



Department of Transport
Main Roads Western Australia
Public Transport Authority

Your ref: A654348

CWS ref: 947

Ms Margaret Quirk MLA
Chair
Joint Standing Committee on the Corruption and Crime Commission
jsccc@parliament.wa.gov.au

Dear Ms Quirk

**Submission to Inquiry into Public Sector Procurement of Goods and Services
Terms of Reference**

Thank you for your letter dated 1 December 2017 requesting a submission for the Inquiry into Public Sector Procurement of Goods and Services.

I have attached submissions from the Department of Transport and Main Roads Western Australia that have addressed elements of the inquiry's terms of reference.

If you require further information please contact me by email to:
director.general@transport.wa.gov.au.

Yours sincerely

Richard Sellers
Director General

16/3/2018

1. The Adequacy and Nature of Oversight Mechanisms, Policies and Guidelines for Procurement within the WA Public Sector to Prevent Corruption and Serious Misconduct

Oversight Mechanisms

The Department of Transport (DoT) operates a centralised procurement model with minor (up to \$5,000) procurement devolved through Purchasing Card (Pcard). The Procurement and Fleet Management (PFM) Branch is responsible for procurement across DoT.

DoT officers can obtain verbal quotations from a single source up to \$10,000 and a sufficient number of verbal quotations from legitimate suppliers for goods, services, works and works related services up to \$50,000 other than for consultancies and Information Communication Technology (ICT) requirements. Establishing the resultant contracts requires a purchase order number being given to the supplier. The creation of a purchase order is done via the iProcurement (iProc) module of DoT's financial system (Oracle).

All consultancy and ICT requirements with a potential contract value greater than \$10,000 and all other requirements with a potential contract value greater than \$50,000 must be arranged through PFM.

Tender documents are prepared and issued by a PFM contracts officer and tenders closed in Tenders WA or Tender Box located within PFM. Two PFM officers download offers after the closing time, conduct compliance checks and record the offers received. The valid offers are distributed to the evaluation panel for assessment.

When forming evaluation panels to assess offers each member must sign a Declaration of Interest and Confidentiality form and disclose any actual or perceived conflict of interest before access to the offers will be granted. Where a real conflict of interest or unmanageable perceived conflict of interest exists the evaluation panel member is removed.

Evaluation panel members conduct their own assessment of the offers against predetermined (and published) evaluation criteria using the set scoring system. Once individual assessments are completed a consensus meeting of all evaluation panel members is held to determine the final scoring and ranking of tenderers. A recommendation report is prepared and signed by the panel and the contracts officer facilitating the process. Each recommendation then undergoes a process of endorsement by either a PFM officer not involved in the evaluation process or the DoT Tenders Committee or State Tender Review Committee depending upon the value.

Approval of the recommendation report can only occur after it has been endorsed as above. An officer endorsing a report cannot then approve it. Contract award is performed by the PFM contract officer.

There is scrutiny of the process by a number of separate officers before a contract is awarded.

As with establishing contracts, contract variations must be approved prior to acceptance. The level of endorsement and approval required is dependent upon the total contract value (initial contract value + any previous approved variation/s + value of proposed variation).

DoT has a rigidly enforced “No Purchase Order No Payment” policy that contributes to efficient procurement. This is:

- Approved users must raise a requisition in iProc and the next appropriate level of management must approve the requisition;
- A requisition can only be turned into a purchase order (PO) by an approved buyer (PFM officer). The value of the total purchase order determines the officer who can approve the PO creation in accordance with the delegation from the Director General (copy attached); and
- Upon receiving the requisition it is checked to ensure a valid contract exists, the supplier is legitimate, there is no order splitting and the details and values are correct. This includes contract variations. If no valid contract exists or other details are incorrect the requisition is rejected. The system has transaction records tracked for audit purposes.

iProc has workflows that automatically direct the transaction to the officer with the appropriate delegation to approve the creation of a PO or adding a new line to the PO. It does not allow an officer to create and approve a PO.

