

Auditing for the Australian Capital Territory

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PA 99/04

19 June 2001

The Speaker
ACT Legislative Assembly
South Building
London Circuit
CANBERRA ACT 2601

Dear Mr Speaker

In accordance with the Authority contained in the *Auditor-General Act 1996*, I transmit to the Legislative Assembly my Report titled '*Peer-Based Drug Support Services Tender - 1998*'.

The audit was managed by Rod Nicholas of this Office.

Yours sincerely

John A Parkinson, FCPA

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1. BACKGROUND TO THE AUDIT

INTRODUCTION

1.1 In November 1998 the (then) Department of Health and Community Care (the Department) advertised seeking tenders from organisations to provide a peer-based education and support service for injecting drug users in the Australian Capital Territory. The Department received tender submissions from two organisations – from Canberra Injectors Network and from Assisting Drug Dependants Incorporated. Canberra Injectors Network was a newly formed peer-based organisation; Assisting Drug Dependants Incorporated was an established organisation already providing a variety of services to ACT drug users.

1.2 The Department assessed the tenders and selected Canberra Injectors Network as the preferred provider. The two organisations were notified of the tender assessment outcome in early February 1999.

1.3 Following public announcement of the tender outcome, a Legislative Assembly Member wrote to the Auditor-General requesting an audit of the processes leading to the allocation of the contract to Canberra Injectors Network. The Member raised concerns about the development of the contract process, its allocation to Canberra Injectors Network, and a possible conflict of interest involving a senior officer of the Department who was said to be ‘instrumental’ in selecting the preferred provider.

1.4 On the basis that these concerns may have relevance to broader issues of contracting for services by the Department, the Auditor-General agreed to undertake a review to determine whether a wider performance audit of the Department’s purchase of services activities was warranted.

1.5 This Chapter provides some background to the Audit. Later Chapters describe the Audit objectives, the methodology used in the Audit and the Audit’s conclusions and bases for those conclusions.

BACKGROUND

Relevant Government Policy

1.6 The relevant Government Policy effective at the time the contract for intravenous drug user services was tendered was the ACT Drug Strategy 1995-97 and the ACT Sexual Health and Blood Borne Diseases Strategic Plan 1998-2000.

1.7 These policies established a context for peer-based intravenous drug user services founded on harm minimisation and featuring consultation with the target population and community group. Participation and ownership of the strategies by the target population was a stated priority. Treatment and support options proposed under the Strategy were intended to reflect 'best practice'.

1.8 The ACT Drug Strategy outlined Territory priorities within the agreed framework set by the National Drug Strategy developed in 1993. The current ACT Drug Strategy - 'From Harm to Hope' - was released in September 1999 following an evaluation of the 1995-97 strategy. The current strategy, which continues with the themes identified above, was developed in the context of the National Drug Strategic Framework 1998-99 to 2002-03.

Decision to Call Tenders

1.9 Peer-based education, information and support services in the ACT had been provided for some ten years by the ACT Intravenous League, a body auspiced by Assisting Drug Dependants Incorporated. ACT Intravenous League closed in late 1997. At that time, Assisting Drug Dependants Incorporated advised the Department that the peer-based education program would be continued in conjunction with Assisting Drug Dependants Incorporated's other programs.

1.10 In March 1998 the Department became aware of a new organisation seeking to establish itself within the intravenous drug user community as a peer-based support service. In June 1998, following discussions with the new organisation and a preliminary submission, the Department decided there was scope to consider the contestability of the service provision, with a view to improved quality of services, improved delivery of the services and efficiency gains. The Department informed Assisting Drug Dependants Incorporated that it intended to call for tenders for the delivery of peer-based services to intravenous drug users.

1.11 The contract for peer-based education and support services for the ACT's intravenous drug users is a small and specialised part of the Territory's drug and alcohol health care program. The services to be sought by the Department had been delivered previously in the ACT and were similar to operations elsewhere in Australia. However, publicly tendering for services of this kind was a first in Australia. Funding for operations of around \$100,000 annually was available, although the tender was for one year only.

Tender Specifications

1.12 Research undertaken by the Health Outcomes Policy and Planning Branch of the Department significantly informed the tender specifications developed for the peer-based services. The research clearly indicated that peer-based services for intravenous drug users are an accepted health and drugs approach and have been supported by the Commonwealth and State governments across Australia to varying degrees. Further, the research supported the Department's view that significant involvement of user groups at all levels of the design and delivery of the services was essential for the effective delivery of harm minimisation interventions to the target groups.

