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SUBMISSION BY MANTEENA PTY LTD TO THE INQUIRY INTO ACT GOVERNMENT PROCUREMENT

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Ms C Le Couteur, Mr. B Smyth and Mr. J Hargreaves
Standing Committee on Public Accounts
Legislative Assembly for the Australian Capital Territory

Dear Madam Chair

Re Inquiry into ACT Government Procurement

We have now had the opportunity to review the Hansard transcript of evidence taken by the Committee on Thursday 4 March, 2010.

While Manteena Pty Ltd was not present at this hearing, it wishes to bring to the attention of the Committee various matters of concern arising out of the evidence given by Mr Dean Hall, Secretary of the ACT Branch of the CFMEU recorded on pages 17 to 28 of the transcript.

The Union clearly has genuine concerns about the unethical activities of some participants in the construction industry and Manteena shares these concerns. Manteena understands that the CFMEU is a significant industry participant representing the rights of workers and promoting their own political interests.

However, numerous statements and inferences made by Mr Hall in his evidence **under the cover of privilege** and recorded in Hansard are factually incorrect and unsubstantiated and have had a detrimental impact on Manteena's reputation as a long-standing good corporate organisation.

We set out in the attached submission a detailed response and correction to these statements and the implications concerning Manteena.

Given the seriousness of these allegations and the possible damage to the reputation of Manteena, which has had long standing, positive and professional relationships with both the ACT Government and the Federal Government over a period of thirty years, we have spoken with the CFMEU representatives, Tilton's representative and also ACT Procurement Solutions and we request that this response and correction be placed on the record with the transcript to ensure that these inaccurate allegations are not promulgated further.

Should additional information be required please contact Manteena Pty Ltd's Chief Executive Officer, Mr Simon Butt on 02 6280 7033 or S.Butt@manteena.com.au whenever convenient.

Yours faithfully

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BACKGROUND

Manteena has on its own and through its association of many years with the Master Builder's Association of the ACT (MBA) promoted and required of itself and its trade and sub-contractors, compliance with all regulatory and statutory requirements. This has taken, and continues to take significant resources from within Manteena.

Manteena has engaged with and continues to encourage the active involvement from relevant regulatory bodies such as the Office of Regulatory Services, Fair Work Australia, Long Service Leave Board, Australian Building and Construction Commission and others. There is a proper role for these bodies to be involved in the establishment of the regulatory framework the industry operates in but also to be involved in training and education along side the compliance audit of all industry players.

Manteena notes that the role of ACT Government through its agencies and departments has generally provided a responsible system of procurement that has to date, despite the issues raised, been able to pass the appropriate level of responsibility to the contracting parties that are best able to carry and manage the risks and responsibilities involved.

Unfortunately the misleading and unsubstantiated claims and statements made by the CFMEU under privilege were aired in the media with little or no investigative diligence.

As a result some of Manteena's clients have raised questions about due process being carried out by Manteena on ACT Government and other projects. Manteena does not accept the premise of the evidence provided by the CFMEU. It is therefore appropriate to respond to correct the public record.

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SUMMARY OF KEY POINTS

We note the key points to our submission are:

1. Manteena refutes the unsubstantiated claims made by the Union in relation to Manteena.
2. The statements made by the CFMEU do not clearly nor accurately define whom they are referring to when they are making their allegations.
3. Contrary to the claim by the CFMEU that some benefit is gained by the Project/Construction Managers (PM/CM) at the time of appointment of the PM/CM by selected trade/subcontractors no advantage is gained because this claim is factually incorrect. Trade/sub contractors are not known at the time appointment of the PM/CM and therefore no advantage could be gained as alleged.
4. Tilton as the partitioning trade contractor, were engaged by ACT Procurement Services on behalf of the ACT Government as is the usual practice for a major trade package. The trade contractor was not engaged by Manteena.
5. There was, and still remains, no evidence of any failure by Tilton on the Kingsford Smith project to meet its statutory, legislative or employee entitlement requirements.
6. Manteena does not support the failure of any industry participants to meet their statutory and regulatory obligations whether they relate to employee entitlements, Occupational Health and Safety requirements, contractual obligations or industrial relations obligations.
7. Manteena is regularly audited and held accountable through a range of audit and regulatory regimes including the ABCC, Office of Federal Safety Commissioner (OFSC), Fair Work Australia, ACT Office of Regulatory Services (ORS), ACT Building Licencing (BEPCON), Department of Education, Employment and Workplace Relations (DEEWR). Manteena continues to meet and exceed those requirements on a regular basis.
8. Manteena was audited by the ABCC on a number of occasions on the project in question and the results were positive.
9. Manteena has, for over 30 years, been an active and committed participant in the construction industry in Canberra, committing significant time and resources to support the employment and training of apprentices, building cadets, construction workers and providing school based experience for students. Manteena is an equal opportunity employer and now has a workforce of over 130 full-time employees.

