

**Submission
No 23**

PROCUREMENT OF GOVERNMENT INFRASTRUCTURE PROJECTS

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AUSTRALIAN STEEL INSTITUTE

16 February 2016

The Committee Manager
Committee on Transport and Infrastructure
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ASI submission to inquiry into the procurement of NSW government infrastructure projects

Dear Committee Manager;

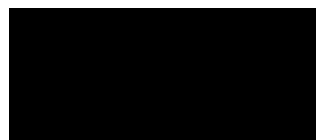
The Australian Steel Institute (ASI) appreciates the opportunity to contribute the following submission to the Committee on Transport and Infrastructure in the interests of procurement approaches for NSW Government to maximise value for the State's economy whilst preserving public safety and good environmental outcomes.

In essence the submission recommends assessment of tenders beyond merely upfront costs to take account of whole-of-life costs and flow-on economic benefits of engaging the local industry more meaningfully.

The ASI also recommends adherence to Australian Standards through existing third party verification programs to help mitigate project risks, especially since prevalence of steel product and materials not meeting relevant Australian standards has increased significantly since the move to global sourcing and purchasing practice in recent years.

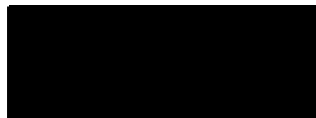
Thank you for any consideration the Committee affords this submission.

Yours sincerely,



Tony Dixon

Chief Executive



Ian Cairns

National Manager – Industry Development
and Government Relations



AUSTRALIAN STEEL INSTITUTE



*NSW LEGISLATIVE ASSEMBLY COMMITTEE ON
TRANSPORT AND INFRASTRUCTURE*

*Inquiry into the Procurement of
Government Infrastructure Projects*

Submission by

AUSTRALIAN STEEL INSTITUTE (ASI)

(FEBRUARY 2016)

**NSW LEGISLATIVE ASSEMBLY COMMITTEE ON TRANSPORT AND INFRASTRUCTURE INQUIRY INTO
THE PROCUREMENT OF GOVERNMENT INFRASTRUCTURE PROJECTS**

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Executive summary and recommendations

The current NSW procurement policy framework is a sophisticated suite of documents used by government agencies to guide procurement of goods and services, including infrastructure.

However, the Australian Steel Institute (ASI) believes that it can be improved to provide greater economic benefit and jobs for NSW.

A review of the documentation contained in the procurement framework suite shows that decision makers are guided towards the lowest cost outcome rather than one that leads to greater benefits for the whole NSW economy (economic growth, local jobs, investment, innovation and skills retention/growth). A consideration of these wider benefits by decision makers will improve utilisation levels throughout the steel supply chain and underpin the viability of the industry. Locally milled and locally fabricated steel is critical to the industry in delivering an economically sustainable outcome (economic sustainability).

The Government of the United Kingdom has published its *Public Contracts Regulation 2015* that provides procurers with the scope to consider environmental and social criteria, including the benefits of employment and supply chain activity when letting contracts for construction and infrastructure projects.

These sort of broader considerations should be contained in NSW procurement documentation.

It is also the case that, as the Australasian Procurement and Construction Council (APCC) stated in its 2015 publication, *Procurement of Construction Products: A Guide to Achieving Compliance*:

“The Australian construction industry operates in a global marketplace and utilises a vast, increasingly complex and innovative range of construction products, many of which are manufactured overseas.. Regardless of the origin of the manufacturer of the construction product there is a lack of credible and accurate information available in Australia to assist all stakeholders involved in construction projects to verify construction product conformance and performance. This has the potential to create significant constraints and risks to a construction project. In Australia there have been numerous instances where non-compliant construction products have caused the collapse of buildings, motorway signs, glass panels and more. The risk of loss of life and severe injury should not be underestimated. The quality and compliance of construction products is a major risk management issue which needs to be addressed. It is vital that we create an environment in Australia in which all stakeholders in the building and construction process, including the community, are assured that all construction products meet a minimum acceptable level of performance and are fit for the purpose to which they are intended.”

This government publication then goes on to say:

“Evidence suggests that the market penetration of non-conforming products in several key construction product sectors in Australia may be up to 50%. This is a sobering and alarming statistic.”

Accordingly, to ensure safer structures, the NSW Government must ensure that when purchasing steel products for government building and infrastructure projects, it is a mandatory requirement that:

- All structural steel products come from mills with ACRS third party certification; and
- All fabricated products are obtained from suppliers accredited under the National Structural Steelwork Compliance Scheme (NSSCS).

For specific identified products or processes such as welding and painting, accreditation programs should be supplemented by conformance testing.

Compliance management plans should be a mandatory part of the procurement framework and a confidential reporting scheme introduced to allow ‘whistle blowers’ to report the use of non-compliant products in NSW. A potential model for such a scheme is the UK’s structural safety confidential and anonymous reporting scheme. Finally, it should be mandatory for procurers to source steel products for government projects from businesses that are accredited under the steel industry’s Environmental Sustainability Charter (ESC).

The recommendations that follow are made so that these principles can be applied within the architecture of the current NSW procurement policy framework.

Should they be adopted, NSW will have the best procurement and processes as well as procurement practices that more closely reflect those in place in Victoria and South Australia.

This will lead to not only a sustainable steel supply chain (economic growth, local jobs and investment) for NSW and Australia, but also the erection of infrastructure that conforms to Australian Standards, thus ensuring the taxpayer receives safer public infrastructure and full value for money when governments invest in the roads and buildings of tomorrow.

ASI's recommendations to the Committee are as follows:

Recommendation 1

Consideration of the principles contained in the APCC's *Procurement of Construction Products – A Guide to Achieving Compliance* guide should be described in the document called *NSW Procurement Policy Framework for NSW Agencies* as a 'mandatory requirement', thus a 'policy' that a government agency must follow when exercising functions in relation to the procurement of goods and services, pursuant to section 176 of the *Public Works and Procurement Act 1912*.