1.13 The tender was publicly advertised in November 1998. A key aspect of the specifications was the following definition:

‘A peer-based service is one in which intravenous drug users have control over the direction of the service and at all levels of the organisation – not one managed by health professionals or alcohol and drug workers which simply employs intravenous drug users’.

Tender Outcome

1.14 The Department received several enquiries regarding the tender but received only two submissions – from Assisting Drug Dependants Incorporated and from Canberra Injectors Network – by the closing date. A tender assessment committee, which included one community representative, considered the submissions against the stated selection criteria. The committee unanimously recommended in January 1999 that Canberra Injectors Network be awarded ‘preferred provider’ status pending further negotiations on a number of matters. The recommendation was agreed by an executive of the Department with the appropriate authority in early February 1999 and the tenderers were advised accordingly. The Department also briefed the Minister for Health and Community Care on the outcome of the tender.

2. AUDIT APPROACH, OBJECTIVES AND OPINIONS

INTRODUCTION

2.1 This Chapter describes the approach followed in the conduct the Audit. It sets out the Audit's objectives and the Audit's opinions developed on the objectives. The bases for the opinions are discussed in Chapter 3.

AUDIT APPROACH

2.2 The focus of the Audit was on the processes leading to the awarding of the contract to Canberra Injectors Network.

2.3 The approach included examination of the report of a 1997 inquiry into the ACT Intravenous League to assess whether it was relevant to the tender process.

2.4 The Audit also considered whether there was any real or apparent conflict of interest involving a senior Departmental officer and if any conflict existed, whether it was managed in accordance with the Public Sector Management Manual and the Public Sector Code of Ethics.

2.5 In undertaking this work, the Audit included:

- an examination of Government and Departmental guidelines concerning contracting for services to identify policies, procedures and criteria;
- discussions with Departmental staff involved in contracting for services and administering the relevant funding program;
- examination of documentation relevant to the tender for peer-based intravenous drug user services; and
- discussions with Community group stakeholders.

AUDIT OBJECTIVES

2.6 The Audit's objectives were to provide an independent opinion on:

- whether processes used to allocate the contract:
 - were consistent with public sector policies and guidelines;
 - were sufficiently comprehensive to enable a sound and defensible selection decision to be made; and
- whether any actual or apparent conflict of interest existed, and if so, whether the conflict was managed in accordance with ACT Government policy, principles and guidelines.

AUDIT OPINIONS

2.7 The independent opinions drawn against the audit objectives are set out in the shaded box below.

Audit Opinions

The Tender for a Peer-Based Intravenous Drug User Education and Support Service

- Processes used to allocate the contract were consistent with public sector policies and guidelines.
- The processes were sufficiently comprehensive to enable a sound and defensible selection decision to be made.

Conflict of Interest Issues

- No actual or apparent conflict of interest existed.
- There could have been a public perception that a conflict of interest existed. However, the perception was generally managed in accordance with Government policy, principles and guidelines.

2.8 The bases for the opinions are provided in Chapter 3 of this Report. The Audit also produced some negative findings. These are described in Chapter 4 of the Report.

DEPARTMENTAL RESPONSE

2.9 In accordance with section 18 of the *Auditor-General Act 1996*, a copy of the proposed report was provided to the Chief Executive of the Department of Health, Housing and Community Care for consideration and comment. The Chief Executive's response is set out below.

'The Department of Health, Housing and Community Care welcomes the Performance Audit "Tender for a Peer-Based Injecting Drug User Education and Support Service".

As the audit notes, since the relevant tender process was completed, the Department has issued detailed purchasing instructions "ACT Department of Health and Community Care Chief Executive Instructions – Purchasing" which complement broader ACT Government guidelines. The Department has also realigned purchasing and policy functions in the Department resulting in less duplication and a higher standard of purchasing.

The Department notes and appreciates that the overall audit opinion is favourable, both in relation to the tender process itself and the related perceived conflict of interest issue. The Department also notes a number of more minor concerns perceived by the audit office and has responded to those concerns in the context of this response. The Department has undertaken to address any such concerns in a constructive way.

Tender process

The advice will be taken on board and the Auditor-General's suggestions with regard to better research practice will be made available to Departmental officers who may be involved in purchasing processes.

