

ACT AUDITOR–GENERAL'S **PERFORMANCE AUDIT REPORT**

Reusable Facility Services Procurement

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The ACT Audit Office acknowledges and respects their continuing culture and the contribution they make to the life of this city and this region.

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PA 24/06

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

Dear Madam Speaker

I am pleased to forward to you a Performance Audit Report titled 'Reusable Facility Services Procurement' for tabling in the Legislative Assembly pursuant to Subsection 17(5) of the *Auditor-General Act 1996*.

The audit has been conducted in accordance with the requirements of the *Auditor-General Act 1996* and relevant professional standards including *ASAE 3500 – Performance Engagements*.

Yours sincerely



Michael Harris
Auditor-General
3 October 2024

Contents

Summary	1
Conclusions.....	1
Key findings	2
Recommendations.....	6
1 Introduction	7
Reusable facility services in the ACT	7
Procurement for reusable facility services.....	7
Procurement legislation and guidance.....	11
Audit objective and scope	13
Audit criteria, approach and method	14
2 Planning for the procurement	17
Summary.....	17
The procurement approach.....	18
Procurement risk management.....	22
Release of the Request for Proposal	25
3 Conduct of the procurement	31
Summary.....	31
Tender Evaluation Plan.....	33
Evaluation of responses.....	38
Management of conflicts of interest.....	47
Communication during the procurement	49
4 Probity advice	57
Summary.....	57
Probity planning	58
Probity advice.....	60
Appendix A: Timeline of key decisions and milestones in the reusable facility services procurement	69
Appendix B: Probity risk indicators	71

Summary

The Territory's reusable facilities provide an opportunity for ACT residents to dispose of and recycle a range of reusable household items. The reusable facilities operate from the Territory's two resource management centres at Mugga Lane and Mitchell.

In 2023 ACT NoWaste, a business unit within the Transport Canberra and City Services Directorate (TCCS), commenced a procurement for the management of the reusable facilities. On 13 March 2024, TCCS announced Vinnies as the new provider to operate the reusable facilities, replacing The Green Shed as the incumbent provider.

The audit considered the probity of the procurement of the reusable facility services.



Conclusions

Planning for the procurement

TCCS effectively planned for the procurement. TCCS considered various options for the conduct of the procurement and settled on a single-stage Request for Proposal (RFP) process as it was expected to support the objectives of the procurement while facilitating open and effective competition. The release of a comprehensive RFP package on 27 June 2023 supported the achievement of the procurement objectives.

Conduct of the procurement

The conduct of the procurement and the evaluation of responses was effective. The evaluation of responses was supported by, and in accordance with, a comprehensive Evaluation Plan that demonstrated compliance with principles of probity and fairness.

A shortcoming in the evaluation process, however, was the absence of a documented, stand-alone value for money (VFM) assessment. This was identified in the Evaluation Plan as a key step in the assessment of responses. Notwithstanding the absence of a stand-alone VFM assessment, a review of the evaluation documentation demonstrates that VFM was satisfactorily considered.

Probity advice

The conduct of the procurement was supported by the engagement of a Probity Advisor, who developed a Probity Plan, provided probity advice throughout the procurement and prepared a draft and final Probity Report at the conclusion of the procurement. The Probity Report(s) endorsed the conduct of the procurement and inter alia recommended 'that the Evaluation Report be accepted and is signed off'. The Probity Report(s) were provided after the evaluation of responses was conducted and after the Delegate had agreed to Evaluation Team's recommendation. The

Probity Report(s) were not provided on a timely basis and did not assist the Delegate's decision-making at a crucial time of the procurement.



Key findings

Planning for the procurement

Paragraph

The procurement approach

The procurement for the reusable facility services was undertaken as a single-stage RFP. In a June 2023 brief to the Minister, TCCS advised it had considered a range of possible approaches to the market and consulted with Procurement ACT. TCCS determined that a single-stage RFP was preferred because there was a clear idea of the outcomes required, but there were some areas where only limited data was available and it was seeking proposals from respondents to address these gaps. The choice of a single-stage RFP was not inconsistent with published Procurement ACT guidance (Procurement ACT factsheet *Approach to Market and Request Types* (June 2022)) although it is noted that RFPs are commonly multi-stage, not single-stage.

2.17

Procurement risk management

TCCS identified the procurement as being high risk, but that various mitigation strategies reduced the risk rating to medium. A Risk Management Plan was developed for the procurement, which identified a range of risks and associated mitigation strategies in the categories of strategic risks, project risks and work, health and safety risks. A key risk mitigation strategy was the appointment of a Probity Advisor.

2.24

TCCS developed a Communications Plan that identified key messages to be conveyed for the purpose of the procurement and the need to communicate clearly with stakeholders including residents and community groups, potential contractors and charities and community partners. The Communications Plan recognised the key needs of the different groups. In comments to the ACT Legislative Assembly shortly after Vinnies was identified as the new provider, the Minister for City Services acknowledged there were shortcomings in communication to the ACT community, the Green Shed and its employees following the identification of Vinnies as the successful respondent.

2.33

Release of the Request for Proposal

TCCS released a comprehensive RFP package through TendersACT on 27 June 2023. The RFP documentation was 243 pages in total and included ten attachments and appendices. The RFP documentation identified the service and procurement objectives and evaluation criteria and associated processes to achieve them. The Audit Office received feedback from the Green Shed that the RFP documentation conveyed that a two-stage evaluation process would be conducted and that this

2.41

process was not ultimately followed. A review of the procurement documentation does not support this contention.

The RFP documentation, released through TendersACT on 27 June 2023, was large and complex. There were errors in the documentation and spelling and grammatical errors across the documentation. These errors were relatively minor and minimal for a procurement of this size and complexity. Nevertheless, entities should take care when preparing procurement documentation to minimise errors and reduce the risk of confusion and miscommunication with potential respondents. 2.49

Conduct of the procurement

Evaluation Plan

The Evaluation Plan for the procurement of reusable facilities services was based on a template developed by Procurement ACT. It was a comprehensive document that demonstrated a clear, well-structured, and thorough evaluation method that demonstrated compliance with probity principles. The Evaluation Plan: 3.8

- identified relevant probity principles including a competitive process, fairness and impartiality, appropriately managed conflict of interest; and
- demonstrated security and confidentiality requirements.

The Service Procurement Team in the ACT NoWaste Branch was responsible for planning for the procurement, and in doing so was responsible for: the planning, research and drafting of procurement documentation; and briefings to the Delegate and Minister and other Executive briefs. There was a substantial separation of roles between the Service Procurement Team and the Evaluation Team, which was responsible for evaluating responses to the RFP. 3.13

Evaluation of responses

The results of the evaluation were recorded in an Evaluation Report that was provided to the Delegate on 22 November 2023. The Evaluation Report was signed by the members of the Evaluation Team and included a suite of supporting documentation and evidence. The Evaluation Report satisfactorily documented the first four phases of the evaluation approach as identified in the Evaluation Plan including: 3.25

- sufficient reasoning and explanation for the evaluation of each response; and
- in accordance with the probity principle of ‘consistency, transparency and accountability’, consistent application of the evaluation criteria and procurement procedures for the responses.

A separate VFM assessment, as envisaged in the Evaluation Plan as the fifth phase of the evaluation process, was not separately undertaken and documented. This 3.36

represented a departure from the formal procedure set out in the Evaluation Plan. While the lack of a separate VFM assessment did not affect the evaluation process and outcome, the Evaluation Team did not seek guidance or approval for the departure from the evaluation approach documented in the Evaluation Plan.

Notwithstanding that a separate VFM assessment was not documented, in accordance with the Evaluation Plan, a review of evaluation documentation: demonstrates that the Evaluation Team assessed the elements of the standalone VFM evaluation to be undertaken as part of phase 5 of the evaluation; and supports the final recommendation of the Evaluation Team to the Delegate on the preferred tenderer. It would have been simple for the Evaluation Team to draft a section in the Evaluation Report to demonstrate compliance with phase 5 of the evaluation envisaged in the Evaluation Plan, but this was not done. Although zero-dollar procurements are rare, VFM still needs to be rigorously considered in accordance with the *Government Procurement Act 2001*. There are practical challenges for entities in relation to how VFM is satisfied and documented in these procurements and further guidance may be sought from Procurement ACT as necessary in these circumstances.

3.44

Management of conflicts of interest

The Evaluation Plan documented the process for the management of conflicts of interest during the procurement. This included the completion of a *Conflict of Interest Disclosure and Confidentiality Undertaking* by all personnel involved in the procurement. A package of signed Conflict of Interest Disclosures and Confidentiality Undertakings was provided to the Delegate in November 2023. These included signed disclosures and undertakings for the TCCS executive, the Delegate, Evaluation Team and advisors and administrative support personnel to the Evaluation Team. Over the course of the procurement, two conflicts of interest were identified and managed by TCCS. Where required, the Evaluation Team sought advice from the probity advisor and managed the potential conflict in accordance with the advice received.

3.49

Communication during the procurement

Procurement ACT was the central communication channel for respondents during the RFP phase. The Evaluation Plan noted that the Evaluation Team Facilitator (a position held by a Procurement ACT officer) was responsible for preparing and clearing written communications with respondents throughout the procurement on behalf of the Evaluation Team. Despite this arrangement, the Evaluation Team Chair updated the respondents directly on the expected timeline during the procurement.

3.71

Respondents indicated that there was limited communication during the procurement, and that respondents were not kept advised of progress. During the evaluation and contract negotiation phases TCCS was approximately two months behind schedule. A review of the communication with respondents during the procurement shows that there was limited correspondence between October 2023 and March 2024 when the contract was awarded. It is also apparent that communication received from The Green Shed on two occasions was not responded

3.72

to. This caused The Green Shed to follow-up with Tenders ACT and seek assistance from an external party. When a published timetable starts to slip – particularly when the procurement is complex and has known sensitivities – consideration needs to be given to whether more information could be provided by the entity to the respondents.

The Evaluation Plan included a process for conducting debriefings with unsuccessful respondents. Debriefs were held with two of the respondents on 18 and 20 March 2024, which were attended by the Chair of the Evaluation Team and another member of the Evaluation Team. During the debriefing with The Green Shed there was a miscommunication with respect to the conduct of referee checks during the evaluation process. This error occurred because the Evaluation Team member who conducted the referee checks was not a member of the debriefing team. The debriefing team took the question ‘on notice’ (along with others) and the Delegate for the procurement provided a written response on 3 April 2024, advising of the process for conducting referee checks. 3.86

Probity advice

Probity advice

In accordance with the suggested approach for medium risk procurements in the *Probity in Procurement Guide*, TCCS engaged an external Probity Advisor to develop a Probity Plan, deliver a draft and final Probity Report, and provide probity advice for the procurement. The final Probity Report found that the tender process was conducted in a way that satisfied the requirements of the RFP and complied with Territory procurement and probity principles. 4.24

A draft Probity Report was provided to TCCS in February 2024 and the final Probity Report was provided in March 2024. This was after the Evaluation Team identified the preferred respondent and made a recommendation to the Delegate. A report on probity compliance at this late stage in a procurement process has limited benefit as it does not assist the Delegate’s decision-making at a crucial time of the procurement. 4.37

At the time of the procurement, the *Probity in Procurement Guide* placed emphasis on Territory entities’ discretion to determine the role of the Probity Advisor in the procurement and envisaged that the role of the Probity Advisor may only be to provide advice, and not assurance or endorsement of compliance with probity principles. In July 2024, the Guide was amended to strengthen the role of the Probity Advisor and it now states that a ‘probity advisor will provide a report to the Delegate on compliance with Territory procurement legislation and policies, including this guide and the probity principles, at various phases of the procurement process’. 4.43



Recommendations

Recommendation 1 Low or zero-dollar value procurements

When conducting low or zero-dollar procurements, ACT Government agencies should:

- a) ensure that the principles of value for money are effectively recognised and addressed in procurement documentation, including the Evaluation Plan; and
- b) ensure that the value for money evaluation process is clearly outlined in the procurement documentation provided to potential respondents, so that potential respondents understand how value for money will be considered for the particular procurement.

Recommendation 2 Communication to potential respondents during the procurement

For complex and long-running procurements, and when there are delays to the expected procurement timeline, ACT Government agencies should ensure there is more frequent and timely communication with potential respondents.

Agencies' responses

In accordance with subsection 18(2) of the *Auditor-General Act 1996*, the Transport Canberra and City Services Directorate was 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. All comments were considered and required changes were reflected in the final report.

In accordance with subsection 18(3) of the *Auditor-General Act 1996*, other entities with an interest in the report 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. All comments were considered and required changes were reflected in the final report.

1 Introduction

Reusable facility services in the ACT

1.1 The Territory's reusable facilities provide an opportunity for ACT residents to dispose of and recycle a range of reusable household items. According to the Transport Canberra and City Services Directorate (TCCS) the reusable facilities:

... provide a safe and convenient location for the public to drop-off reusable items for resale or donation.

... play a specific resource recovery role by taking unwanted items and diverting them from landfill through resale.

... promote the principles of the circular economy, reducing waste and reusing valuable materials wherever possible.

1.2 The reusable facilities are located at the Territory's two resource management centres:

- Mitchell Resource Management Centre (Flemington Road, Mitchell); and
- Mugga Lane Resource Management Centre (Mugga Lane, Symonston).

1.3 The Green Sheds Pty Ltd (The Green Shed) previously operated the two reusable facilities under separate contracts with the Territory:

- the contract for the facility at the Mitchell Resource Management Centre, which commenced on 13 October 2011; and
- the contract for the facility at the Mugga Lane Resource Management Centre, which commenced on 30 November 2015.

1.4 Following a series of extensions the contracts were due to expire on 30 November 2023.

Procurement for reusable facility services

1.5 In 2023 ACT NoWaste, a business unit within TCCS, commenced a procurement for the management of the reusable facilities under a single contractual arrangement. The procurement identified the initial term of the contract as being four years, with the option to extend the term of the contract by up to two years (two extension options of one year each).

Services required

1.6 The scope of services was identified in a Request for Proposal (RFP) that was issued to the market on 27 June 2023:

The Territory, as represented by ACT NoWaste, requires a Contractor with the capability and capacity to undertake the following services ...:

- acceptance of items in reusable condition from the community;
- salvage items from the Transfer Stations;
- sell reusable items;
- dispose unsold items at the landfill;
- provide charity activities and social events;
- provide social inclusion (employment);
- partnerships to maximise resource recovery;
- provide educational programs and communications to promote circular economy;
- provide workshops on reuse, repair and repurpose to the community;
- provide quality customer service; and
- provide quality reports.

Service model

1.7 The 2023 procurement maintained the arrangements of the Territory:

- not paying fees to the service provider for the services; and
- providing the reusable facilities for a nominal 'peppercorn rent' of one dollar.¹

1.8 The procurement required respondents to provide a pricing policy for the reusable items that are to be offered for sale. The pricing policy is uncapped to allow the service provider to generate revenue by selling reusable items at a reasonable market value. The pricing policy is also expected to result in fair and reasonable prices that meet community expectations for second hand goods.

¹ In legal terms a 'peppercorn rent' is a very small cash payment or other nominal consideration that is used for the purposes of creating a legal contract.

- 1.9 The service provider can also sell reusable items to other facilities if they are recorded and reported, and the revenue generated is used to fund social benefits and circular economy support programs.

Conduct of the procurement

- 1.10 Planning for the procurement was underway in 2022, with a view to determining an appropriate model of service delivery and procurement approach to achieve this. TCCS formally approached the market in May 2023 with the release of an Advanced Tender Notice through Tenders ACT on 25 May 2023.

