LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

REVIEW OF AUDITOR-GENERAL'S REPORT NUMBER 6, 1995

Contract for Collection of Domestic Garbage
Non-Salary Entitlements of Senior Government Officers

STANDING COMMITTEE ON PUBLIC ACCOUNTS
Report Number 12

April 1996

RESOLUTION OF APPOINTMENT

The Standing Committee on Public Accounts was appointed by the Legislative Assembly on 9 March 1995 with the following terms of reference:

(a) examine:

(i) the accounts of the receipts and expenditure of the Australian Capital Territory;

(ii) the financial affairs of authorities of the Australian Capital Territory; and

(iii) all reports of the Auditor-General which have been laid before the Assembly;

(b) report to the Assembly, with such comments as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed;

(c) inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question; and

(d) inquire into and report on the implementation of the *Public Sector Management Act 1994* with particular reference to:

(i) the public interest; and

(ii) any other related matter.

MEMBERSHIP OF THE COMMITTEE

Mr Bill Wood MLA (From 26 March 1996. Elected Committee Chair 3 April 1996)

Mr Trevor Kaine MLA (Deputy Committee Chair)

Ms Lucy Horodny MLA

Ms Rosemary Follett MLA (To 26 March 1996. Former Committee Chair)

Secretary: Bill Symington

1. INTRODUCTION

Background

1.1. Auditor-General's Report No 6, 1995 was presented to the Assembly on 21 September 1995. The report comprises two performance audits.

1.2. The first audit deals with the contract for collection of domestic garbage following a recommendation of the 1993-94 Assembly Estimates Committee that the Auditor-General review the tender selection process in view of concerns about fair and open competition between tenderers and value for money.[1]

1.3. The objective of the second audit was to provide an independent opinion as to whether allowances paid and costs incurred by Senior Officers were in accordance with applicable policies, guidelines and legislation, and were paid or incurred in the interests of the ACT Government and/or the ACT community.[2]

1.4. The Committee sought comment on the audit report from the Chief Minister and the Minister for Urban Services. Their responses have been considered by the committee in reaching its conclusions on this review.

2. CONTRACT FOR COLLECTION OF DOMESTIC GARBAGE

2.1. Three contracts were awarded for a new garbage collection system introduced in late 1994. The contracts were for a domestic garbage collection service from households using mobile garbage bins, a domestic recyclables collection service and a domestic garbage collection service from flats and units using hoppers. The audit was confined to the domestic garbage collection service using mobile garbage bins (MGBs).[3]

2.2. The audit sought to determine whether the contract using MGBs was based on a sound evaluation of the tenderer's abilities, and whether the contract was awarded on complete financial comparisons of costs and risks associated with each tender proposal.[4]

2.3. Chapters 3, 4, 5 and 6 of the audit report outline in considerable detail the initial inputs used in the selection process, the selection process itself, the financial comparisons and industrial relations issues.

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[1] Audit report, p1
[2] ibid, p1 (Senior Officers Section)
[3] ibid, p2 (Domestic Garbage Section)
[4] ibid, pp2,3

Audit Findings

2.4. The audit conclusion in relation to evaluation of service delivery is that the process was sound, including weight given to Transport Workers Union (TWU) views. Evaluation of ability to deliver in industrial relations terms was predominantly based on endorsement by the TWU of a proposal by Thiess Contractors Pty Ltd (Thiess) and the Union's advice that it would not endorse a proposal by Pacific Waste Management Pty Ltd (PWM).[5]

2.5. However, the audit noted that the Evaluation Committee's comparative analysis showed little cost difference between the Thiess and PWM proposals, and concluded that there is no doubt that the Evaluation Committee and the Operational and Contractual Sub-Committees ensured that the abilities of the tenderers to deliver the service were fully evaluated.[6]

2.6. With regard to financial comparisons of risks and costs, the audit concluded that the analysis was adequate, but that it should have been more comprehensive, particularly in the area of quantifying and identifying the extent of the potential financial risks to which the Government is exposed through the Thiess proposal being accepted.[7] The audit was sufficiently concerned about this aspect to suggest that all evaluation committees dealing with the financial impact of contracts should include members with appropriate and relevant financial expertise capable of evaluating all costs and risks to the Government.[8]

2.7. The audit noted that neither the Thiess not the PWM tenders conformed with the Request for Tender (RFT), but on the basis that the solutions offered by both were acceptable the assumption can reasonably be made that the RFT was drawn more narrowly than it needed to be.[9] However, while the audit considered the Evaluation Committee's approach to be appropriate, it suggested that to avoid possible implications of lack of probity or of corruption in the future, acceptance of tenders which do not conform to the RFT should occur only in rare situations, and be approved only at the highest levels.[10]

