

25 September 2019

Dr Matthew Butlin
Commissioner
South Australian Productivity Commission
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Business SA
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Dear Dr Butlin

I write in response to your Draft Report on Stage 2 of the Government Procurement Inquiry (capital projects and prescribed authorities), subsequent to Business SA's prior submissions to both Stage 1 and 2 of this inquiry.

Executive Summary

- Business SA welcomes the Commission's consultative approach to reaching its conclusions throughout the Inquiry and its availability to discuss any related matters
- We support the Commission's intent to realise improved whole-of-Government procurement outcomes, bearing in mind that public corporations such as SA Water are also required to meet specific commercial outcomes which may necessitate a level of flexibility with this approach
- A future procurement transparency requirement for Government will be a step in the right direction, but it should also be complimented with a more targeted approach to ensure Government openly considers a range of options in the procurement planning stage, providing businesses with more opportunity to suggest alternative approaches to reach the same desired outcome; in the same vein as existing processes for regulated energy networks
- The final report would benefit from being more explicit about how the Government can better manage intellectual property (IP) ownership to ensure that innovations developed by local businesses through procurement can reach their maximum commercial potential

Should you require any further information or have questions, please contact Andrew McKenna, Senior Policy Adviser, on (08) 8300 0009 or andrewm@business-sa.com.

Yours sincerely,

Anthony Penney
Executive Director, Industry and Government Engagement





General feedback on Draft Report

1. Business SA welcomes the Stage 2 draft report of the Commission's Inquiry into the State Government's current procurement spend of more than \$11 billion per annum.

We support a strong focus on supporting the development, and maintenance of, high calibre procurement staff within the State Government. This is particularly important should the State Government follow the Commission's proposal to move from a more rules-based compliance approach to procurement, to one which incorporates greater use of professional judgement. Notwithstanding, we acknowledge that shifting to this type of approach should occur in conjunction with building a higher degree of trust with the private sector. Ultimately procurement staff within Government are making decisions with public money and while the rules must not be set to unnecessarily constrain the Government from realising value for money, equally the Commission needs to have commensurate regard to the high expectations of probity on the public sector which exist for good reason.

2. While the Commission makes reference to some concerns within Government about existing procurement thresholds, aside from recommendations to lift the minimum threshold of the economic contribution test and adjust the Treasurer Instruction thresholds (contained within the Stage 1 Final Report), there does not seem to be other specific analysis or recommendations pertaining to whether remaining procurement thresholds are appropriately set, including within prescribed authorities. Business SA recommends this matter be addressed in the final Stage 2 report.
3. The draft report recognises that any public work with an estimated value over \$4 million (GST exclusive) must be referred to the Parliamentary Public Works Committee (PWC). However, there is no subsequent analysis of the role of the PWC in providing a due diligence check on State Government capital projects. While Business SA recognises the intention of the PWC is not to stand in the way of the Government progressing with necessary capital projects, and nor should it be, equally its purpose extends beyond rubber stamping an incumbent Government's projects.

In its final report, the SAPC should provide some analysis of projects submitted to the PWC for review and where its recommendations were utilised to enable an enhanced project to proceed or otherwise. This investigation should extend back at least 10 years to adequately capture Governments of both persuasions and determine the costs and benefits of this committee within a political construct.

4. Business SA welcomed the SAPC's Stage 1 report recommendation to ensure Government agencies publish a forward procurement program over two years. This is critical to provide clarity for SMEs seeking to understand medium term opportunities to benefit from Government procurement.

While certainty of Government procurement intentions is important, it can sometimes only be one piece of the puzzle if there are multiple options available to the Government to achieve a desired outcome. This is particularly relevant for SMEs seeking to propose innovative solutions to address Government problems.



