

2011

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE
ON PUBLIC ACCOUNTS
OF THE SEVENTH LEGISLATIVE ASSEMBLY
REPORT NO 13

REPORT ON THE INQUIRY INTO ACT GOVERNMENT
PROCUREMENT
(November 2010)

GOVERNMENT RESPONSE
June 2011

Presented by
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Treasurer

Tabled on 28 June 2011

EXECUTIVE SUMMARY

The Chair of the Standing Committee on Public Accounts announced on 7 May 2009 that the Committee would hold an inquiry into Government Procurement.

The Committee's terms of reference were to inquire into, and report on the following matters:

- (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, and
 - optimising whole-of-life costs.
- (2) the integration of sustainability considerations that encompass environmental, economic and social aspects throughout procurement processes
- (3) agency approaches to procurement training and development activities
- (4) the ability of local suppliers to compete 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.

The Committee invited submissions from interested parties in relation to its inquiry into Government Procurement. On 4 November 2009, the Government lodged a submission which was one of 17 submissions received by the Committee.

The Committee handed down its Report on 18 November 2010.

The Committee made 25 recommendations in its Report. The Government has responded to all of the recommendations.

In its response, the Government has:

- agreed to nine recommendations;
- agreed in principle to four recommendations;
- agreed in part to three recommendations;
- noted seven recommendations; and
- not agreed to two of the recommendations.

Some of the recommendations refer to activities that are already Government practice. A detailed response to each finding and recommendation follows.

The Government was pleased to note that the report, overall, endorsed the Government's centralised approach to procurement, and the procurement legislative and policy framework, and made no recommendations for significant changes to procurement in the ACT Government.

The Government thanks the Committee, and its secretariat, for the Report on Government Procurement.

RESPONSE TO RECOMENDATIONS

RECOMMENDATION 1

The Committee recommends that the ACT Legislative Assembly's Administration and Procedure Committee examine the Assembly's procedures to devise a process to protect the integrity of the committee system with regard to witnesses and submitters making false or misleading statements under the protection of parliamentary privilege.

Government Response

Noted

This is a matter for the Legislative Assembly's Administration and Procedure Committee.

RECOMMENDATION 2

The Committee recommends that the threshold at which agencies are required to seek more than one quotation before proceeding with a purchasing decision, and the threshold at which agencies are required to seek ACT Procurement Solutions' management services for a purchase be aligned.

Government Response

Agreed

The Government will raise the threshold for agencies to seek the assistance of Shared Services Procurement (formerly ACT Procurement Solutions) in managing their procurements to \$25,000, to align it with the lower threshold for seeking three quotations. The Government will also take the opportunity to raise the threshold at which contracts must be published on the Contracts Register to \$25,000.

In principle these three thresholds should remain aligned when any future changes are made.

RECOMMENDATION 3

The Committee recommends that these thresholds be reviewed and adjusted on a regular basis.

Government Response

Agreed in part

Realistic thresholds eliminate unnecessary obstacles to industry and encourage participation.

While the recommendation does not suggest the frequency of reviews and adjustments that the Committee is contemplating, the Government agrees that it may be practicable to review thresholds not less than once every three years and, if required, the thresholds should be adjusted to reflect significant changes in the volume or risk profile of contracts within thresholds and ensure that they are in line with other jurisdictions.

A review of the thresholds may not necessarily dictate that an adjustment to the threshold is warranted. Further, it would be impractical to adjust thresholds too frequently. The confusion and cost (for example, in communication within government and externally, and updating documentation and electronic media) would not be justified for incremental changes that would be likely if thresholds were adjusted more frequently than every few years.

RECOMMENDATION 4

The Committee recommends that the Chief Minister's Annual Report Directions be amended to require agencies to include a statement in their annual reports indicating the number and value of contracts that have been let under an exemption from the *Government Procurement Regulation 2007*.

Government Response

Noted

The Chief Minister's Annual Report Directions already require disclosure of information relating to contracts for works and services exceeding \$20,000. Agencies are required to identify details that include: the type of procurement – either open tender, select tender, single select, or standing offer arrangement; the total expenditure (GST exclusive) in the financial year; and, for contracts of a value greater than \$200,000, the reason for the use of any select procurement processes.