Procurement milestones

- 1.11 Key milestones for the procurement included:
- release of the Advance Tender Notice - 25 May 2023;
 - release of the Request for Proposal – 27 June 2023;
 - evaluation of tender responses from mid-August 2023 to late November 2023;
 - approval of the Evaluation Report by the Delegate – 1 December 2023; and
 - execution of the contract – 8 March 2024.

Procurement responses

- 1.12 Three respondents responded to the RFP:
- St Vincent de Paul Society Canberra/Goulburn Ltd (Vinnies);
 - Community Resources Limited trading as Resource Recovery Australia; and
 - The Green Sheds Pty Ltd (The Green Shed).
- 1.13 On 13 March 2024, TCCS announced Vinnies as the new provider to operate the reusable facilities, replacing The Green Shed as the incumbent provider. Vinnies commenced operations in May 2024.
- 1.14 A timeline of the key decisions and milestones associated with the procurement is included at Appendix A.

Roles and responsibilities

Transport Canberra and City Services (TCCS)

- 1.15 The procurement for the reusable facilities services was managed by ACT NoWaste in the Transport Canberra and City Services Directorate.

1.16 ACT NoWaste is responsible for implementing the ACT Government's Waste Management Strategy through programs aimed at engaging the community and encouraging sustainable waste minimisation and management practices. Responsibilities of ACT NoWaste include:

- providing domestic garbage and recyclables collection services;
- sorting and reprocessing of recyclable materials; and
- managing waste acceptance and disposal facilities.

1.17 ACT NoWaste was responsible for planning and conducting the procurement. This included:

- determining the type and nature of the services required;
- determining the procurement strategy;
- developing the RFP documentation, including the:
 - statement of requirements;
 - evaluation criteria;
 - proposed terms and conditions of the contract; and
 - response schedules for potential respondents;
- evaluating responses to the RFP through an Evaluation Team; and
- negotiating the contract with the preferred supplier.

1.18 The Delegate for the procurement was the Executive Group Manager of Infrastructure Delivery and Waste.

Procurement ACT

1.19 Procurement ACT is responsible for:

- providing procurement advisory services to Territory entities to support the pursuit of value for money in strategic goods and services procurement;
- supporting Territory entities to undertake low risk goods and services procurements by providing guidance and templates; and
- developing and maintaining templates and standardised procurement guidance, documentation and processes to support all procurement.

1.20 Procurement ACT:

- worked with TCCS during planning for the procurement to support the development of the requirements of the procurement, and assisted with the development of the procurement documentation and associated RFP documentation;
- provided the central communication channel for potential respondents during the Approach to Market phase; and

- provided an Evaluation Team Facilitator to assist the Evaluation Team and Evaluation Team Chair during the evaluation process.

Procurement legislation and guidance

1.21 The procurement of goods and services by Territory entities is guided by the *Government Procurement Act 2001* (the Act) and the *Government Procurement Regulation 2007* (the Regulation).

Previous legislation

1.22 At the time of this procurement, Territory entities were required to ‘pursue value for money in undertaking and procurement activity’. Subsection 22A(2) of the Act stated ‘value for money means the best available procurement outcome’. In pursuing value for money, subsection 22A(3) of the Act stated:

The entity must have regard to the following:

- a) probity and ethical behaviour
- b) management of risk
- c) open and effective competition
- d) optimising whole of life costs, and
- e) anything else prescribed by regulation.

Current legislation

1.23 The *Government Procurement Act 2001* was subsequently amended, with the changes taking effect on 1 July 2024. The Act now has two separate sections dealing with the concepts of:

- value for money; and
- probity.

Value for money

1.24 Subsection 8(1) of the Act states ‘value for money, in relation to a procurement, means the best available outcome for the procurement that maximises the overall benefit to the Territory’. Subsection 8(2) of the Act states:

Any decisions made or functions exercised in relation to the following must achieve value for money:

- (a) selecting an entity to supply goods or services;

- (b) authorising, or committing the Territory to, the expenditure of any money;
- (c) entering into a procurement contract for the procurement;
- (d) spending any money;
- (e) amending a procurement contract;
- (f) anything else prescribed by regulation.

1.25 Subsection 8(3) of the Act states:

To achieve value for money, the responsible chief executive officer for a Territory entity must be satisfied that the decision or exercise of the function—

- (a) uses public resources in an efficient and effective manner; and
- (b) manages any risks appropriately; and
- (c) is undertaken by the Territory entity with probity; and
- (d) complies with this Act, including any direction about government procurement practices given by the Minister under section 43.

Probity

1.26 Probity is evidence of ethical behaviour and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process.² By observing probity principles Territory entities are more likely to achieve value for money, reduce the risk of the Territory being exposed to legal or financial loss or reputational risks, and provide potential contractors with confidence about the fairness of a process. It also guards against collusion and fraud.

1.27 The *Probity in Procurement Guide* (2024) provides guidance for Territory entities on applying probity in procurement. The updated 2024 Guide is not significantly different to the previous version. The Guide states:

Probity must be observed at each phase of procurement. The following probity principles apply to all procurements. They help guide Territory Entities to make decisions that demonstrate probity as required in section 7 of the Act.

1. Consideration of an appropriately competitive process
2. Fairness and impartiality
3. Consistency, transparency, and accountability
4. Identification and management of conflicts of interest

² ACT Government, *Probity in Procurement Guide*, version 4.0 (1 July 2024).

5. Appropriate security and confidentiality arrangements.³

Audit objective and scope

Audit objective

1.28 The objective of the audit was to assess the probity of the procurement of reusable facility services.

Audit scope

1.29 The audit focused on the activities of TCCS to plan for, and conduct, the procurement.

1.30 In considering TCCS' planning for the procurement, the audit considered TCCS' activities to effectively design and plan for a procurement that:

- met the policy objectives for the services being procured; and
- provided for a fair, transparent and equitable process.

1.31 In considering TCCS' conduct of the procurement, the audit considered TCCS' activities to:

- engage and communicate with potential service providers; and
- assess and evaluate potential service providers' responses against relevant evaluation criteria.

1.32 The audit considered whether:

- appropriate processes were followed when conducting the procurement, including adherence to ACT Government procurement rules and requirements; and
- value for money considerations, as outlined in section 22A of *the Government Procurement Act 2001*, were appropriately considered.

1.33 The audit considered whether the contract that was agreed with the successful respondent accorded with:

- the ACT Government policy objectives for the service; and
- the terms and conditions of the procurement.

³ Ibid.

Out of scope

- 1.34 The audit did not consider the rationale for, or merit of, the services being procured, including the initial identification of business and operational needs.

Audit criteria, approach and method

Audit criteria

- 1.35 To form a conclusion against the objective, the following criteria were considered:

Criterion 1 - Did TCCS effectively plan for the procurement?

- Did TCCS effectively identify, and document, policy objectives for the service being procured?
- Did TCCS effectively design a procurement process that:
 - met policy objectives for the service; and
 - provided for a fair, transparent and equitable process.

Criterion 2 – Did TCCS effectively conduct the procurement?

- Did TCCS conduct the procurement fairly and impartially?
- Did TCCS conduct the procurement consistently and transparently?
- Did TCCS appropriately consider value for money, as outlined in section 22A of the *Government Procurement Act 2001*
 - Was probity and ethical behaviour demonstrated?
 - Were risks effectively identified and managed?
 - Was open and effective competition demonstrated?
 - Were whole-of-life costs recognised and optimised in the procurement?

Audit approach and method

- 1.36 The audit approach and method consisted of:

- reviewing relevant ACT procurement rules and guidelines;
- reviewing documentation associated with the procurement of the reusable facility services, including advice to decision-makers;
- discussions with key staff in TCCS involved in the procurement;
- discussions with the respondents to the Request for Proposal; and
- reviewing written submissions on the performance audit made to the Audit Office.

- 1.37 The Audit Office engaged Proximity to provide advice in relation to the probity of the procurement.
- 1.38 The audit was performed in accordance with *ASAE 3500 – Performance Engagements*. The audit adopted the policy and practice statements outlined in the Audit Office’s *Performance Audit Methods and Practices (PAMPr)* which is designed to comply with the requirements of the *Auditor-General Act 1996* and *ASAE 3500 – Performance Engagements*
- 1.39 In the conduct of this performance audit the ACT Audit Office complied with the independence and other relevant ethical requirements related to assurance engagements.

2 Planning for the procurement

- 2.1 This chapter discusses TCCS' planning for the procurement, from mid-2022 through to the release of the Request for Proposal (RFP) through Tenders ACT on 27 June 2023. The chapter discusses TCCS' identification and development of its procurement approach and the development of the RFP documentation.

Summary



Conclusions

TCCS effectively planned for the procurement. TCCS considered various options for the conduct of the procurement and settled on a single-stage Request for Proposal (RFP) process as it was expected to support the objectives of the procurement while facilitating open and effective competition. The release of a comprehensive RFP package on 27 June 2023 supported the achievement of the procurement objectives.



Key findings

The procurement approach

Paragraph

The procurement for the reusable facility services was undertaken as a single-stage RFP. In a June 2023 brief to the Minister, TCCS advised it had considered a range of possible approaches to the market and consulted with Procurement ACT. TCCS determined that a single-stage RFP was preferred because there was a clear idea of the outcomes required, but there were some areas where only limited data was available and it was seeking proposals from respondents to address these gaps. The choice of a single-stage RFP was not inconsistent with published Procurement ACT guidance (Procurement ACT factsheet *Approach to Market and Request Types* (June 2022)) although it is noted that RFPs are commonly multi-stage, not single-stage.

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charities and community partners. The Communications Plan recognised the key needs of the different groups. In comments to the ACT Legislative Assembly shortly after Vinnies was identified as the new provider, the Minister for City Services acknowledged there were shortcomings in communication to the ACT community, the Green Shed and its employees following the identification of Vinnies as the successful respondent.

Release of the Request for Proposal

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The RFP documentation, released through TendersACT on 27 June 2023, was large and complex. There were errors in the documentation and spelling and grammatical errors across the documentation. These errors were relatively minor and minimal for a procurement of this size and complexity. Nevertheless, entities should take care when preparing procurement documentation to minimise errors and reduce the risk of confusion and miscommunication with potential respondents. 2.49

The procurement approach

Procurement ACT guidance

- 2.2 The type of procurement approach used by an entity should reflect the nature of the entity's needs and the scale, scope and risks of the goods, services, property or works being procured.
- 2.3 The Procurement ACT factsheet *Approach to Market and Request Types* (June 2022)⁴ describes the two main approaches to procurement:
- **a single-stage request:** the market is approached once to provide solutions and pricing before awarding the contract. This approach is used when the market is stable and competitive and when the requirements can be clearly specified; and
 - **multi-stage approach:** the market is approached in two or more stages, with shortlisting of suppliers or refining of solutions through each stage. This approach is used when there is a high-level understanding of the business need, but detailed

⁴ Procurement ACT, [Approach to Market and Request Types Factsheet](#), June 2022.

requirements are not yet understood and additional information is needed from the market.

- 2.4 The *Approach to Market and Request Types* factsheet describes the types of procurement that typically occur under single-stage and multi-stage approaches. These are shown in Table 2-1.

Table 2-1 Summary of procurement types

Request types: single-stage	Features
Request for Quotation (RFQ)	For low risk, low value procurements for readily available products and services, typically from a limited or specialist market where the entity knows precisely what they need.
Request for Tender (RFT)	For more complex procurements where a supplier would need to provide a detailed response of their offering and demonstrate compliance with eligibility and detailed evaluation criteria.
Request types: multi-stage	Features
Request for Expression of Interest (REOI)	Usually used as the first stage of a process to identify and shortlist providers who have required capacity, and who are then invited to proceed to a second stage of tendering, such as a Request for Proposal.
Request for Proposal (RFP)	Usually used when the procuring entity does not have a particular solution in mind and is seeking industry proposals. This may be used as a single-select process, but is more commonly the first stage of a multi-stage process.
Request for Information (RFI)	This is used to gather market information to inform a subsequent procurement process.

Source: ACT Audit Office, based on the Procurement ACT factsheet *Approach to Market and Request Types* (June 2022).

Single-stage Request for Proposal

Objectives for the procurement

- 2.5 Planning for the procurement commenced in 2022. In a July 2022 brief to the Minister for Transport and City Services, TCCS advised of various options that had been considered for the future of the reusable facility services (including insourcing), but otherwise recommended the services continue to be provided by an external provider.
- 2.6 In a June 2023 brief to the Minister for Transport and City Services, TCCS identified the objectives of the services as follows:
- a. provision of a convenient service for the community to drop off or purchase reusable items;
 - b. provision of effective maintenance of the site, infrastructure, plant and equipment;
 - c. provision of programs to support circular economy principles;

- d. deliver social benefits;
- e. implementation of a reusable items price policy that meets the community's expectations;
- f. provision of effective stakeholder engagement;
- g. provision of accurate and timely reporting of the Services; and
- h. deliver services in compliance with all applicable Territory legislation and government policies and best practice standards.

2.7 These objectives were communicated to prospective respondents through the RFP documentation (*Attachment B – Statement of Requirements*) along with outcomes for the services:

- a) a high level of customer satisfaction and awareness;
- b) maximise resource recovery and diversion of materials from landfill;
- c) a contribution towards a circular economy;
- d) an improvement in the community's capacity to practice Circular Economy principles;
- e) an accurate and quality data for reporting;
- f) a high level of Service safety; and
- g) compliance with legislation and best practice standards;

Procurement approach

2.8 The procurement for the reusable facility services was undertaken as a single-stage RFP. In a June 2023 brief to the Minister for Transport and City Services, TCCS advised that it had consulted with Procurement ACT and determined that a single-stage RFP process was the preferred approach:

Other procurement strategies were considered. In consultation with Procurement ACT, a two-stage procurement (Request for Expression of Interest and Request for Proposal) was not recommended as this had longer timeframes, the objectives and outcomes of the procurement were well understood, and a soft market sounding demonstrated sufficient interest for the opportunity to achieve a value for money outcome.

2.9 In support of the service objectives, the June 2023 brief to the Minister for Transport and City Services noted:

The RFP requires respondents to propose methodologies for providing programs to achieve social benefits, support circular economy and promote resource recovery, including:

- a. employing members from disadvantaged or vulnerable community groups;
- b. organising charity activities;

- c. organising workshops to promote repair, reuse and repurpose of items; and
- d. providing educational programs to the community relating to repairing, reusing, and repurposing items.

The RFP requires respondents to provide a pricing policy for the reusable items they offer for sale. This policy must have a basis on fair and reasonable prices that meet community expectations for second hand goods.

2.10 The June 2023 brief to the Minister for Transport and City Services also noted:

The RFP will have a focus on obtaining quality data. The RFP has a weighted criteria for proposals to detail robust methodologies for recording, tracking, and reporting on reusable items received, salvaged from the transfer stations, transferred to other facilities, donated and sold.

Flexibility for market response

2.11 TCCS advised that a single-stage RFP process was preferred for the procurement because:

- there was a clear idea of the outcomes required and the requirements for each of the evaluation criteria; but
- there were some areas where only limited data was available, and it was seeking proposals from respondents to address these gaps.

2.12 TCCS advised that these factors:

- negated the use of a Request for Tender, which is predicated on suppliers' addressing compliance with eligibility and detailed evaluation criteria; and
- supported the use of a RFP, which would allow the market to respond to the requirements.

