualitative and quantitative ways.

At some stage officers with the appropriate delegated authority to approve recommendations need to take responsibility for the fact that judgments of this nature are based upon uncertainty, complexity and ambiguity, and sometimes the decision will be correct, and sometimes it won't. It is the culture of the public service to minimize risk (the so-called 'Adelaide Advertiser' test). It is this culture that drives the duration and complexity of the tender evaluation process, and it's not clear how this could easily be remedied. How will senior managers be judged if things go wrong?

One potential option is to promote discussion about the "cuffs or collars" debate. Let's say a bid evaluation team deliberately truncate the evaluation process and simplify the complexity of the tender evaluation process in order to reach a quick decision. In retrospect, the decision appears not to have been the correct one. What happens next?

In the *handcuffs* scenario, the senior officers in the department vilify and criticize the staff who made and approved the recommendation, on the grounds that decision making was poor, the careers and job expectations of the staff involved are blighted as well as the reputation of the department is damaged. What is the lesson learned by everyone else?

The *collars* refers to a clerical collar worn by a religious person like a priest or vicar who might, instead of criticizing the staff, forgive them. This might be aspirational, but it makes the point that what is driving the duration and complexity of the evaluation process is not ignorance. It is fear about how a poor decision will be treated. The underlying and recurring theme in my exposure to public sector procurement in South Australia government is that when officers are presented with a choice between optimizing compliance with the process, and optimizing outcomes, they will always optimize compliance with the process. This is because that is what affects their career personally, and who can blame them?

### **Free and fair trade**

In terms of free and fair trade in my experience of procurement in the South Australia government, which extends back to the last century, I can say that the overwhelming majority of staff involved in the procurement process sought to give local suppliers a fair and balanced opportunity. I do not believe it's in the capacity of the South Australian government to change the structure of the Australian economy. The Office of the Industry Advocate has changed the understanding of value for money, including greater complexity and breadth to the definition of value for money, especially including the economic contribution of dealing with local suppliers. However unpopular the use of mandatory weightings may be, there is no question that it has driven an increasing level of sophistication in terms of the definition of value for money.

That it came from outside the State Procurement Board, and outside the procurement practitioner community, reminds us of how junior most procurement staff are, how little authority they have, and how the choices that are made are primarily the choices of the senior leadership team in each department and agency rather than procurement officers. And the extent to which the SPB has adopted a passive role, rather than a leadership role

## 2.2 have you encountered other issues not covered by the section? If yes, what are they?

I would like to list 10 issues.

1

The first is that if you focus on full time procurement practitioners in the state, there is no question that there is a disproportionate focus upon compliance with the proposed procurement process rather than optimizing the outcome. It is certainly true that adhering to a process makes it more likely to achieve an outcome. However, if you were to look at the penetration of outcome-based contracting within the state, it is very low. Instead, we remunerate suppliers on the basis of outputs and government officers manage the procurement process and, indeed, contract management by ensuring that comply with governance, even if that compliance might lead to poor outcomes.

The solution to this is not necessarily more training for procurement practitioners. The solution is to educate auditors and probity advisors (and indeed probity auditors) upon what evidence to review when auditing a procurement project which is focused upon outcomes. If we can desensitize auditors and probity advisors to focusing on 'tick and flick' compliance to rules, and instead recognize even a failed attempt to achieve an outcome, this would make a bigger difference than simply running some briefing sessions for full time procurement staff.

2

The second issue is the combination of an uncertain scope or specification with a request for a fixed price. I believe that this combination does more to inflate tender prices and attract a risk premium than any other single procurement practice in the South Australian government. An obvious fix is that when acquisition plans are approved, there is an obligation for the author to declare whether the scope of work is defined tightly. If the answer is 'no', there should not to be an opportunity to request a fixed price for the works or services.

It is my experience that there is often a *proportion* of the work scope or services that can be defined and that proportion that can be defined might attract a fixed price. For that part of the works or services that cannot be defined the buyer might invite a unit rate instead of a fixed price. Increasing awareness of how tenderers respond to an uncertain scope, and how you might define the 'risk premium' would make a significant difference to tender prices.

