



Ms Alison Sharpe
Principal Research Officer
Joint Standing Committee on the Corruption and Crime Commission
Parliament House
4 Harvest Terrace
PERTH WA 6000
Email: jscccc@parliament.wa.gov.au

Dear Ms Sharpe

Re: An inquiry into public sector procurement of goods and services and its vulnerability to corrupt practice

CCF WA welcomes this opportunity to provide input to the committee's inquiry.

CCF WA members deliver minor and major civil infrastructure works for State Government agencies (including departments and GTEs). The key infrastructure procurement agencies (each with an annual spend exceeding \$500 million) are Main Roads WA, Public Transport Authority, Water Corporation and Western Power. CCF WA works closely with these agencies, being consulted regularly on procurement issues and advocating on behalf of members.

One of our key advocacy planks is that all agencies should observe the State Government's Open and Effective Competition Policy. The main requirements of the policy are

- Contracts valued at \$250,000 and above should be procured by open tender through a public advertisement on Tenders WA.
- Where the awarded contract value is \$50,000 or above, a public authority must publish the contract details on Tenders WA after the successful bidder has been notified.

These are sensible requirements which, if applied, help ensure (as the Policy notes) "fair and equitable access to government supply opportunities whilst maintaining the transparency and integrity of government procurement".

The policy allows agencies to declare themselves exempt from these requirements: all that is required is that the agency considers that circumstances exist which support the minimum requirements not applying; and documents its decision.



As a result, agencies routinely bypass the Open and Effective Competition Policy, adopting practices that restrict transparency in the tendering process.

Some agencies do not use Tenders WA at all, preferring to maintain their own procurement portals. Access to these portals may not be freely available, and companies that are provided access may not be able to see all open tenders.

It is common for the procurement process to look like this:

- An agency prepares a civil works contract for tender.
- The tender is not publicly advertised.
- An agency employee (e.g. project manager) is provided with a list of contractors with the skills and capacity necessary to deliver the project.
- The employee selects some of these companies (typically 3 or 4) to be invited to tender for the contract. The chosen companies are privately invited to tender.
- The award of the contract (successful contractor or value) is not publicly advertised.

Such a selective approach to tender shortlisting may lead to project managers making selection decisions on limited information, e.g. their own recent experience or assumptions about contractors' capacity/capability based on limited or outdated knowledge. It is certainly conceivable that project managers may choose companies that they are comfortable working with.

We must make it clear that we are not alleging, nor have any evidence, of corruption. Our concern is that the practices outlined above create the potential for corruption, which would be mitigated if the existing oversight mechanisms, policies and guidelines for procurement within the WA public sector (e.g. the Open and Effective Competition Policy) were observed without exception, or with stricter criteria for allowing exceptions.

WA Industry Participation Strategy

CCF WA recently provided feedback to the Department of Jobs, Science, Innovation and Tourism on the draft Western Australian Industry Participation Strategy and Implementation Guidelines.

While we were pleased to note the Strategy will mandate that all tenders over \$250,000 (inc. of GST) must be advertised through Tenders WA, it was disappointing



to note that, as with the Open and Effective Competition Policy, agencies could simply declare themselves exempt.

CCF WA commented that the requirement for open advertising should be enforced without exception. CCF WA appreciates that for works where specialist skills are required, agencies may choose to maintain prequalification schemes or panel arrangements that will restrict the number of potential tenderers. However, this should not be an excuse for closed tendering; all tenders should still be advertised on Tenders WA so that:

- Local contractors can monitor potential markets for growth
- Local subcontractors can be aware of all potential opportunities.

Currently, we are seeing State Government agencies award infrastructure works contracts (including regional contracts) worth millions, without public tender. Main Roads WA routinely awards 'minor capital works' contracts (which it defines as up to \$5 million contract value) directly to contractors engaged in long-term road maintenance arrangements. This runs counter to the principles of Open and Effective Competition and may restrict opportunities for local businesses. It also increases vulnerability to corrupt practice.

While exemptions may occasionally be appropriate, agencies should not have the authority to grant themselves an exemption – they should be required to apply to the Department of Finance for each exemption. Exemptions should only be granted when there is evidence supplied that the principle of Open and Effective Competition will not be compromised. All exemptions should be publicly advertised.

Please do not hesitate to contact me for more information.

Yours sincerely,

Jeff Miller, Chief Executive Officer (WA)