2.13 This approach was supported by contemporaneous advice, which highlighted deficiencies in the availability of data on the operation of the reusable facilities at the time. In the June 2023 brief to the Minister, TCCS advised:

A lack of infrastructure and reporting methodology at the Reusable Facilities limits the ability to measure and quantify the mixed loads of items dropped off and sold. This makes it difficult for the Territory and respondents' to accurately model the Reusable Facility services.

2.14 For the purpose of the audit TCCS advised:

A single-stage Request for Proposal (RFP) process was selected as the preferred approach for proposals to deliver outcomes for resource recovery, circular economy, social benefits and reporting. These include solutions for:

- the methodology of managing the reusable items received, donated, sold and disposed;
- the methodology and systems to track and report on Reusable Items; and

- the options for partnerships, circular economy and social benefit programs.

One of the goals of the RFP was to approach the market to identify what approaches different respondents could develop to resolve the data gaps which existed within the existing service model around accurate data capture on acceptance and disposal of reuseable material, transparent pricing, and options for partnerships, circular economy outcomes and social benefits.

Consistency with Procurement ACT advice

- 2.15 A Procurement Plan Minute, prepared by ACT NoWaste and provided to the Delegate for the purpose of approving the release of the Request for Proposal also noted:

Procurement ACT has been consulted and has provided advice that the Procurement Approval is consistent with the Territory Procurement Framework (Framework), inclusive of the *Government Procurement Act 2001*, Government Procurement Regulation 2007 and other relevant legislation and Territory policies.

- 2.16 The choice of a single-stage RFP was not inconsistent with the advice in the Procurement ACT *Approach to Market and Request Types* factsheet. The Factsheet notes that RFPs are commonly used in a multi-stage process, but also contemplates the use of a single-stage RFP:

An RFP is usually used when the procuring Territory entity does not have a particular solution in mind and instead is seeking industry proposals. While an RFP may be used in a single-phase request, it is more commonly used as the first stage of a multistage process and is followed by a restricted RFT process. When used in a single stage request, evaluation of an RFP may be challenging as supplier responses are likely to be widely divergent in nature.



- 2.17 The procurement for the reusable facility services was undertaken as a single-stage RFP. In a June 2023 brief to the Minister, TCCS advised it had considered a range of possible approaches to the market and consulted with Procurement ACT. TCCS determined that a single-stage RFP was preferred because there was a clear idea of the outcomes required, but there were some areas where only limited data was available and it was seeking proposals from respondents to address these gaps. The choice of a single-stage RFP was not inconsistent with published Procurement ACT guidance (Procurement ACT factsheet *Approach to Market and Request Types* (June 2022)) although it is noted that RFPs are commonly multi-stage, not single-stage.

Procurement risk management

- 2.18 TCCS developed a Risk Management Plan and a Communications Plan for the procurement that identified procurement and communication risks and sensitivities and documented associated mitigation strategies.

Risk Management Plan

- 2.19 Procurement ACT's *Procurement Risk Management* factsheet states that 'risk management must be undertaken for all procurement activities regardless of value'. The factsheet identifies a key consideration to managing risk in procurement is the 'early identification, analysis and assessment of risks and developing plans for handling them'.
- 2.20 A Risk Management Plan was developed for the procurement and provided to the Delegate in early June 2023 as part of package of information seeking approval for the release of the RFP. The Plan was endorsed by the Delegate on 26 June 2023. The risks identified in the Risk Management Plan included:
- **strategic risks** including delays to the procurement timelines and not delivering on expected outcomes;
 - **project risks** including responses not providing value for money, disruptions to transition arrangements, negative publicity, and risks around the evaluation criteria, probity and contract management; and
 - **work, health and safety risks** including not having work, health and safety controls in place, and COVID and other pandemic related impacts.

Risk Profile

- 2.21 The Procurement Plan Minute that was provided to the Delegate in early June 2023 identified the procurement as high risk. The procurement was rated as a high risk because of the following factors:
- The procurement project will be delivered in tight timeframes. The procurement, including contract execution, mobilisation and Service commencement, must be delivered prior to the expiration of the contract in November 2023 (or May 2024 if the extension options are executed).
 - The Territory lacks sufficient service data to include in the procurement documents. This creates uncertainty for the prospective responders (except the incumbents) to accurately model the Service.
 - The Territory has a limited understanding of the market's capability and capacity to deliver on the scope and objectives of the Service.
 - The Reusable Facilities have a high public profile and are well-recognised in the community. Renewing services may result in changes to how the existing services operate. The project will engage communications with NoWaste and TCCS teams to manage sensitivity and reputational risk. A probity advisor will be engaged to support the procurement and the high public profile risks.

- 2.22 The Procurement Plan Minute identified that:

... mitigation strategies are in place to reduce overall risk profile for this procurement to medium.

2.23 As noted in the Procurement Plan Minute, a key risk mitigation strategy was the appointment of a Probity Advisor.



2.24 TCCS identified the procurement as being high risk, but that various mitigation strategies reduced the risk rating to medium. A Risk Management Plan was developed for the procurement, which identified a range of risks and associated mitigation strategies in the categories of strategic risks, project risks and work, health and safety risks. A key risk mitigation strategy was the appointment of a Probity Advisor.

Communications Plan

2.25 The June 2023 brief to the Minister highlighted the sensitivities associated with the procurement and noted that a Communications Plan had been developed to address these sensitivities:

The current contractor is a highly recognised brand in the ACT community. TCCS Communications Branch has developed a communication plan for the procurement.

2.26 The June 2023 brief to the Minister also noted that there would be sensitivities associated with a possible change in contractor:

A change in contractor will require careful planning of transition and communications to manage community expectations, transition and existing material at the sites.

2.27 The Communications Plan was endorsed by the Delegate on 22 June 2023. The Communications Plan identified key messages to be conveyed for the purpose of the procurement and the need to communicate clearly with key stakeholders including residents and community groups, potential contractors and charities and community partners. The Communications Plan recognised the key needs of the different groups but focused on external communications at the commencement and conclusion of the procurement process, and not on communications with the tenderers during the procurement process.

2.28 The two risks and sensitivities identified in the Communications Plan were that:

- the requirements of the new contract may change the current operations expected by the community; and
- negative communications garner media attention and put the ACT Government at reputational risk.

2.29 The Communications Plan identified mitigation strategies to address these two risks.

Post-awarding transition

2.30 The Communications Plan also noted:

The current contract holder, The Green Shed, is a well-known brand within the Territory. It has been operating the contract since 2011 and is synonymous with the Reusable Facilities. Any changes to current operations or services in the new contract may require further planned communications to support the transition.

2.31 The Communications Plan did not provide any further guidance on this issue.

2.32 At the time of the announcement of Vinnies as the successful respondent there was considerable negative publicity and public commentary. In comments to the ACT Legislative Assembly on 19 March 2024, the Minister for City Services acknowledged there were shortcomings in communication following the identification of Vinnies as the successful respondent:

I note that the communication from TCCS was regrettable and that they have apologised, and from which there are very clear lessons apparent. The communication about the process and the decision with the community, my office and The Green Shed and its employees was not of the standard that the ACT government or the community expect.



2.33 TCCS developed a Communications Plan that identified key messages to be conveyed for the purpose of the procurement and the need to communicate clearly with stakeholders including residents and community groups, potential contractors and charities and community partners. The Communications Plan recognised the key needs of the different groups. In comments to the ACT Legislative Assembly shortly after Vinnies was identified as the new provider, the Minister for City Services acknowledged there were shortcomings in communication to the ACT community, the Green Shed and its employees following the identification of Vinnies as the successful respondent.

Release of the Request for Proposal

2.34 TCCS released a comprehensive RFP package through TendersACT on 27 June 2023. The RFP package was 243 pages in total (not including two MS Excel spreadsheet templates which were part of the package) and there were a number of attachments.

2.35 Table 2-2 provides an overview of the structure of the RFP, including a description of the attachments and page numbers.

Table 2-2 Request for proposal for the provision of reusable facility services in the Territory – RFP package

Section of RFP package	Description	Total no. of pages
RFP Head Document	Provides background on the RFP, summary of RFP structure, evaluation criteria, details of Industry Briefing, confidentiality and contract requirements.	11
Attachment A - Territory Approach to Market Terms and Conditions	Defines the terms and conditions of the RFP including defined terms, response closing time, response lodgement, late and non-compliant responses, approach to market questions and enquiries, and the process for evaluation, negotiation and debriefs.	21
Attachment B - Statement of Requirements	Outlines the objective, outcomes and required services for the procurement.	59
Attachment C - Response Schedules	Template for tenderer's responses including: response to evaluation criteria, financial and corporate information and ethical supplier's declaration.	35
Attachment C1 (Appendix 3) – Performance Management Framework	Outlines the performance management framework to monitor and measure the Contractor's performance against key performance indicators (KPI). KPIs were based on the following components: services; work, health and safety (WHS) compliance; maintenance compliance; and reporting.	12
Attachment D – Draft Contract	Provides a copy of the draft contract for the procurement	79
Attachment E – Economic Contribution Test (ECT)	Provides a template for the Economic Contribution Test (ECT), an assessment criteria for ACT Government procurements with a value of \$200,000 to \$5 million.	7
Attachment F - Fair and Safe Employment Evaluation Criteria	Provides a template for the Fair and Safe Employment Evaluation Criteria, an assessment criteria for ACT Government procurements with a value of \$200,000 to \$5 million.	15
Appendices	Four appendices were included: <ul style="list-style-type: none"> • Appendix 1 – Waste Facility Reporting Form (spreadsheet); • Appendix 2(a) – Mugga Lane Reusable Facility Map; • Appendix 2(b) – Mitchell Reusable Facility Map; • Appendix 2(c) – Assets Register (spreadsheet); • Appendix 3 (Attachment C1) – Performance Management Framework; • Appendix 4 – Service Plan Example. 	4

Source: Audit Office, based on TCCS documentation.

- 2.36 To support respondents adequately address the evaluation criteria, TCCS provided sample templates for plans and documents as part of the RFP package.

Respondents' understanding of the procurement process

- 2.37 The Audit Office received feedback from The Green Shed that the procurement documentation was confusing and misleading. The Green Shed asserted that the procurement documentation did not present the procurement as a 'single-phase request' but as a 'multistage process' instead. In a complaint to TCCS following the conduct of the procurement, The Green Shed referred to Procurement ACT's *Approach to Market and Request Types* factsheet and the description of a RFP quoted in Table 2-1 of this report and asserted that the procurement documentation had conveyed that a two-stage evaluation process would be conducted and that this process was not followed.

- 2.38 The Audit Office reviewed the RFP documentation and the Industry Briefing presentation that was provided to potential respondents on 4 July 2023. Although the documentation does not explicitly use the term 'single-stage' to describe the evaluation process, a review of the documentation shows that the procurement was satisfactorily and consistently conveyed as a single-stage evaluation process:

- the timeline in the Industry Briefing presentation and the *RFP Head Document* presented the evaluation stage as a single-stage process and set out a schedule for contract negotiations that would commence with the shortlisted respondent.
- the RFP documentation conveyed the criteria against which respondents would be assessed in a single-stage evaluation process, involving preliminary evaluation criteria outlined in the *RFP Head Document* that respondents were required to satisfy before the responses would be evaluated against the weighted and non-weighted evaluation criteria:
 - sections 4.2 and 4.3 of the *RFP Head Document* identified that responses needed to comply with the mandatory evaluation criteria and comply with the Fair and Safe Employment Evaluation Criteria before proceeding 'for consideration in the ATM (approach to market) process'; and
 - section 4.4 of the *RFP Head Document* then described the evaluation process against the weighted and non-weighted criteria for responses that satisfied section 4.2 and 4.3.

- 2.39 No additional evaluation process was described that would suggest further information would necessarily be sought from respondents and that the evaluation against the criteria would be undertaken in a multi-stage process.

- 2.40 A further contention of The Green Shed, which implied the conduct of a multi-stage process, is the reference in the RFP documentation that the Territory may: 'determine at any stage or stages after the Closing Time, to shortlist Respondents on any basis that the Territory considers appropriate'. A review of *Attachment A - Approach to Market Terms and*

Conditions shows that while there was reference to respondent interviews, the documentation did not indicate that this would be part of a separate shortlisting stage. In this respect it is noted that:

- the reference to shortlisted respondents related only to contract negotiations that would take place after the evaluation process had been completed. This reinforces the concept of a single-stage evaluation process; and
- while the Evaluation Team could hold interviews, this was at the discretion of the team. The documentation further stated that ‘a Respondent should not rely on being invited to make further submissions (including presentations or demonstrations) or to participate in an interview process following the Closing Time’. This reinforces the concept of a single-stage evaluation process.



2.41 TCCS released a comprehensive RFP package through TendersACT on 27 June 2023. The RFP documentation was 243 pages in total and included ten attachments and appendices. The RFP documentation identified the service and procurement objectives and evaluation criteria and associated processes to achieve them. The Audit Office received feedback from the Green Shed that the RFP documentation conveyed that a two-stage evaluation process would be conducted and that this process was not ultimately followed. A review of the procurement documentation does not support this contention.

Errors and inconsistencies in the procurement documentation

2.42 The Audit Office received feedback from The Green Shed that the RFP documentation was inadequate, and the documentation contained errors and inconsistencies that made it difficult for potential respondents to properly prepare a valid response.


RFP documentation

2.43 A review of the RFP documentation shows there were a number of relatively minor errors including:

- *Attachment A – Approach to Market Terms and Conditions* includes:
 - a reference to ‘the lowest priced respondents not necessarily being successful’ when respondents were not required to put in a price; and
 - an incomplete clause reference number;
- *Attachment B – Statement of Requirements* references ‘Schedule X of the contract’, thereby indicating that the schedule reference number has not been completed;
- *Attachment C1 – Performance Management Framework* references to ‘draft contract’ rather than ‘contract’.

2.44 A review of the RFP documentation also shows a number of spelling and grammatical errors across the documentation.

Industry Briefing

- 2.45 A review of the Industry Briefing presentation provided to potential respondents on 4 July 2023 also shows there were a number of relatively minor errors.
- 2.46 The Industry Briefing presentation refers to Attachment G in the RFP documentation as being a 'Labour Relations, Training and Workplace Equity Plan'. The RFP package did not include an Attachment G. TCCS advised that there was no Attachment G in the RFP documentation, and that the Labour Relations, Training and Workplace Equity Plan was instead included in the RFP documentation as Appendix 1 of *Attachment F - Fair and Safe Employment Evaluation Criteria*.
- 2.47 As summarised in Table 2-2, the RFP documentation was large and included several attachments. The errors identified in the documentation were relatively minor for a procurement of this size and complexity. Notwithstanding the errors, the documentation could not be described as misleading or lacking sufficient guidance for potential respondents. Furthermore, *Attachment A – Approach to Market Terms and Conditions* outlined how respondents could seek clarification on the RFP documentation and procurement process through an online form available on TendersACT (or via a helpdesk phone number) if they felt the need to do so.
- 2.48 To minimise the risk of respondent confusion when preparing their responses entities should take care in the preparation of their procurement document package, particularly when modifying templates for the particular procurement. This includes checking cross references and terminology used in the package and other communications to ensure consistency.
-  2.49 The RFP documentation, released through TendersACT on 27 June 2023, was large and complex. There were errors in the documentation and spelling and grammatical errors across the documentation. These errors were relatively minor and minimal for a procurement of this size and complexity. Nevertheless, entities should take care when preparing procurement documentation to minimise errors and reduce the risk of confusion and miscommunication with potential respondents.

