



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2022-2023

Mr James Milligan MLA (Chair), Mr Andrew Braddock MLA (Deputy Chair),
Dr Marisa Paterson MLA

ANSWER TO QUESTION TAKEN ON NOTICE DURING PUBLIC HEARINGS

Asked by Elizabeth Lee MLA on 26 August 2022: Chris Steel MLA took on notice the following question(s):

In relation to: Government Procurement Board

Ms Konti: Bettina Konti, Chief Digital Officer but I guess in relation to this question Chair of the Government Procurement Board.

THE CHAIR: Sorry, can I get you to acknowledge the privilege statement as well please.

Ms Konti: Yes. And I also acknowledge the privilege statement, thank you. We have outlined exactly the way that the procurement worked. We receive procurement proposals from proponents. We read and have discussions with them and a weekly meeting of the Government Procurement Board, provide and advice and recommendations to proponents about how they could get better procurement outcomes and the extent to which their procurement aligns with the Government Procurement Act. And where there are some recommendations that are important for us to ensure that the procurement delegate understands our recommendations. Sometimes those conversations go offline also. I would note for this committee that often the Government Procurement Board is not aware of how that advice is undertaken or that advice is taken to be a mechanism through which we follow up and understand what has actually happened to the procurement advice that we have provided.

MS LEE: Thank you for that, Chair. You might need to take this on notice but in the last five years can you please provide to the committee the instances where you had to escalate to the Special Minister of State how many occasions over the last five years?

Mr Steel: If we can take that on notice and the previous minister who was under a different title

MS LEE: Yes. Thank you, minister. Are board members by virtue of their membership of the board as distinct from as members of the public service under obligations of disclosure, for example, under the Public Sector Management Act or Public Interest Disclosure Act?

Mr Bain: Again, as you quite rightly pointed out, Ms Lee, the majority of board members are in fact public servants as well. And so there are commensurate obligations in that sense under both the Public Sector Management Act and indeed any of our other integrity measures. As far as being subject to those same disclosure, that same disclosure regime the non-public sector members of the board are actually engaged as part-time orderlies if you like. I do not know the exact answer but I will be happy to seek some advice as to the extent which that cap, means they are captured by the same regime.

MS LEE: So, you will take that on notice?

Mr Bain: I would be happy to do so.

MS LEE: Thank you, Mr Bain. And this might also need to be taken on notice as well. The same periods, the last five years, where there has been an instance, and I understand the Chair has confirmed that they did not necessarily aware of what happens to the advice that the board gives, but where the board has raised significant issues with a procurement and the proponent has gone ahead anyway. Is that something that you can provide on notice?

Mr Bain: It may be difficult to discern but I could certainly attempt to do so.

MS LEE: Thank you. And—

DR PATERSON: She has had multiple supplementaries and there is lots of us here.

MS LEE: Just one final question.

THE CHAIR: Is there any other supplementaries from anyone else on this substantive?

MS LEE: One final supplementary.

THE CHAIR: One final supplementary, Ms Lee.

MS LEE: Thank you, Chair. There was a letter from the board, Chair, to the minister on 14 September 2020 which sought his advice and okay to conduct a survey of past proponents. Can you let us know what the results of those surveys were, and will you table them for the committee?

Mr Steel: That is one we will probably have to take on notice, yes.

MS LEE: Thank you, minister.

Chris Steel MLA: The answer to the Member's question is as follows: —

1. Based on available records, the Government Procurement Board has not formally provided advice to the Minister on issues of procurement activities of Territory entities or the operation of the Act in the last five years under section 6(e) of the *Government Procurement Act 2001* (the Act).

Current Government Procurement Board practice is to provide advice on procurement proposals to delegates and those accountable for making procurement decisions. Procurement ACT provides policy advice to the Minister including on any systemic issues it identifies in its engagement with Territory entities and as an observer at Government Procurement Board meetings or where procurement policy may need to be improved, adjusted or further clarified to support better procurement outcomes.

