

AUSTRALIAN CAPITAL TERRITORY

AUDITOR-GENERAL'S REPORT

GOVERNMENT PROCUREMENT
REPORT NO.6 / 2005

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The roles and responsibilities of the Auditor-General are set out in the *Auditor-General Act 1996*.

The Auditor-General's Office undertakes audits on financial statements of Government agencies, and the whole-of-Government consolidated financial statements.

The Office also conducts performance audits to examine whether a Government agency is carrying out its activities effectively and efficiently, and in compliance with relevant legislation.

The Auditor-General and the Office act independently of the Government, and report the results of the audits directly to the Assembly.

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AUDITOR-GENERAL

Australian Capital Territory



PA04/16

The Speaker
ACT Legislative Assembly
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Mr Speaker

I am pleased to forward to you a Performance Audit Report titled “**Government Procurement**”, conducted under the authority contained in the *Auditor-General Act 1996*.

I would appreciate if you could arrange for the tabling of the Report in the Legislative Assembly pursuant to Section 17(4) of the *Auditor-General Act 1996*.

Yours sincerely

Tu Pham
Auditor-General
15 November 2005

ACT Auditor-General's Office

Performance Audit Report

GOVERNMENT PROCUREMENT

November 2005

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1. REPORT SUMMARY AND AUDIT OPINION

INTRODUCTION

1.1 This report presents the results of a performance audit that reviewed procurement activities across ACT Government agencies, in particular compliance with the *Government Procurement Act 2001* and relevant procurement guidelines, policies and practices.

BACKGROUND

1.2 The *Government Procurement Act 2001* (the Procurement Act) was introduced in May 2001 in response to a report by a Select Committee of the Legislative Assembly, and increasing concerns about a lack of accountability in government procurement processes. The Act provides for the development, implementation, monitoring, and review of policies and practices regarding the process of procurement by ACT Government agencies. The Act made provisions about the procurement of goods and services by agencies and created the Government Procurement Board, with responsibility for the ongoing improvement of procurement practices and purchasing skills in government.

1.3 In 2004-05, ACT public entities purchased in excess of \$1 billion worth of goods, services and works. The Department of Treasury (Treasury) estimates that total expenditure on procurement processes (including contract and project management expenditure) in 2004-05 across the ACT Government is around \$23m, of which around \$5m is incurred by Treasury's central procurement body, ACT Procurement Solutions (ACTPS). In view of the magnitude of these purchases, efficiency in procurement is essential to good financial management. In addition, the purchasing power of the ACT public sector can have a material market impact. Consequently, policy decisions and strategies adopted by ACT public agencies can influence policy directions in the areas of local industry development, environmental management, and social objectives.

1.4 During 2004-05, the Audit Office received requests by Ms Jackie Burke MLA, Mr Bill Stefaniak MLA, and Ms Vicki Dunne MLA, to examine a number of procurement activities, as they were concerned that these procurement activities did not comply with government procurement guidelines and principles. The concerns raised by these MLAs were examined as appropriate during this audit. References are made to Case Studies 4.1, 4.2 and 5.1.

AUDIT OBJECTIVES

1.5 The objective of this Audit was to provide an independent opinion to the Legislative Assembly on whether:

REPORT SUMMARY AND AUDIT OPINION

- government agencies are complying with the *Government Procurement Act 2001* and associated policies and guidelines;
- current procurement processes encourage efficient and effective procurement management, and achieve value for money for the Territory; and
- transparency and accountability goals of the Government are being achieved.

AUDIT APPROACH

1.6 This performance audit is conducted under the authority contained in the *Auditor-General Act 1996* (Section 12 of the Act).

1.7 The audit focused on compliance with legislation, policies, and procedures. The audit did not cover effectiveness of legislation, government contracts, prudence of individual procurement decisions, or management of the contract after execution.

1.8 The audit did not cover the procurement activities made under grant arrangements.

1.9 More than 370 procurement activities (and supporting documentation) from eight ACT Government agencies for 2003-04 and the first six months of 2004-05 were examined in detail during the audit. The audit also included a survey of 31 agencies regarding their procurement arrangements and practices.

1.10 Appendix A provides further details regarding the audit approach, including the audit focus, scope, and methodology.

AUDIT OPINION

1.11 The audit opinions, formed against the audit objectives, are set out below.

Compliance with legislation

Agencies have demonstrated a satisfactory level of compliance with the Government Procurement Act, principles, and guidelines in respect of major procurement activities (i.e. purchases with value greater than \$50,000). However, procurement practices regarding small purchases (under \$50,000) in many agencies are not fully compliant.

Value for money procurement

Audit is not confident that value for money has been fully achieved due to:

- the high level of non-compliance with quotation requirements for procurements with a value under \$50,000;
- a lack of regular monitoring and review of procurement activities at both agency and government levels;

- a lack of whole-of-government and corporate procurement planning for significant purchases; and
- opportunities for savings from whole-of-government and collective procurements not being adequately explored and used by Government and agencies.

Transparency and accountability

Deficiencies were noted in the administration and management of Notifiable and Reportable Contracts by agencies. As a result, it is doubtful that the transparency and accountability goals of the legislation are being achieved in an effective manner.

Opportunities for improvements

There are opportunities to improve the efficiency and effectiveness of government procurement activities through:

- improved compliance with the procurement principles and guidelines in areas such as risk management, documentation, and strategic procurement planning for significant purchases;
- better co-ordination of current procurement functions within agencies and across agencies leading to whole-of-government purchase decisions;
- a stronger accountability framework and better staff training and development; and
- enhancement in the administration and management of Notifiable and Reportable Contracts.

KEY FINDINGS

1.12 The above opinions are supported by the following key findings.

Compliance with Government Procurement Framework

1. Overall, agencies have demonstrated a satisfactory level of compliance with relevant legislation, and the government procurement principles and guidelines in respect of major procurement transactions.
2. However, there were many instances of non-compliance with the thresholds guidelines and lack of written exemption from the chief executive or delegate. For example:
 - in 30% of transactions audited, agencies did not document that the appropriate number of quotes were obtained prior to the procurement activity being undertaken, particularly for procurement less than \$5,000; and
 - in 22% of transactions audited, agencies did not obtain written approval from their chief executive or delegate for departure from

REPORT SUMMARY AND AUDIT OPINION

- the quotation and tender requirements, particularly for procurement between \$5,000 and \$50,000.
3. The high level of non-compliance indicates:
 - weaknesses in agencies' internal controls; and
 - a poor standard of documentation supporting the decision-making process.
 4. These deficiencies raise doubts regarding the extent to which value for money has been achieved, and increase the risk of collusion between staff and suppliers.
 5. The centralised monitoring arrangements within large agencies and at the Government Procurement Board are generally effective. Their review processes, while at times contributing to significant delays, provide confidence that the major procurement activities have complied with the government principles, guidelines and practices and achieved better value for money and greater transparency.
 6. Agencies have generally addressed the major risks associated with the nature of procurement, although there is some evidence that some agency staff might not have appropriate expertise in risk management. For example, some risk management plans submitted to the audited agencies' Approved Procurement Unit (APU) were rejected and required significant amendments before approval by APU.
 7. The documentation of the procurement process was not always complete or kept on file.
 8. A significant number of procurement projects sampled did not document the required insurance details obtained from the contractors.
 9. There is a lack of formal internal mechanism for collecting and providing procurement contract information, particularly procurement of goods, services or works with a value less than \$50,000. For example, of the audited agencies, only the Department of Justice and Community Safety, the Department of Education and Training, and ACTPS maintained an internal contract register or formalised system to record such procurement information.
 10. Not many agencies audited have prepared their annual strategic procurement plan, in line with better practices, to link their procurement objectives to service delivery objectives and identify ways of improving their procurement activities.
 11. Not all key stakeholders fully understand the procurement principles, in particular the 'value for money' concept. It is therefore important to improve communication with the key stakeholders, such as small business enterprises and industry groups, to ensure their awareness of the procurement principles and guidelines.

12. In response to a concern raised by an MLA, the Audit also examined the Pre-qualification System for ACT Government school cleaning contractors, which is managed by the Department of Education and Training. Audit found that the system provides a sound framework to manage the risks associated with the cleaning contractors and hence should prevent failure to comply with the Occupational Health and Safety requirements, or industrial relations obligations, and performance standards. However, the effectiveness of the pre-qualification framework is dependent on the continuous management support from the Department's Central Office to conduct an effective performance review of the cleaning contractors.
- There is scope for improvement in monitoring the compliance of cleaning contracts.
 - The tender evaluation process for pre-qualification of school cleaners was not timely, or efficient.
13. The majority of agencies considered that the current procurement guidelines and policies are:
- generally easy to understand and to apply,
 - applicable to agency's business needs, and
 - adequate and in line with better practices.

However, small agencies tended to consider that these guidelines, policies and circulars are complex and may not suit their business needs.

Efficiency and effectiveness of procurement processes, and value for money

14. The majority of agencies did not have regular monitoring and review processes to ensure that the government procurement guidelines, procedures and better practices are being properly applied.
15. Agencies' internal audit coverage on procurement and other related matters was found to be inadequate, given the significant procurement expense.
16. Agencies did not maintain adequate and reliable procurement information systems to enable effective management of the purchasing function.
17. Agency procurement functions are fragmented and not well coordinated.
18. Procurement is not regularly reviewed against sound performance measures or benchmarks.

19. Approval of expenditure was not always made by appropriate delegated officers.
20. Although most agencies use the services of ACT Procurement Solutions, responsibilities of the affected agencies and performance standards have not been formalised through a service agreement, leading at times to unclear accountability and responsibility.
21. Significant government expenditure is incurred on procurement below the \$50,000 threshold. In many cases, the purchasing function has been given a low priority with responsibilities often undertaken by junior and/or non-specialist staff who may lack the technical skills or experience necessary to ensure value for money is achieved.
22. Agencies generally refer to the policies and guidelines provided by the Government Procurement Board. It is also appropriate for some agencies to consider issuing further detailed agency specific guidance to assist staff in managing the complex procurement activities and projects.

Transparency and accountability

23. There were significant instances of non-compliance with the reporting provisions of the Procurement Act in respect of the Notifiable Contracts and the Reportable Contracts (containing confidentiality clauses). As a result, it is doubtful that the transparency and accountability goals of the legislation are being achieved in an effective manner.
24. With respect to the reporting requirements for the Notifiable Contracts, Audit found that:
 - a significant number of contracts (38%) were not placed on the Notifiable Contracts Register within the 21-day requirement in accordance with the Act;
 - at the time of the audit, there were instances where contracts had not been placed on the Notifiable Contracts Register in accordance with statutory requirements;
 - information recorded on Notifiable Contracts Register contained errors or omissions; and
 - the public text of the contracts is not available when the contracts expired, and subsequently public access was not available. Within a certain time limit, say three years after the expiry of the

contracts, the continued availability of information can improve accountability and transparency.

25. The reporting requirements for contracts containing confidential text (Reportable Contracts) were not being administered effectively. In particular:

- many agencies did not provide the required information to the Auditor-General in accordance with Section 38 of the Government Procurement Act;
- many agencies did not provide the Auditor-General their Reportable Contracts within the 21 days of the contracts being made (an average of 35% of agencies during the last four reporting periods since September 2003); and
- information provided to the Auditor-General was in many cases either incomplete or incorrect.

PROPOSED REFORM OF PROCUREMENT ARRANGEMENTS

1.13 The Treasurer announced in his 2005-06 Budget Speech that the rationalisation of information technology and procurement and contract management would achieve savings in public administration by eliminating duplication and parallel processes. The Government has agreed to the implementation of significant reforms to the provision of procurement services through clustering and centralisation of procurement activities in ACT Procurement Solutions (ACTPS).

1.14 Audit was advised that details are being finalised to facilitate the implementation process, covering issues such as the transfer of agencies' procurement functions, resources and staff to ACTPS and consolidation of procurement activities in ACTPS, and appropriate governance and accountability arrangements.

1.15 Audit understands that the transfer of agencies' procurement functions will be undertaken progressively on a bilateral basis between individual agencies and ACTPS and that the reforms, once fully implemented, are expected to result in:

- an enhanced range of pre-qualification schemes to reduce transaction costs for the Government and a range of industry sectors;
- all pre-existing APUs being consolidated in Treasury's APU (the Department of Education and Training is exempted from this process until 30 June 2007);
- ACTPS assisting agencies in the procurement of goods, services and works with individual value at \$20,000 or greater;
- enhanced accountability arrangements between individual agencies and ACTPS with detailed project responsibility agreements which will specify the relative responsibilities of the agency and ACTPS for particular classes of procurement activity. ACTPS will be fully responsible for the procurement processes and activities in the proposed arrangements;

- ACTPS being responsible for delivering capital work projects on behalf of agencies; and
- streamlining of and enhanced compliance with a range of reporting and public disclosure requirements, with ACTPS, on behalf of individual agencies, being responsible for ensuring compliance with the *Government Procurement Act 2001* and related statutory requirements.

RECOMMENDATIONS AND RESPONSES TO THE REPORT

1.16 The Audit made 14 recommendations to address the audit findings detailed in this report. Audit notes that the proposed procurement reforms currently being implemented by government will address some of the recommendations made in this report.

1.17 In accordance with Section 18 of the *Auditor-General Act 1996*, a final draft of this report was provided to the Chief Executive of the Department of Treasury and the Chair of the Government Procurement Board for an overall response and to each of the agencies that were audited.

Response from the Chief Executive of the Department of Treasury:

I note your principal finding that overall, agencies have demonstrated a satisfactory level of compliance with the Government Procurement Act, principles and guidelines in respect of major procurement processes. I also note your finding that procurement practices (regarding small purchases under \$50,000) in many agencies are not fully compliant.

The Department of Treasury notes that the reforms to Procurement arrangements across ACT Government agencies which are currently being implemented, with the consolidation of procurement activities in Procurement Solutions, will address a significant number of the recommendations detailed in your report. In addition, as part of these reforms, the Government and my department has also identified and is pursuing the opportunities for improvement which you have indicated in your report.

As noted in the responses to each of the recommendations, through the centralisation of procurement responsibilities in my Department, Treasury will have a key role in facilitating enhanced compliance with procurement-related legislative requirements across the ACT public sector.

Response from the Executive Director, Strategic Projects and Implementation of the Chief Minister's Department:

Many of the recommendations made in the Performance Audit Report are consistent with changes that the Government is making to the operations of the procurement process. The Department is continuing to consider ways in which to improve the overall effectiveness of the Government's purchasing arrangements.

Response from the Executive Director, Resource Management of the Department of Education and Training:

In general terms, the Department agrees with all relevant recommendations, and welcome the opportunity that the performance audit offers the Department to review and monitor its procurement practices as part of the process of continuous improvement.

Response from the Chief Executive of ACTION Authority:

The ACTION Authority agrees with the findings of the audit and will continue to work towards an overall improvement of all aspects of procurement activities.

Response from the Executive Director, Corporate Services, Department of Justice and Community Safety

The Department agrees with the findings and recommendations in the whole of government responses.

Response from the Chief Executive ACT Health

ACT Health is of the opinion that Treasury's comments reflect the general view from a whole of government perspective.

1.18 In addition, agencies provide responses to each recommendation as shown below:

Recommendation 1 (Chapter 3)

Agencies should collect and report sufficient and reliable information to assist better procurement decisions and effective management of procurement, at both an agency and whole-of-government level.

Agencies' Response:

Chief Minister's Department, Department of Education and Training, ACTION Authority, Department of Justice and Community Safety, and ACT Health: **Agreed.**

Department of Treasury: **Agreed.**

Treasury notes that in May 2005, in response to a range of issues, the need for more efficient and cost effective procurement arrangements and identified opportunities for achieving enhanced value for money outcomes from procurement activities, the ACT Government decided to reform procurement arrangements across ACT agencies. A key element of the decision is that, once the reforms are fully implemented, procurement activities above \$20,000 will be consolidated in ACT Procurement Solutions. The reforms

that are being implemented include a range of measures to increase the level and quality of procurement related information which is available to individual agency chief executives, ACT Procurement Solutions, the Department of Treasury and the Government. Specific actions include enhancing the functionality of the Central Contracts Register to enable all agencies to use it for recording all contracts, meeting a range of reporting obligations, and enhancing forward procurement planning at agency and whole of Government levels.

The measures will improve the ability across the ACT Government sector to manage not just procurement functions, but also enhance decision making processes to determine what products, services and works are procured and by what methodologies. In addition, the specific measures and broader reforms will assist all relevant agencies to address the majority of the Audit Office's findings and recommendations in this current report on Government Procurement.

Government Procurement Board: **Agreed**.

The Board will work with Procurement Solutions to:

- identify, implement and monitor mechanisms for the collection and analysis of whole of government data related to procurement activities of value \$20,000 or more;*
- identify, consolidate and review available data on procurement activities of value less than \$20,000 with a view to establishing whole of government contracts for the provision of common use items; and*
- identify the cost benefit of reporting activities less than \$20,000 through a central register.*

Department of Urban Services: **Agreed in principle**.

As a result of the [current procurement] reforms, Procurement Solutions is now responsible for all procurement with a value of \$20,000. A threshold of \$20,000 would therefore be appropriate to this recommendation.

Recommendation 2 (Chapter 3)

Agencies should ensure that procurement documentation is complete and properly maintained on file and complies with records management requirements. Development, and use of a checklist of required actions and documentation may assist this process.

Agencies' Response:

Chief Minister's Department, Department of Urban Services, Department of Education and Training, ACTION Authority, Department of Justice and Community Safety, and ACT Health: **Agreed**.

Department of Treasury: **Agreed**.

Treasury notes that ACT Procurement Solutions uses a range of checklists and other documentation which has facilitated its ability to maintain compliance by staff with the requirements of its Quality Management System which is third party certified to ISO 9001:2000. This approach has enabled that group to fully comply, and be able to demonstrate compliance with, the full range of procurement related statutory requirements. With the consolidation of most procurement activities above \$20,000 in Procurement Solutions, this approach will be applied to a much greater proportion of ACT Government procurement activities.

Government Procurement Board: **Agreed**.

The Board will review its guidance material to address and reinforce this recommendation as appropriate.

Recommendation 3 (Chapter 3)

- | | |
|-----|--|
| (a) | The Department of Treasury should develop and implement a strategic approach to co-ordinating procurement through procurement planning at the whole-of-government level. |
| (b) | Agencies should co-ordinate their purchasing activities across various business units. |

Agencies' Response:

Chief Minister's Department, Department of Education and Training, ACTION Authority, Department of Justice and Community Safety, and ACT Health: **Agreed**.

Department of Treasury: **Agreed in principle**.

Treasury notes that as a key element of the reforms that are being implemented, ACT Procurement Solutions, a Division of the Department of Treasury, is identifying and pursuing opportunities for enhanced coordination of procurement activities for a wide range of goods, services and works. This strategic approach will be undertaken in conjunction with other agencies and facilitate enhanced planning of what is to be procured, under what terms and conditions, the relevant volumes, the appropriate timeframes for procurement activities and product or service supply and the methodologies that are to be utilised for the particular procurements. Treasury recognises that this enhanced procurement planning will result in more effective approaches to individual market sectors, increased aggregation of the Territory's purchasing power where appropriate, lower transaction costs for the Government and suppliers, greater certainty about Territory procurement activities for suppliers and enhanced value for money outcomes from tender processes.

REPORT SUMMARY AND AUDIT OPINION

Treasury also notes that decisions on what particular products or services are to be procured and over what timeframes, are the responsibility of individual agencies. To the extent that agencies have different priorities and urgent requirements, this may constrain the Territory's ability to fully coordinate procurement planning at a whole of Government level.

Government Procurement Board: **Agreed**.

Refer response to Recommendation 1.

Department of Urban Services: Recommendation 3 (b) **Agreed**.

The centralisation of procurement over \$20,000 in Procurement Solutions should improve performance in this area.

Recommendation 4 (Chapter 3)

Agencies should improve their internal control system to ensure that:

- (a) small purchases (under \$50,000) are processed in accordance with quotation requirements, and
- (b) written approval from the chief executive or delegate for departure from the quotation and tender requirements is obtained prior to procurement.

Agencies' Response:

Chief Minister's Department, Department of Urban Services, Department of Education and Training, ACTION Authority, Department of Justice and Community Safety, and ACT Health: **Agreed**.

Department of Treasury: **Agreed**.

Treasury notes that following full implementation of the procurement reforms referred to above, Procurement Solutions' involvement in procurement activities above \$20,000 will contribute to substantially increased compliance with the specified requirements. The increased interaction between Procurement Solutions staff and those of other agencies will also help increase awareness of the full range of procurement requirements, particularly the requirements of the Quotation and Tender Thresholds Guideline.

Government Procurement Board: **Agreed**.

The Board will review its guidance material to address and reinforce this recommendation as appropriate.