3 Conduct of the procurement

- 3.1 This chapter discusses the conduct of the procurement from the receipt of proposals in early August 2023 through to the execution of the contract in March 2024. The chapter considers TCCS' processes for the evaluation of tender responses, management of conflicts of interest and communication with respondents.

Summary



Conclusions

The conduct of the procurement and the evaluation of responses was effective. The evaluation of responses was supported by, and in accordance with, a comprehensive Evaluation Plan that demonstrated compliance with principles of probity and fairness.

A shortcoming in the evaluation process, however, was the absence of a documented, stand-alone value for money (VFM) assessment. This was identified in the Evaluation Plan as a key step in the assessment of responses. Notwithstanding the absence of a stand-alone VFM assessment, a review of the evaluation documentation demonstrates that VFM was satisfactorily considered.



Key findings

Evaluation Plan

Paragraph

The Evaluation Plan for the procurement of reusable facilities services was based on a template developed by Procurement ACT. It was a comprehensive document that demonstrated a clear, well-structured, and thorough evaluation method that demonstrated compliance with probity principles. The Evaluation Plan:

3.8

- identified relevant probity principles including a competitive process, fairness and impartiality, appropriately managed conflict of interest; and
- demonstrated security and confidentiality requirements.

The Service Procurement Team in the ACT NoWaste Branch was responsible for planning for the procurement, and in doing so was responsible for: the planning, research and drafting of procurement documentation; and briefings to the Delegate and Minister and other Executive briefs. There was a substantial separation of roles between the Service Procurement Team and the Evaluation Team, which was responsible for evaluating responses to the RFP.

3.13

Evaluation of responses

The results of the evaluation were recorded in an Evaluation Report that was provided to the Delegate on 22 November 2023. The Evaluation Report was signed by the members of the Evaluation Team and included a suite of supporting documentation and evidence. The Evaluation Report satisfactorily documented the first four phases of the evaluation approach as identified in the Evaluation Plan including:

3.25

- sufficient reasoning and explanation for the evaluation of each response; and
- in accordance with the probity principle of 'consistency, transparency and accountability', consistent application of the evaluation criteria and procurement procedures for the responses.

A separate VFM assessment, as envisaged in the Evaluation Plan as the fifth phase of the evaluation process, was not separately undertaken and documented. This represented a departure from the formal procedure set out in the Evaluation Plan. While the lack of a separate VFM assessment did not affect the evaluation process and outcome, the Evaluation Team did not seek guidance or approval for the departure from the evaluation approach documented in the Evaluation Plan.

3.36

Notwithstanding that a separate VFM assessment was not documented, in accordance with the Evaluation Plan, a review of evaluation documentation demonstrates that the Evaluation Team assessed the elements of the standalone VFM evaluation to be undertaken as part of phase 5 of the evaluation; and supports the final recommendation of the Evaluation Team to the Delegate on the preferred tenderer. It would have been simple for the Evaluation Team to draft a section in the Evaluation Report to demonstrate compliance with phase 5 of the evaluation envisaged in the Evaluation Plan, but this was not done. Although zero-dollar procurements are rare, VFM still needs to be rigorously considered in accordance with the *Government Procurement Act 2001*. There are practical challenges for entities in relation to how VFM is satisfied and documented in these procurements and further guidance may be sought from Procurement ACT as necessary in these circumstances.

3.44

Management of conflicts of interest

The Evaluation Plan documented the process for the management of conflicts of interest during the procurement. This included the completion of a *Conflict of Interest Disclosure and Confidentiality Undertaking* by all personnel involved in the procurement. A package of signed Conflict of Interest Disclosures and Confidentiality Undertakings was provided to the Delegate in November 2023. These included signed disclosures and undertakings for the TCCS executive, the Delegate, Evaluation Team and advisors and administrative support personnel to the Evaluation Team. Over the course of the procurement, two conflicts of interest were identified and managed by TCCS. Where required, the Evaluation Team sought advice from the

3.49

probity advisor and managed the potential conflict in accordance with the advice received.

Communication during the procurement

Procurement ACT was the central communication channel for respondents during the RFP phase. The Evaluation Plan noted that the Evaluation Team Facilitator (a position held by a Procurement ACT officer) was responsible for preparing and clearing written communications with respondents throughout the procurement on behalf of the Evaluation Team. Despite this arrangement, the Evaluation Team Chair updated the respondents directly on the expected timeline during the procurement. 3.71

Respondents indicated that there was limited communication during the procurement, and that respondents were not kept advised of progress. During the evaluation and contract negotiation phases TCCS was approximately two months behind schedule. A review of the communication with respondents during the procurement shows that there was limited correspondence between October 2023 and March 2024 when the contract was awarded. It is also apparent that communication received from The Green Shed on two occasions was not responded to. This caused The Green Shed to follow-up with Tenders ACT and seek assistance from an external party. When a published timetable starts to slip – particularly when the procurement is complex and has known sensitivities – consideration needs to be given to whether more information could be provided by the entity to the respondents. 3.72

The Evaluation Plan included a process for conducting debriefings with unsuccessful respondents. Debriefs were held with two of the respondents on 18 and 20 March 2024, which were attended by the Chair of the Evaluation Team and another member of the Evaluation Team. During the debriefing with The Green Shed there was a miscommunication with respect to the conduct of referee checks during the evaluation process. This error occurred because the Evaluation Team member who conducted the referee checks was not a member of the debriefing team. The debriefing team took the question 'on notice' (along with others) and the Delegate for the procurement provided a written response on 3 April 2024, advising of the process for conducting referee checks. 3.86

Evaluation Plan

3.2 An Evaluation Plan was prepared for the purpose of outlining the:

- (a) processes, principles and methodology the Evaluation Team will follow for the evaluation of Responses to establish which offers the best value for money for the provision of Reusable Facility Services in the Territory.
- (b) Evaluation Team roles and responsibilities;
- (c) evaluation process and schedule; and
- (d) evaluation reporting requirements.

3.3 The Evaluation Plan was first signed by the Evaluation Team members and approved by the Delegate on 23 June 2023. One of the original Evaluation Team members was subsequently replaced and the Evaluation Plan was updated to reflect this. The updated Evaluation Plan was signed by the new Evaluation Team member and re-endorsed by the Delegate on 8 August 2023.

3.4 The Evaluation Plan was based on Procurement ACT’s evaluation plan template. The Plan identified:

- the Evaluation Team members and their positions;
- processes for the management of ‘actual, perceived or apparent’ conflicts of interest for the Evaluation Team;
- the purpose and role of providers of probity and specialist advice;
- the methodology and process for the conduct of the procurement;
- processes for the lodgement of responses and the management of late responses; and
- the detailed evaluation methodology, including:
 - the evaluation criteria to be applied; and
 - guidance on the application of the criteria.

Five phase evaluation approach

3.5 The Evaluation Plan identified that the ‘evaluation of Responses and selection of the preferred Respondent/s will be based on the Territory’s core procurement principle of achieving value for money’ and would be conducted in five phases:

- Phase 1 - Mandatory Evaluation Criteria evaluation;
- Phase 2 – Fair and Safe Employment Evaluation Criteria;
- Phase 3 - Weighted Evaluation Criteria evaluation;
- Phase 4 – Non-weighted Criteria and Risk Assessment; and
- Phase 5 – Value for Money evaluation.

3.6 Further detail on the five phases is provided in Table 3-1.

Table 3-1 Overview of five phase evaluation process

Evaluation phase	Description of evaluation phase
<p>Phase 1 Mandatory evaluation criteria evaluation</p>	<p>Phase 1 of the evaluation will involve an assessment of the Responses against the Mandatory Evaluation Criteria by the Evaluation Team. The mandatory evaluation criteria were that the response must:</p> <ul style="list-style-type: none"> • attend a mandatory Industry Briefing;

Evaluation phase	Description of evaluation phase
	<ul style="list-style-type: none"> • hold a Secure Local Jobs Code Certificated as at the date of close for the response; • complete and submit Attachment G – Fair and Safe Employment Evaluation Criteria Response Schedules.
<p>Phase 2</p> <p>Fair and safe employment evaluation criteria</p>	<p>Phase 2 of the evaluation will involve an evaluation of the Responses by the Secure Local Jobs Code (SLJC) Branch against the following Fair and Safe Employment Criteria (FSEC) specified in the Approach to Market (ATM).</p> <p>Phase 2 may occur concurrently with Phases 1 or 3.</p> <p>The Evaluation Team and SLJC Branch must not confer during the evaluation of these phases, except as required in relation to the issue of any joint requests for clarifications that may be required</p>
<p>Phase 3</p> <p>Weighted evaluation criteria evaluation</p>	<p>Phase 3 of the evaluation will involve a detailed comparative assessment against the weighted evaluation criteria with respect to the Statement of Requirements including:</p> <ul style="list-style-type: none"> • Capability and capacity (10%) – extent to which the Respondents’ proposal demonstrates the capability and capacity to provide the Services; • Managing Reusable Items (20%) – extent to which the respondents’ proposed methodology can effectively manage reusable items to promote resource recovery; • Circular Economy Support Programs and Social Benefits (20%) – extent to which the respondent’s proposal can effectively deliver proposed circular economy support programs and community benefits in delivering the services; • Methodology reporting and data plan (15%) – extent to which the respondents’ proposed methodology for reporting is accurate, valid and consistent for the requirements of the Service; • Transition management (10%) – extent the Respondents' proposed transition methodology effectively manages the activities and actions to prepare the Services for commencement and to finalise the Service by the end of the Term; • Work, Health and Safety (WHS) (15%) – extent the Respondents’ proposed Work Health and Safety regime can manage specific to the requirements of the Service; and • Secure Local Jobs Code – content of Labour Relations, Training and Workplace Equity (LRTWE) Plan (10%) – the Territory will evaluate the extent to which the Respondent’s Labour Relations, Training and Workplace Equity Plan (Plan) demonstrates how the Respondent will support employment security, health and wellbeing, diversity, and career development for workers, as well as previous compliance with the Code and Plans (where applicable).
<p>Phase 4</p> <p>Non-weighted criteria and risk assessment</p>	<p>After ranking responses based on technical merit in phase 3, phase 4 would consider the non-weighted evaluation criteria including an assessment of:</p> <ul style="list-style-type: none"> • risk including risks around the Territory’s reputation and its status as a model employer, risk in procuring from an unethical respondent, and

Evaluation phase	Description of evaluation phase
	<p>the public interest and confidence in the Territory’s procurement framework;</p> <ul style="list-style-type: none"> • performance management framework and key performance indicators; and • all other responses to the Schedules of Attachment C.
<p>Phase 5 Value for money evaluation</p>	<p>A preferred Respondent/s value will be determined based on a Value for Money Evaluation, having regard to, though not limited to:</p> <ul style="list-style-type: none"> • consideration of the SLJC Branch FSEC Evaluation; • the results of each Respondents Weighted Evaluation Criteria score (Phase 3) and the degree to which the Response complies with the Statement of Requirement (SOR); • consideration of the Non-Weighted Evaluation Criteria including price and risk (Phase 4) posed to the Territory (including the SLJC Branch’s assessment of NWC3 (Secure Local Jobs Code – content of Labour Relations, Training and Workplace Equity Plan)); • compliance with the ATM documentation; • compliance with the delivery requirements; • compliance with the Draft Contract; • compliance with relevant policies as identified in the request documentation; • compliance with confidentiality provisions; • consideration of clarifications, interviews, presentations, and demonstrations; • referee checks; • consideration of additional corporate or financial information; • consideration of external feedback (if any); and • negotiations (if any).

Source: Audit Office, based on Evaluation Plan, approved 8 August 2023.

3.7 The Evaluation Plan demonstrated a clear, well-structured and thorough evaluation method. The evaluation method:

- reflected the overall procurement objectives; and
- aligned with the evaluation criteria specified in the RFP documentation.



3.8 The Evaluation Plan for the procurement of reusable facilities services was based on a template developed by Procurement ACT. It was a comprehensive document that demonstrated a clear, well-structured, and thorough evaluation method that demonstrated compliance with probity principles. The Evaluation Plan:

- identified relevant probity principles including a competitive process, fairness and impartiality, appropriately managed conflict of interest; and

- demonstrated security and confidentiality requirements.

Evaluation roles and responsibilities

3.9 Separation of duties and responsibilities during a procurement process is better practice and demonstrates compliance with probity principles. The Australian National Audit Office *Audit Insights* publication on the *Management of Conflicts of Interest in Procurement Activity and Grants Programs* (29 June 2020) notes the separation of procurement duties can assist in the management of conflicts of interest:

Conflicts may also be avoided or mitigated through separation of duties. For example, where an entity plays a role in the preparation of a grant/procurement proposal — such as through providing advice to a grant applicant/tenderers on their proposal that it will later assess — a clear separation should be maintained between entity staff or advisors involved in these respective roles. This will assist in maintaining the objectivity of the assessment stage.

Service Procurement Team

3.10 The Service Procurement Team in the ACT NoWaste Branch is responsible for managing the delivery of complex and multi-faceted procurement projects. The Service Procurement Team planned for the procurement, and in doing so was responsible for:

- the planning, research and drafting of procurement documentation; and
- briefings to the Delegate and Minister and other Executive briefs.

Evaluation Team

3.11 There was a substantial separation of roles between the Service Procurement Team and the Evaluation Team. The Evaluation Team comprised of:

- Director, Waste Regulation team, ACT NoWaste (Evaluation Team Chair);
- Director, Infrastructure, Strategic Coordination and Planning team, ACT NoWaste (Evaluation Team Member); and
- Acting Director, Service Integration, Strategic Coordination and Planning team, ACT NoWaste (Evaluation Team Member).

3.12 TCCS advised that:

The Reusables Service procurement followed standard operating probity procedure in that the final evaluation team were not involved in the development of the procurement planning in any substantial capacity, however, may have been consulted at various junctures for the reusable procurement as all are ongoing members of ACT NoWaste branch. Similarly, the Service Procurement team have limited knowledge of evaluation outcomes until the evaluation is complete and the Delegate has approved.



3.13 The Service Procurement Team in the ACT NoWaste Branch was responsible for planning for the procurement, and in doing so was responsible for: the planning, research and

drafting of procurement documentation; and briefings to the Delegate and Minister and other Executive briefs. There was a substantial separation of roles between the Service Procurement Team and the Evaluation Team, which was responsible for evaluating responses to the RFP.

Evaluation of responses

Responses to the RFP

3.14 The RFP required respondents to respond by 8 August 2023. Three responses to the RFP were received by the required date:

- St Vincent de Paul Society Canberra/Goulburn Ltd (Vinnies);
- the Green Shed; and
- Resource Recovery Australia.

3.15 The Evaluation Team evaluated responses to the RFP from mid-August 2023 to the end of November 2023. Evaluation of the responses involved:

- a detailed comparative assessment by the Evaluation Team of responses against the weighted and non-weighted evaluation criteria (see Phases 3 and 4 in Table 3-1); and
- an assessment of the respondents' capability and capacity to deliver the services based on service plans and response to the matters in the response schedule.

Evaluation Report

3.16 The results of the evaluation were recorded in an Evaluation Report that was provided to the Delegate on 22 November 2023. The Evaluation Report was signed and endorsed by the members of the Evaluation Team.

3.17 The Evaluation Report included:

- background and contextual information on the procurement;
- an overview of the procurement process, including:
 - details of processes and timing;
 - roles and responsibilities; and
 - the evaluation methodology; and
- detailed information on the results of the Evaluation Team's assessment of the responses against the evaluation criteria (mandatory, weighted and non-weighted).