3

The third issue is the lack of negotiation capability of government procurement officers. If you have spent your entire procurement life issuing tenders and avoiding talking to suppliers before tenders are issued and while tenders are open, it is unrealistic to expect that you can suddenly become commercially astute in post offer negotiation. Again and again and again bidders say that procurement people are not open to ideas. One reason for this is that procurement people have been advised by probity advisors that the same information should be given to every supplier and therefore all engagement with suppliers both pre-tender and while tenders are open should be done in a transparent and defensible way, such as public tender briefings.

A consequence of this is that officers are simply not used to negotiating face to face with suppliers, and as a consequence value is left on the table. There is nothing in existing procurement governance that forbids procurement officers from stating in their tender documents that negotiation may be undertaken with selected bidders after the receipt of tenders.

The reality is that this option would release value for the South Australian government, but only if officers with negotiation capability and commercial awareness engaged in the negotiation process. Unfortunately, those officers are not common.

4

The fourth point is the lack of understanding of contemporary procurement by senior leaders. I previously stated that most procurement staff are relatively junior and as a consequence, some key choices about procurement strategy are often made by procurement governance committees in the various departments and agencies, invariably staffed by senior or second tier managers from the department or agency. It is these staff who shape procurement strategy for the departments and agencies. It is these staff who shape acquisition plans. It is these staff who determine what resourcing should be devoted to procurement projects. It is these staff who determine what resources are appropriate for contract management. It is these staff who approve acquisition plans and evaluation plans and recommendations for award.

What level of awareness of contemporary procurement models and capabilities do these staff possess? As somebody who has met senior leaders from most departments and agencies across the SA State Government, I can say that there is a variety of levels of procurement insight amongst senior managers. In those departments that are extensively engaged with commerce (e.g. DPTI) senior leaders are constantly exposed to contractors and the issues they raise, and there is a level of commercial reality in these departments which drives an understanding of the role of the state government as a significant buyer. In other departments, however, the understanding of contemporary procurement seems to be less enlightened. At State Government level some departments may be monopsonists, and the client role is to steward markets. This is not widely appreciated. A department that understands how to engage commercial suppliers in the delivery of services and can manage the commissioning process is sometimes called 'an informed buyer'. Which departments in the South Australian Government warrant that title? Only a few.

5

My fifth point is about the inability to manage contracts. There's no question that state government departments and agencies are *relatively* capable in managing tenders and tender processes. It is my view that departments and agencies are relatively incapable in managing contracts once they have been let.

A good question for the Productivity Commission to ask is how many full-time contract management staff are there across the state government? There will be some, of course (DPTI and Education, spring to mind, mostly managing transport contracts), but the reality is in terms of capacity and capability the ability to manage contracts is a strategic weakness of the South Australia state government. Most practitioners agree that the tendering process creates *potential* value which then has to be realized during the contract management phase. It is not unreasonable to suggest that the potential value of the sourcing process is eroded and diluted by weak contract management simply because there are not enough contract managers in the South Australian state government. The task of contract management is delegated to existing officers, with no additional resource, who are expected to manage commercial contracts with little training and as a 'bolt on' to their existing duties. The results should be unsurprising

6

This point is about the relative effort expended on bid evaluation compared to negotiation. This is a proxy measure of the relative importance of probity as evidenced by the almost incredible number of hours expended in some state government departments upon tender evaluation compared to the miniscule number of hours expended on negotiation. You could argue that tender evaluation is about *selecting* the best value tender, while negotiation is about *improving* the value.

Clearly if bid evaluation is done poorly this can destroy value, just as poor negotiation can destroy value. Here is a simple rule of thumb. Let's say that most tender evaluation panels have three people, and usually three bids are returned. Tenders are evaluated against 20 criteria, taking 30 minutes each to read, score and evaluate. (A very efficient panel!) That is 90 hours work (not including writing Tender Award documentation etc). After only 18 tender exercises in a department, one year's labour has been expended on bid evaluation (based upon 220 days a year and a 7.5-hour day). The reality is in Health, DPTI, DECD and DCSI the complexity of the tenders will be greater, and the number of tenders will be a hundred times this and more.

