



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Mr Ed Cocks MLA (Chair), Mr Michael Pettersson MLA (Deputy Chair),
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Submission Cover Sheet

Inquiry into Auditor-General's Performance
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**STANDING COMMITTEE
ON PUBLIC ACCOUNTS:
INQUIRY INTO HYBRID
ELECTRIC FIRE TRUCK
PROCUREMENT
MARCH 2024**

**UFU ACT Branch
Submission**

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GLOSSARY OF TERMS

ACCC: Australian Competition and Consumer Commission

ACTF&R: Australian Capital Territory Fire and Rescue

AFAC: The Australasian Fire and Emergency Service Authorities Council

CAPA: Combined Aerial Pumping Appliance

ESA: Emergency Service Agency (JACS)

HEFT: Hybrid Electric Fire Truck

ICE: Diesel Internal Combustion Engine

JACS: Justice and Community Safety Directorate | ACT Government

Report No. 3: The ACT Director General's Report into the Court Transport Unit Vehicle – Romeo 5 (2021/No. 3)

RFT: Request for Tender

Rosenbauer: This refers to Rosenbauer Australia Pty Ltd. References to the international parent company is referenced by their full name.

The Agreement: The ACT Public Sector ACT Fire and Rescue Enterprise Agreement 2020 - 2024

The Minister: Minister for Police and Emergency Services, Mick Gentleman MLA

The Report: This refers to the ACT Auditor-General's Performance Audit Report: Procurement of a Hybrid Electric Fire Truck. Report No 4/2023

VRP: The ESA's Vehicle Replacement Program for emergency services vehicles

1. INTRODUCTION

The United Firefighters Union ACT Branch (“UFU ACT”) represents the industrial, professional, health, safety and wellbeing interests of career firefighters and communications officers employed by ACT Fire and Rescue (“ACTF&R”).

Our submission is directly relating to the ACT Auditor General’s Report No 4/2023 – Procurement of a Hybrid Electric Fire Truck (“The Report”), as per the Terms of Reference.

The UFU ACT has a significant interest in the impact that ACTF&R procurement has on the safety of our members, and the ACT Community. We have provided extensive commentary in both the public and private forums on a series of concerns over procurement practices in the ACT Governments’ Emergency Services Agency (“ESA”) and Justice and Community Directorate (“JACS”).

In this submission we advance the position that further investigation, both within ACT Government and by bodies external to the ACT Government, is required into:

- the procurement of the Rosenbauer Hybrid Electric Fire Truck (“HEFT”);
- related procurement of aerial firefighting appliances;
- related procurement of Diesel Internal Combustion Engine pumpers; and
- the extent of the ACT Government’s relationship with the supplier, Rosenbauer.

The matters we raise are considered to be serious and could well have possible legal consequences including disciplinary action, termination of employment, and civil prosecution.

2. BACKGROUND: ESA AND ROSENBAUER

The Auditor General’s Performance Audit Report “Procurement of a Hybrid Electric Fire Truck” (4/2023) examined a range of issues concerning the procurement of a single fire truck. In this submission we suggest a more extensive examination of the relationship between the ESA, focusing on procurement processes which have ‘bookended’ the process examined by the Auditor General.

In the passage of approximately 8 1/2 years, the ESA has proceeded from having little or no commercial relationship to a highly publicised relationship with Rosenbauer, the Australian arm of a global manufacturer of firefighting appliances and related equipment.

A key criticism of the Auditor General’s Report was that the procurement process for the HEFT did not appear to any average reader of the Request for Tender to be exactly that. Rather, the Auditor General observes:

- “on 5 March 2020 the ESA issued a Request for Tender for a “turn key solution for up to five (5) Urban Type Pumpers””
- “The RFT did not specify any requirements for the power source for the vehicle, but stated ‘ACT Fire & Rescue, through the ACT Emergency Services Agency, wishes to explore all options and innovation in regards to the design and construction of this vehicle’”
- “Eight addenda were issued to the RFT, which did not identify anything specifically relevant to the supply of a hybrid electric fire truck.”
- “An industry briefing on 18 March 2020 also did not provide further information specifically relevant to the supply of a hybrid electric fire truck.”

- “Rosenbauer addressed the 13 different specifications in the response schedules, but in doing so provided information in relation to a diesel-powered vehicle. Rosenbauer did not provide a similar detailed response which would purport to show how a proposed hybrid electric vehicle would meet the 13 different specifications.”
- “Rosenbauer’s response to the RFT did note, however ‘we are also extremely proud to provide **additional innovative solutions such as the world leading Rosenbauer CFT and subsequent digital solutions for ACTF&R future fleet consideration**’ [emphasis in original].”¹

To the extent that the above suggests that ‘if you knew, you knew’ (that this was the process via which the ACT Government would procure a HEFT), it makes an inference that the contract process was akin to a ‘Trojan Horse’. However, the relationship between the ESA and Rosenbauer did not begin with this procurement process. Neither did it begin when the Minister for Emergency Services, and the Chief Officer of ACTF&R jointly announced an “innovation partnership” with Rosenbauer in August 2019.²

To identify the point at which the ESA started to shift its preferences to Rosenbauer as an appliance manufacturer and supplier, one must go back as far as the Interschutz international trade fair for rescue services in Hanover in 2015.

For context, in 2015 ACTF&R was experiencing long running problems with its (then) only aerial firefighting appliance the 44 metre “Bronto”. In 2014, ACTF&R was subject to a “Treasury Review”, and since then a well-publicised “Strategic Reform Agenda” was being prosecuted by the then ESA Commissioner. A key element of that agenda was to reduce costs. It was widely believed among ACTF&R personnel that the ESA Commissioner was highly attracted to the Rosenbauer “Aerial Pumper” on show in Hanover as a possible way to reduce the number of firefighters required to crew appliances. The thinking was said to be that you could reduce by 2 the number of firefighters required each shift by providing aerial and pumping capability with a crew of 4 per shift (instead of 2 plus 4 per shift).³

Whether coincidental or not, ACT Labor promised in the lead up to the 2016 Legislative Assembly election that it would, if re-elected, add an ‘aerial pumper’ to the fire and rescue fleet. Ultimately the Labor Government was re-elected, and proceeded to deliver on its promises, including the ‘aerial pumper’.

Whereas in 2015, there were no Rosenbauer manufactured firefighting appliances in the ACTF&R fleet, that fleet now includes 6 appliances (of a fleet of 30 not including restow appliances) supplied by Rosenbauer:

- A Major (40m) aerial appliance
- A Combined Aerial Pumper Appliance (“CAPA”)
- A Hybrid Electric Fire Truck (“HEFT”)
- 3 Diesel Internal Combustion Engine (“ICE”) Pumpers.

We suggest that examining more closely the context of the HEFT procurement, what first appeared as a ‘trojan horse’ might more accurately be described as a ‘Matryoshka Doll’ of one procurement inside another, inside another.

¹ Michael Harris et al., 2023. *ACT Auditor-General's Performance Audit Report: Procurement of a Hybrid Electric Fire Truck (No. 4)*. (Canberra: ACT Audit Office). Para 3.16, p.4 & Para 3.28, p.5.

² *Ibid.*, 21.

³ Personal communication to UFU Secretary by UFU members, October 2015 to October 2016.

If any detail of what has taken place through ACT Government procurement processes is hidden from the public eye, the fact of the relationship between ACT Government and Rosenbauer has become anything but private. Widespread media coverage has become a feature of the relationship, as it has with another vehicle supplier Volvo. How we got here, and whether this is in the public good, is a matter we raise as warranting serious consideration.

3. AN IMBALANCED RELATIONSHIP

As the previous section identifies, there is a short but intensive history of the ACT Governments' engagement with Rosenbauer as a supplier to the ACTF&R. A look into how this relationship operated during the procurement of the HEFT demonstrates a clear imbalance in the benefits accruing to both the ACT community and to Rosenbauer.

There are reputational and possible legal impacts arising from the relationship between the ACT Government and Rosenbauer. This point is made with specific reference to evidence of possible breaches of:

- *Duties of Public Servants* under the *Public Service Management Act 1994*;
- *The Duty of Honesty* in employment law;
- Australian Competition Law, and
- Insider trading law, as defined by Section 1043A of the *Cooperations Act 2001*.

A detailed table of concerns these concerns can be found in the **Appendix 1** of this submission. **Appendix 1** is intended to be read in conjunction with The Report. Column 3 of **Appendix 1** contains key excerpts from The Report as issues raised by the Auditor General. Column 4 expresses concerns identified by the UFU arising from each issue in Column 3. Column 5 identifies possible consequences of each issue, including potential legal issues. Column 6 identifies the relevant investigatory or enforcement bodies for each issue. In all, 31 separate issues with potential legal consequences are identified. To the extent possible, we have addressed these issues in specific recommendations, however for completeness we urge readers to closely read **Appendix 1**.

3.1 WHAT THE ACT COMMUNITY GOT

The Report and subsequent publicity highlights failures within the process, of which come with real consequences. The first of which requires a look back at the number of promises and benefits sprung by both the ACT Government and Rosenbauer throughout this process. Claims such as these span from initial discussions in mid-2019 to claims that have been made as recently as last year.

