



Parliament of New South Wales

Joint Inquiry

**Public Bodies Review Committee
and the
Standing Committee on Public Works**

REPORT

**Competitive Tendering
and Contracting in the
New South Wales Public Sector**

VOLUME 1

Public Bodies Review Committee

Response

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INQUIRY TERMS OF REFERENCE

That the Public Bodies Review Committee and the Standing Committee on Public Works conduct a joint inquiry and report to the Legislative Assembly on the following matters relating to the provision of goods and services and the delivery of capital works in the New South Wales public sector:

- a. Procurement
- b. Competitive tendering
- c. Contracting
- d. Any related issue.

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CHAIRMAN'S FOREWORD

Competitive tendering and contracting (CTC) within the New South Wales public sector has been increasingly utilised over the past decade in an attempt to reform contracting procedures within government agencies. In this regard, CTC has changed the way in which government agencies procure goods and services.

Although CTC has become a common part of management practice in the public sector, there are few if any indications of how much money is expended by State and Local Governments each year for work performed under contract.

To rectify this anomaly, the Committee believes that all government agencies must report all activities which have been outsourced and the value of the contract in their Annual Report.

The introduction of CTC has also seen a growth in regulations and guidelines to assist government agencies implement new processes. Some of these guidelines are compulsory, others merely directive, but together they create a maze of information for government agencies to sort through.

In the opinion of the Committee it would be more effective if these regulations and guidelines were streamlined and approached from a whole-of-government perspective. In this regard, the Committee has proposed that a central agency be appointed to act as a 'One-Stop-Shop' to provide guidance and advice for all government agencies.

Such a process has already been implemented for procurement policy and guidelines with the Department of Public Works and Services functioning as the central agency.

The Committee also received evidence that the existing procedures for procuring 'one-off' specialised items was too rigid. It was commonly held that reference to the NSW Supply Service for 'one-off' procurements in excess of \$50,000 was often in-efficient and not cost effective.

In this instance, the Committee has proposed that a Review Committee establish a mechanism for government agencies to formally call for quotations for specialised purchases and that the \$50,000 threshold be increased.

There are other matters related to CTC which the Committee has not addressed in this inquiry. One such matter is the evaluation of major projects

by approved qualified panellists, structured to include a probity specialist.

Such projects should also be subject to progress monitoring, review of variations and post-tender analysis. The use of these mechanisms should be a part of assessing the success of the process employed and serve as a guide for future project tendering and management. These issues are discussed in more detail in Volume 2 of the Joint Inquiry into Competitive Tendering and Contracting.

On behalf of the Committee, I would like to place on record our appreciation for the effort of all those who have participated in the inquiry. Their contribution has led to a better understanding of the issues and presented a clearer vision for the future.

I would also like to thank Committee Members from both the Public Bodies Review Committee and the Public Works Committee for their contributions. It would be particularly remiss if I did not, at this point, also acknowledge the efforts of the Committee Secretariat. In particular, I would like to thank Chris Denney for the production of this report, Susan Want for her capable assistance and Sandra Butler for laying the foundations for this inquiry.

A handwritten signature in black ink that reads "Stan Neilly". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Stan Neilly MP
Chairman

SUMMARY of RECOMMENDATIONS

1. The Committee recommends that all government agencies review their competitive tendering and contracting (CTC) strategies and identify any inconsistencies in the methods of tendering and contracting for individual projects.
2. The Committee recommends that government agencies outline in their Annual Report:
 - all contracted activities valued in excess of \$50,000;
and
 - the value of the contract.
3. The Committee further recommends that government agencies undertake an annual review of CTC outcomes and that these outcomes be measured against program objectives/targets.
4. The Committee recommends that the NSW Government reviews the use of information technology for purchases within the NSW public sector.
5. The Committee recommends that a Review Committee comprising Treasury, Premier's Department, Council on the Cost of Government, Cabinet Office, Department of Public Works and Services establish a mechanism for government agencies to formally call for quotations for specialised procurements.
6. The Committee recommends that the \$50,000 threshold for specialised procurements be increased and pegged to the Consumer Price Index (CPI).
7. The Committee recommends that the Review Committee provide periodic assessments of CTC and procurement 'whole-of-government' policy formulation.
8. The Committee recommends that the Review Committee appoint a central agency who would, in conjunction with individual agencies, be responsible for the development of agency specific contract and procurement processes.

9. **The Committee recommends that the Review Committee appoint a central agency to become the principal contact for all matters concerning the implementation of CTC or procurement in government agencies.**

1. INTRODUCTION

Successive NSW governments have adopted the approach of introducing and promoting competition as a means of ensuring efficient and effective supply of goods and services.

Competitive tendering and contracting, collectively known as CTC, aims to ensure that the public sector provides the best service for optimum value for money by ensuring the supplier chosen for the provision of goods and services is the most cost efficient and effective.

A number of legislative and policy reforms have been implemented in recent years to underpin these initiatives. In conjunction, a number of guidelines have been produced in order to put in place processes for ensuring equity and efficiency.