The opportunity is to simplify tender evaluation, and, where appropriate, divert some of those hours 'saved' to post offer negotiation

7

My seventh point is about 'worshipping on the altar of aggregation'. If there is a meme in procurement it is that 'the bigger the deal, the better the price'. It is simply not true.

In a State which was one of the first to raise the importance of assessing the economic contribution of suppliers to the local economy, another practical step is to deliberately disaggregate those contracts so that a proportion of the total solution is quarantined for small, medium sized businesses or indeed social enterprises. I would suggest that up to 10% of the total contract value could be segregated exclusively for these suppliers, and that when secondary procurement processes are used with panel solutions, Government officers are mandated to include a small or medium sized supplier on any secondary procurement processes.

All of this is predicated on the assumption that understanding value requires a more sophisticated approach than just looking at the tender price. The industry advocate has championed this, and unfortunately, it runs counter to trends in other parts of the economy where budgets are under pressure, for example in health. In these departments, pressure from senior officers to 'do the same with less' or to 'do more with the same' drives a focus on price, which is antithetical to engaging in supporting local business.

This is not a reason to avoid dealing with local suppliers. It is in fact a recognition that there needs to be selectivity in which markets local suppliers should be engaged, and in which markets economies of scale are more important. The sophistication to make that distinction requires an understanding of markets, and the power of the state government (and local suppliers) in those markets. In my experience, it is the Shared Services team who possess the level of maturity, insight and expertise to make some of those judgments. The maturity of understanding of supply markets is not widely distributed amongst government officers in other departments and agencies.



8

My eighth point is about commercial acumen. It is hardly surprising that government officers who are challenged by a system that requires them to defend and justify decisions reached focus more upon 'covering their backsides' than on optimizing the commercial outcome. One way the Productivity Commission can draw attention to the benefits of commercial acumen is to listen to what suppliers say when they have raised innovation with government procurement officers.

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.

There is a trade-off to be made between avoiding the front page of the Adelaide Advertiser for some failed procurement project and taking a gamble that a new innovative solution may indeed (for example) reduce impatient hospital stays. The appetite for risk in the public sector is not great. And this is a feature of the culture of the organization which will resist initiatives by any government agency, or indeed government of the day. It was Churchill who said, "First we shape our structures, and then they shape us".

My proposed solution is that officers with delegated authority to approve procurement recommendations are themselves trained in procurement and commercial acumen, so that they are at least more aware of options other than inviting three tenders and picking the lowest bidder.

9

My ninth point is about poor planning by business stakeholders. There were times when I have reviewed forward procurement plans from departments and agencies and they have struggled to even find a forward procurement plan, or if they did find one it was a year out of date, and even then, it was populated with a couple of projects and bore no relation to the actual pipeline of work. In my view, this is not an indictment of the procurement staff, it is a lagging indicator of poor planning, poor budgeting and a reactive culture in the departments and agencies. From time to time, you will be told stories about politicians 'moving the goalposts' and announcing initiatives on live TV, prompting government officers to scurry around and respond to by instituting procurement solutions after the public announcement has been made.

While I'm sure this happens sometimes, the reality is that business as usual in most government departments does not include planning projects in sufficient detail to allow the procurement phase of the project to be notified to the market in sufficient time for the market to take account of it. This is a cultural issue to do with budgeting and project planning rather than indictment of procurement practitioners.

10

The tenth and final point is about the inability of officers in the state government to specify quality levels for services. As an exercise you might wish to consider inviting departments and agencies to share some specifications for services that they have requested. You will find a description of a scope of works, what you will not find is a statement saying to what quality standard should the works be conducted. In fact, I would go so far as to say that there are very few specifications issued by departments and agencies across the state government that actually define in a measurable way the service level that should be achieved in the delivery of services. They are almost invariably a



*description* of services rather than the definition of a quality *standard*. You may wish to reflect about what this means for the suppliers when they are pricing the services, and indeed for the contract managers when they come to manage service performance. In my view, there needs to be a library of KPIs and service levels developed and maintained centrally, which are then syndicated to departments and agencies so that they can draw on a common library of defining quality standards and adapt it for different service standards.