An important claim made early in the process pertained to a commitment from both parties to enter a 'partnership.' In a media release in August 2019, Rosenbauer committed to an "innovation partnership" with the ACT Government.⁴

⁴ Ibid. 21.

This commitment was cemented in the *Procurement Threshold Exemption (Single Select) Executive Brief* stating:

“The ACT Government has been formally offered the opportunity to partner with Rosenbauer to design an electric fire appliance”⁵ (our emphasis)

This messaging was consistent across several public statements from Rosenbauer, ESA, JACS and the Minister.¹ It is clear on a number of occasions, both in this process and other engagements with Rosenbauer, that claims of partnership are mischaracterised.

*“[The] plug-in hybrid electric fire engine based on Concept Fire Truck technology to enter operational service at the end of 2022”
Rosenbauer International AG Press Release, 28 August, 2019.⁶*

The above quote is attributable to a press release by Rosenbauer International AG published during the Australasian Fire and Emergency Service Authorities Council (“AFAC”) conference in 2019, following the confirmation of an agreement brokered between the two parties. The proposed deadline set of August 2021 has since passed, with the ‘by the end of 2022’ deadline, set out in the Business Case submitted in March 2020, also not met.⁷

The auditor report cites a number of noteworthy factors that have caused such delays. However, the increased positive public commentary by government surrounding this partnership is at odds with what has been delivered to ACT Community.

*“The Vehicle Replacement Program (VRP) ensures operational capability and community safety”
Mick Gentleman, 11 Nov 2021, Inquiry into ACT Budget 2021.⁸*

These delays also bring to light real concerns surrounding the role of the HEFT, to be introduced into the current fleet under the ESA *Vehicle Replacement Program* (“VRP”). In the original Business Case of 3 March 2020, it was proposed that the “prototype electric hybrid vehicle be acquired in place of the diesel pumper scheduled to be replaced in 2020-21.”⁹

With the continued delays in getting the truck operational, the AFTF&R is at least one vehicle behind what is required. Considering the pumper was only at a concept stage upon the approval of the Business Case in 2019, the inclusion of it in the VRP brought with it significant opportunity and financial costs, with possible legal consequences.

⁵ Ibid.

⁶ Rosenbauer International AG. 2019. *Plug-In Hybrid Electric Rescue and Firefighting Vehicle based on the Concept Fire Truck Australian pre-series foundation partner announced*. (Leonding, 28 August). Accessed March 05, 2023.

⁷ Harris et al., 2023. *ACT Auditor-General's Performance Audit Report*, 20.

⁸ Minister Mick Gentleman MLA. 2021. *Inquiry into ACT Budget 2021–22*. Questions on Notice Paper No. 41, Standing Committee on Justice and Community Safety (Canberra: Legislative Assembly for the Australian Capital Territory.) 1.

⁹ Harris et al., 2023. *ACT Auditor-General's Performance Audit Report*, 28.

At the very same time that the ESA was pursuing acquisition of the HEFT, it was negotiating an enterprise agreement with the UFU. Those negotiations were ultimately concluded in mid-2020, with the resultant Agreement – ACT Public Sector ACT Fire and Rescue Enterprise Agreement 2020 - 2024 ("The Agreement") - being approved by the Fair Work Commission on 27 July 2020, and coming into legal effect 7 days later.

Among the changes introduced by the Agreement were:

- a heavily revised clause mandating safe crewing levels, including a commitment to increase by 86 the number of firefighters on the 10/14 roster;¹⁰
- a commitment to increase the number of firefighter dayworkers by 12.7 FTE;¹¹
- a new Schedule 1 which mandated the crewing of appliances at specific fire stations, and the skill levels of firefighters required to crew those appliances.¹²

Schedule 1 of the Agreement relevantly mandated the deployment of an additional pumper and crew at a newly completed City (Acton) fire station by 31 December 2021. By the time this was freely agreed to by the ACT Government, it was already known to be untrue. The 3 March Business case made clear that funds for a conventional pumper scheduled to be replaced in 2020–21 would instead be allocated to procuring the HEFT, but that the HEFT would not enter operations until at least 2022.

The result of the above is that at the time of writing, no additional pumper whether a HEFT or not has been placed into operational service – despite the legal requirements of The Agreement. The UFU reserves its rights on this and other questions of noncompliance with the Enterprise Agreement.

As mentioned above, this is not isolated to the HEFT procurement, with other procurements of Rosenbauer appliances by the ESA not proceeding as well as what might have been hoped.

Recommendation 1

That the Committee refer to the Public Sector Standards Commissioner for investigation the matter of how ESA senior personnel agreed that an additional pumper would be crewed at Acton fire station by the end of 2021, at the same time as the ESA was actively undermining such agreement by making changes to the vehicle replacement program which had the effect of ensuring that an additional pumper would not be so deployed.

After sales service and 'Turnkey Solutions'

While a number of vehicle manufacturers and suppliers offer "turnkey solutions" it is widely acknowledged that Rosenbauer use the term in circumstances where other suppliers refer to 'appliances'. To this extent, 'turnkey solutions' is a hallmark of Rosenbauer's business.

This attractive feature of Rosenbauer's approach is described as follows on their website:

"A worldwide spare parts and repair service is available even in the most remote regions of the earth. Which is why fire departments all over the world rely on Rosenbauer."¹³

¹⁰ ACT Public Sector ACT Fire and Rescue Enterprise Agreement 2020 - 2024 ("The Agreement") clause S4.8.

¹¹ Ibid. clause S4.18 & Letter from Chief Minister to UFU 29 May 2020.

¹² Ibid clause S4.1 & Schedule 1.

¹³ Rosenbauer International AG, 2024, "Aerials", accessed March 14 2024. <https://www.rosenbauer.com/en/au/rosenbauer-world/vehicles/aerials>.

Unsurprisingly, widely reported reliability and repair issues with ACTF&R's Bronto aerial appliance made overtures such as these attractive. In this context the tender released by the ACT Government for "ACT Fire and Rescue Aerial Vehicles (31009.110)" sought:

*"Procurement of a minor aerial pumper appliance and a major aerial appliance through a turn-key solution."*¹⁴ (Tenders ACT Website)

It is questionable however as to whether the decision to specify in a tender that 'turnkey solutions' were sought, was itself a form of anti-competitive conduct. Ultimately this is an issue for the Australian Competition and Consumer Commission ("ACCC"). There may be some utility in the ACT Government self-referring to the ACCC to have this question investigated.

Recommendation 2

That the Committee recommend that the ACT Government refer to the ACCC the question of whether the tender leading to contract 31009.210 was a form of anti-competitive conduct.

The two aerial appliances acquired from Rosenbauer, the Combined Aerial Pumping Appliance (CAPA) and the Major Aerial, were procured under contract 31009.210, valued at \$3,689,823.39,

Since the contract was signed for a CAPA and a Major Aerial, UFU ACT members have expressed frustration with delays in commissioning, rectification of faults, repairs and servicing as described below:

EXAMPLE 1: CAPA

While perhaps hoped by the ESA Commissioner in 2015 that a CAPA might be a first responding appliance with aerial and pumping capability that could reduce crewing, this did not eventuate.

In addition:

- The Enterprise Agreement mandated that the CAPA would be in service from Aranda fire station as early as 31 December 2020. It ultimately came online on 1 September 2022.
- At least 24 issues were identified as requiring rectification before it could enter service. **Table 1** on Page 11 sets out the status of those issues as at 30 August 2022.
- As at 31 August 2022, 9 of the 24 issues remained unresolved. Despite this the UFUA ACT agreed for the CAPA to enter service because the delays in commissioning were already unacceptable.

Among the issues which delayed the deployment of the CAPA was a faulty screen required for pumping operations. Delays in obtaining a replacement screen delayed training for nine months. Identified problems included:

- The screen was shipped in a shipping container among other parts for other customers, and it took six months to arrive.
- Rosenbauer sent the screen and a mechanic in late 2022.
- The mechanic arrived and identified that the wrong screen had been provided.

¹⁴ Tenders ACT. 2020. *Contract - 31009.210*. July 23. Accessed March 18, 2024. <https://www.tenders.act.gov.au/contract/view?id=173448>.

- A replacement screen was ordered, and it took further time to arrive.

It remains unclear as to whether the delays were attributable to the ESA, Rosenbauer, or both. In any event, further investigation is required at least to ascertain how a critical piece of firefighting equipment was not deployed until almost two years after the date that it was agreed to be deployed.

Recommendation 3

That the Committee refer to the Public Sector Standards Commissioner for investigation the matter of how the CAPA agreed to be deployed by 31 December 2020 was ultimately not deployed until 1 September 2022.

Table 1 Provides an outline of the 24 issues that have been identified with the CAPA as of 30 August 2022.