Recommendation 5 (Chapter 3)

Agencies should collect procurement data for management reporting purposes; particularly data related to contracts under \$50,000 in value. A simple central contracts register or similar could provide a range of benefits, such as meeting various reporting requirements, and providing reliable management information.

Agencies' Response:

Chief Minister's Department, Department of Urban Services, ACTION Authority, Department of Justice and Community Safety, and ACT Health: **Agreed**.

Department of Treasury: **Agreed**.

As noted in response to recommendation 1 above, enhancements are being implemented by Procurement Solutions to the functionality of the Central Contracts Register to enable its use for a greater range of management reporting purposes.

Treasury notes that a number of agencies use other systems for recording contract information below the \$50,000 public reporting threshold. Above that level, as noted elsewhere in the Audit Office report, there is a statutory requirement to use the Central Contracts Register. Whole of government reporting and procurement planning would be facilitated by all agencies using a common system for contract related data.

Treasury, in conjunction with other agencies, intends exploring the scope for establishing effective linkages between the Central Contracts Register and agency financial systems to reduce the costs of complying with a range of current reporting requirements and to improve the availability of expenditure information for procurement planning purposes.

Government Procurement Board: **Agreed**.

Refer response to Recommendation 1.

Department of Education and Training: **Agreed**.

This has been standard practice in the Department for some times as noted elsewhere in the Report (paragraph 1.12 clause 9 and paragraph 3.66).

Recommendation 6 (Chapter 4)

In relation to pre-qualification of school cleaning contractors, the Department of Education and Training should:

- (a) ensure the timely and efficient evaluation of supplier applications;

- (b) routinely monitor and record suppliers' performance assessments using, where appropriate, an electronic database easily accessible to all staff involved in managing the suppliers' performance;
- (c) consider the benefits of extending the Department's performance audit coverage to include suppliers' obligations under the Ethical Suppliers circular as part of its annual compliance audit program; and
- (d) revise and update its procedures manual to reflect the current policy and procedures.

Agencies' Response:

Department of Treasury:

Whilst this recommendation is primarily a matter for the Department of Education and Training (DET), Treasury notes that Procurement Solutions and DET have been having a number of discussions about the administration and future development of the school cleaning prequalification scheme.

Government Procurement Board:

This recommendation does not directly involve the Board. However, the Chair will liaise with both the Department of Education and Training and Procurement Solutions to identify any process weaknesses that may fall within the ambit of the Board in relation to the matters raised in the Recommendation.

Department of Education and Training: **Agreed.**

The Department is currently working towards the implementation of a prequalification system that will operate on a continuous intake basis. This will ensure that new contractors will be able to apply at any time for prequalification and that the process will be streamlined to minimise time-delays in assessment. The procedures manual will be updated when this system is finalised.

The Department will give consideration to the development of a system that records contractor performance, and expanding its supplier audit program as recommended.

Recommendation 7 (Chapter 4)

The Government Procurement Board should provide further guidance on practical application of some complex procurement methods and processes, for example the ethical supplier principle, and select tender process.

Agencies' Response:

Chief Minister's Department, Department of Urban Services, Department of Education and Training, ACTION Authority, Department of Justice and Community Safety, and ACT Health: **Agreed**.

Department of Treasury: **Agreed**.

Treasury, through the Procurement Policy Unit in Procurement Solutions, will work with the Government Procurement Board to identify what further guidance may be necessary for agencies. Treasury notes that the procurement reforms referred to in response to a number of recommendations above, will greatly enhance the ability of ACT Government agencies to participate in complex procurement processes and fully comply with the full range of procurement principles and associated statutory requirements.

Government Procurement Board: **Agreed**.

The Board will review its guidance material to address and reinforce this recommendation as appropriate.

Recommendation 8 (Chapter 5)

Agencies should:

- (a) establish performance measures for reporting on their procurement activities; and
- (b) regularly monitor and report to senior management the performance of procurement activities.

Agencies' Response:

Chief Minister's Department, ACTION Authority, Department of Justice and Community Safety, and ACT Health: **Agreed**.

Department of Treasury: **Agreed**.

Treasury notes that appropriate performance measures are being developed as a key element of the governance and accountability arrangements for the enhanced role of Procurement Solutions in ACT Government procurement activities. Procurement Solution's performance will be monitored by a committee of agency chief executives. A number of the performance measures should also be applicable to the lower value procurement activities to be undertaken by individual agencies.

Government Procurement Board:

This is a matter for agencies. However, the intent of Recommendation 1 may address this Recommendation.

Department of Urban Services: **Agreed in principle.**

Any measures and reporting put in place by Urban Services will be consistent with the \$20,000 limit on the procurement the Department now undertakes.

Department of Education and Training: **Agreed.**

Consultation with the Department of Treasury and the Government Procurement Board to develop a standard set of performance measures and systems for reporting across government would be desirable.

Recommendation 9 (Chapter 5)

The Board should encourage agencies planning to undertake significant procurement activities (unique, high value, or high risk) to liaise with the Board regarding an appropriate procurement strategy at the earliest possible time after confirmation of funding, to ensure timely and efficient completion of the procurement process.

Agencies' Response:

Department of Treasury: **Agreed.**

Treasury notes that in future Procurement Solutions will have a key role in the planning and conduct of all such procurement activities. In this context, Procurement Solutions will generally be a participant in the recommended discussions. This arrangement will also allow the Board's views and advice to be efficiently applied to a broader range of individual projects, thereby contributing to enhanced performance across the board, not just in relation to high value or high risk projects.

Government Procurement Board: **Agreed.**

The Board is fully receptive to any agency seeking to discuss a procurement strategy prior to completing a procurement plan. The Board has met with many agencies undertaking significant projects in the past and will continue to do so.

The Board will review its guidance material to reinforce the option for an agency to approach the Board for advice in relation to appropriate procurement strategies for significant projects, and will address the need for agencies to complete tender process, once commenced, in a timely manner.

Recommendation 10 (Chapter 5)

Agencies should conduct regular internal audits of procurement functions and performance. Internal audits should also assess the efficiency and effectiveness of procurement activities and whether value for money has been achieved, and evaluate overall agency procurement performance, in addition to compliance with the procurement legislation and guidelines.

Agencies' Response:

Chief Minister's Department, Department of Education and Training, ACTION Authority, Department of Justice and Community Safety, and ACT Health: **Agreed.**

Department of Treasury: **Agreed in part.**

Treasury supports the recommendation for regular internal audits of the efficiency and effectiveness of procurement activities, of overall agency procurement performance and of compliance with legislation and statutory guidelines. Treasury notes that a number of agencies already regularly conduct internal audits of procurement related matters.

Treasury notes, however, the difficulties in using internal audit processes to determine whether value for money has been achieved in a particular procurement. Internal audits usually consider compliance or otherwise with particular processes and risk issues. Considerations of whether or not value for money has been achieved will be fundamentally influenced by changes in technology, market conditions and policy and program priorities in the period between when the procurement activity occurred and the internal audit was conducted. It may be difficult to properly account for all of these factors in an internal audit process, and alternative review processes may be more effective.

Government Procurement Board: **Agreed.**

This is a matter for agencies. However, the Chair agrees with the Recommendation. The Board has encouraged agencies to include audit of the procurement function in Audit Programs and provide advice to the Board on outcomes. The Board will reinforce the intent of the Recommendation as appropriate.

Department of Urban Services: **Agreed.**

In recent years Urban Services has conducted a number of internal audits of procurement activities. The centralisation of procurement activity over \$20,000 in ACT Procurement Solutions will lessen the requirement for such audits.

Recommendation 11 (Chapter 5)

Agencies should ensure staff are fully aware of their delegated authority before authorisation of procurement expenditure.

Agencies' Response:

Department of Treasury, Chief Minister's Department, Department of Education and Training, ACTION Authority, Department of Justice and Community Safety, and ACT Health: **Agreed.**

Department of Urban Services: **Agreed.**

Following a major reorganisation of the Department, Urban Services is currently reviewing all financial delegations.

Recommendation 12 (Chapter 5)

A service level agreement, or similar statement of responsibilities, should be formalised between ACT Procurement Solutions and agencies to achieve efficiency and accountability.

Agencies' Response:

Department of Treasury, Chief Minister's Department, Department of Education and Training, ACTION Authority, Department of Justice and Community Safety, and ACT Health: **Agreed.**

Department of Treasury: **Agreed.**

Detailed statements of responsibilities between Procurement Solutions and individual agencies are a key element of the governance and accountability arrangements currently being implemented under the procurement reforms referred to above.

Government Procurement Board: **Agreed.**

The Board agrees that there should be clarity as to the roles and responsibilities of both sides of this relationship, i.e. Procurement Solutions and agencies. However, this is a matter for Procurement Solutions and agencies to address.

Department of Urban Services: **Agreed.**

Following the implementation of the procurement reforms Urban Services is currently negotiating an agreement with ACT Procurement Solutions.

Recommendation 13 (Chapter 5)

Where appropriate, agencies should issue agency-specific guidance to supplement the procurement guidelines and circulars issued by the Government Procurement Board, and ensure such guidance remains complete and up-to-date.

Agencies' Response:

Chief Minister's Department, Department of Education and Training, ACTION Authority, Department of Justice and Community Safety, and ACT Health: **Agreed.**

Department of Treasury: **Agreed.**

Noting that the requirement for such agency specific guidance may diminish following the full implementation of the current procurement reforms.

Government Procurement Board: **Agreed.**

This is a matter for agencies. The Board would have no objection to agencies developing specific detailed guidance, based on a risk management assessment of agency need, and provided such information did not cause confusion at the agency level in relation to Government Policy and directions as contained in such documents as Procurement Circulars and Chief Executive Financial Instructions.

Department of Urban Services: **Agreed in principle.**

The implementation of the procurement reforms has significantly simplified the procurement tasks undertaken by Urban Services

Recommendation 14 (Chapter 6)

In the context of its forthcoming review of the operations of the Government Procurement Act, the Department of Treasury should consider whether the current reporting requirements for Notifiable and Reportable Contracts are an effective means of achieving transparency and accountability in procurement.

Agencies' Response:

Department of Treasury: **Agreed.**

Government Procurement Board: **Agreed.**

This is a matter for the Department of Treasury. However, the Chair agrees that the current reporting requirements are confusing and will support actions to address this recommendation during the review of the operation of the Government Procurement Act 2001, which is to be conducted in 2006.

2. THE GOVERNMENT PROCUREMENT FRAMEWORK

INTRODUCTION

2.1 This Chapter outlines the legislative and policy framework underpinning the Government procurement principles and practices implemented in recent years.

BACKGROUND

2.2 Prior to self-government in 1989, the policies, principles and practices guiding ACT public sector procurement activities were based on the Commonwealth Purchasing Procedures.

2.3 In 1991, the ACT Purchasing Manual was issued as supplementary directions under the Commonwealth Finance Regulations. The Manual was later replaced in 1994 by the ACT Purchasing Policy and Principles.

2.4 The Government implemented finance reform with the introduction of the *Financial Management Act 1996*. Inherent in the Government's reform were the principles that all authority and accountability for an agency rested with the agency's chief executive. Under decentralisation and devolution processes, chief executives were responsible for establishing internal policy and guidelines to govern their agencies' activities, including procurement.

2.5 In 1999, the Legislative Assembly resolved to appoint a Select Committee to inquire and report on government contracting and procurement processes. The Committee's report was tabled in August 2000¹. The Report made 27 recommendations to strengthen and improve consistency in procurement across the ACT public sector, and to assist Territory entities to achieve the Government's required purchasing policy outcomes.

2.6 In June 2000, the ACT Government decided to introduce procurement reforms as a response to political and public perceptions of decreased accountability in procurement, and established a Government Procurement Board to facilitate a 'whole of government' implementation of procurement reforms.

2.7 The interim Procurement Board was established in December 2000 and the government procurement legislation was drafted in 2001 to implement the procurement reforms.

¹ Select Committee on Government Contracting and Procurement Processes tabled a report titled 'Report of government contracting and procurement processes in the Australian Capital Territory'.

CURRENT LEGISLATIVE AND POLICY FRAMEWORK

Procurement Legislation

2.8 The *Government Procurement Act 2001* (the Procurement Act) was passed in the Legislative Assembly in May 2001. The Act created the Government Procurement Board, which, among other things, is responsible for developing and monitoring implementation of procurement policies and practices in government agencies. The Minister for the purposes of the Act is the Treasurer.

2.9 The Procurement Act was amended in July 2003 to incorporate the provisions of the *Public Access to Government Contracts Act 2000* and the *Government Contractual Debts (Interests) Act 1994* into a single procurement-specific legislation. The Procurement Act retains the intention of the former legislation to provide for greater transparency and accountability of public expenditure by making government contracts available to the public. The amendment of the legislation also included a requirement for a register of Notifiable Contracts. This is discussed in Chapter 6.

2.10 All Territory entities, except those established as corporations under the *Corporations Act 2001 (Commonwealth)*, the University of Canberra and the University of Canberra College Pty Limited, are required to comply with the provisions of the procurement legislation.

Government Procurement Board

2.11 The Government Procurement Board (the Board), which is chaired by a public employee, consists of seven part-time members, three of whom are from the private sector.

2.12 The functions of the Board are to:

- develop, implement, monitor and review policies and practices regarding the process of procurement;
- establish an accreditation system for the procurement and disposal activities;
- develop and make guidelines;
- monitor the procurement and disposal activities;
- give advice to agencies on procurement and disposal issues;
- review procurement and disposal activities in accordance with the procurement guidelines;
- assist in the development of training and development courses and activities relevant to procurement; and

THE GOVERNMENT PROCUREMENT FRAMEWORK

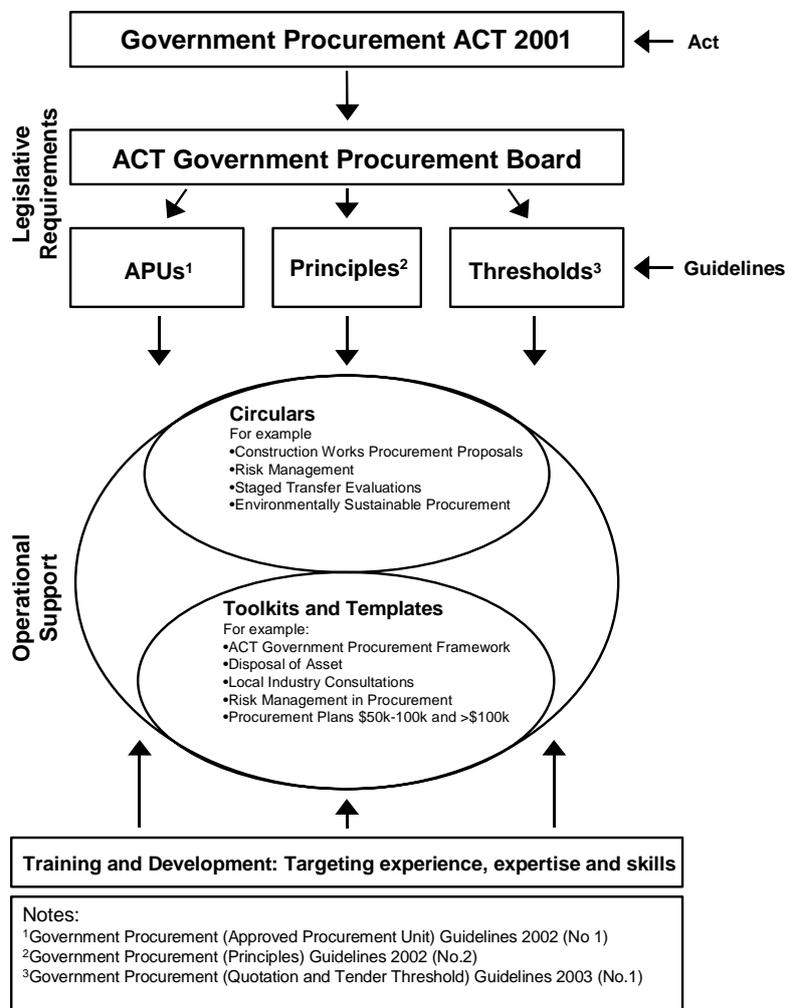
- advise the Minister on any issues relating to agencies' procurement and disposal activities or the operation of the Act².

2.13 A procurement guideline issued by the Board is a disallowable instrument.

Procurement Policy Framework

2.14 The Board has endorsed a policy framework for the dissemination of procurement advice and directions. The Procurement Policy Framework is illustrated in Diagram 2.1.

Diagram 2.1: The procurement policy framework



² Section 6 of the *Government Procurement Act 2001*.

2.15 The policy framework comprises the Procurement Act and guidelines issued as disallowable instruments. Circulars linked to the guidelines further define application at an operational level. Toolkits provide relevant information about the application of the guidelines. Templates, or pro-forma documents, specifically detail the form of working documents, such as procurement plans and contract management plans.

2.16 The framework is underpinned by procurement training.

2.17 The Territory's Procurement Policy Framework is similar to the State Purchasing Policy of other jurisdictions, such as New South Wales, Victoria and Queensland³.

2.18 Further details are available from the 'Buyers and Sellers Information Service' website (maintained by Department of Treasury - ACT Procurement Solutions at www.basis.act.gov.au).

Procurement Guidelines

2.19 The Board has issued three procurement guidelines:

- (i) *Government Procurement (Approved Procurement Units) Guideline 2002 (No. 1)*;
- (ii) *Government Procurement (Principles) Guideline 2002 (No. 2)*; and
- (iii) *Government Procurement (Quotation and Tender Thresholds) Guideline 2003 (No. 1)*.

Approved Procurement Units

2.20 The *Government Procurement (Approved Procurement Units) Guideline 2002* establishes the Procurement Accreditation System for accreditation of officers responsible for procurement activities. The Guideline requires each Territory entity (unless exempted by the Board) to have an Approved Procurement Unit (APU), which examines all proposals for procurement of goods, services or works exceeding a value of \$50,000.

2.21 The Board endorses the composition of an entity's proposed APU subject to assessment of the competencies and capabilities of APU members in accordance with the Australian National Training Authority (ANTA) and the Public Service Education and Training Australia (PSETA). The level of review and approval by an entity's APU is dependent on the level of competency that the entity staff have been authorised to, by PSETA. There are three levels of APU:

³ New South Wales Government Procurement Policy July 2004 <www.Treasury.nsw.gov.au>, Victoria Government Purchasing Board: State Purchase Contracts Policy <www.vgpb.gov.au>, and Queensland State Purchasing Policy <www.qgm.qld.gov.au>.

THE GOVERNMENT PROCUREMENT FRAMEWORK

- Level 1 - \$50,000 to \$250,000;
- Level 2 - \$250,000 to \$1 million; and
- Level 3 - over \$1 million.

2.22 However, an entity's APU is required to refer procurement projects exceeding \$1 million or those having extreme levels of risks to the Government Procurement Board.

2.23 An entity may choose, with approval of the Board, to use an APU in another Territory entity rather than create their own.

2.24 In 2004-05, ten agencies have their own Approved Procurement Unit (APU). The following table summarises the current level of agency APU and the number of APU members.

Table 2.1: APU level and number of APU members by agency

Name of Agencies	APU Level	No of Members
ACT Legal Aid Office	1	4
ACT Planning and Land Authority	1	5
Canberra Institute of Technology	2	8
ACT Health	3	10
The Canberra Hospital	3	23
Department of Disability, Housing and Community Services	3	8
Department of Education and Training	3	9
Department of Urban Services	3	7
Department of Treasury	3	28
Land Development Agency	3	8
Total number of APU members		110

2.25 The APU in the Department of Justice and Community Safety (JACS) ceased operation during 2004-05. Due to its small volume of procurement activity, JACS determined that the cost of ensuring availability of an adequate number of skilled and knowledgeable APU members was unnecessary. JACS and also many other agencies who responded to the audit survey, use Procurement Solutions as their APU.

2.26 The level of accreditation of APUs has not changed since 2003-04. However, the number of APU members has dropped from 125 in 2003-04 to 110 in 2004-05, a decrease of 12%. This may reflect the decline in availability of suitably skilled procurement practitioners.

Procurement Principles

2.27 Under the Procurement Act, ACT Government agencies' chief executives are responsible for ensuring that all facets of agency procurement activity comply with the Act. The Act also requires agencies to comply with the Procurement Guidelines issued by the Government Procurement Board.

2.28 The procurement guidelines⁴ include the following principles:

- procurement must demonstrate value for money;
- procurement must ensure open and effective competition;
- government agencies must comply with the highest standards of probity and ethical behaviour;
- procurement activities must consider environmental sustainability;
- government agencies must give consideration to maximising opportunities for local industry development;
- government agencies must implement sound risk management strategies in procurement;
- government agencies must ensure the requirements of the ethical supplier principle regarding the employment and industrial relations obligations of suppliers be applied in relation to tendering and contracting with suppliers of prescribed works or services; and
- government agencies should, as far as practicable, consider open source software.