In regards to procurement by Pcard, cardholders must enter the relevant details of every transaction into the iExpense module of Oracle and attach relevant receipts. The transactions are automatically workflowed to their manager for approval, rejection or deferral. Each month random transactions are selected for audit by PFM.

All DoT officers undertaking any kind of procurement including with PCard are required to complete the DoT Online Procurement module with a pass mark of 80%. The module includes policies and other relevant procurement matters such as conflicts of interest and receipt of gifts.

The organisational oversight of procurement is set out below:

- Daily control of procurement sits at the third tier of management with the Executive Director Finance and Procurement Services who is also the Chief Financial Officer.
- The Executive Director Finance and Procurement Services is a member of the DoT Corporate Executive.
- The DoT Tenders Committee is a Corporate Executive committee, chaired by the Executive Director Finance and Procurement Services. The committee membership is comprised of both internal DoT officers and external agencies' officers.
- PFM branch.

Policies and Guidelines

DoT has a comprehensive and robust suite of procurement policies, procedures, guidelines and forms templates, audited quality assured processes and work instructions that are covered by ISO 9001:2008.

Policies, procedures, and guidelines are available to all officers via the DoT intranet – Transporta.

To assist DoT officers understand the steps and complexity of procurement and to aid them in planning a procurement a Contracting Matrix Guide for Clients is also available on Transporta.

The PFM Quality Assurance library contains in excess of 200 policies, guidelines, work instructions and templates. As a consequence of adherence to the ISO quality assurance standard the documents in the library are constantly reviewed in order to ensure they are up to date and reflect State Supply Commission Supply Policies. DoT procurement policies are explicit in that the principals of ethical behaviour, probity, accountability and transparency must be followed.

Authority to approve minor changes to procurement policies has been delegated to the Director Procurement & Fleet Management and new / major changes must be approved by the DoT Tenders Committee.

PFM officers have access to relevant documents to make minor changes (date, contact details, etc). More significant changes are discussed and recommended via the PFM Contract Improvement Group. All changes to Quality Assurance library documents must be approved by the relevant member of the PFM management team, and changes made to policies can only be approved by the Director Procurement & Fleet Management.

2. The Profile and Training of Public Sector Personnel engaged in Procurement

Profile of Officers

DoT via PFM possesses very strong procurement knowledge, experience and skills that are underpinned by rigorous processes to ensure the necessary high level of governance required to undertake the procurement of goods and services under a \$20 million partial exemption arrangement.

The PFM procurement team includes highly experienced contract officers that are very well trained and competent in high risk/high value procurements.

Training

In regards to procurement training and awareness for all DoT officers:

- **All** DoT officers must successfully complete the DoT Online Procurement Training Course to be granted a Pcard and to have access to iProc to raise requisitions and/or approve requisitions. Each officer must then complete the course again each three years to maintain a Pcard and/or access to iProc. [NB: compliance is monitored through the monthly Pcard audit of usage. This ensures standards are maintained and new practices enforced between training sessions]. The training course includes conflict of interest, probity and ethics.
- Contract management training is available for staff involved in managing contracts once awarded and specification writing training is available for staff involved in preparing specifications for tenders.
- Contract management and specification development training has been developed and is run regular through the DoT Learning Central site on Transporta. Where immediate training is needed specific training sessions has and will be run.
- Procurement training and development needs are identified through the DoT Performance Partnership Program process.

All DoT officers are required to complete and then completed refresher training on a regular basis of the:

- Fraud and Corruption Risk Management Online Training Course; and
- Accountable and Ethical Decision Making Online Training Course.

The latter includes acceptance of gifts and hospitality awareness.

3. Corruption Prevention and Risk Strategies Deployed in WA Public Sector Agencies

In addition to the DoT Code of Conduct that applies to **all** DoT officers and the aforementioned controls described in 1 and 2 above DoT corruption and risk strategies includes governance structures, processes, documents and systems outlined hereafter.

Governance Structures and Documents

DoT has a Corporate Executive that oversees governance. Two committees established by the Corporate Executive are the Audit Committee and the Tenders Committee. Both committees are chaired by permanent Corporate Executive members and ensure procurement achieves the desired outcomes whilst maintaining the integrity and accountability of the process.

