

2022

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE ACT AUDITOR-GENERAL'S REPORT NO. 13/2021 – *Campbell*
*Primary School Modernisation Project Procurement***

**Presented by
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Introduction

The ACT Government welcomes report No 13/2021 *Campbell Primary School Modernisation Project Procurement* (Audit Report). The Audit Report, which was provided to the Speaker of the ACT Legislative Assembly on 22 December 2022 and tabled on 8 February 2022, examined the effectiveness of the procurement process.

In the 2018-19 Budget, the ACT Government provided \$18.189 million to undertake a major refurbishment of Campbell Primary School. The Campbell Primary School Modernisation project included new learning spaces to accommodate 450 Kindergarten to Year-6 students, landscaping, and ancillary works. The modernisation of Campbell Primary School is part of the ACT Government's commitment to improve school facilities and build state-of-the-art, sustainable educational facilities. At the time of the 2018-19 Budget, it was forecast that works would be physically completed in June 2022.

A procurement for design and construction services for the Campbell Primary School Modernisation Project was undertaken between July 2019 and September 2020.

The procurement process commenced with an Expression of Interest process that resulted in the shortlisting of two proponents: Lendlease Building Pty Ltd (Lendlease) and Manteena Commercial Pty Ltd (Manteena).

Lendlease was awarded the contract in September 2020 and work commenced in January 2021.

In April 2021 the Auditor General commenced a performance audit which considered the effectiveness of the procurement process, and specifically the probity of the process as well as governance and administrative arrangements. The Audit Report concluded that:

- Probity was not demonstrated in the procurement process to 'deal fairly, impartially and consistently with suppliers' as the Delegate within the Education Directorate disagreed with the Tender Evaluation Team's recommendation to appoint Manteena and instead recommended to the Director-General that Lendlease be identified as the preferred tenderer on the basis of value for money.
 - In the view of the Auditor-General this effectively re-weighted and re-prioritised the evaluation criteria and decision-making was not based on the evaluation criteria with which the Territory approached the market and sought tenders.
- A number of governance and administrative shortcomings were identified in the procurement process relating to:
 - The documentation of roles and responsibilities;
 - Procurement risk management (including probity risk management);
 - The use of Confidentiality and Conflict of Interest Undertaking forms by participants; and

- Communication processes with tenderers and the tender debrief process.

Overarching ACT Government Comments

The ACT Government welcomes the recommendations in the Audit Report and agrees, or agrees in principle, with its six recommendations.

The ACT Government is committed to ensuring that all procurement activity is fair, open and undertaken in accordance with the provisions of the *Government Procurement Act 2001* (the Act), the *Government Procurement Regulation 2007* (the Regulation) and all relevant policy and guidance material. In addition, the ACT Government values sound governance practices, with a focus on transparency and ethical engagement with industry and the community.

The ACT Government and relevant Directorates worked constructively with the Auditor-General and the ACT Audit Office throughout the performance audit.

The ACT Government continually monitors and works to enhance the ACT Government's procurement framework (Procurement Framework) which is the hierarchy of whole of government procurement related legislation, statutory instruments, policies, schemes, guidance, factsheets, tools, templates, and systems that support Territory entities to undertake procurement. This work is ongoing, and while it has synergies with the Audit Report, it is broader than the formal response to the Audit Report.

As part of this proactive work to strengthen the current system, the ACT Government published the *Probity in Procurement Guide* in January 2021. Furthermore, new and updated guidance on various topics including risk management, value for money considerations, calculating whole of life costs and conflicts of interests were released in January 2022. This material, which is available on the ACT Government's external facing procurement website, aims to assist officers undertaking procurement as well as the broader public to better understand the Procurement Framework.

A Supplier Complaints Management Procedure has been established for consistently managing supplier complaints about the conduct of Territory procurement. The procedure is designed to provide an effective and efficient process for managing supplier complaints relating to the acquisition stage of procurement activities and is consistent with Free Trade Obligations relating to judicial review.