Risk Management

2.29 The government procurement framework requires agencies to apply effective risk management techniques when undertaking procurement. In this context, risk is the chance of an event or circumstance happening that will have an impact on agencies' procurement objectives.

2.30 In the procurement of goods, services or works, agencies must:

- carry out an identification, analysis and evaluation of likely risks; and
- implement sound risk management strategies⁵.

2.31 Agencies must use the current Australian/New Zealand Standard (AS/NZS 4360:2004) in preparing their risk management plans when making their procurement proposals.⁶

⁴ The *Government Procurement (Principles) Guidelines 2002*, as amended in August 2004.

⁵ Clause 12 of the *Government Procurement (Principles) Guideline 2002 (No. 2)*.

⁶ Procurement Circular 2002/02 *Risk Management*.

2.32 Risk management involves the systematic application of management policies, procedures, and practices to the tasks of establishing the context, analysing, evaluating, treating, monitoring, and communicating risk. Agencies should identify options to reduce or control the likelihood of an event occurring and identify procedures to mitigate or control the consequences of the event.

Guidance and Training

2.33 The Government Procurement Board has issued a range of circulars and toolkits to assist agencies to comply with the guidelines, and to provide best practice advice in procurement activities. At the time of reporting, the Board has issued twenty-seven (27) circulars. These circulars are published on the 'BASIS' website and the Board's website⁷.

2.34 The Board has also developed a number of templates and toolkits to accompany the procurement guidelines, and encourage consistency in application. These circulars, templates, and toolkits are subject to regular review by the Board.

2.35 In addition to policy information sessions conducted by the Procurement Policy Manager of Treasury, the Board has also held various forums with key target groups to communicate issues and gather information to improve process or feedback on procurement performance.

2.36 The Board also monitors the training framework provided by agencies to their staff and the delivery of the training consistent with the requirements of the legislation. Competency-based procurement training is accredited to Australian National Training Authority and Public Service Education and Training Australia Inc standards (PSETA). Several training organisations have been pre-qualified by Treasury for delivery of training to ACT entities.

⁷ Refer ACT Government Procurement Board website <www.procurementboard.act.gov.au>

3. COMPLIANCE WITH PROCUREMENT LEGISLATION

INTRODUCTION

3.1 This chapter presents the audit findings arising from the review of the procurement activities.

KEY FINDINGS

- Overall, agencies have demonstrated a satisfactory level of compliance with relevant legislation, and the government procurement principles and guidelines in respect of major procurement transactions.
- However, there were many instances of non-compliance with the thresholds guidelines and lack of written exemption from the chief executive or delegate. For example:
 - in 30% of transactions audited, agencies did not document that the appropriate number of quotes were obtained prior to the procurement activity being undertaken, particularly for procurement less than \$5,000; and
 - in 22% of transactions audited agencies did not obtain written approval from their chief executive or delegate for departure from the quotation and tender requirements, particularly for procurement between \$5,000 and \$50,000.
- The high level of non-compliance indicates:
 - weaknesses in agencies' internal controls; and
 - a poor standard of documentation supporting the decision-making process.
- These deficiencies raise doubts regarding the extent to which value for money has been achieved, and increase the risk of collusion between staff and suppliers.
- The centralised monitoring arrangements within large agencies and at the Government Procurement Board are generally effective. Their review processes, while at times contributing to significant delays, provides confidence that the major procurement activities have complied with the government principles, guidelines and practices and achieved better value for money and greater transparency.
- Agencies have generally addressed the major risks associated with the nature of procurement, although there is some evidence that agency staff might not have appropriate expertise in risk management. For example, some risk management plans submitted to the audited agencies' Approved Procurement Unit (APU) were rejected and required significant amendments before approval by APU.

- The documentation of the procurement process was not always complete or kept on file.
- A significant number of procurement projects sampled did not document the required insurance details obtained from the contractors.
- There is a lack of formal internal mechanism for collecting and providing procurement contract information, particular procurement of goods, services or works with a value less than \$50,000. For example, of the audited agencies, only the Department of Justice and Community Safety, the Department of Education and Training, and ACTPS maintained internal contract register or formalised system to record such procurement information.
- Not many agencies audited have prepared their annual strategic procurement plan, in line with better practices, to link their procurement objectives to service delivery objectives and identify ways of improving their procurement activities.

EXPENDITURE ON GOODS, SERVICES, AND WORKS

Estimates of Total Procurement Expenditure by the Board

3.2 The Government Procurement Board (the Board) collects information from Territory public entities regarding their procurement activities through an Annual Compliance Report. This report summarises the total number and value of contracts or purchases entered into during the year, broken down into value groups (\$50,000 to \$250,000, \$250,000 to \$1 million, and greater than \$1 million), as well as categories of goods and services (including community service purchases, grants and consultancies) and works. The data provided by agencies is consolidated and analysed in the Board's Annual Report.

3.3 The Board notes that this information is indicative only, since the Board did not, for 2004-05, require all entities to report (several small entities, which undertake little, if any, procurement activity exceeding a value of \$50,000, were exempted from reporting). Further, the Board notes that mechanisms to collect this data are not coordinated. This means the information is not fully reliable.

3.4 Nevertheless, the Board indicated that the Territory budgeted around \$1.2 billion for the acquisition of goods, services and works in any one year.⁸

3.5 During 2004-05, APUs advised the Board that 693 procurement proposals (up from the 595 reported in 2003-04) with a value exceeding \$50,000 were considered, with a total estimated consideration of \$789.7 million (\$675.5 million in 2003-04). APUs referred 99 proposals (\$655.9 million) to the Board for consideration in accordance with the APU Guideline requirements.

⁸ Refer 2004-05 Annual Report of ACT Government Procurement Board p. 40.

Audit Procurement Survey

3.6 Given the Board's concerns regarding the reliability of procurement data, Audit sought to ascertain agencies' procurement activities, through a procurement survey. Audit requested all agencies to provide total number and the amount of procurement transactions for purchases less than \$50,000 and greater than \$50,000 respectively processed during 2002-03 and 2003-04.

3.7 Agencies reported to Audit 657 transactions over \$50,000, totalling \$412.5m during 2003-04.

3.8 Audit also notes that:

- fifteen agencies surveyed (49%) did not have readily available data for contract purchases under \$50,000, or could only provide partial data; and
- four agencies (13%) did not provide any data for purchases greater than \$50,000.

3.9 The differences between information collected from agencies by the Board and that collected by Audit illustrates the need for reliable information, on both an agency and whole-of-government level, to enable effective management of the purchasing function.

3.10 Audit considers that relevant management information, such as the value of purchases by various categories and thresholds and the number of procurement transactions, would assist senior management of agencies, the Department of Treasury, and the Government Procurement Board, in assessing purchasing performance, and ensure that resource allocations and administrative practices adopted are appropriate. This may require Treasury or the Board to develop appropriate definitions of procurement activities to ensure consistency in the information collected by agencies.

3.11 Given the large number of transactions conducted in agencies it is impractical to collect information on all procurement activities, regardless of the value. However, Audit considers there is a need to determine an appropriate threshold level for collection of information, which should be determined by Treasury after consultation with agencies.

Recommendation 1

Agencies should collect and report sufficient and reliable information to assist better procurement decisions and effective management of procurement, at both an agency and whole-of-government level.

Materiality of Government Purchases

3.12 Although the consolidated cost of goods and services purchased by all Territory public sector agencies is not readily available, the item 'Supplies and

COMPLIANCE WITH PROCUREMENT LEGISLATION

Services' in the Territory's Consolidated Operating Statement, which usually relates to procurement of goods and services, represents the second largest public sector expenditure after salaries and related costs.

3.13 In addition to procurement of goods and services (that is expenditure on supplies and service), agencies may also be funded to undertake capital works programs, and for payments of grants and purchased services. Some grants and purchased services may be defined as procurement activities, if grant recipients are required to provide goods, service, or works. In these circumstances, agencies have to follow relevant procurement legislation, principles and processes in making their procurement. It is estimated that, as shown in Table 3.1, total expenditure on goods, services and works amounted to approximately \$1.2 billion in 2004-05.

Table 3.1: Territory's Estimated Expenditure on Goods, Services and Works

Item	2002-03 \$million	2003-04 \$million	2004-05 \$million
Supplies and Services	484	572	646
Grants and Purchased Services	339	368	401
Capital Work Expenditure	146	192	129
TOTAL	969	1,132	1,175

Sources: Audited Consolidated Statement of Financial Performance 2003-04 and 2004-05

3.14 Given the magnitude of these costs, there exists high potential for collective purchasing to maximise value for money and other benefits to the Territory. Further, the purchasing power of the ACT public sector can have a material market impact. Consequently, the policy decisions and strategies of ACT public agencies can influence policy directions in the areas of local industry development, environmental management, and social objectives.

THE PROCUREMENT PROCESS

Purchasing Quotation and Tender Thresholds

3.15 The *Government Procurement (Quotation and Tender Thresholds) Guideline 2003 (No. 1)* (the Procurement Thresholds Guideline) specifies the levels at which quotations and tenders must be sought and the minimum number of quotations that must be sought from local suppliers at different threshold levels. Table 3.2 summarises the government purchasing threshold framework with which agencies need to comply:

Table 3.2: Quotation Thresholds

Clause	Threshold (Estimated Value)	Quotation Requirements from Local Suppliers
Procurement of goods or services		
7	Under \$5,000	Seek at least one oral quotation
8	\$5,000 to under \$100,000	Seek at least 3 written quotations
Procurement of construction works		
9	Under \$20,000	Seek at least one oral quotation
10	\$20,000 to under \$100,000	Seek at least 3 written quotations
Procurement of goods, services or works		
11	\$100,000 or more	Must invite public tenders

Exemption Requirements

3.16 Section 12 of the Procurement Thresholds Guideline allows the chief executive or delegate of an entity to exempt, in writing, a particular procurement activity from complying with either the quotation or tender threshold requirements. The chief executive or delegate may exempt the entity only if satisfied, on reasonable grounds, that the benefit in giving the exemption outweighs the benefit in requiring compliance with the Procurement Thresholds Guideline and the applicable provisions of the government principles⁹.

3.17 Exemption must be made before submitting a procurement proposal to the agency APU for examination.¹⁰

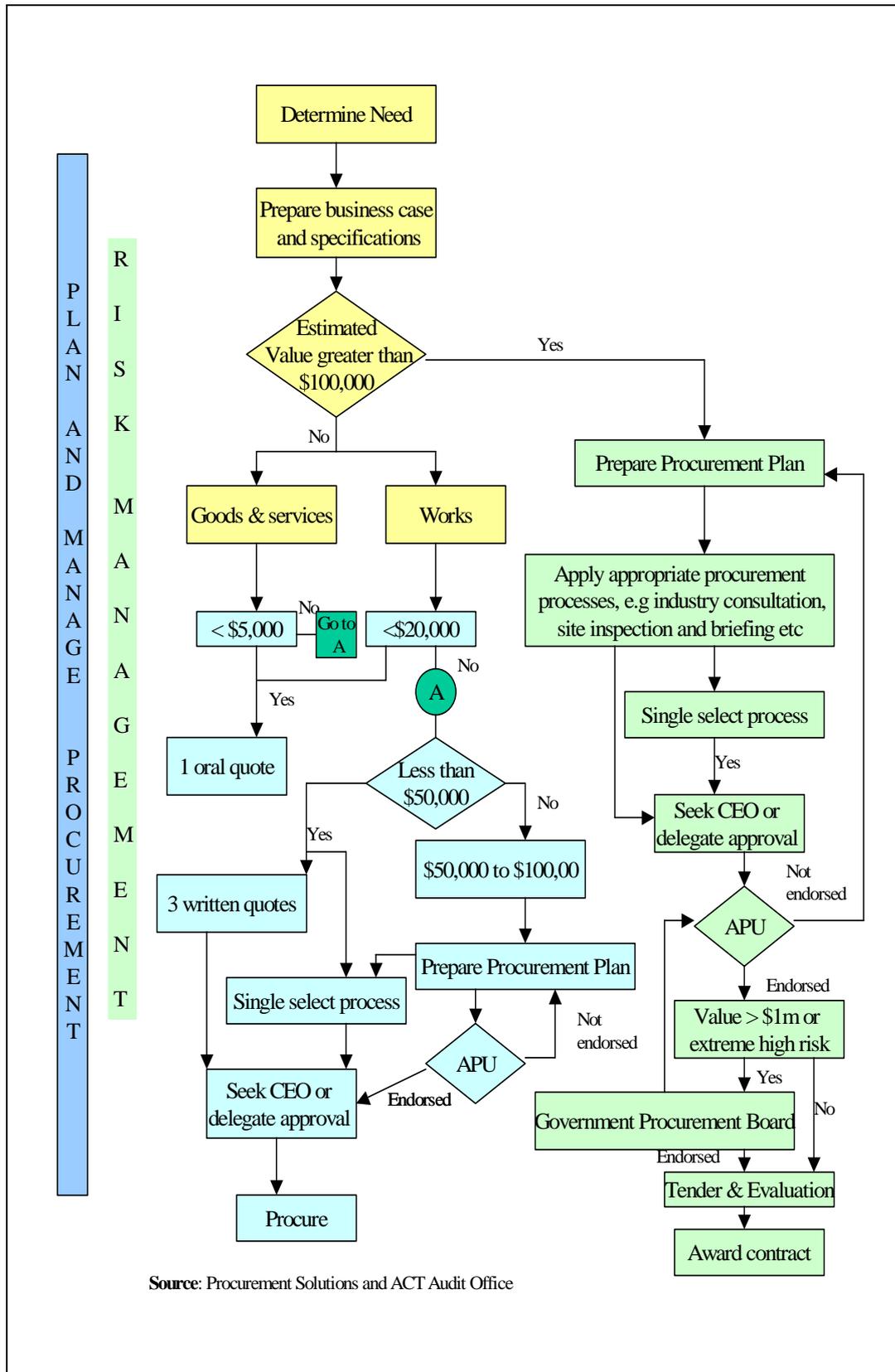
Overview of Territory Procurement Process

3.18 Diagram 3.1 illustrates the overview of the procurement process.

⁹ Refer Clause 8 ‘Open and Effective Competition’ of the *Government Procurement (Principles) Guideline 2002 (No. 2)*.

¹⁰ Clause 12(2)(b) of the Thresholds Guideline 2003.

Diagram 3.1: Overview of Procurement Process



REVIEW OF MAJOR PROCUREMENT

3.19 For the purposes of this audit, major purchases refer to the procurement of goods, services or work with value greater than \$50,000.

3.20 Audit examined a number of major procurement projects and found that agencies have generally complied with the Procurement Act, the procurement principles, and circulars in these procurement transactions.

Completeness of Documentation

3.21 Audit found that, for 22% of the procurement project files examined, the documentation of the process was either not always complete, or not kept on the project files. Documents missing from files included:

- signed copy of procurement plan,
- tender evaluation report,
- evaluation team meeting minutes,
- signed deeds of confidentiality or conflict of interests declarations,
- record of debriefing meeting, and
- letters of acceptance and decline.

3.22 Audit also notes that agencies that outsource their procurement functions to ACTPS typically do not maintain key procurement documents. Although Audit could verify the existence of these documents at ACTPS, or agencies could locate these documents from ACTPS when required, Audit considers that it is a better practice for the agency to retain a copy of the documents, primarily those that require review and endorsement by an agency delegate, for accountability purposes.

3.23 When agencies do not maintain the major procurement documents on the project files undertaken on their behalf by ACTPS, there is an increased risk that the processes will not proceed as planned, e.g. delays or disputes could occur, or the outcome of the procurement may differ from agencies' expectations.

3.24 Further, the *Territory Records Act 2002* requires that an agency 'must make and keep full and accurate records of its activities'. Many agencies failed to satisfy this legislative requirement, and to adequately demonstrate that appropriate procurement (and related financial) requirements were met.

Recommendation 2

Agencies should ensure that procurement documentation is complete and properly maintained on file and complies with records management requirements. Development, and use, of a checklist of required actions and documentation may assist this process.

Risk Management

3.25 When entering into contracts for all procurement activities, the finances of the Territory may be exposed to risks. To mitigate and manage these risks, agencies are required to comply with the 'Management of Risk' procurement principle as set out in clause 12 of the Procurement Principles Guideline. In general, there are various risks associated with procurement, including:

- unavailability of suitable supplies at the time of need;
- suppliers' risks, such as their ability to deliver satisfactory outcomes in terms of time, cost and quality;
- procurement not representing value for money;
- incurring cost above the allocated budget;
- contract or relationship risks, such as financial risks associated with the contract; and
- risks associated with conduct of the procurement process, for example, fraudulent activity.¹¹

3.26 These risks generally associate with procurement of goods and services. Risks relating to construction projects will be more complex.

3.27 A review of a number of the Risk Management Plans noted that agencies have generally addressed the major risks associated with procurement. However, Audit found that some risk management plans prepared by agencies' staff were rejected by the agency's APU because the plans did not either identify or assess the major procurement risks. Although this suggests the APUs are effective in their role, it may introduce further delay in the procurement process.

3.28 In some cases, risk management strategies were not commensurate with the procurement; Audit noted that on occasions, agency staff simply copied similar risk plans from previous procurement actions without consideration of the specific requirements of the procurement activity or its associated risks. The risk plan was not modified to suit the particular circumstances. This suggests that agency staff involved in procurement activities might not have the necessary skills and experience in risk planning and assessment.

3.29 Preparing Risk Management Plans requires individual staff to have appropriate knowledge of risk management standards and practices. Audit considers that provision of further training to staff would assist staff in gaining the necessary knowledge and expertise, thus minimising the delay and costs in having plans redone.

¹¹ Better Practice on 'Selecting Supplier-Managing the Risk' issued by the Australian National Audit Office in October 1998.

Insurance Details

3.30 The 'Management of Risk' procurement principle, set out in the Procurement Principles Guideline, indicates that agencies should include in relevant government contracts:

- a requirement for appropriate types and levels of insurances,
- an indemnity against any claims by reasons of any act, default or neglect of the contractor in the performance of the work under the contract and,
- where appropriate, performance guarantees.¹²

3.31 Where agencies do not have detailed knowledge, agencies should consult with ACT Insurance Authority to determine the required level of insurance after a risk assessment has been undertaken.

3.32 In a significant number of instances (20%) concerning procurement of goods and services, agencies did not maintain a proper record of insurance details, such as a copy of current insurance policy or certificate of currency, on the project files.

3.33 Discussions with agency staff revealed that, in some cases, they had sighted the insurance policies provided by the same contractors in a previous procurement contract. Agency staff also considered that, in certain cases, there would be low risk to the Territory as the contractors were reputable multinational or national companies. It was assumed that these companies would have adequate insurance coverage.

3.34 Agencies that do not ensure that insurance details are obtained before the contract is executed, will have increased the risk that the Territory will be exposed to financial losses if problems occur during the course of the contract. There is also an increased risk that in such situation, officers will not be able to have easy access and reference to the contractor's insurance details.

3.35 Audit considers that agency staff should, at a minimum, document the insurance details on file and review the insurance details periodically over the life of the contract to ensure its validity and relevance.

Central Review and Approval Processes

3.36 The responsibility for decisions relating to the purchase of goods, services, and works primarily rests with individual agencies. However, the existing monitoring mechanisms ensure that all major procurement activities are subject to scrutiny by agency APUs and the Board for compliance with all applicable procurement principles, guidelines, policies and best practice.

3.37 The review and endorsement processes conducted by agency APU and the Board, while at times contributing to significant delay, are generally effective.

¹² Procurement Circular 2004/05 titled '*Managing financial risk through the use of Insurances, Indemnities and Performance Guarantees*' issued by ACT Government Procurement Board.

3.38 The following case studies, concerning the acquisition and disposal of buses, illustrate the centralised monitoring and endorsement processes within agency (APU) and at the Board.

Case Study 3.1: Acquisition of Buses

ACTION Authority (ACTION) provides public transport services for the ACT community. ACTION's Fleet Replacement Policy is to replace its bus fleet at an average of 20 buses per year in order to meet the national targets for accessibility of public transport for people with disabilities. The current fleet replacement programme is to provide all buses with disability access by 2022. ACTION is required to have 25% of its fleet (42 buses) with accessibility by June 2007.

In October 2002, ACTION engaged ACTPS to manage the procurement of 42 new compressed natural gas (CNG) accessible buses. The total value of the contract was \$18.8 million.

The acquisitions project was a complex and high-risk procurement. The project has the potential to cause significant financial loss to the Territory, if any potential issues and risks have not been properly identified, analysed, evaluated, and managed during the procurement process.

In November 2002, the procurement plan was submitted to the Department of Treasury's APU, ACTION's nominated APU. However, the APU did not endorse the plan, primarily because¹³:

- insufficient information was provided to demonstrate how the preferred single supplier was shortlisted in accordance with the Government principles, policies and guidelines; and
- the Risk Management Plan was not undertaken in accordance with the Australian/New Zealand Risk Management Standard.