Recommendation 2

There should be a greater emphasis placed on the overall benefit to the NSW economy of buying local; namely economic growth, local jobs and investment. For a private project or company, this consideration may not be as important as an immediate profitable return for the company or shareholders. However, a government agency or a project containing taxpayers' funds should have a greater responsibility for the overall benefit of local industry and the community. A definition of 'value for money' should be inserted into the *Public Works and Procurement Act 1912* capturing the following concept:

Value for money refers to the weighting of the appropriate quantity and quality of goods or services at the optimum combination of quality, quantity, risk, timeframes and cost for government on a whole-of-life basis with environmental and social considerations so as to ensure the most economically advantageous outcome for the economy.

Recommendation 3

The accreditation concept already applied within the NSW procurement policy framework should be extended so that:

1. All structural steel products be sourced from mills with Australasian Certification Authority for Reinforcing and Structural Steel (ACRS) third party certification;
2. All fabricated steel products to be obtained from suppliers accredited under the National Structural Steelwork Compliance scheme (NSSCS); and
3. All structural steel and fabricated products be sourced from businesses accredited under the steel industry's Environmental Sustainability Charter (ESC).

Recommendation 4

For specific identified products or processes (such as welding, galvanizing and painting), there should not only be a reliance on accredited suppliers (who have evidence to show that they have a capacity to comply to Australian standards) as there should also be conformance testing – that is, a regime that tests whether Australian standards are in fact being met by product supplied and being used for a particular project.

Recommendation 5

A requirement to maintain and execute a compliance management plan should be a mandatory requirement imposed by the procurement policy framework document.

Recommendation 6

The Government should develop a paper setting out its role in ensuring the economic sustainability of the NSW supply chain as part of the broader Australian/New Zealand market.

Recommendation 7

Appropriate criteria that will actually give effect to any policies set out in the policy document referred to in Recommendation 6 should be designed into procurement documentation for projects designated by the Government as being strategic.

Legislative Committee on Transport and Infrastructure Inquiry into the Procurement of Government Infrastructure Projects

The Australian Steel Institute (ASI) is a 'not for profit' organisation and is the peak industry body in Australia representing the nation's steel and associated industries. Its mission is to 'assist in the profitable growth of the complete Australian steel value chain'.

ASI's membership includes all sectors of the steel industry including manufacturers of steel and steel products, distributors, processors, fabricators, designers and detailers, galvanizers and paint companies, suppliers of services and consumables, constructors and educators.

The ASI provides industry and professional development by conducting regular technical seminars, publishing technical manuals available through its own bookshop and online, and operates the largest steel library in this part of the world. It delivers guest lectures at universities and hosts a range of national and state-based committees providing cross-industry representation.

Governance and policy is set by a Board of industry leaders from across the spectrum of Australia's steel industry. The ASI's core business activities are coordinated and supported by a wide range of state and regional committees and special interest workgroups operating under a charter determined by the Board. ASI groups cover areas and interests as diverse as health and safety, sustainability, manufacturing and distribution, roll-forming, fabrication, detailers, pipe and tube, sheet and coil, engineering and construction.

The ASI provides an independent voice for industry representation covering such issues as industry safety, government policy, steel in buildings, maximising local content, sustainability, compliance, codes and regulations.

The Australian steel industry is committed to safety and sustainability:

- Safety – ensuring that the Australian built space is made from products that conform to the highest standards to ensure the personal safety of users and product durability; and
- Economic sustainability - the development of products and practices that will lead to the continuation of a world class Australian steel industry.

The ASI has adopted a bipartisan approach to achieve the best outcome for the NSW economy and therefore proposes government agencies and major contracts implement an approach that demonstrates ongoing commitment according to the following procurement principles:

ASI procurement principles

1. Full and Fair and Reasonable Access – Project proponents are encouraged to maximise Australian industry participation in investment projects ensuring local suppliers have full, fair and reasonable access to supply opportunities under direct government contracts and with prime contractors for major projects.

- Full: Australian industry has the opportunity to participate in all aspects of an investment project (e.g. design, engineering, project management, steel supply, fabrication, professional services, IT architecture);
- Fair: Australian industry is provided an equal opportunity to compete on investment projects on a transparent basis, including being given reasonable time in which to tender; and,
- Reasonable: tenders are free from non-market burdens that might rule out Australian industry and are structured in a way as to provide Australian industry the best opportunity to participate in investment projects.

2. Full Opportunities for Local Suppliers – Australian suppliers should have full opportunity to compete for the provision of goods and services under government contracts both directly and indirectly through supply to prime contractors. For major projects, prime contractors should ensure that local suppliers have full and fair access to sub-contractors and supply arrangements.

Procurement plans should demonstrate how purchasers will facilitate opportunities for participation by local suppliers; undertakings by purchasers should be monitored over the life of the project; and purchasers should publish the extent of participation by local suppliers.

3. Value for Money - Value for money should look beyond 'least cost' and bring to bear a broader cost-benefit approach that considers support of local supply chains, overall benefit to the economy and whole-of-life costs, including rectification, maintenance, servicing, quality and ongoing supplier relationships.

4. Uniform standards and performance assessment – Procurement plans need to ensure that all suppliers adhere to the relevant standards and quality expectations.

- NSW Government sourcing for major projects adhere to Australasian Procurement and Construction Council guidelines.
- All steelwork for State funded (including partly funded) development projects to be specified to the new Structural Steelwork Fabrication and Erection Code of Practice (AS 5131) which calls up established construction classes of the Building Code of Australia ensuring safer infrastructure for the NSW public.

5. Clarity, Transparency and Improvement of Processes – Transparency is a key of good governance and should inform all policy and commercial dealings. Governments should develop policies, processes and criteria regarding investment projects that are clear and unambiguous. The private sector is also encouraged to incorporate the principles of transparency in its processes.