The Industry Commission's report *Competitive Tendering and Contracting by Public Sector Agencies* defined 'competitive tendering' as:

The process of selecting a preferred supplier from a range of potential contractors by seeking offers (tenders) and evaluating these on the basis of one or more selection criteria.¹

Contracting private sector bodies to provide goods and services is not new. Now more complex core activities, which once may have been considered best provided in-house, are being deemed suitable for private sector provision. Examples include the contracting out of the construction and management of private sector hospitals and, on the Federal level, the provision of employment services previously provided by the Commonwealth Employment Service.

The benefits of CTC include a reduction in financial costs, access to innovative solutions, increased flexibility, a greater focus on outcomes and an ability of the public sector to focus on core activities. In order to realise these benefits, effective competition must be achieved. For this reason, it is essential that objectives and specifications be defined, the process monitored and outcomes evaluated and realistic guidelines be established.

The Public Bodies Review Committee's Background Paper *Regulation of Competitive*

¹ Industry Commission : *Competitive Tendering and Contracting by Public Sector Agencies*; Report No 48, 24 January 1996.

Tendering and Contracting in the New South Wales Public Sector, released in November 1997, identified a number of regulative and policy reforms designed to promote, where appropriate, competitive tendering and contracting-out of services which are currently being provided in-house by Government departments and authorities. It also identified a framework within which effective competition and probity could be ensured.

1.1 Background

Over the past decade successive NSW Governments have pursued policies to reform contracting procedures within State and Local Government. These policies have focussed on improving competency in contracting and exploring opportunities for contracting as a means of promoting competition and increasing efficiency and reform within the public sector. They have resulted in the expansion of CTC to a wide range of government activities.

In 1988, the Coalition Government asked the Legislative Council Standing Committee on State Development to inquire into contracting arrangements between the private and public sector in New South Wales, with a view to recommending any changes that might advance State development and produce a more cost effective contracting system.

The State Development Committee produced a number of reports which identified areas requiring reform and recommended the introduction of a number of procedures to achieve the desired changes to the system. Based on these recommendations the Premier's Department published a number of guidelines on tendering and contracting.

In July 1991, the Government of the day released a Financial Statement which promoted contracting out of services provided in-house. The objective was to achieve savings by improving the efficiency of Government agencies by providing the opportunity for in-house bids for tenders.

In 1994, the NSW Government introduced the *Contracting and Market Testing Policy* which required government organisations to utilise providers who could deliver quality service at the best value for money.

This policy was updated by the present Labor Government in the *Service Competition Policy*, announced in the Treasurer's Financial Statement, June 1995.

Through a framework of policy initiatives, legislative reform and procedural

guidelines, State support of competition as a means of improving efficiency reflects the approach of national Coalition and Labor Governments since the 1970s and the implementation of competition policy in 1992.

1.2 National Competition Policy

In 1992, the Commonwealth Government established a Committee of Inquiry to advise on competition policy. The Committee produced the *National Competition Policy Report (The Hilmer Report)*, which aimed to create an overall business environment in which Australia's international competitiveness would increase.

In April 1995, the Council of Australian Governments (COAG) signed three Intergovernmental Agreements which constitute the National Competition Policy. These Agreements are the Conduct Code Agreement, the Competition Principles Agreement and the Agreement to Implement National Competition Policy and Related Reforms.

In accordance with its obligations under these Agreements the NSW Government has produced policy statements and enacted a range of legislation in an attempt to promote principles of competition at the State and Local Government levels.

In 1995 the State Government enacted the *Competition Policy Reform Act*, which applies a Competition Code (in the form of a schedule to the *Trade Practices Act (1974)*) to the activities of individuals, unincorporated associations and statutory corporations in NSW. The Code, which extends to State and Local Government, makes organisations and corporations subject to the prohibitions on anti-competitive behaviour prescribed in Part IV of the *Trade Practices Act* and provides for price surveillance of government businesses. All State and Territory Governments have enacted similar legislation to ensure a uniform code in all jurisdictions.

The State Government has drawn up a legislative review timetable in line with the *Competition Principles Agreement*. Through the review it intends to reform legislation which restricts competition to an extent where the costs of the restriction are not outweighed by public benefits and where there are less restrictive ways of achieving the Government's objectives.

1.3 Service Competition Policy

The *Service Competition Policy* was announced by the Treasurer, the Hon Michael Egan, in the Treasurer's Financial Statement of June 1995. The Policy applies primarily to State Government departments and authorities and updates the previous

Government's *Contracting and Market Testing Policy*.

Under the *Contracting and Market Testing Policy*, the capabilities of other suppliers are investigated to determine whether an activity can be carried out more effectively and/or more efficiently. Market testing usually involves inviting competitive tenders but does not necessarily lead to contracting with external suppliers. In many instances market testing introduces discipline of competition which leads to improvements in in-house services.

The policy emphasises the Government's commitment to encouraging competitiveness in the delivery of services.