2.8. A number of subsidiary but significant findings were reached by the audit. These were that:[11]

- tender specifications should not be so narrowly drawn as to potentially eliminate acceptable solutions and that specifying the desired result rather than the method of achieving it is generally the more effective approach

- tender documents should state whether non-conforming tenders will be considered and how they will be assessed

[5] ibid, p3
[6] ibid
[7] ibid, p4
[8] ibid, p8
[9] ibid, p5
[10] ibid, pp5,6
[11] ibid, p 8

- existing competitors should be able to bid where conditions are relaxed during the tender process
- offers should be assessed in a consistent fashion and on pre-determined criteria
- key criteria for awarding contracts should be explicitly agreed ahead of tender evaluation and the rationale for any change should be clearly documented.

Committee Approach

2.1. The committee sought comment from the Minister for Urban Services. The Minister advised that the Government has noted the audit suggestion about the need for relevant financial expertise when evaluating financial risks and costs and that this would be done immediately. The Minister advised that there will be an examination of these issues in the context of the Government's consideration of the Industry Commission report on Competitive Tendering and Contracting by Public Sector Agencies.[12]

2.2. The Minister further advised that with regard to tenders conforming with the RFT the Government will implement the audit suggestions for enhanced accountability in future tender processes.[13]

2.3. With regard to the significant subsidiary audit findings, the Minister advised that these will be taken into account in future tender processes. However, the Minister then went on to advise that there will be an examination of these matters in the context of the Government's consideration of the Industry Commission report on Competitive Tendering and Contracting by Public Sector Agencies. The Minister added that the audit appears to suggest a system of soliciting all ideas then putting the best out to tender and that while this may be used in the private sector, such a proposition is considered unethical for government sector public tendering and would not be supported by private tenderers.[14]

Committee Comment

2.4. The committee notes the response by the Minister for Urban Services and is generally satisfied that the audit conclusions and suggestions, which the committee supports, have, in the main, been adopted and implemented by the Government.

2.5. However, the committee is uncertain about the Minister's response in relation to the audit view that tender specifications should not be drawn so as to potentially eliminate acceptable solutions. The committee, therefore, asks that the Government clarify its position on this point.

[12] Letter to the committee dated 21 December 1995
[13] ibid
[14] ibid

3. NON-SALARY ENTITLEMENTS OF SENIOR GOVERNMENT OFFICERS

3.1. The audit reviewed payments made to a sample of officers during 1994, and in some cases during 1993. The sample covered senior members of the ACT public sector and included a number of chief executives and SES officers.[15]

3.2. Areas included for review were leave, domestic travel, official hospitality expenditure, use of credit cards and petty cash and acceptance of gifts.[16]

Audit Findings

3.3. Generally the audit found that allowances and benefits were in accordance with applicable policies, guidelines and legislation, and were paid or incurred in the interests of the ACT Government and/or the ACT community. Specific findings were:[17]

- at the time of the audit, SES officers entitlement to fly 1st class within Australia was generally in excess of entitlements for SES officers in State Governments

- in 1994, ACT Electricity and Water Corporation (formerly Authority) (ACTEW) varied the remuneration package for SES officers to enable more components of the package to be fully claimed, making their packages inconsistent with general ACT Government Service packages

- frequent flier points were often not fully used by agencies to reduce travel costs

- agencies may benefit from having more specific guidelines for the acceptance of gifts

- general expenditure and official hospitality expenditure for senior government officers and other staff were generally in accordance with applicable guidelines and policies, but that ACTEW adopted a different attitude to this type of expenditure.

3.4. The audit recommended that the entitlement of first class air travel be reviewed with the objective of achieving economies for the ACT and, in fact, noted that the recommendation had been implemented before the audit was completed. The audit further recommended that instructions be issued to maximise the benefit to the ACT of accrued frequent flier points, and that each agency develop guidelines on situations where the acceptance of gifts would be appropriate.

3.5. The audit findings and recommendations were taken up with the Government and Ministerial responses are outlined later in this report. However, the committee draws attention to a specific chapter of the audit report which covers certain expenditures made by ACTEW on behalf of its staff generally. The audit noted several

[15] Audit report (Senior Officer Section), p2
[16] ibid
[17] ibid, pp2,3

payments of a nature which in other ACT Government agencies would not be met from public funds, and that payments of a similar nature were not identified in other agencies during the audit.