2. Section 9 of the *Public Sector Management Act 1994* (PSM Act) outlines the requirements of public servants and public sector members (which includes all statutory appointees of ACT Government boards or committees) in performing their duties. Specifically, section 9(4) of the PSM Act requires disclosure of any maladministration or corrupt or

fraudulent conduct by a public servant or public sector member that the discloser becomes aware of. This applies to all members of the Government Procurement Board.

Under the *Public Interest Disclosure Act 2012*, any person may disclose disclosable conduct.

The Government Procurement Board Code of Conduct, that is agreed to by all members, also requires members to report to an appropriate authority any corrupt or fraudulent conduct in the ACT Public Sector that comes to the member's attention, or any possible maladministration in the ACT Public Sector that the member has reason to suspect.

3. The information requested is not readily available. The Board comments on every proposal that comes before it and, while the Board secretariat has documents recording Board comments on proposals, any evidence or documentation of how those comments are acted upon by proponents would be difficult to ascertain. Any such documentation is not held centrally, and it would be necessary to analyse what actually went to market compared to what was in the documents provided to the Board for review. Based on the volume (five financial years) and complexity of the request, providing a response would be an unreasonable diversion of public sector resources.
4. Please refer to Attachment A.

Approved for circulation to the Select Committee on Estimates 2022-2023

Signature:



Date:

5/9/22

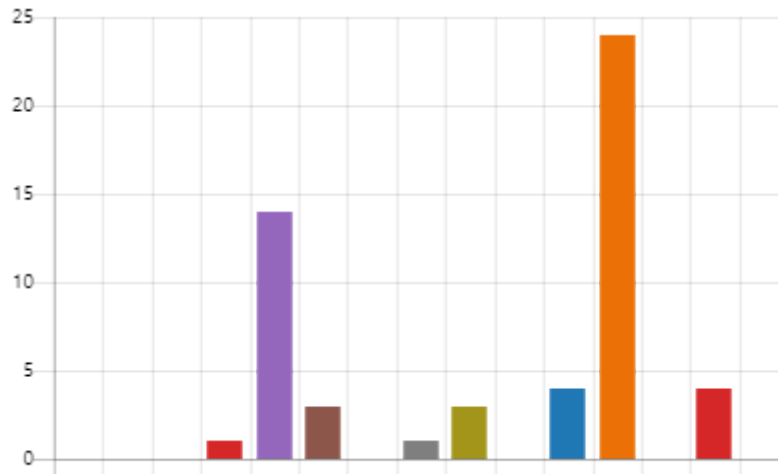
By the Special Minister of State, Chris Steel MLA

2021 Government Procurement Board Survey

54 Responses **21:54** Average time to complete **Closed** Status

1. Please identify which directorate/agency you are from:

● ACT Health Directorate	0
● ACT Integrity Commission	0
● ACT Legislative Assembly	0
● Canberra Health Services	1
● Chief Minister, Treasury and Ec...	14
● Community Services Directorate	3
● Cultural Facilities Corporation	0
● Education Directorate	1
● Environment, Planning and Su...	3
● Housing ACT	0
● Justice and Community Safety...	4
● Major Projects Canberra	24
● Office of the Work Health and...	0
● Transport Canberra and City S...	4
● Other	0



2. Are you happy to provide your individual contact details? If yes, please provide your name, email details and position classification level. If no, please just type No.