Consistent national documentation

The Australasian Procurement and Construction Council (APCC) represents the specialist agencies responsible for government procurement.¹

Some APCC documents are already referenced in Version 4 of the NSW Procurement Policy Framework for NSW Government Agencies² (the procurement framework document), published by the NSW Procurement Board in July 2015.

The recently published APCC publication, *Procurement of Construction Products – A Guide to Achieving Compliance* particularly requires the availability of evidence that conformity standards required under procurement documentation (which in the usual case are Australian Standards) have been met. The principles contained in this document are set out in Attachment 1.

Consideration of the this document should be described in the Government's procurement framework document as being a 'mandatory requirement' and thus a 'policy' that a government agency must follow when exercising functions in relation to the procurement of goods and services, pursuant to section 176 of the *Public Works and Procurement Act 1912*.³

More generally, it is noted that the general requirements for how tenders are to be let and procurement documentation designed in NSW generally reflect the standards set out in World Trade Organisation documents that are in turn used in the international trade agreements to which Australia is a party.⁴ Other normative documents such as Infrastructure Australia's *Benchmarks for Efficient Procurement of Major Infrastructure* (2012)⁵ also exist.

The ASI therefore believes there are enough documents available to encourage as much comity in procurement matters as can be expected within a federation. ASI believes there are also a number of other improvements that can be made to the NSW policy procurement framework. These are now discussed.

¹ NSW is represented by the Department of Finance and Innovation

² https://www.procurepoint.nsw.gov.au/system/files/documents/procurement_policy_framework_-_july_2015.pdf

³ Adopting the explanation of the statutory framework applicable to the procurement of goods and services in NSW set out in page 2 of the procurement framework document

⁴ As an example, see Chapter 15 of the Australia-US Free Trade Agreement: <http://dfat.gov.au/about-us/publications/trade-investment/australia-united-states-free-trade-agreement/Pages/chapter-fifteen-government-procurement.aspx>

⁵ http://infrastructureaustralia.gov.au/policy-publications/publications/files/Procurement_Benchmarking_Volume_1_final.pdf

The concept of 'value for money'

Subsection 176(2) of the *Public Works and Procurement Act 1912* requires government agencies to obtain value for money in the exercise of their functions in relation to the procurement of goods.

The term 'value for money' is not defined by the Act, although the procurement framework document makes a Statement on Value for Money found on the ProcurePoint website⁶.

For convenience, the Statement is set out in Attachment 2 to this submission.

The ASI considers the concept of 'value for money' used by Australian governments is relatively narrow and overly focused on achieving the cheapest cost option rather than the option that benefits the NSW economy and communities as a whole.

When read as a whole, and particularly given the specific reference to the highly technical *NSW Government Guidelines for Economic Appraisal*⁷, the contents of the Statement supports the ASI proposition.

Moreover, the part of the Statement dealing with 'After Purchase Benefits/Costs and Risks' (more commonly known as whole-of-life costs) is drawn quite narrowly.

For example, it is disappointing that the reader's mind is not specifically drawn to the importance of maintenance costs when assessing overall whole of life costs.

This is unlike, for example, the *Commonwealth Procurement Rules*.⁸

There are also considerations when considering 'whole of life' aspects with respect to infrastructure.

Purchasing locally provides other significant savings for a project's whole-of-life costing like lower inventory to manage, reduced lead times and improved after-sales support. Continuity of work within the local industry helps ensure that the existing high skills base is available for ongoing maintenance. Onsite inspection costs can be significantly reduced where the personnel involved are resident in the region.

⁶ <https://www.procurepoint.nsw.gov.au/policies/nsw-government-procurement-information/statement-value-money> : requirement imposed on page 6 and 12 of the procurement framework document

⁷ http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0016/7414/tpp07-5.pdf

⁸ <http://www.finance.gov.au/sites/default/files/2014%20Commonwealth%20Procurement%20Rules.pdf>: see paragraph 4.6b

Locally fabricated steelwork can take advantage of road, rail or local sea transportation, maximising flexibility and economy in meeting delivery schedules and ensuring that project schedules are met.

Regular face-to-face contact between the builder, fabricator and detailer ensures that delays are minimised when design or site erection schedule changes arise. The industry is serviced by a network of steel distribution centres throughout Australia that stock a depth and range of steel products enabling fabricators to quickly source material to respond quickly and cost-effectively to any changes.

Australian steel distributors can also supply processed steel to fabricators to further speed production schedules.

Finally, a whole family of Australian Standards ensures safe and economic use of steel.

They are used as a matter of course by Australian-based members of the steel supply chain.

They ensure mechanical properties, chemical composition, dimensional and mass tolerance. They cover welding, painting, galvanizing and design to deliver quality and reliable solutions. Like links in a chain, if one Standard's requirements are not met, the whole system is likely to fail.

The Australian steel supply chain demonstrates a strong commitment to occupational health and safety (OH&S) believing that all injuries, occupational illnesses and incidents are preventable. Steel manufacturers enjoy global-industry-low, benchmark levels for Lost Time Injury Frequency Rates (LTIFR) and Medical Treatment Injury Frequency Rates (MTIFR).

These are clearly matters that should be dealt with exhaustively in any guidance given with regards to 'whole of life' and 'value for money' issues. Maintenance of this supply chain capacity (jobs, capabilities, skills and investment) also clearly offers social and environmental advantages to NSW as well as providing procurers with a greater choice of vendors.

It is also particularly surprising that the Value for Money Statement says:

Benefits to the broader community from a procurement activity should not generally be included in the assessment of value for money – exceptions can occur where a procurement activity delivers a clear benefit to a community which is aligned with Government policy or programs.⁹

⁹ See under the heading **Assessing Benefits, Costs and Risks When Determining Value for Money**, set out in the Statement on Value for Money contained in Attachment 2

Broader community benefits should be considered as a matter of course. Economic growth and investment underpinning jobs. There is no better benefit to a NSW resident than providing them with a job.

