



**UnionsACT submission to the *Inquiry into ACT
Government Procurement***

Due 31st July 2009

Introduction

UnionsACT is the peak body of trade unions in the ACT and represents 24 affiliated unions and over 31,000 members in the ACT. We are also an affiliate of the Australian Council of Trade Unions (ACTU). We are represented on a number of government committees including the Occupational Health & Safety Council, the Procurement Board, ACT Joint Council, the Vocational Education & Training Advisory Group, and the Construction Industry Training Council to name just a few.

We have a keen interest in the government procurement process at both a Territory and Commonwealth level and have provided comment on these processes over many years. We thank the Legislative Assembly for the opportunity to provide input to the *Inquiry into ACT Government Procurement*

We will endeavour to address each Term of Reference in our following comments.

ToR(1) the pursuit by ACT Government agencies of the ‘Procurement principle—value for money’, having regard to:

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

UnionsACT would emphasise that any prospective tenderers must be required to complete an Ethical Supplier’s Declaration where they must have industrial arrangements in place that comply with the law. When these arrangements change or are reviewed then they should be asked to renew this declaration.

Probity and ethical behavior from an industrial perspective means paying employees according to recognized industrial instruments such as an award or an enterprise bargaining agreement and not an Australian Workplace Agreement (which is no longer a lawful instrument). It also means paying appropriate superannuation contributions and workers’ compensation premiums for employees. Ethical behavior and probity also includes paying any subcontractors who complete work for the lead contractor. With new “Security of Payments” legislation being introduced by the Assembly this problem should soon have a proper resolution. However currently there are some large ACT Government contracts being executed by pre-qualified tenderers who continue to not pay their subcontractors even after the job has been completed. These companies continue to receive ACT Government tenders without this breach being picked up by Procurement Solutions. Clearly there is an ongoing problem with monitoring complaints and the pre-qualification process.

We note there is a similar problem with NSW contractors who do not have an ACT Workers compensation policy to cover their employees in the ACT. This should be

regarded as a breach of probity and an identified risk when considering the suitability of a tenderer.

UnionsACT and its 24 affiliates have entered into an agreement with ACT Government seeking a number of objectives. Our key objectives in monitoring the procurement process are as follows:

- To ensure that the process is open, fair , ethical and accessible
- That any prospective tenderer is clear that they must abide by industrial, OH&S and appropriate licensing requirements in order to be eligible to tender for government work
- That wages and conditions referred to in any tender comply with recognized industrial arrangements ie the ACT Government template enterprise agreement where appropriate.
- That jobs in the territory are not compromised by the tender process
- That if our members have cause to raise an objection to a prospective tenderer due to illegal practices that our objection is dealt with in the either the tender process, a prequalification process or thereafter if they are found to be in breach of their legislative obligations
- That ACT Government continue to liaise with unions and employers about any proposed changes or improvements to the procurement process

UnionsACT believes the process managed by Procurement Solutions works fairly well on the whole, to protect government and public funds and to ensure that work is completed by appropriate providers in a fair market place. We do have some reservations about particular areas of procurement of services which we will address in this submission. Some of our affiliates will make their own submissions with particular reference to their industries where they have particular issues to raise.

Recommendation 1.

In general terms we would seek that all contracts would comply with the following conditions;

- 1. In Sub-contracting only with client permission.**
- 2. The contractor must name the personnel to be engaged to perform the work.**
- 3. Workers must wear photo identification where required.**
- 4. Workers must be given every opportunity to join their Union.**
- 5. The contractor must set out the number of employees and hours of work in the contract and this is publically available.**
- 6. Replacement workers must be engaged to cover any absences.**
- 7. Wages and all employment entitlements established under law must be paid to employees and any permitted sub-contractors.**

8. **The Territory can audit records and withhold monies owed to the contractor. With the contractors consent the territory can pay any unpaid wages from monies withheld directly to the employee.**
9. **The contractor (unless they have surplus personnel) must offer employment to the existing workers on no less favourable conditions than those which they were previously employed.**
10. **The contractor must provide induction training.**
11. **Companies must be prequalified in order to tender and therefore must be signatories to any appropriate *Codes of Best Employment Practice* or the *Ethical Supplier's Declaration* or be able to meet the conditions of industrial agreements or awards.**
12. **The Union is notified of every company bidding for work at the time tenders close and has 10 days in which to comment on their industrial relations history including whether or not they are bound by a collective agreement.**
13. **Contractors must complete an *Ethical Suppliers Declaration* every twelve months. The Union may request a copy.**
14. **The contractor must allow for two half days paid training per year in addition to induction training.**