3.6. The audit report included the ACTEW response to its draft findings; that response being that ACTEW has adopted corporate strategies which include developing a team based approach to work performance, improving internal communication processes, and acknowledging and rewarding excellence in performance and advice, and that the expenditures noted by the audit were made towards achievement of those strategies.[18]

3.7. These ACTEW payments included:

- costs of some $60,000 for staff morning and afternoon teas - coffee, tea and biscuits - costs which are regarded as private and funded by individual officers in other ACT agencies
- costs of some $19,500 for food, drink and a band ($15 per head) for a staff Christmas party (a similar function had been held in previous years)
- a separate Christmas party costing some $7,000 for the children of ACTEW staff (a similar function had been held in previous years)
- a section Christmas dinner and show for 8 members costing $320
- a family day, an initiative for the "International Year of the Family", for 500 ACTEW staff and their families - barbecue, bus tours to ACTEW operations - costing some $4,600 and not including the cost of staff absent from normal duties
- a retirement function for four officers at a restaurant costing $680 and attended by 60 officers
- $570 spent in relation to a second anniversary function for the Business Services Division - cake, savouries and hire of waiters - with 80 officers attending
- $137 for a farewell lunch at a restaurant for an officer, and attended by 28 officers
- several instances of morning tea costs for staff farewells, payments ranging from $20 to $50 per function.[19]

3.8. ACTEW's response, as noted by the audit, was that the corporate strategy is set out in the corporate plan, that the expenditures were in line with those strategies adopted by the Board and the Authority (and by the Minister), under normal delegation

[18] ibid, pp14,15
[19] ibid, pp15 -17

procedures, and that some of the activities were carried from the former ACT Electricity Authority.[20]

3.9. The audit suggested that it would be appropriate for ACTEW to review current policies and either confirm or alter current arrangements.[21]

Committee Approach

3.10. The committee sought comment from the Minister for Urban Services. The Minister was asked for specific comment on the matters raised in relation to ACTEW and on the ACTEW response to the audit as outlined in paragraph 3.8 above. The Minister advised that the Chief Minister would respond with an ACTION PLAN.[22]

3.11. The Chief Minister provided the committee with an ACTION PLAN on the matters raised by the audit.[23] The committee then sought additional comment from the Chief Minister in relation to the ACTEW matters and the Chief Minister provided a response following consultation with the Minister for Urban Services.[24]

3.12. The Chief Minister confirmed that, with regard to SES travel allowances, the Government in July 1995 reduced the standard of air travel to economy class for shorter trips to the eastern seaboard and to business class for longer trips. With regard to ACTEW SES remuneration packages, the Chief Minister advised that these were known to and approved by the ACTEW Board, the judgement being that aligning practices with industry standards would be in the interests of improving efficiency.[25]

3.13. On the matter of frequent flier points, the Chief Minister noted that the Public Sector Management Act 1994 and Management Standards provide clear guidance and that there was no evidence of inappropriate use of these benefits. The Chief Minister further noted that Standard 4 advises chief executives to negotiate with airlines about the use of frequent flier points, but that the Commissioner for Public Administration would raise this matter with chief executives.[26]

3.14. With regard to acceptance of gifts, the Chief Minister advised that agencies may benefit from having more specific guidelines and supported the audit recommendation that agencies develop appropriate guidelines. However, the Chief Minister noted that guidelines must be consistent with the provisions of section 9 of the Public Sector Management Act and the Management Standards. The Chief Minister advised that ethics training, proposed to commence in 1996, will address this and other issues.[27]

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[20] ibid, p17
[21] ibid, p18
[22] Minister for Urban Sertvices, letter dated 21 December 1995
[23] Chief Minister, letter dated 20 December 1995
[24] Chief Minister, letter dated 28 December 1995
[25] Chief Minister, letter dated 20 December 1995
[26] ibid
[27] ibid

3.15. Turning to the matters of general expenditure and official hospitality expenditure covered by the audit, the Chief Minister advised that Management Standard 15 advises that the principle underlying the incurring of expenditure on official hospitality is that "Public moneys should only be spent on official hospitality which is associated with official ceremonies or functions and where it will foster the efficient conduct of public business or promote the public interest".[28]

3.16. However, the Chief Minister advised that ACTEW adopts a somewhat different attitude to this type of expenditure than other Government agencies, and noted that this embraced expenditures for example on Christmas parties, staff farewells and morning and afternoon teas which are normally regarded in other ACT Government agencies to be of a private nature and payable by the staff. The Chief Minister advised that ACTEW expenditure was in line with practice in similar businesses, with one exception which related to a section Christmas function authorised by an officer who is no longer employed by ACTEW.[29]