3.18 The Evaluation Report also included:

- the recommendations for the Delegate’s consideration and approval; and
- information on processes for contract negotiation, contract execution, notification of unsuccessful respondents and listing the executed contract on the Notifiable Contracts Register.

3.19 The Evaluation Report stated:

The Evaluation Team recommends that you:

- a) note that the procurement process for the provision of Reusable Facility Services has been conducted in accordance with the approved Evaluation Plan; and
- b) St Vincent de Paul Society is nominated as the preferred Respondent, and that the Evaluation Team be authorised to enter contract negotiations on the following basis ...

3.20 The Evaluation Report described five issues for further discussion and negotiation with the preferred respondent as part of the contract negotiation process.

Supporting documentation

3.21 The Evaluation Report that was provided to the Delegate was supported by a suite of supporting documentation and evidence that included:

- Conflict of Interest and Confidentiality Declarations;
- a Compliance Checklist;
- a Detailed Evaluation Workbook;
- the results of the *Fair and Safe Employment and Evaluation* criterion evaluation;
- a *Labour Relations, Training and Workplace Equity Report*;
- an *Evaluation Risk Register*; and
- a *Contract Negotiation Plan*.

3.22 The Delegate approved the Evaluation Report on 1 December 2023 and agreed to the recommendation that negotiations should commence with the preferred respondent.

Four phase evaluation

3.23 The Evaluation Report satisfactorily documented the first four phases of the evaluation approach that were documented in the Evaluation Plan (refer to paragraphs 3.2 to 3.3). Table 3-2 outlines the first four phases of the Evaluation Plan and the evaluation approach that was undertaken and documented in the Evaluation Report.

Table 3-2 Phase 1 to 4 evaluation

Evaluation approach described in Evaluation Plan	Evaluation approach undertaken and documented in the Evaluation Report
<p>Phase 1 – Mandatory Evaluation Criteria</p> <p>To continue participation in the evaluation process, all respondents are required to satisfy the mandatory evaluation criteria.</p>	<p>Against phase 1, the Evaluation Report stated that all responses were assessed as meeting the mandatory criteria.</p> <p>Included as attachments to the Evaluation Report were:</p> <ul style="list-style-type: none"> • the Compliance Checklist that included the detailed assessment against the mandatory criteria; and • the Detailed Evaluation Workbook that included a detailed summary of each response against phase 1.
<p>Phase 2 – Fair and Safe Employment (FSEE) Criteria (FSEE)</p> <p>The Secure Local Jobs Code (SLJC) branch will evaluate the responses against the FSEE criteria specified in the approach to market (ATM) documentation.</p> <p>Based on their evaluation, the SLJC branch will make a recommendation to the Evaluation Chair on whether the tenderer should proceed for consideration in the Approach to Market process, with the Delegate making the final decision.</p>	<p>Against phase 2, the Evaluation Report noted that: ‘The Evaluation Team was notified by the Delegate of their decision that all Respondents should proceed for consideration in the ATM process, following evaluation of the FSEE Criteria by the SLJC Branch’.</p> <p>The SLJC branch’s evaluation report was provided as an attachment to the Evaluation Report.</p>
<p>Phase 3 – Weighted Evaluation Criteria (Technical Assessment)</p> <p>Phase 3 of the evaluation will involve a detailed comparative assessment by the Evaluation Team of responses against the weighted evaluation criteria.</p>	<p>The Evaluation Report included the summary of the evaluation team’s technical assessment for each of the respondents.</p> <p>Separately, the Labour Relations, Training and Workplace Equity (LRTWE) Plans for each Respondent was evaluated by the SLJC Branch. The detailed LRTWE evaluation was provided as an attachment to the Evaluation Report.</p>
<p>Phase 4 – Non-Weighted Criteria and Risk Assessment</p> <p>After ranking responses based on technical merit in phase 3, the Evaluation Team will consider the non-weighted evaluation criteria, whole of life cost of the responses, including pricing and any identified risks.</p>	<p>Against phase 4, the Evaluation Report noted that the Evaluation Team:</p> <ul style="list-style-type: none"> • undertook a risk assessment of the responses; • assessed the adequacy of the responses to enable monitoring and measurement of the effective delivery of the Services; • examined requested contract departures by the respondents; • obtained external feedback from stakeholder entities on the respondents; and • undertook referee checks for the respondents. <p>The evidence for the Evaluation Teams assessment of phase 4 were included in tables in the Evaluation Report.</p> <p>Further detail was included in the Evaluation Risk Register and the Detailed Evaluation Workbook.</p>

Source: Audit Office based on TCCS documentation.

3.24 As shown in Table 3-2, the first four phases of the evaluation process outlined in the Evaluation Plan were undertaken and documented in the Evaluation Report. A review of the Evaluation Report shows that:

- the rationale for the evaluation for each response was documented adequately in the Evaluation Report and supported by the attached Detailed Evaluation Workbook; and
- in accordance with the probity principle of ‘consistency, transparency and accountability’, the Evaluation Report demonstrated consistent application of the evaluation criteria and procurement procedures for all responses.



3.25 The results of the evaluation were recorded in an Evaluation Report that was provided to the Delegate on 22 November 2023. The Evaluation Report was signed by the members of the Evaluation Team and included a suite of supporting documentation and evidence. The Evaluation Report satisfactorily documented the first four phases of the evaluation approach as identified in the Evaluation Plan including:

- sufficient reasoning and explanation for the evaluation of each response; and
- in accordance with the probity principle of ‘consistency, transparency and accountability’, consistent application of the evaluation criteria and procurement procedures for the responses.

Phase 5 of the evaluation

3.26 A separate VFM assessment, as envisaged in the Evaluation Plan as the fifth phase of the evaluation process, was not separately undertaken and documented.

Evaluation Plan commitment

3.27 The Evaluation Plan envisaged a standalone VFM evaluation to be undertaken as the fifth and final phase (see Table 3-1). The Evaluation Plan sets this out as follows:

Phase 5 – Value for Money Evaluation

A preferred Respondent/s value will be determined based on a Value for Money Evaluation, having regard to, though not limited to:

- (a) Consideration of the SLJC [Secure Local Jobs Code] Branch FSEC [Fair and Safe Employment Criteria] Evaluation;
- (b) the results of each Respondents Weighted Evaluation Criteria score (Phase 3) and the degree to which the Response complies with the Statement of Requirement (SOR);
- (c) consideration of the Non-Weighted Evaluation Criteria including price and risk (Phase 4) posed to the Territory (including the SLJC Branch’s assessment of NWC3 (Secure Local Jobs Code – content of Labour Relations, Training and Workplace Equity Plan));
- (d) compliance with the ATM documentation;
- (e) compliance with the delivery requirements;

- (f) compliance with the Draft Contract;
- (g) compliance with relevant policies as identified in the request documentation;
- (h) compliance with confidentiality provisions;
- (i) consideration of clarifications, interviews, presentations, and demonstrations;
- (j) referee checks;
- (k) consideration of additional corporate or financial information;
- (l) consideration of external feedback (if any); and
- (m) negotiations (if any).

3.28 The Evaluation Plan also stated that the Evaluation Team would determine (by consensus) a ranking of tender responses according to the VFM consideration. The Evaluation Team:

... will combine both the Weighted and Non-Weighted Evaluation Criteria and the information contained in a combined consensus evaluation workbook for the Evaluation Team to conduct a Value for Money Assessment.

Evaluation Report

3.29 The Evaluation Report recognised that the Evaluation Team was responsible for undertaking a VFM evaluation and in doing so stated that it 'details the outcomes of the value for money evaluation and provides recommendations to the Delegate for the overall evaluation outcome'.

3.30 However, the Evaluation Report explicitly stated that a separate standalone VFM evaluation was not undertaken as the fifth and final phase for the following reasons:

This procurement is not a fee for service contract. The provision of the Services is subsidised by the Territory through a peppercorn lease arrangement and no-cost access to donated goods. Therefore, value for money is assessed only on the services proposed through the submissions, which has been assessed through the weighted criteria, non-weighted criteria and risk assessment. No separate, specific value-for-money assessment has been undertaken.

3.31 The November 2023 brief to the Delegate, which included the final Evaluation Report, reiterated TCCS' assertion that no specific VFM assessment was undertaken because the services being procured did not represent a direct cost to the Territory:

This is not a fee for service, there is no cost to the Territory, however, the Territory subsidises the service through a peppercorn lease arrangement and access to the donated reusable stream. Therefore, in the evaluation of tender submission, only the weighted and unweighted criteria, including risk was considered. No specific value for money calculation was undertaken.

3.32 TCCS advised the Audit Office in May 2024 of the basis for this approach:

... value for money equates to the best package of services being offered to the Territory for the consideration associated with the planned contract. Value for money (VFM) was determined through assessment of the weighted, non-weighted criteria and a thorough risk assessment. While a distinct Phase 5 was not completed, this does not mean that VFM, as required under section 22 of the Government Procurement Act, was not considered in assessing the submissions.

Departure from the five phase approach

3.33 While the lack of a separate VFM assessment did not affect the evaluation process and outcome, the Evaluation Team did not seek guidance or approval for the departure from the five-phase evaluation approach documented in the Evaluation Plan. The departure was not discussed with:

- the Delegate;
- the Probity Advisor; or
- Procurement ACT.

3.34 Since the approach taken was a departure from the formal procedure set out in the Evaluation Plan, it would have required the approval of the Delegate. This approval was not sought.

3.35 The Evaluation Report was reviewed by the Probity Advisor before submitting it to the Delegate and no issues were raised with respect to the approach taken by the Evaluation Team to the VFM assessment.



3.36 A separate VFM assessment, as envisaged in the Evaluation Plan as the fifth phase of the evaluation process, was not separately undertaken and documented. This represented a departure from the formal procedure set out in the Evaluation Plan. While the lack of a separate VFM assessment did not affect the evaluation process and outcome, the Evaluation Team did not seek guidance or approval for the departure from the evaluation approach documented in the Evaluation Plan.

VFM assessment

3.37 The Audit Office reviewed evidence in the evaluation records against each of the individual elements identified in the standalone VFM evaluation to be undertaken as the fifth and final phase, as set out in the Evaluation Plan, to determine if there was sufficient recorded evidence that they had been considered by the Evaluation Team. The results of this assessment are shown in Table 3-3.

Table 3-3 Audit Office review of evidence for Phase 5 – VFM evaluation set out in Evaluation Plan

Phase 5 – VFM evaluation Elements set out in the Evaluation Plan	Record of evidence?	Description of evidence
(a) Consideration of the SLJC [Secure Local Jobs Code] Branch FSEC [Fair and Safe Employment Criteria] Evaluation.	Yes	<p>The Secure Local Jobs Code branch prepared a <i>Fair and Safe Employment Evaluation and Recommendation Report</i> (September 2023) for the procurement that assessed each of the respondents against the FSEC criteria.</p> <p>The report was included as an attachment to the Evaluation Report.</p>
(b) The results of each Respondents Weighted Evaluation Criteria score (Phase 3) and the degree to which the Response complies with the Statement of Requirement (SOR)	Yes	<p>The Evaluation Team’s individual scoring sheets recorded the team’s assessment of the weighted criteria.</p> <p>The detailed evaluation workbook, provided to the Delegate with the Evaluation Report, summarises the Evaluation Team’s overall assessment of the weighted criteria.</p> <p>A summary of the results was included in the Evaluation Report.</p>
(c) Consideration of the Non-Weighted Evaluation Criteria including price and risk (Phase 4) posed to the Territory (including the SLJC Branch’s assessment of NWC3 (Secure Local Jobs Code – content of Labour Relations, Training and Workplace Equity Plan))	Yes	<p>The Evaluation Team’s individual scoring sheets recorded the team’s assessment of the non- weighted criteria.</p> <p>The detailed evaluation workbook, provided to the Delegate with the Evaluation Report, summarises the Evaluation Team’s overall assessment of the non-weighted criteria.</p> <p>A summary of the results was included in the Evaluation Report.</p> <p>The Secure Local Jobs Code branch provided advice on the Labour Relations, Training and Workplace Equity Plan (LRTWEP) Scores for each of the respondents for the procurement.</p> <p>The report was included as an attachment to the Evaluation Report.</p>
(d) Compliance with the ATM documentation	Yes	<p>The assessment of the respondents’ compliance with the ATM documentation was recorded in the compliance checklist.</p> <p>The checklist was provided to the Delegate with the Evaluation Report.</p>
(e) Compliance with the delivery requirements	Yes	<p>Compliance with the delivery requirements was assessed by the Evaluation Team through the team’s assessment of the weighted evaluation criteria.</p> <p>The results were recorded in the individual scoring sheets and the detailed evaluation workbook. A summary of the results was included in the Evaluation Report.</p>

Phase 5 – VFM evaluation Elements set out in the Evaluation Plan	Record of evidence?	Description of evidence
(f) Compliance with the Draft Contract	Yes	Draft contract compliance for the respondents was assessed via the compliance checklist that was provided to the Delegate with the Tender Evaluation Report. The Evaluation Report included a summary of proposed contract departures.
(g) Compliance with relevant policies as identified in the request documentation	Yes	Compliance with relevant policies were assessed through the weighted evaluation criteria. These included Work, Health and Safety policies and the Acceptance and Rejection policy (for the type of material accepted at the facilities). The results of the team’s assessment of the weighted evaluation criteria were recorded in the individual scoring sheets and the detailed evaluation workbook. A summary of the results was included in the Evaluation Report.
(h) Compliance with confidentiality provisions	Yes	Each of the respondents were required to sign a respondent’s declaration (included in the response schedules) that confirmed compliance with confidentiality provisions. The Evaluation Team assessed compliance of the response schedules in the compliance checklist.
(i) Consideration of clarifications, interviews, presentations, and demonstrations	n/a	The information recorded in the individual scoring sheets indicated that the Evaluation Team considered if further clarification or information would be required from the respondents. The Evaluation Team ultimately decided not seek to clarify or otherwise seek further information from the respondents during the procurement.
(j) Referee checks	Yes	The Evaluation Team contacted two referees nominated by each respondent. The results of the referee checks were recorded in the Evaluation Report that was provided to the Delegate.
(k) Consideration of additional corporate or financial information	Yes	Financial and corporate information was provided by the respondents in the response schedules. The Evaluation Team assessed compliance of the response schedules in the compliance checklist.
(l) Consideration of external feedback (if any)	Yes	The evaluation included consideration of external feedback from Unions ACT, the Environmental Protection Agency and the Long Service Leave Board regarding the respondents.
(m) Negotiations (if any)	n/a	Negotiations were undertaken with the shortlisted tenderer but were not undertaken during the evaluation process.

Source: Audit Office review of TCCS documentation.

3.38 A review of evaluation documentation:

- demonstrates that the Evaluation Team assessed the elements of the standalone VFM evaluation to be undertaken as part of phase 5 of the evaluation, as set out in the Evaluation Plan; and
- supports the final recommendation of the Evaluation Team to the Delegate on the preferred tenderer.

3.39 The evidence demonstrates that VFM had been considered by the Evaluation Team during an assessment of the weighted criteria, non-weighted criteria and risk. It would have been simple for the Evaluation Team to draft a section in the Evaluation Report to demonstrate compliance with phase 5 of the evaluation envisaged in the Evaluation Plan. However, this was not done.

