

MEDIA RELEASE**3 October 2024****Reusable Facility Services Procurement**

ACT Auditor-General, Mr Michael Harris, today presented a report on **Reusable Facility Services Procurement** to the Speaker for tabling in the ACT Legislative Assembly. The audit considered the probity of the procurement of the reusable facility services.

In 2023 ACT NoWaste, a business unit within the Transport Canberra and City Services Directorate (TCCS), commenced a procurement for the management of the Territory's reusable facilities. In March 2024 TCCS announced Vinnies as the new provider to operate the reusable facilities.

The audit found that TCCS' planning and conduct of the procurement was effective. Mr Harris says '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. Notwithstanding the absence of a stand-alone VFM assessment, a review of the evaluation documentation demonstrates that VFM was satisfactorily considered.

The conduct of the procurement was supported by the engagement of a Probity Advisor who prepared a draft and final Probity Report at the conclusion of the procurement. The Probity Report(s) were provided after the evaluation of responses was conducted and after the Delegate had agreed to the 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.

The report makes two recommendations for improvement to the conduct of procurements by ACT Government agencies.

Report No. 7 of 2027 - Reusable Facility Services Procurement is available to download from the ACT Audit Office's website www.audit.act.gov.au. If you need assistance accessing the report please phone 6207 0833.

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.