The main features of the policy are:

- All government agencies/departments are to incorporate market-testing and contracting reviews as part of their formal business planning;
- Agencies/departments that make real savings through market-testing and contracting will be allowed to retain the savings for core priority services;
- Progress will be monitored through an annual survey conducted by Treasury and select audits;
- In-house providers will be given every opportunity to compete on equal terms with external contractors; and
- The Office of the Council on the Cost of Government will act as a research and information provider to assist departments in planning their market testing and contracting initiatives.

The Service Competition Guidelines published by the Government, state that while these requirements and provisions are central to the service competition policy the following two qualifications apply:

- In implementing the policy, the pursuit of best value for money, rather than the adoption of a particular means of achieving that end, is the essential factor. The most appropriate means can only be determined after case-by-case assessments.
- Market testing under this policy means testing in-house performance against what the market place can offer, but does not necessarily mean seeking competitive tenders. The option of inviting tenders should only be considered where efforts to improve in-house performance have not realised clear potential for substantial benefits.

The Service Competition Principles which support this policy are set out in the *Service Competition Guidelines*. The Premier's Memorandum (97-24) issued with these Guidelines stated that under the Service Policy, managers are required to:

- know the costs of activities and the levels of performance being achieved;
- benchmark performance and processes against the best performing comparable organisations and alternative providers, where practicable;
- drive internal performance improvement to improve efficiency and realise potential gains;
- collaborate with other agencies in common service delivery arrangements; and
- consider inviting competitive bids for the provision of suitable activities where internal efforts have not realised substantial improvements in efficiency or quality of service.

The essence of service competition policy is the pursuit of the best value for money. It also involves compliance with the service competition principles set out in the *Service Competition Guidelines*.

2. COMPETITIVE TENDERING AND CONTRACTING

2.1 Advantages and Disadvantages of CTC

Competitive tendering and contracting, collectively known as CTC, requires the public sector to provide the best service and get the best value for money by ensuring the best supplier is chosen for the provision of goods and services.

The Industry Commission report *Competitive Tendering and Contracting by Public Sector Agencies* states:

...when done well, CTC can lead to significant improvements in accountability, quality, and cost-effectiveness, providing benefits to clients, taxpayers, and the broader community.

The debate about CTC largely revolves around whether CTC does in fact lead to better outcomes compared with direct public provision of government services and whether current means for evaluating and monitoring CTC are adequate.

Potential advantages of CTC include:

- increased flexibility in service delivery;
- greater focus on outputs and outcomes rather than inputs;
- allows public sector management to focus on high priorities;
- encourages suppliers to provide innovative solutions; and
- cost savings.

Potential costs of CTC include:

- costs associated with specifying, awarding and monitoring contracts;
- potential adverse effects on accountability including the possibility of corrupt conduct;
- potential adverse effects on quality; and
- potential adverse effects on public sector jobs, wages and conditions.

2.2 Key Issues

2.2.1 Cost Savings

The Industry Commission report states that cost savings ranging from 10 to 30 per cent have been realised in over half of the service studied by the Commission.

These figures are consistent with a number of reports on CTC's ability to provide cost savings to public sector agencies in the provision of goods and services. However, these figures have been challenged by evidence which suggests that certain costs including transfer of savings, social costs and costs associated with specifying, awarding and monitoring contracts have not been taken into account.

In the report *Contracting Out: Just Another Fad, or Fundamental Reform?*, Dr Graeme Hodge found that a number of costs were not included in the tender process. These costs include articulating specifications, tender development, and contractor monitoring. As a result, he concluded that the average savings claimed in other literature was overly optimistic:

...(an) average saving of around 6% is probably experienced in contracting public sector services - not the 20% or 30% often quoted by managers or seen in press. (s5)

The Industry Commission Report also argued that in order to determine the cost impact of CTC all relevant costs must be taken into account. It is, however, considered that when this is done, in most cases, there would still be a net saving.

Additionally, the Commission found that there was a significant saving regardless of whether an in-house or external tender won the bid.

In discussions with the Committee concerning net cost savings, Professor Robert Walker, Chairman of the Council on the Cost of Government, agreed that costings were not necessarily reliable:

Presumably the researchers made an attempt to justify it. I have no particular confidence in those figures. In fact, the main author of those studies was invited to discuss his costing methodology with the council and I was not satisfied that the figures were very reliable. In particular, the savings do not take account of matters such as contract administration. They certainly did not take into account redundancy costs and other matters. (T1, 40)

Professor Walker further conceded, that:

Some of the earlier guidelines seemed to be technically flawed because they did not make allowance for the cost of supervising contracts or for the cost of redundancy as part of the cost of contracting out. We take the view that it is appropriate for agencies to have regard to the relative costs of continuing to provide services and, if there are structural reasons or other reasons where outsourcing may be appropriate, to count part of the costs of outsourcing as including the cost of redundancy payments and future administrative costs associated with monitoring those contracts. (T1, 35)

The report, *Outsourcing in the Public Sector* by Gareth Griffith and Honor Figgis noted that cost savings derived through implementation of CTC only reflected a transfer of costs from one area to another:

A general argument is that while outsourcing may reduce the budgetary costs of a given agency, this does not necessarily imply that there is an equivalent net social welfare gain.

