

## LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

### WRITTEN QUESTION

Mrs Lambley to the Minister for Housing and Community Development:

#### **Department of Housing and Community Development Independent Probity Audit of Procurement Process for A15-0031**

1. What position(s) in the Department of Housing was / were directly responsible or accountable for making sure that this procurement process adhered to the NT Government policy, guidelines and codes?
  - The Chief Executive Officer at the time
  - The Deputy Chief Executive
  - The Chief Procurement Officer at the time
  
2. Is the person or people employed in these positions at the time this Procurement Process was undertaken (in late 2015) still employed within the Department of Housing and Community Services? If so, which positions are still held by the same people?
  - The Deputy Chief Executive at the time is still employed by the agency in the same role.
  - The Chief Procurement Officer at the time is still employed by the agency but in a different role.
  
3. What were the consequences or repercussions for these members of staff that were directly responsible for the “non-compliance” or multiple breaches of the NT Government Procurement Process?
  - The key findings of the report notes that the department complied with the majority of the requirements stipulated in the relevant procurement direction.
  - The report also found that there was no evidence of external interference in the tender assessment process and did not identify any evidence of misconduct.
  - Staff members responsible for non-compliance were counselled on the identified issues and targeted procurement training has been organised.

4. The Chief Executive instructed the current Chief Procurement Officer to work more closely with these employees to drive cultural change in the delivery of the procurement function, redesign existing processes and improve monitoring and compliance activities in higher risk areas. What were the salaries or pay rates at the time this Procurement Process was undertaken for the following Department of Housing positions, identified in the Independent Probity Audit of Procurement Process for A15-0031 (note that this list has been taken from Page 31 of the Independent Probity Audit):

- Chief Executive Officer (Accountable Officer)
- Deputy Chief Executive Officer (Delegate)
- Executive Director, Service Delivery Central (Chair of the initial and Final Assessment Panels)
- Director, Central Australia (Initial Assessment Panel Member)
- Chief Procurement Officer
- Executive Administration Officer, Department of the Chief Minister, (Initial Assessment Panel Member)
- Manager Procurement, Procurement and Contracts (Final Assessment Panel Member)
- Director, Contract Delivery (Final Assessment Panel Member)
- Probity Advisor, Deloitte Touche Tohmatsu

The information relating to individual employees' salaries is personnel in confidence and cannot be provided.

It is understood that the probity advice provided by Deloitte cost \$7000.

5. What was the precise role of the Chief Procurement Officer in 2015 in ensuring that this Procurement Process adhered to the NT Government policy and guidelines?
- The Chief Procurement Officer had the overall functional responsibility for ensuring appropriate procurement processes were in place and assuring the assessment panel's recommendation before it went to the delegate for approval.

6. The current CEO of the Department of Housing & Community Services said in a press conference on Tuesday 23<sup>rd</sup> May 2017 that he was advised by the probity audit investigators from Merit Chartered Accountants that they advised not to take disciplinary action and that no “improper conduct” had occurred.

a) Please provide all details how this “advice” was conveyed to the CEO of the Department of Housing & Community Services by the Merit investigators

- The meeting was an audit exit meeting which is routinely conducted at the completion of any audit or review process.

b) Was this advice provided as a part of the Terms of Reference for this report? If so, which particular “term” of Reference elicited this advice?

- The terms of reference for the review were as follows;
  - i. Establish the facts and timeline relating to Request for Tender A15-0031;
  - ii. Understand the reasons behind decisions that were made and by whom;
  - iii. Determine if the tender assessment and award process was managed in accordance with the Northern Territory Procurement Directions;
  - iv. **Determine if there is any evidence of improper conduct or external interference in the tender assessment process; and**
  - v. **Provide a report in relation to the matters outlined above to determine the appropriateness of any further action that may be undertaken by this department.**

c) Please provide all details and information in regard to the particular meeting in which this information was conveyed by Merit Chartered Accountants to the CEO of the Department of Housing & Community Services, including when the meeting was held; who were the other people present at this meeting; what was the agenda of the meeting; and where was the meeting held?

From the department:

- The meeting referred to was a straight forward audit exit meeting which is routinely conducted at the completion of any audit or review process.
- The purpose of the meeting was for Merit Partners to discuss the report specifically; findings and recommendations.