The current references to employment arrangements are very loose and do not provide detail about what are preferred industrial arrangements and we think that a statement by Procurement Solutions similar to the Victorian Government statement below would be helpful;

“The Policy requires that suppliers of goods or services to Victorian Government Entities in nominated vulnerable sectors provide their on-shore employees with terms and conditions of employment which are no less favorable than those provided prior to the introduction of Work Choices. To this end, all suppliers and sub-contractors from nominated vulnerable sectors involved in the provision of goods or services to Victorian Government Entities must (where the value of the goods or services to be provided exceed specified thresholds):

- *Provide terms and conditions of engagement that are not, on balance, less favourable than those provided by the relevant federal award(s) as at 26 March 2006 and no less favourable than those provided by the Long Service Leave Act 1992 (Vic), the Outworkers (Improved Protection) Act 2003 (Vic) and other nominated legislation; and*
- *Incorporate any increases or improvements from determinations of the Australian Fair Pay Commission into the terms and conditions of*

engagement for all on-shore employees engaged in the provision of goods or services.

- ***Nominated vulnerable sectors*** - *The nominated vulnerable sectors to which this Policy currently applies are security services, catering, cleaning services and the textiles, clothing and footwear industries. Additional sectors where employment standards are considered to be vulnerable to erosion may be nominated for inclusion over time.*¹

We think this kind of statement spells out employer obligations much more clearly.

Recommendation 2

- **ACT Procurement Solutions to publish a statement that emphasises fairness of employment and adherence to ethical contracting standards.**

Optimising whole-of-life cost considerations in a contract should be carefully considered when awarding a contract to an interstate tenderer if the contract has ongoing maintenance work attached. When such companies finish the initial construction or creation of a product and no longer have an office or employees remaining in the Territory then the costs of maintenance often soar and it can result in long delays in getting such work rectified or maintained in the long term. This can present other risks to ACT Government by this cost blow-out or unrectified maintenance work.

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

This is critical to the sustainability of all resources in the ACT that procurement processes pay due attention to the ongoing sustainability of any product or service with regard to environmental, economic and social aspects. A contract that does not address environmental concerns will create further risk to the ACT Government when such a contract becomes tangible in the community. A contractor that has not been co-operative with ACT Government officials, local residents or local unions and OH&S representatives should not be deemed suitable to tender in future processes.

We also agree with ACTCOSS's suggestion re: social tendering as follows;

“Social tendering provides ‘disadvantaged groups’ with the opportunity to tender for procurement contracts, such as mowing parks or regular catering.

¹ Victorian Government (2002) Procurement and Ethical Employment (Safety Net) Policy (27/07/09) <
[http://www.procurement.vic.gov.au/CA2575BA0001417C/pages/procurement-practitioners-stage-1---planning-step-3---develop-the-procurement-strategy-procurement-and-ethical-employment-\(safety-net\)-policy](http://www.procurement.vic.gov.au/CA2575BA0001417C/pages/procurement-practitioners-stage-1---planning-step-3---develop-the-procurement-strategy-procurement-and-ethical-employment-(safety-net)-policy)>

Characteristics of social tendering include:

- *The tendering relationship is mutually beneficial between social enterprises and economic entities;*
- *Contracts can be awarded through competitive tendering or other structures such as Memorandum of Understanding;*
- *Contracts are usually structured around larger, regular work offered on a continual basis; and*
- *Negotiation of contracts to sometimes include the equipment required to carry out the tender.”*

We believe this is a useful addition to the process where such a tender may be usefully undertaken by a social enterprise or broker. There are current examples whereby a disability employer or mental health provider provides useful work to their clients through such a contract.

Similar consideration should be given to tenderers that offer more environmental safeguards in their tender such as use of renewable energy sources or use of new technologies which result in lower emissions and lower energy costs over time. This would also help to address the optimising of costs over the whole of life of the contract.

Recommendation 3.

