Your Ref: –
Our Ref: JMcK:SI

9 September 2015

The Chairman
Public Accounts Committee
Legislative Assembly
Parliament House
PERTH WA 6000

ATTENTION: Mr Tim Hughes, Principal Research Officer

Dear Chairman

INQUIRY INTO ICT PROCUREMENT AND CONTRACT MANAGEMENT

Further to the call for submissions on 9 July 2015 by the Public Accounts Committee, in relation to its inquiry into ICT procurement and contract management, I attach a submission from the Corruption and Crime Commission.

I note that the due date for submissions is Friday 11 September 2015. Accordingly, the CCC submission is hereby forwarded electronically with a signed hard copy to follow by regular post.

Yours faithfully

John McKechnie, QC
COMMISSIONER

Attachment

CORRUPTION AND CRIME COMMISSION OF WESTERN AUSTRALIA

Submission to the Public Accounts Committee:

Inquiry into Information and Communications

Technology (ICT) Procurement and Contract

Management

9 September 2015

SUBMISSION TO THE PUBLIC ACCOUNTS COMMITTEE
INQUIRY INTO INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)
PROCUREMENT AND CONTRACT MANAGEMENT

This submission has been prepared to ensure that the Public Accounts Committee (PAC), in its deliberations, recognises that ICT procurement and contract management is particularly vulnerable to corruption and serious misconduct and that the Committee's recommendations address these high risk areas.[1] It draws on material published by the Corruption and Crime Commission and other integrity bodies in Australia. It is not a comprehensive literature search but may provide some direction for further research to be considered by the PAC in the course of its inquiry.

A research paper entitled *Managing IT Contractors, Improving IT Outcomes*[2] from the NSW Independent Commission Against Corruption (ICAC) provides insight into strategies and best practice options applied in both private and public sector organisations to minimise the risk of corruption whilst achieving their ICT goals. The CCC has not produced a report that focusses solely on ICT procurement and contract management issues. However, the findings of some of its reports may be applicable to ICT procurement and contract management.

This submission is structured as a response to the questions contained in the *Call for Submissions*. Its focus is primarily on the common problems witnessed in public sector delivery of ICT goods and services (from a corruption and misconduct perspective) and elements of best practice in procurement and ICT delivery that may address these problems and risks.

Delivery of ICT

1. **What are the common problems witnessed in public sector delivery of ICT goods and services?**

   - Corruption risks identified and exposed in procurement processes (in past CCC reports) may be heightened when procuring and managing contracts for the delivery of ICT goods and services.

   - New skill sets, including expertise in procurement and contract management, are required of public officers as traditional service delivery models are being replaced with outsourced arrangements. This is particularly the case in ICT. The ICAC report (August 2013) recognised that the skill and competency challenges facing public sector operational managers managing IT development and delivery arrangements when it stated that "for managers with an expertise and focus on the core goods and services of an organisation, it is virtually impossible to get on top of the ever-transforming subject matter of IT".

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[1] CCC *Report on the Misconduct Intelligence Assessment of the Western Australian Public Sector*, tabled in the Parliament on 26 March 2015, p.25.

[2] *NSW ICAC, Managing IT Contractors, Improving IT Outcomes*, August 2013.

- The ICAC report contends that the structure of the IT industry is a contributing factor in increasing corruption risks given that there are only a small number of large providers of IT services and the vast majority are small providers with 85% having fewer than five employees. Some providers own specialist IT recruitment companies and it is inevitable that government agencies interact with "this complex contractor labour hire market".[3] The report identifies the specific set of risks that arise with the IT contractor/consultant and client relationship and the public sector's "heavy reliance on IT specialists to design and implement highly innovative projects". These circumstances lead to a range of problems where the IT contractor may:

  - over-specify the needs of the organisation to boost the price;
  - under-price the work and stall completion to augment the original price;
  - steer hardware purchases towards organisations that provide them with a (secret) commission;
  - gain control of intellectual property (IP) and make the public sector organisation dependent on the single contractor for servicing and upgrades;
  - engage sub-contractors of lower skills but bill the organisation at a price for higher skill;
  - own an (undisclosed) recruitment firm through which contractors are sourced and have associates in the industry to whom the work is directed; and
  - enhance position requirements to include superfluous skills for a position in order to extract higher contract rates.

