



Hon Ben Wyatt MLA
Treasurer; Minister for Finance; Aboriginal Affairs; Lands

Your ref: A815666
Our ref: 69-19225

Ms Margaret Quirk MLA
Chair
Joint Standing Committee on the Corruption and Crime Commission
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Ms Quirk

**GOVERNMENT RESPONSE TO THE JOINT STANDING COMMITTEE ON THE
CORRUPTION AND CRIME COMMISSION'S REPORT NO 14 – RED FLAGS...
RED FACES CORRUPTION RISK IN PUBLIC PROCUREMENT IN WESTERN
AUSTRALIA**

Thank you for your letter of 15 May 2020 regarding Report No 14 – *Red Flags...Red Faces Corruption Risk in Public Procurement in Western Australia*.

The Government response to this Report has been prepared and is attached for your reference. The Government response will be tabled in the Legislative Assembly in accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly.

Yours sincerely


Ben Wyatt MLA
MINISTER FOR FINANCE

Att.

11 AUG 2020

Government Response to the Recommendations of the Joint Standing Committee on the Corruption and Crime Commission's Report No 14 - Red Flags...Red Faces Corruption Risk in Public Procurement in Western Australia.

Recommendation 1 - Reforming the procurement framework should remain a priority for the government with firm deadlines set. It should carefully consider recent cases of alleged corruption and allocate the necessary resources to incorporate findings into a workable sector-wide procurement model.

Recommendation 2 - Corruption prevention and detection should be a core aim of the new procurement framework, rather than being an issue addressed *ad hoc* every time the Corruption and Crime Commission uncovers corrupt practice.

Supported

Government is currently undertaking the Enhance Public Sector Procurement Reform (Procurement Reform) project, which aims to consolidate and simplify the State's procurement framework. The Department of Finance (Finance) is leading this project, which was established to address procurement-related reform recommendations from a number of sources including the Special Inquiry into Government Programs and Projects, the Service Priority Review and several CEO Working Groups.

A key deliverable of the project was achieved in June 2020 when Royal Assent was given to the *Procurement Act 2020* (the Act). The new Act will establish a contemporary procurement framework for the Western Australian public sector. This new framework seeks to remedy the fragmentation and complexity of the existing framework.

Chief amongst the initiatives to deliver this framework, is the development of a single set of procurement policies applicable to goods, services, works, community services and certain leases. Following the introduction of the Act, these policies are amongst the first deliverables of the Reform project.

A single set of policies will begin the journey towards making procurement practice more consistent across the sector, however policies alone will not achieve this consistency. Finance has already begun an initiative to address consistency in practice by examining how procurement templates and contractual documents can be made more consistent. In addition, Finance recognises the importance of consistent procurement training and has begun to determine how its existing training offerings for goods, services and community services can be improved; and delivered to those involved in works procurement.

The reform program is also underpinned by a focus on corruption prevention and detection. This is reflected in the:

- audit initiative; and
- ethical procurement initiative.

The audit initiative seeks to improve public sector agency accountability and transparency by focussing on an agency's compliance with the Act for all types of procurement.

The audit initiative lends itself to support procurement outcomes for goods, services and works across the sector by identifying areas of improvement from which, specific training and capability needs can be designed for both practitioners and industry. The initiative also overcomes a limitation of the previous framework where there is no central agency oversight of works procurement conducted by agencies.

The ethical procurement initiative recognises the importance of ensuring the State engages with suppliers who conduct business responsibly. The keystone of the ethical procurement initiative is the delivery of a debarment regime, the first of its kind applicable to goods, services, community services and works in Australia.

Work on the debarment regime is considerably progressed, with the draft regime currently open for public comment until 27 July 2020. A number of important stakeholders were engaged to help shape the draft regime, including representatives from supplier groups, members of the public service, the State Solicitor's Office and representatives from the World Bank.

Finance has recently delivered a number of training courses on how to detect and manage corruption in procurement to the public sector. These courses focus on creating an optimal culture for spotting corruption in procurement; as well as outlining some common indicators of fraud and corruption in procurement. Finance will continue to deliver these courses and will roll them out to suppliers in the near future.

Finance is also helping to enable more proactive identification of fraud and corruption by sharing its procurement data with agencies. Finance encourages agencies to interrogate contract spend through the delivery of a number of interactive, easy-to-use business intelligence 'dashboards'.

More broadly, the Public Sector Commission's (PSC), *Integrity Strategy for WA Public Authorities 2020-2023* (Integrity Strategy) includes activities with a focus on corruption prevention and detection for both the Commission, public authorities and individuals. This is also supported by the Integrity Snapshot Tool, which supports the Integrity Strategy. Further, prevention and detection is being included as a core element in the Integrity Framework guidance, currently being developed by the PSC to assist public authorities.