The Government will amend the ACT Contracts Register to include a facility to indicate the number and value of contracts that have been let under an exemption from the quotation and tender thresholds requirements in the *Government Procurement Regulation 2007* for all relevant contracts notified on the Register. It will not be practical to include this information on contracts notified before this facility is available.

RECOMMENDATION 5

The Committee recommends that the Chief Executive's reasons for exempting a procurement from the requirements of the *Government Procurement Regulation 2007* be included with the contract in the Notifiable Contracts Register. This procedure should be consistent with the current processes for dealing with commercially sensitive information.

Government Response

Agreed

The government will amend the ACT Contracts Register to include the reasons for exempting a procurement from the requirements of the *Government Procurement Regulation 2007*.

RECOMMENDATION 6

The Committee recommends that the ACT Government review the place of independent project managers in the ACT procurement process.

Government Response

Agreed in part

Shared Services Procurement acts as a "Project Director" and the "Principal's representative" on capital works projects. It also undertakes a broad range of responsibilities as a government agency providing policy advice to government; developing legislation and regulation; representing the Territory on inter-governmental groups such as the Australian Procurement and Construction Council; reporting to the Assembly on agency compliance with legislative requirements; maintaining the contracts register as required by legislation; maintaining the call tender register; and developing and updating the procurement policy guides.

Independent project managers are already utilised by the Territory as required to fill gaps in skills and capability. Shared Services Procurement has a panel arrangement for the engagement of project managers.

The role of Shared Services Procurement is not comparable to that of private sector project managers who undertake a narrower function. As with all other jurisdictions, the ACT needs to maintain an in-house capability in terms of the oversight of its capital works program in order to protect the Territory's interests and to ensure that the Territory remains an informed buyer of construction services.

The Government will continue to assess the role that private sector project managers/directors can play in assisting to deliver works for the territory.

RECOMMENDATION 7

The Committee recommends that the ACT Government review its procurement system with a view to the suitability of a range of procurement approaches.

Government Response

Agreed in principle

The ACT Government is continually seeking to improve its procurement approaches, including by exploring a range of options for delivering projects in order to deliver the best value for money, while having regard for open and effective competition and management of risk. For example, the ACT Government is currently reviewing its suite of agreements to both ensure those currently in use are up-to-date and to add new contract models as appropriate.

The Committee's report commentary infers that the managing contractor approach is the only model used by the ACT Government in capital works projects. This is not correct as other contract forms, including lump sum contracting, design and construct, and NSW GC21 are also widely used. The most appropriate contractual model to deliver a project is considered at the time of tendering.

In addition, the ACT Government complies with its commitments to COAG to consider the use of Public Private Partnerships (PPPs) for projects of value greater than \$50 million. The Government has investigated the possibility of delivery, by a PPP, for a number of projects using the National Public Private Partnership Policy and Guidelines.

RECOMMENDATION 8

The Committee recommends that ACT Procurement Solutions engage specifically with representatives of micro, small and medium sized businesses to refine procurement processes to ensure that they are accessible to that sector.

Government Response

Agreed

Shared Services Procurement actively engages with the business community through a range of forums. Roundtables are held quarterly with various industry bodies including the Australian Information Industry Association (AIIA), the Canberra Business Council, the Australian Institute of Architects (AIA), the Australian Institute of Landscape Architects (AILA), the Master Builders Association (MBA) and Consult Australia. These forums provide an opportunity for discussion and continual collaboration between the Government and those bodies representing the interests of businesses of varying sizes.

Shared Services Procurement also hosts regular industry forums, on select procurement topics, which are open to the business sector and provide opportunities for business to hear from guest speakers who are subject matter experts in their field and to engage with procurement specialists. Business is also assisted in understanding the requirements of particular tenders through the course of pre-tender consultation and industry briefings.

RECOMMENDATION 9

The Committee recommends that ACT Procurement Solutions investigate the viability of adopting the Commonwealth's online tender system or modifying its own system to provide a similar targeted service to users.

Government Response

Noted

The ACT Government is currently trialling a simple e-tendering system to facilitate the seeking, processing and evaluation of low value, low risk quotations for goods and services procurements across the Government. The e-tendering system offers benefits through streamlined services that speed the sourcing process and facilitate effective evaluation of the quotations with minimal manual intervention.