### **2.3 What improvements can you suggest to cut red tape and unnecessary costs?**

The main opportunity that I have seen is that tender evaluation processes are unnecessarily complex and actually make the tender process more elongated and harder to defend because they're simply too complex themselves

### **3 Do the guidelines, rules and other procedures and the State Procurement board provide reasonable guidance on the requirements of the procurement process? If not, how could they be improved**

As someone who has reviewed compliance with the State Procurement Board's governance across departments and agencies in the state government for many years, I can tell you that there are two responses to this question. The first is what the guidance actually says, and the second is how departments and agencies *interpret* what the guidance says.

The reality is that most jurisdictions in Australia at state government level have adopted complexity-based governance processes after abandoning financial threshold-based governance processes. The first jurisdiction to adopt a complexity-based model was Queensland and the last jurisdiction to do this was the Victoria State Government. South Australia was one of the first jurisdictions to adopt a complexity-based approach, more than a decade ago. So in terms of procurement governance, the State Procurement board is a model of issuing exemplars, templates and frameworks that allowed departments and agencies to manage the procurement processes based on their own particular spend portfolio. The Queensland state government has adopted the mantra 'centrally enabled, agency led' as a way of describing the balance between the role of the central team and departments and agencies.

In my experience, the State Procurement Board has seen its role as enabling rather than directing, nurturing rather than controlling. This has resulted in advice and guidance which is general and non-prescriptive, designed to be as relevant to SA Health as the Tourism Commission. This means that the guidance is generic and broad, and public authorities can choose how to interpret the guidance. Departments and agencies have adopted practices *broadly* in line with the State Procurement Board's requirements adapted to align with their particular spend portfolio.

I have recently reviewed the annual report of the Victorian Government Procurement Board and analysed the extent to which the departments and agencies in that jurisdiction have adopted consistent practices. For example, in terms of classifying the acquisitions using a complexity matrix it is clear that there are wide disparities in classifying procurements by complexity in that state government. Levels of procurement maturity and comprehension differ from department to department. This is also true in the South Australia government, with the larger departments and agencies (especially if they have full time procurement staff) demonstrating that the State Procurement Board's guidance is sufficiently broad to enable, inform and guide departments with

quite different spend portfolios. The problem comes in smaller departments and agencies which do not have a single full-time procurement person, and whose *perception* of what the rules say is driven by the traditional threshold-based procurement governance. Here market approaches are informed by mental models that assume that you need to get three quotes for all purchases.

The single biggest opportunity for improvement is in terms of contract management. There's no question that the quality of contract management across the state government is poor, with one or two notable exceptions. There are simply not enough full-time contract managers, and those that are involved in contract management are not given the support and the resources they need to be successful.

### **3.2 Is the application of those guidelines, rules and other procedures by agencies reasonable?**

The answer to that question is where there is a full-time procurement resource the answer is 'yes', and when there is not a full-time resource often the answer is 'no'. How could they be improved? I think smaller departments and agencies in procurement terms should be clustered into sharing a full-time procurement resource rather than assume that officers who were parented in other functional disciplines can be expected to 'bolt on' procurement expertise to their existing roles. In other words, there should be a shared services solution for small departments and agencies that do not warrant a full-time procurement person. This might also be considered for contract management, the single biggest opportunity to improve the professionalism of the procurement process in the South Australian government.

### **3.3 Are the thresholds for small medium and large tenders reasonable?**

Yes

### **3.4 Do you receive reasonable feedback on the outcomes of the tender process?**

No. I used to be of the view that giving detailed feedback was problematic in terms of stimulating aggrieved suppliers to register complaints or seek to subvert the outcome of the procurement process. I am now of the view that government officers might be required to publish the total scores of the various bidders, so that each tenderer is clear that, for example, they scored 68 points and the winning bid was 84 points.

This would perhaps give guidance to suppliers as to how they might become more competitive. There is an interesting debate to be had between auditors, procurement staff, and probity advisors as to the level of transparency that might be adopted. One school of thought is that all of the scoring against each of the criteria might be shared publicly with bidders. There will always be some suppliers who will disagree with the decision and will use the feedback to mount a challenge. I think reasonable compromise is to give suppliers details of the own scoring 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 if indeed, quantitative decision was reached.

