



**Government of South Australia**  
Office of the Industry Advocate



# **Performance Based Tendering**

## **Preliminary discussion paper**

Updated 23 April 2014

## **Purpose**

The purpose of this document is to provide an overview of Performance based tendering and to seek input from a variety of businesses that tender for government work to find out how, in their experience, performance based tendering could have allowed for more innovative and cost-effective solutions for Government.

## **Background**

In February 2013, the Office of the Industry Advocate (OIA) was established, led by the Industry Participation Advocate (IPA), to investigate and report on further ways of encouraging a greater number and diversity of local businesses to effectively participate in government procurement processes.

The OIA recently engaged Deloitte Access Economics (DAE) to map the economic gains from procurement spending including the benefits that government can leverage through its procurement activities, which include supporting innovation, socio-economic objectives and training in the workforce.

Additionally, Ernst and Young (EY) were engaged to conduct a preliminary review on procurement efficiencies in the South Australian Government. This review concluded that a whole-of-government (WoG) approach to procurement has the potential to deliver significant savings to the State.

WoG procurement is currently conducted in only a small number of areas. This is not only inefficient it also reduces the ability of Government to source at the best price while maintaining other economic and social benefits like employment and investment outcomes for the State from Industry Participation.

Innovation has been identified in playing a significant role in both increasing long run domestic growth opportunities and increasing competition. Increases in innovation are capable of increasing the monetary value returned to the State in addition to improving the quality of goods and services procured (Grace, K 2013)

Nearly every business the OIA has encountered has communicated their frustration that the bid rules and tender specifications for South Australian Government tenders are too prescriptive and do not allow for innovative solutions to be presented to the tender assessment panel.

Traditionally, government contracts tend to emphasize inputs rather than outcomes. For example, contracts typically detail the procedures and processes to be used in delivering a service; amount and type of equipment; and/or time and labour to be used.

In February 2014, the Government approved a recommendation from the Industry Participation Advocate to investigate the application of performance based tendering in Government contracts. The purpose of this paper is to identify appropriate and innovative opportunities for the application of performance based contracting, within a wider category led buying approach to procurement, to maximise the economic benefit of SA Government procurement spending.

## Discussion

### What is Performance Based Tendering?

*The Office of the Industry Advocate has conducted preliminary desk-top research into performance based tendering in both a domestic and international context and notes the following viewpoints; however this information is not extensive and the Office is open to further information and education on the topic.*

The term Performance Based Tendering (PBT) is interchangeable in this document with Performance Based Contracting, Outcome Based Tendering and Outcome Based Contracting. It is the preliminary view of the Office that PBT covers the entire procurement process, from acquisition initiation through to contract management.

Performance Based Contracting is a results-oriented contracting method that focuses on the outputs, quality, or outcomes that may tie at least a portion of a contractor's payment, contract extensions, or contract renewals to the achievement of specific, measurable performance standards and requirements. These contracts may include both monetary and non-monetary incentives and disincentives. (Principles & Practices of Public Procurement 2012)

There are four key attributes for Performance-based contracts:

1. Describe the requirements in terms of results required rather than the methods of performance of the work.
2. Set measurable performance standards.
3. Describe how the contractor's performance will be evaluated in a quality assurance plan.
4. Identify positive and negative incentives, when appropriate. (GAO 2002 and Principles & Practices of Public Procurement 2012)

The purpose of performance based contracting is to obtain overall better value, better performance, lower costs, or both. Performance based contracting requires output/outcome-based specifications and procedures that require the contractor to devise the most innovative, efficient, and effective way to perform the work. (Principles & Practices of Public Procurement 2012)

Performance-based tendering structures all aspects of an acquisition around the purpose of the work to be performed with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work. (GAO 2002)

Performance-based contracts clearly spell out the desired end result expected of the contractor, however the manner in which the work is to be performed is left up to the contractor. Contractors are given as much freedom as possible in figuring out how best to meet the government's performance objective. (GAO 2002)

Performance-based contracts offer significant benefits. Primarily, they encourage contractors to be innovative and to find cost-effective ways of delivering services. By shifting the focus from process to results, they also promise better outcomes for governments. (GAO 2002)

