Local Content in Government Procurement
LOCAL CONTENT IN GOVERNMENT PROCUREMENT

This report has been prepared for submission to Parliament under the provisions of section 25 of the Auditor General Act 2006.

Performance audits are an integral part of the overall audit program. They seek to provide Parliament with assessments of the effectiveness and efficiency of public sector programs and activities, and identify opportunities for improved performance.

This audit assessed the effectiveness of government procurement initiatives in delivering local content and employment.

I wish to acknowledge the cooperation of the staff at the agencies included in this audit.

COLIN MURPHY
AUDITOR GENERAL
5 December 2017
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Auditor General’s overview

As well as competing globally, business in WA wants to secure local opportunities, including those that come from government procurement. Government wants to support local and regional companies and the jobs they provide. But it also has a duty to taxpayers to secure best value for money, and has to comply with broader trade agreements and procurement rules. Attempting to ensure that government procurement provides local content is complicated.

This complexity is reflected in the Buy Local Policy. The way the Policy interacts with other legislation and rules can render it ineffective exactly when it might appear most relevant. The Policy is very difficult for agencies to apply and enforce, and a lack of information makes it hard to demonstrate if it is making a difference. In short, change is needed.

Legislation has been introduced to the Parliament aimed at changing the Government’s strategy, the Policy and its implementation. My report will, I hope, help shape that change by better informing Parliament and the community, and my recommendations will, I trust, give impetus to agencies implementing more workable and effective local content arrangements.
Executive summary

Introduction

This audit assessed the effectiveness of government procurement initiatives in delivering local content and employment. We focused on the following lines of inquiry:

1. Are local content policies effective in creating employment and stimulating sustained local business activity?
2. Do agencies apply local content policies consistently to all relevant procurement activities, including activities by contractors?

This audit focuses on the state government’s Buy Local Policy (the Policy) as the key local content policy. Audit data was supplemented by a survey of Western Australian businesses that received 64 responses.

Background

The total annual value of Western Australian (WA) government procurement over the last 5 years has been around $25 billion. The Policy, introduced in 2002, aims to sustain and, if possible, increase the share going to local businesses. It sets out principles and objectives of choosing local suppliers at the regional and state levels where possible and balancing this with the need to get value for money.

A number of other WA policies and guidelines support and interact with the Policy, creating a policy framework that includes national laws and policies, international trade agreements that include government procurement and the Australian Constitution (Figure 1). The Buy Local Policy requires government agencies to include local content selection criteria for contracts above $750,000. But the effects of these trade agreements and the Australian Constitution are that if tenders are received from interstate or certain countries, local content criteria do not apply.

Figure 1: Policy framework affecting the Buy Local Policy
The Western Australian Jobs Bill 2017 introduced to Parliament in September aims to strengthen the framework by applying new legislated obligations to a wider range of government bodies, including government trading enterprises. This will require a review of the Policy.

Under the Policy, local content is defined as the proportion of the contract that is undertaken locally in WA and includes:

- the source of goods, materials and services
- the degree to which local suppliers and subcontractors are used.

The Policy applies a system of zones to determine whether a business or content is local (Appendix 1):

- Zone 1 is the Perth Region
- Zone 2 is the Wheatbelt, Peel, South West and Great Southern. In Zone 2, ‘local’ means within 200 kilometres of the point of delivery
- Zone 3 is the rest of the state. In Zone 3, ‘local’ means within 400 kilometres of the point of delivery.

Local businesses are those that have local office addresses within these zones that are not just postal addresses, regardless of whether they have offices elsewhere. If there is little or no local content offered within these distances, then ‘local content’ means content from within WA, and if not within WA then within Australia.

Tenders are adjusted with a formula that weights local content in the assessment. The system also applies price preferences for regional content and regional businesses and imposes additional costs on imported content. These adjustments are used to compare tender bids only and have no effect on the amount actually paid.