A31 - Aerial pumper issues - 30/8/22			
Warranty faults logged with Rosenbauer			
Issue	Interim Solution	Rectified Satisfactorily	Comments
Camera Tilt Motor broken – unable to use camera	None required	Pending completion of works	On order, expected to arrive in 2 weeks
Camera does not focus – unable to use camera	None required	Pending completion of works	On order, expected to arrive in 2 weeks
Water leaking from the telescopic water supply seals – Water leaks on the crews when operating.		Yes	Leak fixed. Demonstrated and tested. No visible leak
Tank level indicators failed LEDs on the panels, water tank and both foam tanks – not preventing operation now but further failures may render the level gauges unreadable.	Monitor for further failure of LED's	Pending completion of works	Issue with parts and reporting. Report stated wrong parts. Correct parts have been ordered. Looking at approximately 2 weeks. Additionally, need to discuss threshold levels: How many, or which LED's need to fail before it becomes non - operational/workshops issue
Dynamic cage load recorded issue – dynamic cage load read incorrectly on one occasion.	Run diagnostics	Pending completion of diagnostics. UFU to be advised of outcome	Fault not repeatable. Diagnostics will be run. When complete and no issue, satisfactorily resolved
Pulpit microphone does not work, communication from pulpit to cage limited to handheld radio.		Yes	Replaced Microphone.
PTO oil leak – oil leaks from Pump drive PTO causing truck to go into fault.		Yes	Swapped breather cap. No leak
Non-Fault/Design Issues			
Issue	Interim Solution	Rectified Satisfactorily	Comments
Beacon programming – the system installed in this truck allows operation of the beacons by the MD and SO – it is possible to have the beacons in a state where both the front beacons remain ON but the beacon switch is OFF for the MD and SO – this occurs with the actuation of a toggle on the SO siren/beacon panel. Is this the pathfinder siren box switch?	Notify workplace of issue, interim sticker to be applied near to toggle switch. Workshops to liaise with lighting company(Striker systems?), see if this can be reprogrammed. UFU to be advised of outcome	UFU To be advised of outcome of potential re-programming	The spec is as ordered, however there is an unintended consequence where the truck information screen can display the emergency beacons are off, however they may still actually be activated. Can this particular function be reprogrammed? Might need further input from training/operations.
Wiring power to the Lukas tool charger		Yes	Work Complete
Cabinet behind front seats – the front seats hit the cabinet causing excessive wear on the back of the MD and SO seats cabinets will have to be removed and refabricated to not clash with the front seats.		Yes	Work Complete. Noted already damage to the rear seat fabric.
Requested Stowage Changes			
Issue	Interim Solution	Rectified Satisfactorily	Comments
Drink holders in rear – only fit disposable water bottles -		Yes	Complete
BA mask shelf for rear passengers – there is currently no provision for the stowage of BA masks in the rear seats.		Yes	Complete

Additional/previously reported			
Issue	Interim Solution	Rectified Satisfactorily	Comments
Auto fill reprogramming - Soft close waterhammer issue	Rosenbauer Technician will re-program. this afternoon/tomorrow	Pending completion of works	Once reprogrammed, issue satisfactorily resolved
Pump PTO gearbox oil level - no visual indicator or site glass	Works will be done to see if a dip stick can be fitted, similar to Volvo pumps.	UFU To be advised of outcome re dipstick installation	This is a workshop maintenance issue. If a dipstick can be fitted, one will be. If fitted this may become a once a week operational check
B Pillar hooks for SO and Driver PPC	Works to be completed this afternoon	Pending completion of works	When installed, issue satisfactorily resolved
4 hooks in rear for ear muffs	Works to be completed this afternoon	Pending completion of works	When installed, issue satisfactorily resolved
Front seat dampers - installed or not?		Yes	Front seat dampeners previously installed
Foam eductor mounting bracket		Yes	Installed
Storage box for foam drum		Yes	The vehicle will only have the on-board foam supply. Fitting of an additional bracket to the side of the pulpit and having firefighters accessing 20l drums of foam from heights is not desirable. The foam eductors will remain on the appliances for access to external foam supplies at larger jobs.
SO portable radio charger not charging		Yes	Fixed
BA stowage in G1? 'Not fit for purpose'		Yes	Unable to ascertain any issue. Need to do more investigating with person who reported the problem. The BA set drawer slides out horizontally, and then lowers vertically. A less heavy duty gas strut may alleviate issues, or training on where the drop down handles are may rectify.
iPad mounting bracket		Yes	Ipad is not currently on the pumper. When it is issued it will have a bracket with it that will be fitted.
Mobile phone holder		Yes	Fixed
G7 Locker flexing when pulsing		Yes	There was no present issue. Continued use may lead to fatigue or damage of the mounting bracket. Workshops will consider re-inforcing the base of the locker.

EXAMPLE 2: BROKEN MAJOR AERIAL

The Major Aerial was included in the RFT with the minor aerial because of the poor reliability record of the ACTF&R Bronto B31. The Bronto, which at the time was Canberra's only aerial appliance, was regularly broken down and requiring repair. A decision was made to include a Major Aerial in the same procurement as the CAPA.

The Major Aerial is understood to be the only right-hand drive Rosenbauer 42 metre Aerial appliance in service in the world.

On 1 October 2023, the Canberra Times reported:

"A staff member employed by Rosenbauer, the company which built the 42-metre appliance, damaged the equipment during routine testing late on Thursday afternoon at the Emergency Service Agency's Fairbairn workshops."¹⁵

On the day following the damage to the Major Aerial, ACTF&R Staff Minute 2023201 (**Appendix 2**) was issued to all ACTF&R staff. As ide from reporting the obvious consequences of the appliance being damaged, the Staff Minute cautioned:

"As ACT Government public servants, ACT Fire and Rescue staff are reminded of the obligations under the Public Sector Management Act 1994, the Public Sector Management Standards, and the ACT Public Service Code of Conduct. I draw your attention particularly to references on the prohibition of the circulation of images and information obtained in the line of employment."¹⁶

The above suggests a level of sensitivity to what the supplier of the appliance might do in relation to any publicity about the appliance being damaged. It places staff in no doubt that even speaking about the appliance would likely have consequences for them in their employment. This level of enforced secrecy in relation to ACTF&R appliances is, in the opinion of the UFU, unprecedented.

As at 13 March 2024, five months after the appliance was damaged by service crew employed by the supplier, ACTF&R remains without the major aerial appliance, as it remains still on the docks in Brisbane. It is not known if, or when the appliance will be returned or otherwise replaced. Notwithstanding this it is known that the delays are such that a new cohort of firefighters will require training on the old Bronto B31, which was supposed to be replaced by the 42 Metre Rosenbauer Major Aerial. Canberra is now reliant on the old Bronto which was manufactured in 2010.

As at 14 March 2024, the Major Aerial Appliance remains on the docks in Brisbane, awaiting shipment to Rosenbauer for repair or replacement. In the interim, it appears that the ESA has not requested that Rosenbauer provide a replacement appliance while the primary appliance remains out of service.

¹⁵ Jasper Lindell. 2023. "'Human mistake' by manufacturer's worker broke ACT Fire & Rescue's 42-metre aerial firefighting lift." *The Canberra Times*, October 3. <https://www.canberratimes.com.au/story/8369441/human-mistake-broke-acts-42-metre-aerial-firefighting-lift/>.

¹⁶ ACTF&R Staff Minute 2023201 29 September 2023

Recommendation 4

That the Committee refer to the Public Sector Standards Commissioner for investigation the matter of what actions have been taken by ESA personnel to secure a replacement vehicle for the Major Aerial Appliance which was damaged while being serviced on 28 September 2023.

EXAMPLE 3: INTERNAL COMBUSTION ENGINE (ICE) PUMPERS

The original procurement process which led to the procurement of the HEFT, was aimed at securing urban pumpers. Consistent with this, the ESA has procured 3 such pumpers from Rosenbauer, built on Volvo chassis with Volvo engines and powertrain. The pumpers were supplied as “turnkey solutions”.

Significant issues have been identified by UFU members with the supply and fit out of these appliances, including:

- All 3 appliances were supplied without the equipment inventories necessary to operate as urban pumpers, including rescue tools. Some relatively minor items of equipment were supplied by Rosenbauer. The necessary equipment for these 3 pumpers and the HEFT was subsequently procured by ACTF&R at its own expense.
- The equipment inventory initially supplied by the relevant Superintendent to Rosenbauer was incorrect.
- UFU representatives strongly and repeatedly advocated for ergonomic assessments of the equipment stowage to be conducted before delivery of the pumpers. This was opposed by the Superintendent overseeing delivery of the pumpers, and did not occur until after delivery of the pumpers. When that assessment was undertaken by JACS WHS, problems with stowage of Breathing Apparatus and other items were identified. UFU representatives and the ACTF&R Vehicle and Equipment Committee have been unable to confirm that the outcomes of the WHS Assessment were actioned.
- Breathing Apparatus Stowage on the pumpers was subject to a “ACTF&R Safety Bulletin for the Information of Staff Rosenbauer Volvo Pumper BA access” on January 30, 2024. The effect of this bulletin was that the recommended remedial action had not been effective in resolving WHS ergonomic issues.
- The stowage issues remain unresolved. UFU members, including some members of the project team, remain frustrated at the stowage on the appliances.

Recommendation 5

That the Committee refer to the Public Sector Standards Commissioner for investigation the matter of ESA and ACTF&R personnel’s management of the procurement of the ICE pumpers and the HEFT, including the issues identified relating to inventories, ergonomics, serviceability, and ultimate cost of the appliances.