The World Bank has observed that definitions of what constitutes 'value for money' vary according to context.¹⁰

The United Kingdom Government has recently published the *Public Contracts Regulation (PCR) 2015*, which is accompanied by a procurement policy note reading:¹¹

The new PCRs 2015 provide greater clarity and scope to assess the most economically advantageous tender on a cost-effective basis that explicitly includes environmental and/or social criteria where they are linked to the subject matter of the contract and are transparent and non discriminatory.

Where relevant and proportionate, in-scope organisations should take full advantage of these new flexibilities when letting major contracts such as construction, or infrastructure.

Environmental criteria could include the carbon footprint of construction materials. Social criteria could include taking into account the benefits of employment and supply chain activity, including the protection of the health and safety of staff involved in the production process, the social integration of disadvantaged workers or members of vulnerable groups among the staff performing the contract, such as the long-term unemployed, or training in the skills needed to perform the contract, such as the hiring of apprentices.¹²

Using the UK regulation as a starting point, the ASI recommends that the concept of 'value for money' should be replaced with something like:

¹⁰ World Bank Institute *Value for Money Practices and Challenges. How Government Choose When to Use PPP to Deliver Infrastructure and Services* (2013):9
<https://openknowledge.worldbank.org/bitstream/handle/10986/17622/840800WP0Box380ey0Analysis00PUB LIC0.pdf?sequence=1>

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/473545/PPN_16-15_Procuring_steel_in_major_projects.pdf

¹² Page 5

Value for money, with respect to goods means achieving the best procurement outcome after weighing the following factors:

- A. Quality of the good being procured;
- B. The quantities of goods to be procured;
- C. The delivery timeframes within which the goods are to be delivered;
- D. The cost to Government involved in purchasing the good judged on a whole-of-life basis;
- E. The environmental costs and benefits of purchasing the good; and
- F. The social benefits for the NSW economy as a result of making the procurement.

The importance of supporting NSW jobs and skills development through the steel value chain cannot be underestimated. An independent report commissioned by the Industry Capability Network in 2012 concluded that for every \$1 million in increased or retained business output, the manufacturing industry supports:

- \$713,400 worth of gross value added in industrial support activity (i.e. type I effects).
- Six full time equivalent (FTE) jobs.
- \$64,900 in avoided welfare expenditure.
- \$225,300 in tax revenue.

These figures are at a job level and do not account for the further benefits of payroll and company taxes collected when Australian, rather than overseas business are used.

The ASI believes this to be so important that it should constitute the definition of 'value for money' contained in the *Public Works and Procurement Act 1912*.

Product conformance is also an important element to consider when procuring infrastructure.

This is discussed next.

Product compliance and conformance

The NSW procurement policy framework embraces the concept of prequalification schemes.

For instance, the Government has put in place a mandatory prequalification scheme for contractors hoping to complete large general construction works for government worth over \$1 million.¹³

The ASI believes that there is some scope to extend the concept of prequalification for both public safety and environmental reasons.

As APCC said in *Procurement of Construction Products: A Guide to Achieving Compliance*:

“The Australian construction industry operates in a global marketplace and utilises a vast, increasingly complex and innovative range of construction products, many of which are manufactured overseas. Regardless of the origin of the manufacturer of the construction product there is a lack of credible and accurate information available in Australia to assist all stakeholders involved in construction projects to verify construction product conformance and performance. This has the potential to create significant constraints and risks to a construction project. In Australia there have been numerous instances where non-compliant construction products have caused the collapse of buildings, motorway signs, glass panels and more. The risk of loss of life and severe injury should not be underestimated. The quality and compliance of construction products is a major risk management issue which needs to be addressed. It is vital that we create an environment in Australia in which all stakeholders in the building and construction process, including the community, are assured that all construction products meet a minimum acceptable level of performance and are fit for the purpose to which they are intended.”¹⁴

This Government publication then goes on to say:

“Evidence suggests that the market penetration of non-conforming products in several key construction product sectors in Australia may be up to 50%. This is a sobering and alarming statistic.”¹⁵

¹³ See <https://www.procurepoint.nsw.gov.au/before-you-buy/prequalification-schemes-0/construction/prequalification-scheme-contractors-and-best> and <https://www.procurepoint.nsw.gov.au/construction-procurement-direction-c2014-04>

¹⁴

[http://www.apcc.gov.au/ALLAPCC/APCC Guide to Procurement WEB%20and%20EPUB%20version.pdf:page](http://www.apcc.gov.au/ALLAPCC/APCC%20Guide%20to%20Procurement%20WEB%20and%20EPUB%20version.pdf:page)

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¹⁵ Ibid

Quality issues on a number of major projects stemming from non-compliant product prompted a tightening of compliance provisions for both the Queensland and NSW transit authorities.

This focused the ASI's attention to be alert to non-compliance in a whole range of steelwork and representations have been made on quality issues ranging from portal frames, guardrails, sheds, bridge trusses, and building construction projects.

Observable defects such as substandard welding that needed to be ground out and replaced, laminations in plate that could cause catastrophic failure, substandard corrosion protection affecting the life of an asset and generally poor workmanship were found unfortunately to be commonplace on imported structural steelwork.

There also is a price depressing effect from these imports that affects a sector of local fabricators that are forced to chase price at the expense of maintaining their quality systems and procedures.

The knock-on effect is that currently many fabricators and steelwork manufacturing SMEs are unable to maintain a reasonable profit that would allow them to reinvest in their businesses.

Testing by the steel industry has also identified metallic coated and pre-painted steels that do not meet Australian Standards and regulations. Examples include substandard metallic coating and paint thicknesses and non-conforming levels of lead in paint.

The non-compliances are not limited to poor quality and bad workmanship but extend to deliberate fraudulent behaviour with examples such as falsified test certificates, welds made with silicone rubber and then painted, attachment of bolt heads with silicon rather than a through bolt and water filled tube to compensate for underweight steelwork with fraudulent claims that their products meet particular Australian Standards.

Examples of non-compliance are contained in Attachment 4 of this submission.