The Policy requires that agencies report the value of contracts awarded to local businesses to the State Supply Commission. More detailed reporting, such as the local content of contracts, is not required by the Policy. State agreements for major projects require local content reporting to the Industry Participation Unit of the Department of Jobs, Tourism, Science and Innovation (JTSI).

Many requests for tender and contracts are issued by the Department of Finance on behalf of client agencies. Some large agencies, such as Main Roads WA and the Housing Authority, issue their own requests for tender and contracts.

**Audit conclusion**

Agency monitoring and reporting of local content in government procurement is not adequate for them to be able to demonstrate whether their contracts are creating employment and sustaining business activity. The lack of clear responsibility for Policy oversight, monitoring and compliance reporting, makes assessing its effectiveness more difficult.

The Policy helps regional businesses compete for regional contracts against metropolitan suppliers, but does little to help WA companies win contracts against interstate and international competition. This is because constitutional protections of interstate trade and some free trade agreements override it.

Although agencies seek to, and largely do, comply with the Policy, a lack of clarity in the Policy itself, and a lack of guidance in how to apply it in some circumstances, leads to
mistakes and inconsistencies. The way the Policy determines if a business is ‘local’ is so
broad that companies can qualify as local despite being geographically distant. There is little
monitoring of, and no effective consequences for, companies failing to meet their local
content tender commitments. This means using the Policy does not automatically ensure a
positive impact for the local community.

Key findings
Inadequate data monitoring and reporting means agencies cannot demonstrate the Buy
Local Policy’s effectiveness. Local business and content preferences can help individual
businesses win tenders. But data is not reported and collected consistently or regularly
enough for reliable analysis. There is no single collection point for local content data, and the
level of detail in local content reporting varies. No agency has overall responsibility for
ensuring the Policy is applied effectively, complied with, and is effective.

The Policy may not be helping WA companies as much as it could be. This is because
certain free trade agreements, the Australia and New Zealand Government Procurement
Agreement and the Australian Constitution prevent local content criteria from applying when
tenders are received from certain countries or interstate.

The common use arrangement (CUA) policy can disadvantage those in the regions.
Agencies operating in the regions can comply with the Policy by using a CUA even if they do
not choose a local supplier. The Department of Jobs Tourism Science and Innovation reports
that this practice is common and a source of complaint from regional suppliers.

Agencies are procuring primarily from WA sources but the definition of ‘local’ can be
misleading.

- Our random sample of 100 contracts valued above $750,000 listed on Tenders WA in
  the 5 years to June 2017 showed that 94% of contractors were defined under the
  Policy as WA businesses.
- At a regional level the definition of ‘local’ differs from common usage. For example, a
  Bunbury business is not local to Narrogin but qualifies as local under the Policy. This
  creates the perception that the Policy is ineffective.

Agencies apply the Policy effectively up to and including awarding the contracts. We
reviewed 23 contracts from 5 agencies. We found that agencies included local content
criteria where required in tender and proposal documents and assessed responses against
these criteria.

The interaction of the Policy, legislation and agreements make them difficult to apply. A lack
of guidance increases the risk of mistakes and inconsistencies. For example:

- Some agencies included businesses’ local content commitments in their contracts even
  when interstate tenders have prevented local content criteria being used to assess their
  tender submissions. Other agencies in the same situation removed all local content
  references from contracts.
- In assessing tenders for the Swan River Pedestrian Bridge, Main Roads WA treated
  the cost of ‘significant imported goods’ in one section of its request for proposals and
  ‘imported content’ in another as the same, as did 2 of the 3 tenders. As a result, it only
  used ‘significant imported goods’ in its assessment. But the winning tender treated the
  2 sections differently, leading to its cost being understated in the assessment. In this
  case, quality criteria strongly favoured the winning proposal, meaning the error had no
  effect on the result.
In one tender evaluation, an agency did not apply the regional preference to a regional business because it had claimed local content as a percentage rather than in dollars. While this was a technical error that did not affect the outcome, the agency should have applied the intent of the Policy and overlooked the tenderer’s mistake.

