

Tendering and Contracting in Local Government

VICTORIA

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Auditor-General

Tendering and Contracting in Local Government

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The Hon. Robert Smith MLC
President
Legislative Council
Parliament House
Melbourne

The Hon. Jenny Lindell MP
Speaker
Legislative Assembly
Parliament House
Melbourne

Dear Presiding Officers

Under the provisions of section 16AB of the *Audit Act 1994*, I transmit my performance report on *Tendering and Contracting in Local Government*.

Yours faithfully



D D R PEARSON
Auditor-General

24 February 2010

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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

Audit Act 1994 section 16— submissions and comments

Introduction

In accordance with section 16(3) of the *Audit Act 1994* a copy of this report, or relevant extracts from the report, was provided to the Department of Planning and Community Development, the City of Casey, City of Greater Bendigo, Mount Alexander Shire Council, Colac-Otway Shire Council, and the City of Yarra with a request for comments or submissions. A copy of the report was also provided to the Local Government Investigations and Compliance Inspectorate for attention in accordance with section 16F(1) of the Act.

The comments and submissions provided are not subject to audit nor the evidentiary standards required to reach an audit conclusion. Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.

Submissions and comments received

RESPONSE provided by the Secretary, Department of Planning and Community Development

The following is an extract of the response provided by the Secretary, Department of Planning and Community Development (DPCD). The full response is provided in Appendix A of this report.

The Department believes the report presents fairly and is balanced.

Recommendation 1 – Councils should strengthen the application of probity standards in procurement by:

- 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.

RESPONSE provided by the Secretary, Department of Planning and Community Development – continued

Recommendation 2 – Councils should strengthen oversight and monitoring of procurement by:

- 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.

Response: *DPCD supports the first and second recommendations which are addressed specifically to local government.*

Recommendation 3 – 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:

- 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.

Response: *With regard to the first part of the third recommendation, which is addressed to Local Government Victoria, the Department will continue to work with the local government sector on enhancing guidance to councils on strategic procurement. Amendments to the regulations will be considered in the context of procurement reforms that are being delivered through the 'Councils Reforming Business' and 'Reducing the Regulatory Burden' programs which the Victorian Government has implemented in an effort to encourage strategic thinking in procurement within local government. The Department supports the second part of the third recommendation.*

RESPONSE provided by the Chief Executive Officer, City of Casey

The following is an extract of the response provided by the Chief Executive Officer, City of Casey. The full response is provided in Appendix A of this report.

Response: *The Chief Executive Officer supports many of the observations and recommendations that have been made and issues that need addressing, however, expressed concern that some parts of the report do not fairly represent Council's practices in relation to tendering and contracting and that the report suggests aggregate payments come under threshold provisions in the Act.*

The Chief Executive Officer advised that Council has comprehensive systems in place that are not referred to in the report. Despite this, Council acknowledges that there is room for improvement and has addressed, and is continuing to address, comments raised.

RESPONSE provided by the Secretary, Chief Executive Officer, City of Casey – continued

The Chief Executive Officer also states that in relation to 'value for money', 169 creditors were individually paid aggregate amounts of over \$150,000 for the purchase of goods and services in either 2007/08 or 2008/09. Of this amount, at least \$200.7 million (90.3%) has either been through a competitive process or a competitive process was not possible or not required.

Further comment by the Auditor-General

The Chief Executive Officer asserts that the report 'implies that Council has not paid sufficient attention to using competitive processes in delivering value for money'; and that the report implies that 'aggregate purchases for discrete arrangements come under the threshold provisions of the Act'.

The report is clear at page ix in the Audit Summary and on page 13, that the *Local Government Act* is silent on the matter of aggregate purchases, and also clear that there was no evidence of contract splitting in the cases examined. The point of the report is to emphasise that where significant amounts are spent in aggregate on one supplier, or for one service, over time; and according to Casey's response this amounted to around \$222.2 million for 169 suppliers over two years; it is possible to achieve greater savings by leveraging this aggregate spend, rather than treating each discrete arrangement as a separate procurement exercise, whether undertaken competitively or not.

RESPONSE provided by the Chief Executive Officer, City of Greater Bendigo

The following is an extract of the response provided by the Chief Executive Officer, City of Greater Bendigo. The full response is provided in Appendix A of this report.

The City of Greater Bendigo welcomes and accepts the three recommendations in the report.

Recommendation 1 – Councils should strengthen the application of probity standards in procurement by:

- 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.

RESPONSE provided by the Chief Executive Officer, City of Greater Bendigo – continued

Response: In response to the first recommendation, I note the Auditor-General's findings regarding probity standards. Following the inclusion of section 186A of the Local Government Act 1989 the Council revised its practices in regard to procurement. Since the audit, however, there is now greater clarity as to the actions required to improve the current arrangements. The staff Code of Conduct has been completely revised to emphasise conflict of interest issues. A formal Conflict of Interest Declaration has been developed and promulgated as a mandatory addition to the procurement process. The Council has also adopted a Tendering Policy which clearly states probity requirements and specifies which in-house bids can be made in response to Council's requests for tender. There has also been a focus on ensuring all staff are aware of their procurement responsibilities through systematic in-house training. Discreet components of the training may also form part of our on-going induction process.

Recommendation 2 – Councils should strengthen oversight and monitoring of procurement by:

- 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.

Response: In relation to recommendation two, I acknowledge that strengthening the oversight and monitoring of procurement will enhance Council's statutory compliance and improve best value outcomes for the community. The Council's Executive Management Team is now reviewing key procurement performance indicators on a monthly basis. Also, a cross organisation team of staff monitors the implementation of the procurement Action Plan and is introducing improved processes, including reviewing collaborative procurement arrangements and establishing procedures for compliance and reviewing procurement activities. The Council is considering additional resources to achieve more strategic procurement outcomes.

Recommendation 3 – 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:

- 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.

RESPONSE provided by the Chief Executive Officer, City of Greater Bendigo – continued

Response: In relation to recommendation three, the Council would welcome enhanced practical guidance from Local Government Victoria in the area of procurement, particularly in regards to section 186 of the Act and the complex conflict of interest provisions. I acknowledge that LGV has recently provided support to the sector in developing capacity in the area of procurement. However, further clarity regarding the circumstances under which the provisions apply, especially regarding cumulative spend, would assist in avoiding unintentional breaches.

RESPONSE provided by the Chief Executive Officer, Mount Alexander Shire Council

The following is an extract of the response provided by the Chief Executive Officer, Mount Alexander Shire Council. The full response is provided in Appendix A of this report.

Response: Mount Alexander Shire welcomes the Victorian Auditor General's Report on Tendering and Contracting in Local Government and supports the recommendations within the report. The report will provide a basis for the sector to improve its overall performance in procurement activities.

As a result of the Report, Council is already considering a number of enhancements to systems and procedures that will address the matters raised and recommendations put forward.