This issue of non-compliant substitutions concerns building surveyors or inspectors who do not have the engineering expertise, knowledge or often opportunity to identify steel defects or check whether the steel supplied is compliant.

Builders and project managers may take on the responsibility of site inspection but often do not have the skills or knowledge to understand compliance at a material or fabrication level.

Moreover, for structural steelwork there is currently no reliable system for surveillance of imported building products apart from product failure. However, if defects with major

structural steel items are discovered, the prime contractor often has no alternative to meet the time constraints but to accept faulty product or try to patch repair any defects.

The implementation of a system that requires the supplier and all stakeholders in the construction chain to ensure that the products that they are selling are certified to comply with relevant standards and fit-for-purpose responsibilities within their scope will be good for Australia.

In 2014, the ASI implemented a National Structural Steelwork Compliance Scheme (NSSCS) that requires steelwork fabricators to elect to be audited for compliance capability. It is not mandatory and relies on contractor engagement and good purchasing practice for its success.

It is modelled on the steel product compliance principles used in the UK where there is a risk categorisation for each type of structure and the fabricator capability requirements are commensurate with the level of complexity and nature of the risk profile involved. This is also a voluntary scheme as per the model used in the USA.

The scheme is open to all fabrication companies from any country and provides the engineer and client reassurance that the subcontractor is certified as being capable of carrying out the work to Australian Standards requirements to a predetermined risk category of the project.

Steel reinforcing and structural steel product manufactured in or imported into Australia are covered by a compliance scheme managed by the Australasian Certification Authority for Reinforcing and Structural Steels (ACRS). This scheme seeks to certify compliant structural and reinforcing steel by auditing at the steel mill level. It is well established and has a very good track record in ensuring compliant quality steel is used in construction.

It follows that the ASI believes a mandatory requirement should be introduced into the NSW procurement policy framework which requires:

1. All structural steel products to be sourced from mills with ARCS third party certification; and
2. All fabricated products to be obtained from suppliers accredited under the NSSCS.

This would mean NSW would comply with the APCC principles contained in its *Procurement of Construction Products* document, set out in Attachment 1.

It would also mean this State would have a similar position to the South Australian Government.¹⁶

¹⁶ <http://www.eventbrite.com.au/e/industry-participation-forum-expression-of-interest-tickets-20096929457>

If this occurred, an increased standardisation of government processes and documentation would start to develop throughout Australia.

The ASI also believes there is a case that for specific identified products or processes (such as welding and painting), there should not only be reliance on accredited suppliers (who have evidence to show that they have a capacity to comply to Australian standards), there should also be conformance testing – that is, a regime that tests whether Australian standards are in fact being met by product supplied and being used for a particular project.

The steps taken to ensure that only products meeting Australian standards are being used in NSW infrastructure should also be recorded in a compliance management plan. This should be a mandatory requirement imposed in the procurement framework document.

This is an important management tool for complex infrastructure projects such as the development of freeways where no one standard or construction code can act as a normative document to guide the development of a quality project.

The fact that non-complying product is being used in infrastructure projects causes ASI members frustration. This is because they are unable to safely report non-compliant product due to confidentiality clauses in construction contracts and sensitivity of relationships in the building products supply chain, which may cause them to lose future contracts.

This makes continuous improvement or a 'Safety Alert' process impossible. The key to the success of reporting non-compliant product is anonymity coupled with qualified review of the matter reported.

A major instance of structural failure of a bridge truss in Sydney was recently reported on through this mechanism. The ASI has proven its effectiveness to Australia.

The ASI has been active in endeavouring to gain support for a confidential reporting system for instances of fraudulent supply of steel and steelwork and has been in discussions with Engineers Australia on this matter. This was one of the ASI's recommendations in its Senate submission into Non-conforming Building Products. ASI members support the availability of such a scheme.

In the United Kingdom, a confidential reporting scheme previously known worldwide as CROSS, now known as Structural Safety, has been established which allows stakeholders to report anonymously on unsafe building products and practices in structures.

This is funded by the UK structural and civil engineering fraternity as well as health and safety sectors supported by the UK Government and has positively influenced change to improve safety in the UK construction industry.

In the absence of such a scheme, the Department of Industry should establish a cell within the Department to allow 'whistle blowers' to report the use of non-compliant product in NSW, in much the same way that reports of malpractice in other areas of administration in NSW can be reported.

For this to work, procurement documentation will need to contain provisions that require suppliers and contractors to provide all reasonable assistance and all relevant documents necessary to determine whether non-compliant product has been used in NSW infrastructure.

Finally, environmental sustainability is important.

As steel is recognised as a sustainable material, there was a need to establish mechanisms for companies to determine what a sustainable steelwork supplier is and how to identify one.

The ASI Environmental Sustainability Charter (ESC) was established in 2010 to encourage the steel industry channel to operate in a more environmentally responsible way and to develop a means of accrediting committed downstream enterprises associated with steel manufacturing, fabrication or services.

The accreditation is designed to be used by regulators, environmental rating agencies and bodies such as the Green Building Council of Australia.

To become an ESC member, it is necessary to sign the Charter declaration committing the company to operating its business to reduce its environmental footprint, to increasing the efficiency of its resource use, to demonstrating environmental responsibility and sharing its knowledge of sustainability with others and to seek this in its choice of sub-contractors and suppliers.

Accordingly, it is recommended that the NSW procurement policy framework should make it a mandatory requirement for procurers to source steel products from businesses accredited under the ESC.

That said, as important as environmental sustainability is, so too is sustainability of the NSW steel supply chain.

This is now discussed.

The NSW steel supply chain

The vast majority of the members of the NSW steel supply chain are companies that employ fewer than 200 employees and are therefore regarded as being 'small to medium businesses'¹⁷.

Whilst the NSW Procurement Board has published *Direction 2014-02* and the Government the *NSW Government: Small and Medium Enterprises Policy Framework*¹⁸, taken as a whole these documents do not do much more than require procurers to think about small and medium enterprises when making procurement decisions and to communicate opportunities better.

