

**MEDIA RELEASE****28 June 2021****Procurement exemptions and value for money**

Auditor-General, Mr Michael Harris, today presented the report **Procurement exemptions and value for money** to the Speaker for tabling in the ACT Legislative Assembly. In 2019-2020 exemptions were used in 14 percent of all ACT Government procurement, valued at approximately \$119 million in spending. Exemptions allow agencies to undertake a procurement without seeking three quotes or conducting an open tender.

The audit considered a selection of high value procurements undertaken in 2019 and 2020 from across all areas of the ACT Government. The audit focused on whether agencies effectively documented the rationale for using an exemption, and pursued value for money, managed risks and maintained high standards of integrity.

The audit found that ACT Government entities are effectively documenting the rationale for selecting providers without an open and competitive process. Mr Harris says ACT Government agencies 'are complying with the legislative requirements for using an exemption in procurement. ACT Government entities most often use exemptions because they assert there is a limited number of suppliers able to provide the goods and services required by the agency.'

Mr Harris also noted that 'of the procurements considered in the audit, there was inconsistency in agencies' consideration of probity and ethical considerations, management of risk and optimisation of whole of life costs'. The audit found that:

- less than half of the procurements had a documented process for addressing probity issues;
- one third had signed Declarations of Confidentiality and Conflicts of Interest;
- less than half of the procurements had effective risk assessments; and
- there was no evidence that whole of life costs were factored into value for money assessments.

The audit made four recommendations to improve the quality of value for money assessments in procurement using exemptions. Directed at ACT Government agencies and Procurement ACT, the recommendations seek:

- improvement in the quality and comprehensiveness of procurement documentation across government;

- greater use of policy guidance and more training to improve the understanding of integrity issues in procurement within agencies; and
- improved guidance on the management of procurement risk, and the optimise whole of life costs.

The summary of the **Procurement exemptions and value for money** audit, with audit conclusions, key findings and recommendations is attached to this media release.

Copies of **Procurement exemptions and value for money: Report No. 07/2021** are available from the ACT Audit Office's website [www.audit.act.gov.au](http://www.audit.act.gov.au). If you need assistance accessing the report please phone 6207 0833.

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# SUMMARY

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The *Government Procurement Regulation (2007)* (the Regulation) sets out the processes for government purchasing, including the need to seek three quotes or conduct an open tender process for the procurement of goods and services valued at more than \$25,000. The Regulation also allows entities to exercise an exemption to these requirements and conduct a select tender process.

Exemptions can be granted for a range of reasons, such as policy priorities that have urgent purchasing needs, or when there is only one supplier in the market with the knowledge or equipment to meet the government's needs.

Procurements that use exemptions and are above \$25,000 are called 'select' or 'single select' procurement. They may also be referred to as 'limited sourcing', 'direct sourcing', 'select tender' and 'single select tender'.

Procurements applying exemptions are a small but valuable proportion of overall procurement by ACT Government entities. In 2019-2020 exemptions were used for 14 percent of all procurements, and this represented approximately \$119 million in spending.

Like all procurement, procurements using exemptions must demonstrate value for money. Determining value for money involves an evaluation of immediate and whole of life costs, through a procurement process that manages risk, is open and fair and can demonstrate high standards of probity and integrity. As exemptions allow entities to engage solely with a single supplier, a clear demonstration that value for money has been pursued is essential to public confidence in government procurement.

The audit considers 33 high value procurements undertaken by ACT Government entities in 2019 and 2020 that used exemptions. The audit considered:

- how entities documented the rationale for using exemptions and justified not adopting an open and competitive process; and
- how effectively the procurement process considered risks, ensured a high level of integrity and accounted for the whole of costs of the purchasing decision.

## Conclusions

### PROCUREMENT EXEMPTIONS

Exemptions to the quotation and tender thresholds set out in the *Government Procurement Regulation (2007)* were used in approximately a fifth of ACT Government procurement over the past three years. This represents 770 procurements, valued at approximately \$395 million.

Entities are effectively documenting the rationale for selecting a provider without an open and competitive process – that is, they are complying with the legislative requirements for using an

exemption in procurement. ACT Government entities most often use exemptions because they assert there is a limited number of suppliers able to provide the goods and services required by the agency.

The legislation requires that entities pursue value for money when undertaking procurement. As competitive tendering is not a feature of procurements using exemptions, it is imperative that entities demonstrate that a value for money assessment had occurred. This was not consistently evident in the procurements considered in the audit; only 14 of the 33 procurements had a Tender Evaluation Plan and only eight of these resulted in a Tender Evaluation Report.