The ACT Government is committed to making continual improvements to ensure public and industry confidence in procurement processes. As part of delivering on that commitment, an independent review of the operational performance of Procurement ACT was conducted in 2021. The Review was led by Ms Renee Leon, supported by the Strategy and Transformation Office in the Chief Minister, Treasury and Economic Development Directorate (CMTEDD). A copy of the Review report is provided with this Government

Response. This review was commissioned to identify areas for improvement in the support provided by Procurement ACT to ACT Government directorates undertaking procurements.

Some key findings of the Review were that:

- a. Centralised procurement, with ultimate responsibility for procurement decisions devolved to agencies, is appropriate for the size and needs of the ACT Government;
- b. Nonetheless, in recent years ACT Directorates have increased their procurement capability and while to some extent this is appropriate for Directorates with large or niche procurement activities, it has also resulted in some dissatisfaction with Procurement ACT services;
- c. Respective roles and responsibilities as between Procurement ACT and agencies undertaking procurement remain unclear, particularly for complex procurements;
- d. There is also a lack of clarity regarding the respective roles of Procurement ACT and Major Projects Canberra (MPC) – the latter having responsibility for procurement activities for construction related capital works;
- e. There is limited systems-wide data and reporting to assist agencies in procurement activities (e.g., tracking supplier performance, cross directorate contract opportunities);
- f. While ongoing contract management responsibility should remain with agencies undertaking procurement, Procurement ACT could, subject to resourcing, play a stronger advisory role;
- g. Procurement ACT has successfully managed a demanding workload of implementing and managing new policy;
- h. Procurement ACT does not have adequate capability to meet the needs of agencies seeking more contemporary and innovative approaches; and
- i. Agencies have expressed frustration with delays and inconsistency in advice from different officers in Procurement ACT.

The Review makes eight recommendations in response to these findings that focus on clarifying roles and responsibilities, leveraging whole of government data on procurement activity to achieve better procurement outcomes, modernising systems and streamlining processes and making advice and support easier to access, and ensuring Procurement ACT has the workforce capability to provide that advice and support. It acknowledges that

Procurement ACT has processes already underway (stemming from previous reviews and client feedback) to deal with some of the recommendations made.

Together with the recommendations of this and other audit reports, the findings and recommendations of that Review are being used to inform the development of a whole of government procurement reform program. This will focus on supporting ACT Government procurement activity to be robust, transparent, and effective, while also being streamlined and efficient. CMTEEDD is currently in the process of preparing a detailed work plan for this reform program, and this will be publicly released by June 2022.

Broadly, the objectives of the procurement reform program will be to:

- a. further clarify respective roles and responsibilities as between Procurement ACT, MPC and agencies undertaking procurement;
- b. refine probity and appropriate engagement with risk to support the pursuit of value for money in ACT procurement through enhanced guidance and training;
- c. improve data and reporting to support agencies in making more informed procurement decisions;
- d. streamline procurement processes, where appropriate;
- e. build capability in relation to contemporary and innovative procurement practices; and
- f. enhance supplier experience, including awareness, of ACT Government procurement.

The procurement reform program is in addition to our ongoing review and improvement of the Procurement Framework.

Recommendations

RECOMMENDATION 1 PROBITY ADVICE

Major Projects Canberra, in cooperation with Procurement ACT, should review and revise its procurement guidance documentation, and associated templates, to explicitly require the preparation of independent probity advice where a delegate or decision-maker seeks to over-rule the recommendation of the tender evaluation team.

RECOMMENDATION 2 DOCUMENTATION OF ROLES AND RESPONSIBILITIES

Major Projects Canberra, in cooperation with Procurement ACT, should review and revise its procurement planning and tender evaluation templates and guidance documents to require:

- a) the identification and acknowledgement of all participants in the procurement process, including the Delegate and those with managerial and supervisory responsibilities; and
- b) the identification and documentation of the specific roles and responsibilities of all participants in the process.

RECOMMENDATION 3 RISK MANAGEMENT

Major Projects Canberra, in cooperation with Procurement ACT, should review and update its procedures for the management of risk as part of procurement processes. The revised procedures should require procurement managers to actively review risks, including probity risks, and their treatment throughout the entire process. The review should be explicitly documented.