3.40 The inclusion of clearer documentation of the VFM assessment in a dedicated phase 5 section of the Evaluation Report would not have changed the panel's recommendation to the Delegate on the preferred respondent. However, the inclusion of clearer documentation in the Evaluation Report under a dedicated phase 5 section would have:

- addressed the unusual financial aspects of the procurement and articulated what VFM means in a low or zero-dollar procurement;
- indicated that the Evaluation Team's VFM assessment included consideration of other evaluation results rather than a financial assessment; and
- provided clearer evidence on how section 22A of the *Government Procurement Act 2001* was satisfied in this procurement.

Guidance on VFM assessments for low or zero dollar procurements

3.41 Due to the uncommon nature of low or zero-dollar procurements, how VFM is evaluated in these types of procurements may be difficult or unclear for Territory entities, potential respondents and the broader community.

3.42 Resource Recovery Australia and The Green Shed advised the Audit Office that they had difficulty finding any information on the Territory's website or elsewhere to assist them in considering what to include in their response in relation to a zero-dollar VFM evaluation process.

3.43 Procurement ACT advised the Audit Office in May 2024 that there is no guidance for Territory entities in relation to conducting VFM assessments where there is little or no fees paid by the ACT Government, because:

... those procurements are not common and so the approach to the assessment of value for money for those procurements depends on the outcomes that are being sought for that procurement. Any advice will be specific to that procurement.



3.44 Notwithstanding that a separate VFM assessment was not documented, in accordance with the Evaluation Plan, a review of evaluation documentation: demonstrates that the Evaluation Team assessed the elements of the standalone VFM evaluation to be undertaken as part of phase 5 of the evaluation; and supports the final recommendation of the Evaluation Team to the Delegate on the preferred tenderer. It would have been simple for the Evaluation Team to draft a section in the Evaluation Report to demonstrate compliance with phase 5 of the evaluation envisaged in the Evaluation Plan, but this was not done. Although zero-dollar procurements are rare, VFM still needs to be rigorously considered in accordance with the *Government Procurement Act 2001*. There are practical challenges for entities in relation to how VFM is satisfied and documented in these procurements and further guidance may be sought from Procurement ACT as necessary in these circumstances.

**Recommendation 1****Low or zero-dollar value procurements**

When conducting low or zero-dollar procurements, ACT Government agencies should:

- a) ensure that the principles of value for money are effectively recognised and addressed in procurement documentation, including the Evaluation Plan; and
- b) ensure that the value for money evaluation process is clearly outlined in the procurement documentation provided to potential respondents, so that potential respondents understand how value for money will be considered for the particular procurement.

Management of conflicts of interest

3.45 The identification and management of conflicts of interest is one of the five probity principles set out in the *Probity in Procurement Guide*. The Guide states that to help ensure any potential, perceived or actual conflicts of interest are actively managed, those involved in the procurement (including all Australian Capital Territory Public Service (ACTPS) officers, employees, contracted services professionals and other non-ACTPS public officials):

... must complete a Conflict of Interest Disclosure ... including, where relevant, to affirm that they do not have a conflict of interest. The completed Disclosures must be maintained as a record with other documents relating to the procurement.

3.46 Section 5.5 of the Evaluation Plan documented the process for the management of conflicts of interest during the procurement. The Plan required:

- all personnel involved in the procurement to complete a *Conflict of Interest Disclosure and Confidentiality Undertaking*;
- conflicts of interest to be documented and addressed by the Evaluation Team Chair or Delegate and Probity Advisor if applicable; and

- continued involvement in the evaluation process to be dependent on the determination of the declared conflicts of interest.

3.47 A package of signed Conflict of Interest Disclosures and Confidentiality Undertakings was provided to the Delegate in November 2023. These included signed disclosures and undertakings for the TCCS executive, the Delegate, Evaluation Team and advisors and administrative support personnel to the Evaluation Team.

3.48 Over the course of the procurement, two conflicts of interest were identified and managed by TCCS as follows:

- one of the TCCS executive with supervisory responsibility for ACT NoWaste had previously held a volunteering role with Vinnies. To manage this potential conflict of interest the TCCS executive did not take part, nor were they briefed on, the procurement process; and
- one of the Evaluation Team members was negotiating with the parent company of one of the respondents in relation to another contract. The Evaluation Team member sought advice on the potential conflict of interest with the Probity Advisor, who subsequently advised that this did not represent a high probity risk, and that any communications with the respondent should be documented by the Evaluation Team member.



3.49 The Evaluation Plan documented the process for the management of conflicts of interest during the procurement. This included the completion of a *Conflict of Interest Disclosure and Confidentiality Undertaking* by all personnel involved in the procurement. A package of signed Conflict of Interest Disclosures and Confidentiality Undertakings was provided to the Delegate in November 2023. These included signed disclosures and undertakings for the TCCS executive, the Delegate, Evaluation Team and advisors and administrative support personnel to the Evaluation Team. Over the course of the procurement, two conflicts of interest were identified and managed by TCCS. Where required, the Evaluation Team sought advice from the probity advisor and managed the potential conflict in accordance with the advice received.

Referee advice

3.50 The RFP required each respondent to provide:

... the details of three Referees that are based in Australia, that have had contractual relationships for a varying number of years with the Respondent (e.g. one reference at the beginning of the contract term, one reference in the fourth year of the contract term, etc.) and where the Respondent has provided services similar to those described in this ATM within the last five years.

- 3.51 The RFP included a template for the provision of information relating to the respondents' referees, including:
- details of the services provided; and
 - timeframes for the services.
- 3.52 In due course members of the Evaluation Team interviewed two of the three referees nominated by each respondent for the purpose of evaluating their response.

Referee involvement in preparation of response

- 3.53 During fieldwork for this audit, it became apparent that one of The Green Shed's nominated referees had assisted it in preparing its response. It is understood that the referee provided advice on how to respond to the RFP. In response to the draft proposed report The Green Shed advised that the referee's assistance was minimal.
- 3.54 The Evaluation Team was unaware of the referee's involvement when one of its members interviewed the referee and the referee did not disclose this as part of the interview. It is, however, noted that when the respondents' referees were contacted they were not specifically asked if they had any involvement in preparing the responses.
- 3.55 A review of the RFP documentation, and the template for the provision of information relating to the respondents' referees, shows that respondents were not specifically required to indicate if their referee(s) had any conflict of interest in relation to the current RFP process or had otherwise assisted in the preparation of the response.

Communication during the procurement

- 3.56 Procurement ACT was the central communication channel for respondents during the RFP phase. In accordance with the probity principles, the Evaluation Plan noted that Evaluation Team members could not:
- ... have any contact with the Respondents. All communication with Respondents must be managed by the Evaluation Team Facilitator and conducted in writing through Tenders ACT, or the Evaluation Team Facilitator after the closing date and time for the Approach to Market.
- 3.57 During the RFP phase, respondents could seek clarification on the process or ask questions through an online form on TendersACT or via a helpdesk phone number. The contact details for TendersACT were provided at the Industry Briefing and in *Attachment A – Approach to Market Terms and Conditions* of the RFP documentation.
- 3.58 As noted in chapter 2, a Communications Plan was developed for the procurement. This primarily focused on external communications in the lead-up to the issuing of the RFP and

did not provide guidance on communications with respondents during the procurement process.

3.59 Procurement ACT provided a dedicated officer to be the Evaluation Team Facilitator for the procurement. According to TCCS:

The Evaluation Team Facilitator was responsible for preparing and clearing written communications with Respondents throughout the procurement on behalf of the Evaluation Team where this was mutually agreed with the Evaluation Team Chair ... This included distributing responses to questions while the tender was open to market via addenda and notification to unsuccessful respondents at the conclusion of the procurement.

3.60 During the procurement, two addenda were issued that provided answers to questions of clarification:

- a request for the Industry Briefing presentation, which was subsequently provided; and
- a request for access to the data relating to the existing operation of the reusable facilities, including for product sales. In response, the addendum noted that the Territory did not have data for profit or loss, historical breakdown of reusable stream transfers or equipment hire contracts.

3.61 In addition to the two addenda, all other correspondence with respondents during the procurement related to the procurement timeline.

3.62 Neither Procurement ACT nor ACT NoWaste maintained a communication register for the procurement.

Communication of procurement timeline

3.63 All three respondents to the RFP advised that there was limited communication from TCCS during the procurement process. The Green Shed further asserted that respondents were not kept advised on progress and that enquiries were not addressed in a prompt manner.

Timeliness of the procurement

3.64 The Audit Office reviewed the timeframes associated with the procurement and in doing so:

- compared the published timetable for the procurement with the actual timetable to determine if there were significant delays in the procurement process; and
- examined the correspondence between TendersACT and respondents to determine if this delay was communicated in a timely way with respondents.

3.65 Table 3-4 sets out the expected timetable provided to respondents at the Industry Briefing in early July 2023 and the actual timeframe for key milestones in the procurement.

Table 3-4 Expected and actual timeframe for key milestones during procurement

Milestone	Expected timeframe	Actual Timeframe
Evaluation of the responses and selection of the preferred service provider(s)	August 2023	August-November 2023
Approval of Evaluation Report by the Delegate	September-October 2023	1 December 2023
Contract negotiations	October-November 2023	December 2023-February 2024
Contract execution	Early December 2023	8 March 2024
Service transition/commencement	December 2023-May 2024	31 May 2024

Source: Audit Office, based on TCCS documentation.

3.66 A review of the expected and actual timeframe for the procurement shows that:

- the evaluation process took longer than set out in the originally published timetable;
- during the evaluation and contract negotiation phases TCCS was approximately two months behind schedule; and
- by the end of the procurement process, TCCS had caught up with the expected timeframe.

Communication with respondents



3.67 Table 3-5 provides a summary of the communication with, or on behalf of, respondents during the procurement (excluding correspondence with the preferred supplier as part of negotiations to finalise the contract). Table 3-5 shows the correspondence was primarily with The Green Shed and related to the timetable for the procurement.

Table 3-5 Communication during the procurement

Date of correspondence	Author of correspondence	Description of correspondence
6 July 2023	TendersACT	Addendum no. 1 issued regarding the Industry Briefing presentation.
17 July 2023	TendersACT	Addendum no. 2 issued regarding operational data for the reusable facilities.
1 November 2023	The Green Shed	Query to TendersACT asking if the timeline for the procurement had changed, or if The Green Shed had been unsuccessful.
1 November 2023	TendersACT	TendersACT emailed The Green Shed indicating that the question had been forwarded to the business area managing the procurement. TCCS advised that it cannot find evidence of this email.

Date of correspondence	Author of correspondence	Description of correspondence
10 January 2024	The Green Shed	<p>The Green Shed had not received a response to the query on 1 November 2023.</p> <p>The Green Shed emailed a follow up request to TendersACT on its original query.</p>
10 January 2024	Tenders ACT	<p>TendersACT advised The Green Shed that the <i>'Territory is still undertaking the evaluation of the responses to this procurement and is unable to provide any further information at this time'</i>.</p>
17 January 2024	The Green Shed	<p>Query to TendersACT asking if all respondents can be updated on the new procurement timeline.</p>
17 January 2024	TendersACT	<p>TendersACT advised The Green Shed that their query had been forwarded to the Procurement Officer managing this tender for advice.</p> <p>The Evaluation Team Facilitator consulted the Evaluation Team who advised a timeline could not be provided at that stage.</p> <p>No response was provided to the Green Shed on the 17 January 2024 query.</p>
7 February 2024	Senior Advisor, Minister for City Services	<p>On 30 January 2024, The Green Shed contacted the Canberra Business Chamber for assistance. The Green Shed met with the Business Chamber on 6 February who followed up their concerns with an adviser for the Minister for City Services.</p> <p>On 7 February 2024, a senior advisor for the Minister for City Services emailed the TCCS Liaison Officer (DLO) asking if an update be provided to respondents on:</p> <ul style="list-style-type: none"> • where the procurement is up to; and • when an outcome could be expected noting that the expected timeframe of December 2023 had passed.
7 February 2024	TCCS DLO	<p>The TCCS DLO forwarded the email from the Senior Advisor to the Delegate for actioning.</p>
8 February 2024	Delegate	<p>The Delegate forwarded the 7 February 2024 email to the Evaluation Team Chair asking for an update on the current timeline for the procurement, and if the respondents had been notified of the delay.</p>
8 February 2024	Evaluation Team Chair	<p>The Evaluation Team Chair provided a response to respondents advising that:</p> <ul style="list-style-type: none"> • the procurement process was yet to be finalised; and • that the entity would be in contact when the process was finalised.
13 March 2024	Evaluation Team Facilitator	<p>The Evaluation Team Facilitator emailed The Green Shed and Resource Recovery Australia to advise that they were not selected as the preferred respondent and offering them a debrief.</p>

Source: Audit Office, based on TCCS documentation.

- 3.68 A review of communication with respondents during the procurement shows that:
- on two occasions (1 November 2023 and 17 January 2024), The Green Shed did not receive a response to its correspondence and followed up on these queries with TendersACT; and
 - communications from TendersACT and TCCS to all respondents pending the completion of the procurement process was limited between October 2023 (when the finalisation of the Evaluation Report was expected to occur) and March 2024 (when the contract was awarded).
- 3.69 It is apparent that there was miscommunication between TendersACT and ACT NoWaste in relation to the 1 November 2023 communication from The Green Shed. TendersACT communicated to The Green Shed that '[the email] has been forwarded to the business area who are managing this Tender'. TCCS advised that it cannot find evidence of this email.
- 3.70 Notwithstanding that Procurement ACT was identified as the central communication channel for respondents during the Approach to Market phase, it is apparent that the Evaluation Team Chair also updated the respondents directly on the expected timeline.
-  3.71 Procurement ACT was the central communication channel for respondents during the RFP phase. The Evaluation Plan noted that the Evaluation Team Facilitator (a position held by a Procurement ACT officer) was responsible for preparing and clearing written communications with respondents throughout the procurement on behalf of the Evaluation Team. Despite this arrangement, the Evaluation Team Chair updated the respondents directly on the expected timeline during the procurement.
-  3.72 Respondents indicated that there was limited communication during the procurement, and that respondents were not kept advised of progress. During the evaluation and contract negotiation phases TCCS was approximately two months behind schedule. A review of the communication with respondents during the procurement shows that there was limited correspondence between October 2023 and March 2024 when the contract was awarded. It is also apparent that communication received from The Green Shed on two occasions was not responded to. This caused The Green Shed to follow-up with Tenders ACT and seek assistance from an external party. When a published timetable starts to slip – particularly when the procurement is complex and has known sensitivities – consideration needs to be given to whether more information could be provided by the entity to the respondents.



Recommendation 2

Communication to potential respondents during the procurement

For complex and long-running procurements, and when there are delays to the expected procurement timeline, ACT Government agencies should ensure there is more frequent and timely communication with potential respondents.

Debriefing process

3.73 Procurement ACT's *Supplier Debriefing Factsheet* states:

Debriefing is the process by which a Territory entity provides suppliers with feedback on their response against the evaluation criteria set out in the Approach to Market documentation ... Debriefing should be offered for all procurements, regardless of the total estimated value of a procurement.

3.74 From a probity perspective, the opportunity for a debriefing demonstrates an entity's commitment to openness and a willingness to address any perceptions about the integrity of a procurement process. The *Supplier Debriefing Factsheet* also states that supplier debriefings can help to:

- improve the quality of offers from suppliers;
- increase the potential for improved value for money in future procurements, due to more competitive responses; and
- increase a supplier's chance of success in subsequent procurements.