Agencies do not hold businesses to their local content commitments and some businesses ignore them. This is despite agencies awarding contracts conditional on these commitments and including them in the contracts. Insufficient monitoring of contract commitments and an absence of consequences for non-compliance means that agencies do not know whether the Policy is being effectively applied. Respondents to our survey were also concerned that the Policy was not enforced.

Recommendations

1. The Department of Finance and the Department of Jobs Tourism Science and Innovation should review the Buy Local Policy and guidelines to improve clarity and effectiveness of the Policy in line with legislation by 30 June 2018.

2. By the end of 2018, Policy and guidelines should require that:
   a. agencies monitor and report local content compliance and outcomes of procurement contracts, including employment outcomes, to Tenders WA
   b. Tenders WA record this information in its searchable database for public access
   c. agencies issuing requests for tender contractually bind successful tenderers to meet their local content commitments and manage contracts to reduce the risk of default.
Agency responses

Department of Primary industries and Regional Development

The Department of Primary industries and Regional Development (DPIRD) supports the recommendations in the Summary of Findings and requests OAG note our Minister’s commitment to deploy Local Content Officers in the regions helping ensure the Policy intent is understood and implemented at a local level. DPIRD looks forward to providing a regional perspective in the proposed review.

Horizon Power

Horizon Power welcomes the opportunity to respond to the findings of the report. As noted in the report, Horizon Power, as a government trading enterprise (GTE), is not required to apply the Buy Local Policy however chooses to do so to support local businesses, in particular, those in our regional and remote service areas. Horizon Power notes the intent of the WA Jobs Bill 2017 introduced to Parliament in September that may require a review of the Buy Local Policy. Horizon Power would welcome participation in any such review.

Department of Communities

The Department appreciates the opportunity to review the Summary of Findings as part of procedural fairness process, and supports the recommendations within the report to improve government procurement initiatives in delivering local content and employment.

The Department accepts the report findings with no suggested amendments.

Main Roads WA

Main Roads generally agrees with the key findings and will participate in any consultation forums to review the Local Content Policy and guidelines in line with any new legislation. Notwithstanding the recommendations, Main Roads has already implemented the following improvements:

- Request for proposal documentation - Imported Content (Schedule 23) and application of 20% impost, and Significant Imported Goods (Schedule 19) and application of Exchange Rate Risk. The title of Exchange Rate Schedule is now “Proponent’s Schedule of Imported Goods Proposed for Exchange Rate Adjustment” as evidenced by revised template. Opportunities for improvement in the evaluation methodology will be explored to ensure relevant local content tender schedules are provided to appropriate officers for assessment.

- To assist in the application of the Policy for unincorporated JV’s with WA and interstate addresses, Main Roads standard form of proposal has been modified with the requirement for a single ‘Bid Address’ to be included.

Main Roads will consider and implement the accepted recommendations by the end of 2018 in accordance with the revised Policy and guidelines. In the meantime, Main Roads will continue to enhance our contract management practices to better monitor local content compliance. Immediate action has commenced to check compliance with Buy Local commitments for the Swan River Pedestrian Bridge contract that requires the contractor to provide a monthly statutory declaration.

The template contract management plan and monthly contract reporting process is being reviewed to identify any further measures for all contract management teams to check compliance with the Policy and address the need to report against local content
commitments. These checks will also be undertaken at the time of assessing payment claims.

Reporting via Tenders WA can only be achieved if the system is updated by Department of Finance to enable this reporting obligation to be met by agencies.

Ideally the revised local content policy and guidelines should include model tender and contract clauses for all agencies to adopt that bind tenderers to meet their local content commitments.

**Department of Jobs, Tourism, Science and Innovation**

The Department concurs with the basic finding of this performance audit that the effectiveness of the Buy Local Policy cannot be determined, in terms of local content outcomes, due to a lack of data collection and reporting processes. The implementation of the Western Australian Jobs Bill 2017 and the Western Australian Industry Participation Strategy will to a large extent, address this issue.