The role of the DoT Tenders Committee is to review and endorse the procurement process, practices and soundness of reports/plans placed before it prior to approval by the appropriate delegated officer.

Accountability for procurement decisions have been delegated by the Director General to appropriate officers via Delegation and Sub Delegation instruments prepared by the DoT Legal and Legislative Services branch. The instruments are included in the PFM quality management system so as with all other documents in the system are automatically scheduled for regular review.

An important strategy deployed throughout DoT via processes and systems is the separation of duties whereby an officer cannot:

- create a requisition and approve it;
- approve a requisition and create the purchase order;
- incur and certify a payment;
- approve recommendations in which they have had a role or input;
- endorse and approve evaluation report recommendations and contract variations; and
- initiate and approve contract variations.

Another strategy implemented by DoT is the increasing use of workflow automation for approvals in other processes.

In addition to specific procurement policies there are a number of DoT policies that have broader coverage not only across procurement and underpin the governance of corruption prevention in DoT. These policies are listed below:

- DoT Complaints Handling Policy
- DoT Conflict of Interest Policy
- DoT Conflict of Interest Procedure
- DoT Contact with Lobbyists Policy
- DoT Corporate IT Decision Making Policy
- DoT Governance Framework
- DoT Fraud and Corruption Control Policy
- DoT Fraud and Corruption Control Plan
- DoT Hospitality Policy

Systems

Within DoT contract management of deliverables is performed by the customer at the point of delivery of the goods, services and works.

Contracts are established and administered by PFM contract officers. The administration includes all contractual correspondence, price reviews, variations, recall action, etc.

All contracts are established, registered and managed through the DoT Contracts Management System (CMS). CMS was implemented in September 2016 following the decommissioning of the Department of Finance Contract Document

Management system. The system is DoT's tender register and repository for all tender processes including those conducted by the Department of Finance.

CMS also facilitates contract managers managing their contracts on a day to day basis.

DoT's Electronic Documents and Records Management System is Objective. At the commencement of each contract process a file with standard folders is created in Objective. All documentation (including RFT, offers received, evaluation documents, recommendation report, approvals, correspondence with tenderers/contractor, award letter, contract documents and contract management documentation) is retained in the Objective file. As a corporate system Objective is routinely backed up on remote servers in two data centres. This ensures the security of the information and business continuity. The Objective file is linked to the corresponding contract in CMS.

Contract files in Objective are locked down to only be able to be viewed and edited by specific officer granted those privileges by an authorised PFM officer thereby maintaining the integrity of the records.

Both CMS and Objective have very good audit tracking that identifies anyone who has accessed and/or made changes to a document/record.

1. Adequacy and nature of oversight mechanisms, policies and guidelines for procurement within the WA public sector to prevent corruption and serious misconduct.

Main Roads' policies, procedures and systems are compliant with AS/NZS 9001:2008, State Supply Commission Procurement Policy, (specifically the Probity and Accountability Policy) and AS4120 (Code of Tendering). These provide some level of prevention of corruption and serious misconduct in the procurement of works, goods and services. Details of the Main Roads' specific oversight mechanisms, policies and guidelines are contained within the following Manuals:

- Procurement Management Manual;
- Tendering and Contracts Administration Manual;
- Purchasing Manual; and
- Corporate Credit Card Manual.

Additionally, in Main Roads integrity of the procurement process is achieved through segregation of duties and independent review and approval of all purchases and tender recommendations in accordance with the Delegation of Authority (e.g. specific delegations for calling and accepting tenders, approving contract variations and contract extensions). Adequate recordkeeping enables external scrutiny of decisions. Contract award details are published in accordance with the State Supply Commission Open and Effective Competition Policy for transparency in procurement. External probity auditors are engaged for complex or high risk procurements.

Where an established panel contract or common use arrangements exists, selection of contractors is in accordance with the buying rules determined prior to tender release. The buying rules set out the manner in which work will be allocated under the panel arrangement and are managed by an independent Contract Manager.