3.2 WHAT ROSENBAUER GOT

Since the start of the relationship with Rosenbauer at the Interschutz trade exhibition in Hanover, Germany in 2015, they have entered a number of tenders with ESA, for the supply of a range of ACTF&R equipment. The benefit of this partnership goes far beyond the financial value of the three current contracts (worth over \$9 million combined), with a greater media presence and underwhelming scrutiny in the process benefiting Rosenbauer as well.

First, the media coverage makes up a considerable part of the benefit these engagements have provided to Rosenbauer. We have compiled 41 public statements and news articles dating from September 2016 – June 2023, relating to the HEFT procurement and development. *Table 2* (below) tracks the occurrence of these articles across this time span (Refer to **Appendix 3** for full Index):

Year	Month	Occurrence
2016	September	1
2018	November	1
2019	August	11
2020	January	1
	February	1
	March	1
	July	1
	September	1
2021	October	8
2022	November	1
2023	April	1
	May	6
	June	4
	July	3
	Total	41

Table 2 This table includes the distribution of 41 news articles relating the HEFT, from 2018-2023

Table 2 displays the trend of high media coverage associated with major announcements made throughout the process. Notably, the initial announcement of the partnership in August 2019 at the AFAC conference saw a suite of media coverage. Additionally, there was a further increase in public traffic with the official announcement of the agreement in 2021 and the subsequent delivery of the HEFT in the middle of 2023.

The publicity stemming from AFAC 2019 was obviously well planned and executed. The Minister, Chief Officer of ACTF&R stood with local and international representatives of Rosenbauer to announce the partnership to Australian fire and emergency services managers. This is in contrast to the engagement with ACTF&R personnel and the UFU mandated by the enterprise agreement – who were instead blindsided by the announcement.

This increased media coverage provided Rosenbauer with unquestionable reputational benefits. Key terms such as ‘innovative’, ‘world first’, ‘eco-friendly’ and ‘increased safety’ were commonplace in media coverage, all of which provided reputational benefits to Rosenbauer. Notably, this reputational impact was also intended to benefit the ACT Government, already perceived as having significant ‘green’ credentials.

This partnership has also been promoted by officers of the ACT Government, such as in media releases and public statements. This includes by Matthew Mavity, the Chief Officer of ACTF&R, through material posted on his LinkedIn page. In his bio, he refers to two commercial suppliers of firefighting equipment namely BristolXFlex and Rosenbauer and that their products are being used or will be used by ACTF&R. In addition, in the experience section under his ACTF&R role he again refers to BristolXFlex and Rosenbauer. Just as it would be unusual for a Chief of an ACT Prison to provide a public appraisal of Lockwood, or the Australian Federal Police to pose with Glock/Winchester (logo facing out), so is the conduct of the ACTF&R Chief Officer. Screenshots of the comments can be found at **Appendix 4**.

In fairness, Chief Officer Mavity is not alone among his international peers in publicly promoting the features, benefits and reputation of Rosenbauer. His comment and endorsements are similar to those made by other fire service heads internationally. Indeed, they seem to be part of the template of fire service relationships with Rosenbauer. This is seen in *Figure 1* (below), which shows featured quotes from Fire and Rescue officials internationally which were displayed in Rosenbauer International AG's 2019 Annual report.¹⁷

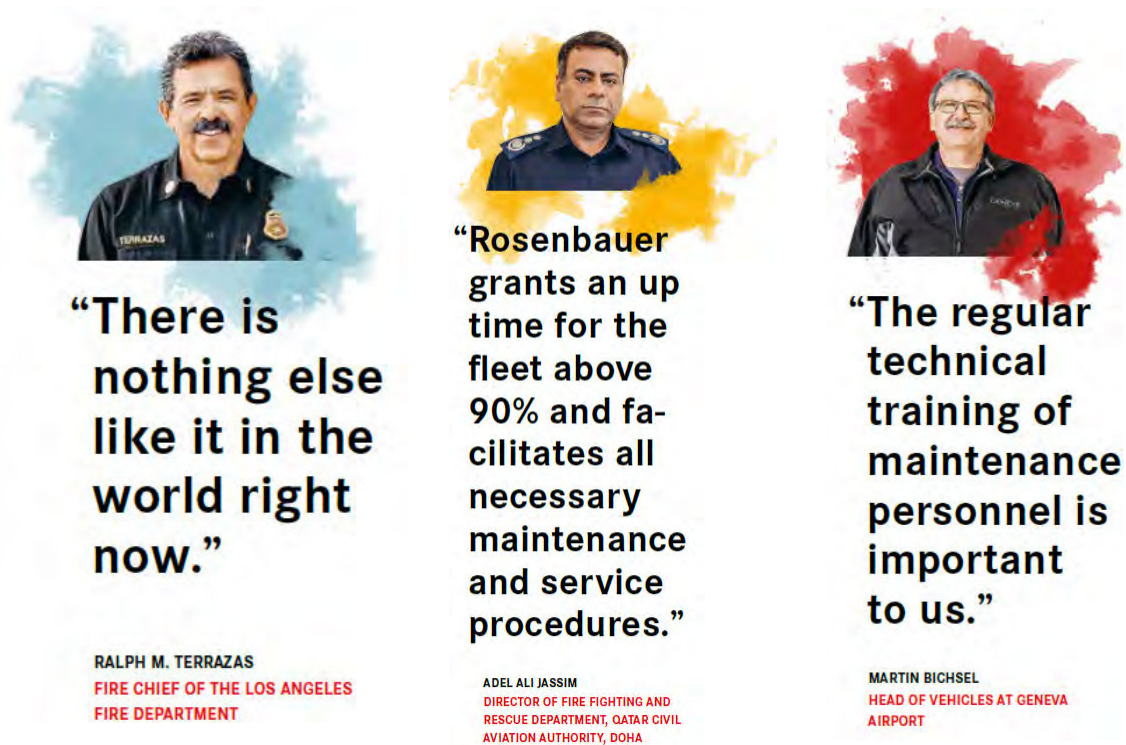


Figure 1 Endorsements from Rosenbauer International AG's 2019 Annual Report. It features: Adel Ali Jassmin (Qatar Civil Aviation Authority, Ralph M. Terrazas (Los Angeles Fire Department), and Martin Bichsel (Geneva Airport).

Recommendation 6

That the Committee recommend enhancement of Public Sector Standards and Code of Conduct to prohibit endorsement of commercial products, suppliers and manufacturers by ACT Government officials.

Undoubtedly these publicity benefits enhanced the financial success of Rosenbauer and their parent company, due in part to the flow on effects of the announcement of this product in the ACT. A look at Rosenbauer's parent company, Rosenbauer International AG's stock price from 2020-2021 provides evidence to this point. From March 2020 to April 2021, Rosenbauer's stock price increased from €23 to €58 in just over a year later. To adjust for the impact of Covid19, the peak in 2021 still represents a one third increase compared to the average price in the last two months of 2019.¹⁸ Importantly, the share price 'coincided' with the signing of the purchase order for the HEFT, after which the share price decreased. Bear in mind that the ACT announcement was regarding the first vehicle of its kind to have right-hand drive-in Australia and indeed the world. Hence, the above concern cannot be wiped away as coincidence, nor as stemming purely from other countries.

¹⁷ Rosenbauer International AG. 2019. 2019 Annual Report: Everything for this moment. (Leonding: Rosenbauer International AG). 9, 15 & 17 (left to right as they are displayed).

¹⁸ Yahoo! Finance. 2024. *Rosenbauer International AG (ROS.VI): Historical Data*. March. Accessed March 05, 2024. <https://finance.yahoo.com/quote/ROS.VI/history>.

Recommendation 7

That the Committee refer to the Public Sector Standards Commissioner and the ACT Integrity Commission for investigation the disclosures of conflict of interest (if any) made by ACT Government personnel involved in the procurement of firefighting appliances from Rosenbauer.

Recommendation 8

That the Committee recommend that the Public Sector Standards Commissioner and the ACT Integrity Commission either jointly or separately establish a regime of regular audits of disclosures of conflict of interest (if any) made by personnel involved in the procurement across the ACT Government more broadly.

Rosenbauer International AG's 2020 Annual Report cites the importance of the Australian market, where "increasingly positive results are being delivered".¹⁹ Additionally, the 2021 report identified Australia as a "positive exemption" to lower demand in a "fragmented Asian firefighting market."²⁰ It is clear from these statements that Rosenbauer is presenting shareholders with a vision of expanding the Australian and Asia-Pacific markets, in which the development of the HEFT in Canberra plays a crucial role.

"The concept vehicle will then be... put through its paces by the fire service in Canberra... These technology partnerships... help determine whether the vehicle concept [HEFT] is suitable for everyday deployment... If this is the case, Rosenbauer is perfectly positioned"
Rosenbauer International AG, 2019 Annual Report.²¹

Finally, it is important to note that whilst reaping these benefits, the procurement of the HEFT was scattered with instances of checks and balances not being met. The Report draws on several key procedural failures in the process. For example, the lack of a Value for Money assessment of the project made it vulnerable in two key areas. This is first the increased costs, with the HEFT costing 0.8 million more than the equivalent diesel pumpers.^{26F} It is also an unavoidable fact that is still unknown if the vehicle is fit for purpose, a Value for Money standard that was omitted from the procurement.