The Department has reservations about whether the tender requirements were unnecessarily detailed or lacked background information given this was the first tender undertaken of its kind in the ACT. The Department does accept, however, that the public documentation could have been clearer and better presented. The Department will therefore ensure that the need for close scrutiny of public tender documentation is clarified with Departmental officers. The Department's purchasing instructions will be reviewed to ensure clarity in this regard.

Noting that the selection criteria were in place prior to the assessment commencing, the Department accepts this finding and will review its purchasing instructions to ensure clarity in this regard.

Perceived conflict of interest issue

The audit has noted that it would have been appropriate for the officer concerned to discuss their intentions with management and to provide that advice in writing. The Department acknowledges this advice and undertakes to ensure Departmental staff understand the responsibilities of public employees in relation to conflict of interest issues. This will include drawing to the attention of potential tender panel members, the specific guidance available in the Better Practice Note on Ethics. The Department's purchasing instructions currently refer staff to this documentation.'

3. BASES FOR AUDIT OPINIONS

INTRODUCTION

3.1 The Audit's opinions on the Audit's objectives were set out in the previous Chapter.

3.2 This Chapter describes the reasons supporting the opinions.

TENDER FOR PEER-BASED INTRAVENOUS DRUG USER SERVICES

Consistency with Public Sector Policies and Guidelines

Background

3.3 In considering this aspect of the Audit, the Audit reviewed the policy background to the contract, and the general process applied by the Department in tendering for these services, including the development of the specifications used in the tendering process. The Audit considered whether the specifications were consistent with the Government's policies for services to intravenous drug users.

3.4 Planning for the tender for intravenous drug user services began in June 1998 with research to assist the development of the tender specifications. An outline of the steps involved in the tender process was prepared at that time. The outline had regard to accepted purchasing practice. The planned approach was generally followed during the tender process, and was, overall, consistent with ACT Purchasing Policy, accepted purchasing practice and complied with the Departmental guidelines.

3.5 The public tender documentation was a comprehensive package of material including an introduction to the tender requirements and process, a 26-page application form, and other material describing reporting requirements and mandatory performance standards.

Basis for the Audit Opinion on Consistency with Public Sector Policies and Guidelines

3.6 The opinion drawn was that ***processes used to allocate the contract were consistent with public sector policies and guidelines***. The opinion was based on the following positive findings.

- The Department's approach to the provision of services for intravenous drug users is consistent with the policy expressed in the ACT Drug Strategy and the ACT Sexual Health and Blood Borne Diseases Strategic Plan.
- The research undertaken by the Department as a basis for developing the tender specifications considered a broad range of matters including extensive consultation and literature-based research.
- The tender specifications provided for adequate and equitable access and consideration to occur, consistent with the Department's preferred service delivery model.
- The overall tender process applied was consistent with ACT Purchasing Policy, accepted purchasing practice and complied with the Department's guidelines.

3.7 The following other findings were made:

- A report prepared in 1997 on the then-current intravenous drug user service provider drew attention to a number of issues that, prima facie, warranted attention by the provider, its parent organisation and the Department. Available documentation indicates that the service provider and the Department appropriately addressed the immediate concerns.
- The report had marginal relevance to the intravenous drug user tender process. The main relevance was in a general 'lessons learned' sense. The Department had proper regard to the report in developing tender specifications, assessing submissions and developing the contract conditions.

Audit Comments

3.8 The Audit considers the documentation used was adequate for calling tenders for the intravenous drug user services contract and sufficiently comprehensive to allow the selection of a quality provider who could achieve the program outcomes and meet sound accountability requirements.

3.9 The positive findings support the expression of a positive opinion on the audit objectives. However, some negative findings were also made. These are described in Chapter 4 of this Report.

Comprehensiveness of the Selection Processes

Background

3.10 The tender submissions from Assisting Drug Dependants Incorporated and Canberra Injectors Network were detailed and comprehensive. The two submissions showed a good appreciation of the policy context, the tender background and needs of the ACT intravenous drug user community.

3.11 The assessment committee comprised members with experience in the health/alcohol/drugs field. As well, a community expert took part in discussions regarding the tender submissions but did not vote on them. This was appropriate. Members of the committee were not requested to formally declare conflicts of interest.

