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The Committee Secretary
Standing Committee on Public Accounts
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

Dear Committee Secretary

Inquiry into ACT Government Procurement

The Master Builders Association of the ACT (MBA-ACT) welcomes the opportunity to participate in the Standing Committee on Public Accounts *Inquiry into ACT Government Procurement*.

This inquiry comes on the back of considerable discussions around the procurement process during the ACT Government's roundtables to address the impacts of the Global Financial Crisis (GFC). Resulting from those roundtables was a commitment to undertake an internal review of which we believe has been recently completed.

MBA-ACT produced a paper for the Chief Minister's roundtable which addressed procurement issues and I enclose a copy of that paper for the Committee for your consideration in this inquiry. This paper addresses most of the issues included in the Terms of Reference for this inquiry. We would welcome any opportunity to appear before the committee to expand on any matters contained in this paper or other Terms of Reference, some of which have been subject of the recent review above and further action by ACT Procurement Solutions.

We do acknowledge ACT Procurement Solutions recent initiative to undertake a review of design and documentation, a matter that has been the source of considerable angst for the construction industry in relation to the procurement process for many years. We further acknowledge the willingness of ACT Procurement Solutions in engaging with our industry on a regular basis to address issues, some which have been long standing and others that arise from time-to-time.

Whilst it is perhaps too early to address the matter of *"effectiveness of recent reforms"* (ToR 5) one issue that often perplexes local industry is that of scheduling the procurement activities that can impact on *"the ability of locals suppliers to compete for ACT Government procurement opportunities"* (ToR 4). This is particularly relevant to our industry where often there is a famine or feast. This is addressed in our paper (see point 4).

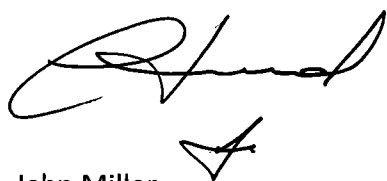
Speed of process and feedback (ToR 6) are issues that always attract considerable discussion on the subject of procurement and are critical factors in businesses either opting in or opting out of the procurement process. There is a balance required that will ensure that the ACT Government is able to attract enough interest to ensure that value for money is achieved and for businesses to feel comfortable in participating in a process that does not negatively impact on their operations.

In terms of sustainability (ToR 2), the building and construction industry will be subject to greater cost pressures in order to meet new and future mandated requirements. This will have pricing implications for government procurement as it will at other commercial and consumer levels. It is generally accepted that many changes to meet sustainability objectives will come at a cost and some of those costs are still largely unknown, particularly in relation to the proposed Carbon Pollution Reduction Scheme (CPRS). It is anticipated that CPRS will impact on capital works delivery, something which might not have been factored in fully in the out years.

The above notwithstanding, the social and environmental demands and imperatives to which governments at all levels are being asked to respond will challenge the value for money principle, particularly if economies are subject to turbulence of an ongoing nature as witnessed by the GFC.

We appreciate the opportunity to put forward our comments regarding procurement for your inquiry and look forward to receiving the final report on your findings.

Yours sincerely



John Miller
Executive Director

Enc: Copy of Submission to Chief Minister's Procurement Roundtable – February 2009



MASTER BUILDERS
AUSTRALIAN CAPITAL TERRITORY



MASTER BUILDERS
AUSTRALIAN CAPITAL TERRITORY



Submission to Chief Minister's Procurement Roundtable February 2009

Introduction

The ACT is well served by its procurement processes and many projects are planned, designed and executed to a high standard. There are recurring problems however, and there is ample justification for a wide-ranging review of all of the factors that impact upon the efficient spending of tax-payer's funds during the provision of public supplies and services.

The relatively constant growth of Canberra during the last five decades has meant that our community enjoys the availability of highly skilled project management and construction companies, coupled with experienced government agencies. A review of our procurement processes, that is adequately resourced and combined with constructive comment from ACT resident professionals, will lead to measurable efficiency gains.

