ACT AUDITOR-GENERAL'S OFFICE

Ms Caroline Le Couteur MLA
Chair
Standing Committee on Public Accounts
Legislative Assembly Building
London Circuit
CANBERRA ACT 2600

Dear Ms Le Couteur

Re: Inquiry into ACT Government Procurement

I am writing in response to your invitation of 24 February 2010 to make a submission to the Committee's current inquiry into ACT Government Procurement.

I greatly appreciate the opportunity to make a submission to this Inquiry.

The attached submission focuses on the issues that have been identified during the recent audits conducted since the tabling of my report on '*Government Procurement*' (Report No. 5 of 2005) in November 2005.

My staff and I look forward to participating in the public hearings of the inquiry and to responding to any questions and issues the Committee may have on the Office's submission.

Yours sincerely

T. Pham

Tu Pham
ACT Auditor-General

10 March 2010

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ACT AUDITOR-GENERAL'S OFFICE

SUBMISSION TO THE STANDING COMMITTEE ON PUBLIC ACCOUNTS

INQUIRY INTO ACT GOVERNMENT PROCUREMENT

A. Introduction

This submission is provided to the Standing Committee on Public Accounts in response to its Inquiry into ACT Government Procurement. The terms of reference for the Committee's inquiry include:

(1) The pursuit by ACT Government agencies of the 'Procurement principle – value for money', having regard to:

- probity and ethical behaviour
- management of risk
- open and effective competition
- optimising whole-of-life costs

(2) the integration of sustainability considerations that encompass environmental, economic and social aspect throughout procurement processes

(3) agency approaches to procurement training and development activities

(4) the ability of local suppliers to complete for ACT Government procurement opportunities

(5) the effectiveness of recent reforms

(6) impact on tendering organisations, in particular, speed, feedback and finalisation, of government discontinuing the tender process, and

(7) any other relevant matter.

B. General Comment

The Performance Audit Report titled '*Government Procurement*' (Report No. 6 of 2005) was tabled in the Legislative Assembly on 15 November 2005. The Audit examined procurements undertaken by selected government agencies (seven in total) and assessed whether they had complied with relevant Government legislation, principles and guidelines, and achieved Government procurement objectives including transparency, accountability and value for money.

A representative sample of procurement proposals and supporting documentation were selected from each audited agency and more than 370 small and major procurement transactions were examined. A written survey of 26 government entities was also conducted with an overall response rate of 92 per cent. The results of the surveys were used to assist in audit assessment of whether agencies had sound management practices and effective control environment to encourage and support efficient and effective procurement processes and practices.

Summary of audit findings

In 2005, the Audit found that:

- Overall, agencies demonstrated a satisfactory level of compliance with relevant legislation, and the Government procurement principles and guidelines in respect of major procurement transactions (i.e. purchases with value greater than $50 000).
- The centralised monitoring arrangements within large agencies and at the Government Procurement Board were generally effective. Their review process, while at times contributing to significant delays, provided reasonable confidence that major procurements, especially those over $1 million in value, complied with proper processes to achieve greater transparency and better value for money.
- There was a high level of non-compliance for procurement practices regarding small purchases (under $50 000), in particular with the thresholds guidelines and lack of written approval from the chief executive or delegate for exemption from the required guidelines.
- The high level of non-compliance indicated weaknesses in agencies' internal controls, and a poor standard of documentation supporting the decision-making process. These deficiencies raised doubts regarding the extent to which value for money had been achieved, and increased the risk of collusion between staff and suppliers.
- The majority of agencies did not have regular monitoring and review processes to ensure that the government procurement guidelines, procedures and better practices are being properly applied.
- Agencies did not maintain adequate and reliable procurement information systems to enable effective management of the purchasing function.
- Agency procurement functions were fragmented and not well co-ordinated.
- Agencies did not review and assess their procurement activities against sound performance measures or benchmarks.
- There were significant instances of non-compliance with the reporting provisions of the Procurement Act in respect of the Notifiable Contracts and the Reportable Contracts (containing confidentiality clauses). As a result, it was doubtful that the transparency and accountability goals of the legislation were being achieved in an effective manner.

Recommendations

The Audit made fourteen recommendations to improve the efficiency and effectiveness of government procurement activities through:

- improved compliance with the procurement principles and guidelines in areas such as risk management, documentation, and strategic procurement planning for significant purchases;
- better co-ordination of current procurement functions within agencies and across agencies leading to whole-of-government purchase decisions;
- a stronger accountability framework and better staff training and development; and

- enhancement in the administration and management of Notifiable and Reportable Contracts.

Government response

The Government, in its submission to the Standing Committee on Public Accounts in respect of the '*Government Procurement*' Report in February 2006, agreed to all 14 recommendations except one which was agreed in part. In its submission, the Government stated that:

> Overall, the Government considers that the consolidation of procurement into Procurement Solutions and the associated implementation arrangements that are being developed with the Government Procurement Board and individual agencies, largely address many of the Auditor-General's 14 recommendations in relation to procurement activities of $20 000 and above. Individual agencies will pursue action in relation to procurement activities below $20 000, using whole of Government systems and approaches being developed as part of the consolidated procurement arrangements, where appropriate.
>
> The Government, through Procurement Solutions, is also pursuing the opportunities for improvement identified in the Auditor-General's Report.[1]

The Audit Office noted that the Government, through the Government Procurement Board and Procurement Solutions, has implemented various changes since mid 2005, such as:

- amendments to the Procurement Act and Regulations;[2]
- updates of relevant Government procurement policy circulars, including changes to quotation and thresholds (effective May 2009);[3] and
- centralisation of procurement activities under Procurement Solutions (since mid 2005). Procurement Solutions is now a division of Shared Services within the Department of Territory and Municipal Services and provides all capital works delivery and procurement of goods and services above a threshold of $20 000.