- Fraud and conflicts of interest, and gifts and benefits are particular corruption and misconduct risk areas identified for procurement and contract management.[4] These risks may be heightened in times of tight budget constraint and it is important to remember that corruption in procurement matters in the public sector generally requires a willing public officer. The findings of the PwC *Global Economic Crime Survey 2014* concluded that procurement fraud is the second most commonly reported type of economic crime and the commentary on the survey in Australia noted that procurement fraud often involves an external and an internal party, and is collusive nature.[5]

- New governance arrangements to minimise the risks of corruption in procurement and contract management have also been identified by the CCC.[6] In its *Report on Misconduct Risk in Local Government Procurement* (tabled in the Parliament by the Minister on 26 February 2015), the CCC found that local government in WA appeared to be particularly vulnerable to misconduct arising from procurement processes. The lack of risk assessments for misconduct in procurement is a significant issue for the local government sector and financial governance weaknesses included:

[3] *Ibid*, p.4.

[4] *Ibid.*

[5] CCC *Report on Misconduct Risk in Local Government Procurement*, 4 February 2015, tabled in the Parliament by the Minster on 26 February 2015.

[6] CCC *Report on the Misconduct Intelligence Assessment of the Western Australian Public Sector*, tabled in the Parliament on 26 March 2015, p.25.

- internal audit procedures relevant to misconduct risk;
- lack of separation of duties;
- tendering and quotation procedures;
- adherence to procedures, particularly in relation to authorisation to make decisions and justification of those decisions;
- education and training about misconduct; and
- dealing with conflicts of interest.[7]

- The CCC *Report on Fraud and Corruption in the Procurement in WA Health: Dealing with Risks* made a number of conclusions that may be relevant when considering best practice options for ICT procurement space:

  - poor supervision (senior managers not understanding procurement policy and processes);
  - no understanding of misconduct risks around procurement of works (and this may be the case around the procurement of ICT goods and services);
  - low accountability (audits failed to identify multiple payments below the threshold and insufficient controls for enforcing and monitoring compliance with legislation and policies);
  - high discretion (and executive autonomy); and
  - senior executives more focussed on delivery of outcomes, rather than how it was done.[8]

The report also noted that in WA Health, "major" capital works (above $20 million) are subject to greater oversight (both internally and externally) and employees therefore have less autonomy. This threshold is high and lesser value projects may not be subjected to the same level of scrutiny. This may be an issue for the procurement and contract management of ICT goods and services that fall below "major" threshold levels where an agency's business involves high monetary values.

- The CCC *Report on the Investigation of Alleged Public Sector Misconduct by a Local Government Employee in Relation to the Purchase of Management Systems Software* identified the following issues and associated misconduct risks that can arise with the procurement of IT software within the local government sphere.[9]

  - The calculation of the total cost of IT software procurement is an issue, given that it is the total cost which determines the appropriate method of procurement. Procurement of IT software ordinarily involves the cost of the software, together with implementation, training and licensing fees, which can be substantial.

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[7] CCC *Report on Misconduct Risk in Local Government Procurement*, 4 February 2015, tabled in the Parliament by the Minster on 26 February 2015, p.1.

[8] CCC *Report on Fraud and Corruption in Procurement in WA Health: Dealing with the Risks*, tabled in the Parliament on 12 June 2014.

[9] CCC *Report on the Investigation of Alleged Public Sector Misconduct by a Local Government Employee in Relation to the Purchase of Management Systems Software*, tabled in the Parliament on 19 December 2013.