### VALUE FOR MONEY IN PROCUREMENT PROCESS

For the procurements considered in the audit, there was inconsistency in entities' consideration of probity and ethical considerations, management of risk and optimisation of whole of life costs:

- less than half of the procurements considered in the audit had a documented process for addressing probity issues, and only a third had signed Declarations of Confidentiality and Conflicts of Interest
- less than half of the procurements considered in the audit had effective risk assessments, and for those procurements that did have a risk assessment, these were largely focused on operational matters and not risks related to the procurement
- there was no evidence that whole of life costs were factored into the value for money assessment.

## Key findings

### PROCUREMENT EXEMPTIONS

#### Paragraph

Data from the ACT Government Contracts Register shows that procurements using exemptions have accounted for approximately 21 percent of all ACT procurement in the past three years (2017-18 to 2019-20). The majority of this procurement has been for goods and services.

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Analysis of the 33 procurements considered in the audit shows that entities appropriately sought delegate approval for an exemption before undertaking the procurement. This demonstrates compliance with the requirements of the Regulation.

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Documentation to establish delegate approval to use an exemption took the form of a brief or minute to the Director-General (or delegate) or a Procurement Plan Minute. In 10 of the 33 procurements entities used both forms of documentation. The Procurement Plan Minute is a template for procurements over \$200,000. It encourages consideration of a wide range of procurement policies and practices, including procurement risks, evaluation methodology and whole of life costs. These

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are key to the process of establishing value for money. The Procurement Plan Minute facilitated more fulsome documentation of procurement risks and considerations and its use should be widely encouraged.

Analysis of the 33 procurements considered as part of the audit shows that the two most common reasons entities seek an exemption are that: 2.30

- only one, or a limited number of, suppliers is available because of a need to buy equipment that is compatible with existing equipment, or because of a supplier's specialist knowledge; and
- only one supplier can supply a particular good or service.

It is good practice to conduct research about the market and potential suppliers, and to provide the delegate with the findings of the research in support of a claim that only one or a limited number of suppliers is available yet value for money can still be pursued. Procurement ACT's *Procurement Values Guide (2020)* provides effective advice on how to conduct market research while being mindful of probity considerations. 2.31

Analysis of the 33 procurements considered as part of the audit shows that it is common practice for a commitment to be made to the delegate that an assessment of value for money would occur once approval to use an exemption is granted. This assessment is then typically made through the tender evaluation process and may be documented in a Tender Evaluation Plan and Tender Evaluation Report. Templates for the Plan and the Report, provided by Procurement ACT, are in circulation to support this process. The templates are comprehensive and provide useful guidance to officers managing a procurement process. 2.40

Only 14 of the 33 (42 percent) procurements considered as part of the audit had a Tender Evaluation Plan and only eight of these resulted in a Tender Evaluation Report. Where a Tender Evaluation Plan and Tender Evaluation Report has been used in a procurement there is evidence of a comprehensive assessment of value for money. In the absence of these documents, entities could not systematically and comprehensively demonstrate that they effectively considered value for money in the procurement. 2.41

## **VALUE FOR MONEY IN PROCUREMENT PROCESS**

Paragraph

Probity is important to delivering value for money and maintaining public confidence in the integrity of procurement processes. Analysis of the 33 procurements considered as part of the audit shows that 14 of the procurements (42 percent) documented considerations associated with managing probity issues; the most common document for this was a Tender Evaluation Plan. 3.10

In the Tender Evaluation Plan, the ACT Government Solicitor's Office (GSO) or Procurement ACT were typically nominated as the probity advisor for these 3.11

procurements, but in only two procurements was evidence provided that this arrangement was formalised through further correspondence that described more fully the roles and responsibilities of each of the parties, and the deliverables in terms of probity plans and protocols.

In December 2020 Procurement ACT published a *Probity in Procurement Guide*. The Guide significantly expands on the advice available to ACT Government entities on the recognition and management of probity matters in procurement. Use of the Guide should be widely encouraged. 3.12

ACT legislation and procurement policy sets out the obligations of ACT public servants and contracted third parties in relation to conflicts of interest, both actual and perceived. A template Declaration assists ACT Government entities to effectively document and manage these. Analysis of the 33 procurements considered as part of the audit shows that 11 (33 percent) included a Declaration signed by the evaluation team, or officers involved in the procurement process, but not external parties. Commonality in form and content across these documents suggest a template is being used across ACT Government entities. 3.21

No instances of actual or perceived conflict were documented in the Declarations reviewed as part of the audit. However, in the absence of signed Declarations for *all* 33 procurements considered in the audit, the documentation does not give confidence that conflicts of interest are being systematically captured and addressed in procurement. 3.22