The Government will consider the implementation of a full online tendering system in the light of emerging budget priorities.

RECOMMENDATION 10

The Committee recommends that ACT Procurement Solutions liaise with peak bodies in the community sector and organise regular briefing sessions on procurement to assist the sector in understanding processes and to give the sector early advice of forthcoming opportunities. ACT Procurement Solutions should also work with purchasing agencies to seek to schedule tenders to avoid significant numbers of tenders falling within limited time periods.

Government Response

Agreed

The ACT Government regularly and frequently communicates with the community sector through its Service Funding Agreement (SFA) Managers in relevant agencies. The Government acknowledges that the community sector needs regular advice on procurement processes, in particular guidance in relation to preparing tenders. Shared Services Procurement will work with the Service Funding Agreement Managers to deliver workshops and other guidance on preparing tenders.

The Government acknowledges that it can be challenging for the community sector to respond to similar requests for tender issued in a short timeframe and Shared Services Procurement attempts to assist agencies to schedule tenders to avoid this.

Unfortunately, at times policy or program commitments may not support this objective. For example, difficulties in scheduling tenders for Service Funding Agreements arise when the expiry dates of existing contracts align with the financial year and with timeframes associated with the budget cycle and Australian Government funding.

Shared Services Procurement publishes the Call Tender Schedule and the Goods and Services Procurement Forecast to assist industry in planning for responding to requests for tenders and will continue to work with the Department of Disability, Housing and Community Services (DHCS) to schedule requests for tenders in a manner as conducive to the community sector as practicable.

RECOMMENDATION 11

The Committee recommends that ACT Procurement Solutions, in conjunction with peak bodies in the community sector, investigate the feasibility of greater use of pre-qualification and panel arrangements for procurements involving community sector service providers.

Government Response

Agreed

The Outcomes Based Service Funding Agreement – Purchasing Framework will provide a tool to efficiently and effectively manage the quality of services delivered, along with developing a methodology for determining the population and individual outcomes over a ten year period.

The prequalification component within the Purchasing Framework is a tool where service providers will be assessed against pre-determined criteria and only those service providers who satisfy the prequalification criteria will be eligible to be considered when tendering for human services. Initially, DHCS will use the Purchasing Framework, with the possibility of human services contracts across the ACT Government using the approach in the future.

The purpose of prequalification is to assess and perhaps classify service providers in accordance with their expertise, business arrangements and capability, before inviting tenders for any specific work. Prequalification will simplify, streamline and better coordinate the funding and purchasing of human services for individuals and groups. Quality assurance, value for money, and performance improvement are key objectives of prequalification.

The Project Advisory Group for the Purchasing Framework includes members from Government and the community sector and includes representatives from Shared Services Procurement and community sector peak bodies.

RECOMMENDATION 12

The Committee recommends that the ACT Government review the legal powers and resources of regulatory bodies such as ACT Workcover and the ACT Long Service Leave Board to ensure that these entities can discharge their responsibilities proactively.

Once completed, the ACT Government should inform the ACT Legislative Assembly of the outcome of the Review.

Government Response

Not agreed

On 3 May 2010, the ACT Government established WorkSafe ACT as the new regulatory body for work safety, private sector worker's compensation and dangerous substances in the Territory. This followed one of several reviews conducted over the previous three years and resulted in additional inspectors and funding to improve work safety in the Territory. WorkSafe ACT has sufficient power to conduct its regulatory role in the context of its obligations.

The ACT Long Service Leave Authority (ACT Leave) is funded to establish and administer the portable long service leave schemes that apply to the building and construction industry, the cleaning industry and the community sector. The legislation governing the portable long service leave schemes was completely reviewed two years ago. ACT Leave has sufficient powers to regulate the payment of long service leave entitlements. Neither WorkSafe ACT nor ACT Leave is a general labour inspectorate. Neither could act like one under the current *Fair Work Act 2009* (Cwlth) to prevent or prosecute sham contracting generally as it would be acting beyond power. However, these organisations can share information about possible sham contracting with either the Fair Work Ombudsman, or the Australian Building and Construction Commission (ABCC), whichever is the appropriate body to deal with these issues. It is not considered appropriate to expand the role of WorkSafe ACT or ACT Leave beyond the realms of their current obligations.