As suggested by the APU, ACTION engaged Government Solicitor's Office to conduct a probity audit and certify that all processes previously undertaken were open, accountable, and in accordance with government requirements.

The procurement plan was rewritten and submitted to the APU in January 2003. The APU approved the revised plan and referred it to the Board.

In February 2003, the Board endorsed the procurement plan and noted that the proposed selected tender process was appropriate in the particular circumstance. The Board required ACTION to follow up certain matters, including appointment of an independent external Probity Auditor to review the tender evaluation process, and to provide hedging options in the tender documentation for foreign exchange risk.

¹³ Department of Treasury's APU Review Meeting Minutes Nos. 86 and 86(a) dated 21 and 26 November 2002 respectively.

Audit Comment

The review of ACTION's procurement plan by the APU and the Board was robust. Both reviews offered thorough, candid, and constructive comments on the adequacy of the procurement plan, and placed greater emphasis on the importance of risk management over the whole-of-life procurement cycle, in line with better practice. Audit considers the process of review was commensurate with the nature of the procurement, in particular the special circumstances of the supply market. The reviews would contribute to achieving 'value for money' and satisfying the 'open and effective competition' principle. The process, however, took five months to complete.

3.39 Disposal of goods or works is defined as a procurement activity in accordance with Section 7 of the Procurement Act. Agencies are required to follow the Procurement Circular 2004/01 'Disposal of Assets', which was issued in July 2004, in managing their disposal activities. The objective of any disposal action is to achieve the best net outcome for the Territory.

Case Study 3.2: Disposal of Buses

In accordance with its fleet replacement strategy, ACTION has replaced its vehicles at an average age of 18 to 20 years, which is consistent with the practices followed by major bus operators in Australia. The main consideration associated with vehicle replacement strategy is the cost of maintenance, balanced against capital and running costs over the life of the vehicle.

Subsequent to the acquisition of 42 CNG buses and the delivery of 21 new buses in October 2004, ACTION decided to dispose of some surplus buses to be consistent with its fleet disposal strategy. In October 2004, ACTION engaged ACTPS to prepare a procurement plan to dispose of 12 buses. These buses were some of the oldest in ACTION's fleet, being approximately 16 years old.

Disposal Methodology

The proposed disposal process was sale by public tender. The procurement (disposal) plan stated that the proposed disposal methodology would meet the requirements of the provisions of the procurement legislation and the relevant guidelines. It indicated that a public tender process, which had a proven track record for the delivery of the desired outcome in previous disposals of buses, would enable communication of the desired outcome, promote and encourage a competitive environment. The estimated total value of disposal would be approximately \$430,000.

The APU's review of the disposal plan was thorough, and ensured that adequate consideration was given to guidance contained in the Procurement Circular 2004/01. The APU also specifically addressed the need for analysis of the niche second-hand bus market, and realistic expectations of the disposal outcome. Further, the APU ensured ACTION appropriately assessed the risk of the proposed disposal process by public tender as the preferred option versus other methodology, such as sale by auction, direct sales, sale by consignment and sale through a broker.

The APU endorsed the proposal because the disposal plan:

- complied with the procurement principles, guidelines and circulars; and
- demonstrated value for money, through open and effective competition.

Audit Comment

The APU’s review was thorough, and demonstrated a sound understanding of the procurement framework.

On implementation of the disposal plan, ACTION only sold eight buses from the public tender and received \$236,735 from the sale. For the remaining four buses, ACTION received no public offer or an offer below the reserve price. These buses were retained in service by ACTION. The outcome of the public tender was reasonable as the average price offered for each bus from the tender was within the expected market price. This demonstrates that the disposal methodology was sound, as it had produced a reasonably good outcome for the Territory.

Strategic Procurement Planning

3.40 Effective procurement planning provides an agency with the strategies to advance government purchasing objectives¹⁴. As procurement is becoming more complex, it is increasingly important for agencies to undertake thorough analysis of their purchasing expenditure and set out the strategies for improving the procurement functions¹⁵.

3.41 However, the majority of the agencies audited have not undertaken corporate procurement planning. Very little management attention has been given to the strategic management of agencies’ procurement and to ensuring the function adds value to their service delivery and the Government’s priorities.

3.42 Further, there is also inadequate procurement planning at the whole-of-government level and a lack of centralised approach in acquisition of recurrent, on-going, requirements for goods, services, and/or works. Although some common-use or panel contracts have been made, there are opportunities to extend this concept further, to the benefit of the Territory. For example, the Territory’s capital works program on roads is currently managed by three agencies, namely the Department of Urban Services, Land Development Agency and ACT Planning and Land Authority.

3.43 Although these agencies manage different road construction programs, there is no co-ordinated approach in procurement activities. These agencies sometimes have to compete for the same number of local suppliers when funding is available at

¹⁴ ‘Better Purchasing Guide – Corporate Procurement Plan’ issued by Queensland Department of Public Works July 2000.

¹⁵ United States Government Accountability Office Best Practices titled ‘Using Spend Analysis to Help Agencies Take a More Strategic Approach to Procurement’ issued in September 2004 refer <www.gao.gov/cgi-bin/getrpt?GAO-04-870>

the beginning of the budget year. As a result, they may not achieve best value for money for the Territory, particularly if the supply market is tight.

3.44 Procurement planning is part of the strategic framework that other jurisdictions, such as New South Wales, Victoria and Queensland, have adopted to plan activities and services, allocate resources and report on performance. For example, New South Wales requires its agencies to undertake a three-year rolling procurement plan, which is updated annually. In its 2003-04 report on the Procurement Planning Program, New South Wales Treasury reported that, for the years ending 2004-05, the procurement plans identified over \$300 million actual and estimated cumulative savings.¹⁶

3.45 Audit considers that effective corporate procurement planning and planning for significant purchases will assist the Territory and agencies to achieving better procurement management and thereby the best possible procurement outcomes for the Territory¹⁷. As part of the procurement planning process, agencies should undertake a review of their purchasing expenditure and identify procurement options to meet their business objectives.

3.46 The Government Procurement Board, in its 2004-05 Annual Report, encouraged agencies to examine their on-going requirements to streamline and facilitate more efficient and effective procurement arrangements in future.¹⁸

3.47 Developing a strategic approach to procurement through procurement planning helps agencies achieve better value for money. The Department of Treasury, being a lead agency for the whole-of government procurement functions, should play a leading role to develop and implement strategies to undertake procurement planning for the Government and agencies.

Recommendation 3

- | | |
|-----|--|
| (a) | The Department of Treasury should develop and implement a strategic approach to co-ordinating procurement through procurement planning at the whole-of-government level. |
| (b) | Agencies should co-ordinate their purchasing activities across various business units. |

SMALL PROCUREMENT

3.48 For the purposes of this audit, 'small' procurement refers to the procurement of goods, services, or work with a transaction value less than \$50,000.

¹⁶ New South Wales Treasury 'Procurement Planning Program 2003-04 Report' issued in October 2004 page 3. Refer <www.Treasury.nsw.gov.au/procurement/procure>

¹⁷ 'Better Purchasing Guide – Corporate Procurement Plan' issued by Queensland Department of Public Works July 2000.

¹⁸ The Government Procurement Board 2004-05 Annual Report page 9.

COMPLIANCE WITH PROCUREMENT LEGISLATION

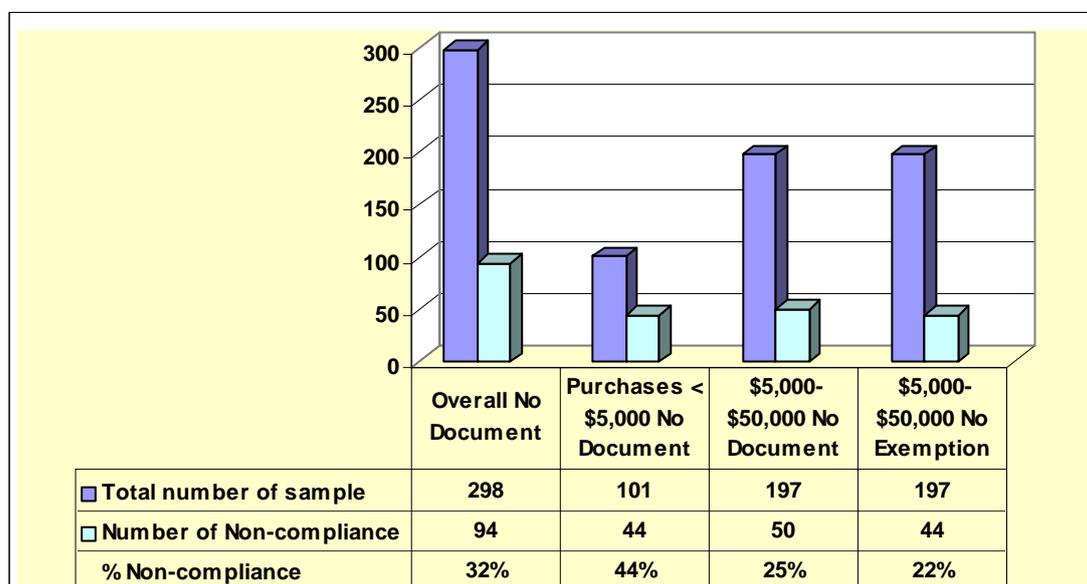
3.49 At Table 3.1, Audit estimated that the Territory's expenditure on goods, services, and works totalled approximately \$1.176b in 2004-05. Of this, as indicated in Table 3.3, total purchases with an individual value less than \$50,000 accounted for approximately \$713m (60%) or an average 52% of total Territory expenditure on Supplies and Service, Capital Works, and Grants and Purchases Services from 2002-03 to 2004-05.

Table 3.3: Estimated Purchasing Activities of the Territory By Thresholds

Item	2002-03 \$million	2003-04 \$million	2004-05 \$million
Purchases greater than \$50,000 (a)	483	650	463
Estimated Purchases under \$50,000	486	482	713
Expenditure on supplies, services and works (b)	969	1,132	1,176
Sources :			
(a) 2003-04 and 2004-05 Annual Reports of the Government Procurement Board.			
(b) Consolidated Statement of Financial Performance 2003-04 and 2004-05.			

3.50 In accordance with the Procurement Thresholds Guideline, agencies are required to obtain a minimum number of quotations in acquisition of goods, services or works. If the required number of quotations has not been obtained, a written exemption from the responsible chief executive or delegate for not complying with the Procurement Thresholds Guideline is required. Diagram 3.2 summarises the results of audits of selected small purchases.

Diagram 3.2: Non-compliance With The Thresholds Guidelines



Source: ACT Audit Office's Procurement Surveys

Record-Keeping Requirements

3.51 As indicated in Table 3.2, for procurement of goods or services valued under \$5,000 and works under \$20,000, agencies are required to seek at least one quotation from a local supplier and ensure written evidence of quotation and approval.

3.52 Further, Chapter 2.2 of the Department of Treasury's Model Chief Executive Financial Instructions¹⁹ (CEFI) issued in December 2003 requires that records of quotations must be kept on file. This requirement is consistent with the '*Quotation and Tender Thresholds*' circular. As the Model CEFI has been adopted by most agencies as their CEFI, it is therefore expected that agencies should be familiar with such requirement for maintaining proper records on file. The *Territory Records Act 2002* requires agencies to keep full and accurate records of their activities.

3.53 Overall, a significant number of small purchases (32% of total sample tested) did not have any evidence of documentation to support that the right number of quotes were sought before procurement activities were undertaken.

3.54 For procurements of goods, services and works under \$5,000, 44% of the items reviewed did not have any documentary evidence to support that at least one oral quotation was obtained. Therefore, Audit could not establish whether the Government Procurement Guideline had been complied with for these purchases.

3.55 During audit, several agencies indicated that payment against the relevant tax invoice from a supplier in respect of procurement less than \$5,000 could constitute evidence of compliance with the requirement to obtain one oral quotation from a local supplier. Audit considers that tax invoices do not constitute a documentary record that the quotations have been obtained prior to procurement decisions are made. If there is a practice of payment based only on receipt of invoices, exposure to fraudulent invoices is increased.

3.56 Audit sought advice from ACT Government Solicitor's Office on application of the procurement legislation. In respect of the opinion expressed by some agencies regarding use of tax invoices as an evidence of compliance, ACT Government Solicitor's Office states that:

agencies must still apply the principles set out in the Procurement Principles Guideline for procurement of \$5,000, and a tax invoice of itself is unlikely to suffice as evidence of such compliance with a requirement to obtain one oral quotation from a local supplier.

3.57 Agencies also suggested that any requirement to maintain a record of oral quotation on file could result in excessive administrative work and might not be made in accordance with the intention of the procurement legislation to have efficient procurement process for small purchases. However, Audit considers that the requirement to at least have a file note of oral quotations from suppliers is not

¹⁹ Refer Chapter 2.2, 'Procurement of Goods and Services' issued in December 2003 <www.treasury.act.gov.au/accounting/html/guidelines.htm>.

onerous, to protect taxpayers money. Audit believes that a proper documentary record of any procurement decision is important for agencies to adopt better practice in record-keeping, ensure ethical dealing and is also necessary to prevent potential errors and frauds.

Approval of Exemption from Tender and Quotation Requirement

3.58 Audit found that for 22% of those audited procurement transactions with a value greater than \$5,000 and under \$50,000, agencies obtained less than the required three written quotations from local suppliers and did not have evidence of exemptions by the chief executive or delegate from the requirement.

3.59 These instances of non-compliance with the Procurement Thresholds Guideline and lack of written exemption from chief executive or delegate identified that there were weaknesses in agencies' internal controls and a poor standard of documentation supporting the purchase decision process. Not only do these deficiencies raise doubts regarding the extent to which better value for money has been obtained, but the risk of collusion between staff and suppliers is also increased.

3.60 Further the objective of the procurement legislation in achieving accountability and transparency is likely to be compromised.

Materiality of Legislative Breach

3.61 Based on the broad estimated value of the Territory's purchases with value less than \$50,000 in Table 3.3 above and taking into account limitations of data collected, it is projected that up to \$100 million of average annual procurement expenditure could not be supported by any documentary evidence that a right number of quotations has been obtained, prior to procurement being made.

3.62 The Audit's estimate should be treated as indicative only, in view of unavailability of reliable data from agencies. However, Audit believes that there could be a significant amount of procurement expenditure that failed to comply with the provisions of the procurement legislation. It is Audit's view that there is a need for agencies to improve internal controls and standard of documentation in small purchases in order to enhance the accountability framework and minimise risks of fraud and collusion with suppliers.

Recommendation 4

Agencies should improve their internal control system to ensure that:

- (a) small purchases (under \$50,000) are processed in accordance with quotation requirements, and
- (b) written approval from the chief executive or delegate for departure from the quotation and tender requirements is obtained prior to procurement.

Management Information Systems

3.63 In order to undertake an assessment of risk, and to set internal guidelines and policies, agencies need to have sufficient information for monitoring purchases. Such information would enable the identification of overall trends and purchasing patterns and areas for further savings to agencies, as well as facilitating strategic planning and measurement performance.

3.64 It was apparent during the audit that most agencies selected for audit could not provide Audit with reliable management information on purchasing. Discussions with agencies' senior officers indicated that most agencies only collect procurement data against specific requests (as and when such requests occur), and they do not maintain a central contract register, or similar.

3.65 In the current devolved management framework, most agencies require their individual business units or sections to manage their procurement activities. Individual project officers are responsible for reporting any procurement contracts for goods, services or works over \$50,000 in the Notifiable Contract Register on the Buyers and Supplier Information Service ('BASIS') website in accordance with the provisions of the procurement legislation. Apart from those required under the Government Procurement Act and the annual report requirements, agency staff do not usually maintain any record in respect of purchases less than \$50,000. As a result, there is a lack of adequate audit trails in respect of procurement activities with individual contracts valued less than \$50,000.

3.66 Audit notes that all agencies under audit, except the Department of Education and Training (DET), the Department of Justice and Community Safety (JACS), the Canberra Hospital, and ACTPS do not maintain any internal contract register or formalised system to record procurement information. Audit considers that the DET and JACS have put in an effective management information system to capture the major procurement and contractual data. DET has maintained a register for all contracts over \$5,000 and JACS has a central register for all contracts.

3.67 Without a formalised system to support the collection of procurement data related to transactions under \$50,000 in value, such as a centralised contracts register, there is a risk that agencies may not be fully aware of their contractual arrangements and commitments, and may require extra resources to compile on an ad-hoc basis procurement and contractual data to meet various reporting requirements for management and key stakeholders, such as annual reports to the Legislative Assembly and the Government Procurement Board. A central contracts register could provide a range of benefits, such as meeting various reporting requirements for, and providing accurate and reliable management information to management and key stakeholders.

3.68 It is doubtful that the procurement data currently produced by agencies can be relied upon for senior management of agencies to effectively assess purchasing performance and ensure that resource allocations and administrative practices adopted are appropriate.

Recommendation 5

Agencies should improve collection of procurement data for management reporting purposes; particularly data related to purchases under \$50,000 in value. A simple central contract register or similar could provide a range of benefits, such as meeting various reporting requirements, and providing reliable management information.

CONCLUSIONS

3.69 Agencies selected for testing have demonstrated a satisfactory level of compliance with relevant legislation and the government procurement principles and guidelines, in respect of major procurement activities (for purchases valued over \$50,000). However, there were a significant number of small purchases that did not comply with the guidelines, and total value of these purchases is significant.

4. APPLICATION OF PROCUREMENT PRINCIPLES AND GUIDELINES

INTRODUCTION

4.1 This chapter discusses the government procurement principles and guidelines and the extent to which agencies have complied with these policies and guidelines. It also presents the results of the Audit survey in respect of the usefulness and effectiveness of procurement guidelines, policies and circulars issued by the Government Procurement Board.

KEY FINDINGS

- Not all key stakeholders fully understand the procurement principles, in particular the ‘value for money’ concept. It is therefore important to improve communication with the key stakeholders, such as small business enterprises and industry groups, to ensure their awareness of the procurement principles and guidelines.
- In response to a concern raised by an MLA, the Audit also examined the Pre-qualification System for ACT Government school cleaning contractors, which is managed by the Department of Education and Training, provides a sound framework to manage the risks associated with the cleaning contractors and hence should prevent failure to comply with the Occupational Health and Safety requirements, or industrial relations obligations, and performance standards. However, the effectiveness of the pre-qualification framework is dependent on the continuous management support from the Department’s Central Office to conduct an effective performance review of the cleaning contractors.
 - There is scope for improvement in monitoring the compliance of cleaning contracts.
 - The tender evaluation process for pre-qualification of school cleaners was not timely, or efficient.
- The majority of agencies considered that the current procurement guidelines and policies are:
 - generally easy to understand and to apply,
 - applicable to agency’s business needs, and
 - adequate and in line with better practices.However, small agencies tended to consider that these guidelines, policies and circulars are complex and may not suit their business needs.

PROCUREMENT PRINCIPLES AND GUIDELINES

4.2 Agencies are required to comply with the government procurement principles and guidelines when they undertake any procurement activities. In making any

procurement decision, agencies should have sound management practices to ensure that these procurement principles are considered and applied.

4.3 There is a variety of purchasing methods available to Territory agencies for the acquisition of goods, services or works, including:

- open or public tender;
- select tender;
- direct sourcing;
- request for expression of interest (EOI);
- panel contract; and
- whole-of-government common use arrangement.²⁰

4.4 It is important that agencies should choose the most appropriate purchasing method taking into consideration the nature and value of the purchase including when, where and how often the goods and services are required, the range of suppliers available in the market together with the costs and benefits of alternative purchasing methods.

4.5 However, irrespective of the particular purchasing method that has been determined, agencies should demonstrate that the procurement principles have been considered in their procurement activities with the aim of achieving the best value for money, while maintaining principles of open and effective competition, and probity.

‘VALUE FOR MONEY’ AND ‘OPEN COMPETITION’ PRINCIPLES

4.6 In accordance with the Procurement Principles Guideline, ‘value for money’ means the best available procurement outcome and is not based on price alone.²¹ This concept is widely adopted by other jurisdictions.²²

4.7 To assess what is value for money, clause 7(4) of the Guideline requires an entity, in relation to proposals from suppliers relating to a procurement activity, to:

- evaluate all proposals against the applicable evaluation criteria; and
- assess all relevant risks, costs and benefits on a whole-of-life basis.

4.8 Open and effective competition is a key element in the government procurement framework. The Guideline requires agencies to carry out their procurement activities in a transparent way. In undertaking a procurement activity, agencies should ensure effective competition, which requires non-discrimination in procurement and the use of competitive procurement processes. Agencies should not have specifications for goods, services or works that favour a particular supplier or

²⁰ Refer *Commonwealth Procurement Guidelines January 2005* Appendix E and 2003-04 Annual Report of the ACT Government Procurement Board p 60.

²¹ Clauses 7(2) and (3) of the *Government Procurement (Principles) Guidelines 2002*.