C. Recent Audit Activities

Since the tabling of the '*Government Procurement*' Report in November 2005, the Audit Office has not undertaken any follow-up audit of government procurement. However, several performance audits since 2005 have examined aspects of agencies' procurement activities and Procurement Solutions' operations, for example:

- Report No. 5 of 2007 titled *The Firelink Project* (tabled in August 2007);
- Report No. 1 of 2008 titled *Chris21 Human Resource Management System Procurement and Implementation* (tabled in May 2008);
- Report No. 4 of 2008 titled *Maintenance of Public Housing* (tabled in August 2008);

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1 Government Submission to Standing Committee in Public Accounts in response to Auditor-General's Report No. 6 of 2005 titled *Government Procurement*, 2006, page 2.

2 *Government Procurement Amendment Act 2007* and other minor amendments in *Statute Law Amendment Act 2008* and *Statute Law Amendment Act 2009 (No. 2).*

3 Details of Government policy circulars are on Procurement Solutions' website refer www.procurement.act.gov.au

- Report No. 1 of 2009 titled *Road Project Fairbairn Avenue Upgrade and Horse Park Drive* (tabled in February 2009); and
- Report No. 6 of 2009 titled *Government Office Accommodation* (tabled in August 2009).

These audits have identified the need for further improvement in procurement practices, focusing on procedures and policy.

D. Comments on Selected Terms of Reference

Based on these audits, I have provided the following comments.

Procurement principle – value for money

To achieve value for money, the Procurement Act requires agencies to have regard to the following principles in their procurement activities:[4]

- probity and ethical behaviour;
- risk management;
- open and effective competition;
- whole of life costs; and
- anything prescribed by regulation.

These principles are fundamental to sound government procurement processes and practices and are being adopted by other jurisdictions.[5] Value for money is enhanced in government procurement by:

- maintaining high standards of probity and ethical principles;
- encouraging open and fair competition by ensuring non-discrimination in procurement and using competitive procurement processes;
- managing procurement and contract risks;
- considering a whole of life value for money assessment across the entire procurement cycle (acquisition, maintenance, operating costs, training and disposal); and
- making decisions in an accountable and transparent manner.

However, the procurement activities identified in the audit reports (for example, *The Firelink Project*) were not always achieving the best procurement outcome to the Territory.

The Audit Office also noted that, in the various audits conducted in the recent years, instances were noted where agencies had adopted a select tender process to single select a preferred supplier to provide goods or service for various reasons. While there might be a merit to adopt such select tender process, such as open tender process would cause delay in completion of the project within the tight time frame, decisions on single select process

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[4] Section 22A of *Government Procurement Act 2001*, as amended.
[5] For example *Commonwealth Procurement Guidelines* issued by the Commonwealth Department of Finance and Deregulation in December 2008 and ANAO Better Practice Guide titled *Fairness and Transparency in Purchasing Decisions. Probity in Australian Government Procurement.*, August 2007.

without sound justifications could lead to higher costs in the long run as projects do not achieve the intended outcomes.

Integration of sustainability considerations

The procurement and tender evaluation process examined in the recent audits indicated that agencies had generally required tenderers to comply with environmental sustainability requirements stated in the tender documentation and considered the tenderers' ability to comply with environmental sustainability requirements during the tender evaluation process. However, management of compliance to the environment plan or monitoring program (for example in the *Road Project Fairbairn Avenue Upgrade and Horse Park Drive*) was not effective.[6] Enhancement in project management by agencies in this area is warranted.

Effectiveness of recent reforms

As no follow-up audit in government procurement was conducted since the '*Government Procurement*' audit in 2005, the effectiveness of recent procurement reforms has not been fully assessed. However, the deficiencies identified in the recent audits have identified the need for further improvement in procurement practices.

Impacts on tendering organisations, in particular, speed, feedback and finalisation, of government discontinuing the tender process

In the recent years, the Audit Office has received a number of representations and requests for investigations by the community in respect of government procurement practices and processes. The representations and requests for investigations primarily related to alleged systemic problems in procurement procedures, incorrect tender evaluations, conflict of interest, deficiencies in tender documentation and lack of accountability in procurement decisions.

In view of limited resources and the competing priorities of our audit activities, the Audit Office had not been able to investigate all these representations. However, the results of some of the reviews conducted by the Audit Office indicated the need for further improvement in procurement practices and management of procurement processes.

E. Conclusion

The various audits, representations and requests for investigations discussed above suggest the need for further improvement and development in government procurement practices and processes.

ACT Auditor-General's Office

10 March 2010

[6] Auditor-General's Report No. 1 of 2009 titled *Road Project Fairbairn Avenue Upgrade and Horse Park Drive* February 2009, page 6.