Any discussion regarding the improvement of Government procedures must start with the observation that Canberra, being either a big country town or a small city, is inhabited by only 330,000 people. We cannot afford any duplication of services or the cost impact of unnecessary regulation. Of the above, the former is unforgiveable in such a small jurisdiction while the latter is a matter for judgement depending upon the perceived political and cultural needs of the population.

The MBA believes that over time, the ACT has become excessively handicapped by required institutional processes that add very little to the quality of project outcomes.

Examining the Procurement Issues

The following observations of problems within the ACT procurement process, coupled with associated suggestions for improvement, all involve the key theme of stopping the waste of skilled human resources (our most critical asset that will continue to be in short supply for the foreseeable future) and identifying practices that waste community funds.

In order to be brief, we are just listing issues to become the basis for further discussion rather than to provide exhaustive evidence of an undesirable practice. Clearly, the MBA's comments come from experience directly related to the construction industry; however, we believe that the principles of our concerns are common to many aspects of the general Government procurement process.

1. Significant delays to project delivery occur as planners and designers struggle to deal with many different agencies and pass through a convoluted approval process prior to actually commencing construction. We believe that a small committee of planners and designers should produce a comprehensive list (plus common delay times) of all of the approvals that have to be obtained for a typical ACT project. The list should then be reviewed with government and discussion should centre on the number and height of the hurdles that have to be negotiated. Any unnecessary processes should be trimmed or abolished. This issue is the source of much time-wasting during the design and planning phases.
2. Government legislation is often the source of unexpected consequences within the procurement chain. Once a requirement is prescribed into regulation then ACT Public Servants are duty bound to insist upon actions that may appear to be unnecessary. A solution is to review regulations based upon the above list of hurdles. Institute a more effective process whereby proposed new legislation is carefully examined so that the real costs of the law are acceptable when compared with the aimed benefits.

Consider establishing a central government contact point (with a mandate to take a common-sense approach) to which bureaucratic bottle-necks can be reported for prompt review. It currently takes way too long to resolve obvious problems.

3. Our small state needs coordinated actions by all Government agencies and quasi Government authorities. It was disappointing that ACTEW were not represented at the 'Roundtable'. As a significant player in the provision of public infrastructure, Actew and ActewAGL must not be allowed to operate in a manner that does not reflect their true status as a Government monopoly who should act in a manner that is totally consistent with the remainder of Government processes. Solution is to bring Actew into the planned discussions.
4. Institute an idea that is at least 20+ years old, where some designs are prepared to sit on the shelf to be ready for use at short notice. The benefits are obvious and the shortage of land for sale within the ACT recently would not have become so dramatic if the policy had been strictly followed.
5. Educate policy makers as to the length of time necessary from project conception to the commencement of construction. Demonstrate the critical importance of achieving top quality planning and design. There are significant, (an Australia wide recognised problem), cost penalties during construction if designs and planning are rushed. Avoid crash programmes for design and construction as longer programmes are of great assistance for those companies trying to efficiently manage the time of permanent employees. Crash programmes promote the use of casual employees and lead to reduced standards.
6. Dramatically improve the time taken to let tenders after tenders have closed. It is a fundamental recurring problem within the ACT. Some projects take months to let. All businesses need to know about success or failure in the tendering process promptly as they struggle to keep their expensive workforce employed.

The solution is to require Procurement Solutions to report on this issue for every contract let and make good performance one of their key performance indicators.

7. Don't go to tender until all approvals are in place and drawings are completed. Some tenders are called too early to satisfy pressure from more senior authorities. This item relates to points 5 & 6 above.
8. Cease the practice of making consulting engineers tender for work for all but the largest of projects. Understand that the consulting fees are small compared with most total project costs. There is an Australia-wide shortage of design staff and it is a waste to use their time in the competitive bidding process. Overall savings will be made to project delivery costs if design engineers are not forced to cut prices to win work. A small increase in the cost of design will greatly improve standards and allow for time to optimise solutions, all of which reduces construction costs. Work can be given out using a panel system as was used in the days of the National Capital Development Commission (NCDC).
9. Consider a review and then change (if possible) of the ACT land tenure system. Land in NSW appears to be more easily resumed for public works than within the ACT. Delay in gaining access to lease-hold land is a recurring and costly problem within the ACT. Review past land management issues to see if there is a pattern that can be rectified. This issue alone has been the cause of many delays over many years.
10. Be aware that most government agencies do not have the internal resources to conduct the reviews of processes that are occasionally required. Extra staff or consultant support needs to be given from time to time for targeted projects. A glaring example is the five (5) year wait to get to the situation where Procurement Solutions is now going to conduct a serious review into the 'design and documentation' issue which was first raised by the MBA in 2004. Note particularly those areas where rapid technological change is occurring.