In the case of the regulated electricity network sector, the regulatory investment test (RIT), (RIT-D for distribution and RIT-T for transmission), is effectively a cost-benefit test that monopoly energy network businesses must apply when assessing the economic efficiency of different investment options. According to the Australian Energy Regulator (AER), *'The RIT promotes efficient network investment in the NEM for the long-term interests of consumers. It does this by enhancing consistency, transparency and predictability in planning processes.'*¹ The RIT specifically requires networks to:

- consult with community stakeholders throughout the RIT process
- consider all credible network and non-network options as part of their planning processes
- explicitly consider the wider market benefits of their investment decisions
- fairly assess non-network options, such as demand-side management, against network options.²

There are slight variations in the extent of RIT requirements depending on project cost and whether within distribution versus transmission networks, but effectively for energy network augmentation projects over \$6 million, some form of RIT applies. For example, ElectraNet is undertaking a well publicised RIT-T process for its \$1.53 billion interconnector proposal to link South Australia's electricity grid directly with New South Wales.

Business SA is not arguing for the same level of structure to be applied for large Government department procurement projects, but the framework for the regulated monopoly energy network businesses provides some useful context to consider how Government departments could approach their procurement decisions. This would require further transparency in the planning stage of procurement to ensure that all possible options were considered, and that the market had been appropriately tested.

Feedback on specific recommendations

5. *Draft Recommendation 2.1*

While Business SA supports the intent of having PPAs adopt relevant whole-of-government goods and services arrangements for their common purchases, we contend that PPAs with commercial drivers such as SA Water should not necessarily be limited to whole-of-government procurement options.

The test for exclusion from whole-of-government procurement should also be more definitive than demonstrating superior administrative efficiencies and economic benefits. For example, in the case of SA Water being a public corporation, it also has a requirement to perform its commercial operations in accordance with prudent commercial principles and to use its best endeavours to achieve a level of profit consistent with its functions. This needs to be considered for in relation to any whole-of-government procurement mandate recommended by the Commission.

6. *Draft Recommendation 3.1 - Support*

7. *Draft Recommendation 3.2 – Support*

¹ Australian Energy Regulator, Fact sheet on regulatory investment test for distribution, August 2013

² Australian Energy Regulator, Fact sheet on regulatory investment test for distribution, August 2013



8. *Draft Recommendation 3.3 – Support*
9. *Draft Recommendation 4.1 – Support*
10. *Draft Recommendation 4.2*

Business SA encourages recommendations to push Government to be more accommodative and supportive of innovative proposals within tenders but we do not believe this recommendation sufficiently deals with matters pertaining to intellectual property rights. The second component of the recommendation '*agencies to accept and manage the inherent risks involved in procuring innovative products, including the approach to helping businesses developing their IP*' is unlikely to make a material difference to how innovative proposals are treated within Government.

While Business SA recognises there are a range of factors which drive the current treatment of innovative tender proposals, and some for good reason to protect the taxpayer, this recommendation in its current form is unlikely to achieve a measurable result and should be reconsidered.

As we have previously stated, we have concerns that Government is retaining IP which could otherwise be developed by the private sector. While Business SA accepts the Government may wish to retain access to IP, which can be achieved through other mechanisms such as licencing, we believe the Commission should be more definitive in directing Government to facilitate commercialisation of IP developed through procurement. If such enterprise is unlikely to be driven by Government anyway, which is what we contend, there is a deadweight loss to society from unnecessarily prohibitive treatment of IP ownership. Similar concerns have been raised by businesses in relation to how universities treat IP innovations from a legal perspective which can stymie commercial development with the end result being no party is better off.

Feedback on Information Request 5.1:

Business SA supports the Commission's intent of seeking to measure the economic contribution of local suppliers through expanding the current industry participation policy framework to consider the contribution of local suppliers in interstate and international supply chains. Many successful South Australian businesses are active in both interstate and export markets, and growing those revenues for local businesses should be an equally important focus of Government policy aimed at generally facilitating growth opportunities for local businesses. Business SA provides a range of export related support from trade and migration services, to our flagship Export Ready training program, and we would like to see the State Government's procurement policy have mind to how locally companies can be encouraged/assisted to grow market opportunities beyond the State's borders.

Importantly though, any changes to the Economic Contribution Test or Industry Participation Policy should not add unnecessary and costly compliance to Government tenders. Furthermore, it should only be considered if it is likely to have a bearing on a procurement related decision, and not just as a 'nice to know' exercise.