The procurement framework document observes that procurers should abide by the international obligations entered into by Australia.

There is a general proposition that there is a requirement to treat overseas parties 'on no less favourable terms than Australian firms when governments are making procurement decisions for infrastructure falling within scope of an international trade agreement'.¹⁹

However:

- Article 15 of the US-Australia Free Trade Agreement (for example) permits terms and conditions relevant to the evaluation of tenders according to essential requirements and evaluation criteria set out in tender documents²⁰.

What this means is that despite the general terms of the US-Australia Free Trade Agreement suggesting the contrary, preference can be given to the produce of small to medium businesses. It is these provisions that permit the South Australian Government to specify a transparent weighting

¹⁷ Under NSW Procurement Board Direction 2014-02: <https://www.procurepoint.nsw.gov.au/direction-2014-02>

¹⁸ http://www.procurepoint.nsw.gov.au/system/files/documents/sme_policy_framework.pdf

¹⁹ See for example Article 15.2.1 of the Australia- US Free Trade Agreement: <http://dfat.gov.au/about-us/publications/trade-investment/australia-united-states-free-trade-agreement/Pages/chapter-fifteen-government-procurement.aspx>. For NSW, construction work worth more than \$7,769,000 falls within scope of the Agreement: see Section 2 of the Schedule of Australia, forming part of Annex 15-A of Chapter 15 of the US-Australia Free Trade Agreement

²⁰ See Articles 15.6.1(e) and 15.9.6 of the Australia-US Free Trade Agreement. In the case of the Trans Pacific Partnership, it expressly permits procurement documentation to list the relevant importance of the criteria: see Article 15.13.1(c)

for parties who can meet specific criteria set out in procurement documentation for projects falling within specified classes.²¹

Moreover, some NSW procurement documents require taking account of social considerations.

As an example, the *NSW Public Private Partnership Guidelines* require a public interest evaluation considering amongst other things, whether a proposal meets the Government's objective relating to the economic and regional development in the area concerned, including investment and employment growth.²²

It would therefore be appropriate for the Government to develop a paper setting out its role in ensuring the economic sustainability of the NSW supply chain as part of the broader Australian/New Zealand market for steel.

So the steel channel can have confidence that one of Australia's largest procurers of steel products will support the continued economic sustainability of the steel supply chain²³, appropriate criteria should be designed into procurement documentation for projects designated by the Government as being strategic.

This Victorian example illustrates the process that ASI has in mind:

- During 2014-15, thirteen strategic projects were underway with a total value of \$7.92 billion. Six of these strategic projects were declared in 2014-15 with the remaining seven ongoing from prior years.
- Each of these strategic projects has minimum local content requirements applied to help drive additional economic activity and jobs. The minimum local content requirements for strategic projects are determined on a case-by-case basis by the Victorian Government with consideration to analysis undertaken by ICN based on its experience with previous projects of a similar nature and information provided by the responsible Agency.

²¹ See *South Australian Industry Participation Policy Procedural Guidelines* (November 2015): <http://www.industryadvocate.sa.gov.au/upload/industry-advocate/ipp/ipp-guidelines.pdf?t=1448599529885> and the South Australian Industry Participation Plan: <http://www.industryadvocate.sa.gov.au/upload/industry-advocate/ipp/industry-participation-policy.pdf?t=1448599529885>

²² *NSW Public Private Partnership Guidelines* (2012): 25
http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0015/22605/NSW_PPP_Guidelines_2012_Final_Version_14_August_2012_dnd.pdf

²³ Taking the NSW Government as a whole

- In addition, the Victorian Government has set additional requirements for the Level Crossing Removal Project packages to use 100 percent local steel and maximise the use of local steel in the West Gate Distributor.²⁴

It is recommended that NSW procurement documentation must be sufficiently wide to allow for the same capacity to be exercised in this jurisdiction.

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www.steel.org.au

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²⁴ Victorian Government *Victorian Industry Participation Plan Annual Report 2014-5* (2015): 5. See dsdbi.vic.gov.au/__data/assets/word_doc/.../VIIP-Annual_Report.doc

Attachment 1

Principles contained in *Procurement of Construction Products:*

A Guide to Achieving Compliance

Principle 1:

All relevant legislation must be complied with including, but not limited to, building, workplace health and safety, and consumer laws.

Principle 2:

Contract documentation should clearly specify product standards and the required evidence of conformity. Product standards should refer to relevant Australian Standards. Where there are no relevant Australian Standards, relevant international standards or authoritative industry sources should be utilised.

Principle 3:

All construction products procured should conform to the requirements in the contract documentation.

Principle 4:

The selection of the required evidence of conformity should be based on the intended use and risk exposure (likelihood and consequence of failure) of each construction product.

Principle 5:

Construction product conformity requirements should refer to relevant Australian Standards. Where there are no relevant Australian Standards, appropriate international standards or authoritative industry sources should be utilised.

Principle 6:

Evidence of construction products meeting specified standards should be demonstrated by conformity assessment including, but not limited to, product certification, testing or inspection, as set out in the contract documents.

Principle 7:

Evidence of the source of construction products and their authenticity should be obtained and retained.

Principle 8:

Project managers should obtain and retain contemporary and credible documentary evidence to demonstrate conformity of all construction products.

Principle 9:

Responsibility for managing conformity assessment outcomes at each stage of the project should be appropriately allocated in the contract documentation.

Principle 10:

Where third party conformity assessment bodies are relied upon to provide evidence of conformity, they should be accredited by:

- Joint Accreditation System of Australia and New Zealand (JAS-ANZ) – for product certification, management systems, certification and inspection bodies.
- National Association of Testing Authorities Australia (NATA) – for testing and calibration laboratories and inspection bodies.
- Accreditation bodies that are signatories to relevant international multilateral/mutual recognition arrangements and have the relevant scope associated with the conformity assessment activity.