3.12 The assessment committee considered and assessed the proposals individually and comparatively. Significant variances between individual assessments were examined and resolved. A comparative assessment of the proposals was prepared. As the overall scores of the two proposals were similar, a sensitivity analysis was performed, focusing on criteria where individual scores differed by more than one point. This confirmed the initial ranking of the proposals.

Basis for Audit Opinion on Comprehensiveness of Selection Processes

3.13 The opinion that *the processes were sufficiently comprehensive to enable a sound and defensible selection to be made* is based on the following positive findings.

- The general approach adopted by the assessment committee was consistent with accepted purchasing practice and the processes complied with the relevant Departmental guidelines.
- The assessment committee fairly considered the two submissions received, consistent with the Department's interpretation of 'peer-based' and the limitations of some of the selection criteria.
- The assessment processes were sufficiently comprehensive to arrive at a sound recommendation.
- The process was satisfactorily timely, and the recommendation was consistent with the information available.
- The decision-maker had appropriate authority.
- Post-tender negotiations were consistent with Departmental and Government guidelines.

Audit Comments

3.14 In the Audit view the assessment committee fairly considered the two submissions, given the Department's interpretation of 'peer-based' and the limitations of some of the selection criteria. The committee's recommendation was unanimous.

3.15 The process was satisfactorily timely, and the recommendation was consistent with the information available. The decision-maker had appropriate authority.

3.16 Post-tender negotiations were consistent with Departmental and ACT Government guidelines.

3.17 The assessment process was sufficiently comprehensive to arrive at a sound and defensible recommendation.

3.18 The positive findings support the expression of a positive opinion on the audit objectives. However, some negative findings were also made. These are described in Chapter 4 of this Report.

CONFLICT OF INTEREST ISSUES

Existence of Actual or Apparent Conflict of Interest

Background

3.19 Public allegations were raised concerning a possible conflict of interest involving a senior officer of the Department of Health and Community Care. The officer, who was the Chairperson of the Tender assessment committee, was said to have been 'instrumental' in selecting the Canberra Injectors Network as the successful provider of intravenous drug user services.

3.20 In considering this aspect of the Audit, the Audit reviewed the tender process and other information available against the requirements of the *Public Sector Management Act 1994*, the Public Sector Management Manual and Public Sector Code of Ethics. The purpose was to assess whether there was any real or apparent conflict of interest involving officers of the Department of Health and Community Care. The Audit also sought to determine whether management action taken by the Department, in relation to any conflict of interest issues, was in accordance with the Public Sector Management Manual and the Public Sector Code of Ethics (Better Practice Note 1).

3.21 The Public Sector Management Standards establish binding regulations in relation to, among other things, conflicts of interest. Supplementary guidelines are provided in the ACT Public Service Code of Ethics (Better Practice Note 1.1). The Better Practice Note states that a conflict of interest can be:

- **Actual** – an *actual* conflict of interest exists if private interests have influenced the proper performance of an employee’s duties;
- **Apparent** – an *apparent* conflict of interest exists if private interests can appear to have influenced the proper performance of an employee’s duties, even if they did not; or
- **Potential** – a *potential* conflict of interest may arise if existing private interests have the potential to influence the proper performance of an employee’s duties.

3.22 The Better Practice Note emphasises that public employees are obliged to declare and take reasonable actions to avoid conflicts of interest.

3.23 The Audit noted that a strong personal and pecuniary interest between an officer of the Department and a former manager of Assisting Drug Dependants Incorporated arose from the officer’s friendship with the former manager and a personal financial arrangement with the former manager.

Bases for Audit Opinion on Existence of Conflict of Interest

3.24 The opinion that ***no actual or apparent conflict of interest existed*** is based on the following positive findings:

- The private relationship between an officer of the Department of Health and Community Care and a former manager of Assisting Drug Dependants Incorporated did not create actual conflict between the officer’s private interests and official duties.
- The private relationship resulted in, at best, a tenuous connection to the tender for intravenous drug user services.
- The officer was not improperly influenced in the performance of his duties.

Audit Comments

3.25 In the Audit view, the private relationship between the officer and the former manager of Assisting Drug Dependants Incorporated could not be considered sufficiently proximate to the officer’s duties to create an

actual conflict of interest. Any connection to the tender process for the intravenous drug user contract was, at best, a tenuous connection, and most unlikely to be seen by a reasonably informed observer¹ as creating a conflict of interest.