RESPONSE provided by the Chief Executive Officer, City of Yarra

The following is an extract of the response provided by the Chief Executive Officer, City of Yarra. The full response is provided in Appendix A of this report.

Response: We consider the overall intent of the Report as highly desirable and a timely driver of clearer legislative direction, improved processes, collaboration, procurement and value for money outcomes and the pursuit of opportunity and innovation across the sector.

In accord with the above context, we have reviewed the proposed report and in response to your invitation, record that key new probity processes noted as in progress during the audit process at Yarra, have been incorporated in Council's Procurement Procedure Manual and procedures implemented.

1 Background

1.1 Introduction

Local government spends more than \$2.7 billion on goods, services and works annually. Major expenditure is on roads and associated infrastructure, construction and maintenance, waste management and plant and equipment. Councils should effectively manage tendering and contracting to achieve their service objectives, including being able to demonstrate achievement of value for money for ratepayers.

1.1.1 Legislative framework

The *Local Government Act 1989* (the Act) requires councils to publicly tender contracts worth \$150 000 or more for the procurement of goods and services and \$200 000 or more for capital works.

The Act permits councils to seek an exemption from the Minister for Local Government from public tendering in certain circumstances and to enter into contracts without going to public tender if the council resolves the contract must be entered into because of an emergency.

The Act requires councils to comply with best value principles which may include, among other factors, taking into account value for money, community expectations and values, balancing affordability and accessibility of services and local employment.

The *Local Government (General) Regulations 2004* require councils to maintain a public register of contracts above the thresholds that did not go to public tender and were not exempt.

1.1.2 Responsibilities of key players

Local Government Victoria (LGV), a division of the Department of Planning and Community Development, provides a whole-of-system perspective by:

- supporting the minister in administering the Act
- supporting and guiding councils in applying the Act
- advising on procurement best practice
- supporting and encouraging best value and continuous improvement in local government service delivery, organisational performance and governance
- supporting the minister in managing exemption applications.

LGV's responsibility for investigating potential breaches of the Act by councils was transferred to the newly created Local Government Investigations and Compliance Inspectorate (LGICI) in August 2009. The inspectorate's responsibilities include ensuring councils meet the highest standards of accountability and transparency, and spot auditing for compliance with the Act's governance requirements.

1.1.3 Local Government Procurement Strategy

In September 2008, LGV launched the Local Government Procurement Strategy (LGPS) to offer practical recommendations for councils to work in partnership, make savings for local communities and to improve capability across the sector.

The first stage of the strategy has included:

- 13 Collaborative Procurement Projects (CPPs) at 53 councils that aim to set the foundation towards achieving the broader goals of the strategy and that are due to finish by February 2010
- delivery of two training programs, Towards Better Tendering (TBT) and the Procurement Professionals Program (PPP), to improve council capability
- providing access to 10 State Purchase Contracts that enable councils to purchase related goods and services worth \$150 000 or more without first going to public tender
- providing access to the Construction Supplier Register (CSR) administered by the Department of Transport, which permits councils to selectively tender projects with registered contractors and consultants.

LGV commenced development of a Procurement Development Program (PDP) in October 2009 to assist individual councils increase their procurement capability. The program will involve developing an implementation framework for stage 2 of the LGPS that will include:

- developing an evidence-based understanding of the regulatory burden on business of current procurement practices
- evaluating the CPP projects to identify better practices and to inform future sector-wide procurement initiatives
- identifying continuous improvement principles and a change management plan for the sector to improve capability
- developing actions to deliver sustainable changes across the local government sector.

LGV plans to finalise the PDP and implementation framework for stage 2 by April 2010.

1.2 Audit of tendering and contracting

1.2.1 Audit objectives

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

- acceptable probity standards had been set and applied
- legislation and councils' policies and procedures had been complied with
- value for money had been achieved through competitive tendering.

1.2.2 Scope and methodology

The audit examined a sample of tenders and contracts for compliance with the Act and good practice 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.

The audit was performed in accordance with the Australian Auditing Standards.

1.3 Cost of the audit

The cost of the audit was \$460 000 which includes staff time, overheads and printing.

2 Probity and value for money

At a glance

The *Local Government Act 1989* (the Act) sets thresholds for contracts that must go to public tender. Councils can set their own business rules for purchases below these thresholds. To manage procurement effectively, councils should have sound policies and processes that assure fairness, transparency and achieve value for money for the community.

Key findings

- While all councils generally had adequate procurement policies, assurance they had optimised value for money through competition and complied with their statutory obligations to go to tender was variable.
- Conflicts of interests were inadequately managed by some councils and the quality of documentation to reliably demonstrate probity needs to be improved.
- Councils should improve their oversight of procurement to take better advantage of strategic procurement opportunities and assure probity.

Key recommendations

Councils should strengthen:

- the application of probity standards through staff training and better record keeping
- oversight and monitoring of procurement to achieve better value through competition.

Local Government Victoria should review and enhance guidance to councils on strategic procurement in consultation with stakeholders.

2.1 Introduction

Purchasing is a major activity in local government. When managed effectively, it improves service delivery, supports the achievement of strategic objectives, and delivers savings and benefits to the community.

The *Local Government Act 1989* (the Act) establishes the thresholds for contracts which must go to public tender. Each council sets their own business rules for purchases below these thresholds. Prudent practice is for these purchases to also be competitive to demonstrate achievement of value for money.

Poor purchasing practices can lead to inadequate competition, unfair treatment of suppliers and to inferior goods and services that fail to meet local needs. To assure processes are fair, transparent and deliver positive outcomes for the community councils need:

- sound policies that promote compliance with the Act, probity in procurement and value for money
- effective management that assures compliance, adherence to probity and continuous improvement.

2.2 Maintaining probity in procurement

2.2.1 Conclusion

While councils had adequate probity standards, most of the councils examined managed conflicts of interests inadequately. This results in a lack of assurance on the fairness and integrity of the process. Councils should enhance guidance to staff on applying probity standards effectively. Councils also need to improve the quality and completeness of tender documentation to better demonstrate probity and the soundness of decisions reached.

Council performance in setting and applying probity standards is summarised in Figure 2A.

Figure 2A
Summary of councils' performance in establishing
and applying probity standards

	Bendigo	Casey	Colac	Mount Alexander	Yarra
Adequacy of policies					
Policies identify acceptable probity standards	✓	✓	✓	✗	✓
Policies provide sufficient guidance on applying probity standards	✗	✗	✗	✗	✓
Application					
Tender bidders treated equally	✓	✓	✓	✗ ^(a)	✓
Adequate controls for the management and security of tender documentation	✗ ^(b)	✓	✓	✓	✓
Conflicts of interest adequately managed during tendering	✗ ^(b)	✗ ^(b)	✗ ^(b)	✗	✓
Tender evaluation reports contain sufficient detail to support recommendations to award tenders	✗	✗ ^(b)	✓	✓	✓
Oversight and training					
Council staff trained in probity standards	✗ ^(b)	✓	✓	✗	✓
Adequate arrangements to monitor adherence to probity standards	✗ ^(b)	✗ ^(b)	✗ ^(b)	✗	✗ ^(b)

Notes:

(a) Insufficient documentation on file to demonstrate equal treatment of bidders.