²² References are made to the *Commonwealth Procurement Guidelines 2005* and ‘Better Purchasing Guide – Value for Money’ issued by Queensland Department of Public Works July 2000.

group of suppliers unless their requirements cannot be reasonably met without such specifications.²³

4.9 The Guideline also requires agencies to comply with a procurement guideline that specifies that a public tender process should be used for purchases above \$100,000. Agencies should advertise the public tender process in a way that gives all potential suppliers a reasonable opportunity to be aware of the tender and have the same opportunity to compete for government business.²⁴

4.10 When purchasing goods, services or works, the task is to determine which supplier, offer or mode of supply will provide the best value for money.

4.11 The Procurement Principles indicate that to assess value for money for any purchase, agencies should consider:

- which option will contribute the most to provide the best available procurement outcome to the Territory;
- what non-cost factors affect value for money; and
- what is the real cost of the purchase.

4.12 The Audit Office receives from time to time complaints on the decisions of government tendering processes. Audit found that not all suppliers fully understood the procurement principles well, as illustrated by the following case study.

Case Study 4.1: Value for Money and Effective Competition

Audit received a request to investigate the concerns raised by a company in respect of tender processes in a number of construction projects. The company considered that its tender prices were the lowest compared to other tenderers and therefore it should be awarded the contracts.

These projects were managed by the Department of Urban Services (DUS) and the Land Development Agency (LDA). DUS engaged Procurement Solutions to manage its procurement activities in relation to these construction projects.

Tendering and evaluation processes

Agencies had adopted similar tendering practices and processes relevant to the construction projects.

Evaluation criteria

The evaluation criteria for each project had a set of mandatory and assessable criteria. However, depending on the nature of the project, the criteria and the weighting for each criterion set for each project may be slightly different.

²³ Clauses 8(1) of *the Government Procurement (Principles) Guidelines 2002*.

²⁴ Clauses 8(2) of *the Government Procurement (Principles) Guidelines 2002*.

The mandatory criteria generally included compliance with the tender documents, financial viability and pre-qualification status. The assessable or project specific criteria usually included the tenderer's management and organisational structure, past performance, technical and professional resources, human and physical resources, quality assurance plan and occupational health and safety system.

Evaluation methodology

The weighting and scoring methodology, which is in line with better practice, was applied in these tenders.

Audit Comment

Based on the review of the tendering processes, Audit was satisfied that:

- the tender evaluation processes of the projects reviewed had been conducted in accordance with the government procurement guidelines, principles and circulars;
- the evaluation of the tender was undertaken in an accountable and transparent manner; and
- the decision to support the selection of the best offer was sound, based on the value for money principle which would offer the best procurement outcome to the Territory.

4.13 This case study demonstrates that there should be better efforts to provide information to contractors. In determining the best offer, the lowest price does not necessarily represent the best 'value for money'. Other non-cost factors, such as suppliers' organisational and managerial skills, past performance, technical competency, financial and physical resources, their capacity to meet obligations as ethical suppliers, as well as other known risks, are important in the tender evaluation. These factors should be considered and included as the major assessable criteria, other than price, in the evaluation plan of the project.

4.14 The effectiveness of the tender assessment and evaluation processes is much dependent on whether the members of the Tender Evaluation Team (TET) have relevant experience and skills in the industry and are 'informed buyers' in the particular supply market. Audit notes that the TETs involved in the construction projects reviewed in the above case study had relevant skills and expertise in the construction industry.

4.15 Audit considers that the Government Procurement Board can play an important role in enhancing its communication strategy with key stakeholders such as the contractors and the industry group, to increase their understanding of the government procurement principles and processes.

ETHICAL SUPPLIERS PRINCIPLE

4.16 Clause 13 of the Procurement Principles Guideline requires a Territory entity to ensure that suppliers, who tender and contract for ‘prescribed works and services’²⁵ having a total consideration, or estimated consideration worth \$20,000 or more, comply with their employee industrial relations obligations.

4.17 In accordance with the Procurement Circular 2004/09 titled ‘Ethical Suppliers Principle’, agencies are required to ensure that²⁶:

- appropriate consultative mechanisms are established so external stakeholders have a point of contact in each entity to whom they may advocate the interests of employees, suppliers and subcontractors;
- suppliers who tender for the provision of ‘prescribed works or services’ certify that they are complying with their employee and industrial relations obligations;
- contracts for provision of ‘prescribed works or services’ contain terms allowing for the verification of compliance by suppliers and subcontractors with their employee and industrial relations obligations; and
- the necessary policies and procedures exist for exercising scrutiny over the performance by suppliers and subcontractors of ‘prescribed works or services’ in relation to their employee and industrial relations obligations.

4.18 The ‘Ethical Suppliers Principle’ applies to contracts in relation to maintenance, construction, cleaning, horticultural and gardening services, but would not normally apply to other types of services, such as information technology and professional services.²⁷ To comply with this principle, agencies should have relevant controls and systems in place to ensure that the tendering and contracting arrangements have adequately addressed the legislative requirements. For example, agencies should ensure that requests for tender contain provisions to require tenderers’ certification for their compliance with their employee and industrial relations obligations.

4.19 Provisions should also be made in the contracts that allow agencies to audit and monitor contractors’ performance, and terminate the contracts if non-compliance is not remedied. Agencies should establish audit and procedure protocols in their contract management process to monitor their suppliers’ compliance with their employee and industrial relations obligations.

²⁵ ‘Prescribed works and services’ is defined in clause 13 of the *Government Procurement (Principles) Guidelines 2002* as those works or services that will require the exertion of labour by employee in the performance of the contract.

²⁶ Clause 13(1) of the *Government Procurement (Principles) Guidelines 2002*.

²⁷ Clause 13(2) of the *Government Procurement (Principles) Guidelines 2002*.

4.20 Other than the pre-qualification scheme for construction works,²⁸ which has been implemented for many years, the Territory has other pre-qualification schemes in relation to School Cleaning, Procurement Competency Training, Weed Control Services, and Fire Trails Maintenance and Upgrade.

Pre-qualification framework for School Cleaning

4.21 The Pre-qualification System for school cleaning contractors was introduced by the Department of Education and Training (DET), formerly known as the Department of Education, Youth and Family Services (DEYFS), in 2003.

4.22 The aim of the system is to ensure that only contractors that are pre-qualified with the DET will be entitled to lodge a tender for cleaning contracts. Approved contractors will have to demonstrate that they give proper attention to staff training, to Occupational Health and Safety (OH&S) issues and to providing employees with their award entitlements in order to comply with the Territory's 'Ethical Suppliers Principle' in their provision of school cleaning services under government contract.

4.23 DET expects that the Pre-qualification System will produce efficiencies for both contractors and ACT Government schools, which are responsible for managing their own procurement activity in relation to school cleaning services. As only the pre-qualified contractors can tender for any school cleaning contracts, it is expected that the tendering process will be more streamlined as documentation required of contractors will be significantly reduced, while analysis of tender documentation will be more straightforward for schools to manage. It is indicated that the overall effect should be a more efficient process to achieve quality cleaning for schools on a value for money basis.²⁹

4.24 To accommodate 'proprietary labour' contractors, for example husband and wife or father and son teams, the DET allows these contractors to seek concessional treatment. However, these 'proprietary labour' contractors are subject to a number of guidelines but specifically that they are only eligible for a maximum of one school cleaning contract.

4.25 Pre-qualification will not lead directly to any contracts or procurement. However, only those pre-qualified tenderers are eligible to tender for individual contracts at schools. Normal procurement practices will be applied to all subsequent cleaning contracts after the publication of the pre-qualified list.

²⁸ Private sector suppliers for construction of public facilities and infrastructure are required to meet the pre-qualification scheme. Details of the pre-qualification scheme for construction activities can be found on the 'Basis' website <www.basis.act.gov.au>.

²⁹ Refer 'Information Regarding Pre-qualification Cleaning Contractors for ACT Government Schools' on the 'Basis' website <www.basis.act.gov.au>.

Review of School Cleaning Pre-qualification Framework

4.26 A representation was made to the Auditor-General in respect of the appropriateness of the appointment to the pre-qualification list of cleaners for ACT Government schools. There was some concern about some cleaners for not complying with basic OH&S requirements.

4.27 As part of the procurement audit, Audit reviewed the Pre-qualification System for school cleaning contractors and the related tendering processes in order to form an opinion on whether:

- the Pre-qualification System achieved the intended objectives of the pre-qualification framework; and
- the tendering processes and the pre-qualification framework were implemented effectively and efficiently.

4.28 The details of the audit findings are discussed in the following case study.

Case Study 4.2: Pre-qualification of School Cleaning Contractors

Assessment criteria

The applicants were assessed against a number of criteria, including:

- demonstrated commitment to the principles of OH&S and the relevant industry awards,
- demonstrated financial viability and commercial standing;
- demonstrated capability to deliver cleaning services, based on effective management systems and resources;
- demonstrated commitment to Equal Employment Opportunity principles; and
- satisfactory performance on previous cleaning contracts.

Pre-qualification processes

The first Call for Applications was initiated in September 2003 after industry comment on the draft tender. Information leaflets provided to potential applicants were printed in seven different languages, including English, Tagalog, Croatian, Spanish, Macedonian, Serbian, and Arabic.

The Call for Applications was advertised and closed in October 2003. The final Evaluation Report was endorsed and approved in April 2004. A total of 28 out of 35 applicants were granted pre-qualification status for a period of 3 years.

The second Call for Applications for pre-qualification was advertised in June 2004 after the applications were closed in July 2004. An additional 15 applicants were granted pre-qualification status in 2004.

The pre-qualification status of the current contractors will be reviewed in 2007. The pre-qualification list is available on the ACT Government website www.basis.gov.au.

Performance review framework

As part of the Pre-qualification framework, the Department's Schools and Corporate Support Unit conducts compliance audits of contractors' performance, with primary focus on the contractors' compliance with OH&S requirements and quality of cleaning services. At the time of audit, the Schools and Corporate Support Unit had completed its annual audit program for 2004 and also commenced the 2005 audits.

Audit Comments

Overall, it is Audit's view that the Pre-qualification System is sound, provided that the annual performance review program has been conducted effectively as intended.

Audit noted that there are areas that can be improved, including the efficiency and timeliness of the tender evaluation process, development of a system to record suppliers' performance assessments, expansion of the compliance audit to include suppliers' obligations under the 'Ethical Suppliers Principle', and update of the draft departmental procedures manual on the Pre-qualification System.

4.29 Audit notes that there was a lengthy delay in finalising the applications for the pre-qualification processes held in 2003 and 2004. It took up to six months to finalise the evaluation of the first Call for Applications, which closed in October 2003 (completed April 2004). The second Call for Applications, which commenced in July 2004, also took about four months to finalise (completed November 2004).

4.30 Audit was advised that the delays were primarily due to follow-up actions in obtaining information from the third parties and extensive consultations with various interested groups.

4.31 Audit considers that delaying the completion of the pre-qualification process beyond a reasonable time increased costs, and increased the risk that the Department could not implement its new pre-qualification system for any school cleaning contracts to be renewed from January 2004. It also imposed business costs on the suppliers for not having their application status assessed and determined in a timely manner.

4.32 In respect of the performance review system, Audit considers that the compliance audits conducted at schools are an effective process for providing assurance to the Department and schools management regarding contractors' performance, in particular contractors' compliance with the OH&S requirements. This has addressed the concerns raised by the stakeholders before the implementation of the Pre-qualification System.

4.33 Although the audit procedures and the documentation of the contractors' performance are generally adequate, Audit considers that the current performance review framework could be improved by:

- enhancing the existing performance information system, preferably in electronic database, to record suppliers' performance assessments and ensure that the contractors' performance records can be readily available to departmental and school staff in managing the suppliers' performance; and
- extending the compliance audits to cover contractors' compliance with the requirements of the Ethical Suppliers circular.³⁰ It would also facilitate the early completion of the application evaluation process when the majority of the contractors' pre-qualified status will be subject to review in 2007.

4.34 Additionally, the Department should revise and update its draft procedures manual to reflect the current policy and procedures. An updated procedures manual would assist staff (Central Office and schools) to fully understand the pre-qualification framework and their roles and responsibilities in managing the pre-qualification process and cleaning contracts.

4.35 While the matters were noted during the review of the pre-qualification system in relation to school cleaning contractors, Audit believes that some of these matters would also be relevant to other existing pre-qualification systems.

4.36 Audit was advised by ACTPS that in its administration of the Construction Industry Pre-Qualification Scheme, Procurement Solutions monitors and records supplier performance and that information is used to inform tender evaluation and contract management processes. The information is recorded in an electronic database, the functionality of which has been enhanced over the last year. Procurement Solutions audits supplier obligations under contracts, including in relation to matters covered by the Ethical Suppliers principle. These approaches are also part of the other prequalification arrangements which Procurement Solutions has been developing and implementing over the last 18 months, including for weed spraying and fire trail maintenance.

Recommendation 6

In relation to pre-qualification of school cleaning contractors, the Department of Education and Training should:

- (a) ensure the timely and efficient evaluation of supplier applications;
- (b) routinely monitor and record suppliers' performance assessments using, where appropriate, an electronic database easily accessible to all staff involved in managing the suppliers' performance;

³⁰ Procurement Circular 2004/9 titled 'Ethical Suppliers Principle' issued by the Government Procurement Board in October 2004.

APPLICATION OF PROCUREMENT PRINCIPLES AND GUIDELINES

- (c) consider the benefits of extending the Department’s performance audit coverage to include suppliers’ obligations under the Ethical Suppliers circular as part of its annual compliance audit program; and
- (d) revise and update its procedures manual to reflect the current policy and procedures.

USEFULNESS OF PROCUREMENT GUIDELINES AND CIRCULARS

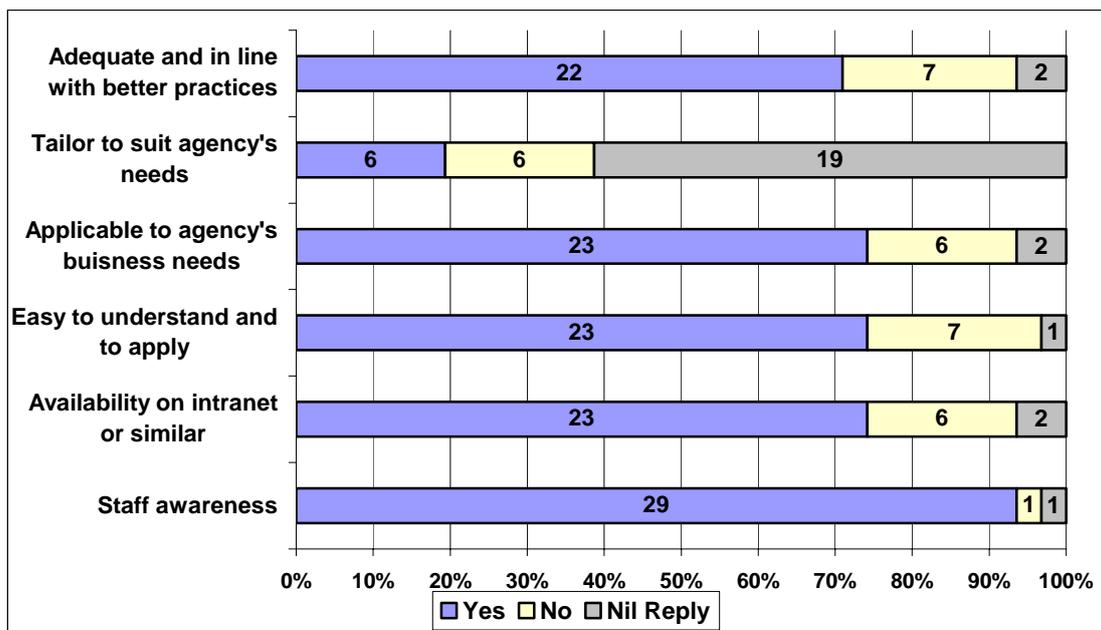
Procurement Survey

4.37 Audit conducted a procurement survey as part of this audit. Among other things, agencies were requested to comment on whether the guidelines and circulars issued by the Board are:

- being made aware to staff involved in procurement activities;
- available locally on the agency’s intranet or similar;
- easy to understand and to apply;
- applicable to the agency’s business needs;
- tailored to suit the agency’s business if the guidelines and circulars are not applicable; and
- adequate and in line with better practices.

4.38 Diagram 4.1 summarises the result of agencies’ responses.

Diagram 4.1: Results of survey on the procurement guidelines and circulars (Views of Agencies)



Source: ACT Audit Office’s Procurement Surveys

APPLICATION OF PROCUREMENT PRINCIPLES AND GUIDELINES

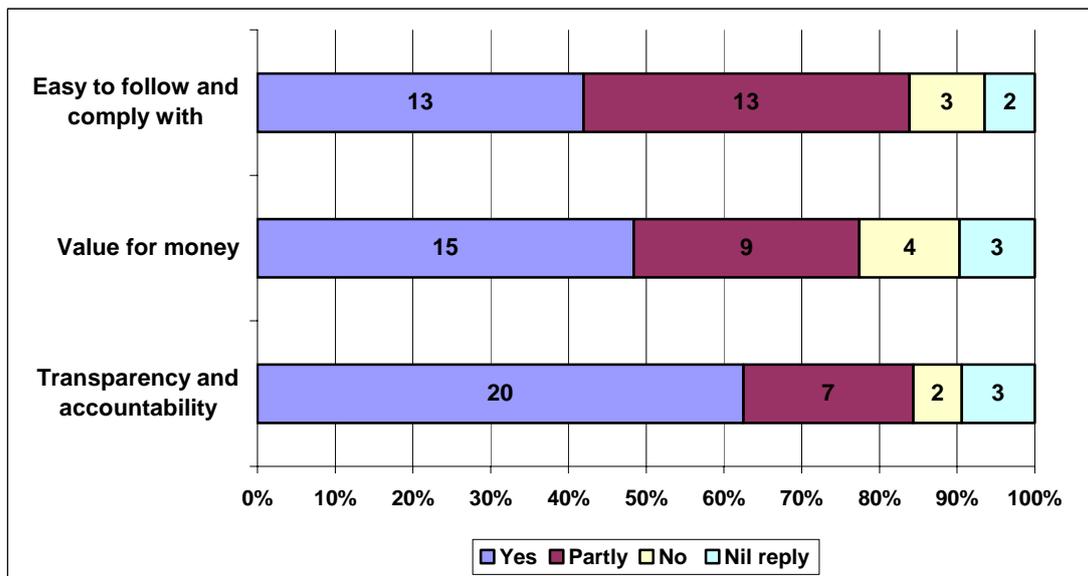
4.39 The results of the survey indicated that:

- twenty-nine agencies (94%) reported that staff involved in procurement activities are aware of the guidelines and circulars;
- twenty-three agencies (74%) have the guidelines and circulars made available in their intranet or similar mechanisms;
- twenty-three agencies (74%) reported that the guidelines and circulars are easy to understand and to apply;
- twenty-three agencies (74%) considered the guidelines and circulars are applicable to their business needs;
- six agencies (19%) advised that, if the guidelines and circulars are not applicable to their business needs, they have modified the guidelines and circulars to suit their business. However, it was noted that the majority of the agencies surveyed did not provide any comment; and
- twenty-two agencies (71%) considered that the guidelines and circulars are adequate and in line with better practices.

‘Value for Money’, Transparency and Accountability

4.40 In addition to the above questionnaires, agencies were also asked to provide comment on whether the current procurement guidelines and policies improve transparency and accountability, assist in achieving ‘value for money’, and are easy to follow and comply with. The results are summarised in Diagram 4.2 below.

Diagram 4.2: Results of survey: Procurement guidelines and policies – ease of use (Views of Agencies)



Source: ACT Audit Office’s Procurement Surveys

APPLICATION OF PROCUREMENT PRINCIPLES AND GUIDELINES

4.41 The survey indicates that:

- 65% of agencies responded positively that the current guidelines and policies improve transparency and accountability (23% of agencies partly);
- 48% of agencies reported that the current guidelines and policies positively assist in achieving 'value for money' (29% of agencies partly); and
- 42% of agencies advised that the current guidelines and policies were easy to follow and comply with (42% of agencies partly).

4.42 Several agencies also made specific comments that the procurement guidelines, policies and circulars are:

- numerous and complex;
- not easy for general or inexperienced staff to understand;
- not always relevant to small agencies; and
- generally considered 'better practice', but the processes imposed upon them are onerous, time consuming and costly.

4.43 Nevertheless, Audit notes that most agencies are generally satisfied with the guidelines, policies and circulars issued by the Board. Some agencies, in particular the small agencies with limited resources, consider these policies and circulars are complex and sometimes difficult to understand and apply. Further, several agencies indicated that some policies and circulars lacked clarity, uniformity and simplicity.