Principle 11:

Where construction products are supplied without required evidence of conformity, or where doubt exists about product conformity, product testing to an appropriate level may assist in ascertaining construction product quality.

Principle 12:

Without adequate evidence of product conformity, the product should not be used in construction.

Attachment 2

Statement on 'Value for Money' forming part of the NSW Procurement Policy Framework for NSW Agencies

The overarching requirement for procurement is that a government agency achieves 'value for money'.

A government agency is required by law to ensure it obtains 'value for money' in the exercise of its functions in relation to the procurement of goods and services - s176(2) *Public Works and Procurement Act 1912* (the Act).

An objective of the NSW Procurement Board is to "ensure best value for money in the procurement of goods and services by and for government agencies" (refer s171 of the Act).

Achieving 'value for money' also underpins responsible financial management. Accordingly the defining and achieving of 'value for money' is an important element in the NSW Government's procurement scheme.

At its simplest, 'value for money' is the differential between the total benefit derived from a good or a service against its total cost when assessed over the period the goods or services are to be utilised.

Benefits, costs and risks include money and non-monetary factors. While most non-monetary factors can be translated into money equivalent amounts, others cannot be easily translated. These factors still remain relevant to the assessment of 'value for money'.

Achieving 'value for money' does not always mean that the 'highest quality' good or service is selected. A lower cost option still appropriate to quality requirements may be appropriate where an agency has limited funds available for a particular procurement. 'Value for money' is achieved when the 'right sized' procurement solution is selected to meet an agency's need.

The planning stage of every procurement activity brings the challenge of identifying the extent of benefits and costs and then estimating an equivalent monetary amount for those items.

Using the information in this Statement to determine value for money

This Statement is provided to assist procurement decision-makers at the procurement planning stage to make informed and supportable decisions. It provides guidance on one way in which these decision-makers can determine what is 'value for money'.

In providing this Statement, it is also recognised that it is not always possible to identify or quantify all benefits and costs associated with a procurement activity. Sometimes, such as where a major prequalification scheme is being constructed or at a whole-of-government level, not all benefits and costs will be known and it then becomes reasonable for decision makers to build 'value for money' assessments on assumptions using available information, such as past performance or usage.

It should also be recognised that procurement planning activities which apply the examples in this Statement in a formulaic manner are unlikely to achieve 'value for money'.

While it may be appropriate to also apply the concepts in this Statement to individual instances of procurement activity and each procurement activity should consider the best way to apply 'value for money' principles as part of the overall procurement process, agencies will achieve greatest 'value for money' if procurement planning involves a rigorous approach to the determination of benefits and costs.

The NSW Treasury publication *TPP07-5 NSW Government Guidelines for Economic Appraisal* contains detailed advice about the identification and assessment of benefits and costs, albeit relating to capital projects. Agencies undertaking procurements which require very complex assessments of benefits and costs, or assessments which extend over a number of years, may find utility in the principles contained within these guidelines.

Identifying benefits, costs and risks when determining value for money

In most procurement activities, there are at least three broad types of benefits, costs and risks which need to be considered at the planning stage when assessing value for money; these are up-front benefits/costs and risks, after-purchase benefits/costs and risks, and benefits and costs associated with the fitness-of-purpose of the goods or services procured.

Up-front benefits/costs and risks

These types of benefits, costs and risks are usually the focus of most procurement activities. While most procurement activities restrict assessment of these benefits and costs to the price being paid for a good or service when assessing upfront 'value for money', agencies should also consider:

- A. Savings - which are verifiable reductions in existing levels of expenditure if a procurement action proceeds (wherever savings are claimed, the clear identification of the areas of such savings and costs saved is necessary so that any later review can ascertain whether they have actually been achieved).
- B. Revenue changes - such incremental revenues which result directly or indirectly from a particular procurement action (revenue changes which would have occurred regardless of the procurement should not be included).
- C. Avoided costs - which are incremental costs that are unavoidable if nothing is done to solve a particular problem, but may be avoided if a procurement action is taken.
- D. Transitioning-in costs - which includes direct and indirect commissioning and technical costs for the agency associated with the purchase.
- E. Risks – risks of the acquisition and procurement activity itself, including commercial, delivery and business continuity risks.

After-purchase benefits/costs and risks

These types of benefits and costs are sometimes called whole-of-life, whole-of-contract benefits/costs or total benefit/costs of ownership and they are usually easier to identify in the case of procuring services (rather than goods). While agencies will be well aware of direct charges associated with recurrent costs (such as rentals, license fees etc), agencies should also take account of the following issues when identifying after-purchase 'value for money':

- A. Contract period benefits and costs – it should not be assumed that the anticipated benefits and costs accruing initially from a procurement action will be replicated in future years throughout the term of a contract – benefits in absolute and relative terms may reduce if technologies or agency preferences change throughout the period of the contract.
- B. Transactional costs associated with performance of the contract – while the types of direct charges described above are readily identifiable, agencies may also need to identify ongoing costs associated with inspections or verifications that the goods and services are being delivered in accordance with the contract's terms.
- C. Transitioning-out costs - including remediation costs, residual benefits accruing to an agency after completion of the contract.

- D. Contingency costs – such as early termination fees and charges, and costs associated with remedying any failure of the supplier to perform the contract.
- E. Contract management risks – including failure to supply, business continuity risks and reputational risks.

Fitness-for-purpose benefits/costs

Types of benefits and costs associated with the fitness-for-purpose of goods and services are usually the least well-considered in procurement activities as typically benefits are over-estimated and indirect costs are not identified properly. Many fitness-for-purpose benefits and costs are also considered to be 'non-price' elements of the assessment of 'value for money'. When achieving 'value for money', agencies should consider:

- A. Applicable Government-wide procurement policies relating to the purchase of goods and services and should not procure goods and services inconsistent with these policies (e.g. the promotion of competition).
- B. Capability of the good or service to meet the precise identified need underpinning the procurement and if adjustments are required the costs of those adjustments to the agency (ensuring that the goods or services do not deliver more than what is required to meet the precise identified need).
- C. Compliance with specifications/standards associated with the goods or services being purchased.
- D. Capacity of the supplier to deliver the good or service, including a supplier's reputation and availability (care should be taken not to double count benefits or costs in this category which have already been assessed as contingency benefits and costs).
- E. Flexibility and adaptability in the goods and services over the lifecycle of the procurement, including the scope for benefits and costs to arise from process improvement, and adaption and innovation during the delivery of the goods or services.