### **3.5 How can agencies improve how they manage contracts?**

As indicated previously, this is the single biggest opportunity. If the Productivity Commission was to conduct an interview with the full-time contract managers across the state. It wouldn't take you long, because I don't believe there are any. There may be some staff who actually manage contracts but don't have that in that job title. They will be found in DPTI and perhaps in the Department of Education, and that should tell its own story.

What would you expect if you engage part time staff to do something for which they have received little training, and which is a 'bolt on' to their additional duties? The answer to 3.5 is to improve the capacity and capability of contract managers and to ensure that their position descriptions reflect the contract management roles. The PD should also define specifically the capabilities needed to manage commercial contracts, which should then be linked to the 36-month obligation to attend mandatory training delivered by the SPB

### **3.6 Do the current guidelines, rules procedures in the operation of the complaints process work satisfactorily, how can they be improved?**

I have witnessed it first-hand how a state government department responded to a supplier complaint, and the response to the potential reputational damage was disproportionate to the actual legitimacy of the supplier complaint.

Suppliers have limited visibility at the extent to which procurement officers seek to adopt the highest standards of probity and fairness. There is no question that there are some examples of poor procurement practice across the State government as there are in any large organization. However, unless the complaint concerns fraudulent behaviour, I think that the level of complaints tells its own story. The level of complaints is extraordinarily low.

### **3.7 Why are complaints infrequent?**

I remember getting feedback from a state government officer in another jurisdiction who looked me in the eye and told me that we had been unsuccessful for a tender on the basis of value for money. The winning tender, he told me, was three times the price of our offer. At that stage, I wanted to cross the table, rip off his identity badge and escort him from the premises myself. If the spread of tenders received at the tender opening ranged from 100 to 300, (or in other words, some tenders were three times the value of other bids) this is a clear indictment of the tender documents.

The scope of the tender was so vague, so uncertain, that the bidders simply did not know what the scope of works were. To then say that a tender that was three times our bid was 'better value for money' was simply incredible. Instead of escorting the gentleman from his own office I nodded and smiled and said, 'Thank you!' The reason why I said 'thank you' is because there was no upside for pointing out that he didn't know what he was doing. He was incompetent, and the whole tender exercise should have been abandoned as soon as the tenders were opened. There is no reason to assume that that isn't the same script that most bidders would adopt when they receive feedback.

### **3.8 Has the balance between value for money objectives, meeting the objectives of government and growing the local economy been achieved by the current arrangements and if not, how can it be improved?**

I think it is too soon to answer this question. Lots of credit needs to be given to the Office of the Industry Advocate for broadening the understanding of what is value for money in procurement in the state government. State governments in Australia have lagged behind local authorities which have long had a greater sensitivity to the impact of their procurement activities on the local economy. If I live in another state and travel to Adelaide and train 20 government procurement staff in negotiation over two days, and then travel back to the state where I live, what is the economic contribution I have made to the state government? Is it the taxi fare to and from the airport, the value of the hotel accommodation and the meals I ate? Well, if that is how you measure economic contribution then that's all the contribution I would have made.

The reality is the outcome of upskilling twenty government procurement staff in negotiation would dwarf more easily measurable activities such as the number of man hours expended in South Australia. However, as a proxy measure, it is simple and a good place to start.

### **3.9 Is the economic contribution test a useful tool in the supplier selection process?**

It's a start. Other jurisdictions use similar approaches and I think about 10% is a fair weighting

### **3.10 Is the level of reporting and compliance required under the IPP effective**

It is relatively simple to complete and has the net effect of discouraging me from tendering for work in South Australia on the not unreasonable grounds that I will be scored out of 85 rather than out of hundred. Whether this adds value to the South Australian government is a matter for the industry advocate and the government of the day to judge

### **3.11 Does the State Procurement board risk management framework provide sufficient guidance to agencies? If not, how could it be improved?**

The answer to this question is 'yes'. However, it is my experience as having read hundreds of acquisition plans that when government officers write risk management statements, they only address the risks presented during the *acquisition phase* of the procurement process. They answer, 'how could it be improved?' is to instruct and inform government officers that when they write risk management plans as part of an acquisition plan, they must not only address the risks presented during the acquisition phase of the procurement process, but also the whole of life of the service or good, including disposal/recycling. This single act would have the largest significant impact and improve the quality of risk management during the procurement process. This refers back to commerciality and also outputs and outcomes

### **3.12 Can the application at the risk management framework by public authorities be improved?**

Yes. How might this be done? By creating a template or guidance that forces government officers to focus upon the whole of life of the asset or service and not just address the risks presented during the acquisition phase of the procurement process?