The Industry Commission Report found that while CTC clearly resulted in efficiency gains, it was also accompanied by some redistribution of resources between individuals and groups. Ways in which transfers may occur is through:

- (i) transfers from employees through reduction in wages and conditions, or increased in effort;
- (ii) transfers from one level of government to another through 'cost-shifting';
- (iii) transfers from governments and tax payers due to tax evasion; or
- (iv) transfers from clients through reductions in the level or quality of services.

The Industry Commission found that in order to examine cost savings over time, clear specifications and objectives are essential:

In examining whether any cost savings are maintained over time, it is important to be clear about the base on which the savings are being measured - the cost of internal provision prior to contracting or the cost if it were currently provided internally. The available evidence suggests that cost savings continue to be realised over time relative to the cost prior to contracting, but may vary (up or down) from those obtained initially. Often savings appear to decline over time when measured against the (actual or estimated) current cost of internal provision. This may result from the cost of internal provision falling in response to competition introduced through CTC.

The NSW Auditor General also raised the issue of measuring cost savings and, in evidence to the Committee, stated that greater cost savings due to CTC may be realised in future when the standard of contract specifications improve with experience.

... several pieces of research suggest that which we are contracting out at the moment is giving quite good savings. Even people who are ideologically opposed to contracting out appear to have admitted that that which has been contracted out has given good savings. Twenty per cent is the figure that one customarily sees.

Having said that, it is not clear that that will be the figure for all services. For example, it appears to be true that the contracting out of public hospitals to a for-profit enterprise has been rather more expensive than in-house provision. There are lots of caveats about that. It was the first deal done, and it was not done very well. The quality is higher under the contract with the Port Macquarie Base Hospital than it is for general public hospitals of that time. Nevertheless, the Department of Health suggests that on that deal it is more expensive. That does not mean that the next deal will be more expensive, but one has to look at it fairly closely. (T1, 3)

Despite on-going debate about the level of cost savings realised through CTC, the Industry Commission believed that cost savings are being realised:

...several pieces of research suggest that which we are contracting out at the moment is giving quite good savings. Even people who are ideologically opposed to contracting out appear to have admitted that that which has been contracted out has given good savings.

2.2.2 Accountability

As CTC becomes more prevalent within the public sector, maintaining probity within the process is a particular concern. The best way to improve probity is to improve the transparency of the CTC process. In this way the accountability of government agencies to the people of NSW will also be improved.

The Industry Commission noted that although agency responsibility to provide certain goods and services can be transferred, the accountability for the results cannot.

The Committee agrees that government agencies must remain accountable for the effective, efficient and equitable provision of goods and services for which it has responsibility.

In this regard, the Industry Commission recommended that governments should make public as much information about the tender process and contract award as possible. This position was supported by Mr Anthony Harris, the Auditor General of NSW, who told the Committee that:

The best way to address potential corruption and actual corruption is to put out all the documentation for public review. I am pleased to see that in some jurisdictions, like the United States and New Zealand, this works without a problem. As soon as a deal is done the entire documentation is released as a matter of course. They do not wait for an FOI application; they simply ensure that they have enough copies for distribution. In New South Wales we seem to have bedevilled ourselves with the view that the information is somehow so important that normal people cannot see it. If you put it on the table you can rely on media representatives, other contractors and people with a particular interest in the matter to view all the documentation of the successful tenderer to see whether it stands up to that which they know, for example, their own tender. They can talk about it in a very informed way.

We are better than other jurisdictions because we put out a summary of contracts for some items, but that is having me make judgments about what is and is not important in the summary. It is not nearly as good as just putting it all on the table. (T1, 13-14)

In order to achieve a measure of accountability throughout the CTC process, it is necessary that government agencies develop specific criteria for each step of the tendering process. In this way, service delivery can be clearly defined and thus ensure that the contractor's performance can be effectively monitored and evaluated.

Agency development of procedures aimed to enhance accountability will make it easier for agencies to identify whether outsourcing has met the specified objectives and outcomes and, if not, where the failure has occurred.

2.2.3 Service Quality

CTC is not only about cost efficiency but is also about the public sector providing the best quality service possible by ensuring the best provider. This includes accessing the flexibility, innovative and cost efficiencies available to the government through CTC.

Agencies are able to specify quality objectives and monitor the performance of contractors to ensure that these quality objectives are met. In this way, government can ensure that outsourcing is not simply a means to achieve cost savings but is a process by which government can ensure quality of service provision and balance the need between this and value for money.

Professor Robert Walker, Chairman of the Council on the Cost of Government, concurred with this view noting that a balance must be struck between cost efficiency and quality:

...we are also expressing the view that it is appropriate to look at the quality of service being provided by outsource suppliers and in-house service delivery. It is not simply a financial issue; it is a question of looking at quality of service as well. (T1, 35)

While the Industry Commission found that while there were cases where the quality of services provided had declined, it did not attribute this to CTC.

On the whole, it believed that the quality of services outsourced have remained on par or improved over services provided by government agencies. It also found that improvements in the quality of agency services are derived from better specifications of the service, improvements in monitoring and the ability to access external expertise.