54
Responses

Latest Responses

"no"

"No"

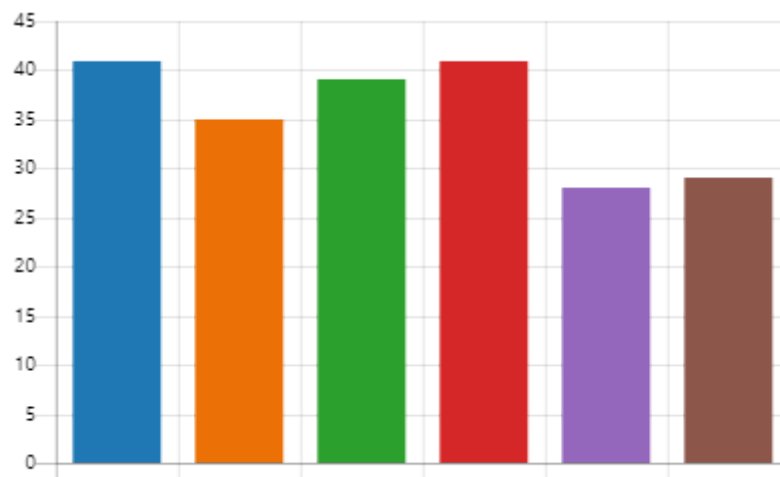
3. In the 2020-21 financial year, approximately how many times did you attend a Government Procurement Board meeting?

● Did not attend	12
● 1-5 times	36
● 6-10 times	5
● More than 10 times	1



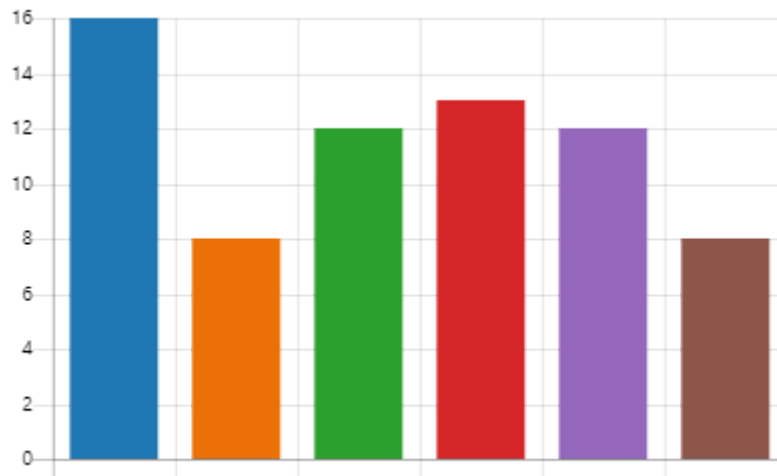
4. Of the below list, which of the following are you aware to be the functions of the Board? (please select as many as apply)

● to review, and give advice to t...	41
● to review, and give advice on ...	35
● to review procurement propos...	39
● to consider, advise on and, if a...	41
● to provide advice to the Minis...	28
● to exercise any other function ...	29



5. Which of the Board’s functions would you like to know more about or access?
(please select as many as apply)

- to review, and give advice to t... 16
- to review, and give advice on ... 8
- to review procurement propos... 12
- to consider, advise on and, if a... 13
- to provide advice to the Minis... 12
- to exercise any other function ... 8



6. If your answer to question 3 is that you attended the Board 1-5 times or more in the 2020-21 financial year, were you able to schedule a meeting with the Board in a timely manner to meet the requirements of your procurement?

- Yes – please go to question 9 35
- No– please go to question 8 12



7. If you answered "No" to question 6, what do you think the Board needs to do to ensure timely access to the Board?

- Have more available meeting ... 6
- Require proponents to come ... 0
- Other 3



8. Other than timing, were there any other factors that affected your interaction with the Board?

- No – please go to question 10 18
- Yes - lack of skilled staff to pre... 0
- Yes - lack of guidance on what... 3
- Other 5



9. In relation to your attendance at the Board, please select the extent to which you agree with the statement: "I found the Board's advice useful".

