



Our Ref: 2018/26866

Dr A D Buti MLA
Chairperson
Public Accounts Committee
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Dear Dr Buti

**INQUIRY INTO PUBLIC SECTOR CONTRACT MANAGEMENT PRACTICES -
INVITATION TO PROVIDE A SUBMISSION**

Thank you for your letter dated 4 December 2018, inviting the Department of Communities (Communities) to provide a submission to the above inquiry.

Communities' functions and services include disability services; child protection and family support; social and affordable housing; community initiatives and remote regional services reform.

Communities' mandate is fundamentally about providing pathways to individual, family and community wellbeing. Our direction centres on building safe, strong, secure and inclusive communities that empower individuals and families across Western Australia to lead fulfilling lives.

We have a broad remit reflected in the range of services that we provide and also those provided by external service providers on our behalf.

A large proportion of the total government spend on commercial goods and services and not-for-profit service providers is within Communities, in excess of \$2 billion.

Currently we are looking at ways to leverage value between the functions of contract management and relationship management to build agency capacity. This means building on service delivery roles to shift from transactional relationships to collaborative partnerships with service providers.

This focus recognises that service delivery staff are ideally positioned to identify opportunities for program improvements based on their day-to-day experiences interfacing with service providers in supporting clients' needs. There is significant potential to increase outcomes for clients and achieve better value for money for contracted services by identifying and implementing improvements at a service delivery and place-based levels.

Our focus is on creating the right environment for improved effectiveness, transparency and contestability of procurement processes to deliver the right outcomes to those we serve.

In the short to medium term, Communities is focusing on:

- developing an Outcomes Framework to enable alignment of whole-of government-outcomes and move towards purchasing for outcomes rather than outputs;
- improving data collection and data linkage processes to enable a better understanding of client needs and continual assessment of the context to improve service delivery.

Transitioning to this new way of working will be a journey for the whole agency. Over the next two to five years, Communities expects that the contracting activity will have increasingly transform, embed commissioning processes and leverage more strategic value to government.

Communities provides the following in relation to the Committee's terms of reference.

A. The policy frameworks that currently govern public sector contract management in WA

Communities' contract management activities are aligned with the State Supply Commission's (SSC's) *Procurement Planning, Evaluation Reports and Contract Management Plans policy*. Under this policy, Communities:

- develops Contract Management Plans for medium and high-risk contracts with an estimated value of \$5 million and above
- complies with CUA buying rules that require contract management plans if the purchase is above \$5 million
- submits contract management plans and contract variations above \$5 million to the State Tender Review Committee or the Community Services Procurement Review Committee, as applicable. This includes contract variations made to contracts established under a CUA, unless the CUA Buyers Guide says otherwise
- applies the *Delivering Community Services in Partnership Policy 2018* to contracts for community services, which are procured and managed consistent with this policy.

In addition to compliance with the SSC policy, Communities has a number of agency level contract management frameworks and policies including:

- a Procurement Operational Framework which establishes clear guidelines for procurement and contract management activities that align with Communities Strategic Intent and Delegations of Authority
- a Procurement and Contracting of Community Services manual
- a management framework to manage the Disability Services Provider Panel.

B. The extent to which compliance with these frameworks is monitored and reported

SSC Policies and Communities' procurement frameworks and manuals require contract management plans for procurements above \$5 million. Further, Communities refers to the Department of Finance's Supplier Performance

Management framework as a guide for best practice contract and performance management.

The SSC grants a partial exemption to agencies to enable them to arrange the supply and undertake the purchase of goods and services necessary for their operations. A number of terms and conditions are attached to the partial exemption.

One of the conditions is that Communities must undertake an internal audit of its procurement and contract activity to ensure compliance of its supply policies with the partial exemption.

To meet this requirement, SSC audits form part of Communities' annual Internal Audit Plan. Internal Audit findings, as well as Office of the Auditor General findings, are presented to Communities' Audit Committee which allocates responsibility for each recommendation to the relevant Communities business unit. The Committee also tracks the status of all current and previous audit findings and recommendations.

Auditor General reports are tabled in Parliament and any findings and recommendations it makes form part of a subsequent audit to ensure that recommendations are implemented.