- Present at the meeting were the Chief Executive Officer, the Chief Procurement Officer and the Director from Merit Partners who was responsible for undertaking the review.
  - The meeting was held on 7 April 2017 in the Chief Executive Officer's office on Level 7 of the RCG Centre
- d) What other "advice" did the investigators from Merit Chartered Accountants provide to the CEO (and others) at this meeting that was not included in the final report?
- The content of the report was discussed during the meeting. Merit Partners answered questions in relation to the methodology used to conduct the audit.
- e) Why wasn't this information included in the "key findings" of the report provided by Merit Chartered Accountants?
- Points iv and v of the terms of reference required Merit Partners to;
    - **Determine if there is any evidence of improper conduct or external interference in the tender assessment process;** and
    - **Provide a report in relation to the matters outlined above to determine the appropriateness of any further action that may be undertaken by this department.**
  - The report explicitly states there was no evidence of external interference in the tender assessment process and did not identify any evidence of misconduct
- f) Was this meeting minuted and documented? If so, could the notes or minutes of this meeting be made public?
- No, the meeting was not formally minuted.
- g) Was the auditor Merit Chartered Accountants specifically tasked to provide the Department of Housing & Community Services advice on how to manage the staffs that were responsible for these breaches and examples of "non-compliance"?
- Refer to points iv and v of the terms of reference.
- h) Does the CEO usually use external advisers, like Merit chartered accountants, to make decisions regarding the management of his staff?
- The Chief Executive Officer engaged Merit Partners to provide a report that could be used to determine the appropriateness of

any further action that may be undertaken by the department as stated in point v of the terms of reference below.

- i) Did the investigators from Merit Chartered Accountants state that there was no “improper conduct” involved in this Procurement Process? If so, when did they state it and why was this not included on the report?
- The report identified a number of areas where the department did not comply with NT Procurement Directions and the best practice guides, which are detailed in the report. No further ‘improper conduct’ was identified. If it was, it would have been included in the report.
- j) I note again that the report from Merit Partners explicitly states there was no evidence of external interference in the tender assessment process, nor did it identify any evidence of misconduct was the Independent Probity Audit specifically asked to make a determination on whether there was “improper conduct “or illegal conduct in the execution of this Procurement Process?
- The terms of reference for the review were as follows:
    - i. Establish the facts and timeline relating to Request for Tender A15-0031;
    - ii. Understand the reasons behind decisions that were made and by whom;
    - iii. Determine if the tender assessment and award process was managed in accordance with the Northern Territory Procurement Directions;
    - iv. Determine if there is any evidence of improper conduct or external interference in the tender assessment process; and
    - v. Provide a report in relation to the matters outlined above to determine the appropriateness of any further action that may be undertaken by this department.
- k) What is the definition of “improper conduct” in the context of this investigation? Is “improper conduct” non-compliance with the codes, policy and guidelines of the NT Government Procurement Process?
- The department did not want to limit the scope of the audit by applying a specific definition of improper conduct.
  - Improper conduct by an employee in the context of this audit would generally relate to corruption, a criminal offence, dishonesty, a serious breach of trust, wilfully or deliberately breaching policy and procedures failure to exercise best judgement or other actions and behaviours that would warrant

disciplinary action being undertaken under the *Public Sector Employment and Management Act*.

- The report from Merit Partners explicitly states there was no evidence of external interference in the tender assessment process, nor did it identify any evidence of misconduct, and on that basis the Chief Executive Officer determined there were no reasonable grounds for disciplinary action to be taken.
7. Have all the tenderers in the Procurement Process for A15-0031 been individually advised of the findings of the Independent Probity Audit of Procurement Process for A15-0031?
- No. However, a copy of the probity report has been released.
8. Is there any responsibility on behalf of the Department of Housing & Community Services to make amends to the unsuccessful tenderers in the Procurement Process for A15-0031, due to the failure of the NT Government to execute this Procurement Process with the required due diligence and adherence to policy and guidelines?
- The department will obtain legal advice on this if and when it is required.
9. Will this matter be referred by the Department of Housing & Community Services to the NT Independent Commission against Corruption when it is established in the near future?
- The independent probity report conducted by Merit Partners made no findings or recommendations in relation to point iv of the terms of reference which explicitly required a determination of whether there was any evidence of improper conduct in the tender assessment process.
  - If at any time corrupt or illegal activities are identified, they will be dealt with appropriately.
10. You told the press conference on Tuesday 23<sup>rd</sup> May 2017 that you have referred the Procurement Process for the tenancy management of the Alice Springs Town Camps to the Auditor General; this was one full day before the winning tender for this contract was announced by the Department of Housing & Community Services?
- a) Why did you make this referral to the NT Auditor General?
- I referred the recent procurement process to the Auditor-General to demonstrate to the tenderers and the public that it was conducted fairly and objectively and in accordance with due process.
  - The Chief Executive Officer also wanted to assure the Auditor-General that he was treating the findings of the audit with the utmost importance and inform her of steps that he already

taken since being appointed to improve procurement performance and compliance and restore public confidence in the department's procurement decision making processes.

b) Why did you announce this referral to the NT Auditor General before you announced the winner of the contract?