RECOMMENDATION 4 CONFIDENTIALITY AND CONFLICT OF INTEREST UNDERTAKINGS

Major Projects Canberra, in cooperation with Procurement ACT, should review and update its procedures for the management of confidentiality and conflicts of interest as part of procurement processes. The revised procedures should require *Confidentiality and Conflict of Interest Undertaking* forms to be completed for all staff who have a role in a procurement process.

RECOMMENDATION 5 PROBITY AWARENESS TRAINING

Major Projects Canberra and the Education Directorate should require staff to have received probity awareness training before participating in procurement activities. The training should also identify how staff can elevate and raise any concerns with probity or conduct during a procurement.

RECOMMENDATION 6 TENDERER COMMUNICATION PROCESSES

Major Projects Canberra, in cooperation with Procurement ACT, should review and revise its procurement planning and tender evaluation templates and guidance documents to require, during the tender process, that:

- a) unless otherwise authorised by the chair of the tender evaluation team, the chair be solely responsible for communicating with tenderers in relation to the tender up until the delegate has approved a preferred tenderer; and
- b) the identification and authorisation of communication methods that allow records of communication to be captured in a timely and accurate manner.

Government Response to the ACT Auditor-General's Report No 13/2021 – Campbell Primary School Modernisation Project Procurement

Recommendation 1 Probity Advice

Major Projects Canberra, in cooperation with Procurement ACT, should review and revise its procurement guidance documentation, and associated templates, to explicitly require the preparation of independent probity advice where a delegate or decision-maker seeks to overrule the recommendation of the tender evaluation team.

Government Response

Agreed in Principle

The ACT Government has already taken a number of actions that address this recommendation.

Probity

The ACT Government has reviewed and updated its guidance in relation to procurement probity and the circumstances in which independent probity advice should be considered.

In January 2021 the ACT Government released the *Probity in Procurement Guide* (the Guide) which provides guidance on probity and how to maintain probity in ACT Government procurement processes. The Guide was reviewed and updated in May 2021 and again in February 2022.

The Guide, which applies to all Territory Entities, relevantly notes that the Territory Entity undertaking a procurement is accountable for ensuring the probity of the process. Where public officials have delegations to make decisions under legislation, it is ultimately for those public officials to exercise their own judgement on the most appropriate decision. Public officials retain primary accountability for the procurement decisions that they make. This accountability cannot be 'contracted out' through the appointment of a probity advisor or auditor.

However, the Guide establishes clear probity risk indicators and suggested risk treatments which reflect the Auditor-General's recommendations. Of relevance to the Campbell Primary School procurement

- Where the estimated total cost of the procurement is high or the procurement process has a high level of complexity (e.g., multistage or interactive, Best and Final Offers) an internal or external probity advisor be appointed; and
- Where there are political sensitivities or areas of keen public interest, the procurement involves significant intellectual property, the procurement process

involves a significant negotiation phase or there is a high level of supplier engagement through the procurement process, a more detailed probity plan be implemented to ensure an appropriate level of governance and application of the Guide and to address any specific probity risks.

The role of the probity advisor outlined in the Guide may include providing advice on, or assisting with, one or more of the following:

- Protocols for managing information, approach to market communications, site visits, industry briefings, best and final offers, or requests for revised offers and protocols;
- Probity principles and procedural fairness;
- Evaluation plans and evaluation processes; and
- Assurance through written reports, outlining the advice provided during their engagement.

The Guide also establishes that where a Territory Entity decides not to follow probity advice, the Territory Entity should fully document the decision and the reasons, along with any alternative action it takes to address the probity risk(s) identified.

Procurement guidance documentation and associated templates have been updated to reflect the Guide.

Value for money

The Procurement Framework provides scope for Delegates to make a decision that differs from the recommendation of the Tender Evaluation Team if circumstances warrant. This discretion is specifically allowed because the Delegate is expected to use their expertise and judgment to ensure the most effective and efficient delivery of the procured project.

The standard Tender Evaluation Plan templates articulate that a Delegate for a procurement can:

- Approve the recommendation made in the Tender Evaluation Report;
- Not approve a Tender Evaluation Report and direct the TET to undertake further evaluation activities;
- Make an alternative decision using the TET assessment (e.g., choose to award the contract to a supplier other than the highest scoring supplier); or
- Terminate the specific procurement activity and determine that no contract should be awarded at all or require re-advertising of the procurement.