- Strongly agree 9
- Agree 22
- Neither agree not disagree 10
- Disagree 3
- Strongly disagree 1



10. If your answer to question 9 was any of "neither agree nor disagree" "Disagree" or "Strongly disagree", please provide details as to your reasons for responding in that way:

10
Responses

Latest Responses

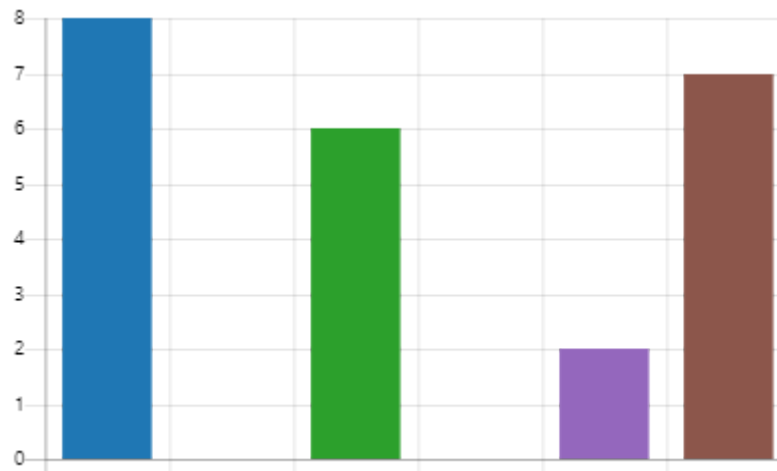
11. If your answer to question 9 was "neither agree nor disagree" "Agree" or "Strongly agree", overall to what extent did you follow the Board's advice?

- I followed all of the Board's ad... 23
- I followed all of the Board's ad... 12
- I followed some of the Board's... 3
- I followed some of the Board's... 2
- I never followed the Board's a... 0



12. If your answer to question 11 was anything other than "I followed all of the Board's advice all of the time" what factors affected whether you followed the Board's advice? (please select as many that apply)

- The Board's advice did not co... 8
- The Board's advice was too co... 0
- The Board's advice was irrelev... 6
- There was no time to follow th... 0
- The delegate for the procure... 2
- Other 7



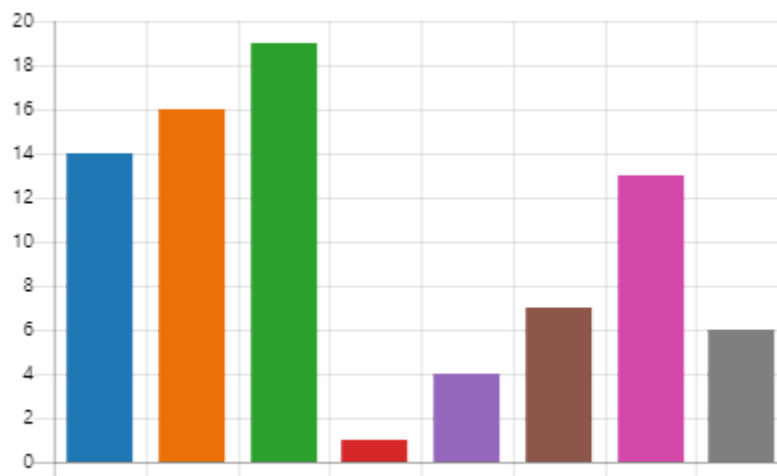
13. Overall, to what extent did you meet the procurement timeframes that were presented to the Board?

● All of the time	15
● Most of the time	22
● Some of the time	8
● Rarely	1
● Never	2



14. If your answer to question 13 was anything other than "all of the time" please explain what factor(s) affected the timeframes (please select as many as apply).