### **3.13 Are the South Australian procurement systems Key Performance Measures adequate? If not either other measures that can be used?**

No, they are not adequate. A more sophisticated portfolio of measures would be to address input, process and output measures. **Input** measures might measure the ratio of procurement staff expressed as a percentage of spend. The cost of managing the procurement process for expressed as a percentage of the value of the spend under management figures may range from 0.8% up to 4%. This would be calculated by excluding the shared services, accounts payable staff and calculating the number of man hours expended on both the acquisition phase and contract management and expressing that as a percentage of the value of contracts awarded.

I would suggest that the greater the focus on compliance and probity, the higher the figure. So public sector values will be closer to 4% or maybe even higher simply because of the increased transparency and the policy burden associated with being in a transparent and defensible procurement process.

So input measures are important how many procurement staff are employed, and perhaps there might be variants on this which address, for example, the value of spend for each procurement person. These are crude measures and need careful interpretation. For example, some departments have diverse and complex spend (SA Health) and some have a large proportion of repetitive contracts which are less novel (DEWNR).

The same measures might also be applied to contract management, if indeed contract management staff could be identified. That would be a challenge for most departments and agencies, let alone for the State Procurement Board.

The second suite of measures might be **process** measures, which might include the number and cycle time of procurement processes. While quicker does not always equal better, there are some procurement processes which take more than nine months from beginning to end. Some may be abandoned part way through. These are leading indicators of lack of executive support or lack of governance and good measures of the lack of traction that procurement planning has in most departments and agencies. Why do some Departments have more direct negotiation than others? What is the mean number of clarifications received per tender? Why is that? What proportion of invoices cannot be matched in BASWARE as there is no relevant PO number? Why is that?

**Output** measures address the actual impact of the procurement process. Given the focus on risk management and risk treatment, it is not unreasonable to ask the question 'did the risk management approach of the procurement process successfully reduce the residual risk borne by agencies and departments?' If there are departments under budgetary pressures like SA Health, it is not unreasonable to measure 'savings' even if they are 'hard dollar' savings focused on the purchase price. What proportion of spend was expended in SA? How many new jobs were created as a result of SA firms winning State Government projects? These are outcomes, and are harder to measure, but represent the contribution of the procurement process to the goals of the government of the day.

The measures that are given in the issues paper demonstrate a lack of understanding of the potential role and contribution of the procurement process to the State Government.

#### **4.1 Improving procurement processes for small business in SA**

I've always found that public sector departments are relatively good in terms of payment, especially compared with some private sector enterprises

#### **4.2 What other policies supporting SME procurement in other jurisdictions should be considered in South Australia?**

There is no question that Gold Coast City Council is the leading exemplar of enlightened procurement practice in dealing with socially responsible procurement. The officer who is championing that in Gold Coast City Council used to work at Olympic Dam. That it is a local authority that is leading the way into terms of socially responsible procurement should be no surprise to

anyone who understands the landscape of the penetration of non-economic factors into government procurement. Federal and State governments have lagged behind local authorities which for many years have shown a greater sensitivity to the impact of their behaviours on local businesses.

The best example of socially responsible procurement will not be found at State Government level, it will be found in local authorities. Gold Coast City Council is the leader by some margin. The exemplar at a larger scale is the New Zealand Government, whose ability to engage with, and support what is described as 'New Zealand Inc.' is a good example of how public sector procurement can be used as a lever of economic and social change. I would further suggest that the inclusion of contract clauses (such as the domestic violence clause) is tokenistic, and a more powerful step is to engage and empower female-owned and run businesses. Most 'Mom and Pop' shops are 50% female owned; what could be done by supporting >51% female owned businesses? Or 100%? Supply Nation shows what can be done in the indigenous community. But who is there to lead these socially responsible approaches? What has happened to the CPO in the State Government?