The Government will continue to refer matters to the Commonwealth as appropriate where there is no relevant ACT legislation. The Department of Employment, Education and Workplace Relations (DEEWR) is already undertaking work in strengthening compliance and is liaising with the ACT Government on this matter.

RECOMMENDATION 13

The Committee recommends that the ACT Government ensure that regular training is provided for all officers engaged in procurement activities on the latest developments in public sector procurement.

Government Response

Agreed

Shared Services Procurement provides monthly training to ACT Government employees who are new to procurement or wish to refresh their knowledge of procurement principles, policies and practices. In addition, specialised training is available on request or is offered as appropriate, for example, introduction to social procurement, risk management and negotiation skills.

Internal to Shared Services Procurement, an ongoing in-house training program has been established and is supplemented by professional training. Shared Services Procurement invites subject matter experts to present sessions on topics of interest at Branch meetings. Shared Services Procurement engages registered training organisations to deliver group training sessions to enable staff to gain specialist qualifications at the level of Certificate IV in Government (Procurement) and Advanced Diploma of Government (Strategic Procurement) and all agencies are encouraged to participate.

In addition, the Chartered Institute of Purchasing and Supply Australasia (CIPSA) has provided formal training in different aspects of procurement to Shared Services Procurement officers and also occasionally holds talks on procurement matters for all interested parties to attend.

RECOMMENDATION 14

The Committee notes that ongoing legal action exists and, subject to consideration of that legal action, recommends that the ACT Auditor-General conduct a broad ranging investigation of the allegations raised with regard to Aussie Junk's employment practices and the management of contractual processes for the letting of the leases for the Mugga Lane and Mitchell facilities.

Government Response

Noted

This is a matter for the ACT Auditor-General.

RECOMMENDATION 15

The Committee recommends that the Chief Minister's Annual Report Directions be amended to specify that ACT Government agencies are to report on compliance with sustainable procurement requirements.

Government Response

Noted

Sustainability forms an integral part of the value for money assessment undertaken for each project on a case-by-case basis. The reporting of separate sustainable procurement requirements in ACT Government agencies' Annual Reports would involve a considerable reporting and data gathering burden to be meaningful. The Government will consider the feasibility of developing sustainable procurement monitoring and reporting systems in the context of budget considerations.

RECOMMENDATION 16

The Committee recommends that ACT Government agencies should be required to select goods, services and works on the basis of triple bottom line impacts. Guidelines should be developed to assess these impacts, including whole-of-life cycle impacts.

Government Response

Agreed

ACT agencies are already required to consider optimisation of whole-of-life costs in all procurements as required by section 22A (3) of the *Government Procurement Act 2001*. Procurement Circular 2010/11 Optimising Whole of Life Costs, includes an attachment showing worked examples of financial analysis techniques to assist agencies to prepare their whole of life costs for individual products or services.

Whole of Government contracts provide an excellent opportunity for sustainability impacts to be identified and measured, leading to changed purchasing behaviour. The Government has previously mandated use of whole of Government contracts by all ACT Government departments and agencies.

RECOMMENDATION 17

The Committee recommends that the ACT Auditor-General conduct a review of a selection of recent procurements to evaluate the influence that ACT Government sustainability policies are having on the procurement process.

Government Response

Noted

This is a matter for the ACT Auditor-General.

RECOMMENDATION 18

The Committee recommends that explicit reference to sustainability, expressed in terms similar to those used in section 11 of the *Financial Management Act 1996*, be included in section 22A of the *Government Procurement Act 2001* as matters which must be considered in pursuing "...the best value for money" objective.

Government Response

Not agreed

ACT agencies are already required by the *Government Procurement Act 2001* to consider optimisation of whole-of-life costs in all procurements. This principle ensures that sustainability issues are considered in a way most relevant to the individual procurement activity. By considering all costs associated with a procurement, including the purchase, operating and disposal costs, the most sustainable option overall will be selected.