2.2.4 Social Costs

It is apparent that evaluations of efficiency gains arising from the implementation of CTC have not, in general, taken into consideration the less quantitative area of social costs such as employment and the adverse effects on public sector jobs, wages and conditions including equity and EEO and the impact on specific groups.

The Industry Commission Report found that CTC will have quite different effects on different groups including public sector employees and rural and remote areas. While the Industry Commission found that the community as a whole does benefit from CTC it also found that some groups may be disadvantaged.

A number of submissions to the Committee expressed concern at the introduction of CTC policies within the public sector. The majority of these submissions focussed on the social impact of CTC on employees within the public service.

In his submission to the Committee, Dr Graeme Hodge (s5), included a copy of his report *Contracting Out Government Services*. This report found that minority groups, such as women, part-time workers, and blacks were being forced to bear the brunt of contracting 'efficiencies'.

Concern about the apparent disregard for the social costs associated with CTC implementation was also commented on by Ms Gwenda Happ, Industrial Officer, Public Service Association (PSA):

When governments start talking about competitive tendering and contracting ... it begins to worry public sector unions and their members. CTC is a bit like nuclear testing in the Pacific: it is highly experimental, the outcomes are uncertain and the research to date that has been used to promote it, as recognised in the issues paper associated with the inquiry, comes from a narrow economic paradigm. It has not investigated the social costs. (T1, 15)

The PSA also expressed concern at the lack of monitoring surrounding the potential impact of CTC on employment:

...the current lack of any defined central agency responsibility with designated resources to enable credible monitoring and evaluation for the employment and industrial relations impacts of CTC. (s8)

The Committee's report *Regulation of Competitive Tendering and Contracting in the New South Wales Public Sector* (November 1997) noted that research into competitive tendering and contracting issues had been the source of some debate. The majority of the research which has been undertaken on CTC has been approached from an economic perspective. Social justice issues have not been comprehensively explored.

From the Committee's perspective this is not surprising, especially given the tendency for a small number of researchers (mainly economic) to dominate research into CTC issues.

The Committee remains concerned that the government relies heavily on CTC research obtained through a limited number of consultants. This trend also raises concern about bias and whether researchers have a vested interest in the outsourcing industry themselves.

3. CTC AND THE NSW PUBLIC SECTOR

Over the past decade Federal, State and Local Governments throughout Australia have faced both social and economic pressure to provide services more effectively and efficiently.

Successive New South Wales Governments have pursued policies designed to reform contracting procedures within State and Local Governments. These policies have focussed on improving competency in contracting and exploring opportunities for contracting as a means of promoting competition and increasing efficiency and reform within the public sector.

Although governments have always purchased goods and services externally, there has been a concerted move towards the use of competitive tendering and outsourcing as a tool of public management. In response to changing economic conditions, government agencies have reviewed and restructured their operations to concentrate primarily on their core functions - usually at the exclusion of non-core activities.

The pursuit of these policies has resulted in the expansion of (CTC) to include a wide range of activities according to Figgis and Griffiths. Such activities include building and equipment maintenance, cleaning, catering, prison management, information technology, telecommunications, waste management, mail services, printing, training, legal services, security, library services, property management, policy advice, payroll and accounting services, economic forecasting, determining or administering welfare entitlements, auditing, recruitment, collecting revenue, health care, home and community care, and transport.

Throughout the latter part of the 1990s, CTC has been widely used by public sector agencies at all levels of government. The Industry Commission report *Competitive Tendering and Contracting by Public Sector Agencies* stated that:

while comprehensive data is not available, total contract expenditure on services by Australian public sector agencies is estimated to be at least \$13 billion a year.

In NSW the use of CTC has grown rapidly during the 1990's. Since 1993, annual surveys have been conducted in NSW of all budget sector agencies and several Government Trading Enterprises. The use of an annual survey has proven to be an effective mechanism to quantify the extent of contracting in the NSW public sector.

Data gained from the survey has shown a substantial increase in the value of outsourcing in the NSW public sector.

Table 1: Total Expenditure on Outsourcing by NSW Government Agencies

Year	Expenditure
1993	\$540 million
1994	\$1.07 billion
1995	\$1.48 billion
1996	\$1.762 billion

In the period 1995-1996, the five main areas of outsourcing were health and welfare (\$547 million), transport (\$352 million), property (\$255 million), training and education (\$197 million), and information technology (\$85 million). Combined these services represent more than 80% of total contracting expenditure for 1995-1996.²

3.1 CTC Guidelines and Regulations

As the use of CTC has become more prolific, governments and agencies have sought to supplement general purchasing policies with specific CTC guidelines. Such guidelines are valuable in clarifying a number of issues raised by CTC, such as defining the service to be contracted, managing an on-going relationship between purchaser and provider and handling in-house bids.³

3.1.1 Service Competition Guidelines

These guidelines replace the *Competitive Tendering and Contracting Out Guidelines*, the *Competitive Tendering and Contracting Out Costing Guidelines* and the *Contracting and Market Testing Policy*, produced by the Premier's Department in 1991, 1992 and 1993 respectively.