4.44 During the audit, instances were noted where there was confusion and a lack of understanding by agencies in the application of some principles and procurement processes. Agencies consider that further guidance will be useful on the following:

- ethical supplier principle;
- single select process; and
- procurement of goods, services or works under a grant arrangement.³¹

4.45 Audit noted that the consistency in application of policy and guidelines is adversely affected by the fragmentation of procurement activities within business units within an agency and across agencies. The involvement of significant numbers of non-specialist staff also a contributing factor.

4.46 In view of the above, Audit considers that some of the guidelines, policies and circulars may need clarification and that better practice guidance on practical application of some complex procurement methods and processes.

³¹ If as part of a grant arrangement, agency intends to require a grant recipient to provide goods, services or works, then agency is required to comply with the guidelines and processes in accordance with the procurement legislation. This may require agency to determine on case-by-case basis.

Recommendation 7

The Government Procurement Board should provide further guidance on practical application of some complex procurement methods and processes, for example the ethical supplier principle, and select tender process.

CONCLUSIONS

4.47 In processing major purchases, agencies are generally assisted by the government procurement principles and guidelines. Agencies consider that these principles and circulars improve transparency and accountability, assist in achieving ‘value for money’, and are easy to follow and comply with.

4.48 There were concerns raised by some agencies, in particular small agencies, about the effectiveness and usefulness of the principles, policies and circulars.

5. EFFECTIVENESS AND EFFICIENCY OF PROCUREMENT

INTRODUCTION

5.1 This chapter discusses whether agencies' current procurement processes encourage efficient and effective procurement management, and value for money.

KEY FINDINGS

- The majority of agencies did not have regular monitoring and review processes to ensure that the government procurement guidelines, procedures and better practices are being properly applied.
- Agencies' internal audit coverage on procurement and other related matters was found to be inadequate, given the significant procurement expense.
- Agencies did not maintain adequate and reliable procurement information systems to enable effective management of the purchasing function.
- Agency procurement functions are fragmented and not well co-ordinated.
- Procurement is not regularly reviewed against sound performance measures or benchmarks.
- Approval of expenditure was not always made by appropriate delegated officers.
- Although most agencies use the services of ACT Procurement Solutions, responsibilities of the affected agencies and performance standards have not been formalised through a service agreement, leading at times to unclear accountability and responsibility.
- Significant government expenditure is incurred on procurement below the \$50,000 threshold. In many cases, the purchasing function has been given a low priority with responsibilities often undertaken by junior and/or non-specialist staff who may lack the technical skills or experience necessary to ensure value for money is achieved.
- Agencies generally refer to the policies and guidelines provided by the Government Procurement Board. It is also appropriate for some agencies to consider issuing further detailed agency specific guidance to assist staff in managing the complex procurement activities and projects.

EFFECTIVENESS AND EFFICIENCY

5.2 Agencies' chief executives are responsible for ensuring that all facets of agency procurement activity comply with the provisions of the procurement legislation and associated principles, policies and guidelines. They mainly discharge this responsibility for procurement by ensuring that their agencies have appropriate

structure, resources, policies, procedures, and accountability arrangements in place to achieve value for money in procurement outcomes.

5.3 Agencies are also accountable for the efficiency and effectiveness of the procurement processes. Efficiency relates to achieving the maximum value for the resources used to conduct an activity. Effectiveness relates to how well outcomes meet objectives.

5.4 In this context, agencies should have appropriate structure and resources, and effective control environment to manage their procurement activities. Successful implementation and operation of an internal control framework for managing the procurement functions will contribute to the efficient and effective delivery of quality procurement outcomes.

5.5 As part of the audit examination, Audit used surveys to gather information from agencies on a range of issues. Reference is made to [Appendix A](#) for the details of the survey methodology.

PROCUREMENT STRUCTURE AND ARRANGEMENTS

Procurement arrangements

5.6 On the basis of this survey, Audit notes that:

- twenty-four agencies (77% of the 31 agencies that responded to the survey) manage their own procurement activities, especially for those purchases less than \$50,000;
- sixteen agencies (52%) use ACTPS to handle their purchases with a value greater than \$50,000; and
- all major agencies, for example the Department of Urban Services and the Department of Education and Training, have decentralised procurement functions within the Departments. Business units are responsible for their own purchasing and managing their procurement activities.

Approved Procurement Units (APU)

5.7 Ten agencies have their own APU (refer Table 2.1).

Qualifications of APU members

5.8 The accreditation system was established by the Government Procurement Board (the Board) to provide a framework for accreditation of officers responsible for the procurement activities of agencies. In assessing and approving the procurement level of the agency's APU, the Board will determine the levels of competency of the agency's APU members based on the Public Service Education and Training

(PSETA)³² standards in accordance with clause 10 of the *Government Procurement (Approved Procurement Units) Guideline 2002 (No. 1)*.

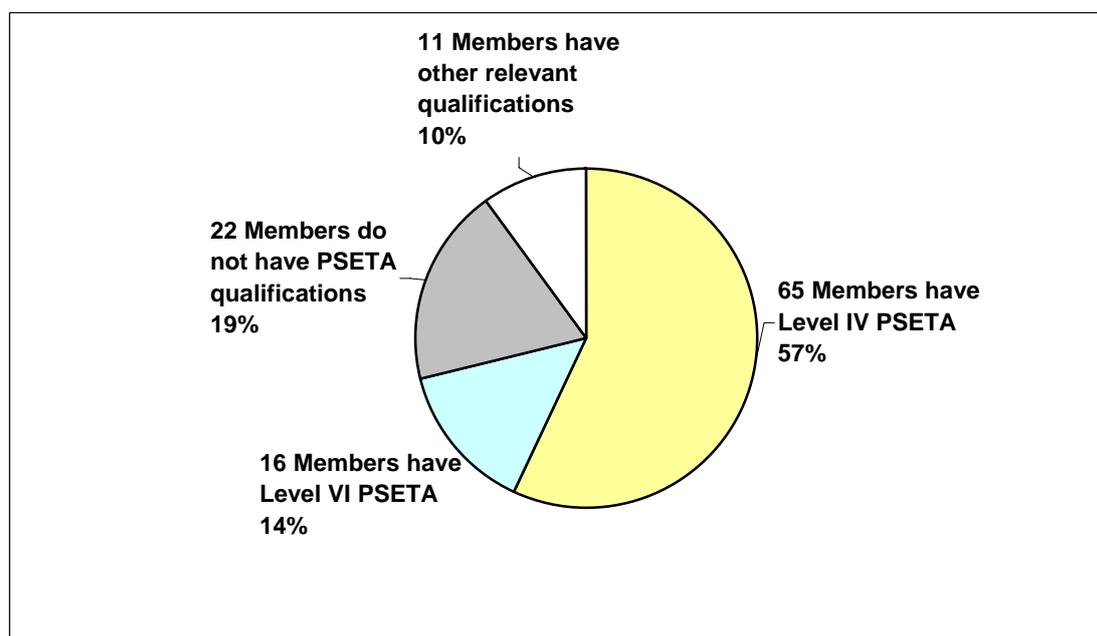
5.9 The qualifications in respect of procurement competencies that PSETA authorises are:

- Level IV PSETA, Certificate IV in Government (Procurement),
- Level VI PSETA, Advanced Diploma (Contract and Tendering); and
- Level VI PSETA, Advanced Diploma of Government (Strategic Procurement).

5.10 The Certificate IV in Government (Procurement) covers the competencies required of personnel responsible for the procurement of goods or services. The Advanced Diploma (Level VI PSETA) covers the competencies required of personnel responsible for the management of strategic procurement in public sector organisations.³³

5.11 The level of competencies of agency APU members is shown in Diagram 5.1 below.

Diagram 5.1: Qualifications of APU members



Source: ACT Audit Office's Procurement Surveys

5.12 The audit survey of APU members' qualifications indicates that the majority of APU members (71%) have PSETA qualifications in procurement, 10% have other

³² PSETA was established as the nationally recognised body for the public administration areas of the Commonwealth and State/Territory governments.

³³ Reference is made to PSETA website <www.pseta.com.au>

qualifications, such as accounting qualifications, and experience in procurement and related areas; while the rest (19%) do not have any qualifications. Audit notes that, in general, agency APU members have relevant competencies and qualifications to manage the agency's procurement activities. Also, most agency APU members perform their APU functions in addition to their usual work responsibilities.

APU Activities

5.13 The following table summarises APU activities during 2002-03 and 2003-04 collected by the survey, and 2004-05 data from the Procurement Board 2004-05 Annual Report.

Table 5.1: APU workload during 2002-03 and 2003-04

	2002-03	2003-04	2004-05
Number of APU Meetings	221	181	238
Number of proposals considered	799	522	693

5.14 At the same time, Audit notes that the data provided by agencies in this survey was significantly different from the data published in the Board's 2003-04 Annual Report. For example, total number of APU meetings and total number of proposals considered during 2003-04 reported by the Board was 281 and 595 respectively.³⁴

MANAGEMENT REVIEW AND MEASURING PERFORMANCE OF PROCUREMENT PROCESS

5.15 More than 50% of agencies surveyed do not have monitoring and review processes for their procurement activities, which are important components of an effective internal control framework:

- seventeen agencies (55%) do not undertake any regular review of procurement process;
- twelve agencies (39%) do have management review; and
- two agencies (6%) provided no comment.

5.16 Inadequate regular management review of agencies' overall procurement activities reduces the opportunity to encourage and promote sound principles of management, including continuous improvement.

5.17 As part of management review processes, agencies should establish appropriate performance indicators to measure and report the performance of their processing activities. However, Audit understands that the audited agencies generally do not establish any performance indicators for procurement. Audit notes that other jurisdictions (for example, NSW) have established performance indicators and

³⁴ ACT Government Procurement Board 2003-04 Annual Report Table 18 p.59.

benchmarks, such as cost per tender, cost per invoice, per service provider over time and service providers per category, to measure their procurement performance.

5.18 Agencies also do not analyse procurement data as a valuable source of information for assessing and improving their purchasing activities. For example, there was no analysis of frequently used suppliers for which formal contracts may be appropriate, or the use of other suppliers for a supply already covered by a common use contract.

5.19 By undertaking a review of common suppliers being used by different business units, agencies can identify common user contracts, where appropriate, and help ensure contracts are in place for amounts over a specified threshold. This may improve the efficiency and effectiveness of agencies' procurement activities by eliminating duplication of purchasing activities by different business units and result in better use of collective purchasing power.

5.20 In brief, for the procurement function to operate efficiently and effectively, agencies are recommended to adopt the following practices:

- (i) establish appropriate performance indicators;
- (ii) measure the performance of their procurement activities on a regular basis; and
- (iii) review the performance of overall procurement functions against objectives from time to time.

Timeliness of Procurement Process

5.21 The audit survey sought information from agencies on the time required from the development of a procurement proposal or business case to the actual procurement of the good or service or works. The responses from the twenty-two agencies indicated that timeliness of procurements varies significantly between agencies, as shown in Table 5.2 below.

Table 5.2: Time required to process procurement by type of transaction

Type of Transactions	Period (Days)
Small procurement, valued less than \$5,000	1 to 30
Medium procurement, valued between \$5,000 and less than \$100,000	1 to 540
Large procurement, valued greater than \$100,000	20 to 485

5.22 The information provided by agencies suggests that there are many cases where the time taken for procurements was unacceptably slow.

5.23 As agencies have not established performance indicators on the timeliness of the procurement processes, Audit is unable to undertake any assessment of agencies' performance against established objectives or benchmarks.

Recommendation 8

Agencies should:

- (a) establish performance measures for reporting on their procurement activities; and
- (b) regularly monitor and report to senior management the performance of procurement activities.

Delays in complex procurements

5.24 Audit notes that three agencies reported that they had used more than a year to process medium and large procurement proposals. Two of these three agencies reported that they took more than a year (one agency used 365 days and 485 days for another agency) to process a proposal to engage fund managers for provision of investment management services for their investment assets. Both agencies raised their concerns that ‘the government procurement process is highly cumbersome, protracted and unwieldy’ and could not allow them ‘to move from a low performing manager to a higher performing manager quickly in the marketplace’.

5.25 In one example, it took sixteen (16) months to finalise the procurement processes partly because of inappropriate procurement methods adopted in the initial proposal, legislative issues that needed to be resolved, and a lengthy process in developing an contract commensurate with the nature of the purchase.

5.26 Although the proposals to engage fund managers might be an uncommon and complex procurement, it is unsatisfactory to take more than a year to complete the procurement processes. Delay in finalising the processes to select a high performing fund manager, or conversely the disengagement of a poor performer, would result in a significant financial cost to agencies in respect of potential loss in investment income.

5.27 Audit notes that many factors could contribute to a lengthy delay in the procurement process. Audit considers that agencies should consult with the Board to review and identify various project risks and issues associated with the previous procurement processes so that an innovative procurement approach will be developed to benefit any future procurements of similar nature.

Recommendation 9

The Board should encourage agencies planning to undertake significant procurement activities (unique, high value, or high risk) to liaise with the Board regarding an appropriate procurement strategy at the earliest possible time after confirmation of funding, to ensure timely and efficient completion of the procurement process.

Internal Audit Coverage

5.28 Internal audit forms a critical component of an organisation’s accountability framework through its role in the monitoring and review of compliance with internal

controls, regulations and procedures. Internal auditing provides a basis for on-going improvements of procurement activities.

5.29 Audit found that three of eight major agencies had conducted internal audit reviews of procurement during 2003-04 and 2004-05, while three agencies reported that they had conducted an internal audit review primarily on contract management or facilities management. Audit notes that these reviews focused on identifying deviations from internal controls and the requirements of the procurement legislation rather than on the extent to which value for money had been achieved in agency arrangements. Agencies have focused primarily on compliance, with minimum attention to strategic planning and value for money purchases.

5.30 In view of the significant amount of expenditure on procurement of goods, services and works and inadequate regular management review of procurement functions, it is of concern that there was a lack of internal audit evaluation of the effectiveness and efficiency of an agency's purchasing functions, to identify scope for improvement. This may expose agencies to the potential risks due to erroneous or fraudulent transactions.

5.31 Audit considers that more priority should be given by agencies in undertaking their internal audit coverage on procurement.

Recommendation 10

Agencies should conduct regular internal audits of procurement functions and performance. Internal audits should also assess the efficiency and effectiveness of procurement activities and whether value for money has been achieved, and evaluate overall agency procurement performance, in addition to compliance with the procurement legislation and guidelines.

Delegation

5.32 The chief executive of an agency may delegate authority to incur expenditure to other members of staff. In accordance with the agency's Chief Executive Financial Instructions issued under the *Financial Management Act 1996*, certain officers are also authorised to incur expenditure, including procurement commitments.

5.33 It is important that delegations are made in line with the agency's operational needs and reflect the accountability framework established within the agency in areas such as budgetary control. For this reason, delegations should regularly be reviewed and updated to reflect any changes in responsibilities or organisational structure.

5.34 Audit found that all agencies have developed delegation packages for areas of responsibility relevant to the purchasing function, such as spending authorities and exemption under clause 12 of the Procurement Thresholds Guideline.

5.35 However, a sample of commitments and payments examined in some selected agencies revealed instances where officers authorised expenditure outside, or in excess of, their delegation.

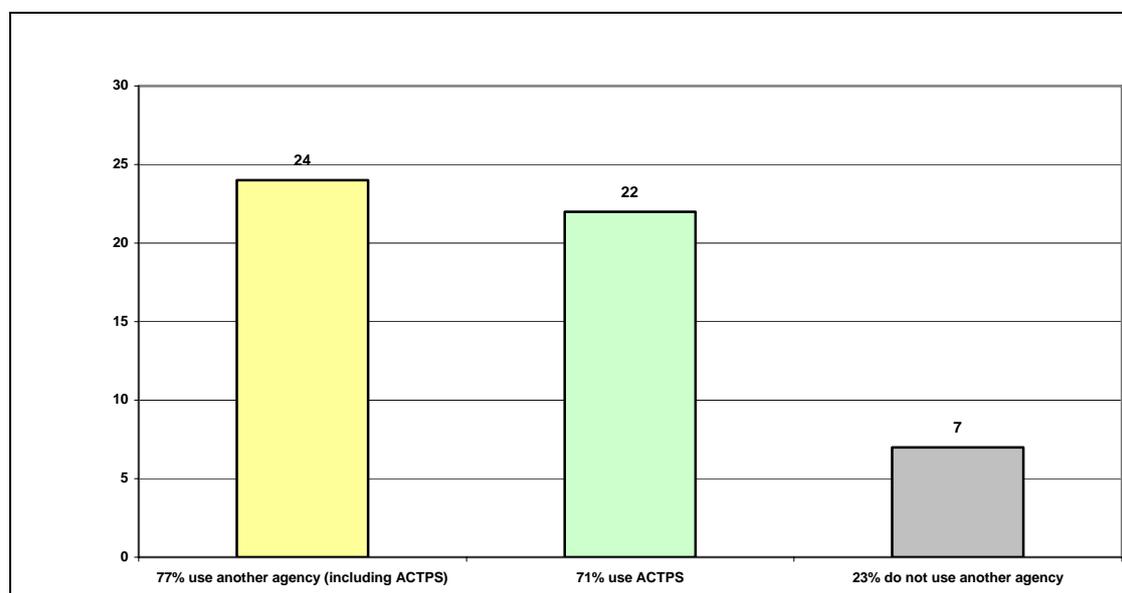
Recommendation 11

Agencies should ensure staff are fully aware of their delegated authority before authorisation of procurement expenditure.

PROCUREMENT AND ADMINISTRATIVE ARRANGEMENTS

5.36 In undertaking procurement activities, agencies may use other agencies to manage their procurement functions or seek other related services. Diagram 5.2 illustrates the result of the survey.

Diagram 5.2: Engagement of another agency to manage agency's procurement

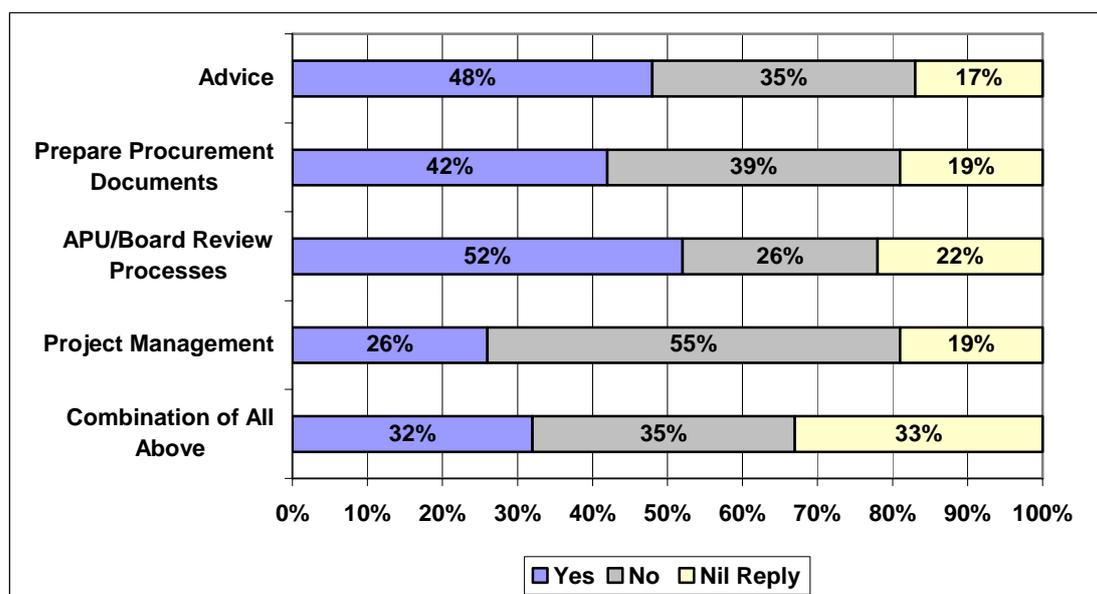


Source: ACT Audit Office's Procurement Surveys

5.37 Twenty-four agencies (77%) responded that they have used another agency to perform part or all of their procurement functions. Of these twenty-four agencies, twenty-two or 92% of agencies that use another agency, indicated that they use ACT Procurement Solutions (ACTPS) for managing their procurement activities.

5.38 In addition, Audit also sought information from agencies relating to what services that they obtain from other agencies, such as advice, review process by their nominated APU and the Board, project management of the procurement functions, or a combination of all these services. The results are illustrated in Diagram 5.3.

Diagram 5.3: Services obtained from other agencies



Source: ACT Audit Office’s Procurement Surveys

5.39 In summary, Audit notes that out of 31 agencies that responded to the survey:

- fifteen agencies (48%) used another agency for advice on procurement activities;
- thirteen agencies (42%) required another agency to prepare procurement documentation;
- sixteen agencies (52%) used another agency’s APU and the Board for the review process;
- eight agencies (26%) engaged another agency for project management of the procurement functions; and
- ten agencies (32%) sought a combination of the above services.