In relation to detailed reporting on contracts privacy and commercial-in-confidence considerations govern the extent and nature of information that can be provided.

C. The effectiveness of these frameworks in fostering robust contract management practices and capacity within agencies

A wide range of on-line resources support both the SSC and Communities contracting frameworks. These are tailored to the target audience and are easily accessible to those that require them.

For high risk/value contracts, the standard of contract management is considered appropriate as these have a higher level of compliance and oversight required. For example, these projects require a contract management plan and also assessed by the State Tender Review Committee, or the Community Services Review Committee as appropriate.

For low-medium risk/value contracts, best practice in management is not always achieved. The causes vary from a lack of capacity, resulting in prioritisation of high risk/value contracts, and allocating low risk/value contracts to contract managers with less experience in the principles of contract management and contract design.

It is recognised that the level of contract management expertise is not consistent across all officers that manage contracts. Contract managers within specialised areas generally understand contract management requirements as detailed in their procedures and manuals. For less experienced contract managers, peer support, mentoring and supervision support is provided.

It is a high priority for us to standardise contract management processes and tools across the agency. A functional review is currently underway within Communities with

a focus on the contracting directorate. The outcome of this will ensure that the agencies capacity is optimised to consolidate contract management practices where necessary.

Disability Services Provider Panel

An example of good practice contract management is Communities' open Disability Services Provider Panel. Respondents that are successful in applying to be on the Panel are awarded a Head Agreement to provide National Disability Insurance Scheme-funded services in the service delivery locations described in their application. Communities and Commonwealth policies, procedures and guidelines apply to all Service Providers delivering services to people with disability.

Contract management of service providers aligns with the *Delivering Community Services in Partnership Policy 2018* and a contract management plan exists for every contracted provider for the life of the Head Agreement.

Independent evaluators assess a service provider's compliance with National Standards for Disability Services, usually every three years, or at the discretion of Communities. The assessment report provides information on issues/recommendations that require follow-up through contract management.

D. The processes by which contract management expertise and good practice within individual agencies is identified, developed, and shared across the WA public sector

Communities has representatives on the State Government's Agency Procurement Manager's forum and the Government Community Services Procurement Leaders Council. The Agency Procurement Manager's forum has been established to provide key procurement officers in government agencies with an opportunity to network and to collaborate on issues related to the strategic procurement of goods and services. The Council is the similar forum for engagements under the Delivery Community Services in Partnership policy. These forums are an opportunity to discuss and share procurement and contract management best practice and lessons learned across the sector. Representatives are managers who bring the information back to the agencies and share the lessons learned.

Furthermore, Communities has sitting members on the Department of Finance's Community Services Procurement Review Committee and the State Tenders Review Committee, chaired by Communities' Chief Financial Officer.

These committees review management plans prepared for contracts valued at \$5 million or above. Purchases exceeding \$5 million from a Common Use Arrangement also require a contract management plan. They provide agencies and the Department of Finance with a level of assurance that high value/ high risk projects deliver outcomes in accordance with the spirit and intent of the SSC policies.

Feedback from the two committees is shared across Communities' procurement personnel through information sharing forums.

Within Communities, contract management support material is available on the intranet and the Procurement and Contract Policy and Coordination team run information sessions that cover contract manager roles and responsibilities on an as required basis.

Contract management skills within Communities, like any other skill set, is recognised and developed in individuals through the staff development process (Professional Development Review) conducted annually and followed up during the year.

How are public concerns about transparency and accountability addressed?

The role of the SSC (including the Community Services Procurement Review Committee and State Tenders Review Committee), the Office of the Auditor General and the internal audit function all provide a cross-government oversight and reporting role beyond the accountable agency.

At the agency level, the following procedures are in place to help ensure transparency and accountability:

- An instrument of Delegation, Appointment and Authorisation for *State Supply Commission Act 1991* related procurement is in place.
- Management of conflicts of interest and probity are an ongoing requirement for all contract managers. Contract managers are required to disclose any conflict of interest issues that might arise over the course of the contract.
- Conflicts of interest are also generally managed through human resource guidelines.
- Variations and payments follow documented requirements and applicable Treasurer's instructions.
- Freedom of Information requests are complied with in cases where a public interest threshold is demonstrated.
- Internal complaints management processes are in place to ensure that all public concerns are responded to efficiently.
- All awarded tenders and contract variations over \$50,000 are published on Tenders WA.