3.26 The Audit's analysis of relevant documentation indicates that the assessment committee acted impartially in reviewing the tenders received – there is no evidence of bias towards either tenderer during the assessment process. There is no evidence that the officer was improperly influenced in the performance of his duties.

Management of the Perception of a Conflict of Interest

Background

3.27 The circumstances surrounding the intravenous drug user contract and the officer's private relationship with the former manager of Assisting Drug Dependants Incorporated did, nevertheless, give rise to a public perception of a conflict of interest. This was evident from media reports regarding the tender process.

3.28 The Audit considers it was reasonably foreseeable that such a perception could arise.

3.29 In this regard, the Audit reviewed the actions by the officer and the Department to manage the perception of a conflict of interest.

Bases for Audit Opinion on Management of Conflict

3.30 The opinion that *there could have been a public perception that a conflict of interest existed. However, the perception was generally managed in accordance with Government policy, principles and guidelines* is based on the following findings.

- The officer's disclosure of the relevant facts to his manager, was reasonably timely.
- The Department's decision to allow the officer to remain in his normal duties was appropriate.

¹ The Audit considers a 'reasonably informed observer' would be one who was aware of the ACT Government purchasing methodology, the ACT Government Drug Strategy and, perhaps, the 'politics' of the intravenous drug users' community.

Audit Comments

3.31 The Public Sector Management Act requires a public employee to disclose a conflicting interest to his or her supervisor as soon as possible after the relevant facts come to the employee's notice. The Act also requires that an employee must take reasonable action to avoid a conflict of interest as soon as possible after the relevant facts come to the employee's notice. The Act does not indicate what action is to be taken.

3.32 The Best Practice Note offers managers some guidance for dealing with a conflict of interest brought to their attention. There are three basic options:

- to approve, preferably in writing, continuation of normal duties, in cases where the conflict of interest is capable of management or can readily be avoided;
- to change work responsibilities, by reallocating duties or transferring the employee to another area; or
- to request, preferably in writing, that the employee give up the conflicting interest.

3.33 The Tender assessment committee did not specifically discuss conflict of interest issues. The officer's relationship with the former manager of Assisting Drug Dependents Incorporated does not appear to have been raised in this context. It is not evident, however, from the information available to the Audit that there was any reason for the relationship to be discussed.

3.34 In January 1999, shortly after the assessment committee had formed its recommendation, but before the delegate approved the recommendation, the officer advised members of the assessment committee and his manager of certain private actions connected with his relationship with the former manager of Assisting Drug Dependents Incorporated. There is no contemporaneous documentary record of these discussions.

3.35 In the Audit view the officer's disclosure of the relevant facts was reasonably timely. The assessment committee's recommendation concerning the intravenous drug user services contract had not yet been approved, and there was clearly opportunity for the responsible Departmental executive to consider the implications of the officer's disclosure.

3.36 The Audit noted that neither the officer nor his manager/s took specific action in relation to the potential conflict of interest issues. That is, the officer continued in his normal duties – he was not removed from his duties, nor were his duties re-arranged.

3.37 This is consistent with the view expressed by both the officer and the then Chief Executive of the Department that they did not consider a conflict of interest existed or could be perceived in relation to the tender process. As such, no action was deemed necessary.

3.38 The Audit considers that continuing normal duties is appropriate if the conflict or potential conflict can be managed or readily avoided. This approach generally accepts that the conflict is not a significant, ongoing issue and/or that other controls exist to diminish the potential impact of the conflict. An employee's duties would only be rearranged, or the employee transferred, if the conflict is significant or ongoing.

3.39 In the context of the intravenous drug users services tender it was reasonable for the officer to continue to perform in his normal duties.

3.40 The positive findings support the expression of a positive opinion on the audit objectives. However, some negative findings were also made. These are described in Chapter 4 of this Report.

4. OPPORTUNITIES FOR IMPROVEMENT

INTRODUCTION

4.1 Chapter 3 set out the positive findings that supported the Audit's opinions against each of the audit's objectives.

4.2 There were, however, some negative findings made during the Audit. These are described in this Chapter. The negative findings present the Department with opportunities to improve its activities and practice.

CONSISTENCY WITH POLICIES, GUIDELINES AND BETTER PRACTICE

Research Methodology

Background

4.3 Research to support the development of specifications for the intravenous drug user services tender was undertaken by the Department. The research considered a broad range of matters and featured extensive consultation and literature-based research. The Audit considers, however, that a more structured research methodology could have better supported the action proposed by the Department. This in turn could have led to an improvement in the tender process (including the tender specifications and documentation).