In terms of the recommendation relating to the review of the Local Content Policy and guidelines to improve clarity and effectiveness in line with legislation, we advise that this is already underway. The current target date for completion of this review is the beginning of March 2018.

With regard to the requirements placed on policy and guidelines, these are endorsed and are part of the implementation of the Western Australian Jobs Bill 2017 and the Western Australian Industry Participation Strategy.

**Department of Finance**

The Department of Finance notes the findings of the Office of Auditor General's report — Local Content in Government Procurement.

The Department of Finance is committed to ensuring that, where possible, local industry participation is increased in the supply of goods, services and works in Western Australia. As an example of this commitment, the Department currently provides comprehensive and professional procurement and contracting services to agencies in relational Western Australia procuring goods and services through its regional offices. These offices have the added focus of supporting regional suppliers.

The Department supports the intent of the recommendations outlined in the report and makes the following comment.

It is important to note that the local content policy and guidelines are being reviewed as part of the development of the Western Australian Industry Participation Strategy (WAIPS) required by the Western Australian Jobs Bill 2017. The Department of Finance is contributing to the development of the WAIPS, which is being led by the Department of Jobs, Tourism, Science and Innovation.

The implementation of the Western Australian Jobs Bill 2017 and the WAIPS will largely give effect to the OAG's recommendations. The Jobs Bill places a number of obligations on agencies in relation to the participation of local industry, including incorporating commitments in supply contracts and reporting on achievement of commitments.
Audit focus and scope

This audit focuses on the Buy Local Policy and how it has been implemented by government agencies. For the purposes of the audit we excluded policies aimed at Aboriginal and disability organisations.

From 2,593 contracts valued above $750,000 in the 5 years to 30 June 2017, we sampled 100 to assess the proportion awarded to WA companies. A separate sample of 23 contracts was analysed more closely to assess how local content was treated in the request for tender, evaluation of submissions, contracting and delivery.

A sample of 23 contracts was obtained from (Appendix 2):

- Department of Finance
- Department of Communities
- Department of Education
- Main Roads WA
- Horizon Power.

The Department of Finance, the Department of Primary Industries and Regional Development, Regional Development Commissions and the Department of Jobs, Tourism, Science and Innovation (formerly Department of Commerce) provided additional information.

The Chamber of Commerce and Industry WA and Regional Chambers of Commerce and Industry WA assisted the audit by facilitating a survey of members and a roundtable discussion. The survey asked about businesses’ experience of the Buy Local Policy. It was conducted online and received 64 responses.

This was a broad scope performance audit, conducted under section 18 of the Auditor General Act 2006 and in accordance with Australian Auditing and Assurance Standards. Performance audits focus primarily on the effective management and operation of agency programs and activities. The approximate cost of tabling this report is $251,000.
Audit findings

Inadequate monitoring and reporting means agencies cannot demonstrate if the Buy Local Policy is working

Agencies do not collect and report local content procurement data often enough and in enough detail for reliable analysis. As a result, it is hard to tell if the Policy is achieving its aims of net employment growth and sustained business activity. There is also no single collection point for local content data. Assessing the Policy’s outcomes is made harder by there being no single agency with overall responsibility for ensuring the Policy is applied effectively, for monitoring and reporting, and for providing guidance to agencies and businesses.

Responsibility for overall collection of and reporting of local content information is unclear as both the State Supply Commission and the Department of Jobs Tourism Science and Innovation have reporting roles. The Policy requires the State Supply Commission to collect and publish information annually. The Commission advises that Tenders WA is able to capture all information required by the Policy but the information is not always supplied. Only 64 projects listed on Tenders WA since 2011 recorded the outcome of the tender process being affected by the Policy. This is a fraction of 1% of contracts on Tenders WA. Also, local content is not generally included in contract progress reports. This means that local content data is incomplete and so analysis of it inconclusive.