11. Be aware that the occasional disaster can lead to an over-reaction when reviewing what went wrong. The decisions taken in the aftermath of the 'Bruce Stadium' affair and the demolition of the hospital have both lead to significant time and cost imposts upon the procurement process for little apparent benefit.
12. Review and then seek to establish the absolute minimum requirements for insurance cover. The level of cover required for public liability insurance is excessive in many situations (as well as being a barrier to broader participation in the procurement process) and the trend to insist upon the provision of professional indemnity insurance makes no sense in most cases.
13. Workers' Compensation Insurance deserves special comment despite the political issues associated with the topic. The MBA believes that few people really understand the excessive cost of Workers' Compensation insurance within the ACT.

The following factual example is instructive. One of the MBA's significant civil contractor members, with a good accident record and a long history of doing business with Allianz Insurers, carries out about 2/3 of its turnover in the ACT and the balance in NSW. For the identical class of work the company's current Workers' Compensation rate in the ACT is 8.5% of gross wages while the corresponding rate in NSW is 4.1%. That is, the cost of Workers' Compensation insurance within ACT is in excess of 100% more expensive than within NSW. The situation is a scandal of significant proportions.

The NSW system has now been in place for long enough to prove the benefits to all parties. A quick review of the ACT 'Yellow Pages' demonstrates one of the fundamental problems associated with the situation in the ACT. Large advertisements from opportunistic legal firms are prominent amongst the 32 pages devoted to the sector.

The MBA is very keen to have the opportunity to further discuss the recent review into the ACT Workers' Compensation insurance scheme. The current arrangements add a significant cost to the construction process and actively encourage avoidance and dishonest reporting of employee numbers. The worst feature of the current system is that it is a corrupting influence whereby honest firms are severely disadvantaged in the tendering process compared with those who are casual with the truth.

Despite many years of bringing the issue to the attention of ACT Government departments there has been an almost total lack of action taken to institute an effective audit process of those companies who conduct business with the government. It would be very easy to establish such an audit system whereby companies are put on notice that they must conform to the laws of the ACT. The major issue remains the need to adopt the NSW system.

14. Running in parallel to the planning and design hurdles are the handover procedures that contractors must cope with at the end of a project. Different government agencies can have a critical role to play and while the MBA supports the need for a high standard of construction, we are concerned at the continuing reports of constantly changing requirements and unreasonable decisions at the end of projects.

The actions of City Parks in particular add considerable risk to a contractor's position and they should not be permitted to dump the problems of the drought into the lap of others. For the most competitive pricing to be achieved in the procurement process the concept of risk sharing needs to be followed.

15. Not always, but invariably, some projects result in dispute bringing additional time and cost into the equation. Adjudication over issues surrounding contractual disputes could benefit from an alternative mechanism in the form of an expert

panel review. Accessing and being bound by such a mechanism would be subject to agreement between parties involved in the dispute. This could provide significantly less costly and time-consuming settlement of matters with benefits flowing back to the ACT taxpayer.

Conclusion

As previously noted, all of the above items can be supported by direct examples from a broad range of the membership of the MBA. Our association is very keen to play a positive role in assisting any review that the Chief Minister chooses to conduct. A team effort between ACT public servants and local professionals will be able to establish changes in practices that will reduce waste and duplication.

We look forward to further opportunity to engage in discussions to streamline procurement in the Territory and ensure that as a small jurisdiction we are fleet-of-foot and responsive to change, something we believe can be achieved without compromising required standards and transparency.