Negative Finding

- The Department's research did not demonstrate that a structured methodology consistent with better practice was used.

Audit Comments

4.4 The research undertaken by the Department adopted an appropriate methodology and provided the opportunity to consider a broad range of matters, including extensive consultation with subject-matter experts and literature-based research. The methodology was sufficient to provide a sound basis for the tender specifications.

4.5 Nevertheless, the Audit considers that improvements could be made to the research methodology. For example, in this instance, a research plan was not developed and a formal report on the research was not produced, although an internal minute summarising the research was prepared as 'preliminary policy input' to the development of the tender

specifications. Nor was there evidence that the research results, and 'policy' directions established therefrom, were subject to critical analysis or challenge or consideration by experts or stakeholders.

4.6 The deficiencies noted did not, in this instance, have a significant affect on the quality of the research undertaken. The research proposed a policy basis for the peer-based services tender consistent with accepted models within other jurisdictions and ACT Government Policy. The research outcomes were a sufficient basis for developing the tender specifications.

4.7 A more structured research methodology would overtly acknowledge the project nature of the research; i.e. that it is considered as a single project with a stated objective, with several defined stages leading to an outcome. The structure involves planning the research project; implementing it in accordance with the plan; supervising the project and reviewing project products; and reporting the project. A structured approach is commonly adopted for research in academic and scientific fields or professional fields such as sociology. The elements of a structured research methodology are discussed briefly at the end of this Chapter.

4.8 The primary benefit from implementing a more structured research methodology would be to improve overall the clarity, completeness and validity of the research outcomes. This in turn would lead to improvements in the quality of any resultant work, such as tender documents and processes (as in this case) or policy advice.

4.9 The importance of a structured approach will vary in accordance with the significance of the matter under consideration. However, given that the research on peer-based services was to support a public tender, acknowledged by the Department at the time as the first of its kind in Australia, the Audit considers a more structured approach was warranted and would have been of benefit.

4.10 Overall, the Audit considers there would be benefits from adopting a more structured approach to research undertaken by and for the Department.

Tender Specifications and Documentation

Background

4.11 The tender was publicly advertised in November 1998. The tender documents featured a four-page introduction (describing the aim of the

tender, the selection process and various requirements expected of the successful provider) and a 26-page application form. Twenty-two separate selection criteria were listed. The tender documents also contained attachments describing the successful provider's reporting requirements and listing mandatory performance standards.

Negative Findings

- The tender documentation lacked background information, was unclear and ambiguous in some respects and was poorly presented. These deficiencies could have been avoided by a closer scrutiny of the research outcomes and the public tender documentation before finalisation.
- The list of design requirements included in the tender specifications was unnecessarily detailed. In practice, however, this has had little effect on the submissions received.

Audit Comments

4.12 The tender specifications were developed substantially from the research results. The list of design requirements included in the tender specifications was unnecessarily detailed. For example, tenderers were required to respond to twenty-two, mainly qualitative, selection criteria (some of which contained more than one part). Some selection criteria were unclear, appeared difficult to assess (particularly comparatively) and offered the selection committee little practical information.

4.13 Further, desirable characteristics for the charter and management of an intravenous drug user group were listed in the tender documentation. In effect, these established 'implied criteria' in addition to the stated selection criteria. It is unclear whether tenderers were expected to respond to the 'implied criteria' or whether or how the assessment committee intended to consider tenderers' achievements against the 'implied criteria'.

4.14 The Audit also noted that the tender documentation did not clearly establish the policy context of the services to be purchased and contained numerous presentational errors (such as typographical errors, errors of punctuation and grammar, other proof-reading errors). Although these deficiencies had no effect on the tender process, the Audit considers they do not reflect well on the professional image of the Department and could easily have been avoided.

4.15 The deficiencies in the tender specifications and documentation identified by the Audit were not, overall, critical to the submission of

proposals from the tenderers or the quality of the assessment of the proposals. For example, the Audit noted that proposals submitted in response to the tender were detailed and comprehensive, reflecting the tenderers' appreciation of the policy context, the tender background and the community needs to be addressed. Further, the process applied by the Department in assessing the tender was comprehensive and fair (i.e. it was in accordance with the ACT purchasing policy, principles and guidelines).