- **Explore the options for social tendering**
- **Ensure contractors comply with high environmental standards by integrating requirements into the tender process.**
- **Prioritise tenderers with good record of environmental management**

ToR (3) agency approaches to procurement training and development activities

We would agree with the ACTCOSS submission whereby they indicate that the community services tenders do not appear to follow the same probity considerations being required by other types of contracts. We agree with their recommendation that departments should convene information sessions to coincide with community service tenders to ensure that all community sector organizations are aware of the open process.

We note ACTCOSS's comment:

“Increasingly, Procurement Solutions is playing a greater role in the provision of tenders and contracts for community sector services, such as Home and Community Care (HACC) and disability services. To accommodate this it is important that Procurement Solutions works with the community sector to ensure that their knowledge of the work that is

undertaken by the sector and the principles that underpin this work is understood.”

The Australian Services Union (SACS Division) has commented to us that tender processes in the child protection and foster care area have not been required to meet the normal Procurement Solutions standards in past years and that they hope they will have to meet the same stringent requirements adopted in other industries. They cited examples of complaints re: tendering agencies which continued to employ staff under illegal contracts and with suspect industrial arrangements that had been notified to the Department of Disability, Housing & Community Services and yet continued to win contracts over local providers who had provided good service in past years with proper industrial arrangements in place.

Recommendation 4.

- **Ensure community services procurement processes have high standards similar to other procurement processes.**
- **More education of vulnerable sectors (for example, the community services sector) in the tendering process by the Department**

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

We are very supportive of any provisions that assist local suppliers to compete fairly for the work being offered by ACT Government. We have been concerned for some years about the awarding of increasing numbers of contracts to interstate companies who offer a cheaper bid merely to undercut the prices that a job can actually be completed for. We have raised concerns in the past with regard to TAMS outdoor landscaping, tree-logging and similar horticultural work which is going to non-local providers.

Recommendation 5.

- **That ACT Procurement Solutions pay due regard to local and regional businesses when assessing tenders as a risk-minimisation strategy to ensure that maintenance arrangements and work rectification costs are minimized.**

ToR (5) the effectiveness of recent reforms

We believe the recent reforms that have changed requirements for smaller size contracts (i.e. under \$50,000) are sensible. Small contracts should not be unduly burdened by attaching too much red tape to the process. From our point of view, contracts that do not involve wages are considered to require fewer rigors than those that involve employment of staff.

ToR (6) impact on tendering organisations, in particular, speed, feedback and

finalisation, of government discontinuing the tender process, and

We don't offer a comment on this term of reference as we are not a tenderer.

ToR (7) any other relevant matter.

In conclusion UnionsACT would point the ACT Government towards the new Procurement Statement issued by the Commonwealth Government on 28 July 2009 which supports a new approach to government procurement.

The new policy statement acknowledges that it could be a model of fairness in the workplace, and that it would not support contracting arrangements that undermined entitlements or did not comply with the Fair Work Act.

With unemployment rising, this is the right time for government purchasing to maximise the creation of Australian jobs by supporting local industry with a new policy framework.

Price should not be the only determinant of who is a successful bidder for a Government tender.

It is important to see taxpayers' money being spent locally and in the region when there are world-class suppliers of goods and services who are suffering from the economic downturn.

Such guidelines will ensure taxpayers' money is spent wisely and in a way which maximises good jobs for working Australians, and also promotes skills development and higher productivity so that we can successfully position our local economy for the global recovery.

List of UnionsACT Recommendations

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7. Wages and all employment entitlements established under law must be paid to employees and any permitted sub-contractors.
8. The Territory can audit records and withhold monies owed to the contractor. With the contractors consent the territory can pay any unpaid wages from monies withheld directly to the employee.
9. The contractor (unless they have surplus personnel) must offer employment to the existing workers on no less favorable conditions than those which they were previously employed.
10. The contractor must provide induction training.
11. Companies must be prequalified in order to tender and therefore must be signatories to any appropriate *Codes of Best Employment Practice* or the *Ethical Supplier's Declaration* or be able to meet the conditions of industrial agreements or awards.
12. The Union is notified of every company bidding for work at the time tenders close and has 10 days in which to comment on their industrial relations history including whether or not they are bound by a collective agreement.
13. Contractors must complete an Ethical Suppliers Declaration every twelve months. The Union may request a copy.

14. The contractor must allow for two half days paid training per year in addition to induction training.

Recommendation 2.

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Recommendation 3.

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- Ensure contractors comply with high environmental standards by integrating requirements into the tender process.
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Recommendation 4.

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Recommendation 5.

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