These are designed to assist agencies in implementing the NSW Government Service Competition Policy. They set out the objectives of the policy and the role of

² Domberger, S Farago, C Hall, E Li: *Competitive Tendering and Contracting in the NSW Budget Sector: 1993-1996 survey findings*, University of Sydney, Graduate School of Business reference in Honor Figgis & Gareth Griffith: NSW Parliamentary Library Research Service: *Outsourcing in the Public Sector*, Briefing Paper No 22/97, p 6-7.

³ Industry Commission : *Competitive Tendering and Contracting by Public Sector Agencies - Overview*; Report No 48, 24 January 1996, p 23.

competitive tendering in achieving these objectives. The guidelines state that competitive tendering should only be considered after methods of improving in-house performance and the possibility of a joint arrangement between agencies for a common service have been fully pursued.

The guidelines suggest that to obtain maximum benefit agencies should consider tendering for activities undertaken in-house where the normal annual cost of the activity exceeds \$250,000 and where in-house cost levels are estimated to be more than 8 to 12% higher than viable alternative service providers.

Eleven key processes must be considered when assessing the suitability of an activity for competitive tendering are listed in the guidelines. These processes include:

- preparing a strategic assessment;
- keeping staff informed;
- preparing a detailed specification;
- investigating the market;
- establishing an in-house bid;
- establishing a market;
- finalising the approach to the market;
- relations with bidders;
- evaluating bids;
- comparing the costs of in-house and external bids; and
- contract transition and monitoring.

In evidence before the Committee, Professor Robert Walker, Chairman of the Council on the Cost of Government noted that:

...the new guidelines reflect a slightly different focus. First, they emphasise that it is an agency responsibility not to find something to contract out but to operate efficiently and to place emphasis on efficient operations. Second, it is appropriate to look at major areas of activity and not simply relatively minor activities.

Another aspect that I suggest is different...is placing particular emphasis on the need for agencies to track costs and monitor their operating expenses, and to continually assess their performance against the market or other suppliers. (T1, 32)

3.2 Guidelines and Regulations for Local Government

3.2.1 Local Government Act 1993 and Local Government (Tendering) Regulation

The *Local Government (Tendering) Regulation* applies to all contracts for which a council invites tenders, as specified in section 55 of the *Local Government Act 1993*. Tenders are required for the acquisition of goods and services above the value of \$100,000.

The *Local Government (Tendering) Regulation* specifies the three types of tendering procedures councils can follow. They are:-

- Open tendering, by which tenders are invited by public advertisement;
- Selective tendering, by which invitations to tender for a particular proposed contract are made following a public advertisement asking for expressions of interest; or
- Selective tendering where recognised contractors are selected from a list prepared or adopted by Council and invited to tender for proposed contracts of a particular kind.

The Regulation specifies the procedures to be followed when extending, shortening or varying the tender. If a tender is varied, Council must provide all other tenderers the opportunity to vary their tenders. A tender cannot be varied if the variation would substantially alter the original tender. Apart from these procedures there are no provisions for negotiation with the preferred tenderer to refine details of their bid.

If a Council decides not to accept any of the tenders for a proposed contract or receives no tenders for the contract it must, by resolution, postpone or cancel the contract; advertise for or invite fresh tenders based on different details; enter into negotiations with any person with a view to entering into a contract or carry out the requirements of the proposed contract itself.

If Council decides to enter into direct negotiations with a person the resolution must state reasons for declining to advertise for or invite fresh tenders.

Councils must take all practicable steps to ensure that information contained in tenders is not disclosed without the tenderer's permission.

3.2.2 Competitive Tendering Guidelines

These Guidelines were foreshadowed in the Government's Policy Statement on *Application of National Competition Policy to Local Government*.

They emphasise the fact that local government has a degree of flexibility in the application of competition reform and that competitive tendering is not compulsory, either as part of competition policy or otherwise.

The Guidelines provide a background to issues surrounding competitive tendering and its effects on local communities and council employees. They emphasise the need for careful assessment of local circumstances, the level of expertise within Council and the need to consult staff, unions and the community when considering the contract tendering option.

They contain a discussion on the advantages and disadvantages of competitive tendering and draws on research derived from the United Kingdom and Victorian experiences regarding compulsory competitive tendering. This research has highlighted some of the adverse social effects which can result from contracting out functions which were previously performed in-house.

Other issues covered in the publication include strategic planning, accountability, open decision making, probity, quality of service, weighing the issues in competitive tendering and the process of competitive tendering.

3.2.3 Pricing and Costing for Council Business

The purpose of these Guidelines is to assist Local Governments to apply the principle of competitive neutrality to CTC and reflect Local Government's view that for competition policy to be effective it must provide cost effective benefits to the wide range of councils.

The Guidelines are divided into two main parts. Part 1 establishes the principle of structuring and costing for competitive neutrality. It identifies business activities and the application of the corporatisation model to relevant businesses; identifies the pricing factors to be incorporated in government business pricing; and outlines a complaints handling system for competitive neutrality complaints.