3.75 Stage 7 of the evaluation process involved notifying unsuccessful respondents and offering debriefs. The Evaluation Plan outlined the debriefing process as follows:

- unsuccessful and successful respondents should be offered a verbal debrief;
- the Evaluation Team must provide a debrief if requested;
- the debrief must be conducted with reference to the *Supplier Debriefing Factsheet*;
- general comment is allowed on the comparative quality of the respondent relative to other respondents, however the confidentiality of other respondents must be maintained; and
- the debrief must be documented and all written records must be appended to the relevant Territory file.

3.76 The Evaluation Plan stated:

As a minimum, the Evaluation Team Facilitator and Evaluation Team Chair will provide the debrief to the Respondent at a mutually agreed place and time.

3.77 All respondents were offered a debrief following the conclusion of the procurement process. Debriefs were held with two of the respondents on 18 and 20 March 2024. They were attended by the Chair of the Evaluation Team and another member of the Evaluation Team.

3.78 The debriefings were largely held in accordance with the requirements outlined in the Evaluation Plan, with documentation recording:

- the time and location of the debrief as well as attendees, including the names and titles of the debriefing team;
- a summary of the evaluation of the respondent's response;
- the respondent's questions for the Evaluation Team;
- information on the complaints and procurement feedback process; and
- where provided, the closing statements by both parties.

3.79 Some questions were taken 'on notice' and subsequently answered via email.

3.80 Notwithstanding the requirement in the Evaluation Plan, the Evaluation Team Facilitator did not attend the two debriefs. In June 2024, TCCS provided the following advice on why the Evaluation Team Facilitator did not attend the debriefs:

Section 11.1.2 of the Evaluation Plan states that "As a minimum, the Evaluation Team Facilitator and Evaluation Team Chair will provide the debrief to the Respondent at a mutually agreed place and time." However per the Final Evaluation Plan, Schedule 2 – Roles and Responsibilities, the Evaluation Team Chair does not require the assistance of the Evaluation Team Facilitator for the purposes of conducting respondent debriefs ('The Evaluation Team Chair must', section z). It is acknowledged that ambiguity in the drafting of the Evaluation Plan may have confused this matter.

For this procurement, the Evaluation Team Facilitator did not attend either of the debriefing sessions and the Evaluation Team did not request that the Facilitator attend. The Evaluation Team Chair and an Evaluation Team Member were present at both debriefings.

Respondent feedback on the debriefing process

3.81 The Green Shed raised concerns with the Audit Office that the debrief offered by TCCS was inadequate, and that:

- not all members of the Evaluation Team attended; and
- incorrect information was provided regarding the referee interview process that had been undertaken.

3.82 In relation to representation and attendance on the part of the Territory, it is noted that the Evaluation Plan did not specifically identify that all members of the Evaluation Team would attend the debrief.

3.83 During the debriefing, The Green Shed questioned why the third referee that it had identified had not been contacted. The Green Shed's notes from the meeting indicate that:

- the debriefing team provided incorrect information;

- The Green Shed identified the information was incorrect; and
- the debriefing team then identified it was not able to specifically answer the question because the member of the Evaluation Team that had conducted the referee checks was not present.

3.84 The debriefing team took the question 'on notice' (along with others) and the Delegate for the procurement provided a written response on 3 April 2024, advising of the process for conducting referee checks. This error occurred because the team member who conducted the referee interviews was not a member of the debriefing team. This was a communications error in the debriefing process but not the evaluation process itself.

3.85 In order to minimise the risk of respondent confusion arising out of a debrief, members of the debriefing team should fully appraise themselves of the work undertaken in the evaluation process by members not present at the debriefing. That is, the debriefing team needs to be fully across the entire evaluation process, not just the roles they undertook in the process.



3.86 The Evaluation Plan included a process for conducting debriefings with unsuccessful respondents. Debriefs were held with two of the respondents on 18 and 20 March 2024, which were attended by the Chair of the Evaluation Team and another member of the Evaluation Team. During the debriefing with The Green Shed there was a miscommunication with respect to the conduct of referee checks during the evaluation process. This error occurred because the Evaluation Team member who conducted the referee checks was not a member of the debriefing team. The debriefing team took the question 'on notice' (along with others) and the Delegate for the procurement provided a written response on 3 April 2024, advising of the process for conducting referee checks.

4 Probity advice

- 4.1 This chapter discusses the role of the Probity Advisor and the provision of probity advice for the purpose of the procurement.

Summary



Conclusions

The conduct of the procurement was supported by the engagement of a Probity Advisor, who developed a Probity Plan, provided probity advice throughout the procurement and prepared a draft and final Probity Report at the conclusion of the procurement. The Probity Report(s) endorsed the conduct of the procurement and inter alia recommended 'that the Evaluation Report be accepted and is signed off'. The Probity Report(s) were provided after the evaluation of responses was conducted and after the Delegate had agreed to Evaluation Team's recommendation. The Probity Report(s) were not provided on a timely basis and did not assist the Delegate's decision-making at a crucial time of the procurement.



Key findings

Probity advice	Paragraph
In accordance with the suggested approach for medium risk procurements in the <i>Probity in Procurement Guide</i> , TCCS engaged an external Probity Advisor to develop a Probity Plan, deliver a draft and final Probity Report, and provide probity advice for the procurement. The final Probity Report found that the tender process was conducted in a way that satisfied the requirements of the RFP and complied with Territory procurement and probity principles.	4.24
A draft Probity Report was provided to TCCS in February 2024 and the final Probity Report was provided in March 2024. This was after the Evaluation Team identified the preferred respondent and made a recommendation to the Delegate. A report on probity compliance at this late stage in a procurement process has limited benefit as it does not assist the Delegate's decision-making at a crucial time of the procurement.	4.37
At the time of the procurement, the <i>Probity in Procurement Guide</i> placed emphasis on Territory entities' discretion to determine the role of the Probity Advisor in the procurement and envisaged that the role of the Probity Advisor may only be to provide advice, and not assurance or endorsement of compliance with probity principles. In July 2024, the Guide was amended to strengthen the role of the Probity Advisor and it now states that a 'probity advisor will provide a report to the Delegate	4.43

on compliance with Territory procurement legislation and policies, including this guide and the probity principles, at various phases of the procurement process’.

Probity planning

Probity risk assessment

4.2 Procurement ACT’s *Probity in Procurement Guide* notes:

Territory Entities should assess the level of probity risk by completing a risk assessment during the planning phase of a procurement to establish the appropriate risk rating and inform the decision as to appropriate risk treatments.

4.3 Procurement ACT’s *Probity in Procurement Guide* provides guidance with respect to probity risk indicators and suggested risk treatments. The latest version of the Guide (July 2024) is not materially different to that which was in place at the time of the procurement. Appendix B shows the Guide’s guidance with respect to probity risk indicators and suggested treatments.

4.4 TCCS did not separately and explicitly assess the probity risk of the procurement. Using Procurement ACT’s *Probity in Procurement Guide*, however, a review of the probity risk indicators associated with the procurement suggests that it is at least a medium risk procurement and potentially a high-risk procurement from a probity perspective.

4.5 Procurement ACT’s *Probity in Procurement Guide* suggests the following risk treatments for medium probity risk procurements:

- all probity principles are considered and compliance with or variation from them are properly documented;
- individuals participating in the procurement process have received probity training;
- a probity plan is recommended to ensure an appropriate level of governance and application of this guide and address any specific probity risks; and
- an internal or external probity advisor is recommended. The probity advisor may or may not be a lawyer.

4.6 Probity was identified as a risk in the Risk Management Plan for the procurement. TCCS identified the risk of non-compliance with probity principles during the conduct of the procurement and contract negotiations. The control for this risk was that ‘an independent probity adviser will be engaged to provide assistance during the procurement process’.

Probity Plan

4.7 Procurement ACT's *Probity in Procurement Guide* identifies the purpose of a Probity Plan as follows:

A probity plan details the agreed probity arrangements for a particular procurement to ensure an appropriate level of governance and application of this guide and address any specific probity risks. A probity plan should include:

- overview of the procurement
- governance for the procurement
- the agreed procurement processes
- how probity principles will be applied during each phase of the procurement
- roles and responsibilities, including how probity will be assured (for example, through a governance structure, by engaging a probity advisor and/or probity auditor)
- the nature and timing of assurances to be provided by a probity advisor and/or probity auditor during a procurement process, including assurance through written reports.

4.8 A Probity Plan was prepared by the Probity Advisor on 23 May 2023 and endorsed by the Delegate in June 2023. The Probity Plan stated that the following probity principles applied to the procurement:

- (1) compliance with the legal and policy framework applying to procurement decisions (including the Procurement Act, *Financial Management Act 1996* and *Public Sector Management Act 1994* (PSM Act));
- (2) use of an appropriately competitive Procurement Process;
- (3) fairness and impartiality;
- (4) consistency and transparency;
- (5) identification and management of conflicts of interest; and
- (6) appropriate security and confidentiality arrangements.

This Probity Plan focuses on Probity Principles (3) to (6).

Observing the above Probity Principles will assist to:

- (1) facilitate the achievement of value for money;
- (2) reduce the risk of the Territory being exposed to legal and/or financial loss, or reputational risks;
- (3) provide potential contractors with confidence about the fair treatment of all Respondents in Procurement Processes, with consequential improvements in competition and performance; and

(4) guard against collusion and fraud.

4.9 The Probity Plan also stated:

... unless otherwise agreed, the probity advisor provides advice when instructed by the evaluation Chair or other authorised Project Personnel on specific probity issues which may arise during the Procurement Process.

Probity advice

Probity Advisor

4.10 Procurement ACT's *Probity in Procurement Guide* notes:

The decision to engage a probity advisor is a matter for the Territory Entity's chief executive officer or delegate undertaking the procurement and should have regard to the risk profile of the specific procurement.

...

Typically, a Territory Entity that requires assistance in identifying and managing a range of medium, high, or extreme probity risks in a procurement should engage a probity advisor. A Territory Entity that requires a high level of independent verification that a completed tender process adhered to the ACT Government's procurement framework, should engage a probity auditor.

4.11 Procurement ACT's *Probity in Procurement Guide* notes however:

The appointment of a probity advisor or auditor does not:

- outsource accountability for probity
- substitute good management practices
- guarantee there will be no probity or process breaches in the procurement process.

4.12 In April 2023, TCCS appointed Griffin Legal as Probity Advisor for the procurement process. The Probity Advisor was required to provide a range of services which may be summarised as:

- preparation of a probity plan;
- probity briefings to the Evaluation Team;
- provision of advice, guidance and/or attendance on probity matters if and when instructed including:
 - reviewing and advising on the procurement documentation;
 - attending internal and external briefings and meetings for the procurement as required;

- developing probity protocols as required;
- providing ad hoc advice to the Evaluation Team as required; and
- providing a report at the conclusion of the procurement process, as well as interim reports if requested at specific stages, ‘stating what probity advice has been provided and the extent to which, in the probity adviser’s views, all probity issues upon which they have been instructed have, to their knowledge, been satisfactorily managed’.

Activities of the Probity Advisor

4.13 The Evaluation Plan for the reusable facility services procurement stated the ‘Territory may seek advice from the probity advisor as required in relation to the evaluation process’.

4.14 During the procurement, the Probity Advisor:

- reviewed the draft RFP documentation and provided input prior to the documentation being finalised;
- provided advice to TCCS on the Conflict of Interest declarations throughout the procurement;
- attended the Industry Briefing on 4 July 2023 and provided information on probity to prospective tenderers;
- provided a probity briefing to the Evaluation Team on 8 August 2023 (the date the RFP closed) to assist in ensuring probity was followed throughout the evaluation process;
- provided guidance on conducting referee checks to the Evaluation Team; and
- provided responses to probity enquiries and advice as required.

Probity Report

4.15 The procurement was concluded in mid-March 2024 and TCCS issued a media release on 13 March 2024 announcing the new provider.

4.16 The Probity Advisor advised that it was instructed on 2 February 2024 to prepare a Probity Report. The Probity Advisor provided a draft Probity Report on 7 February 2024, which was revised and updated on the basis of updated information on 21 February 2024. The Probity Advisor received comments from TCCS in late March 2024 and provided a final Probity Report on 27 March 2024. There were no notable changes between the draft and final probity reports.

4.17 In response to the draft proposed report, the Probity Advisor advised ‘at all times instructions were actioned in a timely manner and there was no delay in providing the report based on the instructions that were received’.

4.18 The final Probity Report noted that the Probity Advisor had reviewed: the Probity Plan template; the Approach to Market documents including the RFP, draft contract and returnable schedules; Evaluation Plan; and draft Evaluation Report and was of the opinion that these 'document a defensible Tender Process'.

4.19 In the findings section of the final Probity Report, the Probity Advisor stated that it had:

... reviewed the Evaluation Report to ensure that the recommendations made by the Evaluation Team adhered to the guidelines and methodology outlined in the Evaluation Plan and Probity Plan.

We believe the Tender Process was conducted in a systemic way, using a structured process to identify the procurement options which:

(a) best satisfy the requirements specified in the RFP; and

(b) accord with current Territory procurement principles.

4.20 In conclusion, the Probity Advisor indicated that it did not identify:

... any instances of a lack of compliance with probity principles in the Tender Process to date and recommend to the Delegate that the Evaluation Report be accepted and is signed off. We are satisfied that probity principles have been complied with during the Tender Process.

Issues with the Probity Report

4.21 The final Probity Report referred to the Delegate as being a member of the Evaluation Team. This is incorrect. In response to the draft proposed report the Probity Advisor advised that the reference to the Delegate as a member of the Evaluation Team was a typographical error.

4.22 The final Probity Report did not make any reference to the decision by the Evaluation Team not to conduct a formal VFM evaluation as per the fifth phase of the evaluation process outlined in the Evaluation Plan. This represented a divergence from the approved Plan and warranted comment in the Probity Report. Even if the Probity Advisor had formed the view that the decision by the Evaluation Team was appropriate in the circumstances, it was a matter of significance that should have been raised in the report itself.

4.23 In response to the draft proposed report the Probity Advisor advised:

The extract of the Tender Evaluation Report at [paragraph 3.30] of this Report sets out the peculiarities of the procurement and that it was not a fee for service contract. The extract explains that value for money is assessed on services proposed through the submissions and risk assessment. The extract notes that value for money was contemplated and assessed in each stage of the evaluation considering the peculiarity of being a procurement which was not fee for service.



- 4.24 In accordance with the suggested approach for medium risk procurements in the *Probity in Procurement Guide*, TCCS engaged an external Probity Advisor to develop a Probity Plan, deliver a draft and final Probity Report, and provide probity advice for the procurement. The final Probity Report found that the tender process was conducted in a way that satisfied the requirements of the RFP and complied with Territory procurement and probity principles.

Timeliness of the Probity Report

- 4.25 The *Probity in Procurement Guide* states that the probity principles:

... help guide Territory Entities to make decisions that demonstrate probity as required in section 7 of the [Government Procurement Act 2001] Act.

- 4.26 In order for a Delegate to be confident in their decision-making, the Evaluation Report that is submitted to them needs to demonstrate that the requirements of the *Government Procurement Act 2001* have been satisfied. This is typically achieved through the Probity Report or evidence included in the Evaluation Report that refers to the Probity Report.

- 4.27 Table 4-1 outlines the sequence of events from the approval of the Evaluation Report through to the provision of the final Probity Report.

Table 4-1 Timeline for provision of final Probity Report

Date	Description
17 November 2023	Evaluation Report was signed off by all members. The only reference in the Evaluation Report to probity noted that a Probity Advisor had been appointed to the project 'to provide advice on the procurement'.
23 November 2023	Evaluation Report was provided to the Delegate.
1 December 2023	The Delegate endorsed the recommendations in the Evaluation Report.
7 February 2024	A draft Probity Report was prepared and addressed to a senior officer of TCCS (who was a member of the Evaluation Team) using their position title and address.
21 February 2024	An updated draft Probity Report was sent to the same person.
27 March 2024	The final Probity Report was sent to the same person, without any notable changes from the previous version.