Of the 23 contracts we reviewed, only 4 required local content reporting. We saw no evidence that agencies monitor local content in other ways during contract delivery or ensure compliance once a contract is awarded. The Industry Participation Unit of the Department of Jobs Tourism Science and Innovation reports that for most projects, local content is reported only at the end of a project, if at all. This means these reports are not useful for monitoring compliance.

While the Department of Finance administers the Policy on behalf of the government, in practice this responsibility is distributed among a number of agencies. Its role has been limited to publishing amendments and guidelines. It also publishes an annual summary of selected procurement data called Who Buys What and How that includes a section called Buy Local. However, this does not contain a detailed breakdown of local content procurement.

The Department of Finance and the Department of Jobs Tourism Science and Innovation both have roles in monitoring and reporting procurement data. The Department of Finance’s role is in government purchasing while the Department of Jobs Tourism Science and Innovation’s role relates to State Agreements. The Department of Finance also facilitates procurement over $250,000 for other agencies although some larger agencies manage it themselves. The Department of Primary Industries and Regional Development has a role in implementing the Policy by promoting opportunities to regional businesses.

Available data suggests high levels of local content in recent years but is not detailed enough to attribute this to the Policy. This is consistent with comments from respondents to our survey. Since 2008-09 the proportion of suppliers with WA addresses has varied within a narrow range (Figure 2). Overall, this result meets the Policy’s minimum target of 80% of all purchases and contracts awarded.
The total value of new contracts on Tenders WA subject to local content criteria is similar to 5 years ago\(^1\) (Figure 3).

Seven of the 64 respondents to our survey said that winning government tenders enabled them to employ and retain extra staff. Six also said that their business outlook had substantially improved through winning government contracts while another 7 said it had improved a little. However, none of those businesses believed that the Policy had helped them win those contracts.

Despite this, one of the contracts in our sample clearly showed that the Policy can help regional businesses win contracts over metropolitan businesses. The tender assessment for this contract showed 2 metropolitan businesses offering lower prices than the regional businesses. However, a regional business won the contract after regional preferences were applied.

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\(^1\) Tenders WA lists most but not all tenders let by government entities. Figure 3 includes contracts not covered by the Policy because of trade agreements. Figures for 2016-17 are at 2 October 2017 and may rise as agencies add to the data.
The Buy Local Policy does little to help WA companies win contracts if there is interstate and international competition

Local content criteria cannot apply when tenders are received from certain countries with free trade agreements, New Zealand or other states. This is because free trade agreements, the Australia and New Zealand Government Procurement Agreement and the Australian Constitution override state policies.

The Australian Constitution establishes a free trade area within Australia’s national borders. This means local content policies are not applicable when interstate tenders are submitted. For example, that if an interstate business tenders for a regional WA contract, competing regional businesses would no longer enjoy an advantage over metropolitan suppliers. Thirty percent of the contracts we sampled had received one or more tenders from interstate companies.

This particularly affects common use arrangements (CUAs) which are standing offers open for set periods of time to prequalified suppliers. The large numbers of pre-qualified suppliers for CUAs often include some from interstate, meaning no local content criteria apply. Because CUA suppliers are pre-qualified, agencies operating in the regions can use CUAs to choose a metropolitan or interstate supplier even if a local supplier is available. Agencies informed us that this practice is widespread and a source of complaint from some regional suppliers.

For the 3 CUAs in our sample, there were 320 prequalified suppliers. Seventy-nine suppliers across 3 CUAs were from interstate. This meant that local content criteria could not be applied to those CUAs.

During our audit we were told that some businesses ‘almost certainly’ submit tenders from their interstate offices to wipe out local content criteria but we saw no evidence of this. More generally, businesses we spoke to told us that local content rules had never been a barrier to what they wanted to do because they were too easy to work around.

There are similar restrictions if companies from New Zealand or certain countries with a free trade agreement with Australia tender for a contract. We did not see any of these cases in our samples.