Part 2 discusses general costing and pricing practices applicable to all council activities and provides details of the steps common to any process of costing activities. It also addresses the costing of competitive tendering; costing in-house tenders; making meaningful comparisons between internal and external providers; and the essential elements of a pricing policy for a business activity.

3.4 CTC and Government Policy

The expansion of CTC within government agencies has engendered on-going debate and study about the consequences of these initiatives and whether they enhance or undermine the achievement of policy goals.

As has been established in Chapter 1, CTC if well planned and managed, can offer a number of benefits, including:

- better economy through competition;
- the ability to respond to short term demands on resources;
- the ability to complete a project in the required time frame;
- 'freeing up' resources to concentrate on core businesses;
- access to innovative solutions to problems; and
- access to specialised skills.

In evidence before the Committee, the Auditor-General of New South Wales, Mr Tony Harris, outlined the difficulty in getting government to clearly state their policy objectives regarding outsourcing. In this regard, Mr Harris noted:

We have found when we undertake performance audits that we get into a lot of trouble because people say we are questioning policy. The Act actually requires us not to question policy objectives. We have been writing to Ministers for each audit asking what were the policy objectives and we do not get very clear policy objectives from very senior quarters in the Government. I think that that might be where the issue starts; that we treat issues separately without having the advantage of an overarching, well-researched policy view that could support a program not only in the short term but in the medium term.

A good example of that is the tolls on roads. We have as many policies on tolls on roads as one could imagine in Sydney. We levy tolls and have a paid cash back, we do not levy tolls, we levy tolls and do not have a cash back... We have public hospitals which are provided by charitable institutions - that is outsourcing- but we do not put that work to tender. We do it through a negotiation pattern and that does not necessarily give the best value for money. Some we put to tender. (T1, 6)

The Committee agrees that the treatment of CTC policy issues has been approached haphazardly in NSW. It is clear that there is a requirement for a standard approach to a number of policy areas given the propensity for public sector agencies to pursue CTC strategies in an attempt to develop more effective and efficient operations, .

The Committee remains puzzled why there remains a multitude of policy inconsistencies within government agencies when establishing which projects should be outsourced. The present situation whereby some projects in a particular area are outsourced and other projects are not is both confusing and difficult to justify.

3.4.1 CTC and Policy Fragmentation in the Public Sector

In its submission to the Committee the Public Service Association of New South Wales (PSA) stated that:

Policy fragmentation (was) evident in the introduction of microeconomic reform strategies such as CTC to the delivery of public sector goods and services in NSW.

Further:

The application of CTC to the delivery of public sector goods and services will result in the incremental and unco-ordinated transfer of in-house activities and jobs to private sector contractors. (s8)

The PSA also raised a number of issues concerning 'policy fragmentation', including:

- the lack of coordination between central agencies responsible for implementing public sector microeconomic reform and agencies responsible for industrial relations and public employment;
- the lack of clear objectives for CTC outcomes; and
- the lack of any central agency responsible for the monitoring and evaluation of employment and industrial relations impacts of CTC.

The Committee is acutely aware of the conflict between the implementation of CTC and existing industrial relations and employment issues. The issue of how cost savings are achieved by public sector agencies obviously has a major impact on both industrial relations and employment within the public sector.

In evidence before the Committee, Ms Happ, Industrial Officer, Public Service Association stated that the introduction of CTC in the public sector had moved beyond the National Competition Policy reforms embodied in the Competition Principles Agreement (1995):

The Competition Principles Agreement says nothing explicit about contracting out or competitive tendering. It talks about introducing competition into previous government

monopolies. Competitive tendering and contracting out have never been an express part of the competition principles agreement. But all State Governments and the Commonwealth are using national competition policy as the justification for introducing those strategies into the public sector. In New South Wales the particular flavour of it is that service competition will now be focused on the budget sector, in other words, ministerial departments.

Ministerial departments were never the focus of national competition policy in that sense. National competition policy was about government business, government trading enterprises—GTEs—or the commercial aspects of big sector agencies, such as the Land Information Centre at Bathurst which is a commercial entity of an administrative department. Service competition will be focusing on the non-commercial generic corporate support activities of budget sector agencies—the administrative and clerical functions of ministerial departments. You will not find that focus in the Competition Principles Agreement. It is an extension of introducing competition into the public service proper. (T1, 18)

3.5 Core or Non-Core Activities

As CTC becomes more entrenched in government agencies, there is increasing debate over whether both core and non-core activities should be outsourced.

The majority of government agencies have responded to changing budgetary conditions by concentrating on their core functions and contracting out their ancillary services to external providers.

During the 1990s, however, there have been incidences of contracting expanding from primarily non-core services such as cleaning and refuse collection to areas seen as core government activities such as prison management, employment assistance and hospital management.

Although outsourcing is not a new practice within the public sector, “what marks recent developments as a change from past practices is the comprehensive application of competitive tendering and contracting to a very wide range of government activities”.⁴

In its submission to the Committee, the PSA raised concern over the introduction of competition into the ‘core’ activities of government agencies:

⁴ Honor Figgis & Gareth Griffiths, NSW Parliamentary Library Research Service: *Outsourcing in the Public Sector*, Briefing Paper No 22/97 p 3.

