

2025

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

ELEVENTH ASSEMBLY

**GOVERNMENT RESPONSE TO ACT AUDITOR-GENERAL'S REPORT NO. 7 OF 2024 –
REUSABLE FACILITY SERVICES PROCUREMENT**

**Presented by
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Minister for City and Government Services**

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Introduction

The ACT Government welcomes the Auditor-General's performance audit report No. 7 of 2024 on the Reusable Facility Services Procurement. The Report was provided to the Speaker for out of session circulation to Members of the Legislative Assembly on 3 October 2024.

- The ACT Audit Office undertook a performance audit on the Reusable Facility Services Procurement following the announcement on 13 March 2024 that St Vincent de Paul Society Canberra/Goulburn Ltd (Vinnies) was to be the new operator of the Territory's reusable facilities, replacing The Green Shed, the incumbent provider.
- The audit considered the probity of the procurement of the Reusable Facility Services.
- The key findings of the audit were related to the following:
 - Planning for the procurement: the procurement approach; procurement risk management; release of the Request For Proposal;
 - Conduct of the procurement: Evaluation Plan; evaluation of Responses; management of conflicts of interest; communication during the procurement; and
 - Probity advice.
- The audit found that Transport Canberra and City Services Directorate (TCCS) effectively planned for the procurement and that the conduct of the procurement and the evaluation of responses was effective. It also found the conduct of the procurement was supported by the engagement of a Probity Advisor, who developed a Probity Plan, provided probity advice throughout the procurement and prepared a draft and final Probity Report at the conclusion of the procurement.
- The audit identified minor shortcomings and challenges including:
 - Whilst the evaluation documentation demonstrated that value for money (VFM) was satisfactorily considered there was an absence of a documented, stand-alone VFM assessment.
 - The Probity Report(s) had not been provided on a timely basis to assist the Delegate's decision-making at a crucial time of the procurement. A draft and final Probity Report had been prepared and provided by the Probity Advisor at the conclusion of the procurement. However, the Probity Report(s) were provided after the evaluation of responses was conducted and after the Delegate had agreed to the Evaluation Team's recommendation.
 - The audit also noted that there was limited correspondence with the respondents in the late stages of the procurement and suggested that consideration needs to be given to whether more information could be provided by the entity to the respondents when there are delays to a published timeline.
- Two recommendations were made in the final report relating to process improvement which are relevant to all Territory entities in the conduct of their procurements.

- The ACT Government agrees to both recommendations and notes that related changes have already been made as part of the delivery of the Procurement Reform Program. The initiatives implemented as part of the Procurement Reform Program and in response to the recommendations will continue to be monitored over time to ensure compliance.

Government Position on Recommendations

RECOMMENDATION 1 – LOW OR ZERO-DOLLAR VALUE PROCUREMENTS

When conducting low or zero-dollar procurements, ACT Government agencies should:

- a) ensure that the principles of value for money are effectively recognised and addressed in procurement documentation, including the Evaluation Plan; and*
- b) ensure that the value for money evaluation process is clearly outlined in the procurement documentation provided to potential respondents, so that potential respondents understand how value for money will be considered for the particular procurement.*

Government Position

AGREED

RESPONSE

Under the recent Procurement Reform Program, amendments to the *Government Procurement Act 2001* (Act) and the *Government Procurement Regulation 2007* (Regulation) took effect from 1 July 2024. These amendments included an expansion of the definition of VFM. In accordance with the Act, VFM means the best available outcome for the procurement that maximises the overall benefit to the Territory.

Further changes have included the introduction of the *Government Procurement Rules 2024* made as a Disallowable Instrument under the Act. The Government Procurement Rules (the Rules) came into force on 4 September 2024 and will remain in force unless disallowed.

The Act, Regulation and Rules collectively establish requirements in relation to VFM considerations during the procurement lifecycle.

The Rules articulate the need to thoroughly consider VFM through a clear understanding of the goals and the purpose of a procurement and by ensuring the design of a process achieves the best VFM through the consideration of:

- stakeholder input;
- the scale and scope of the business requirements;
- the Territory entity's resourcing and budget;
- obligations and opportunities under other existing arrangements;
- relevant laws and policies; and
- the market's capacity to competitively respond to a procurement.

The Rules enforce the Territory's position that price is not the sole factor when assessing VFM and require Territory entities to consider the relevant financial and non-financial costs and benefits of each submission, including (but not limited to) the:

- quality of the goods or services;
- fitness for purpose of the potential supplier's response;
- potential supplier's relevant experience and performance history;
- flexibility of the potential supplier's response (including innovation and adaptability over the lifecycle of the procurement);
- ability to achieve outcomes against the Procurement Values; and
- whole-of-life costs, where whole-of-life costs could include:
 - maintenance and operating costs;
 - transition out costs;
 - licensing costs (when applicable);
 - the cost of additional features procured after the initial procurement;
 - consumable costs; and
 - decommissioning, remediation and disposal costs (including waste disposal).

The expanded definition of VFM and the additional guidance and requirements captured in the Rules took effect after the finalisation of the procurement process for the Reusable Facility Services. In addition to the amendments to the legislation, the ACT Government recognises that there is an opportunity to support Territory Officers in the conduct of procurements that are for low or zero-dollar values through the issuing of better practice guidance on the conduct of these procurements including the assessment of VFM. Procurement ACT is responsible for the delivery of templates, guidance and training on all aspects of the procurement lifecycle. A better practice guide will be developed in the first half of 2025 and will be promulgated across the ACT Government via the public-facing Procurement ACT website.

The information in the fact sheet will be communicated to TCCS staff and embedded in the directorate's governance framework. It is expected the Better Practice Guide will also serve as a useful resource for potential suppliers and the general community.

RECOMMENDATION 2 – COMMUNICATE TO POTENTIAL RESPONDENTS DURING THE PROCUREMENT

For complex and long-running procurements, and when there are delays to the expected procurement timeline, ACT Government agencies should ensure there is more frequent and timely communication with potential respondents.

Government Position

AGREED

RESPONSE

Procurement ACT has implemented an Accreditation model and Tiered Service Offering, which came into effect on 1 July 2024. This means that Territory entities have greater autonomy and identified support for conducting procurement based on their accredited levels and the scale, scope and risk of the procurement activity.

Territory entities are responsible for communicating with potential respondents during a procurement process. However, advice and support is provided by Procurement ACT to ensure that Territory entities undertake any communication whilst maintaining probity in accordance with the

requirements under Section 7 of the Act. The Probity in Procurement Guide (the Guide), the Probity in Procurement eLearning Module and the Communication Protocol provided under the Guide assist Territory entities to communicate where appropriate during a procurement process.

To ensure that Territory entities understand the need for consistent and timely communication with all potential respondents, further guidance on communications during procurement processes will be released in Procurement ACT's bi-monthly newsletter and through regular face-to-face sessions on probity. This targeted communications and awareness campaign will be delivered by the end of 2024.