4.16 Nevertheless, the Audit considers the deficiencies had the potential to adversely effect the tendering process and the quality of submissions received. In the Audit's view, the deficiencies could have been avoided by a closer scrutiny of the public tender documentation before finalisation.

Comprehensiveness of Processes

Background

4.17 Developing an evaluation methodology for each purchasing activity is an important part of government purchasing. A suitable methodology assists committees to conduct a comparative analysis of all offers and make selections based on the relative merits of each offer received. The methodology should allow the assessment committee to clearly identify the proposal which provides the best value for money, the key element of ACT Government purchasing.

4.18 Departmental guidelines available to the assessment committee advised that 'at the time of preparing the selection criteria for the tender, the measures to assess the tenders must be established. ... include any weightings given to the selection criteria'.

Negative Finding

- An assessment methodology was not settled before the assessment began.

Audit Comments

4.19 Documentation available to the Audit does not indicate that a methodology for assessing the proposals had been agreed, other than the specification of the selection criteria, before the assessment began. For example:

- the twenty-two selection criteria listed were not weighted;
- the committee did not indicate how it would have regard for implied criteria, such as the design characteristics for a peer-based service (i.e. ‘a peer based service should...’ or ‘the organisation must...’); and
- the method of rating submissions was not settled before the assessment began, and was varied during the assessment. No guidance appears to have been given to the assessment committee on using the scale.

4.20 Nevertheless, the committee adopted a process that was generally consistent with the ACT Government Purchasing Policy and Departmental guidelines.

4.21 The Audit considers that better procurement practice includes developing an evaluation methodology before the assessment process begins, which involves, *inter alia*, determining selection criteria and their weighting, ‘consider points’ for assessing various criteria and establishing a rating regime to ‘score’ submissions against each criteria and overall.

4.22 The Department has advised that it has implemented a number of changes to its tender and procurement processes, since the Audit commenced, that will address the matters identified in the Audit.

Conflict of Interest Processes

Background

4.23 As discussed in the previous Chapter, the Audit noted that a strong personal and pecuniary interest between an officer of the Department and a former manager of Assisting Drug Dependants Incorporated arose from the officer’s friendship with the former manager and a personal financial arrangement.

4.24 The Audit concluded that no actual or apparent conflict of interest arose from this private relationship. However, media reports at the time that the contract for the intravenous drug user services was awarded indicated there could be a public perception that a conflict existed.

Negative Findings

- The circumstances gave rise to a public perception of a conflict of interest, in relation to a specific issue (i.e. awarding a specific contract for health services), and potentially, in relation to the officer’s broader duties.

- It would have been appropriate for the officer to discuss his intentions (in relation to entering into the personal financial arrangement), and any foreseeable consequences, with his manager before acting. Potentially, this could have avoided the ensuing difficulties.
- It would have been appropriate, and better practice, for the officer to disclose his actions to his manager in writing, and to document, at the time, discussions regarding the perceived conflict of interest and any resultant decision.

Audit Comments

4.25 It was evident from media reports regarding the tender process for the intravenous drug users services contract that a public perception of a conflict of interest existed. The officer was aware that he was dealing with 'contentious' issues in the course of his duties. The Audit considers the officer could reasonably have foreseen that his personal financial arrangement with the former manager of Assisting Drug Dependants Incorporated could give rise to an apparent conflict of duty.

4.26 It was the officer's responsibility to disclose any potential conflict as soon as possible. The officer's disclosure of the relevant facts to his manager was reasonably timely, although it was not documented. It would have been appropriate for the officer to discuss his intentions, and any foreseeable consequences, with his manager before acting, and to document the discussion.

4.27 The Department's decision to allow the officer to remain in his normal duties was appropriate. This decision however was not documented.

SUGGESTIONS FOR FUTURE ACTION

Actions Already Taken

4.28 Although the Audit's opinions regarding the process for allocating the contract to Canberra Injectors Network were positive, the negative findings identified by the Audit pointed to a need for some improvement to the tendering process overall. In this regard, the Audit notes that the Department has implemented a number of changes to its purchasing and tender processes since this tender was advertised. For example, detailed instructions relating to purchasing have been issued which complement ACT-wide purchasing reforms.