(b) Council took action to strengthen practices during the audit.

Source: Victorian Auditor-General's Office.

2.2.2 Establishing acceptable probity standards

Probity in procurement relates to the fairness, impartiality and integrity of the process and is critical to achieving value for money. Consistency and transparency in all dealings with potential suppliers is also important to avoid actual and perceived bias, and for encouraging participation and public confidence in competitive purchasing processes.

The Act establishes obligations for councillors and staff for ethical behaviour that apply to procurement and promote probity. These include:

- staff and councillors must act impartially, with integrity and avoid conflicts of interest
- staff and councillors must disclose a direct or indirect interest in any matter they intend to advise or report to council about

- staff who have been delegated a power, duty or function of the council are prohibited from exercising those powers if they have conflicts of interest and they must disclose those interests
- councillors must avoid conferring an advantage or disadvantage on any person, and must avoid conflicts between their public duties and personal interests and obligations
- implementing a code of conduct for councillors and staff.

Review of probity standards in councils

Council procurement policies should identify acceptable probity standards that reinforce:

- the obligations for acting fairly, impartially, with integrity and for declaring and mitigating actual or potential conflicts of interest
- treating potential suppliers equally in relation to access to information, evaluation of tenders/quotes and negotiations
- demonstrating probity and adherence to procedures by clearly documenting dealings with suppliers and the basis of related council decisions
- the responsibility to protect the security of confidential information
- the obligations of councillors, staff and contractors to comply with their responsibilities for ethical behaviour and probity set out in the Act.

All councils except Mount Alexander had policies that adequately identified these requirements. While Mount Alexander's policy referred generally to most of these principles it needs to clarify and better document the probity obligations of its staff. This is particularly important as the council did not have a code of conduct for its staff, contrary to the requirements of the Act.

Although all council policies contained some guidance on probity, with the exception of Yarra's, all had insufficient detail to guide staff and contractors where relevant, in applying probity standards to demonstrate the fair and equal treatment of suppliers.

2.2.3 Applying probity standards

Avoiding conflicts of interest

Tender evaluation panels

All councils examined have policies that require staff to declare and avoid conflicts of interest. This is particularly important for staff on tender evaluation panels (TEPs) who are assessing tenders. It is good practice for TEP members in these circumstances to complete conflict of interest declarations to provide evidence they are impartial.

Of the five councils only Yarra required TEP members to sign conflict of interest declarations before evaluating tenders. There was less assurance, therefore, at the other four councils that TEP members were free from bias, and that they had properly considered and avoided potential conflicts. Colac, Bendigo and Casey amended their procedures during this audit to require TEP members to sign conflict of interest declarations. Colac had resolved to introduce this change before the audit.

Casey has outsourced its building and project management to an external firm whose staff routinely sit on TEPs for building works. The firm's staff have delegated authority to evaluate tenders under the firm's contract with council, but have a conflict of interest through their involvement in TEPs 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 authority to the contractors to approve invoices up to \$100 000 contrary to the Act, which only permits a council to delegate such functions to staff.

There was no indication that the contractors had acted inappropriately, however, the Act under the same circumstances prohibits council staff who have been delegated a power, duty or function of the council from exercising those powers 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.

While Casey's policy requires staff to declare a conflict or pecuniary interest, Casey did not require TEP members to complete conflict of interest declarations to confirm whether or not they have any conflicts. Casey took action to address this during the audit.

Figure 2B

Case study: Inadequate management of conflicts of interest

Independence of external panel member

One council's policy requires tender evaluation panels to include an 'independent' person for in-house bids. In two instances an employee of a private engineering firm that occasionally does project work for the council carried out this role. The 'independent' panel member did not declare any interest, however, there are doubts about the panel member's independence as the individual is employed by a firm with a commercial relationship with council.

Panel member nominated as referee

During a public tender one competing supplier named a tender evaluation panel member as their business referee. While the panel member was not asked to provide a referee report, the supplier later won the contract. The nominated panel member had a potential conflict and, in accordance with good practice, should have withdrawn from the decision-making process. However, no conflict was declared or managed prior to tenders being evaluated. The issue was brought to the attention of another panel member after the contract was awarded but that person took no action.

Source: Victorian Auditor-General's Office.

Managing in-house bidders

Bendigo has an internal civil works unit that competes as an in-house bidder on public tenders administered by the council. The unit also competes for external construction projects. Probity arrangements for the management of in-house bidders, however, were insufficient. There were no procedures or controls to assure that the in-house team did not have information about competing public tenders and associated works that might give it an unfair advantage.

An external review in 2008 recommended that Bendigo update its policy and adopt a probity plan to guide competitive tendering for in-house bidders. The council has since updated its procurement policy, however, it still does not adequately specify the procedures to assure the probity of in-house bidders. The review also noted that Bendigo's in-house unit is successful in 57 per cent of all tenders for which it competes. The high success rate reinforces the importance of taking action.

Treating bidders equally

At all councils except Mount Alexander there was generally sufficient documentation to prove that tender bidders were given the same information and treated equally. Nevertheless, there was scope to improve the documentation and retention of records of telephone conversations, meeting minutes, emails and addenda. Mount Alexander needs to improve its file management practices to provide evidence that bidders have been treated equally.

Assuring the security of documentation

All councils except Bendigo had taken reasonable steps to protect the security of tender documentation. Bendigo needed to better assure that access to electronic contract documents is restricted to authorised personnel and that physical contract files are stored securely. Bendigo took action to address this during the audit.

Adequacy of probity training

Councillors had conflict of interest training in 2009 in response to amendments to the Act. Senior and nominated staff at Casey and Colac with delegated financial authority had similar training, but this did not always extend to other staff involved in TEPs. Senior staff at Bendigo received training during the course of the audit, but there was no evidence that staff at Mount Alexander had received conflict of interest training.

Only Yarra had an extensive education and training program that covered probity issues for all staff. Further, it regularly circulates information on probity and conflict of interest to councillors and staff to remind them about legislative and policy requirements. In the course of the audit, Bendigo formulated a plan for addressing deficiencies in procurement practices, which included a commitment to procurement training and enhancing capability.

2.2.4 Evaluating and awarding tenders

Performing appropriate and thorough assessments

All councils clearly stated their evaluation criteria in tender documentation, which included both cost and quality factors.

At Casey and Bendigo TEP reports to council were brief and did not offer sufficient information to support decisions. Key shortcomings included lack of information on the evaluation process, analysis of implications for council, results of referee checks, analysis and commentary to support the basis of evaluations and associated recommendations. Bendigo updated its contract manual during the audit to improve the documentation of reference checks and interviews with tenderers. Similarly, Casey recently introduced a checklist to improve the quality of future tender evaluation reports.