An apt summation of this is found in The Report's proximity observations, responding to the ESA's defence of their procurement processes. As follows (Figure 2):

ESA comment: <i>Approval had been given for both proposals, i.e. [limited market approach] and open tender.</i>
Proximity: Technically, this is correct, but the circumstances surrounding the two processes were very different and it is disingenuous to intimate that the evaluation process undertaken for a limited market approach can be transposed across to a more general open tender process with their own set of evaluation criteria/operational requirements - particularly when there is a question mark hanging over whether the argument supporting the decision to undertake a limited market approach in the first place was rigorous.

Figure 2 An excerpt from The Report, part of the response to an email sent from the ESA to the Audit Office on 23 January 2023. This email presented ESA's justification of including the HEFT in the contract with Rosenbauer.

¹⁹ Rosenbauer International AG. 2021. *We take on new challenges: 2021 Annual Financial Report*. (Leonding: Rosenbauer International AG.) 29.

²⁰ *Ibid.*, 8.

²¹ Rosenbauer International AG. 2019. *2019 Annual Report*. 7.

To this point, the idea that approvals were “technically... correct”, does not sufficiently alleviate such concerns and risks that were highlighted by The Report.²² It is in consideration of this fact that a clear benefit was gained by Rosenbauer in this process. Rosenbauer avoided a competitive tender process, met fewer strict procedural requirements, and consequently dedicated less resources overall. Despite this lack of accountability, they were still privy to the same financial and reputational gains. If this disregard for process in ESA becomes reputational, it is clear to see how bad actors will seek advantage from these very same holes in the system in the future. Additionally, the committee should consider what other suppliers might think of how Rosenbauer appeared to benefit from an ‘inside run’, whilst they remained in the dark.

The concerns raised here could easily be dismissed as theoretical concerns arising from the conduct of a relatively small territory government (in international terms), in engaging with a global cooperate giant. To this extent they might be characterised as potential risks. There exists in the public domain however significant reporting on cartel proceedings successfully pursued against manufacturers of fire fighting vehicles, including Rosenbauer International AG and a subsidiary. These matters were easily discovered by the writers of this submission through an ‘internet search’ and should have been similarly discovered or at least brought to the attention of key decision makers in this procurement process. This includes ESA procurement personnel, the ESA Commissioner, the Minister and the Cabinet. The key facts of these Cartel proceedings are as follows:

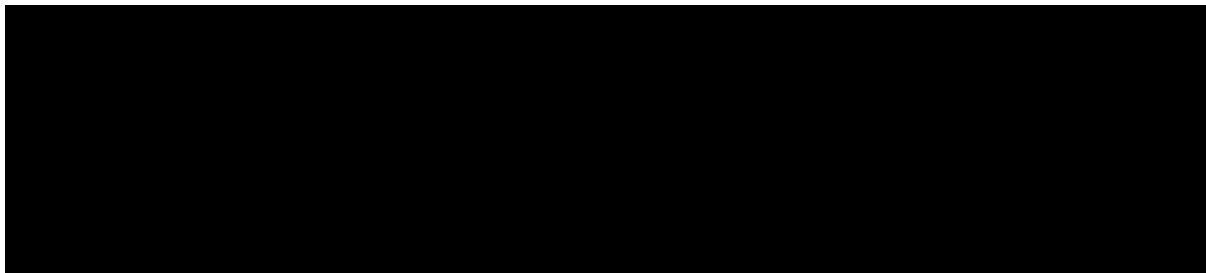
CASE STUDY: CARTEL PROCEEDINGS IN GERMANY, 2011

In 2011, the German competition regulatory agency, Bundeskartellamt, undertook an investigation into possible cartel proceedings, involving major manufacturers of Fire Trucks. They were:

1. Albert Ziegler GmbH & Co. KG,
2. Schlingmann GmbH & Co. KG
3. Rosenbauer International AG
4. Rosenbauer Feuerwehrtechnik GmbH

The investigation led to a €20.5 million fine imposed on the involved companies, as well as a Swiss accountant involved in the action. The investigation found that between 2000-2009, the companies, both at a CEO level and sale managers level, met on several occasions to plan and discuss the division of the market between themselves. This included the:

- Allocation of a “fixed share” of the Fire Fighting vehicle market across each of the cartel companies, based on a set “target quota”.
- Division of which company would bid for tender invitations by local authorities.
- Agreement between the companies “on mutually raising the prices of their product”.²³



²² Harris et al., 2023. *ACT Auditor-General's Performance Audit Report*, 44.

²³ A full decision summary produced by Bundeskartellamt is listed in **Appendix 5**.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Recommendation 9

That the Committee recommend the development of whole of government legislated protocols governing Public Private Partnerships and procurement including Ministerial and MLA conduct. Such protocols should be based upon the principles of government impartiality and independence.

Recommendation 10

That the Committee recommend preparation of whole of government advice for public sector officials on the operation of competition, consumer and securities law pertaining to the duties of public servants involved in procurement processes.

CASE STUDY: ROMEO 5 PROCUREMENT

In concluding the evidence of this submission, it is clear that the HEFT procurement is not an isolated incident and is more so a symptom of systemic issues with ACT Government procurement. The 2021 A-G’s report: Court Transport Unit Vehicle – Romeo 5 – no. 3 (“Report No. 3”) provides a valuable point of comparison, highlighting the need for further action to be taken.

Report No. 3 related to a number of issues involved with the procurement of a detainee transport vehicle for ACT Corrective Services (“ACTCS”), as part of JACS. The audit report draws on a number of themes that have been highlighted as part of the HEFT procurement process. The summary of the Report No. 3 is found at **Appendix 6**.

Following Romeo 5, the Minister of Corrections, Mr Gentleman MLA, committed to a range of assurances to address recommendations from Report No. 3, as well as the Select Public Accounts Committee’s report.

Despite the conduct of ACTCS being the focal point of this audit, the involvement of JACS Executives at crucial points of the approval process is of note. For example, during the second round of procurement, the Director-General of JACS received a minute for the “procurement of a detainee module” despite there being “...no documentation supporting the estimate of the procurement” of

\$200,000, a number that was expected to be exceeded.²⁴ This minute was approved by the Acting Director-General of JACS on 8 May 2017, 5-months after it was issued.²⁵

The approval of this procurement with the absence of evidence supporting its cost, and assurances that previous issues had been managed, both of which should have prompted further investigation from JACS, is a clear failure in accountability. An ignorance of what the ACT Auditor General, Michael Harris referred to as “a dozen red flags” in the Romeo 5 procurement can be transferred in understanding the same failures of the HEFT process. Such “red flags” in the HEFT procurement include:

- Cartel proceedings against Rosenbauer’s parent company and subsidiary.
- Historical issues with Rosenbauer’s ‘Turnkey Solutions’.
- The lack of a Value for Money assessment.

These, as well as multiple others, seemed to be plainly ignored by JACS and the ESA officials. Importantly, it is not enough to treat these actions as “...a bit naughty” (to borrow a phrase from the Report No. 3) and leave it at the AG’s recommendations.²⁶ Instead, the committee should propose an investigation be conducted into the actions of JACS and ESA Directors and Executives across the lifetime of engagement with Rosenbauer. This course of conduct all points to the same question of accountability at the executive level and above – a question that demands an answer.

4. RECOMMENDATIONS

Recommendation 1

That the Committee refer to the Public Sector Standards Commissioner for investigation the matter of how ESA senior personnel agreed that an additional pumper would be crewed at Acton fire station by the end of 2021, at the same time as the ESA was actively undermining such agreement by making changes to the vehicle replacement program which had the effect of ensuring that an additional pumper would not be so deployed.

Recommendation 2

That the Committee recommend that the ACT Government refer to the ACCC the question of whether the tender leading to contract 31009.210 was a form of anti-competitive conduct.

Recommendation 3

That the Committee refer to the Public Sector Standards Commissioner for investigation the matter of how the CAPA agreed to be deployed by 31 December 2020 was ultimately not deployed until 1 September 2022.

Recommendation 4

That the Committee refer to the Public Sector Standards Commissioner for investigation the matter of what actions have been taken by ESA personnel to secure a replacement vehicle for the Major Aerial Appliance which was damaged while being serviced on 28 September 2023.

²⁴ Michael Harris et al. 2021. *ACT Auditor General's Report: Court Transport Unit Vehicle - Romeo 5 (No. 3)*. (Canberra: Produce for the ACT Audit Office by Publishing Services, Chief Minister, Treasury, and Economic Development Directorate). 19.

²⁵ Ibid.

²⁶ Ibid., 3.

Recommendation 5

That the Committee refer to the Public Sector Standards Commissioner for investigation the matter of ESA and ACTF&R personnel's management of the procurement of the ICE pumpers and the HEFT, including the issues identified relating to inventories, ergonomics, serviceability, and ultimate cost of the appliances.

Recommendation 6

That the Committee recommend enhancement of Public Sector Standards and Code of Conduct to prohibit endorsement of commercial products, suppliers and manufacturers by ACT Government officials.