Recommendation 3 - The Department of Finance, as part of the procurement reform program, should assess public procurement processes in Western Australia against the principles of the Open Contracting Data Standard. Where procurement processes fall short of compliance with those principles, increased compliance (where practicable) should be addressed as a matter of priority. The Minister should report to the Parliament on where compliance could be increased in its response to this report or within six months of the date of tabling of this report.

Supported in part

Where a contract is valued at \$50,000 or more, agencies must publish all contract award details on Tenders WA including:

- the name and address of the agency;
- a description of the goods, services or works procured;

- the award date or contract date;
- the contract value;
- the name of the successful supplier; and
- the procurement method used.

In addition, agencies must publish increases to the awarded contract value on Tenders WA. The threshold for this publication has not yet been determined, however the current State Supply Commission policies for goods and services require agencies to publish these increases when they are valued at \$50,000 or more (individually or cumulatively).

Tenders WA does not currently publish request documents after the tender has closed. Finance will investigate whether it is possible to ensure request documents remain public after contract award. Together with the information above, this will satisfy most of the basic and intermediate level information anticipated by the Open Contracting Data Standard.

The Open Contracting Data Standard sets out not only *what* information should be published, but *how* this information should be published.

Finance appreciates the benefits of a standard format in relation to publication of data, however, at this time, data from Tenders WA is not published in bulk form. The publication of bulk data, including compliance with the Open Contracting Data Standard will be considered when reviewing the procurement systems platforms, including Tenders WA.

<p>Recommendation 4 - The composition, role and function of the State Tender Review Committee should be more clearly delineated by the Department of Finance as a part of its ongoing reform process, taking into account the observations made here.</p>
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Supported

Finance is currently conducting a review of the function of the State Tender Review Committee and the Community Services Procurement Review Committee.

In addition, the draft procurement rules consider peer review of works procurement documentation.

Finance will consider the findings in this report when completing its review.

Recommendation 5 - That the Public Sector Commission undertake a systemic review of all training currently being delivered across government around the areas of procurement, ethical decision making and corruption prevention.

As a result of this review, the Public Sector Commission should report to Government as to a preferred framework for the delivery of training and who is best placed to deliver those components.

Supported in principle

The Government recognise the role of the PSC in exercising its functions under Part 4A and section 45A of the *Corruption, Crime and Misconduct Act 2003* with respect to the prevention and education function. Government also recognise Finance's new role in supporting the development of procurement competency in all types of procurement across the public sector.

The PSC's Integrity Strategy includes activities with a focus on education for the Commission, public authorities and individuals. This includes the development of online materials to assist public authorities and their employees with respect to ethical decision making and corruption prevention. Further, the Integrity Framework guidance being developed by the PSC for public authorities similarly emphasises the need for their integrity frameworks to include a focus on building the ethical knowledge of all their employees and those who do business with them.

The PSC will deliver information about best practice education approaches through existing communication channels, such as an Integrity Bulletin, its Integrity Practitioners' Group, forums and community practice sessions.

The PSC will also consider conducting a review of a sample of public authorities of varying size, function and location in order to examine the integrity training provided (including program materials) and ascertain the quality of approach. The timing of such a review will take into account the procurement reform being introduced to provide agencies with the opportunity to implement and operationalise that reform. Finance will support the PSC with such a review.

Finance already provides training in the conduct of goods and services procurement to the public sector. In addition, Finance has recently added the Identifying and Preventing Corruption in Procurement course to its portfolio of training offerings for the public sector. These courses focus on creating an optimal culture for identifying corruption in procurement; as well as outlining some common indicators of fraud and corruption in procurement. Finance will continue to deliver these courses and will roll them out to suppliers in the near future.

As Finance moves into its role as functional leader in all forms of procurement, public authorities will be engaged to better understand their procurement capability development needs and to identify any existing training service offerings.

Recommendation 6 - The Committee encourages the relevant decision makers to watch the progress of the Commonwealth inquiry closely in order to integrate its findings into the procurement reform process.

Supported in principle

Finance notes that the Commonwealth Inquiry findings are not due until 2 December 2020. Several procurement reform initiatives will have been delivered by this date, and, specifically, work on the audit initiative will be significantly advanced. Finance will assess the feasibility of integrating the findings of the Commonwealth inquiry once known.

Recommendation 7 - The Department of Finance should consider, as part of its review of the state's procurement policy framework, the role played by companies that provide audit and financial services.

Supported

Finance notes the Committee's findings, particularly finding 39 in relation to the procurement of audit and financial services.