Yarra's tender evaluation reports were extensive and Colac's and Mount Alexander's were sufficiently detailed to inform decision making. Assessments also showed consistent application of balanced criteria overall. However, in a minority of cases they needed to improve documentation of reference checks, the identity of panel members and authorisations. All councils approved TEP reports recommending award of tenders in line with delegations.

2.3 Achieving value for money from procurement

2.3.1 Conclusion

All councils had engaged in competitive procurement. However, there was substantial scope to improve value for money through greater use of competitive purchasing in situations where cumulative spend over time exceeded legislative thresholds. There was also an evident lack of clarity over councils' statutory obligations for tendering in some circumstances, and insufficient assurance that councils are meeting these obligations.

Figure 2C summarises councils' procurement practices for promoting value for money.

Figure 2C
Summary of councils' procurement practices for promoting value for money

	Bendigo	Casey	Colac	Mount Alexander	Yarra
Adequacy of policies					
Policies promote compliance with requirement to tender and use competition	✓	✓	✓	✓	✓
Policies identify circumstances exempt from tender processes	✗ ^(a)	✓	✓	✓	✓
Policies guide procurement when cumulative spend exceeds tender thresholds	✗	✗	✗	✗	✗ ^(b)
Application					
Council proactively uses competitive/collaborative purchasing when cumulative spend exceeds tender thresholds	✓	✗ ^(a)	✓	✓	✓
Oversight					
Systematic monitoring and reporting occurs to identify competitive procurement opportunities	✗	✗ ^(a)	✗	✗	✗ ^(a)
Procurement processes and outcomes are systematically reviewed for improvement	✗	✗	✗	✗	✗ ^(a)

Notes:

(a) Council took action to strengthen practices during the audit.

(b) Council advised it intends to update its policy to address this issue.

Source: Victorian Auditor-General's Office.

2.3.2 Adequacy of procurement policies

All councils audited had procurement policies that support compliance with the public tender requirements in the Act, achievement of best value principles, and the use of competition for procurements valued below public tender thresholds.

These policies required multiple quotations for significant purchases under the public tender thresholds. While procedures varied between councils, in each case they were appropriately directed towards assuring higher value purchases that were competitive and which included an assessment to promote value for money.

All councils except Bendigo identify when councils are exempt from using a competitive process to buy goods, works or services. This was amended during the course of the audit. Yarra's policy details a step by step guide for staff acquiring goods and services in an emergency.

2.3.3 Optimising value through use of competition

Seeking value through public tender

There were purchases at each council that had been publicly tendered in line with the Act, however, there were many instances where cumulative payments to suppliers over time had exceeded the public tender thresholds, and where there was no contract or competition to secure better value from suppliers. While the Act is silent on the requirement to tender when cumulative payments over time exceed legislative thresholds, it is good practice to subject the provision of goods and services to competitive processes where an established, ongoing need is identified.

Deliberate contract splitting was not evident in these cases, however, there was insufficient assurance that councils had either optimised value for money through competition or that they had complied with their statutory obligations to go to tender. This is because:

- there is general confusion among some councils on whether the statutory thresholds apply to discrete purchases with suppliers or to multiple purchases and payments with the same supplier which accumulate over time
- there is inadequate monitoring of and reporting on supplier expenditure due in part to the limitations of software systems
- the size of the supplier market particularly in regional and rural areas where the number of suppliers who can tender for the work is likely to be much smaller.

Figure 2D presents an analysis of supplier payments and identifies a number of cases where councils were addressing situations where they could improve value for money.

Figure 2D
Analysis of supplier payments

An internal review at **Mount Alexander** in 2009 identified two suppliers of different labour hire services that had received cumulative payments exceeding the legislative thresholds without going to tender. Payments to one supplier exceeded \$1.2 million since 2003–04, including \$505 000 paid in 2008–09. The other has received \$560 000 in payments since 2004–05, with the highest amount paid being \$179 000 in 2007–08. The council has since terminated these contracts and initiated a public tender.

In June 2009 **Colac** analysed creditor payments made since 2005–06 and identified 31 suppliers without contracts that had received aggregate payments in excess of legislated threshold amounts. Individual suppliers had received payments totalling \$3.7 million for building materials and \$1.1 million for excavation works that were not publicly tendered. Average annual payments to these two suppliers were \$748 000 and \$218 000 respectively. Since then the council has tendered its building maintenance and paving and plant hire services to establish annual supply contracts.

A 2007 internal audit at **Yarra** identified 11 suppliers that had received aggregate payments over the public tender thresholds. Four of these suppliers received payment in excess of \$350 000 for the period 1 July 2006 to 31 May 2007. The audit recommended that Yarra monitor payments over \$50 000 to vendors and that it explore ways to maximise value. Council upgraded its information systems in 2009 to enable better reporting and has increased its focus on strategic procurement by tendering for common services and accessing state contracts and collaborative purchasing.

A similar analysis at **Bendigo** identified 17 suppliers where cumulative payments over time exceeded public tender thresholds. One supplier received \$942 000 for marketing services and another received \$760 000 for maintenance services between 2007 and 2009 that were not publicly tendered. There were three instances where suppliers received individual payments over the tender thresholds for goods, services or works that were not publicly tendered contrary to the Act. These were for the provision of marketing services, road maintenance and construction. Bendigo has acknowledged these issues and has developed an action plan to improve procurement practices. It has also since identified a number of service contracts which it intends to progressively tender.

Source: Victorian Auditor-General's Office.

While these councils had taken steps to improve value for money, Figure 2E highlights a number of instances at Casey where there was no action on previous internal audit recommendations to make greater use of competitive purchasing.

Figure 2E

Case study: Opportunities to improve strategic purchasing at Casey

Lack of action on internal audit recommendations for annual supply contracts

Internal audits at **Casey** in 2005 and 2006 each identified 27 suppliers that had collectively been paid over \$100 000 in a year for numerous engagements and where there was no annual supply contract. The legislative threshold for public tender was then \$100 000.

In 2005, one supplier had been paid \$629 700 for road maintenance, and suppliers of labour hire services were paid a total of \$878 096. Of the suppliers we identified without contracts in 2006 the three highest paid received \$405 433, \$486 418 and \$1.2 million for electrical works, nursery supplies and labour hire respectively.

In each case, the auditors recommended the council consider and where possible implement annual supply contracts including regularly review creditor payments over \$100 000 to identify how to improve value for money through competition. Council advised that it had considered opportunities, however, action has not yet been taken to address the recommendations made in 2005.

Insufficient use of competitive processes

Casey paid 65 suppliers aggregate amounts of \$153 000 to \$3.5 million over the two year period 2007–08 and 2008–09. Twelve of the 65 suppliers were also identified by the above internal audit reviews further indicating the council's inaction in optimising value for money through competition.

In 17 of the 65 cases, Casey had bought goods and services by a quotation process but the aggregate payments over the two years 2007–08 and 2008–09 exceeded \$150 000. Ten of these suppliers had been paid amounts ranging from \$320 000 to \$1.5 million, mainly for fleet vehicles and landscaping works.