- Guarding the "gateway" through which contractors enter the organisation. This concern was explored further by the ICAC report.[10]
- The acceptance of gifts, of whatever kind, by a public officer who is engaged in commercial dealings with a private contractor.

- The issue of the receipt of gifts and the management of conflicts of interest is a common theme. In an earlier CCC report that focused on the receipt of gifts related to the purchase of toner cartridges, the CCC quoted the Office of the Auditor General 2011 public sector performance report where it considered how well six public authorities had planned for, procured and managed their ICT contractors. The report identified "poor procurement practice and a failure to adequately recognise or address potential conflicts of interest" among the common weaknesses.[11]

2. **What elements represent best practice in ICT delivery? ICT delivery includes Project Planning, Contract Management, Project Management, Project Status Reporting and Reviews**

- The ICAC report *Managing IT Contractors, Improving IT Outcomes* states that "traditional methods of project control are rendered less effective"[12] and identifies five broad levers that need to be considered to both keep control and to reduce the risk of serious misconduct and corruption. It is suggested that these "levers", detailed below, represent elements of best practice in ICT contractor management in terms of ensuring the delivery of the ICT project outcomes and managing the corruption risks.

    (1) Linking the business case to project controls on deliverables, price and scope *throughout* the course of the project.

    (2) Dedicating effort to ensure that consultants used in the design phase are "strongly separated" from the build phase.

    (3) Guarding the gateway through which contractors enter the organisation to avoid friends and associates and low skilled contractors entering the organisation through capital works budgets, procurement processes or short-term appointments through Human Resources processes.

    (4) Closely managing the project management which includes ensuring the project managers have the required skills, they are not too close to contractors; there are limits on their span of control, insisting on end user sign-off and audit of progress; and the proportion of contractors on the team and how long they spend on the team.

    (5) Ensuring a clear exit strategy to ensure the transfer of knowledge is planned throughout the life of the project and the organisation is not left dependent on the external provider.

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[10] *NSW ICAC, Managing IT Contractors, Improving IT Outcomes,* August 2013.

[11] CCC *Report on the Investigation of Alleged Public Sector Misconduct in Relation to the Purchase of Toner Cartridges in Exchange for Gifts Outside of Government Procurement Polices and Arrangements,* tabled in the Parliament on 24 November 2011, p.5 (paragraph 30).

[12] *Ibid,* p.4.

- The CCC *Report on the Investigation of Alleged Public Sector Misconduct by a Local Government Employee in Relation to the Purchase of Management Systems Software* made additional recommendations which may also need to be considered:

  - A more detailed guide for the procurement of IT by local governments with a particular focus on how the total cost of the purchase is to be determined to ensure compliance with procurement legislation and policies. This reflects the fact that the procurement of IT software ordinarily involves the cost of the software, together with implementation, training and licensing fees.
  - Communication with suppliers to establish a clear set of supplier behaviour expectations and associated consequences for non-compliance.
  - The receipt of gifts by public officers is prohibited.

- In providing an overview of the investigations and external procurement audits discussed in the CCC report into misconduct in local government procurement, the key actions taken by the relevant authorities to address identified risks were noted. These actions could be factored in when determining the elements of best practice in ICT delivery:

  - developing and implementing a fraud prevention policy and fraud control plan;
  - reviewing risk management policies and frameworks;
  - undertaking risk assessments which include fraud, corruption and misconduct risks in procurement;
  - testing key controls;
  - requiring the independent review of tenders and sole supplier applications before they are approved, and improved recordkeeping for this process;
  - reviewing segregation of purchasing duties;
  - developing a statement of business ethics for suppliers and contractors; and
  - establishing external audit and review mechanisms.[13]

- The NSW ICAC report *Corruption Risks in NSW Government Procurement* published in December 2011 argues that organisations have to look beyond the basic controls of policies and procedures and training to control corruption.[14] Rather it outlines a range of tools that can influence behaviours and improve systems. The report focuses on three pillars of corruption control in procurement, each of which could be applied when considering the structures, processes and people involved in the procurement and management of ICT resources. The pillars are:

  - Strengthen and design procurement structures that minimise corruption risks and enhance efficiency. By assigning accountabilities, having

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[13] CCC *Report on Misconduct Risk in Local Government Procurement*, 4 February 2015, tabled in the Parliament by the Minster on 26 February 2015, p.1.