● Approach to market took long...	14
● Evaluation took longer than e...	16
● Obtaining delegate approval t...	19
● Obtaining ministerial approval...	1
● Obtaining budget took longer...	4
● Obtaining/implementing inde...	7
● Contract negotiations took lo...	13
● Other	6



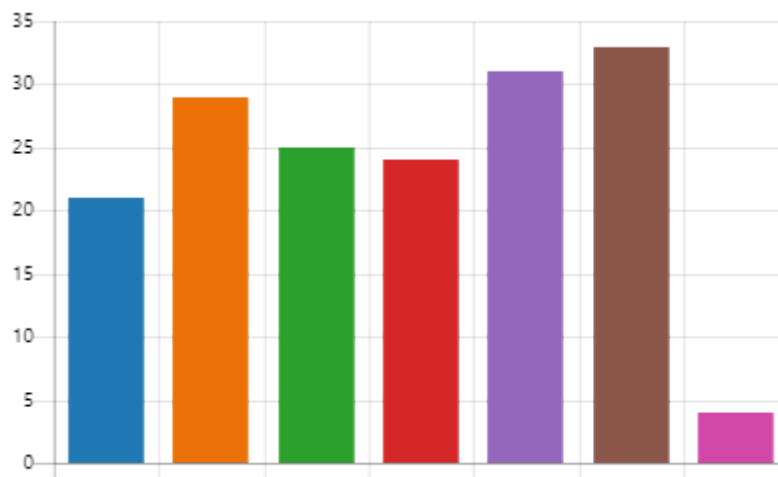
15. Overall, did the procurement(s) referred to the Board achieve the intended outcomes? If yes, please go to question 16. If no, please specify why the intended outcomes were not achieved.

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Responses

Latest Responses
"Yes - however there were complications in the procurement ..."
"Yes"

16. Do you think that your procurement(s) have successfully considered and implemented the Procurement Value(s) that had been nominated in the documents presented to the Board (please select as many as apply).

- Yes - Aboriginal and Torres Str... 21
- Yes - Business Development a... 29
- Yes - Diversity, Equality and In... 25
- Yes - Environmental Responsi... 24
- Yes - Fair and Safe Conditions ... 31
- Yes - Transparent and Ethical E... 33
- No 4



17. If you answered No to question 16, please specify why the nominated Procurement Value(s) were not achieved.

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Responses

Latest Responses
"The 2 procurements we went to the Board with are still in p..."

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Proposed 2021 Survey Questions

1. Please identify which directorate/agency you are from:
 - a. ACT Health Directorate
 - b. ACT Integrity Commission
 - c. ACT Legislative Assembly
 - d. Canberra Health Services
 - e. Chief Minister, Treasury and Economic Development Directorate
 - f. Community Services Directorate
 - g. Cultural Facilities Corporation
 - h. Education Directorate
 - i. Environment, Planning and Sustainable Development Directorate
 - j. Housing ACT
 - k. Justice and Community Safety Directorate
 - l. Major Projects Canberra
 - m. Office of the Work Health and Safety Commissioner
 - n. Transport Canberra and City Services Directorate
2. Are you happy to provide your individual contact details?
 - a. Yes – Please provide your name, email details, and position classification level e.g. SOGC(Note: if you provide your individual contact details, the Board might contact you to seek further feedback. We will not attribute your survey response or comments in any public documents.)
 - i. name:
 - ii. email:
 - iii. position level:
 - b. No – I would like to remain anonymous
3. In the 2020-21 financial year, approximately how many times did you attend a Government Procurement Board meeting?
 - a. Did not attend
 - b. 1-5 times
 - c. 6-10 times
 - d. More than 10 times

If your answer to Question 3 is that you did not attend the Board in the 2020-21 financial year, thank you for participating in the survey - please click "Finish" to save your answers and exit the survey.

4. Of the below list, which of the following are you aware to be the functions of the Board (please select as many as apply)?