Recommendation 7

That the Committee refer to the Public Sector Standards Commissioner and the ACT Integrity Commission for investigation the disclosures of conflict of interest (if any) made by ACT Government personnel involved in the procurement of firefighting appliances from Rosenbauer.

Recommendation 8

That the Committee recommend that the Public Sector Standards Commissioner and the ACT Integrity Commission either jointly or separately establish a regime of regular audits of disclosures of conflict of interest (if any) made by personnel involved in the procurement across the ACT Government more broadly.

Recommendation 9

That the Committee recommend the development of Whole of government legislated protocols governing Public Private Partnerships and procurement including Ministerial and MLA conduct. Such protocols should be based upon the principles of government impartiality and independence.

Recommendation 10

That the Committee recommend Preparation of whole of government advice for public sector officials on the operation of competition, consumer and securities law pertaining to the duties of public servants involved in procurement processes.

5. CONCLUSION

The above conclusions represent an important preface for more work to be done to ensure mismanagement to this extent is left unaddressed. The procurement of the Hybrid Electric Pumper requires integration across all involved parts of the ACT Government. Action needs to be swift to ensure that the negative outcomes from this matter do not again impact the important work of ACTF&R. Some tough questions need to be asked, and some even tougher conversations need to be had to ensure change is made.

REFERENCES

- Harris, Michael, Brett Stanton, James Penny, and Bruce Brown. 2023. *ACT Auditor-General's Performance Audit Report: Procurement of a Hybrid Electric Fire Truck (No. 4)*. Canberra: ACT Audit Office.
- Harris, Michael, Kellie Plummer, and Taylah Commisso. 2021. *ACT Auditor General's Report: Court Transport Unit Vehicle - Romeo 5 (No. 3)*. Canberra: Produce for the ACT Audit Office by Publishing Services, Chief Minister, Treasury, and Economic Development Directorate.
- Lindell, Jasper. 2023. "'Human mistake' by manufacturer's worker broke ACT Fire & Rescue's 42-metre aerial firefighting lift." *The Canberra Times*, October 3.
- MLA, Minister Mick Gentleman. 2021. *Inquiry into ACT Budget 2021–22: Questions on Notice No. 41*. Questions on Notice Paper No. 41, Standing Committee on Justice and Community Safety, Canberra: Legislative Assembly for the Australian Capital Territory.
- Rosenbauer International AG. 2019. *2019 Annual Report: Everything for this moment*. Leonding: Rosenbauer International AG.
- . 2024. *Aerials*. Accessed March 14, 2024. <https://www.rosenbauer.com/en/au/rosenbauer-world/vehicles/aerials>.
- Rosenbauer International AG. 2020. *Connected with the Future: Annual Financial Report 2020*. Leonding: Rosenbauer International AG.
- Rosenbauer International AG. 2019. *Plug-In Hybrid Electric Rescue and Firefighting Vehicle based on the Concept Fire Truck Australian pre-series foundation partner announced*. Leonding, August 28. Accessed March 05, 2023.
- Rosenbauer International AG. 2021. *We take on new challenges: 2021 Annual Financial Report*. Leonding: Rosenbauer International AG.
- Tenders ACT. 2020. *Contract - 31009.210*. July 23. Accessed March 18, 2024. <https://www.tenders.act.gov.au/contract/view?id=173448>.
- . 2019. *Request for Tender (31009.110)*. June 12. Accessed March 14, 2024.
- Yahoo! Finance. 2024. *Rosenbauer International AG (ROS.VI): Historical Data*. March. Accessed March 05, 2024. <https://finance.yahoo.com/quote/ROS.VI/history>.

ENDNOTES

ⁱ See **Appendix 3** and refer to statements in the following items: 1, 2, 3, 8, 16, 19, & 21.

ⁱⁱ Costing based on the two purchase orders for three diesel pumpers issued in October 2020 and the HEFT, issued in January 2021. Refer to page 46 and 49 of The Report for the summary.

APPENDIX TABLE

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APPENDIX 1. HEFT PROCUREMENT ISSUES TABLE

Issues arising from Auditor General Performance Audit Report titled 'Procurement of a hybrid electric fire truck'

Item	Page	Issue identified by Auditor General	Concern	Possible consequence	Responsible Body
1.	General	Relationship with supplier predated the process audited by the Auditor General	Two previous contracts were entered with into the same supplier, the first of which was to give effect to an election promise made in the 2016 Election for the ACT Legislative Assembly	<p>It appears that a tender for “turnkey solution” contract (Aerial Pumper & major aerial appliance), which led to single select contract form Hybrid Electric, then procurement of diesel pumpers from same supplier.</p> <p>There are inconsistent reports from within ACTF&R that varying state that ESA has either ordered or has a “place in the queue” for additional hybrid electric fire trucks</p>	ACT Integrity Commission ACT Auditor General
2.	General	Relationship with supplier predated the process audited by the Auditor General	The CO ACTF&R's LinkedIn page appears to contain endorsements for Rosenbauer and for the manufacturer of the recently supplied ACTF&R structural firefighting PPC.	<p>It is questionable as to whether this is consistent with the duties of public sector officials. It could be construed that it amounts to any or all of the following obligations of s.9 of the Public SM Act:</p> <ul style="list-style-type: none"> • A failure to avoid a conflict of interest; or • A failure to manage a conflict of interest that could not be avoided; or • A failure to work with impartiality; or • Behaviour inconsistent with public sector values; or • Comment that appears to be official comment, but made without lawful authority. 	ACT Integrity Commission Public Sector Standards Commissioner.

Item	Page	Issue identified by Auditor General	Concern	Possible consequence	Responsible Body
3.	1	There was poor documentation to support the identification and selection of Rosenbauer as the preferred supplier. The ESA asserted that research was conducted into potential suppliers of alternative fuel source fire trucks and that a feasibility study was undertaken. No reports or artefacts in relation to the research or the feasibility study were prepared.	The community and government appear to have been misled.	Investigation, disciplinary action including termination of employment for breach of Public Sector Management Act and Standards, including a failure to “do the public servant’s job with reasonable care and diligence, impartiality and honesty.” S.9(1)(d) PSM Act.	ESA Commissioner / Director General of JACSD Public Sector Standards Commissioner
4.	1 - 2	Various planning documents prepared at the time, including a briefing to the Economic Development Subcommittee of Cabinet and a Business Case for ACT Budget funding, identified further processes that were to take place to demonstrate the utility of the vehicle, including project management activities to ‘evaluate the prototype and further investigate the ... vehicle’s whole-of life benefits for the ACT community’. This did not occur.	The Cabinet Sub Committee and government appear to have been misled	See above in respect of public sector employees, There may be a need to refer this matter top the ACT Legislative Assembly Privileges Committee in respect of Ministerial conduct. Privileges committee	See above and CMTEDD ACT Legislative Assembly Privileges Committee.

Item	Page	Issue identified by Auditor General	Concern	Possible consequence	Responsible Body
5.	2	The procurement of the hybrid electric fire truck was subsequently pursued by incorporating it into a contract that derived from a public tender process for the supply of urban pumper.	The diesel pumper procurement was a “Trojan Horse” containing the Hybrid pumper, although this was not revealed in the statement of requirements	<p>Failure to adhere to procurement guidelines, resulting in:</p> <ul style="list-style-type: none"> • Loss or damage to the ACT Government; • Reputational damage to the ACT Government among suppliers <p>This could be construed as “serious misconduct” which is grounds for immediate termination of employment (see Fair Work Act and Regulations)</p>	ESA Commissioner / Director General of JACSD, Head of ACT Public Service, Public Sector Standards Commissioner
6.	2	The tender evaluation report that was subsequently produced did not reference the hybrid electric fire truck, or otherwise identify it as being a factor in the Tender Evaluation Team’s recommendation.	<p>An inference could be drawn that “insider information” was provided to the only known supplier of a hybrid electric fire truck and vice versa</p> <p>It could also be inferred that a supplier obtained preferential treatment</p>	Individuals “in the know” could potentially have benefitted from “timely” investments in publicly listed companies.	ACT Integrity Commission, ASIC, ESA Commissioner / Director General of JACSD, Head of ACT Public Service, Public Sector Standards Commissioner
7.	2	“...the ESA did not assess the value for money of the hybrid fire truck in accordance with the requirements of section 22A of the <i>Government Procurement Act 2001</i> .”		Either the community will face increased taxes and levies, or other areas of expenditure, most likely the fire service itself, will have to fund an expensive venture. The total cost remains unknown.	Chief Officer Fire and Rescue, ESA Commissioner, Minister and Government