5.40 Almost 50% of agencies surveyed indicated that they used other agencies, in particular ACTPS, to manage their procurement activities. This indicates that most small agencies do not have experienced in-house procurement staff to manage their procurement functions and rely on ACTPS. Further, about eight agencies advised that they used ACTPS for any purchases over \$50,000.

5.41 Based on Treasury estimates, the total expenditure on procurement processes in 2004-05 across the ACT government is around \$23m. Expenditure in agencies accounts for \$18m, and ACTPS expends around \$5m.

Formal Service Agreement

5.42 ACTPS manages a significant amount of projects for other agencies each year. However, Audit notes that ACTPS does not have a formal Service Level

Agreement (SLA) or similar service/management agreement in place with each agency. For example, ACTPS provides procurement services to the Department of Urban Services, the Canberra Hospital, Department of Education and Training and Department of Justice and Community Safety under informal arrangements. Audit also understands these informal agreements have been operating for several years.

5.43 Audit was advised that ACTPS, in the absence of a formal service agreement with agencies, had usually requested agencies to enter into a Project Responsibility Agreement (the Agreement) with ACTPS for each project. The Agreement states the schedule fee that ACTPS will charge for each project and the project responsibilities between agencies and ACTPS. ACTPS advised that, in some cases where SLAs do not exist, for example, where the project was a significant undertaking and the relevant agency had limited or no prior experience in dealing with ACTPS, exchanges of letters of engagement or specific project responsibility agreements would be established to provide clarity for the various staff involved in delivery of the project.

5.44 An SLA or a similar agreement provides clear parameters for both ACTPS and other agencies and ensures that both parties are aware of their responsibilities and performance requirements. It also provides efficiencies as negotiations and agreements do not have to be undertaken for each project.

5.45 Audit understands that, as part of the revised procurement arrangements currently being implemented, ACTPS intends to negotiate a Responsibility Statement with each agency. Audit considers it is important for ACTPS, as a central provider for procurement services and in line with better practices, to have a formal service agreement with other agencies. The new service agreement should cover and set service levels and performance targets, roles and responsibilities between ACTPS and agencies, accountability and governance arrangements, dispute resolutions, and right of accessibility of procurement documentation by agencies for management and audit review.

Recommendation 12

A service level agreement, or similar statement of responsibilities, should be formalised between ACT Procurement Solutions and agencies to achieve efficiency and accountability.

RESOURCE ALLOCATION AND STAFF COMPETENCIES

5.46 The audit sought information on the number of full-time equivalent (FTE) staff involved in procurement activities for agencies. It showed that:

- twenty-five agencies (81% of the 31 agencies that responded) advised that they employed a total of 153.8 FTE staff in handling their procurement activities;
- one major agency reported that each business unit has its own procurement staff. However, no detail was provided in respect of total number of FTE staff employed; and

EFFECTIVENESS AND EFFICIENCY OF PROCUREMENT

- five agencies provided a ‘nil’ response. This may indicate that they either do not engage any FTE staff to manage their procurement functions or have no relevant information available.

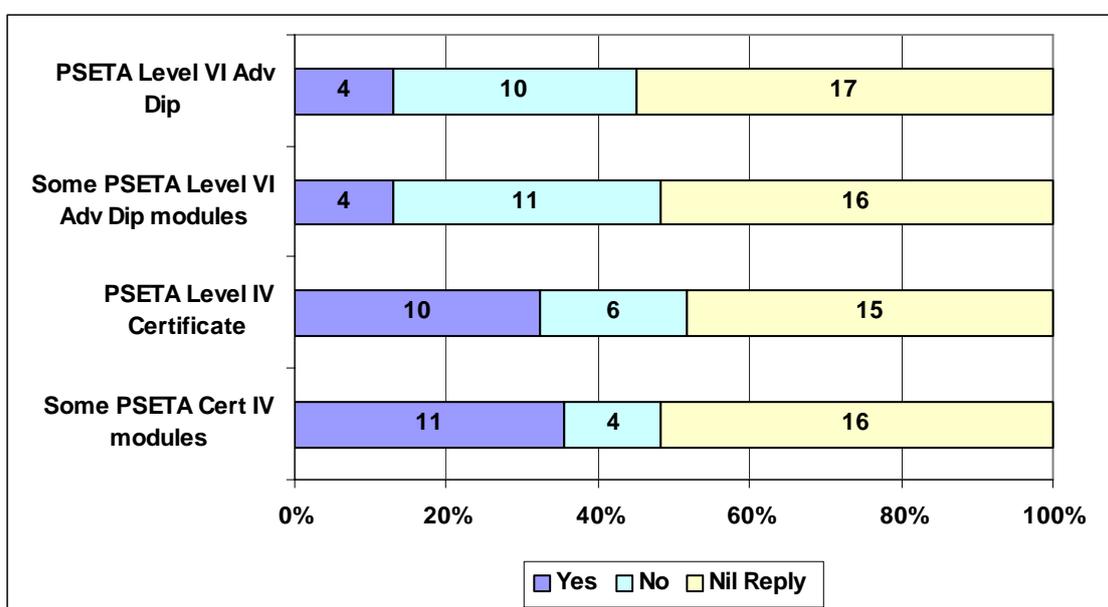
5.47 Based on agencies’ advice, Treasury estimates that across government the staffing effort applied to procurement is 217 FTE. Around half of these (113) are full time staff, of which 48 are in Procurement Solutions, and 65 are located within agencies. Almost half of the procurement activity is undertaken by non-specialist staff who are not primarily involved in procurement. Around 350 officers are involved in procurement activity across government.

5.48 Staff involved in procurement activities range from 0.2 FTE and up to 31.9 FTE in individual agencies. About eighteen agencies (72%); most of them small agencies; employ less than two FTE staff. Audit observed that the purchasing function has often been allocated a low priority with responsibilities assigned to relatively junior staff.

Staff Qualifications and Training

5.49 To ensure procurement is processed efficiently and effectively, agency staff involved in procurement activities should have certain level of competencies and experience as well as procurement training. Diagram 5.4 shows the level of competencies and training attained by agency staff.

Diagram 5.4: Level of procurement training undertaken by procurement staff



Source: ACT Audit Office’s Procurement Surveys

5.50 On the basis of the survey, Audit notes:

- eleven agencies (35% of the 31 agencies surveyed) reported that their staff have completed some modules of Level IV PSETA, Certificate IV in Government (Procurement);
- ten agencies (32%) advised that their staff completed Level IV PSETA Certificate;
- four agencies (13%) have staff that have completed some modules of Level VI PSETA, Advanced Diploma of Government (Strategic Procurement);
- four agencies (13%) indicated that they have staff that have completed Level VI PSETA Advanced Diploma. Nine (9) agencies (29%) reported that their staff do not have any procurement training; and
- a significant number of agencies (more than 15) provided no comment to each of the above mentioned level of competencies or training.

5.51 Further, a review of comments provided by several agencies indicated that:

- a major agency required almost all staff involved in significant procurement to have undertaken or completed Level IV PSETA Certificate;
- five agencies arranged for staff to attend various procurement forums or seminars; and
- a few agencies indicated that formal training to procurement staff is being considered.

5.52 The number of agency staff undertaking training (92) in 2004-05 decreased significantly from the peak of 2003-04, when 120 participated, although the number of units of training attempted by agency staff rose from 408 to 453. As the Government Procurement Board notes, this is a significant investment by Territory entities.³⁵ Audit is concerned, however, that less than 70% of participants attained the required level of competency in the units attempted (compared to 100% attained the competency units in 2003-04), and only 86 competency certificates were issued out of the 453 units attempted. This represents a completion rate of only 19%, compared to 60% in 2003-04.

5.53 The low completion rate warrants further consideration. Agencies advise that they recognise the importance of staff acquiring and maintaining up-to-date knowledge about the procurement and contract management process. However, some agencies consider that the formal qualification offered by this type of training may not be necessary in achieving the training objectives. This suggests that the Board should consider an alternative training model for non-specialist staff involved in procurement activities.

5.54 Based on the information available, Audit considers it is likely that the majority of agency staff who are involved in procurement activities do not have any formal qualification in procurement or related areas, such as contract or project

³⁵ ACT Government Procurement Board, Annual Report 2004-05, p51

management. Skilled procurement staff are spread thinly across government agencies, leading to a dilution of expertise and experience. Non-specialist staff are engaged in a wide range of procurement activities, particularly procurement under \$50,000, increasing the risk of inappropriate procurement decisions or lack of value for money.

5.55 There have also been cases where work undertaken by non-specialist staff did not receive APU endorsement. Re-working these proposals to meet procurement guidelines resulted in duplicated effort, delays in procurement, and is inherently inefficient.

5.56 To effectively undertake their duties, staff responsible for purchasing need expertise in the application of sound management and procurement practices and a knowledge of accountability procedures. For this to be achieved, it is essential that agencies should have an effective training and development program for staff involved in procurement activities.

INTERNAL OR LOCAL GUIDELINES

5.57 Audit has requested agencies to advise whether they have issued any internal guidelines or procedures to supplement the guidelines issued by the Board and ACTPS.

Table 5.3: Agencies' internal or local guidelines

	Yes	No
Number of agencies	15	14
Percentage of responses	48%	45%

5.58 Agency responses indicate that approximately half of the agencies have issued internal guidelines and procedures to assist staff.

Agency's Internal Procedures and Guidelines

5.59 Not all agencies need to develop supplementary guidance, but it may be useful in specialist areas such as the Canberra Hospital, or for schools in the Department of Education and Training.

5.60 Audit noted that DET, DUS and the Canberra Hospital have issued local guidelines and communicated these internal policies and procedures to relevant procurement staff using agency intranet and similar mechanisms. However, these documents (except those issued by the Canberra Hospital and DET's intranet sites) often were too general for practical application and typically referenced documents issued by the Government Procurement Board.

5.61 Audit believes that comprehensive up-to-date guidance is essential to assist staff in understanding their responsibilities and applying sound management practices. The following case study illustrates the importance of having a written internal policy and guidelines.

Case Study 5.1: Documented Policy and Guideline

In response to concerns raised with the Auditor-General, Audit reviewed the process in relation to the Department of Education and Training (DET) capital work projects.

Facilities Management Section (FMS) manages the Department's capital works program. The Capital Works Program represents a significant investment with total expenditure of \$28m in 2004-05. Audit understands that project management of most of the capital works has been outsourced to ACT Procurement Solutions (ACTPS), which manages projects on behalf of the Department, from initiation to completion.

Audit Comment

As part of the procurement audit, Audit examined whether the Department had sound policy and procedures in managing its capital works programs and the tendering process was open and transparent.

A review of a number of the Department's construction projects at ACTPS found that the relevant tendering and evaluation processes had been conducted in accordance with relevant principles, guidelines and processes. These procurement projects were subject to review and endorsement by the ACTPS's APU and the Government Procurement Board, where appropriate. Audit considers that the tendering processes were undertaken in an open and transparent manner.

Audit reviewed a number of project files held by the Department's FMS and noted that different project officers had adopted different practices in record keeping and documentation. This reflected the individual experience of managers and a lack of a formal policy and procedures manual or guidelines relating to managing capital works. As a result, staff might not be following appropriate and consistent procedures in managing the projects.

Audit notes that the Department has made changes to some of its management practices since October 2003 to improve accountability and transparency. The Department has also advised that it will revise its internal policy and procedures manual or guidelines relating to facilities management. The new manual or guidelines can be placed in the Department's intranet and all FMS staff should be advised of its existence, and of any subsequent amendments. The revised policy and procedures manual will be completed early in 2006.

5.62 Audit understands that, prior to October 2003, FMS staff were not involved in the tender evaluation process and that the Department allowed an ACTPS delegate to approve the tenders. Current procedures now require, for each project managed by ACTPS, at least one FMS officer to be a member of the tender evaluation team and the Department's delegate to review and approve the tender evaluation report. However, these changes were not documented in any departmental policy and

guidelines, as the Department does not have any formal facilities management procedures or guidelines.

5.63 The guidelines on agencies' intranet in relation to procurement are usually very brief. As procurement activities and the project management of some purchases, for example the capital work program, can be complex, agencies should issue internal policies and guidelines in assisting staff in undertaking various purchasing functions.

5.64 Further, the development of internal procedures and guidelines will assist staff in understanding their roles and responsibilities and applying sound and consistent management practices.

Recommendation 13

Where appropriate, agencies should issue agency-specific guidance to supplement the procurement guidelines and circulars issued by the Government Procurement Board, and ensure such guidance remains complete and up-to-date.

CONCLUSIONS

5.65 On the basis of the survey results and from audit examination of agencies' systems and practices in place, Audit notes that agency procurement functions are fragmented and not well co-ordinated. Procurement is not regularly reviewed against sound performance measures or benchmarks. Significant government expenditure is incurred on procurement below the \$50,000 threshold, which is often undertaken by non-specialist staff who may lack the technical skills or experience necessary to ensure value for money is achieved.

6. TRANSPARENCY AND ACCOUNTABILITY

INTRODUCTION

6.1 This chapter reviews the provisions of the *Government Procurement Act 2001* (the Procurement Act) in respect of the administration and operation of the Notifiable and Reportable Contracts, and also discusses whether the transparency and accountability objectives of the legislation are being achieved.

KEY FINDINGS

- There were significant instances of non-compliance with the reporting provisions of the Procurement Act in respect of the Notifiable Contracts and the Reportable Contracts (containing confidentiality clauses). As a result, it is doubtful that the transparency and accountability goals of the legislation are being achieved in an effective manner.
- With respect to the reporting requirements for the Notifiable Contracts, Audit found that:
 - a significant number of contracts (38%) were not placed on the Notifiable Contracts Register within the 21-day requirement in accordance with the Act;
 - at the time of the audit, there were instances where contracts had not been placed on the Notifiable Contracts Register in accordance with statutory requirements;
 - information recorded on Notifiable Contracts Register contained errors or omissions; and
 - the public text of the contracts is not available when the contracts expired, and subsequently public access was not available. Within a certain time limit, say three years after the expiry of the contracts, the continued availability of information can improve accountability and transparency.
- The reporting requirements for contracts containing confidential text (Reportable Contracts) were not being administered effectively. In particular:
 - many agencies did not provide the required information to the Auditor-General in accordance with Section 38 of the Government Procurement Act;
 - many agencies did not provide the Auditor-General their Reportable Contracts within the 21 days of the contracts being made (an average of 35% during the last four reporting periods since September 2003); and
 - information provided to the Auditor-General was in many cases either incomplete or incorrect.

BACKGROUND

6.2 Prior to the amendment of the Procurement Act in July 2003 to incorporate the provisions of the *Public Access to Government Contracts Act 2000* (the Public Access Act) and the *Government Contractual Debts (Interests) Act 1994* into a single, procurement specific, legislation, the Public Access Act provided for the publication, as far as possible, of the terms of government contracts.

6.3 The Public Access Act was intended 'to enforce the public's right to know how their money is being spent and public assets are managed, while giving business confidence that their privacy is protected'.³⁶ It commenced on 21 December 2000.

6.4 The Public Access Act required agencies to prepare, and make available to the public, a public text of government contracts with a value of \$50,000 or more. The Act limited information in contracts that can be made confidential and excluded from the public text. If a contract was to make certain information confidential, it must do so using provisions that follow the model confidentiality clause in the schedule of the Act.

6.5 Where a government agency agreed to the inclusion of a confidentiality clause in a contract, the agency was required to provide a copy of the contract to the Auditor-General. The Act further required that the Auditor-General maintain a register and report every six months to a committee of the Legislative Assembly on the contracts added to the register.

6.6 In June 2002, the then Auditor-General tabled a report titled 'Operation of the Public Access to Government Contracts Act' Report No. 2, 2002. The Report found that the Act was not effective and was not being administered effectively. A number of recommendations were made to improve the effective implementation of the legislation.

6.7 The July 2003 amendments to the Procurement Act did not change the intention of the Public Access Act to provide for transparency and accountability of public expenditure by making government contracts available to the public. However, among other things, the Procurement Act establishes the concepts of 'Notifiable' and 'Reportable' contracts.

NOTIFIABLE CONTRACTS

6.8 A 'Notifiable Contract' is defined in section 25 of the Procurement Act as a written contract for the procurement of goods, services or works or for disposal of goods and works with a total consideration, or estimated total consideration, worth \$50,000 or more, to which a Territory agency is a party.³⁷

³⁶ Australian Capital Territory Legislative Assembly, Debates, 5 May 1999, page 1338.

³⁷ Procurement Circular 2003/05 titled 'Notifiable and Reportable Contracts' issued by the Government Procurement Board in June 2003

6.9 Effective from 1 July 2003, all government agencies, except Territory Owned Corporations or Territory entities established under the Corporations Act, are required to publish the public text of all Notifiable Contracts, and Notifiable Contract amendments³⁸ on the ACT Government Notifiable Contracts Register (the Contracts Register) within 21 days of contract or amendment creation.³⁹

6.10 The Contracts Register is maintained by the Department of Treasury (ACT Procurement Solutions) on its 'BASIS' (Buyers and Sellers Information Service) website.⁴⁰ The contents of the Contracts Register are specified in Section 28 of the Procurement Act and include the following information for each Notifiable Contract:

- the parties to the contract;
- the responsible Territory entity;
- brief description of the contract,
- date the contract was made/ended;
- value of the total consideration, or estimated total consideration, of the contract;
- details of a notifiable amendment of the contract;
- whether any part of the contract is confidential text;
- a brief indication of what the confidential text relates to; and
- information relating to access of a copy of the public text of the contract (in an electronic form and/or hard copy).

6.11 Individual agencies are responsible for entering the public text of Notifiable Contracts and amendments on the Contracts Register. The public text must be made available on the Contracts Register either by attaching an electronic copy of the public text or allowing anyone to buy a printed copy of the public text.

Completeness And Correctness Of Notifiable Contracts Register

6.12 Audit reviewed a number of purchases with a value more than \$50,000 and found that 38% of the sampled tested were not placed on the Notifiable Contracts Register within 21 days of the contracts being made. Audit also found that for a number of the contracts reviewed during the audit, the information recorded on the Register was not correct, or not in accordance with the requirements of the Act.

6.13 Further, Audit could not access through the Register the public text of those contracts that had expired during the period of review. Audit verified the details of these contracts based on the database files provided by ACT Procurement Solutions (ACTPS).

³⁸ The notifiable amendments threshold is \$20,000 or 10% of the total consideration payable, whichever is greater, either alone or counted with another amendment or other

³⁹ Divisions 3.1 to 3.3 of the *Government Procurement Act 2001*.

⁴⁰ Buyers and Sellers Information Service website – <www.basis.act.gov.au>

6.14 Audit considers that a government contract does not cease to be of interest to the public merely because the term of the contract has expired. The public, for example potential suppliers, may still be interested to find out the information relating to any previous contracts that may assist them in preparing for the tenders in provision of similar goods or services to the Territory.

6.15 The matter in respect of the unavailability of the public text of the expired contracts was raised in the previous Auditor-General's Report No. 6 titled 'Workers' Compensation Supplementation Fund' tabled in the Legislative Assembly in September 2004.⁴¹ In that Report, Audit recommended ACTPS:

in consultation with ACT Government Procurement Board, redesign the database supporting the Notifiable Contracts Register to ensure that the public text of contracts continues be made available to the public for, say, three years after they have ceased to be current.

6.16 Treasury agreed with the recommendation and advised that enhancements to the database would be likely to be incorporated in broader changes to the online contracts and tender information services.⁴² However, Audit notes that such enhancement had not been implemented at the time of this audit.

REPORTABLE CONTRACTS

6.17 Although the Procurement Act intends to make government contracts available for public scrutiny, it acknowledges that there will be circumstances where agencies are satisfied there is a legal requirement to maintain the confidentiality aspects of a notifiable contract. Provisions for contracts containing confidential text are included in the Act. One important provision relates to the requirement of agencies to advise the Auditor-General of Notifiable Contracts with confidential text (termed 'Reportable Contracts').

6.18 Agencies must not propose (or agree) to information or text being regarded as confidential unless they are satisfied it is a legal requirement or:

- be an unreasonable disclosure of personal information about a person;
- disclose a trade secret;
- diminish commercial value of the information;
- be an unreasonable disclosure of business affairs;
- put public safety or security of the Territory at risk; or
- disclose prescribed information.⁴³

⁴¹ Auditor-General's Report No. 6 2004 titled 'Workers' Compensation Supplementation Fund' pages 26 and 27.

⁴² Ibid., page 27.

⁴³ Section 35 of the *Government Procurement Act 2001*.

6.19 If a government contract is to make certain information confidential, it must do so using the provisions that follow the model confidentiality clause in the schedule of the Procurement Act.

Contracts And Information To Be Provided To The Auditor-General (Section 38 of the Procurement Act)

6.20 All Notifiable Contracts with confidential text become 'Reportable Contracts' and a copy must be provided to the Auditor-General within 21 days of being created.