#### **4.3 How could government and business benefit for a more targeted or industry specific approach to procurement and industry participation policies?**

An obvious opportunity is that there may be interstate bidders who are discouraged from tendering for work in South Australia because they realize that they will score zero on the economic contribution test. However it is possible they could partner with or subcontract to a local business to be at least part of the delivery of the services or goods that are involved and at least score something on the economic contribution test. However, if you are located outside South Australia, how can you be aware of who might potentially be a subcontractor or a potential partner in South Australia? An opportunity is to create a register of capability such as is provided by ICN or a list of social enterprises or other subcontractors who might be potential partners in service delivery

#### **4.4 What policies would be most beneficial?**

A policy that for secondary procurement processes where multiple bids are invited from panel members, at least one of those bids should be from a small or medium sized enterprise or indeed, from a social enterprise would mandate or force procurement officers to include offers from firms that they might not normally engage on the grounds that 'I don't know anything about them.'

#### **4.5 To what extent could these types of programs and policies improve the efficiency and effectiveness of the South Australia procurement system?**

As someone with reasonable experience of both the VGPB and the South Australia State Procurement Board, there is no question that the South Australia State Procurement Board has created a more mature and more sophisticated framework for developing procurement capability than the VGPB. The SPB has for many years run a nurturing and supportive approach to developing procurement capability and while the SPB can be criticized for its passive role in procurement leadership, it has at least maintained a consistent approach to developing procurement capability.

The tools that are referenced including the New Zealand government procurement capability index are only a means to an end. I have been the architect of a number of tools to develop a procurement capability in Australia and beyond and my opinion is that the issue is not so much the tool, as the extent to which the tool acts as a catalyst for the departments and agencies to take ownership of their own capability.

The most obvious opportunity is to compare different departments and agencies across the South Australia state government and ask, 'why is there such variation?' This would require a more assertive role for the centre, one which the SPB was reluctant to adopt. If the State was a company, rather than a public entity, the various public authorities would be compared against each other in terms of inputs, processes and outputs, and the 'laggards' encouraged to develop capability.

This would require a change in role for a central team, a more paternal role in 'levelling up' capability and capacity. Is there an appetite to do this? Is the staffing level for the tendering process consistent in terms of the ratio of the number of people involved in procurement compared the spend in that department or agency? Is that ratio consistent across all the departments or agencies? If it is not and then ask yourself why is that?

You might then ask what value of contracts are managed across the agency and what level of resources are expended on contract management? And then ask yourself why do these figures vary? Comparing capability frameworks with other jurisdictions can indeed help you identify a different approach to developing procurement maturity. However, the benefit that departments and agencies have had in South Australia is a relatively consistent approach to developing procurement capability over many years. Changing it will not necessarily improve the quality of the procurement maturity in different departments and agencies.

It is leadership that is lacking, not a different type of tool

#### **4.6 What other examples aware of that would improve South Australia's procurement system.**

There is no question that in terms of southern hemisphere procurement the New Zealand government is an example of good practice. And if you were to look at the proportion of people who work in procurement in the Kiwi government who are professionally qualified in procurement, and then compare that to the proportion of people working in the procurement process in the South Australian government who professionally qualified in procurement, you would get a clear indicator of one of the key steps needed in order to professionalize procurement in South Australia.

#### **4.7 To what extent can value for money be achieved through innovative social, inclusive or ecologically sustainable procurement approaches**

I think the fact that this issues paper fails to mention ISO 20,400 (or the Modern Slavery Act) tells its own story. It tells a story of people who do not understand procurement trying to advise and guide others about how procurement might be improved. A recurring pattern for the South Australian Government! The answer is to require authors of acquisition plans to include reference to the extent to which they have assessed not only the first-tier suppliers but also the whole supply chain in terms of the risks and opportunities to comply with ISO 20,400. What programs or policy should be considered? The answer to that is promote a consistent approach to adopting ISO 20,400 and the Modern Slavery Act.