While Casey has now tendered some of these services, it did not adequately pursue more strategic ways to buy goods and services in the above examples. This has limited its potential to deliver better value for money.

Source: Victorian Auditor-General's Office.

Under the Act the requirement to go to tender depends on the estimated value of the contract when engaging with potential suppliers. If the value of a contract is reasonably estimated to be less than the statutory thresholds then there is no legal requirement for a council to initiate a tender.

LGV's guidelines identify situations where a council is in breach of its tendering obligations under the Act. These include when:

- a contract of the specified amount or more is entered into willingly without first conducting a public tender
- a public tender is called for but the resulting contract is significantly different from the tender specifications
- a contract of the specified amount or more is extended where there was no provision for an extension
- a contract of the specified amount or more is entered into without first going to a public tender despite the refusal of the minister to approve an exemption.

But the Act is silent on whether there is a need to go to public tender if actual expenditure with a supplier exceeds the original estimate, or if this occurs as a result of multiple purchases with the same supplier over time. This has led to a lack of clarity across the sector on the circumstances under which a council must go to public tender.

The disparate practices described in Figures 2D, 2E above and in Figure 2F below demonstrate that councils need to improve their strategic procurement and that LGV needs to clarify councils' statutory obligations.

One way is by amending the *Local Government (General) Regulations 2004* (the regulations) to prescribe the circumstances that require a council to tender. The regulations could also cover cases where the cumulative value of purchases exceeds the thresholds over a given time so that councils will optimise the use of competitive processes.

Figure 2F
Case study: Breach of tendering obligations

Ongoing expenditure after contract expiry

There were two instances at one council where contracts had expired but the council continued to buy services from the same suppliers. One contract for equipment hire expired in June 2007. While the contract was re-tendered, the process was not properly concluded and approved by council. Total expenditure after contract expiry exceeded \$1.5 million for one supplier and \$650 000 for the other for the period 2007–08 to 2008–09. The tender process was repeated in August 2009 and a panel of eighteen suppliers has subsequently been approved by council.

The second case involved a contract for playground maintenance that was extended until June 2007 after it expired in 2004. The contract had not been re-tendered due to delays in the sign off of the new tender specification. The council later spent \$1.1 million in 2007–08 and around \$840 000 in 2008–09 with the same supplier. Council has since re-tendered the contract following discussions with audit.

Splitting of purchases

One council bought three vehicles on the same day from the same supplier but as separate contracts. The council approached three suppliers and asked them to price each of the three vehicles individually rather than submit a quote for the potential purchase of two or more as a means of encouraging better value. This is poor practice.

Because they were treated as separate contracts public tender thresholds were not exceeded and the purchase was able to be expedited, prior to the end of the financial year. There was no clear explanation as to why the vehicles were bought separately.

The contract values of the vehicles were \$64 259, \$73 996 and \$71 259 totalling \$209 951, which exceeds public tender thresholds.

Source: Victorian Auditor-General's Office.

Exemption from tendering in emergencies

The Act enables councils to enter into a contract without first going to public tender if the council resolves that the contract must be entered into because of an emergency.

Local Government Victoria's *Local Government Procurement Best Practice Guideline* states that contracts entered into in an emergency must be limited in scope to whatever is necessary to deal with the emergency. The council should then publicly tender any works or services following the initial emergency.

The Act neither defines what constitutes an emergency nor requires councils to publicly report when they have invoked emergency powers. Casey had paid approximately \$18.7 million to 12 contractors under emergency provisions since September 2008 for remedial works on the methane gas leak at the Stevensons Road landfill site in Cranbourne.

However, the council did not identify the point at which ongoing work related to the emergency should be publicly tendered. Casey was also unable to provide evidence of the approvals to engage all 12 suppliers associated with the emergency. These circumstances effectively create an open-ended situation, and limit transparency and accountability. Following discussions with audit, Casey advised that all future works associated with the emergency will be subject to competitive processes. A tender for the long-term management of the Stevensons Road site has been advertised and Casey has advised that the contract will be awarded by 1 April 2010.

2.4 Oversight of procurement activities

All councils except Bendigo centralised the administration of tendering. The responsibilities of central units included maintaining the contracts register, advising staff including assisting with, and overseeing, the preparation and management of tender documentation. Bendigo's major projects unit maintains the contracts register and provides advice to staff, however, responsibility for managing tender processes is devolved to individual business units.

Similarly, the responsibility for managing and varying contracts was also devolved to individual business units at each council. Although some processes were centrally managed none of the councils had comprehensive arrangements for overseeing and managing their local procurement activities.

This lack of central oversight resulted in a level of inadequate and inconsistent practice. This is discussed below.

2.4.1 Monitoring adherence to probity standards

Most councils had inadequate arrangements for assuring actual or potential conflicts of interest were effectively managed during procurement. The policies place the onus on staff to declare such interests. However, except for Yarra, none of the remaining councils required staff to demonstrate they had considered the issue and to confirm whether or not they had any conflicts.

This means that most councils were unable to demonstrate that they had sufficient oversight or knowledge of whether staff apply probity standards effectively when deciding on tenders. The range of probity issues identified during this audit suggests councils need to strengthen this area. As stated earlier Colac, Bendigo and Casey have since taken action to strengthen local practices.

2.4.2 Monitoring expenditure levels

None of the councils systematically monitored and reported to senior management on aggregate supplier payments as a way of identifying opportunities to leverage better value from high-value purchases through competitive procurement.

All councils had examples where they had engaged in competitive quotation or tender processes in accordance with their policies and/or the Act. However, there was little evidence that they had made adequate use of competition to optimise value for money or that they had consistently complied with the statutory requirement to go to tender.

As stated earlier, the Act is silent on whether there is a need to go to tender if actual expenditure exceeds the original estimate or if this occurs as a result of multiple purchases with the same supplier over time. There were numerous instances at each council where cumulative payments to suppliers exceeded the statutory tender thresholds and where there was no consideration given to conducting a public tender once expenditure reached such amounts. Reasons for this varied among councils and included:

- staff were not sufficiently aware of, and focused on, the benefits of strategic procurement
- local systems were inadequate for tracking payments against suppliers, contracts and statutory thresholds
- general confusion on the circumstances under which the statutory tender thresholds apply
- low procurement capability among staff.

This meant most councils were inadequately equipped to monitor, identify and capitalise on opportunities for strategic procurement.

All councils were aware of these challenges. Casey, Yarra and Colac had either implemented or initiated upgrades of their information systems to enable better oversight of procurement and expenditure, and Bendigo took action to strengthen its oversight of procurement arrangements during the audit.

2.4.3 Improving procurement practices

None of the councils systematically reviewed the effectiveness of their procurement and associated controls.

