

Review of the Auditor-General's Report No. 4 2001, Peer-Based Drug Support Services Tender - 1998

Committee on Finance and Public Administration
(Incorporating the Public Accounts Committee)

Report Number 29

August 2001

Legislative Assembly for the Australian Capital Territory



Committee membership

Mr Ted Quinlan MLA, Chairman

Mr Trevor Kaine MLA, Deputy Chairman

Mr Greg Cornwell MLA

Secretary: Maureen Weeks

Inquiry Secretary: Siobhán Leyne

Resolution of appointment

The Standing Committee for the Chief Minister's Portfolio was appointed by the Legislative Assembly on 28 April 1998 to examine any matter under the responsibility of the Chief Minister's portfolio. The Assembly also resolved that the committee perform the duties of a public accounts committee, specifically:

- (a) to 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) to report to the Assembly, with such comments as it thinks fit, on 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; and
- (c) to 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.

On 26 November 1999, the Assembly retitled the committee as the Standing Committee on Finance and Public Administration (Incorporating the Public Accounts Committee), omitted reference to matters under the responsibility of the Chief Minister's portfolio and included reference to women's affairs, Aboriginal and Torres Strait Islander issues, asset management, gaming and racing and any other related matter.

1. Introduction

1.1. On 19 June 2001, the Speaker tabled in the Assembly, the Auditor-General's Report 4 2001: Peer-Based Drug Support Services Tender – 1998.

1.2. This audit was undertaken at the request of a Member of the Assembly for an audit into the processes leading to the awarding of the contract to provide peer-based education and support services for injecting drug users.

1.3. At its meeting on 17 August 2001, the Committee agreed to report on its findings and the Government response, received by the Committee on the same date.

2. Background

2.1. Tenders were advertised for a peer-based education and support service for injecting drug users in November 1998 by the then Department of Health and Community Care. Submissions were received from Assisting Drug Dependents Incorporated (ADDInc) and Canberra Injectors Network (CIN).

2.2. CIN was announced as the preferred provider in February 1999. Following concerns raised by a Member of the Assembly regarding the contract process, the contract allocation to CIN, and a possible conflict of interest involving a departmental officer, an Audit was undertaken.

2.3. The Audit "objectives were to provide an independent opinion on:

- Whether processes used to allocate the contract:
 - were consistent with public sector policies and guidelines;
 - were sufficiently comprehensive to enable a sound and defensible selection decision to be made; and
- whether any actual or apparent conflict of interest existed, and if so, whether the conflict was managed in accordance with the ACT Government policy, principles and guidelines.”¹

2.4. The Audit concluded:

- “Processes used to allocate the contract were consistent with public sector policies and guidelines.
- The processes were sufficiently comprehensive to enable a sound and defensible selection decision to be made.
- No actual or apparent conflict of interest existed.

¹ Auditor-General's Report 4, 2001, p. 5

- There could have been a public perception that a conflict of interest existed. However, the perception was generally managed in accordance with Government policy, principles and guidelines.

3. Audit Findings

3.1. The Committee notes that on a whole the findings of the Audit were positive, and that the Department complied with the relevant guidelines for tender and contract management. Departmental officers also acted within the requirements of the *Public Sector Management Act 1994*, and the Best Practice Notes when dealing with the potential existence of a conflict of interest.

3.2. However the Audit did have several negative findings, particularly in relation to the methodology for assessing the tenders. The Committee was concerned that the findings are further evidence of a service wide problem with tender practices. However, the Committee notes that since 1998 there have been Government-wide reforms in purchasing and tendering processes.

Contract and Tender management

3.3. The Committee notes that the lack of a structured research methodology, background information and assessment methodology (which was not settled prior to assessment commencing) is indicative of the attitude towards contract and tender management that has been evidenced across the Government in the last three years.

3.4. It indicates to the Committee that the Government needs to address the attitude towards contract and tender management, not just the process.

3.5. In its response to the Committee, the Government states the steps that they have taken to improve tender and contract management processes and holds up the detailed guideline “ACT Department of Health and Community Care Chief Executive Instructions – Purchasing”, issues November 2000, as an example to complement recent Government-wide reforms.²

3.6. While this guideline is comprehensive, the Committee is concerned to note that it refers to the Office of Financial Management, which ceased to exist in the Administrative Arrangement Orders of 6 August 1999. It also refers users to a number of websites that are equally outdated.

3.7. If the Government is truly committed to reforming the tender and contract management environment, the Committee is of the view that maintaining and updating the relevant guidelines should be a priority.

Conflict of interest management

² Government submission received 17 August 2001.

3.8. There was a personal and pecuniary relationship between an officer of the Department who was involved in the tender, and the former manager of ADDInc.

3.9. The Audit found that while no actual or apparent conflict of interest existed, there was public perception of such. While the officer and Department did take appropriate action, there was no documentation to this effect. The Audit suggests that disclosure in writing would have been more appropriate.

3.10. Perceived conflicts of interest should be dealt with as seriously as actual conflicts of interest, as identified by section 9(k) of the *Public Sector Management Act 1994*.

3.11. The Committee agrees with the Audit that the Department and the officer should have properly documented discussions relating to the potential conflict of interest. Later media and public interest undermined the validity of the tender process because of the involvement of this officer. It is essential to ensure that transparency is maintained at every step of the process, failing to document the disclosure adequately, compounded the perception of an existing conflict.

4. Conclusion

4.1. The Committee welcomes the Government response and is encouraged by endeavours to reform the contract and tender management environment.

4.2. The Committee notes that policies and procedures have been improved, and the new legislation has been introduced namely the *Public Access to Government Contracts Act 2000* and the *Government Procurement Act 2001*.

4.3. However, while these are positive steps forward, the Acts must be utilised with a willingness to abide by and comply with them before they will have any effect.

4.4. Additionally, the Committee is concerned about the Department of Health, Housing and Community Care's reliance on a set of instructions that were out of date that time of issue.

4.5. Finally, the treatment of conflicts of interest, whether they be actual or perceived, is a most serious matter and must be treated with the utmost priority to ensure that Government processes are transparent, and to avoid undue stress and pressure on public servants through unnecessary public scrutiny of their private affairs.

Ted Quinlan MLA
Chair
27 August 2001