Item	Page	Issue identified by Auditor General	Concern	Possible consequence	Responsible Body
8.	2	<p>“...2 August 2019 Procurement Threshold Exemption (Single Select) Executive Brief was approved by the Acting Director-General of the Justice and Community Safety Directorate ...</p> <p>... to directly ‘engage Rosenbauer Australia/Germany to <i>partner</i> in the development, design, compliance, delivery and testing of Australia’s first electric fire appliance’. (our emphasis)</p>	<p>It is unclear how the ACT Government benefitted from this “partner” arrangement. It appears to be an unequal arrangement.</p>	<ul style="list-style-type: none"> • The cost was more than double that of a conventional pumper (when capital included); • The supplier benefitted from significant media and other publicity (including the launch at the AFAC conference in Aug 2012); • Any intellectual property of ACTF&R transferred to the supplier appeared to be at no cost to the supplier • There appeared to be no value placed on the contribution of ACTF&R to the development of the appliance <p>Ultimately these benefits accrued to the supplier, their parent company and related entities.</p>	<p>The ESA itself who negotiated the contract.</p>
9.	2	<p>“research into potential suppliers was undertaken via an internet search. The research was not documented, nor were any reports or artefacts produced in relation to the research that was conducted.”</p>	<p>The “research” may not have been undertaken at all, and relevant officials and the government were potentially misled. PSMA due diligence</p>	<p>Officials may be in breach of obligations under public sector management act and standards</p>	<p>ESA Commissioner / Director General of JACSD Public Sector Standards Commissioner ACT Integrity Commission</p>

Item	Page	Issue identified by Auditor General	Concern	Possible consequence	Responsible Body
10.	3	Following the announcement at the 2019 Australasian Fire and Emergency Services Authorities Council Conference in Melbourne on 28 August 2019 , the Minister for Police and Emergency Services provided a briefing to the Economic Development Subcommittee of Cabinet. The Briefing acknowledged the single-select procurement process and that approval had already been given to enter into a contractual agreement with Rosenbauer Australia <i>‘to build an Australian-compliant Hybrid electric fire appliance for ACT Fire & Rescue’</i> . (our emphasis)	This is a significant shift in language from <i>“partner in the development, design, compliance, delivery and testing”</i>	The Economic Development Sub Committee of Cabinet may have been misled.	ACT Integrity Commission, ASIC, ESA Commissioner / Director General of JACSD, Head of ACT Public Service, Public Sector Standards Commissioner The Chief Minister of the ACT
11.	3	“risks would be ‘managed by an ACT Government project team’ that ‘would consist of all relevant stakeholders to progress the issues across two streams (strategic and operational)’”	Did this project team have a line of reporting back to the Economic Development Sub Committee of Cabinet?	Cabinet and the relevant ministers appear to have not been abreast of matters as they unfolded, or they were not taking steps to re-evaluate the project as risk became apparent. For example see below	Chief Minister, Minister for Emergency Services
12.	3	“The Briefing advised ‘preliminary discussions with the contractor have indicated that the cost would be similar to the current cost of a fire appliance, i.e. approximately \$1 million’.”	The basis of this costing is unclear, and in any event there was no apparent precedent on which to base this cost estimate	The costing may not have been realistic	ESA staff preparing the business case

Item	Page	Issue identified by Auditor General	Concern	Possible consequence	Responsible Body
13.	3	<p>“Throughout late 2019 and into early 2020 a Business Case for ACT Budget funding was progressed.... The Business Case sought a total of \$2.34 million in funding (\$1.62 million capital expenditure and \$0.716 million expenses).... The Business Case was submitted on 3 March 2020</p>	<p>This cost escalated significantly in the seven months from Late August 2019 (\$1 million) to March 3 2020, (\$2.34 million)</p>	<p>The \$1 million figure of August / September 2019 was not prepared with due care and attention.</p>	<p>Public Sector Standards Commissioner</p>
14.	3	<p>“The Business Case also stated that the ESA had ‘conducted a feasibility study into the viability, suitability and sustainability of introducing an electric hybrid vehicle into the fire appliance fleet’ and that ‘the study identified that the concept vehicle would be similar in maintenance costs and produce efficiencies both financially and in terms of sustainability’. <i>There were no reports or artefacts produced in relation to a feasibility study as described.</i>” (our emphasis)</p>	<p>It is reasonable to conclude that the business case was not supported by facts, and that decision makers in the Budget process were misled</p>	<p>Officials may be in breach of obligations under public sector management act and standards</p>	<p>ESA Commissioner / Director General of JACSD Public Sector Standards Commissioner ACT Integrity Commission</p>

Item	Page	Issue identified by Auditor General	Concern	Possible consequence	Responsible Body
15	3	<p>The Business Case advised ‘the (JACS) work health and safety representative conducted a full workplace health and safety assessment of the Rosenbauer concept vehicle and compared it with existing vehicles and the recorded injuries associated with existing vehicles’ and that ‘this report ... overwhelmingly supported the concept design and progression to the prototype’.</p> <p>In relation to the workplace health and safety assessment, the ESA provided a four-page document titled ‘Concept Fire Truck A Safe Design Approach’. The document is undated and it does not identify who prepared or reviewed it. The document makes a series of observations and assertions many of which were reproduced in the Business Case.</p>	<p>The “workplace health and safety assessment” document is cursory at best.</p> <p>It is possible that the document referred to here was created for the sole purpose of providing a document to the Auditor General</p>	<p>Officials may be in breach of obligations under public sector management act and standards</p> <p>Any such documents are required to be shared with WHS representatives:” we have no record of that having occurred during the procurement process. Following the publication of the Auditor General’s report, we requested and obtained the document via the ACTF&R WHS Committee. It had not been previously provided.</p>	<p>ESA Commissioner / Director General of JACSD Public Sector Standards Commissioner ACT Integrity Commission</p> <p>Work Health Safety Committees and PCBUs</p>
16.	4	<p>“The funding sought through the Business Case was also for ‘the costs of equipping the ESA Workshop to service and repair an electric hybrid vehicle and upskilling its workforce to undertake that work, training ACTF&R in the operation and use of the new vehicle and retrofitting the ESA Workshop and at least one existing station with appropriate charging facilities for the vehicle’.”</p>	<p>It is unknown whether this work has occurred at ESA Workshops.</p>		

Item	Page	Issue identified by Auditor General	Concern	Possible consequence	Responsible Body
17.	4	the Business Case did not recommend the option of not proceeding, because of the imperative in achieving the expected environmental benefits and workplace health and safety benefits.	<p>It is difficult to accept the “WHS benefits” as an imperative in the context of:</p> <p>No “at source” exhaust extraction in any fire station; No airlock included in build of Aranda fire station; No on site remediation of PFAS; Failure to deliver health screening initiative over 3 years; The most recently acquired urban pumper being put into service (10.07.2023) with WHS concerns that were identified over 12 months ago</p>	<p>Officials may be in breach of obligations under public sector management act and standards</p> <p>It is worth considering the procurement documents against the statements made by the Minister to Estimates on 18 July 2023</p>	<p>ESA Commissioner / Director General of JACSD Public Sector Standards Commissioner ACT Integrity Commission</p>

Item	Page	Issue identified by Auditor General	Concern	Possible consequence	Responsible Body
18.	4	<p>On 5 March 2020 the ESA issued a Request for Tender (RFT) titled 'ACT Fire and Rescue Pumper'. The RFT was for a 'turn-key solution for up to five (5) Urban Type pumpers'. The RFT did not specify any requirements for the power source for the vehicle, but stated 'ACT Fire & Rescue, through the ACT Emergency Services Agency, wishes to explore all options and innovation in regards to the design and construction of this vehicle' and 'there is no limit to what may be presented, including but not limited to alternative power sources, construction materials etc'. Eight addenda were issued to the RFT, which did not identify anything specifically relevant to the supply of a hybrid electric fire truck. An industry briefing on 18 March 2020 also did not provide further information specifically relevant to the supply of a hybrid electric fire truck.</p>	<p>This was only two days after the business case was submitted. Given that the business case did not proceed "due to the advent of the COVID 19 pandemic" (p.3)</p> <p>O</p> <p>"Turn key" solution fire trucks are a hallmark of Rosenbauer's business. This may amount to anti-competitive conduct.</p> <p>A question arises as to whether the supplier was told, outside of the tender process, that the Hybrid Electric Truck would be procured through the contract resulting from the procurement process for the diesel pumpers.</p>	<p>Given that the business case did not proceed "due to the advent of the COVID 19 pandemic" (p.3), a question arises as to whether tacit approval was given at a high level of the ACT Government to proceed in any event. See page 47 re: "During the (25 May 2020) discussion, you (Minister) asked for options to progress the purchase without reliance on the Business Case</p> <p>This raises questions about the operation of certain requirements of Australian competition law, for example:</p> <ul style="list-style-type: none"> • Potentially limiting competition. • Exclusive dealing <p>If this were assessed as a risk, the ESA could have sought an exemption from the ACCC</p> <p>Officials may be in breach of obligations under public sector management act and standards</p>	<p>ACT Integrity Commission Chief Minister and Cabinet</p> <p>Australian Competition and Consumer Commission</p> <p>ESA Commissioner / Director General of JACSD Public Sector Standards Commissioner ACT Integrity Commission</p>

Item	Page	Issue identified by Auditor General	Concern	Possible consequence	Responsible Body
19.	4 - 5	Rosenbauer addressed the 13 different specifications in the response schedules, but in doing so provided information in relation to a diesel-powered vehicle. Rosenbauer did not provide a similar detailed response which would purport to show how a proposed hybrid electric vehicle would meet the 13 different specifications. Rosenbauer's response to the RFT did note, however 'we are also extremely proud to provide additional innovative solutions such as the world leading Rosenbauer CFT and subsequent digital solutions for ACTF&R future fleet consideration '	See above	See above	See above
20.	5	"In the tender evaluation report, there was no reference to a hybrid electric fire truck or it being a factor in the Tender Evaluation Team's recommendation."	See above	See above	See above