Conflict of interest declarations are standard in tender assessment reports and requests for exemptions from the State Supply Commission Open and Effective Competition Policy are documented and registered.

A Conflict of Interest and Gifts & Benefits Policy is published on the Main Roads intranet. A Procurement Conflict of Interest Register has been established for officers involved in the procurement process to declare any actual or perceived conflicts of interest to the Chair of the Tender Evaluation Panel, or their Manager, with notification to the Manager Supply. The register also records action/s taken to mitigate the actual or perceived conflict. Main Roads' secondary employment policy includes an approval process that enables proper assessment of potential conflicts of interest.

Oversight mechanisms also include internal and third party audits of the centralised procurement activities, as well as regional procurement processes, to monitor and report on key procurement processes and controls. Sample testing and routine monitoring by the central procurement team is conducted for low value purchases on credit card.

Procurement systems are well established with adequate system controls for approving purchase orders. A comprehensive contracts database provides visibility of information pertaining to the tender process and contract management (including variations) and is compliant with the Treasurers Instructions 820.

Main Roads procurement grievance policy provides suppliers a formal complaints process. These grievances are registered to identify themes or trends that indicate potential corruption and misconduct.

2. The profile and training of public sector personnel engaged in procurement.

Main Roads recruits appropriately skilled people and undertakes criminal record checks of new employees as required. Designated Procurement Managers are centrally located in the Supply Branch and have extensive public sector procurement experience, thus improving consistency of advice.

Training on Main Roads' procurement policies and practices is provided on an ongoing basis with targeted training delivered based on audit findings in areas of poor compliance.

Procurement capability is developed through on the job training and knowledge transfer by senior procurement staff. Knowledge gaps are identified through career conversations. Government Procurement at the Department of Finance Education Framework provides varying levels of procurement training that are attended by procurement staff as relevant.

3. Corruption prevention and risk strategies deployed in the WA Public Sector agencies.

Main Roads is committed to the prevention of corruption in the agency. Preventing corruption assists the agency in achieving excellence.

A key strategy in the prevention of risk at Main Roads is the promotion of integrity, including identifying corruption risks in procurement. Approaching prevention with a positive slant is effective. Cultural change is unique in its ability to pervasively and effectively prevent corruption.

Main Roads is a values based organisation. Main Roads' values inform what we do and why we do it and in turn contribute to the prevention of corruption. The agency's foundation values are Roads Matter, Embracing Challenge, Excellence in Customer Service, Working Together, Professionalism, and Family. Building on these values, the agency strives to promote an environment where corruption not only has no place, it is counter-cultural.

Main Roads' approach is supported by its Code of Conduct and its Fraud and Corruption Control Plan (FCCP) which follows the Australian Standard for Fraud and Corruption Control (AS 8001:2008). Main Roads' FCCP includes awareness training, commitment from leadership group, gifts and benefits and conflict of interest registers and recruitment practices. Main Roads has a dedicated risk and integrity team committed to the development of a culture of integrity and the prevention, detection and treatment of fraud and corruption.

Main Roads is innovating its corruption prevention and risk strategies including biennial fraud and corruption risk workshops annual detection forums, and the integration of fraud and corruption risk management into business planning. Fraud and corruption risk workshops were rolled out as a pilot across the business between 2014 and 2017. These workshops will now occur on a regular basis and provide an opportunity to refine controls and treatment plans, as well as identify new risks. Main Roads' strategy in this space includes reviewing processes, learning from journal articles and case studies, and being open to changing the way it does things for the greater prevention of corruption.

4. The sufficiency and use of sanctions for individuals found to have engaged in corrupt and serious misconduct in procurement duties

Employees of Main Roads are appointed by the Commissioner of Main Roads in accordance with section 10 of the *Main Roads Act 1930* – not under Part 3 of the *Public Sector Management Act 1994* (the Act).

Consequently, Main Roads' employees are not public servants (they are Government Officers) and not subject to the provisions of Part 5 – Substandard Performance and Discipline Matters of the Act.

Instead, Main Roads responds to allegations of misconduct and inappropriate behaviour in accordance with the discipline provisions of its Enterprise Bargaining Agreements and policies and procedures.