6.21 For each reporting period (a six-month period ending on 31 March or 30 September) agencies must provide the Auditor-General within 21 days after the day each relevant reporting period ends with a list of the following:

- the Reportable Contracts that became Notifiable Contracts during the relevant period; and
- the Reportable Contracts which had confidential text changed during the relevant period; or
- a statement that no Reportable Contracts became notifiable or changed during the relevant period

6.22 The list of Reportable Contracts must contain, for each Reportable Contract:

- the parties to the contract;
- a brief description of what the contract is for;
- the date the contract was made/ends;
- the value of the total consideration, or estimated total consideration, for the contract;
- if a reportable contract which had confidential text changed during the relevant period, what the change(s) to confidential text relate to; and
- any other information prescribed under the regulations.

The Auditor-General's Responsibilities

6.23 In accordance with Section 39 of the Procurement Act, the Auditor-General must give the information provided by agencies to the appropriate Legislative Assembly committee (at present, the Public Accounts Committee) as soon as possible after the end of each reporting period (i.e. as soon as possible after 31 March or 30 September). The Act does not require the Auditor-General to review or audit the information provided by agencies, e.g. to ensure the accuracy of the contract details or that an agency's decision to agree to a part of a contract being confidential was consistent with the grounds for confidentiality of information identified in the Act.

Reporting of Contracts with Confidentiality Clauses

6.24 Pursuant to Section 39 of the Procurement Act, the Auditor-General has provided the Public Accounts Committee the following reports relating to contracts including confidential text since the amendment of the Act in July 2003:

- Report dated 7 January 2004 for the period 22 June to 30 September 2003;
- Report dated 25 May 2004 for the period 1 October 2003 to 31 March 2004;
- Report dated 6 December 2004 for the period 1 April to 30 September 2004; and
- Report dated 23 June 2005 for the period 1 October 2004 to 31 March 2005.

6.25 The Auditor-General in her reports of ‘Reportable Contracts’ to the Public Accounts Committee had expressed concerns that reports to the Public Accounts Committee may contain errors or omissions, because some agencies fail to meet their obligations under Section 38 of the Act.

6.26 The Public Accounts Committee advised Audit that the reports relating to the reporting of contracts with confidentiality clauses for the above reporting periods were discussed by the Committee in its various private meetings. Other than seeking further clarification on certain matters from the Auditor-General, no particular action was proposed.

Analysis Of Agencies’ Reporting

6.27 Several matters were noted from the analysis of agencies’ reporting of contracts with confidentiality clauses to the Auditor-General. Details are discussed in the following paragraphs.

Proportion of Reportable Contracts to Notifiable Contracts

6.28 As shown in Table 6.1 below, the proportion of total number of contracts with confidentiality clauses (Reportable Contracts) to the total number of Notifiable Contracts had increased, from 5% for the reporting period ended 30 September 2003 to 14% for the reporting period ended 31 March 2005.

Table 6.1: Percentage of total number of Reportable Contracts to total number of Notifiable Contracts by reporting period

Reporting Period	No. of Notifiable Contracts	No. of Reportable Contracts	Percentage of Reportable Contracts
22 June 2003 to 30 September 2003	327	15	5%
1 October 2003 to 31 March 2004	386	40	10%
1 April 2004 to 30 September 2004	544	68	13%
1 October 2004 to 31 March 2005	275	38	14%

6.29 Notwithstanding that the number of Notifiable Contracts for the reporting period ended 31 March 2005 has significantly decreased (by 50%) compared to the last reporting period, the percentage of Reportable Contracts continued to increase slightly.

Analysis Of Confidentiality Of Information

6.30 Table 6.2 summarises the grounds for confidentiality of information in accordance with Section 35 of the Procurement Act.

Table 6.2: Summary of grounds for confidentiality of information

Grounds for confidentiality	Reporting Period			
	22/6/2003 to 30/9/2003	1/10/2003 to 31/3/2004	1/4/2004 to 30/9/2004	1/10/2004 to 31/3/2005
Personal information	10	8	13	7
Trade secret	--	1	2	3
Commercial value	15	29	56	21
Business affairs of a person	12	20	35	17
Public safety or security	--	--	--	1
Statutory requirement	2	--	--	1
Total no. of Reportable Contracts	15	40	68	38

6.31 Based on agencies' information, Audit notes that the disclosure of text of the contracts relating to personal information about a person, information (other than a trade secret) having a commercial value, and information about the business affairs of a person were the main grounds that agencies agreed to being confidential text.

6.32 The Audit does not assess whether an agency's decision to agree to a part of a contract being confidential was consistent with the grounds for confidentiality of information identified in Section 35 of the Act.

Non-Compliance With Reporting Provisions By Agencies

6.33 Since implementation of the new reporting provisions for Reportable Contracts under the Procurement Act, a significant number of agencies, which were required to report their Reportable Contracts for each reporting period, did not comply with the provisions of the legislation to deliver the Reportable Contracts to the Auditor-General within the twenty-one day period. This is illustrated in Table 6.3.

Table 6.3: Non-compliance with the 21-day reporting provisions

Reporting Period	No. of agencies with Reportable Contracts	Non-compliance	Percentage
22 June 2003 to 30 September 2003	8	4	50%
1 October 2003 to 31 March 2004	28	23	82%
1 April 2004 to 30 September 2004	26	7	27%
1 October 2004 to 31 March 2005	23	21	91%

6.34 For the March 2005 reporting period, the number of agencies that did not comply with the statutory reporting requirement had increased significantly to 91% from 27% for the September 2004 reporting period.

6.35 Table 6.4 below identified that there were a significant number of Reportable Contracts that agencies did not provide to the Auditor-General within 21 days of the contracts being made for each reporting period. Instances of non-compliance were material as indicated by continued increasing breaches of the legislation.

Table 6.4: Non-compliance with the end-of-period reporting provisions

Reporting Period	No. of Reportable Contracts	Non-compliance	Percentage
22 June 2003 to 30 September 2003	15	4	27%
1 October 2003 to 31 March 2004	40	9	23%
1 April 2004 to 30 September 2004	68	29	43%
1 October 2004 to 31 March 2005	38	15	39%
Total	161	57	35%

6.36 Since June 2003, an average of 35% of the total number of Reportable Contracts were not submitted by agencies to the Auditor-General within the 21 days of the contracts.

6.37 These instances of non-compliance indicate that agencies do not have reliable systems and controls in place to ensure that their Reportable Contracts are submitted to the Auditor-General in accordance with the legislative requirements.

6.38 Furthermore, it was noted that:

- agencies did not provide all information to the Auditor-General required by Section 38 of the Procurement Act, such as a list of Reportable Contracts that became Notifiable Contracts during each reporting period or a statement that no Reportable Contracts became notifiable or changed during each reporting periods;

- discrepancies have been found in the information provided to the Auditor-General, for example, differences in the contract period and consideration; and
- inconsistencies were identified between the information provided to the Auditor-General in writing and the information recorded on the Government Contract Register, for example the number of Reportable Contracts reported by the agencies and the number of the contracts recorded on the Government Contracts Register.

Effectiveness of the Reporting Provisions

6.39 Agencies have not managed the reporting provisions efficiently or effectively. There has been significant non-compliance with the Act.

6.40 The Auditor-General's reporting obligations for contracts containing confidentiality clauses under Section 39 of the Procurement Act are only limited to compilation of a report to the Public Accounts Committee based on agencies' information for each reporting period.

6.41 It is questionable whether the current reporting achieves the legislative intention for greater transparency in an effective or efficient manner. This is due to information collected and reported, but not necessarily verified or scrutinised in any detail.

6.42 Given that the administrative process required of agencies by the Act is not complex, and notwithstanding ongoing effort by the Auditor-General and the Government Procurement Board to encourage compliance, the current high level of non-compliance suggests that agencies do not allocate adequate priority to this aspect of the legislation.

6.43 To ensure effective applications of the reporting provisions relating to confidential text by agencies, consideration should be given to amending the relevant legislation and present arrangements. It is suggested that more effective reporting and monitoring mechanism be introduced to ensure agencies' compliance with the legislation.

Recommendation 14

In the context of its forthcoming review of the operations of the Government Procurement Act, the Department of Treasury should consider whether the current reporting requirements for Notifiable and Reportable Contracts are an effective means of achieving transparency and accountability in procurement.

APPENDIX A – AUDIT APPROACH

Focus And Scope

The audit covered procurement functions across several ACT government agencies. For the purpose of the *Government Procurement Act 2001* (the Procurement Act) and the related Guidelines, 'procurement activity' is defined to include the procurement of goods, services and works, and the disposal of goods and works by Territory entities.

The ACT government agencies reviewed for this audit were:

- Chief Minister's Department;
- Department of Treasury (including ACT Procurement Solutions);
- Department of Urban Services;
- Department of Education and Training;
- ACTION Authority;
- Department of Justice and Community Safety; and
- ACT Health (including The Canberra Hospital).

The scope of the audit was limited to compliance with the Procurement Act and related policies, circulars and guidelines. The audit did not involve an evaluation of the legislative and policy framework underpinning procurement management and practices in the Territory. However, any departures from the legislative or policy framework were analysed and reported so that improvements can be made in the future.

The audit did not review legal aspects of the procurement, for example the degree of protection afforded by the contents of contracts, and management of the contract after execution.

The scope included detailed examination of a representative sample of procurement plans and supporting documentation in the agencies selected for review, using the Audit's test programs. More than 370 small and major procurement transactions and supporting documentation were examined in detail.

Methodology

The audit approach consisted of:

- consultation with the Government Procurement Board and ACT Procurement Solutions;
- identifying those documents that set down the policies and procedures to be followed when assessing procurement activity and processes. This involved

- identifying the legislative framework and related policy and procedures, researching documents and discussion with the relevant agency staff;
- identifying procedures and controls used to give effect to the legislation and to ensure compliance, and developing a normative test program covering the small purchases (value less than \$50,000) and major procurement projects (value greater than \$50,000). The test procedures covered areas of the procurement processes, including:
 - a business case for the procurement proposal,
 - completeness of major procurement documents (such as procurement plan, evaluation plan, tender evaluation report, contract management plan, probity plan, contract and insurance details),
 - approval of the procurement plan and tender evaluation report by agency's chief executive or delegate, endorsement of the proposal by agency's Approved Procurement Unit and the Government Procurement Board where appropriate,
 - compliance with the government procurement principles and guidelines,
 - evidence of tender and quotations sought, and
 - record keeping.
 - determining whether all the relevant policies and guidelines had been followed and relevant documentation had been submitted;
 - determining whether the decisions made were based on information that was accurate, complete, interpreted correctly and used appropriately;
 - conducting a survey of 26 agencies on procurement activities. The responses from the agencies were then collated and analysed, and follow up discussions were held with some agencies;
 - briefing, interviews, and correspondence with relevant agency staff; and
 - preparation and finalisation of a report to the ACT Legislative Assembly and to specific agencies (as required).

Use Of Sampling

A representative sample of procurement proposals and supporting documentation for each agency for 2003-04 and the first six months of 2004-05 was selected for detailed examination using the Audit's test program.

More than 370 procurement proposals and supporting documentation were reviewed, of which 72 major projects were examined in detail during the audit.

Procurement Survey

The purpose of the surveys was to collect information to assist in audit assessment of whether agencies have sound management practices and effective control

environment to encourage and support efficient and effective procurement processes and practices.

The audit survey covers a range of issues, including:

- agency's current procurement structure and arrangements;
- management support and review;
- effectiveness and efficiency of procurement processes;
- resources allocated to procurement activities;
- skills and competencies of procurement staff; and
- adequacy and usefulness of internal and external guidelines.

Out of these 26 entities surveyed, 24 entities responded. This represents an overall response rate of 92 per cent.

However, due to decentralised procurement functions and different management practices, the business units of two entities, namely the Canberra Hospital within ACT Health, and six major business units of Department of Justice and Community Safety, have elected to provide their individual responses. As a result, a total of 31 survey forms were received and used for the survey analysis.

APPENDIX B – PROCUREMENT SURVEY

PERFORMANCE AUDIT

GOVERNMENT PROCUREMENT

Questionnaire

Instructions

The answers to this questionnaire will assist in the conduct of the above-mentioned audit and respondents are therefore requested to answer all questions. Please clearly circle Yes or No, and/or specify a description for others.

The ACT Auditor-General's Office will be happy to provide assistance in completing any part of this questionnaire, and would welcome any written comments or explanations. Should you have any queries about the questionnaire please contact Michael Lai on (02) 6207 0822 or michael.lai@act.gov.au

Time Required: This questionnaire should be answered based on readily available information. If the information is not readily available please write N/A for the relevant question. We estimate that the questionnaire will take approximately 30 mins.

Please return the completed questionnaire by **30 March 2005** to:

Michael Lai
Manager
ACT Auditor – General's Office
GPO Box 275
Civic Square ACT 2608
E-mail: michael.lai@act.gov.au

Authorisation of completed questionnaire. It would be preferred that the completed questionnaire be signed by an Executive Director equivalent or higher as the authorised response from the agency. In addition, please nominate a contact officer.

Agency Name (please print):

Authorised Officer (please print):

Position Title:

Signature:Date:

Contact officer

Name (please print):Position Title:

Phone number:E-mail:

Thank you for your cooperation

Part One: Agency's General Information					
Q1.1	Describe the Agency's procurement structure and arrangements (eg. Centralised APU responsible for all procurement activities over \$50,000, with agency work units responsible for procurement under \$50,000).				
Q1.2	Provide a summary of procurement activities				
		2002-03		2003-04	
		No.	\$	No.	\$
	Under \$50,000				
	Over \$50,000				
<i>Alternatively, please provide a copy of the Agency's previous annual returns to the Government Procurement Board</i>					
Q1.3	How long does it approximately take for proposals go through the procurement process? (i.e. how long does it take from the development of a procurement proposal or business case to the actual procurement of the good/service/works?)				
	Type of transaction			Period (days)	
	Small Procurement, valued less than \$5,000				
	Medium Procurement, valued between \$5,000 and less than \$100,000				
	Large Procurement, valued greater than \$100,000				
Q1.4	Is there any overall review process of procurement undertaken by management on a regular basis to ensure compliance with procurement guidelines? (Please Specify)			Yes <input type="checkbox"/>	No <input type="checkbox"/>
Part Two: Agency Approved Procurement Unit (APU)					
Q2.1	Does the Agency have an APU?			Yes <input type="checkbox"/>	No <input type="checkbox"/>
**** If the Agency does not have an APU, please go to Part 3 Questions					
Q2.2	What level is your APU currently?				
Q2.3	How many APU members are there?				

Part Two: Agency Approved Procurement Unit (APU) (continued)

Q2.4	How many APU members have:	
	Qualification	Number
	Level IV Public Services Education and Training Authority (PSETA) qualifications	
	Level VI PSETA qualifications	
	None of the above	
Other relevant qualifications (Please Specify)		
Q2.5	How often did the APU meet:	
	Year	Number of APU Meetings
	2003-2004	
	2002-2003	
Q2.6	How many proposals did the APU consider:	
	Year	Number of Proposals
	2003-2004	
	2002-2003	

Part Three: Use of other Agencies for Procurement

Q3.1	Does the Agency use another agency for some or all of its procurement function? If yes, please provide your Agency's nominated Approved Procurement Unit (eg. Procurement Solutions)	Yes <input type="checkbox"/> No <input type="checkbox"/>
Q3.2	Does the Agency use another Agency for:	
	1) advice?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	2) preparation of procurement documentation?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	3) APU and Government Procurement Board review processes?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	4) project management?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	5) a combination of the above?	Yes <input type="checkbox"/> No <input type="checkbox"/>

Part Four: General Staff					
Q4.1	How many full time equivalent (FTE) staff are involved in procurement activities for the Agency?				
Q4.2	What is the level of procurement training that has been undertaken by staff involved in procurement activities:				
	Training for staff involved in procurement activities	Yes	No		
	None	<input type="checkbox"/>	<input type="checkbox"/>		
	Some of the modules for Level IV certification but not completed	<input type="checkbox"/>	<input type="checkbox"/>		
	Level IV certification	<input type="checkbox"/>	<input type="checkbox"/>		
	Some of the modules for Level VI certification but not completed certificate	<input type="checkbox"/>	<input type="checkbox"/>		
	Level VI certification	<input type="checkbox"/>	<input type="checkbox"/>		
Other (Please Specify)					
Q4.3	Who do staff contact if they have questions relating to the procurement process or guidelines?				
Part Five: Whole of Government Guidelines					
Q5.1	Are staff involved in procurement activities aware of the Government Procurement Guidelines and Circulars?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
	Comment				
Q5.2	Are the Guidelines available locally on the Agency's Intranet or similar?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
	Comment				
Q5.3	Are the Guidelines and Circulars easy to understand and to apply?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
	Comment				

Part Five: Whole of Government Guidelines (continued)

<p>Q5.4</p>	<p>Are the Guidelines and Circulars applicable to the Agency’s business needs?</p> <p>Comment</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>																		
<p>Q5.5</p>	<p>If the Guidelines and Circulars are not applicable to the Agency’s business needs have the Guidelines and Circulars been tailored to suit the Agency’s business?</p> <p>Comment</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>																		
<p>Q5.6</p>	<p>Do you consider the Guidelines and Circulars issued by the Government Procurement Board are adequate and in line with better practices?</p> <p>Which area that you consider may need further improvement?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>																		
<p>Q 5.7</p>	<p>Do you think the current procurement policies and guidelines:</p> <p>1) improve transparency and accountability?</p> <p>2) assist in achieving “Value for Money”?</p> <p>3) are easy to follow and comply with?</p> <p>Comment</p>	<table border="1"> <tr> <td>Yes</td><td><input type="checkbox"/></td><td>No</td><td><input type="checkbox"/></td><td>Partly</td><td><input type="checkbox"/></td> </tr> <tr> <td>Yes</td><td><input type="checkbox"/></td><td>No</td><td><input type="checkbox"/></td><td>Partly</td><td><input type="checkbox"/></td> </tr> <tr> <td>Yes</td><td><input type="checkbox"/></td><td>No</td><td><input type="checkbox"/></td><td>Partly</td><td><input type="checkbox"/></td> </tr> </table>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Partly	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Partly	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Partly	<input type="checkbox"/>
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Partly	<input type="checkbox"/>															
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Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Partly	<input type="checkbox"/>															

Part Six: Local Guidelines

<p>Q6.1</p>	<p>Have any local (departmental) guidelines or procedures relating to procurement been prepared by the Agency or Agency Work Units to supplement the guidelines released by Procurement Solutions and the Government Procurement Board?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q6.2</p>	<p>If yes, please list the relevant Work Units or contacts which prepare and manage these guidelines, and a contact name for each.</p>	

Any other comments?

Please provide any other comments you may have concerning the ACT Government procurement framework, and procurement activities within your Agency

Thank you for taking the time to complete this questionnaire.

PREVIOUS AUDIT REPORTS

Reports Published in 2005-2006

Report No. 3 / 2005	Reporting on Ecologically Sustainable Development
Report No. 4 / 2005	Courts Administration
Report No. 5 / 2005	Annual Report 2004-05

Reports Published in 2004-2005

Report No. 4 / 2004:	Data Reliability for Reporting on the ACT 'No Waste by 2010' Strategy
Report No. 5 / 2004:	Leave Management
Report No. 6 / 2004:	Workers' Compensation Supplementation Fund
Report No. 7 / 2004:	Annual Report 2003-2004
Report No. 8 / 2004:	Waiting Lists for Elective Surgery and Medical Treatment
Report No. 9 / 2004:	Administration and Monitoring of Youth Service Contracts
Report No. 10 / 2004:	2003-04 Financial Audits
Report No. 1 / 2005:	Management of Government Grants to the ACT Multicultural Council Inc.
Report No. 2 / 2005:	Development Application and Approval Process
Review Report:	Matters Relevant to the Office of the Special Advisor, Council of Australian Governments and Inter-Governmental Relations

Reports Published in 2003-2004

Report No. 9 / 2003:	Annual Management Report for the Year Ended 30 June 2003
Report No. 10 / 2003:	Financial Audits with Years Ending to 30 June 2003
Report No. 1 / 2004:	Administration of Policing Services
Report No. 2 / 2004:	Travel Arrangements and Expenses
Report No. 3 / 2004:	Revenue Estimates in Budget Papers 2002-03

Reports Published in 2002-2003

Report No. 5 / 2002:	V8 Car Races in Canberra – Costs and Benefits
Report No. 6 / 2002:	Annual Management Report for the Year Ended 30 June 2002
Report No. 7 / 2002:	Financial Audits with Years Ending to 30 June 2002
Report No. 1 / 2003:	Effectiveness of Annual Reporting
Report No. 2 / 2003:	Belconnen Indoor Aquatic Leisure Centre
Report No. 3 / 2003:	Emergency Services
Report No. 4 / 2003:	Management of Fraud and Corruption Prevention in the ACT Public Sector
Report No. 5 / 2003:	Lease of FAI House
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