Procurement Policy Circular *PC24: Risk Management* provides guidance on the management of risks during procurement, noting that risk management should be incorporated within all procurements and risk management plans should be prepared for all procurements valued at more than \$25,000. Procurement ACT has developed a Risk Management Plan template to assist ACT Government entities. Only 14 of the 33 procurements considered as part of the audit (42 percent) had formally assessed procurement risks using this template. The documentation and consideration of procurement risks was more comprehensive and visible for these procurements than for procurements that did not use the template. 3.41

Where risk management plans were prepared they featured a strong bias towards operational risks; none of the procurement risk management plans focused purely on procurement risks. Where procurement risks have been described, they concern low risk considerations such as delays to the procurement and the inexperience of staff, and not significant matters that may undermine the validity of the procurement outcome. 3.42

ACT Government entities advised of a range of reasons as to why a risk management plan had not been prepared for the procurement including: an existing contract had 3.43

been extended, and the risk had been assessed during the initial procurement; the purpose of the procurement was to treat a larger operational risk; a risk questionnaire had been completed in lieu of a risk assessment; it was deemed unnecessary as the procurement is a single select approval; and the procurement had been given an overall low risk level, but that this was done without undertaking a formal risk assessment. This demonstrates a lack of understanding and appreciation of procurement risk management and that there is a need to demonstrate risk management in all procurements (including those using exemptions) as a means to ensure value for money in the procurement.

In the 33 procurements considered in the audit there was no evidence of the explicit consideration of 'whole of life' costs associated with the procurement. Whole of life costs should be considered as part of the value for money assessment because it encourages a comprehensive evaluation of the total cost of a procurement, including the future possibilities of selling or disposing of a product, or the availability of more sustainable products and services that may have lower running and disposal costs. 3.52

Three of the 33 procurements considered as part of the audit had not been published on the ACT Government Contracts Register at the time of the audit. Of the procurements not published on the register, one was due to a misunderstanding about the need to publish contracts that are made under panel arrangements, and two others were not published due to an administrative error by the entity responsible for the procurement. 3.57

## Recommendations

### RECOMMENDATION 1 VALUE FOR MONEY DOCUMENTATION

To support ACT Government entities to improve the quality and comprehensiveness of procurement documentation, Procurement ACT should:

- a) promote the use of the Procurement Plan Minute, Tender Evaluation Plan and Tender Evaluation Report templates for procurements using exemptions; and
- b) provide training to entities on the use of these templates and the assessment of value for money in procurements using exemptions.

ACT Government entities should review and revise as necessary, their Chief Executive Instructions or similar procurement policy guidance to promote the use of Procurement ACT templates, namely the Procurement Plan Minute, Tender Evaluation Plan and Tender Evaluation Report.

### RECOMMENDATION 2 INTEGRITY IN PROCUREMENT

To support ACT Government entities to improve staff understanding of the importance of integrity in procurements using exemptions, Procurement ACT should:

- a) promote the Probity in Procurement Guide (2020); and
- b) provide training to entities in probity risk assessments and identifying and monitoring conflicts of interest in procurements using exemptions.

ACT Government entities should improve staff understanding of the importance of integrity in procurement using exemptions by requiring delegates and officers undertaking procurement to undertake probity training, which would include the management of probity risks and identifying and monitoring conflicts of interest.

### **RECOMMENDATION 3      PROCUREMENT RISK ASSESSMENTS**

To support ACT Government entities to improve the quality and comprehensiveness of risk management in procurements using exemptions, Procurement ACT should:

- a) prepare better practice guidance on the management of procurement risk; and
- b) review and revise the procurement risk assessment template to provide greater clarity on the scope of a procurement risk assessment and examples of procurement risk that could be considered.

### **RECOMMENDATION 4      WHOLE OF LIFE COSTS POLICY**

To support ACT Government entities to optimise whole of life costs in procurements using exemptions, Procurement ACT should prepare better practice guidance on the identification of whole of life costs and how they should be incorporated in value of money assessments.

## **Response from entities**

In accordance with subsection 18(2) of the Auditor-General Act 1996, the Chief Minister, Treasury and Economic Development Directorate, the Community Services Directorate, the Justice and Community Safety Directorate, the Transport Canberra and City Services Directorate, the Education Directorate, the Health Directorate, Canberra Health Services, Major Projects Canberra, and the Environment, Planning and Sustainable Development Directorate were provided with:

- a draft proposed report for comment. All comments were considered and required changes were reflected in the final proposed report; and
- a final proposed report for further comment.

In accordance with subsection 18(3) of the Auditor-General Act 1996 other entities considered to have a direct interest in the report were also provided with extracts of the draft proposed and final proposed reports for comment. All comments on the extracts of the draft proposed report were considered and required changes made in the final proposed report.

No comments were provided for inclusion in this Summary Chapter.

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