Finance notes the release of Treasurer's Instruction 1201, specifically subsection 7, which requires agencies to limit the term of engagement of external auditors.

While the Treasurer's Instruction is a good start, Finance, as owner of the Audit and Financial Services Common Use Arrangement (CUA), undertakes to address this recommendation by providing further guidance and support to agencies procuring from this CUA by:

- amending the order form used by agencies to secure these services to include a requirement for suppliers to disclose any conflicts of interest at the outset of the engagement; and a reminder that the obligation to disclose these conflicts persists for the entire contract period;
- strengthening the guidance used by agencies when procuring from this CUA to specifically include information on conflicts of interest and managing poor supplier performance; and
- proactively seeking feedback from agencies about supplier performance in order to determine if patterns of poor performance can be detected.

Recommendation 8 - All public sector employees with a remit that includes spending public money should be required to maintain a register of interests and associations. This should be in addition to specific declarations of actual or perceived conflicts of interest.

Supported in part

The number of public sector employees with a remit that includes spending public money is significant. For example, approximately 30,000 employees currently have a purchasing card. The administrative burden of this recommendation; the limitations of these registers as identified in the report; and the ease with which financial data can be interrogated to spot anomalies without reference to a register, does not make their use appropriate for all employees with a remit to spend public money.

The PSC is currently reviewing conflict of interest guidelines. This recommendation will be considered as part of this review and a reference to public officers with a remit to spend public money and the risks this creates will be reflected in the revised guidelines. It is anticipated that the guidance will strongly suggest to authorities that they require those who meet a particular risk profile to complete a more rigorous disclosure process, for example, those officers working in positions of trust, such as Chief Financial Officers or those in specific purchasing roles.

Recommendation 9 - That the Premier, as Minister for Public Sector Management, take steps to ensure that public sector authorities are required to have in place a management plan which details how to handle a conflict of interest once it is declared. The management plan should detail clear and appropriate consequences for non-compliance.

Supported

All public sector bodies as defined by the *Public Sector Management Act 1994* (PSM Act) are required to have policies and procedures to deal with and manage conflicts of interest with consequences for non-compliance varying on a case by case basis depending upon the circumstances.

Conflicts of interests (including gifts and benefits) is one of the seven conduct areas that all public sector entities are required to include in their Code of Conduct (Commissioner's Instruction 8).

The Integrity Strategy includes activities with a focus on working in the public interest. The Integrity Snapshot Tool references conflicts of interest as a key integrity risk including the need to develop policies and monitor.

The PSC is currently reviewing conflicts of interest guidelines and will strengthen the messaging regarding the need to make a declaration and documenting the rationale for selecting a particular management strategy once declared. A sample declaration/management form will also accompany the revised guidelines (see recommendation 8).

An 'All in a day's work' campaign aimed at educating public officers, contractors and suppliers, about the misconduct risks associated with gifts and benefits (for example conflicts of interest that may result from the offering and acceptance of gifts, benefits and hospitality) is under development by the PSC with a desired launch to coincide with International Anti-Corruption Day. As part of this campaign the gifts, benefits and hospitality guidelines will be reviewed and re-released by the PSC.

Recommendation 10 - The Premier should direct the Public Sector Commissioner to investigate how directors general and other agency heads could be held to account for the effectiveness of internal controls, the internal audit function and the overall financial management of their agency.

Supported in Principle

The intent of this recommendation is supported, however, a direction to the Public Sector Commissioner is not required as the Commissioner has independent functions and powers that can be exercised.

The Commissioner will consult with the Under Treasurer and the Auditor General to investigate how the current and inherent obligations under the *Financial Management Act 2006*, relevant Treasurer's Instructions and the *Auditor General Act 2006* holds Directors General and other agency heads to account for the effectiveness of internal controls, the internal audit function and the overall financial management of their agency.

In the interim, the Commissioner will also explore the option of including such requirements in the CEO performance agreement framework developed under section 47 of the PSM Act, acknowledging that this only has direct applicability to CEOs appointed under section 45 of the PSM Act.

Recommendation 11 - That the Premier direct the Public Sector Commissioner to monitor implementation of the *Integrity Strategy for WA Public Authorities 2020-2023*. The quality and timeliness of implementation should be made the subject of performance agreements for all directors general. The strategy should be reported on annually to the Parliament.

Supported in principle

The intent of this recommendation is supported however, a direction to the Public Sector Commissioner is not required as the Commissioner has independent functions and powers that can be exercised to monitor the Integrity Strategy.

The PSC intends to report on the Integrity Strategy in the Commission's annual report to Parliament and will consider how to collect information in the future about authorities' implementation of the strategy once they have had time to operationalise it to meet their needs.