Assessing benefits, costs and risks when determining 'value for money'

Once benefits and costs are identified, it is necessary to assess the equivalent money value where practicable. Major issues for agencies when assessing the money value of benefits and costs include:

- Every procurement activity has an opportunity cost which is the opportunity forgone by the agency to apply scarce resources to another need or issue.

- All relevant benefit and cost items which can be identified, quantified or estimated must be included.
- Benefits and costs be assessed for the period of expected use of the good or service.
- Benefits to the broader community from a procurement activity should not generally be included in the assessment of 'value for money' – exceptions can occur where a procurement activity delivers a clear benefit to a community which is aligned with Government policy or programs.
- It is important to view benefits and costs outside of a narrow, commodity-based perspective – for example, value for money may be achieved by an agency which purchases camera-equipped desktop computers so that teleconferencing can then reduce the agency's travel expenditure, but it should be recognised that costing assessments in this paradigm may be more complex to determine and due consideration should be given to that in the procurement planning process.
- Assumptions underlying all estimates (such as continuing usage levels of laptop computers) should be made explicit in the evaluation of 'value for money', particularly where non-money benefits and costs are being identified.
- The *With/Without Principle* should be applied: benefits and costs should not be simply assessed on a 'before procurement/after procurement' basis as the basis for current benefits and costs is not static (for example, increased maintenance costs or difficulties in obtaining spare parts can be considered as subsidiary and indirect costs when deciding whether to upgrade or replace a computer fleet).
- There should be parallel treatment of costs and benefits - when considering benefits and costs which either cannot be valued or cannot be quantified, there can be a tendency to concentrate on the benefits and ignore the costs.
- Benefits to the agency not reflected in revenue flows can be difficult to quantify accurately – in some cases, an agency will not be charged a price which reflects the benefits received (while it may prove difficult, attempts should be made to quantify such benefits wherever possible. If quantification proves impossible, as much detail of the benefits as possible should be included).
- Benefits of services such as police may have secondary or subsidiary effect on a group or industry other than the agency (for example, lower-emitting buses may reduce urban pollution levels).

Summary

This Statement is provided to assist procurement decision-makers to make informed and supportable decisions about value for money when planning procurement of goods and services.

Identifying 'value for money' is sometimes a complex task. In most procurement activities, there are at least three broad types of benefits, costs and risks which need to be considered at the planning stage being upfront benefits/costs and risks, after-purchase benefits/costs and risks, and benefits and costs associated with the fitness-of-purpose of the goods or services procured.

Once risks, costs and benefits have been identified, it is necessary to assess the equivalent money value where this is practicable. By making an informed and supportable decision about these benefits, costs and risks, it is more likely that 'value for money' can be achieved.

Attachment 3

Examples of steelwork failures



Photo 1
Bolts failure

(Source: APCC-ATIC standards presentation, 18 April 2011)

Photo 2
Poor galvanizing due to steel chemistry



Photo 3
Silicon Welds



Photo 4

Diagonal chords on this bridge truss when cut were found to be filled with water. This is extremely unusual and is thought possibly to have been deliberate to build up the weight of the structure to have a mass within overall specification.



Photos 5-6
Poor paint finish against a specification of 75um inorganic zinc silicate, 6. 125um epoxy and 75um urethane. Top coat left off.



Photos 7-8
Steel cracking on imported
fabricated product

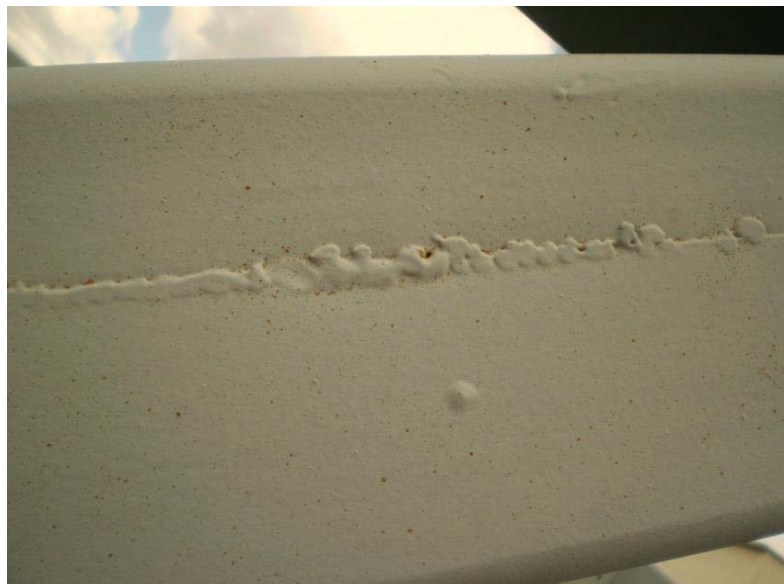


Photo 9
Very poor seam welding or
rectification of an
unwelded section

Falsification of test reports

Steelwork tested and analysed by ALS NATA certified laboratory

Tensile testing showed the steel was 338 MPa yield strength versus a 450 MPa grade to AS/NZS 1163 Grade C450L0 called up in the engineer's documentation.

Extract:

COMPLIANCE STATEMENT: The tensile test results reported herein fails to comply with the requirements specified in Table 6 of the AS/NZS 1163: 2009 for Grade C450L0. CVN impact test results reported herein comply with the requirements specified in Table 7 of the AS/NZS 1163: 2009 for Grade C450L0.

Non- Compliant welding statement