Casey and Yarra had reviewed some individual contracts to inform future specifications, procurement and service delivery approaches, but these were isolated instances. Councils did not routinely perform post-contract evaluations to assess if they had achieved value for money. Bendigo's and Colac's policies require projects to be evaluated after completion, but this did not occur routinely.

Audit committees at each council had played an important role in reviewing their procurement systems and in recommending improvements to local practices. Key recommendations from these audits focused on better vendor management, monitoring of cumulative payments and managing probity and conflicts of interest. While councils had committed to act, the upgrade of local information systems had generally delayed implementation.

2.5 Overall conclusion

All councils engage in competitive procurement processes. However, the absence of systematic and documented evaluations of procurement outcomes means that they are unable to demonstrate that best value is being achieved.

Significant opportunities were evident at all councils for optimising value for money through greater use of competition and strategic procurement. Each council had examples of expenditure on goods, works, or services that had exceeded the statutory tender thresholds over time, and for which there was no evidence of a contract, public tender or use of a competitive process. There is a lack of clarity over councils' statutory obligations in these circumstances and LGV should address this in consultation with councils.

While all councils had procurement policies that identified probity standards, shortcomings in local controls and oversight meant that there was inadequate assurance that probity standards had been consistently applied, and that conflicts of interest were being appropriately managed.

Recommendations

- 1 Councils should strengthen the application of probity standards in procurement by:
 - 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.
 - 2 Councils should strengthen oversight and monitoring of procurement by:
 - 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.
 - 3 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:
 - 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.
-

Appendix A.

Audit Act 1994 section 16— submissions and comments

Introduction

In accordance with section 16(3) of the *Audit Act 1994* a copy of this report, or relevant extracts from the report, was provided to the Department of Planning and Community Development, the City of Casey, City of Greater Bendigo, Mount Alexander Shire Council, Colac-Otway Shire Council, and the City of Yarra with a request for comments or submissions. A copy of the report was also provided to the Local Government Investigations and Compliance Inspectorate for attention in accordance with section 16F(1) of the Act.

The comments and submissions provided are not subject to audit nor the evidentiary standards required to reach an audit conclusion. Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.

Submissions and comments received

RESPONSE provided by the Secretary, Department of Planning and Community Development



Department of Planning and Community Development

Ref: BSEC001225

1 Spring Street
Melbourne Victoria 3000
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Melbourne Victoria 3001
Australia
Telephone: (03) 9651 7026
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Mr Des Pearson
Auditor-General
Level 24
35 Collins Street
MELBOURNE VIC 3000

Dear Mr Pearson

AUDIT ACT 1994, S 16(3) – PROPOSED AUDIT REPORT PERFORMANCE AUDIT – TENDERING & CONTRACTING IN LOCAL GOVERNMENT

Thank you for your letter of 1 February 2010 enclosing a copy of the proposed report on the performance audit your office undertook on 'Tendering and Contracting in Local Government' and the opportunity to provide formal comments for inclusion in the report.

I note that you have also provided a copy of the proposed report to Mr David Wolf, the Chief Municipal Inspector of the Local Government Investigations and Compliance Inspectorate for information.

The Department has reviewed the proposed report and, as was the case with the preliminary draft report provided in late December 2009 for final confirmation of issues, facts and context, believes the proposed report presents fairly and is balanced.

With regard to the series of three recommendations contained in the proposed report, and which are unchanged from the preliminary report, the Department wishes to reiterate the comments dated 12 January 2010 in response to the preliminary report.

The Department supports the first and second recommendations which are addressed specifically to local government.

With regard to the first part of the third recommendation, which is addressed to Local Government Victoria, the Department will continue to work with the local government sector on enhancing guidance to councils on strategic procurement. Amendments to the regulations will be considered in the context of procurement reforms that are being delivered through the 'Councils Reforming Business' and 'Reducing the Regulatory Burden' programs which the Victorian Government has implemented in an effort to encourage strategic thinking in procurement within local government. The Department supports the second part of the third recommendation.

Yours sincerely

**Yehudi Blacher
SECRETARY**



RESPONSE provided by the Chief Executive Officer, City of Casey

21-31-2
SD/MR

15 February 2010

Dr Peter Frost
Acting Auditor General
Victorian Auditor General's Office
Level 24
35 Collins Street
MELBOURNE VIC 3000



Dear Dr Frost

Proposed Audit Report – Performance Audit of Tendering and Contracting in Local Government

I refer to the proposed report on Tendering and Contracting in Local Government. Thank you for the invitation to provide formal comments for inclusion in the report.

Independent audits provide the benefit of not just confirming good practices that exist, but also highlights opportunities for improvement. Your report focuses on the latter and I support many of your observations and recommendations that have been made and issues that need addressing.

I am concerned however, that some parts of the report unfairly represent Council's practices and procedures that exist in relation to tendering and contracting. For example, Figure 2E, Page 15, infers that Council has not paid sufficient attention to using competitive processes in delivering 'value for money'. There is an unusually high level of attention paid to aggregate payments to individual contractors or suppliers for purchase, with the implication that aggregate purchases for discrete arrangements come under the threshold provisions of the Act. Council's legal advice has been, and still is, that this is not the case.

In relation to 'value for money', 169 creditors were individually paid aggregate amounts of over \$150,000 for the purchase of goods and services in either 2007/08 or 2008/09. Of this amount, at least \$200.7 million (90.3%) has either been through a competitive process or a competitive process was not possible or not required.

Can you please insert the following formal comments in your report:

"Council has comprehensive systems in place that are not referred to in the report. Despite this, Council acknowledges that there is room for improvement and has addressed, and is continuing to address, comments raised.

.../2

Victoria's Largest and Most Vibrant Municipality

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RESPONSE provided by the Chief Executive Officer, City of Casey – continued

21-31-2

- 2 -

15 February 2010

In relation to 'value for money', 169 creditors were individually paid aggregate amounts of over \$150,000 for the purchase of goods and services in either 2007/08 or 2008/09. Of this amount, at least \$200.7 million (90.3%) has either been through a competitive process or a competitive process was not possible or not required."

If you have any questions in relation to this matter please do not hesitate to contact me on xxxx xxxx.

Yours faithfully

A handwritten signature in black ink that reads "Mike Tyler". The signature is written in a cursive, slightly slanted style.

Mike Tyler
Chief Executive Officer

RESPONSE provided by the Chief Executive Officer, City of Greater Bendigo



10 February 2010

Dr Peter Frost
Acting Auditor-General
Level 24
35 Collins Street
MELBOURNE VIC 3000

Dear Dr Frost

Proposed Audit Report – Performance Audit of Tendering and Contracting in Local Government

Thank you for your letter of 1 February 2010 in which you enclose your proposed report on Tendering and Contracting in Local Government to be tabled in Parliament later this month. You have invited a formal response from me for inclusion in the report.

I welcome and accept the three recommendations in the report as an opportunity to further review and refine our procurement process and improve our contract administration. Since the audit was undertaken there have been significant improvements in our probity and transparency arrangements and increased internal scrutiny of our processes.