In this way, the Tender Evaluation Team does not displace the appropriate accountability of the Delegate. The Tender Evaluation Team appropriately supports the Delegate by providing an evidence-based recommendation to the Delegate as the decision maker. The Delegate

must then exercise their delegated authority in making a decision as to the outcome of the procurement process, and ultimately, the award of contract to a supplier that represents best value for money.

This decision is made within the bounds of Part 2A of the Act where value for money is specified as the procurement principle that must be pursued in undertaking any procurement activity. Value for money means achieving the best available procurement outcome that maximises the overall benefit to the Territory.

Section 22A(1) of the Act provides that in pursuing value for money, Territory Entities must have regard to probity and ethical behaviour, management of risk, open and effective competition, optimising whole of life costs, and anything else prescribed by the Regulation.

The ACT Government has released the *Value for Money Considerations Factsheet* (January 2022) (the Factsheet) to assist Delegates in their decision-making and provides guidance on the matters which a Territory Entity needs to consider when undertaking a procurement.

The Factsheet provides guidance including a set of questions which may be useful for Delegates when assessing or approving the value for money outcomes of a procurement. The considerations identified in the Factsheet are outlined in the table below.

Value for money principles	Key considerations
Probity and ethical behaviour	<ul style="list-style-type: none"> • Has the procurement process complied with the Procurement Framework? (e.g., the procurement complied with quotation and tender thresholds, Secure Local Jobs Code was applied where appropriate, any Procurement-related Policies were included and assessed) • Was the procurement process conducted in an ethical manner and in a way that upheld probity? (e.g., were all suppliers given the same information in a timely manner, did all staff involved in the procurement declare any conflicts of interest?)
Management of risk	<ul style="list-style-type: none"> • Have risks been identified and managed throughout the procurement process? • Does the supplier's offer sufficiently manage, mitigate, or eliminate any identified risks?
Open and effective competition	<ul style="list-style-type: none"> • Was the process conducted in the most competitive and transparent method available for the type of procurement? (e.g., the maximum number of suppliers were invited to tender/quote to ensure competitive tension with consideration of the value of the procurement and the nature of the market)?

	<ul style="list-style-type: none"> • Is the supplier's offer competitive for the market?
Whole of life costs	<ul style="list-style-type: none"> • Have all the potential costs for the procurement been considered and accounted for in the request and supplier offer? (e.g., maintenance, ongoing licencing costs and wage increases have been considered and included in the final price where applicable) • Does the supplier's offer provide the best balance of quality and whole of life cost? • Is the offer fit for purpose? (e.g., will the offered goods, services or works achieve the desired outcome, does the procurement have the flexibility to adapt to possible change over the life of the contract?)
Anything else prescribed by regulation	<ul style="list-style-type: none"> • Are there broader social or economic benefits to the supplier's offer? (e.g., does the procurement offer opportunities to meet the procurement values such as employment or economic opportunities for marginalised or disadvantaged groups or incorporate sustainable environmental practices?)

In relation to probity and ethical behaviour, the Factsheet specifically provides that Territory Entities must ensure they apply the probity principles in all procurements.

Building on the actions already taken, the ACT Government will update the standard Tender Evaluation Report template to allow the Delegate to document their decision making, including reasons for departure from the Tender Evaluation Team's recommendations, or further action for the Tender Evaluation Team, should the Delegate not accept the recommendation of Tender Evaluation Team.

There is currently no specific requirement for Directorates to report information to Procurement ACT or other bodies on cases where delegates depart from a panel's recommendation. The Government recognises that there would be value in having more visibility of how often, and under what circumstances, delegates are exercising this power. Procurement ACT will facilitate a data gathering exercise which will involve taking a sample of procurements across directorates and examining how frequently this situation is occurring. That will help us understand whether further work is needed to strengthen understanding of the procurement framework as it relates to these kinds of decisions.