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21.	5	<p>On 1 September 2020 the ESA signed a contract with Rosenbauer Australia Pty Ltd (and S.K. Rosenbauer Pte. Ltd of Singapore) for the supply of 'fire appliances for the Territory's Emergency Services Agency'. The details of the diesel pumpers and the hybrid electric fire truck were contained in separate attachments to the contract. The details for the diesel pumpers were based on the detailed information in the response schedules provided and evaluated as part of the response to the RFT. ... Similar documentation was not included in the contract for the hybrid electric fire truck.</p> <p>There is no evidence that the details of the hybrid electric fire truck were assessed, similarly to the details of the diesel pumpers, and identified or confirmed as suitable or appropriate. There is no evidence that the ESA tested the details of the hybrid electric fire truck to confirm that they met operational requirements.</p>	See above	See above	See above

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22.	5	The ESA asserts that decision-makers' valid approval for the initial entry into the partnership agreement with Rosenbauer for the development of the Concept Fire Truck (through the 2019 single-select process) and the approval of Rosenbauer for the supply of urban pumpers (through the March 2020 RFT process) allowed it to include the hybrid electric fire truck in the September 2020 contract for services with Rosenbauer.	See the opinion of subject matter expert "Proximity" on pp 44 & 45 of the Auditor General report, which describes this proposition as follows: ..."it is disingenuous to intimate that the evaluation process undertaken for a limited market approach can be transposed across to a more general open tender process with their own set of evaluation criteria/operational requirements - particularly when there is a question mark hanging over whether the argument supporting the decision to undertake a limited market approach in the first place was rigorous."	See above	See above
23.	6	"Unlike the purchase orders issued for the diesel pumpers, the purchase order for the hybrid electric fire truck does not identify costs associated with import duty, training or delivery."	The true cost of the Hybrid Electric Fire Truck remains unknown		

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24.	8	1.6 Like all procurement, procurements using exemptions must demonstrate value for money. Determining value for money involves an evaluation of immediate and whole of life costs, through a procurement process that manages risk, is open and fair and can demonstrate high standards of probity and integrity. As exemptions allow entities to engage solely with a single supplier, <i>a clear demonstration that value for money has been pursued is essential to public confidence in government procurement.</i> (our emphasis)	Public confidence in government decisions will have been undermined by this process.	If this were allowed to remain so, without subsequent processes of inquiry by relevant authorities, it is potentially damaging for the current ACT Government and for the institution of government itself.	Ultimately the Chief Minister needs to be assured, and be able to report to the Legislative Assembly, that no stone will be left unturned.

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25.	9	<p>1.14 A purchase order was issued for the supply of the hybrid electric fire truck on 28 January 2021. The hybrid electric fire truck was ordered at a cost of \$1,524,387 (GST ex):</p> <ul style="list-style-type: none"> • \$1,463,723 (basic unit) • \$29,554 (rear axle steering) • \$31,110 (roof monitor) 	<p>The vehicle has been provided without a roof monitor. This reduces the vehicle’s capability in relation to large scale structure fires.</p> <p>Lack of communication between ACT government and the supplier: it is not known how long after the 28 January purchase order was issued that the ACT Government was made aware that a monitor was not supplied</p> <p>A UFU representative queried the absence of a roof monitor on 10/5/2022 at a working party meeting. The ESA responded that a roof monitor was not compatible with the electric systems through the roof cavity. Instead a higher capacity ground monitor was to be supplied</p>	<p>Operational deficiencies where an aerial appliance is not available for the provision of elevated fire suppression.</p> <p>Reduced capability as compared to other ACTFR pumpers.</p> <p>Need to adjust purchase price.</p> <p>It is unclear what other variances there are as compared to other ACTFR vehicles and their equipment. For example, an ACTF&R Chief Officer Staff Bulletin dated 2 September 2019 stated:</p> <p>“The electric urban fire truck that we will build with Rosenbauer has the capability to carry the identical inventory to the current fleet of pumpers and a small diesel motor will still be utilised to power the pump and extend the vehicle’s range.”</p>	<p>Chief Officer ACTF&R, ESA Commissioner / Director General of JACSD Public Sector Standards Commissioner</p>
26.	10	<p>In early 2019 the ESA identified an opportunity to enter into a partnership arrangement with Rosenbauer for the development of a Concept Fire Truck.</p>	<p>There was a “proposal” to enter a partnership at least as early as “early 2019.</p> <p>The relevant enterprise agreement requires the ACT</p>	<p>Breach of enterprise agreement</p>	<p>UFU / Federal Court / Federal Circuit Court</p>

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		<p>discussed with Rosenbauer representatives during a visit to Germany by ACT Fire & Rescue officers in May 2019.</p> <p>Between May and June 2019 the Concept Fire Truck was further discussed by the ESA and Rosenbauer.</p> <p>On 4 June 2019 Rosenbauer offered the ESA the opportunity to enter into a partnership arrangement for the development of the Concept Fire Truck.</p> <p>...on 22 July 2019 an exemption was sought from the Director-General of the Justice and Community Safety Directorate The Director-General agreed to this on 4 August 2019.</p> <p>“On 26 July 2019 the Minister for Police and Emergency Services wrote to Rosenbauer “:</p> <ul style="list-style-type: none"> • “to confirm the ACT Government’s interest in the proposal” (p.18) • proposal also commits the ACT Government to a build-to-buy arrangement • I also understand that Rosenbauer seeks to make a 	<p>Government to consult with the UFU and firefighters “where there are proposals”</p> <p>At this date it is apparent that a decision was made to pursue the partnership.</p> <p>The UFU was not consulted at all until 22 August, at which point it complained.</p> <p>The Minister confirmed the Government’s interest, and some degree of commitment, in the absence of a business case and due diligence</p>	<p>The Minister’s letter could be construed as being pre-emptive of the formal approval process</p>	

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		<p>public announcement ... 28-29 August 2019</p> <ul style="list-style-type: none"> • look forward to working with you on a joint announcement 			
27.	10	<p>A Business Case was prepared in late 2019 and early 2020 for Budget funding for the development of the Concept Fire Truck. Due to the advent of the COVID-19 pandemic in March 2020 the Business Case did not proceed and funding was not secured</p>	<p>A business case was not developed until after the ACT Government had publicly committed to partner with Rosenbauer via an announcement at the AFAC conference on 28 August 2019</p>		
28.	10	<p>Request for Tender was issued on 5 March 2020 and closed on 16 April 2020</p> <p>During negotiations for the contract with Rosenbauer, following its identification as the preferred tenderer, the ESA sought to include the supply of the hybrid electric fire truck in the contract.</p>			

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29.	11	The audit did not consider the fitness-for-purpose of any trucks delivered through the March 2020 procurement or their operational effectiveness.	A separate evaluation of these appliances and the related procurement and commissioning processes should occur. A number of faults have been identified, as were faults with the two aerial appliances supplied in an earlier process	<p>Reports have been provided about the lack of responsiveness of the supplier to faults. Faults and deficiencies identified with the Diesel powered pumpers (ICE Pumpers) include:</p> <ul style="list-style-type: none"> • incorrect inventories being provided to the supplier by ESA project managers; • lack of lagging on brake lines; • deficiencies with Breathing Apparatus brackets • pinch points in stowage areas; • ladder gantry; • siren and radio control positions; • helmet stowage; <p>Significant faults have also been reported in relation to the major aerial appliance, the combined aerial pumper appliance (CAPA). These are documented in a separate document titled. (insert title)</p>	ACT Auditor General

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30.	19	<p>The Executive Brief dated 22 July 2019 also stated:</p> <p>“This partnership will provide value for money as the cost of the development has been carried by the Berlin Fire Department and Rosenbauer in the CFT.”</p> <p>“The ACT Government already has a contract in place for the delivery of two aerial appliances to the value of \$4.2 million, which demonstrates Rosenbauer’s competitiveness in the open market, and appropriate due diligence to award contract.”</p>	<p>In reality this appeared to have no influence on the cost. By this stage the estimated value was \$1.5 million (see para 2.8 of report).</p> <p>This points to a “Matrioshka Doll” of related contracts. (one inside the other). At the very least, the previous contract with Rosenbauer obtained under a “turnkey solution” contract was a factor weighing in the considerations of the ESA, if not the Cabinet sub-committee and the Minister.</p>		
31.		Enhancement of supplier’s corporate image	At the absolute least, the relationship between Rosenbauer and the ACT Government created significant international media attention that was undoubtedly favourable to Rosenbauer. The UFU has identified no fewer than 41 significant items of media coverage about the Hybrid Electric Fire Truck. See attachment A	Significant media coverage correlates with a dramatic improvement in the profitability of the parent company Rosenbauer and its investors between March 2020 and April 2021. During this time, the share price increased from 28 Euros to 58 Euros. At its worst there is the very real possibility that persons within the ACT Government were involved in insider trading and exploited information gained in the course of the relationship with Rosenbauer to make personal profits.	ASIC