- a. to review, and give advice to territory entities on, procurement issues
 - b. to review, and give advice on – procurement proposals and activities referred to the Board by a Minister or responsible chief executive officer; or procurement proposals for procurement matters declared by the Minister
 - c. to review procurement proposals of territory entities in accordance with the regulations
 - d. to consider, advise on and, if appropriate, endorse procurement practices and methods for use by territory entities
 - e. to provide advice to the Minister on any issue relevant to the procurement activities of territory entities or the operation of this Act
 - f. to exercise any other function given to the Board under this Act or any other Territory Law
5. Which of the Board’s functions would you like to know more about or access?
(please select as many as apply)
- a. to review, and give advice to territory entities on, procurement issues
 - b. to review, and give advice on – procurement proposals and activities referred to the Board by a Minister or responsible chief executive officer; or procurement proposals for procurement matters declared by the Minister
 - c. to review procurement proposals of territory entities in accordance with the regulations
 - d. to consider, advise on and, if appropriate, endorse procurement practices and methods for use by territory entities
 - e. to provide advice to the Minister on any issue relevant to the procurement activities of territory entities or the operation of this Act
 - f. to exercise any other function given to the Board under this Act or any other Territory Law
6. If your answer to question 3 is that you attended the Board 1-5 times or more in the 2020-21 financial year, were you able to schedule a meeting with the Board in a timely manner to meet the requirements of your procurement?
- a. Yes – please go to question 9
 - b. No– please go to question 8
7. If you answered “No” to question 6, what do you think the Board needs to do to ensure timely access to the Board?
- a. have more available meeting dates
 - b. Require proponents to come before the Board earlier or at different points in a procurement process
 - c. Other – please specify <open text box>
8. Other than timing, were there any other factors that affected your interaction with the Board?

- a. No – please go to question 10
 - b. Yes, please describe what those factors were [please select as many as apply]:
 - i. Lack of skilled staff to prepare material for the Board
 - ii. Lack of guidance on what to bring to the Board
 - iii. Other – please describe <open text box>
9. In relation to your attendance at the Board, please select the extent to which you agree with the statement: “I found the Board’s advice useful”.
- a. Strongly agree
 - b. Agree
 - c. Neither agree nor disagree
 - d. Disagree
 - e. Strongly disagree
10. If your answer to question 9 was any of “neither agree nor disagree” “Disagree” or “Strongly disagree”, please provide details as to your reasons for responding in that way:
<open text box>
11. If your answer to question 9 was “neither agree nor disagree” “Agree” or “Strongly agree”, overall to what extent did you follow the Board’s advice?
- a. I followed all of the Board’s advice all of the time
 - b. I followed all of the Board’s advice some of the time
 - c. I followed some of the Board’s advice all of the time
 - d. I followed some of the Board’s advice some of the time
 - e. I never followed the Board’s advice.
12. If your answer to question 11 was anything other than “I followed all of the Board’s advice all of the time” what factors affected whether you followed the Board’s advice?
- a. The Board’s advice did not consider all the relevant factors for my procurement
 - b. The Board’s advice was too complex to follow
 - c. The Board’s advice was irrelevant to my procurement
 - d. There was no time to follow the Board’s advice
 - e. The delegate for the procurement did not wish to follow the Board’s advice
 - f. Other – please specify <open text box>

The next four questions relate to the remainder of your procurement process for the procurement(s) that you referred to the Board.

13. Overall, to what extent did you meet the procurement timeframes that were presented to the Board?
- All of the time
 - Most of the time
 - Some of the time
 - Rarely
 - Never
14. If your answer to question 13 was anything other than “all of the time” please explain what factor(s) affected the timeframes [please select as many as apply].
- Approach to market took longer than expected
 - Evaluation took longer than expected
 - Obtaining delegate approval took longer than expected
 - Obtaining ministerial approval took longer than expected
 - Obtaining budget took longer than expected
 - Obtaining/implementing independent advice took longer than expected
 - Contract negotiations took longer than expected
 - Other – please specify <open text box>
15. Overall, did the procurement(s) referred to the Board achieve the intended outcomes?
- Yes – please go to question 16
 - No – please specify why the intended outcomes were not achieved <open text box>
16. Do you think that your procurement(s) have successfully considered and implemented the Procurement Value(s) that had been nominated in the documents presented to the Board (please select as many as apply).
- Yes
 - No – please specify why the nominated Procurement Value(s) were not achieved <open text box>