Agencies mainly contract WA businesses, but the criteria for ‘local’ are too broad

We looked at 100 contracts listed on Tenders WA from July 2012 to June 2017 that were covered by the Policy. Ninety-four percent of successful contractors met the Policy definition as WA businesses. However, the Policy’s definition of ‘local’ is not effective in identifying genuinely local businesses. For example, the Policy makes no distinction between a multinational firm that has had an office in Perth for 6 months and a family business based in Perth for generations.

How a business is determined to be local is a particular concern in the regions, and responses to our survey support this view. For many businesses, local means the town where it is based or its immediate surrounds, not another town hundreds of kilometres away. For example, a Bunbury business can compete for a contract in Narrogin as a local supplier because it is less than 200 kilometres away. Such a business is not local to Narrogin in the ordinary sense of the word despite qualifying as local under the Policy.

Our sample of 100 requests for tender from the last 5 years showed 169 businesses won contracts, with some contracts shared by a number of businesses. Among these businesses, 33 had interstate offices and 23 had international offices. All companies with international
Local Content in Government Procurement

offices also had local WA offices, and 22 of the 33 interstate companies had local offices. Overall, 159 of the 169 winning businesses, or 94%, qualified as Western Australian by virtue of having a permanent operating office in the state (Table 1).

<table>
<thead>
<tr>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total contractors</td>
<td>169</td>
</tr>
<tr>
<td>Total contractors with WA offices</td>
<td>159</td>
</tr>
<tr>
<td>Contractors with Perth metropolitan offices</td>
<td>131</td>
</tr>
<tr>
<td>Contractors with Perth metropolitan offices only</td>
<td>83</td>
</tr>
<tr>
<td>Total contractors with interstate offices</td>
<td>33</td>
</tr>
<tr>
<td>Contractors with WA regional offices only</td>
<td>28</td>
</tr>
<tr>
<td>Total contractors with International offices</td>
<td>23</td>
</tr>
<tr>
<td>Interstate contractors without WA offices</td>
<td>11</td>
</tr>
<tr>
<td>International contractors without WA offices</td>
<td>0</td>
</tr>
</tbody>
</table>

**Table 1: Location of suppliers in a sample of 100 projects on Tenders WA, 2012-13 to 2016-17**

**Agencies generally apply the Policy when awarding contracts**

All agencies whose contracts we sampled applied the Policy when procuring goods and services, awarding contracts for capital projects and using CUAs. We reviewed 23 contracts from 5 agencies, including 3 CUAs, ranging in price from under $1 million to over $1 billion (Appendix 1). Local content requirements were included in tender and proposal documents where required and submissions were assessed against appropriate criteria.

The Policy has never been applied to community services contracts as these are delivered face-to-face over extended periods by people living in the community. In these cases, the content is necessarily local. One of our sample contracts was for community services and consequently the Policy was not applied.

The Acts of Parliament that establish the government trading enterprises (GTEs) make their compliance with the Policy a matter of choice. GTEs include Water Corporation, Electricity Networks Corporation (Western Power), Electricity Generation and Retail Corporation (Synergy), Regional Power Corporation (Horizon Power), Western Australian Land Authority (LandCorp) and port authorities.

GTEs do not often use Tenders WA to request tenders, and instead set up panels of suppliers. However, the Horizon Power contracts included in our sample showed it was applying the Policy. The government introduced legislation in its Western Australian Jobs Bill 2017 to create a Western Australian Industry Participation Strategy for government agencies, including GTEs.

**A lack of guidance on implementing the Policy means it has not been consistently applied**

Agencies interpret the effects of interstate tenderers on the tender process differently when deciding what to include in contracts. This creates a risk of unfair decisions that could be open to challenge. Lack of guidance on how to treat joint ventures between local and non-local businesses means that they may be considered local in one case but not in another. For example, the Policy allows a joint venture bidding for a regional contract to be considered
local if it is submitted by a local participant. But it is silent on interstate joint ventures bidding for metropolitan contracts.