The Government of South Australia has a role to play in raising the standards of procurement activity to lift the economic contribution of procurement activity in South Australia. This must be seen as a joint project with increasing the SA Government's procurement efficiency and effectiveness. There are three factors driving the need for change connected to this project:

- Assessment of tender proposals by government panels
- Monitoring of the delivery of projects, including promised use of local labour, capital and supply chains
- Reduction of other red tape – identifying other areas of the procurement process where there can be a commensurate reduction in red tape to assist local industry. (DAE 2014)

Key characteristics of a PBC are that they:

- focus on outcomes, outputs and quality, rather than how the work is performed;
- use measurable performance standards that are indicators of the required outcomes;
- have clear accountability for contract outcomes (ie, the contractor should have control over the processes to deliver the required goods and/or services);
- combine monetary and non-monetary contractual incentives and disincentives (rewards and remedies) that vary in response to performance, and which are specifically designed to motivate the contractor to the achievement of the required contract outcomes;
- have an appropriate governance framework applicable to contractor processes (e.g. regarding quality and safety); and
- are typically part of a larger performance-based management framework. (DMO 2011)

The Office of the Industry Advocate is promoting the concept of industry category specialists to guide and support the procurement reforms approved by the Government, including Performance Based Tendering. It is anticipated these category specialists would have sufficient authority to oversee how government procurement operates and direct agencies to ensure the utilisation innovative solutions delivered by locally based businesses.

### **Approach the IPA will take**

The Office of the Industry Advocate is seeking input from a variety of local businesses, across a range of industries to provide information about their experiences in tendering for work for the South Australian Government, specifically in the following cases:

1. Where performance based tendering was used in the procurement process
2. Where performance based tendering was not used but the specific procurement was well suited to this approach.

A range of thought provoking questions is contained in Attachment 1 to assist in the provision of relevant experiences and recommendations.

Once this information has been received, a more refined discussion paper will be developed and provided to the six Industry Advisory Panels and the Innovation Think Tank established

by the Industry Participation Advocate. These members will be invited to provide additional input to the paper before a final report is presented to Cabinet.

## References

Australian Government Department of Defence, Defence Material Organisation (DMO), Managing Contractor Performance under Productivity and Performance Based Contracts – The PPBC Handbook, June 2011 Accessed at:  
[http://www.defence.gov.au/dmo/gc/asdefcon/asdefcon\\_support.cfm](http://www.defence.gov.au/dmo/gc/asdefcon/asdefcon_support.cfm)  
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Deloitte Access Economics (2014). Economic contribution analysis of State Government Procurement.

Grace, K., (2013) Understanding the Impact of the Public Procurement Process on Innovation: A South Australian Perspective. *University of Adelaide: Internship Report*

Principles & Practices of Public Procurement (2012), Public Procurement Practice: Performance Based Contracting Accessed at: <http://216.22.26.112/wp-content/uploads/2013/04/PerformanceBased.pdf> (02/04/2014)

US Government Accountability Office (GAO) (2002), Contract Management: Guidance Needed for Using Performance-Based Service Contracting. Accessed at: <http://www.gao.gov/products/GAO-02-1049> (02/04/2014)

## Attachment 1

<b>FEEDBACK</b>
<p><b>Relevant Experience</b></p> <p><i>Have you ever been involved in a Performance based tender before?</i></p> <p><i>Have you been involved in a tender process that, in your opinion, would have been better if a performance based approach was taken?</i></p> <p><i>What were the circumstances and outcomes?</i></p> <p><i>How have you found innovative solutions to a government procurement been received?</i></p>
<p><b>Desired outcome</b></p> <p><i>What would the outcome be for your business if the South Australian government adopted performance based tendering?</i></p>
<p><b>Likely impediments</b></p> <p><i>What do you see as the likely impediments to achieving your desired outcomes listed above?</i></p>
<p><b>Changes necessary to current procedures and practices</b></p> <p><i>What recommendations do you have for the implementation of performance based tendering?</i></p>

Written feedback should be provided by email to:

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