Recommendation 2 Documentation of Roles and Responsibilities

Major Projects Canberra, in cooperation with Procurement ACT, should review and revise its procurement planning and tender evaluation templates and guidance documents to require:

- a) *the identification and acknowledgement of all participants in the procurement process, including the Delegate and those with managerial and supervisory responsibilities; and*
- b) *the identification and documentation of the specific roles and responsibilities of all participants in the process.*

Government Response

Agreed

The ACT Government has undertaken a number of actions that address this recommendation.

Procurement planning and tender evaluation templates and guidance documents for construction projects involving MPC already identify and acknowledge participants in the procurement process including the Delegate and those with managerial and supervisory responsibilities.

In this regard, the Audit Report acknowledges (pp 56) that the Tender Evaluation Plan for the Campbell Primary School Modernisation Project procurement identified that:

- The Tender Evaluation Team may, as required, utilise specialist advice to assist in the evaluation process; and
- The areas of expertise may include probity and technical procurement advice, including from the ACT Government Solicitor and (MPC) Directors/Manager (such advice may include, but not be limited to, technical drafting advice and review of draft evaluation reports for clarity and consistency with the *Government Procurement Act (2001)* and the Request for Tender.

Notwithstanding this, MPC will review and further update its planning and evaluation templates and guidance documents as recommended, noting such documents have already been updated to include the identification of the specific roles of:

- The Secure Local Jobs Code Branch (SLJC Branch) within CMTEDD in respect of the evaluation of the Fair and Safe Employment Evaluation Criteria and the non-weighted criteria for the content of the Labour Relations, Training and Workplace Equity Plan; and
- The Work Health Safety Superintendent of Works (or their delegate) for assessment and scoring Work Health and Safety System tender submissions.

The MPC Tender Evaluation Plan documentation and template currently sets out the role of the Tender Evaluation Team where it is responsible for:

- a) Maintaining probity, including ensuring compliance with the Probity in Procurement Guide, issued by Procurement ACT;

- b) Evaluating the responses in accordance with the criteria and methodology;
- c) Documenting the evaluation process;
- d) Obtaining Director-General (or their Delegate) sign-off for confidential text, if applicable;
- e) Preparing an evaluation report;
- f) Seeking Delegate approval to commence post negotiations with the preferred tenderer;
- g) Seeking Delegate approval to proceed with a contract with the preferred tenderer; and
- h) Debriefing unsuccessful tenderers, noting the SLJC Branch should be invited to the debrief if the unsuccessful tenderer did not pass the Fair and Safe Employment Evaluation Criteria or the Labour Relations, Training and Workplace Equity Plan (LRTWEP) non-weighted criteria was an influencing factor in the assessment.

The MPC Tender Evaluation Plan documentation and templates also currently establish where the Tender Evaluation Team and SLJC Branch may, as required, utilise specialist advice to assist in the evaluation process. These areas may include:

- a) Technical analysis, including advice from consultants and MPC Branch Managers/Directors;
- b) Past performance, including advice from officers within ACT Government;
- c) Financial assessment provided by the Contracts and Prequalification team with MPC;
- d) Probity and technical procurement advice, including from the ACT Government Solicitor and Senior Directors/Executive Branch Managers within MPC (such advice may include, but not be limited to, technical drafting advice and review of draft evaluation reports for clarity and consistency with the Act and the RFT); and Legal issues, including advice from the ACT Government Solicitor.

Procurement templates maintained by Procurement ACT for goods and services procurements also include the identification of all participants in the procurement process, including the Delegate and an outline of their roles and responsibilities in the procurement process

Recommendation 3 Risk Management

Major Projects Canberra, in cooperation with Procurement ACT, should review and update its procedures for the management of risk as part of procurement processes. The revised procedures should require procurement managers to actively review risks, including probity risks, and their treatment throughout the entire process. The review should be explicitly documented.

Government Response

Agreed

The ACT Government has undertaken a number of actions that address this recommendation.

The ACT Government has released the *Procurement Risk Management Factsheet* (January 2022) which outlines procurement risk management requirements and builds on the *Value for Money Considerations Factsheet* (January 2022). This factsheet identifies where effective risk management throughout the procurement process is identified as a key aspect of pursuing value for money. Territory Entities must conduct a risk assessment for every procurement and review the risks and mitigations throughout the procurement lifecycle. The Factsheet is available on the Procurement ACT website and Directorates and Agencies have been notified about the release of the factsheet through whole of government messaging and the Procurement Community of Practice.