[14] *NSW ICAC Corruption Risks In NSW Government Procurement: The Management Challenge*, December 2011

coordination mechanisms and clear chains of command, both organisational performance and corruption control can be enhanced.

- Design procurement processes that also minimise risk and enhance efficiency. "The goal is to find methods to reduce risk to an acceptable level without seriously damaging efficiency and effectiveness through loss of flexibility and responsiveness or inefficient hand-offs and doubling up".[15]

Discretion in processes can create particular risks in ICT procurement and contract management. This includes establishing an accurate identification of needs (can give power to consultants when only one person or supplier is determining how to solve the problem) and price discovery or determining what price to pay. The report lists some options for compensating for a "weak" market where there is only one supplier with the required patent or where this no single supplier that can deliver the full service.[16]

- The people factor arising from employees, manager and dealing with suppliers.

In addition to suggestions for skilling public officers and managers in establishing required behaviours, the report recommends managers need to assess the skills of staff involved in any aspect of the procurement process and be involved in the preparation of tender documentation, the procurement of subcontractors and the financial viability of a project or program.

In terms of best practice, the report recommends that public officers take the initiative in engaging with suppliers and in so doing set the rules about ethical obligations and the principles and standards of behaviour relating to procurement. Excellent detail is provided in the report on how this can be achieved.[17]

The report also addresses conflicts of interests and identifies two types. The first are hidden private interests where a public officer keeps secret secondary employment arrangements where they may be working for a supplier or they have family and associates employed by the supplier. The second occurs where the supplier/client relationship develops into a friendship with the accompanying risk that the public officer becomes partial to the supplier. The report provides further detail on options for addressing these issues which are particularly relevant in an ICT procurement and contract management environment.[18]

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[15] *Ibid*, p 10.

[16] *Ibid*, p 11.

[17] *Ibid*, p 27.

[18] *Ibid*, pp.27-28.

3. **How do we best measure or define success in ICT delivery?**

The NSW ICAC report *Corruption Risks in NSW Government Procurement* suggests some options for verifying delivery and measuring success:

- contract clauses that specify performance indicators and defines the records the provider must create and provide to the agency;
- an independent assessment of quality by a third party ; and
- Monitor the desired deliverables, not the process.[19]

Government Solutions for WA

4. **What are the latest developments (domestic and/or international), in the area of government ICT systems?**

The Commission makes no comment in relation to the above.

5. **What jurisdictions (domestic and/or international) have adopted the latest developments in government ICT systems that have demonstrably reduced the cost, and improved the delivery, of government services?**

- **Could such systems be incorporated into Western Australia?**
- **If so, what factors need to be taken into account to ensure successful implementation?**

The Commission makes no comment in relation to the above.

Conclusion

This report has attempted to identify issues that the Committee may wish to consider in the course of its inquiry and has relied solely on the review of its past reports and those prepared by the NSW ICAC. ICT Procurement and Contract Management (ICT) carries with it significant risks of serious misconduct and corruption.

To assist the Committee, it is suggested that:

(1) input is sought from the Office of the Auditor General with respect to best practice in developing integrated control frameworks and the use of internal audit and external review processes of ICT activities; and

(2) organisational exposure to corruption and misconduct risk is a key principle to guide policy development relating to ICT procurement and contract management.

John McKechnie, QC
COMMISSIONER

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[19] *Ibid.*