4.29 In addition, in early 2000, the Department realigned its purchasing and policy areas to ensure better consistency and co-ordination between the two functions. The Department has advised that this realignment has been the subject of much positive comment from service providers and consumers and has resulted in less duplication and a higher standard of Departmental purchasing.

Audit suggestions referred to the Department

4.30 The Audit has referred a number of matters to the Department for its further consideration, with the aim of encouraging improvements. The Audit suggests the Department initiate action to:

- Adopt a more structured approach to research undertaken by and for the Department.

This suggestion is directed to ensuring the clarity, completeness and validity of the research outcomes. A 'better practice' research methodology would cover:

Planning the research project to identify and clarify the research topic; considering and defining the aims of the research, intended outputs and outcomes; documenting a broad strategy covering the overall methodology to be adopted, resources to be applied and expected nature, timing and extent of the research; documenting possible sources for data;

Implementing the project in accordance with the plan. This could involve defining key concepts and terminology; establishing appropriate evaluation criteria; identifying and documenting alternative views (or policies/approaches etc); establishing a practical methodology for assessing the reliability and validity of data gathered during the research; evaluating alternative views etc including distinguishing among the alternatives, assessing strengths and weaknesses; concluding as to a preferred approach, and developing appropriate recommendations for implementation;

Supervising the project and reviewing project products, to ensure the quality and integrity of the research. This could involve appropriate supervision of all stages of the project by suitably qualified persons; and implementing an appropriate quality control process such as critical analysis or challenge by experts or stakeholders or internal review/appraisal;

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Reporting the project, as a step towards initiating further action (such as implementation of recommendations). This could involve a formal report on the findings, conclusions and recommendations of a research project and endorsement of project products by appropriately qualified/delegated persons;

- Ensure Departmental staff have a better understanding of the responsibilities of public employees in relation to conflict of interest issues. This would include drawing to the attention of potential tender assessment committee members to the specific guidance on conflict of interest available in the Better Practice Note on Ethics.

Annexure

Reports Published in 1996

- 1 Legislative Assembly Members - Superannuation Payments/Members' Staff - Allowances and Severance Payments**
- 2 1995 Taxi Plates Auction**
- 3 VMO Contracts**
- 4 Land Joint Ventures**
- 5 Management of Former Sheep Dip Sites**
- 6 Collection of Court Fines**
- 7 Annual Management Report For Year Ended 30 June 1996**
- 8 Australian International Hotel School**
- 9 ACT Cultural Development Funding Program**
- 10 Implementation of 1994 Housing Review**
- 11 Financial Audits with Years Ending to 30 June 1996**

Reports Published in 1997

- 1 Contracting Pool and Leisure Centres**
- 2 Road and Streetlight Maintenance**
- 3 1995-96 Territory Operating Loss**
- 4 ACT Public Hospitals - Same Day Admissions**
Non Government Organisation - Audit of Potential Conflict of Interest
- 5 Management of Leave Liabilities**
- 6 The Canberra Hospital Management's Salaried Specialists Private Practice**
- 7 ACT Community Care - Disability Program and Community Nursing**

Annexure (continued)

3 Annual Management Report for Year Ended 30 June 1999

4 Financial Audits With Years Ending to 30 June 1999

Reports Published in 2000

- 1. Bruce Stadium Redevelopment — Summary Report**
- 2. Bruce Stadium Redevelopment — Value for Money**
- 3. Bruce Stadium Redevelopment — Costs and Benefits**
- 4. Bruce Stadium Redevelopment — Decision to Redevelop the Stadium**
- 5. Bruce Stadium Redevelopment — Selection of the Project Manager**
- 6. Bruce Stadium Redevelopment — Financing Arrangements**
- 7. Bruce Stadium Redevelopment — Stadium Financial Model**
- 8. Bruce Stadium Redevelopment — Actual Costs and Cost Estimates**
- 9. Bruce Stadium Redevelopment — Market Research and Marketing**
- 10. Bruce Stadium Redevelopment — Stadium Hiring Agreements**
- 11. Bruce Stadium Redevelopment — Lawfulness of Expenditure**
- 12. Bruce Stadium Redevelopment — Governance and Management**
- 13. Annual Management Report for the Year Ended 30 June 2000**

Reports Published in 2001

- 1. Financial Audits with Years Ending to 30 June 2000**
- 2. Enhancing Professionalism and Accountability**
- 3. Market Research and Marketing (Second Report)**

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