The *Procurement Risk Management Factsheet* has been developed consistent with the ACT Insurance Authority (ACTIA) Risk Management Framework and establishes that:

- Risk management must be undertaken for all procurement activities regardless of value;
- The level of effort and documentation directed to risk assessment and management should be equal to the scale and risks of a procurement;
- Risk should be considered at the earliest stages of the procurement planning and be continuously reviewed and updated throughout the procurement lifecycle;
- There are additional risks to be considered when procuring construction and risk management plans for ACT Government construction should be developed by officers with relevant experience; and
- Territory Entities also need to consider probity risks when undertaking procurements with further detail on probity found in the Probity in Procurement Guide.

Existing risk tools include a *Procurement Risk Management Plan* (Version 7.2, August 2015) which was developed in accordance with the ACTIA Risk Matrix template and the *AS/NZS ISO 31000:2009* risk management standard and provides guide notes to assist in recording the results of the risk management process.

In addition, the ACT Government will continue to incorporate the requirements of the *Value for Money Considerations Factsheet* and *Procurement Risk Management Factsheet* into the standard procurement process templates and the development of any procurement specific risk management tools.

Recommendation 4 Confidentiality and Conflict of Interest Undertakings

Major Projects Canberra, in cooperation with Procurement ACT, should review and update its procedures for the management of confidentiality and conflicts of interest as part of procurement processes. The revised procedures should require Confidentiality and Conflict of Interest Undertaking forms to be completed for all staff who have a role in a procurement process.

Government Response

Agreed

The ACT Government has undertaken a number of actions that address this recommendation.

The *Probity in Procurement Guide* was updated in May 2021 to clarify that all ACTPS officers and employees involved in a procurement must complete a Conflict of Interest Disclosure. This includes affirming that they do not have a conflict of interest. The Guide provides the further advice that all Disclosures must be maintained as a record with other documents relating to the procurement.

The ACT Government also released the *Conflict of Interest Better Practice Guide* (January 2022) which provides guidance to Territory Entities on identifying and managing conflicts of interest as part of ensuring probity and ethical behaviour when conducting procurement activities.

The Guide provides information for procurement officers in relation to:

- Identifying conflicts of interest
- Conflict of Interest Disclosures
- Managing Conflicts of Interests

In relation to conflict of interest disclosures, the Guide establishes that “all ACTPS officers, employees and contracted service providers involved in a procurement must complete a Conflict of Interest Disclosure”.

The Guide further provides that:

- Public officials should not participate in any decision-making processes, if at any time an actual, potential, perceived conflict of interest exists or is likely to arise;
- When an individual becomes aware of a conflict of interest, they should inform the officer noted in a Probity Plan or other internal documentation outlining the conflict of interest process. Generally, the Delegate is responsible for managing any perceived, potential or actual conflicts of interest;

- The person involved in a conflict of interest should suspend their involvement in the procurement until advised that it is appropriate to resume involvement;
- It is better practice to seek probity advice in relation to dealing with a conflict of interest, particularly where the intention is to maintain the involvement of the relevant public official in the procurement; and
- The Territory Entity should maintain appropriate records of all Conflicts of Interest Disclosures raised during a procurement and with the appropriate treatment.

MPC has reviewed and updated its template Tender Evaluation Plan to provide that:

- The members of the evaluation team, the WHS Superintendent of Works, the officers of the SLJC Branch, advisors and all other personnel involved in the evaluation process are to comply with the *Probity in Procurement Guide*, and (if relevant) the procurement Probity Plan (consistent with ethics and probity considerations in the Act);
- All Personnel are to disclose any actual or apparent conflicts of interest and to take steps to avoid that conflict;
- All Personnel must promptly identify and disclose to the Chair or Delegate (as the case may be) any actual, perceived or potential conflicts of interest involving themselves, their immediate family or any other relevant relationship;
- All ACT Public Servants are required to sign the Confidentiality Undertaking and Conflict of Interest Disclosure found in *Probity in Procurement Guide*; and
- All non-ACT Public Servants (such as specialist subject matter advisors) involved in an ACT Government procurement activity are to sign the Confidentiality Undertaking and Conflict of Interest Disclosure as found in the *Probity in Procurement Guide*.