For the Swan River Pedestrian Bridge, Main Roads WA treated an unincorporated joint venture between a WA company and one in NSW as an interstate tender and decided not to apply local content criteria, potentially affecting the outcome. The agency made this decision because the Policy is unclear on how to treat joint ventures. It also calculated the effect of applying local content criteria and concluded that it would not have affected the outcome. However, it is unlikely to always be the case that such decisions have no effect.

There is no guidance in the Policy to assist agencies when to hold contractors to the commitments they made in their tender submissions and when to allow changes. Companies base their tenders on estimates and plans, but changing conditions may justify a change of plans during the early stages of a complex project.

As again seen in the Swan River Pedestrian Bridge, it was a year into the project before the main contractor was ready to sub-contract for key components. In these circumstances, it may not be reasonable to enforce the precise terms of the winning tender submission. For a summary of events in the Bridge’s procurement process, see Appendix 3.

Different interpretations of how to treat interstate tenderers also affect what is included in contracts, with potentially significant impacts on businesses. In one case we found that all local content commitments were excluded from the winner’s contract because an interstate tender had applied. In another case, we found that an interstate business was held by contract to its local content commitments.

**Local content weightings and imported content loadings**

The local content criterion must have a minimum weighting of 20% in any process agencies use to select suppliers for contracts of $750,000 or above. Imported content attracts a loading calculated as 20% of its value for evaluation purposes. Regional business and content preferences also apply. These are deductions that lower the tender value to make it more competitive. The value of these deductions is capped at $250,000 each.

For goods and services, the deduction is calculated as 10% of the tender value if the tender is from a regional business or 10% of the declared value of the regional content in the tender.

In the case of housing and works contracts, the deductions are both 5% but can be combined. For example, a business claiming the regional preference could claim up to $250,000 for being regional and a further $250,000 for the local content of its proposal giving it a $500,000 advantage in the assessment process relative to other tenders.

**Agency procedures for applying the Policy can be complicated, increasing the risk of mistakes**

Agencies have used complicated processes to apply local content criteria, risking mistakes and poor outcomes. These include application forms that have multiple schedules with overlapping questions. This can lead to mistakes by both agencies and businesses that could have commercial impacts.

For example, despite its generally thorough tender assessment process, Main Roads WA made a mistake in assessing imported content for the Swan River Pedestrian Bridge. It asked tenderers to include values for ‘significant imported goods’ in one section and ‘imported content’ in another. Two of the 3 tenders show the same sum for both parts; the
Local Content in Government Procurement

other, winning proposal showed 2 different amounts. The difference went unnoticed in the assessment process and the report understated the total value of imported content in the winning proposal.

Fortunately, in this case the winning proposal's strong rating for quality criteria outweighed the effect of the imported content mistake. While the mistake did not affect the result, it meant that the assessment report inaccurately reported the total value of imported content in the bid.

**Agencies do not always apply the intent of the Policy when they could and should**

The full effect of the Policy is not achieved because agencies do not always consider the intent when applying specific aspects of it. The Policy states that government agencies 'must apply the intent of the Buy Local Policy to all purchases or contracts.' Overlooking the Policy's intent can lead to local businesses missing out on contracts they would be eligible for. For example, in the tender evaluation for one of our sampled contracts, we found the agency did not:

- give regional business preference to a tenderer as the business did not request it on the correct form
- give regional content preference to another tenderer who had claimed local content as a percentage instead of a dollar value.

In this case, the result would have been the same had the intent been considered. However, it does show that some agencies do not consider the intent of the Policy to promote regional business and content when awarding government contracts.

This concern was also expressed by respondents to our survey that agencies appeared to favour larger companies who were better at 'the paperwork'. Small businesses do not have the resources to prepare complex tender documents when they are unlikely to win most bids.

**Agencies do not ensure local content commitments are honoured**

Businesses submit their plans for local content, including local sub-contractors, in their tender submissions to improve their chances of winning contracts. However, agencies do little to hold them to these commitments beyond including them in the contracts. Respondents to our survey complained that the Policy was not enforced.