In response to the first recommendation, I note the Auditor-General's findings regarding probity standards. Following the inclusion of section 186A of the *Local Government Act 1989* the Council revised its practices in regard to procurement. Since the audit, however, there is now greater clarity as to the actions required to improve the current arrangements. The staff Code of Conduct has been completely revised to emphasise conflict of interest issues. A formal Conflict of Interest Declaration has been developed and promulgated as a mandatory addition to the procurement process. The Council has also adopted a Tendering Policy which clearly states probity requirements and specifies which in-house bids can be made in response to Council's requests for tender. There has also been a focus on ensuring all staff are aware of their procurement responsibilities through systematic in-house training. Discreet components of the training may also form part of our on-going induction process.

In relation to recommendation two, I acknowledge that strengthening the oversight and monitoring of procurement will enhance Council's statutory compliance and improve best value outcomes for the community. The Council's Executive Management Team is now reviewing key procurement performance indicators on a monthly basis. Also, a cross organisation team of staff monitors the implementation of the procurement Action Plan and is introducing improved processes, including reviewing collaborative procurement arrangements and establishing procedures for compliance and reviewing procurement activities. The Council is considering additional resources to achieve more strategic procurement outcomes.

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***RESPONSE provided by the Chief Executive Officer, City of Greater Bendigo –
continued***



In relation to recommendation three, the Council would welcome enhanced practical guidance from Local Government Victoria in the area of procurement, particularly in regards to section 186 of the Act and the complex conflict of interest provisions. I acknowledge that LGV has recently provided support to the sector in developing capacity in the area of procurement. However, further clarity regarding the circumstances under which the provisions apply, especially regarding cumulative spend, would assist in avoiding unintentional breaches.

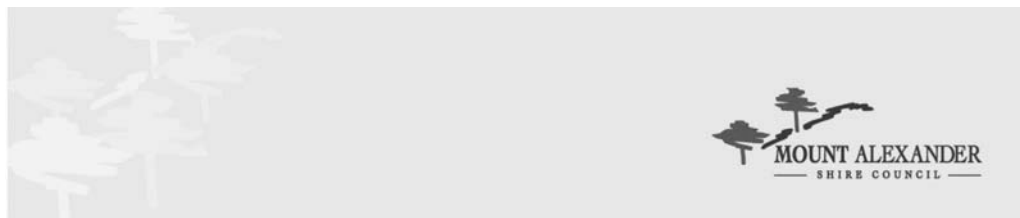
Thank you for the opportunity to respond to your report.

Yours sincerely,



Craig Niemann
CHIEF EXECUTIVE OFFICER

RESPONSE provided by the Chief Executive Officer, Mount Alexander Shire Council



File no. (10/030/001)

12 February 2010

Des Pearson
Audit-General
Victorian Auditor-General's Office
MELBOURNE VIC 3000

Dear Des

Proposed Audit Report: Performance Audit of Tendering and Contracting in Local Government (ref. 10/00962)

I refer to your letter dated 1 February 2010 regarding the Proposed Audit Report: Performance Audit of Tendering and Contracting in Local Government and provide the following formal comment for inclusion in the report.

Mount Alexander Shire welcomes the Victorian Auditor General's Report on Tendering and Contracting in Local Government and supports the recommendations within the report. The report will provide a basis for the sector to improve its overall performance in procurement activities.

As a result of the Report, Council is already considering a number of enhancements to systems and procedures that will address the matters raised and recommendations put forward.

Please do not hesitate in contacting me on xxxx xxxx should you wish to discuss this further.

Yours sincerely



PHIL ROWLAND
Chief Executive Officer

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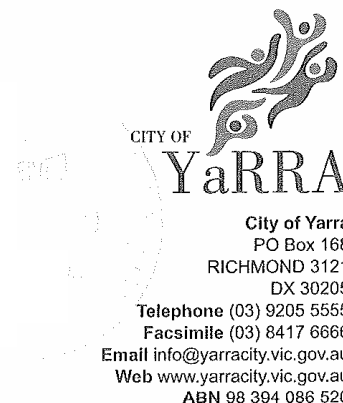
A STRONG, ENGAGED COMMUNITY CREATING A DYNAMIC FUTURE

RESPONSE provided by the Chief Executive Officer, City of Yarra

In reply please quote: D10/4801
Our ref: D10/6867
Contact: Ivan Gilbert

12 February 2010

Mr Peter Frost
Victorian Auditor Generals' Office
L 24
35 Collins St
MELBOURNE VIC 3000



Dear Dr Frost

**Re: Proposed Audit Report
Performance Audit of Tendering and Contracting in Local Government**

Thank you for forwarding the proposed audit report for formal comment.

We consider the overall intent of the Report as highly desirable and a timely driver of clearer legislative direction, improved processes, collaboration, procurement and value for money outcomes and the pursuit of opportunity and innovation across the sector.

In accord with the above context, we have reviewed the proposed report and in response to your invitation, record that key new probity processes noted as in progress during the audit process at Yarra, have been incorporated in Council's Procurement Procedure Manual and procedures implemented. These are outlined as follows.

Page ix Reference, words commencing "However the Act is silent on..."

Yarra has as previously noted, implemented a monthly procedure of monitoring and reporting to the Executive on both expenditure with all providers and tender thresholds with intended outcomes including one of:

- (i) ceasing expenditure with a provider (if tender thresholds are exceeded or approached) until appropriate market testing is undertaken, or
- (ii) ceasing use of a provider and migrating procurement to an approved provider with State Purchasing or Procurement Australia or another Council contracted provider.

RESPONSE provided by the Chief Executive Officer, City of Yarra – continued

I note the details of procedures in an extract of the Yarra Procurement Procedure Manual referred to in the paragraph referencing Page 12. Figure 2C, below.

Outcomes (i) and (ii) above have already been implemented on a number of occasions.

Page ix Reference, words commencing “Except for Yarra and also for the rare occasions where a probity ...”

We note the Report and advise that Yarra is developing detailed guidelines for inclusion in its Procurement Procedure Manual to clarify and specifically direct the implementation of a “Probity Plan” for tenders in excess of \$500,000 and also tenders of specific complexity, whether of a technical or service structure, etc.

Pages ix and x – Recommendations Table

We note that Yarra’s Procurement Procedure Manual does address and Yarra’s processes do include:

- each of the first three dot point functions under Recommendation 1,
- as a result of our new electronic Contract Management system (now in operation), the fourth dot point function under Recommendation 1,
- as a result of our new procedures (now in operation), the three dot point functions under Recommendation 2.

Page 6. Clause 2.2 Maintaining Probity in Procurement

We are in the process of expanding the guidelines in our Procurement Procedure Manual around the procedures for debriefing and advising unsuccessful tenderers of the outcome of tendering processes.

Page 7. Figure 2A

We note the reference “(b) Council took action to strengthen practices during the audit” in connection with comment “Adequate arrangements to monitor adherence to probity standards”.