Where it is determined that action is to be taken against an employee (as a result of findings made from a discipline process), any of the following options are available to Main Roads – with regard to the level of seriousness of the alleged misconduct:

- Counselling the employee;
- Training/retraining the employee;
- Issue of a formal written warning;
- Transferring the employee to another Directorate, region or base location;
- Withhold a salary increment payable to the employee;
- Reduce the level of classification of the employee;
- Termination of the employee's services;
- Summary dismissal; or
- Other alternative arrangement as agreed with the employee and the Union.

Main Roads believes that the above actions are sufficient when determining the appropriate sanctions for an individual who has been found to have engaged in corrupt or serious misconduct in procurement.

An example of the process undertaken and sanction imposed by Main Roads is as follows:

- Main Roads became aware that a senior engineer had been involved in procuring the services of a family member and, on occasion, authorising payment of invoices.
- The CCC were informed immediately. CCC advice was that it was satisfied that Main Roads were conducting an internal investigation and would inform them of the findings.
- An internal discipline process was initiated.
- KPMG Forensics was selected through a tender process to undertake the investigation.
- The scope of KPMG's investigation was to establish whether:
 - work packages performed were at an appropriate cost and were value for money; and
 - determine whether the engagements were in accordance with Main Roads procurement policies.
- The findings of the KPMG investigation found that the employee did commit an act of misconduct.
- The proposed course of action for this breach was termination of employment.
- The employee resigned soon after receiving the proposed course of action letter.

5. Best corruption prevention practices in procurement from other jurisdictions

In other jurisdictions, guidelines are in place that outline minimum expectations for suppliers on ethics and conduct, as well as the procuring agencies. The Code of Practice for Procurement (Code) NSW Government requires suppliers and others down the contract chain to maintain ethical business practices by with breaches of the Code resulting in a range of sanctions. Specifically, the NSW Procurement Board PBD 2017- 07 imposes sanctions on suppliers - *"Findings of dishonest, unfair, unconscionable, corrupt or illegal conduct can have a range of consequences for individual suppliers, including as serious as exclusion from contracting opportunities with the Government"*.

A Supplier Code of Conduct exists in Victoria that describes the minimum expectations in the areas of integrity, ethics and conduct, conflict of interest as well as other commitments. These expectations extends to related entities of the suppliers and subcontractors and include supplier reporting mechanisms for suspected corruption.

6. Reform to current legal and administrative practices in the area of procurement to prevent and reduce the risk of corruption.

While current administrative and legal practices focus on agencies, Main Roads is considering the requirement for contractors to develop, and submit with their tender, a fraud and corruption plan in line with AS 8001 to be assessed as part of the tender evaluation process to determine the adequacy of the contractor's corruption controls. Adherence to these plans will be monitored as part of the contract management process with non-compliance resulting in possible sanctions similar to that in other jurisdictions.

7. Adequacy of whistle-blower protections in the context of allegations of corruption in procurement

As with all State Government agencies, whistleblowing protections in Main Roads are headlined by the statutory regime set out in the *Public Interest Disclosure Act 2003* (PID Act). Since its inception, Main Roads has not dealt with any formal disclosures made under the PID Act, i.e. proceeded with any relevant investigations in the manner set out in the PID Act. The various matters (few in number) that have been raised by informants with the Main Roads PID Officer over that period were either assessed as not falling with the definition of "public interest information" in accordance with the PID Act and therefore not dealt with as a formal disclosure, or the informant chose not to proceed with the disclosure.

Main Roads' experience with the PID Act is that it provides comprehensive legal protections to an informant who chooses to proceed with an appropriate disclosure under the PID Act, but must be reinforced by an organisation culture that actively and positively encourages employees to alert management to any suspected corruption or fraud in procurement without fear of reprisal or discrimination. Simply having the PID Act in place is not sufficient, nor is periodically raising staff awareness of its existence (although the latter is still necessary as a minimum). In summary, whistleblowing protections should not only rely on legal frameworks, which are in effect a "last resort" option; real protection should be built into organisational culture and senior management leadership ethos.