Source: Audit Office based on TCCS documentation.

- 4.28 Table 4-1 shows that a Probity Report (demonstrating satisfactory compliance with the probity principles) was not prepared and provided to the Evaluation Team, or the Delegate:
- prior to the Evaluation Team preparing the Evaluation Report, with its recommendations; or

- at the time of the Delegate's decision to agree to, and endorse, the Evaluation Report.

Evidence of probity compliance to the Delegate

4.29 The Audit Office examined the role of the Probity Advisor in this procurement to determine whether there was a requirement for a final Probity Report to be provided to the Delegate and the timing of such a report.

4.30 The scope of services of the Probity Advisor stated:

The Advisor is required to provide the following as part of the Services.

...

(3) If and when instructed to do so by the Territory, provide advice, guidance and/or attendance for probity matters as instructed, which may include, on instruction:

...

(g) providing a report at the conclusion of the procurement process, as well as interim reports if requested at specific stage(s) of the procurement process, as instructed, stating what probity advice has been provided and the extent to which, in the probity advisor's views, all probity issues upon which they have been instructed have, to their knowledge, been satisfactorily managed.

4.31 The final Probity Report dated 27 March 2024 indicated a wider role for the Probity Advisor than suggested in the endorsed Probity Plan. This included:

- stating that the advisor's role is 'to monitor the ... process[es] ... and provide comment on whether they are defensible and conducted in a fair and unbiased manner';
- stating that the advisor's role is to provide 'a report at specified stage(s) of the Tender Process as instructed'; and
- including a reference to the report as a probity 'sign off'.

4.32 Although the final Probity Report did not specifically state that a 'probity sign off' would be expected from the Probity Advisor, it is clear that the Probity Advisor was expected to provide a report at some stage during the procurement.

Purpose of the Probity Report

4.33 TCCS asserts that the Probity Report was for the benefit of TCCS as a means of identifying any learnings from the process and improve probity in future procurements, at the conclusion of the procurement. It was not provided to the Delegate to assist the decision-making process.

- 4.34 This is indicated in TCCS advice to the Audit Office on the use of probity reports:

It is normal practice for the probity advisor's report to not be finalised until a procurement has been concluded and a contract has been executed, as the probity advisor's report is used as an independent demonstration of probity compliance (documenting all issues encountered during the life of the procurement) and as a tool to support improvement in future procurements.

- 4.35 Accordingly, the draft and final Probity Reports were addressed to a senior officer of TCCS in their capacity as an officer of the Directorate, rather than in their capacity as a member of the Evaluation Team.

- 4.36 A report on probity compliance at a late stage in a procurement (after the Delegate has already made a decision based on the Evaluation Report) has limited benefit for the purposes of providing assurance on the integrity of the procurement process and outcome.



- 4.37 A draft Probity Report was provided to TCCS in February 2024 and the final Probity Report was provided in March 2024. This was after the Evaluation Team identified the preferred respondent and made a recommendation to the Delegate. A report on probity compliance at this late stage in a procurement process has limited benefit as it does not assist the Delegate's decision-making at a crucial time of the procurement.

Findings from previous Auditor-General reports

- 4.38 The Auditor-General has previously commented on the role of probity advisors and the timeliness of Probity Reports in Territory procurements and made recommendations regarding their role. The performance audit of *Total Facilities Management* (Report No. 1 of 2019) found that a probity statement was not provided by the Probity Adviser until November 2018, notwithstanding that the Delegate had considered and approved the Tender Evaluation Report in April 2018:

The provision of the probity statement in November 2018 was not timely, as it was provided after the conclusion of negotiations with the successful tenderer and after the services agreement had been signed. It did not serve a purpose in providing assurance to the Delegate to assist in their decision-making associated with the evaluation of tenders and consideration of the Tender Evaluation Report (April 2018).

- 4.39 The audit report stated:

For a complex, high value and high risk procurement such as this, probity arrangements would have been enhanced by a clearer articulation of the role of the Probity Adviser (including the nature of the activities to be undertaken and services to be provided) and more timely provision of written assurance with respect to the probity of the procurement process.

- 4.40 The audit report recommended:

Procurement ACT, in the Chief Minister, Treasury and Economic Development Directorate, should review and revise its procurement and probity information to provide more detailed

guidance on, and clarity with respect to, the engagement of probity advice in a procurement process, including requirements for:

- a) a Probity Plan to specify the activities to be undertaken and services provided by a probity adviser; and
- b) the nature and timing of assurance to be provided by a probity adviser during a procurement process, including assurance through written reports.

Updates to the Government Procurement Act 2001 and the Probity in Procurement Guide

4.41 On 1 July 2024, Procurement ACT released the updated the *Probity in Procurement Guide*. The Guide strengthened the role of the probity advisor through the inclusion of the following guidance:

It would usually be expected that a probity advisor will provide a report to the delegate on compliance with Territory procurement legislation and policies, including this guide and the probity principles, at various phases of the procurement process. For example, after completion of evaluation or negotiations and contract execution.

Where the report is prepared by a legal advisor and subject to legal professional privilege, consideration may be given to preparing a summary report that could be published without foregoing privilege.

Advice and reports to the delegate should be provided in a formalised format. Advice should only be left in draft form to the extent that:

- the administrative step of finalising it has not yet been undertaken
- there are remaining questions to be answered in relation to the issues under consideration.

4.42 Further the Guide has been updated to:

- state that where a high or extreme probity risk rating is allocated to a procurement 'Independent probity advice must be sought prior to a decision being made'; and
- include a reference to updated Probity Advisory Services including independent reporting line to the Senior Executive Responsible for Business Integrity and Risk (SERBIR).⁵ Independent reporting lines can assist in ensuring the independence and authority of probity practitioners and allows probity practitioners to bypass management and report to those charged with governance if required.

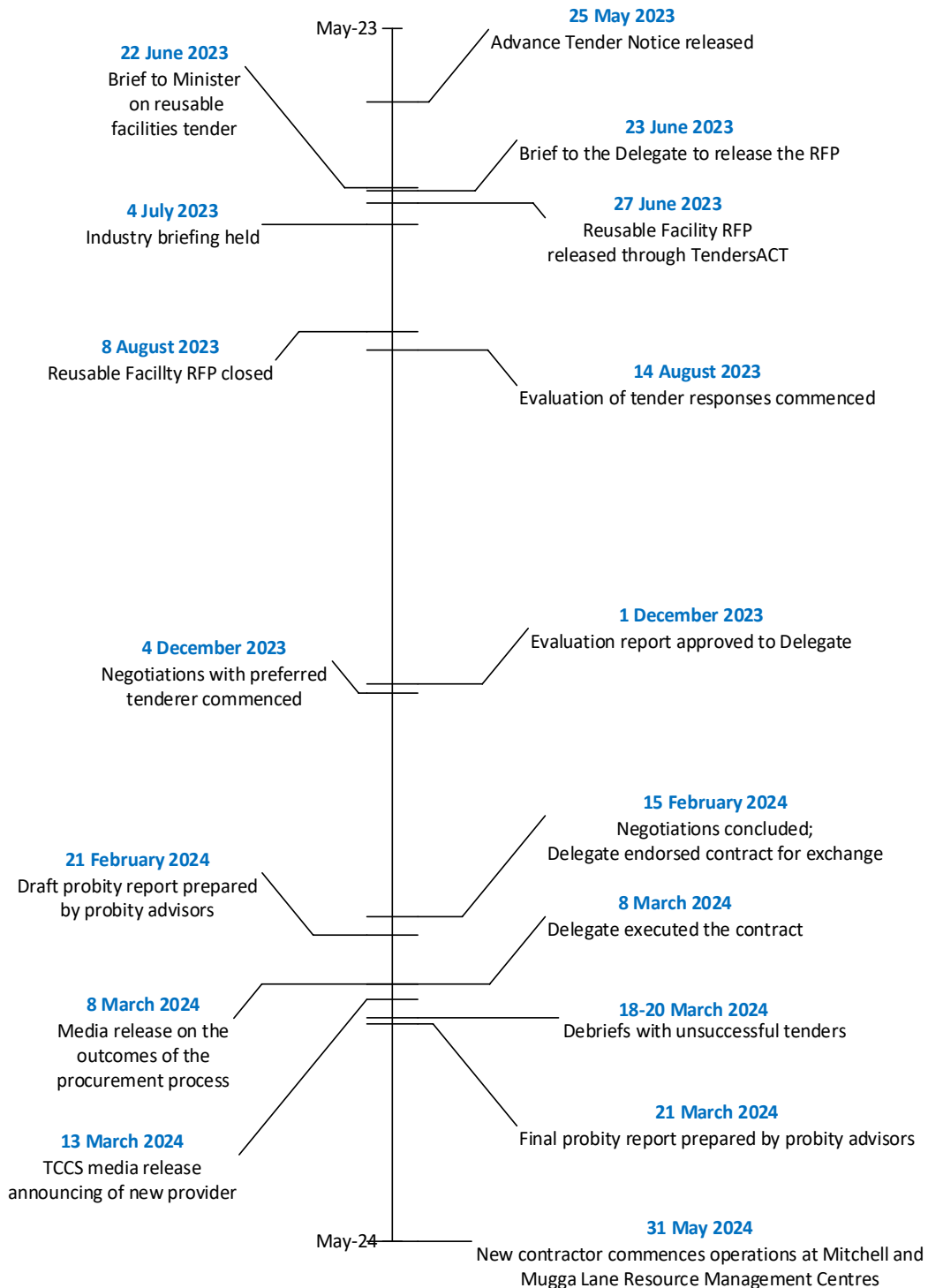


4.43 At the time of the procurement, the *Probity in Procurement Guide* placed emphasis on Territory entities' discretion to determine the role of the Probity Advisor in the procurement and envisaged that the role of the Probity Advisor may only be to provide advice, and not assurance or endorsement of compliance with probity principles. In July 2024, the Guide

⁵ The SERBIR is responsible for the implementation of integrity strategies and the processes for the detection and investigation of fraud and corruption. The SERBIR also acts upon reported cases of suspected fraud and corruption.

was amended to strengthen the role of the Probity Advisor and it now states that a 'probity advisor will provide a report to the Delegate on compliance with Territory procurement legislation and policies, including this guide and the probity principles, at various phases of the procurement process'.

Appendix A: Timeline of key decisions and milestones in the reusable facility services procurement



Source: ACT Audit Office based on TCCS documentation.

Appendix B: Probity risk indicators

Procurement ACT's *Probity in Procurement Guide* provides guidance with respect to probity risk indicators and suggested risk treatments.

Probity risk indicators and suggested treatments

Probity risk rating	Probity risk indicators	Suggested risk treatments
Low	<p>The procurement process complies with the minimum quotation or tender threshold requirements set out in the Regulation or an appropriate exemption has been approved under the Regulation</p> <p>Clearly defined requirement or off-the-shelf product</p> <p>Standard procurement process (e.g. single-stage RFQ [Request for Quotation])</p> <p>Individuals undertaking the procurement have sound breadth and depth of skills and expertise</p>	<p>All probity principles are considered and compliance with or variation from them are properly documented</p> <p>Individuals participating in the procurement process have received probity training</p> <p>This guide, including appendices, is used to assist in observing probity</p> <p>A probity advisor is generally not required</p>
Medium	<p>Estimated total cost of the procurement is high relative to the types of procurement normally undertaken by the Territory Entity</p> <p>Requirements of the procurement may be novel or complex</p> <p>Procurement process has a level of complexity (e.g. multi-stage or interactive, best and final offers)</p> <p>Territory Entity is expecting to make a profit or generate an income stream from the procurement</p> <p>Potential for bias or inappropriate disclosure of information (e.g. because of an incumbent Supplier)</p>	<p>All probity principles are considered and compliance with or variation from them are properly documented</p> <p>Individuals participating in the procurement process have received probity training</p> <p>A probity plan is recommended to ensure an appropriate level of governance and application of this guide and address any specific probity risks</p> <p>An internal or external probity advisor is recommended. The probity advisor may or may not be a lawyer</p>
High / Extreme	<p>Consider the following probity risk indicators in addition to the probity risk indicators under 'medium' risk rating</p> <p>Political sensitivities or area of keen public interest</p> <p>The procurement involves significant intellectual property</p> <p>Procurement process involves a significant negotiation phase</p> <p>High level of supplier engagement through the procurement process</p>	<p>All probity principles are considered and compliance with or variation from them are properly documented</p> <p>Individuals participating in the procurement process have received probity training</p> <p>A more detailed probity plan is strongly recommended to ensure an appropriate level of governance and application of this guide and address any specific probity risks</p> <p>A probity advisor who is a lawyer is strongly recommended. This is because there are likely to be legal consequences for the</p>

Probity risk rating	Probity risk indicators	Suggested risk treatments
	<p>Incumbent supplier with access to data or information not publicly available</p> <p>Potential for an ACT Government agency to submit a response</p> <p>Potentially litigious category of procurement e.g. where the nature of the marketplace makes complaints more likely, including due to fierce competition, or where commercial secrets are commonplace</p> <p>Delegate does not agree with the recommendations of the evaluation team</p>	<p>process where a probity risk rating is high or extreme.</p> <p>A probity auditor may also be appropriate</p> <p>Independent probity advice must be sought prior to decision being made</p>

Source: Procurement ACT's *Probity in Procurement Guide*.

Audit reports

Reports Published in 2024-25	
Report No. 6 - 2024	Business Transformation Program: ICT renewal activities
Reports Published in 2023-24	
Report No. 05 - 2024	Management and oversight of ACT Policing services
Report No. 04 - 2024	Planning and delivery of services for young people with moderate to severe mental health illness
Report No. 03 - 2024	Management of the Growing and Renewing Public Housing Program
Report No. 02 - 2024	Management of key contracts under A Step Up For Our Kids
Report No. 01 - 2024	Urban Tree Management
Report No. 11 - 2023	2022-23 Financial Audits – Financial Results and Audit Findings
Report No. 10 - 2023	Human Resources Information Management System (HRIMS) Program
Report No. 09 - 2023	2022-23 Financial Audits Overview
Report No. 08 - 2023	Supports for students with disability in ACT public schools
Report No. 07 - 2023	Annual Report 2022-23
Report No. 06 - 2023	Implementation of the ACT Aboriginal and Torres Strait Islander Agreement
Report No. 05 - 2023	Activities of the Government Procurement Board
Reports Published in 2022-23	
Report No. 04 - 2023	Procurement of a hybrid electric fire truck
Report No. 03 - 2023	Financial Management Services for Protected Persons
Report No. 02 - 2023	Management of Operation Reboot (Outpatients)
Report No. 01 - 2023	Construction occupations licensing
Report No. 10 - 2022	2021-22 Financial Audits Financial Results and Audit Findings
Report No. 09 - 2022	ACT Emergency Services Agency cleaning services arrangement
Report No. 08 - 2022	2021-22 Financial Audits – Overview
Report No. 07 - 2022	ACT Childhood Healthy Eating and Active Living Programs
Report No. 06 - 2022	Annual Report 2021-22
Report No. 05 - 2022	Procurement and contracting activities for the Acton Waterfront Project

These and earlier reports can be obtained from the ACT Audit Office’s website at <http://www.audit.act.gov.au>.