Recommendation 5 Probity Awareness Training

Major Projects Canberra and the Education Directorate should require staff to have received probity awareness training before participating in procurement activities. The training should also identify how staff can elevate and raise any concerns with probity or conduct during a procurement.

Government Response

Agreed

The ACT Government has undertaken a number of actions that address this recommendation.

The *Probity in Procurement Guide* published in January 2021 and revised in May 2021 and February 2022 recommends that “individuals participating in the procurement process have received probity training”.

Guidance and training on the Procurement Framework is available to all ACT Government employees. There is also an enhanced program of training and support provided for procurement compliance which includes:

- A suite of eLearning Modules, which includes a Probity in Procurement Module;
- Face to face, customised training sessions;
- Fact sheets and better practice guides;
- Procurement training bootcamps, which includes Value for Money Training for all Senior Executives across the ACT Government; and
- A Procurement Capability Framework.

In mid-2021, Procurement ACT delivered a series of training sessions to MPC officers on the procurement process with a focus on probity in procurement.

Building on these actions, the ACT Government will seek approval from all Directorates and Agencies to agree minimum mandatory training requirements for individuals participating in procurement activities. Once the suite of mandated training has been agreed Procurement ACT will update the Territory’s standard Approach to Market Templates and Procurement Framework Guidance to identify the requirement for all participants in a procurement process to have undertaken relevant training.

Recommendation 6 Tender Communication Processes

Major Projects Canberra, in cooperation with Procurement ACT, should review and revise its procurement planning and tender evaluation templates and guidance documents to require, during the tender process, that:

- a) unless otherwise authorised by the chair of the tender evaluation team, the chair be solely responsible for communicating with tenderers in relation to the tender up until the delegate has approved a preferred tenderer; and*
- b) the identification and authorisation of communication methods that allow records of communication to be captured in a timely and accurate manner.*

Government Response

Agreed in Principle

The ACT Government has undertaken a number of actions that address this recommendation.

Procurement ACT and MPC have reviewed and revised their procurement planning and tender evaluation templates and guidance documents in relation to communication with tenderers and will continue to do so.

The ACT Government notes that the formal supplier complaints process such as arranging meetings, where communication, will not be undertaken solely by the Chair of the Tender Evaluation Team. However, in such instances ensuring communication is undertaken with the knowledge and prior approval of the chair of the tender evaluation team will ensure there is clarity about roles within the process and the purpose of such communication, as well as appropriate documentation of this.

Consistent with its international free trade agreement obligations, the ACT Government has developed the *Supplier Complaints Management Procedure* which establishes the process for managing supplier complaints about a Territory procurement in a consistent way across government. The procedure is designed to provide an effective and efficient process for managing supplier complaints and sets out who will be involved in the process, and their roles and responsibilities.

Depending on the nature of the supplier complaint this may include a range of individuals outside of the Chair of the Tender Evaluation Team including:

- The Contact Officer who is generally listed on the relevant procurement documentation and may or may not be the Chair of the Evaluation Panel;
- The Delegate depending on the nature of the Complaint for action;
- An appropriate officer in the Territory Entity to investigate the Complaint if the matter is referred to them by the Delegate;

- The Executive Group Manager of Procurement ACT in the event of a supplier request for Internal Review;
- The Territory Entity's Director-General who will provide the supplier with a written response on completion of the internal review or discontinuation of the review; and
- The ACT Ombudsman in the event the supplier remains unsatisfied with the outcome of an internal review.

The Ethical Treatment of Workers Evaluation, for instance, may require some communication between a tenderer and officers from the SLJC Branch. In such instances it is still appropriate that the chair of the tender evaluation panel is aware such communications are taking place and that these are also properly documented as part of the broader procurement record keeping requirements.

Guidance on clear and transparent communication protocols – including appropriate roles and responsibilities – will be developed as part of the ongoing review of procurement practice and procedures.