- The process itself was referred to the Auditor General rather than the decision.

c) Why does the Department of Housing & Community Services not have confidence that they have conducted this Procurement Process with the level of compliance and diligence required?

- The department is confident that its procurement processes have been improved. Referral to the Auditor General was for an independent assessment of the implemented recommendations.

d) Is it the role of the CEO of the Department of Housing & Community Services (the "accountable officer") to make sure that mistakes that occurred in the Procurement Process for A15-0031 do not occur again?

- The Chief Executive Officer (as the Accountable Officer for the agency) is ultimately responsible for ensuring compliance with the Procurement Directions.
- The responsibilities of the Accountable Officer is prescribed under Procurement Direction F4.8:
  - The Accountable Officer is responsible for determining and authorising the procurement method to be used;
  - Agencies are responsible for all processes associated with procurement activity in Tier One and Tier Two (refer Procurement Directions PR1 and PR2);
  - Agencies will use the mandated Contract and Procurement Services Agency Purchase Requisitions Online system, for all Tier Three, Tier Four and Tier Five procurement activity;
  - Agencies will ensure that appropriate procurement planning (including determination of relevant Assessment Criteria and Percentage Weightings) is undertaken before commencing the procurement process. The Agency Accountable Officer determines and authorises the procurement method to be used;
  - Accountable Officers will ensure Agencies comply with relevant government requirements in relation to their procurement activities. These requirements are outlined in the Procurement Framework;

- The Accountable Officer delegates some of these responsibilities to employees of the agency through its Procurement Delegations; and
- All employees of the agency are required to conduct their duties to the best of their ability, act in accordance with the relevant authority and limitations of their position and abide by the Code of Conduct.

e) What role does the CEO have in ensuring all Procurement Processes undertaken by his Department comply before a contract has been awarded?

- Please refer to the response to Question 10(d) above.

f) Will the Department of Housing & Community Services be using the NT Auditor-General to ensure compliance with all Procurement Processes undertaken by the Department of Housing & Community Services in the future?

- The department may refer other procurement matters to the Auditor General in future if the circumstances justify this action being taken.

g) Would you make this letter of referral to the NT Auditor General you announced on 23<sup>rd</sup> May 2017 available to the public?

- I have attached a copy of the letter that I sent to the Auditor-General. In addition, please find attached a copy of the letter sent by the Chief Executive Officer to the Auditor-General.

11. Given that Zodiac Business Services were awarded a contract with “aberrant pricing”, more than 20% less than the tender estimate, were they able to manage the requirements of the contract within their budget?

- Yes.

12. Did Zodiac Business Services require a variation on their contract to provide tenancy management services to the Alice Springs Town Camps?

- No.

13. Please list all the ways in which the Department of Housing & Community Services will respond to the 10 “key findings” of the Probity Audit report.

From the department:

Following the announcement of the independent probity audit on 17 February 2017, the Chief Executive Officer made a number of immediate changes to improve agency procurement compliance including:

- A re-organisational structure that strengthened the independence and oversight of the Chief Procurement Officer;
- Commenced targeted training for employees involved in procurement including participation in whole of government Certificate IV and Diploma level training programs and technical skills development courses; and
- Strengthening the support and guidance that is provided to employees involved in tender assessment panels to ensure they fully understand procedural, probity and confidentiality requirements.

More recently, the Chief Executive Officer has:

- Formed a new Executive Management Board and appointed the Chief Procurement Officer as a member to ensure there is a strong focus on procurement compliance, performance and risk mitigation at a whole of agency level;
- Developed a new procurement functional model and governance framework that will clearly describe roles and responsibilities in respect to key stakeholders in procurement, how business units will interface with the centralised procurement team and establish appropriate work flow processes to efficiently manage and support procurement activities in future; and
- Commenced planning for compulsory procurement awareness training to be delivered to all agency staff throughout the Northern Territory. Ongoing training and professional development will be embedded in employee personal development plans and performance agreements where appropriate.

14. The Independent Probity Report uncovered a reported allegation of bias of one of the assessment panel members. The investigators “could not obtain evidence that the Department investigated allegations”.

a) Was this allegation of bias ever investigated by the Department?

- A number of employees interviewed by Merit Partners stated that the allegation of bias had been thoroughly investigated and a determination made there was no basis to it.

- The key findings of the report identifies a number of areas where record keeping was absent and this included the investigation of the allegation of bias.

b) If it was investigated, could you provide details of the process used to investigate the matter and what the outcome of that investigation was?

- The report from Merit Partners found that 'We have been unable to obtain evidence that the Department investigated the allegations'.
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