RECOMMENDATION 19

The Committee recommends that the ACT Government ensure that all officers engaged in procurement activities receive training on:

- (i) incorporating sustainability considerations into the request for tender development process**
- (ii) incorporating sustainability considerations into the tender selection process, and**
- (iii) engaging with suppliers on sustainability issues.**

Government Response

Agreed

Sustainability is an important factor in responsible fiscal expenditure. The ACT Government, through Shared Services Procurement, has an ongoing program of training in a range of procurement related matters, including sustainability in procurement. In addition, procurement policy circulars, which are available to agency officers from the Shared Services Procurement website and Government intranets, provide guidance on a broad range of procurement-related matters.

RECOMMENDATION 20

The Committee recommends that section 22A (3) of the *Government Procurement Act 2001* be amended to include a new subparagraph stating that entities, in making purchasing decisions, must have regard to the potential social benefits that may flow from the decision and the potential of the community sector to deliver a service, or component of a service, being sought by the entity.

Government Response

Agreed in principle

Whilst the Government agrees that the community sector is occasionally well placed to deliver a service, or component of a service, this needs to be considered on a case by case basis and a requirement to do so has been included in the procurement planning guidance material.

The Government will continue to promote social procurement through the suite of procurement policy circulars, information sessions, templates, and other guidance material.

For example, the ACT Government is developing an accreditation system to recognise business, community and Government agencies that are accessible for people with disability known as the BLITS Tick. Procurement guidance material will advise agencies, where appropriate, to favour procurement of services from agencies that have a BLITS Tick awarded to them.

RECOMMENDATION 21

The Committee recommends that the ACT Department of Disability, Housing and Community Services undertake a study of the community sector in the ACT and develop a guide to the type and number of social enterprises operating in the territory. This could include the development of an ACT Register of Social Enterprises.

Government Response

Agreed in part

The Government understands that the ACT Social Enterprise Hub (SEH) maintains a register of social enterprises and thus there is no necessity for DHCS to duplicate this,

although DHCS continues to take an active interest in fostering understanding of social procurement in collaboration with Shared Services Procurement. The Government supports the SEH and is working with the SEH and Social Ventures Australia (SVA) to better link social enterprises with Government procurement opportunities.

RECOMMENDATION 22

The Committee recommends that the Chief Minister's Annual Report Directions be amended to include a requirement for reporting entities to include a list of social procurement contracts and agreements entered into by the entity.

Government Response

Agreed in principle

Social procurement may occur in various forms, some of which are not evident in a contract. For example: procuring from a contractor who demonstrated in the tender response socially responsible practices that do not form part of the contract; or agencies making small purchases that do not require a contract (such as catering for meetings, or gifts). This could make it difficult for agencies to identify all their social procurements for inclusion in their Annual Reports.

The Report notes that Government is faced with challenges in (i) capturing or identifying the different forms of social procurement and (ii) building capability within its existing systems to support the capture, monitoring and reporting of social procurement. Until such time as definitions are developed and systems established, the Government considers that the existing reporting requirement in the Annual Report Directions provides adequate scope for the identification of procurement actions that add social value.

RECOMMENDATION 23

The Committee recommends that ACT Procurement Solutions hold a special information forum on the ACT Government's new social procurement policy commitment, in particular but not restricted to targeting organisations and groups that fall under the gambit of the ACT Council of Social Service.

Government Response

Agreed

Shared Services Procurement is working in partnership with the SEH to develop social procurement opportunities and encourage community sector engagement. Information sessions for not for profit organisations (NFPs) are currently being planned and these will assist in the dissemination of information on social procurement policy, the procurement framework and tendering guidelines. Shared

Services Procurement also plans to provide guidance on social procurement to the business and construction communities.

RECOMMENDATION 24

The Committee recommends, as a matter of priority, to ensure that appropriate data is captured under the ACT Government's new social procurement policy commitment, that ACT Procurement Solutions should be appropriately resourced to make appropriate adjustments to its current system to monitor and facilitate reporting on social procurement under the new policy commitment.

Government Response

Noted

The Government will consider improvements to Shared Services Procurement's system in the context of emerging budget priorities across the broad range of ACT Government services.

RECOMMENDATION 25

The Committee recommends that the ACT Department of Disability, Housing and Community Services, as the lead department in this area, develop methodologies to measure the benefits flowing from social procurement.

Government Response

Agreed in principle

The Department of Disability, Housing and Community Services is developing an outcomes based performance measurement framework for the procurement of human services, which may be adapted for use by other ACT Government agencies to measure the benefits of their social procurements.