E. The processes and instruments available to ensure agencies can effectively allocate and manage commercial and performance risks on major contracts

What commercial levers are available to the State when formulating its contracts to ensure vendors provide the required level of performance and compliance?

Do these levers effectively allocate risk between the State and the parties with whom it contracts?

Communities has a number of governance frameworks in place to ensure accountability and to monitor progress and facilitate informed decision making in relation to managing commercial and performance risk within the agency. There are various Program/Project Boards chaired by Tier 2 management that monitor service delivery effectiveness and value for money.

Within the land development function, Communities operates under a structured project management framework which includes risk mitigation strategies. Governance mechanisms include joint venture boards or management committees that regularly meet to assess and manage market, commercial and project risks and make decisions about risk mitigation.

Commercial risks are assessed by the scale of the project and approvals flow through one of several internal bodies, including the Investment Assessment Panel and the Development Committee. The IAP assesses legal, commercial and transaction risks. The IAP includes technical consultants as well as legal and financial advisors to assist with the assessment of risks.

The Investment Assessment Panel was established by Corporate Executive to provide a forum where the Corporate Executive could meet specifically to discuss in detail the metrics, assumptions, risks and implications for Communities of the financial, legal and transaction structures of significant land and property transactions proposals.

The Development Committee considers property development opportunities above \$5 million or 15 dwellings in scale to determine the strategic fit (the 'what' 'where' and 'why') with Communities' outcomes as well as the 'strategic demand' for the project in the context of other projects in progress.

As part of our procurement processes, tenders and quotation document templates include directives about performance management to staff developing documents or specifications. Contracts clearly define the deliverables and associated timeframes. Contractor performance is measured against appropriately defined key performance measures.

Contract payments are generally subject to the provision of compliance reporting demonstrating provision of service and achievement of outcomes. Payments can be withheld or default provisions considered where there are compliance or service delivery issues. Milestone payments are common for many contracts and, where appropriate, abatements and incentive payments are used.

Are certain levers prone to being under-utilised? If so, why is this the case?

Social impact investment is a worthy consideration and could be an innovative mechanism for funding solutions to complex social problems to generate social and financial returns. Social impact investments would aim to bring together government, philanthropic and mainstream capital, and cross-sector capability to help address social problems.

The potential application of social impact investment in WA aligns closely with the intent and direction provided through the Service Priority Review, particularly the recommendations to strengthen data sharing and improve performance and data performance, and leverage government procurement to both reduce costs and improve outcomes for the community. Payments by results contracts, incentive

payments and social impact bonds are not widely used and are levers that should be explored by central government.

More generally, we understand that contract management is a discipline in its own right.

Whenever issues with contract management arise from poor contract management practices, it can usually be traced to the following reoccurring themes:

- contract management is devolved and treated as a sub set of another job
- staff turnover
- insufficient attention to the contract requirements
- inappropriately addressing a dispute in the prescribed manner at the earliest opportunity
- nuclear or vague scoping of the initial contract and subsequent engagement with contractors.

F. Ways to improve or enhance contract management performance across the sector

Communities, through the intent of the Supporting Communities Policy, intends to break down barriers between government agencies, community organisations and people who are using services.

The Supporting Communities Forum has established a Procurement Reform Working Group and through our participation, we will be looking at options to improve practice around collaboration and co-design as well outcomes-based procurement. This has the potential to enhance any future contract management practice

Furthermore, digitalisation enhancements for the entire contract management lifecycle could increase businesses efficiency and improve internal and third-party collaboration. A joined-up sector approach could go a long way in breaking down silos and offer a consistent solution, where practicable.

In addition, contract management training provided by the Department of Finance could continue to be promoted to enable departments to take full advantage of the opportunity to develop its organisational capability in this area.

Thank you for the opportunity to make a submission.

Yours sincerely

Micheëlle Andrews
Director General

18 March 2019