DETAILS OF RESPONSE TO ALLEGATIONS AND STATEMENTS MADE BY MR. HALL AS RECORDED IN THE TRANSCRIPT

Claimed: "*Manteena Pty Ltd is a classic example of this. We have been on a number of their projects. A number of the subcontractors on their projects have collapsed over the last two to three year, owing in excess of hundreds and thousands of dollars in entitlements to workers. This has been going on for a long time. It is not just in the last few years; it is an ongoing problem.*"

Response: This claim is false.

No trade or sub-contractors have collapsed on Manteena sites as alleged.

One other major trade contractor, not the one referred to by the Union in their evidence, on the Kingsford Smith school project went into voluntary administration during the course of the works, yet with support and assistance from Manteena and ACT Procurement Solutions completed their trade works and managed to trade out of their difficulties.

In their submission the CFMEU then detailed allegations regarding Tilton and the situation of one of their subcontractors who provided the labour resources to carry out the dry-wall plastering on the Kingsford Smith school project.

Manteena notes the following in relation to the claims made by the CFMEU regarding Tilton and their performance on the project.

Manteena were not made aware, by any party including the CFMEU during the course of the contract of any such alleged failure of the partitioning trade contractor, Tilton to make payment to its subcontractor providing the labour resources. Nor of any failure by Tilton's subcontractor to make payment to its labour resources (the plasterers).

There was no failure to pay and no delay in payments to Tilton by the ACT Government. Payments were made as due and payable on a regular monthly basis.

There was no notice to Manteena by the trade contractor or employees, the media or the Union during the course of the contract at the time of the alleged claimed failure to pay the trade contractor, sub-contractor nor its employees.

There was no advice to Manteena from either the employees, the Union or Media that the Union had to feed "starving" workers.

The Secretary of the CFMEU did attend site during the course of the project and claimed once, to Manteena's representative that there were incorrect employee relationships (an 'employment contract' issue) between the trade contractor's sub-contractor and its employees, the plasterers. Despite a request at the time from Manteena's representative to provide evidence none was ever passed to Manteena and no further claims were made by the CFMEU or any other person to Manteena. Manteena did, as a matter of diligence check on site and no evidence to support any of the claims made by the CFMEU were found.

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Claimed: *"We approached the builder and got the back pay, which was the luckiest thing, which these Chinese people, most of them visa holders, were quite happy to receive. They were quite happy to get their money and go away because they were hungry. We fed them for two days."*

Response: The CFMEU did not obtain any "back-pay" from approaching Manteena. As previously noted there were no claims outstanding from Manteena nor the ACT Government to the trade contractor.

Claimed: *We said, "Where is the super?" There were no super records. We said "Where is the long service, which is an ACT act? The company was not even registered for long service. They had no registration or superannuation . We said, "Where is your workers comp?" They had comp for 10 people. "There were no super records.", "The company was not even registered for long service.", "They had no registration of superannuation"* and *"They had workers comp for 10 people."*

Response: We are not sure who the CFMEU is talking about here however we can confirm that contrary to the claims made above evidence was provided by the trade contractor (Tilton) submitted, amongst other documents, as part of his tender, receipted via 'hole-punching' by ACT Government in the ACT Procurement Solutions tender box on 13/12/07 the following documents:

i. Certificate of Registration of a Company (ASIC)
ii. Certificate of Registration of Business Name (in ACT)
iii. Australian Business Register – ABN Registration
iv. Certificate of Currency – Public and Products Liability
v. Certificate of Currency – ACT Workers' Compensation – number of employees stated as 25.
vi. Certificate of Currency – NSW Workers Compensation – number of employees stated as 26.
vii. Construction & Building Industry Super (CBUS) Employer Registration certification.
viii. Long Service Building & Construction (LSLB) – certificate of employer registration.
ix. Australian Construction Industry Redundancy Trust (ACIRT)
x. Department of Employment and Workplace Relations (DEWR) letter dated 31 May 2007 regarding compliance of their industrial arrangements.
xi. Completed 'Compliance with National Code of Practice (NCoP)' checklist.

We have records showing that the Workers Compensation Certificate for the ACT was upgraded to cover 100 employees. Other documentation confirming compliance, including statutory declarations was provided on a regular basis by the trade contractor.

Further, for the information of the Committee, we note that the contractor also provided at the time of tender:

1. References
2. Completed 'Hazard Identification & Risk Assessment' – OH&S.
3. Confirmation of OH&S and Quality Assurance (QA) systems in place.

4. Letter dated 10 Dec 07 from their accountants confirming the Working Capital, Net Tangible Assets and belief that the Contractor had the financial capacity to complete the project.

It is worth noting that the diligence of this particular contractor in providing evidence of compliance of regulatory and statutory requirements exceeded, at that time and still to date, that of many other locally and inter-state based contractors, directly refuting the claims and subsequent allegations made by the Union.

Claimed: "*We went to the builder and said," Here's the evidence of this...* "

Response: At no time did the CFMEU provide to Manteena any evidence of the stated claims.

Claimed: "*The response was: "That's not a requirement. I don't have a requirement to do that.*"

Response: The quoted response, we presume allegedly one of our staff, is neither true nor accurate of Manteena's approach to compliance and protection of employees entitlements and employment conditions. Our Senior Project Manager, who was on the project and has worked for the last 33 years in the industry, denies this claim by the Union.