We now specifically wish to record that the reporting software we were developing at the time of the audit process, to enable proper monitoring of

RESPONSE provided by the Chief Executive Officer, City of Yarra – continued

probity issues, has been implemented and is now fully operating. This is enabling detailed monitoring and provision of monthly reporting to the Executive, actioning and recording accountability outcomes, recording adherence to probity standards and compliance with legislation and Council policy and addressing value for money issues.

Page 10. Paragraph – “Treating Bidders Equally”

From a “**bidder's**” viewpoint, Yarra's tender process is that all tenderers receive the same information, i.e formal written advice of all questions raised by any bidder (but not identification of which bidder) and all responses given to those questions, in order that no tenderer is disadvantaged in the tender process.

From a “**contractor's**” viewpoint, Yarra's now operational electronic Contract Management system requires, and direction has been given to all Contract Managers in this regard, that ALL information relating to the contract and its management, e.g. all documentation, file notes, minutes of on-site meetings, emails, reminders, records of telephone conversations, etc. ARE to be filed in the system, which links directly to the Council's Electronic Record Management system (TRIM). The specific purpose of this requirement is to ensure ALL records are recorded, readily accessible and auditable by the system administrator and the Contract Manager's Manager/Director for monitoring purposes. This requirement is detailed in the Procurement Procedure.

We believe that Yarra's processes fully comply with both the reality and spirit of treating all bidders equally.

Page 12. Figure 2C

We note the references in Figure 2C

- “Policies guide procurement when cumulative spend exceeds tender thresholds” and comment “(b) Council advised it intends to update its policy to address this issue”,
- “Systematic monitoring and reporting occurs to identify competitive procurement opportunities” and comment “(a) Council took action to strengthen practices during the audit”,
- “Procurement processes and outcomes are systematically reviewed for improvement” and comment “(a) Council took action to strengthen practices during the audit”.

We wish to specifically record that Council has both amended its Procurement Procedure Manual to address the above issues and implemented a detailed process of monthly reporting to the Executive as outlined above, in references

RESPONSE provided by the Chief Executive Officer, City of Yarra – continued

to the paragraphs Page ix Reference, words commencing "However the Act is silent on..." and also Page 7. Figure 2A.

I note the following extract from Council's Procurement Procedure Manual which highlights the various report elements required to be addressed

"...Councils are required under section 186(1) to conduct a public tender before entering into contracts of the specified amount or more. Further, section 186(2) allows Councils to conduct an 'Expression of Interest' (EOI) process as a precursor to a public tender.

*Notwithstanding the legislative or policy directives noted above and the requirement to obtain quotations as outlined in the Council's Instrument of Delegation re Procurement and Expenditure Authorisation Limits, staff are required to undertake a formal public tender process when the proposed expenditure will **or is likely to exceed** \$100,000.*

To ensure appropriate monitoring and control of all expenditure, the Manager Contracts and Procurement shall on a monthly basis, prepare and present a report to the Director and the Chief Executive Officer detailing:

- (i) that all year to date expenditure of \$100,000 (\$100K) or more to any supplier, has been reviewed and is/is not in compliance with Section 186 of the Local Government Act 1989, i.e. that the expenditure is/is not via a **current contract** with the Council or Procurement Australia or the State Purchasing Board.*
- (ii) That where year to date expenditure has reached or is approaching \$100K with a supplier and there is no current contract, that instructions have been issued to stop further expenditure with that supplier and that a procedure has been initiated either for a public tender process or to use a supplier with a current Procurement Australia or State Purchasing Board contract.*
- (iii) That year to date expenditure of less than \$100K with all suppliers has been monitored and spot checks undertaken to ensure compliance with Council's Purchasing Policy (i.e. 3 quotations - verbal or written as appropriate – have/have not been obtained and to initiate appropriate remedial action if quotes have not been obtained).*
- (iv) The implementation of progressive market testing (by quotations or public tender or use of Procurement Australia or State Purchasing Board contract suppliers) of procurement across all expenditure of \$5,000 and above, to maximise value for money in procurement.*
- (v) That year to date expenditure on common services or goods with multiple suppliers (e.g. "printing" services, catering or the like) has been monitored and a process of public tendering initiated to establish market tested value for money outcomes and/or establishment of a contracted **panel of providers** of e.g. "printing" services, via a Council, Procurement Australia or State Purchasing Board contract...."*

RESPONSE provided by the Chief Executive Officer, City of Yarra – continued

Page 13. Clause 2.3.3 Optimising value through use of competition

In referring to the sentence “While the Act is silent on.....ongoing need is identified” we again draw attention to the new procedures incorporated into Yarra’ Procurement Procedure Manual which are now implemented as a formal monthly task with report to the Executive as noted above.

Page 14. Figure 2D

In respect of paragraph 3 referencing the 2007 Yarra audit, we note the new procedures as outlined above will monitor, report and effectively prevent any incidents such as that in 2006/2007 from occurring.

Page 18. Clause 2.4 Oversight of procurement activities

We believe that with the implementation of each of the electronic Contract Management system and the monthly monitoring procedures as outlined above, associated with the new capacity to centrally monitor all contract management processes (i.e. by each of the Contract and Procurement Branch, the respective Branch Manager and the respective Divisional Director) will ensure effective oversight of procurement activities at Yarra.

Page 18. Clause 2.4 .1 Monitoring adherence to probity standards

We believe Yarra’s procurement procedures as specified in the Procurement Procedure Manual, make it clear that all members of a TEP are required to sign a Conflict of Interest form prior to taking up membership on a TEP. We believe this process prevents the instance of a person having a Conflict from being involved in a TEP.

Page 19. First paragraph

The wording “However, there was little evidence that they had made adequate use.....to go to tender” is quite generalised and perhaps tends not to distinguish the councils which have more comprehensive processes in place.

We believe that Yarra’s new procedures as outlined above, address this issue, both clearly and strongly.

Page 19. Fourth paragraph

We suggest the wording “All councils were aware of these challenges.....during the audit”, does not give a clear indication as to which of Casey, Yarra and Colac have respectively implemented or initiated upgrades. In this regard we

RESPONSE provided by the Chief Executive Officer, City of Yarra – continued

wish to record that our now operating comprehensive new procedures, do address the matter.

Page 20. Clause 2.5 Overall conclusion

The wording of the final paragraph is quite general and when read in conjunction with the final paragraph in clause 2.2.2 and the first paragraph of clause 2.2.3, perhaps does not convey the extent of variation between the processes and policies at each of the Councils.

In this regard we note that the proposal to develop more clarity in legislation will lead to more consistent methodology and applications across all councils. This outcome will no doubt improve assurances that appropriate probity standards are being applied and conflicts of interest are being appropriately managed.

Should you require further information please feel free to contact Ivan Gilbert on xxxx xxxx.

Yours sincerely



**Ivan Gilbert
Executive Manager Governance**



**Andi Diamond
Chief Executive Officer**

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