Agencies report that contractors have varied their subcontracting arrangements after a contract has been awarded without incurring any penalty. For example, once the contract has been secured a contractor might replace a local subcontractor who was part of its winning tender submission with a cheaper non-local alternative. This may be legitimate and have no impact on delivery but it is a source of grievance for regional businesses and reduces the impact of the Policy.

Of the contracts we reviewed, only those from Main Roads WA and the Department of Finance’s Building Management and Works business unit (BMW) had included financial penalties if a contractor ignored local content commitments. But these penalties have never been applied. Main Roads WA has been advised that it could be hard to enforce because ignoring local content would not cause it any financial damage or loss. The agency is looking at ways to address this, such as making repeated acts of bad faith affect pre-qualification for the right to tender.
BMW introduced a similar approach on 30 September 2017. The ‘Supplier Demerit Scheme’ applies demerit points to contractors that fail to meet their local content commitments. Contractors that accumulate 3 demerit points within a 3-year period may be subject to a sanction, which may include being ineligible for contracts for a defined period.

In November 2016, the Department of Finance issued revised compliance checking requirements that should improve reporting and may improve compliance for contracts over $6 million. The contractors must submit a Buy Local compliance report with every claim for payment. These account for around 20% of projects subject to local content selection criteria. However, the changes do not apply to the 80% of projects that are under $6 million.

The Western Australian Jobs Bill 2017 aims to improve both compliance and reporting by requiring tenderers to provide industry participation plans and including them in contracts. These plans are currently used by major projects and are more detailed than the declaration forms currently used for most Policy compliance. The need for industry participation plans may help increase local content in tenders simply by encouraging greater attention to the local resources available.
Appendix 1: Zones 2 and 3
## Appendix 2: Sample of contracts

<table>
<thead>
<tr>
<th>Public authority</th>
<th>On behalf of</th>
<th>Region</th>
<th>Title</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Finance</td>
<td>Department of Sport and Recreation</td>
<td>Metropolitan</td>
<td>The new Perth Stadium – Design-Build-Finance-Maintain Project</td>
<td>$1,086,350,739</td>
</tr>
<tr>
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<td>Carnamah District High School Roof Replacement and Air-conditioning</td>
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Total $2,763,760,735
Appendix 3: The Swan River Pedestrian Bridge

Summary of events

The Swan River Pedestrian Bridge is a key part of the transport solution for moving people to and from the new Perth Stadium on event days. The process of procuring the bridge shows some of the risks and costs associated with the choice between imported and local content.

In June 2014, Main Roads WA issued a design-and-construct tender for the Bridge with tenders not to exceed a capped fixed price of $50 million.

In October 2014, Main Roads WA received 3 tenders with similar prices. Evaluation included price and quality assessments and was guided by the principle that higher quality scores within the capped budget represent better value for money. The Buy Local Policy was not applied as one of the tenders included a joint venture partner from NSW. The other tenders were from WA. All 3 tenders proposed using imported content.

On 12 March 2015, the panel awarded the contract to the WA-NSW joint venture (JV) based on its flowing design using tubular steel arches (Figure 5).

Main Roads WA is managing the contract. The overall project budget, excluding project management costs, was $65.27 million funded from the Perth Stadium Transport Infrastructure fund.

In March 2016, the JV issued a request for tender for the steel arches and decks to 20 companies. Ten were Australian and 5 were from WA. Two were shortlisted: one from WA and another from Victoria. The JV chose the Victorian company, with the steel arches to be made in Malaysia and delivered on site by September 2016. By June 2017, with the arches 9 months late and the stadium’s opening looming, the JV terminated its contract for the arches.

In June 2017 the government entered an alliance agreement that withholds $2.6 million due to the JV if work is not completed by 16th March 2018. In August 2017, the government and the JV signed a sub-alliance agreement with the other shortlisted company to make the arches. The total contract sum for the bridge is now $83 million, including the $2.6 million incentive payment and excluding project management and new site assembly costs.
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