

VICTORIA

Victorian
Auditor-General

Audit summary
of
Tendering and
Contracting in Local
Government

Tabled in Parliament
24 February 2010

Audit summary

Local government spends more than \$2.7 billion annually on goods, services and works. Most expenditure is on roads, construction, waste management and plant and equipment.

The *Local Government Act 1989* (the Act) requires councils to seek best value for their communities and publicly tender contracts worth \$150 000 or more for goods and services, and \$200 000 or more for capital works. Councils must comply with the Act, unless they have been granted an exemption by the Minister for Local Government or entered a contract because of an emergency. Each council develops its own procurement procedures for purchases below the public tender thresholds. Prudent practice is for these purchases to also be competitive to achieve value for money.

Local Government Victoria (LGV) supports the minister in administering the Act and provides guidance to councils on matters such as best practice in procurement. LGV also processes applications to the minister for exemptions.

LGV has recently introduced sector-wide initiatives to improve procurement systems, practices and capability across councils. These include the Local Government Procurement Strategy that incorporates projects to identify and promote the uptake of better practices across the sector, as well as arranging access for local councils to state government purchasing contracts.

Audit objective

The objective of the audit was to examine whether policies, guidelines and procedures for tendering and contracting are adequate, have been complied with and have resulted in value for money.

The audit examined a sample of tenders and contracts for the period 2007–09 at:

- the City of Casey
- the City of Greater Bendigo
- Mount Alexander Shire Council
- Colac-Otway Shire Council
- the City of Yarra.

Overall conclusion

Council procurement policies were adequate. Nevertheless limited guidance to staff coupled with weaknesses in local management controls and oversight arrangements meant there was generally less than desirable assurance that probity standards had been consistently applied, and that conflicts of interest were avoided.

There is significant scope at the councils examined to achieve better value for money through procurement. There is a lack of attention to the benefits of strategic procurement, and a lack of clarity on statutory obligations was evident when aggregate payments to suppliers exceeded the tender thresholds. This situation is not conducive to a culture of effective procurement within councils, and does not reinforce the imperatives for seeking and demonstrating value. LGV needs to address this in consultation with councils.

Findings

All councils had established adequate probity standards. In most cases, however, guidance to staff was insufficient resulting in actual and potential conflicts of interest being inadequately managed.

Casey's contract with a service provider delegates the firm authority to evaluate council tenders for building works. The firm's staff routinely sit on tender panels for council, but have a conflict of interest as the firm receives a percentage of the value of works tendered. This conflict is not currently covered by the Act, however, the above arrangement represents poor practice in probity. Casey has also delegated financial authority to the firm's staff to approve invoices up to \$100 000 contrary to the Act, which only permits a council to delegate such functions to staff.

The Act under the same circumstances prohibits council staff from exercising delegated duties, powers or functions if they have conflicts of interest. While the Act in this situation refers explicitly to council staff only, it is good practice for councils to apply the same minimum probity standards to contractors in cases where they are performing the same duties as council staff. Notwithstanding this, there was no indication that contract staff at Casey had acted inappropriately.

Similarly, Bendigo has an internal civil works unit that competes as an in-house bidder on public tenders by council. There was insufficient assurance that the in-house team did not have access to information about competing tenders that could provide an unfair advantage. During the course of the audit Bendigo developed an action plan to strengthen local procurement practices.

Only Yarra had procedures requiring tender evaluation panel (TEP) members to complete conflict of interest declarations prior to evaluating tenders. Consequently it was unclear whether TEP members at the other four councils were impartial as it could not be demonstrated that they had properly considered and avoided conflicts. Colac, Bendigo and Casey amended their procedures during the course of the audit to address this issue. Colac had resolved to introduce this change before the audit.

A council is not legally required to tender if the estimated value of a contract is less than the statutory thresholds. However, the Act is silent on whether this obligation arises when the tender thresholds are exceeded as a result of multiple purchases with the same supplier over time.

All five councils had examples of recurring services that resulted in cumulative payments to suppliers that, over time, had exceeded public tender thresholds, and where there was no contract or evidence of a competitive process. Therefore, there was insufficient assurance that councils had optimised value for money through competition, or that they had complied with their statutory obligations to go to tender.

Council oversight of procurement activities was generally inadequate. While all had undertaken ad hoc reviews of local practices none had systematically monitored cumulative payments to suppliers to identify ways to achieve better value through more strategic procurement. Also, except for Yarra and for the rare occasions where a probity auditor may be engaged for high-value tenders, none of the remaining councils had procedures to systematically monitor whether probity standards had been met for the vast majority of tenders undertaken. Colac, Bendigo and Casey have since initiated action to strengthen local practices.

Recommendations

Number	Recommendation	Page
1.	<p>Councils should strengthen the application of probity standards in procurement by:</p> <ul style="list-style-type: none"> training all staff involved in procurement to identify and manage conflicts of interest and probity requiring all tender evaluation panel (TEP) members to document declarations of conflicts of interest assuring TEP reports provide sufficient detail and analysis to support decisions to award tenders maintaining sufficiently detailed and secure records of all procurement activities and decisions to reliably acquit transparency and accountability obligations. 	20

Recommendations – *continued*

Number	Recommendation	Page
2.	<p>Councils should strengthen oversight and monitoring of procurement by:</p> <ul style="list-style-type: none"> • regularly monitoring cumulative payments to suppliers to identify opportunities to use competitive and/or collaborative procurement arrangements for improved value • establishing procedures for assuring compliance with and adherence to statutory requirements and public sector probity standards • systematically reviewing the effectiveness of procurement activities and associated controls. 	20
3.	<p>Local Government Victoria (LGV) should review and enhance guidance to councils on strategic procurement in consultation with stakeholders. This should include amending the Local Government Regulations to:</p> <ul style="list-style-type: none"> • better prescribe the range of circumstances under which a council's statutory obligations to tender apply, and specifically address situations involving cumulative spend with suppliers • require councils to set the scope, timeframe and value of works to be covered by a contract entered into because of an emergency and to report this publicly. 	20