3.17. In this later response dealing with ACTEW hospitality expenditures, the Chief Minister advised that these matters are the responsibility of the ACTEW Board, and that the role of Ministers is to keep at arms length from the day to day running of the Corporation. The Chief Minister noted that ACTEW operates under specific legislation and industrial agreements and that the Government did not consider it appropriate that ACTEW be compared with other Government agencies.[30]

3.18. The Chief Minister reiterated the ACTEW response to the audit (paragraph 3.6 above), and advised that these strategies were set out in ACTEW's corporate plans which were submitted to the Minister at the time in accordance with the requirements of the Electricity and Water Act. The Chief Minister further advised that expenditure associated with morning and afternoon teas is part of a long standing ACT Electricity Authority industrial agreement negotiated to cease formal morning and afternoon tea breaks, the provision of staff canteens and the use of "tea ladies"; and that this has provided substantial savings to ACTEW.[31]

3.19. The Chief Minister advised that other expenditures of the type identified by the audit (paragraph 3.7 above) are a recognition of service and employee achievements, similar in concept (but preceding) the ACT Government's Long and Dedicated Service Awards, and that such expenditures are approved on a case by case basis by the ACTEW Board. The Chief Minister advised that such expenditures can be beneficial to organisational harmony and productivity and also, conversely, ceasing to pay them may have negative effects.[32]

3.20. It was noted by the Chief Minister that the section Christmas party costing $320 appears to have been outside ACTEW guidelines, was an inappropriate use of funds and that necessary action was taken.[33]

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[28] ibid
[29] Chief Minister, letter dated 28 December 1995
[30] ibid
[31] ibid
[32] ibid
[33] ibid

Committee Comment

3.21. The committee supports the audit recommendations and notes that the Government has either adopted them or has indicated its intention to do so. The committee will recommend that, in its response to this report, the Government provide details of action taken in relation to frequent flier points and acceptance of gifts.

3.22. The committee has problems with the ACTEW hospitality expenditures identified by the audit and with the Chief Minister's responses to the audit concerns. In essence, the committee is concerned that the ACTEW expenditures were, and are, not in accord with the spirit of conserving public funds. The expenditures appear to exhibit a degree of insensitivity towards the ACT community whose electricity and water bills reflect ACTEW's operating costs. Thus, in regard to such expenditures, the committee considers that ACTEW has a responsibility to be seen to be acting in the public interest.

3.23. Importantly too, the committee discerns a degree of indulgent behaviour by the Corporation towards its staff. A similar degree of generosity with ACTEW/ACT community funds has been exhibited by the ACTEW offer to its senior officers of the private use of ACTEW cars in return for productivity improvements. This matter was covered in the committee's report No 9 - Review of Auditor-General's Report No 1, 1995 - Government Passenger Cars, which was presented to the Assembly on 7 December 1995.

3.24. Other Government agencies are required to fully justify their expenditures in the public interest and to be seen to be acting in the public interest, and they wear budget cuts which impinge upon the amenity of their staffs. The committee does not question in this report the Government's prerogative to determine agency operational budget reductions, but it does observe that, whereas the ACTEW expenditures are justified in terms of their beneficial effect on team work, performance, communication, harmony and productivity as well as providing rewards, such considerations are not seen to apply in other Government agencies. Indeed, it is not apparent to the committee that the lack of benefits similar to those available to ACTEW staff have had negative effects on other Government agencies.

3.25. The committee has some difficulty in accepting that the role of the responsible Minister is to keep at arms length from the day today running of ACTEW. The Corporation is owned by the ACT and is answerable to the ACT community. Further, the voting shareholders of ACTEW are the Chief Minister and the Minister for Urban Services and, in that capacity, they have the sole right to appoint the directors of the Corporation. In the committee's view, it follows that the Ministers have the prerogative, and indeed, the duty, to involve themselves in ACTEW's operations especially where these may be in conflict with the Management Standards which apply to officers of other Government agencies.

Recommendations

3.26. The committee recommends that the Government, in its response to this report:

(1) clarify its position in relation to the audit report view that tender specifications should not be so narrowly drawn as to potentially eliminate acceptable solutions (both technical and financial), and that tender documents should be designed to elicit the necessary information to allow proper assessment in relation to each of the tender criteria;

(2) provide documentary evidence of action taken to ensure that all Government agencies, including ACTEW, have in place:

   (i) programs to fully utilise frequent flier points to the benefit of the agency concerned; and

   (ii) specific guidelines and training programs relating to the acceptance of gifts by officials; and

(3) address the concerns of the committee as enunciated in paragraphs 3.22 to 3.25 above.

Bill Wood

Bill Wood MLA
Chair