Essentially the CTC element of Service Competition is a strategy to introduce direct competition into the non-commercial, non-core activities of Budget sector agencies... This having been said, the Association can see little guarantee that the 'core' activities of Budget sector agencies will remain immune from 'competition' via CTC... Core and non-core are slippery definitions and what is a non-core activity for one agency may be the core activity of another... (s8)

The Auditor General also raised a number of concerns over the tendering out of core activities, stating:

We used to say that core work should be provided by the provider and you can think about tendering out the non-core work. The Commonwealth Bank tendered out its IT business and the Department of Social Security is tendering out its IT business, and I see those as core businesses for those entities. Social Security is a data bank of names and histories. You are matching up those histories with eligibility requirements and that will be tendered out to a provider.

That is a very interesting development to me. I put the core concept away and I say that where there is a significant amount of change so that you do not have a stable environment, where the task is very complex and hard to express in terms of performance indicators and simple rules, where the accountability is very important to the Government, there might be an argument that it should be retained in Government under those three broad criteria. (T1, 10-11)

The Committee is concerned that there is a concerted move towards the outsourcing of core agency activities. The Committee is of a view that such a move is ill advised. The short time frame within which the majority of CTC projects have been operating has not provided a significant sample with which to categorically assess quantitative and qualitative outcomes of non-core activities let alone core activities.

In evidence before the Committee Professor Robert Walker, Chairman of the Council on the Cost of Government commented that:

The guidelines say that it is appropriate to examine the cost of core activities, which has not been there before. The guidelines are not about putting them out to tender; they are about assessing whether you are operating efficiently... we are also expressing the view that it is appropriate to look at the quality of service being provided by outsource suppliers and in-house service delivery. It is not simply a financial issue; it is a question of looking at quality of service as well. The process involves encouraging agencies to look at their core functional activities and to assess whether they can do better. If their costs are relatively high compared to other States or private sector suppliers the onus should be on agencies to explore the reasons for that and to improve

their performance. (T1, 35)

Professor Walker further noted:

It seems to me that a focus on getting the best price now needs to be balanced against the risks of higher costs down the track. For that reason, many areas of public sector activity, in principle, could be done outside, but you have only got one chance to get it wrong. If it is outsourced, the capacity to re-enter that field is lost and it may end up that a monopoly is transferred to other suppliers, which will cause disadvantage in the long run. So it is both a question of analysing costs and thinking strategically about long-run cost structures. (T1, 36)

The decision regarding which activities to outsource should only be made after all relevant options and circumstances have been assessed. In this regard, government agencies should be trying to find the best solution not contracting out for the sake of it. Ultimately, however, the decision on whether to outsource both core and non-core activities will lie with each agency.

Of more immediate concern, however, is the possibility for reductions in the quality of services and for reduced accountability for government agencies. Given that the primary responsibility of any government agency is to the NSW public, it is paramount that a certain level of control and direction be kept over key activities.

This issue was identified in the PSA submission, which commented on the:

...lack of any statutory requirement upon organisations to publicly place on record contracting developments ie no current Annual Reporting requirements as opposed to use and cost of consultants. (s8)

It is the opinion of the Committee that accountability to the public would be significantly improved by government agencies outlining in their Annual Report:

- all activities valued in excess of \$50,000 which have been outsourced;
- the value of the contract;
- the qualitative and quantitative outcomes of outsourced services.

RECOMMENDATIONS

The Committee recommends that all government agencies review their CTC strategies and identify any inconsistencies in the methods of tendering and contracting for individual projects.

The Committee recommends that government agencies outline in their Annual Report:

- **all contracted activities valued in excess of \$50,000; and**
- **the value of the contract.**

The Committee further recommends that government agencies undertake an annual review of CTC outcomes and that these outcomes be measured against program objectives/targets.

4. PROCUREMENT AND THE NSW PUBLIC SECTOR

The NSW Government is one of the largest purchasers of goods and services within Australia, spending approximately \$10 billion per year. It is estimated that \$6 billion is spent on construction and capital equipment, with the remaining \$4 billion spent on other goods and services.

In the past, procurement has been viewed as a supporting function in government agencies governed by standard procedures and delegated to specialised purchasing staff. In the last decade, however, procurement by the public sector has changed dramatically with the key developments being:

- expansion in the range and complexity of contracting strategies, with increasing emphasis on performance assessment, incentives to encourage innovation and the effective management of risk
- growth in the service market, providing buyers with the option of contracting complete business solutions in place of buying products and services to support in-house activities, and
- development of the concepts of partnering and strategic alliances, directed at delivering added value to both buyer and supplier in managed long-term contractual arrangements.

Despite a number new developments there are still a number of areas where procurement requires improvement. These areas include:

- consolidation of the Governments purchasing expenditure; and
- ensuring that procurement strategies are consistent with broader Government objectives for economic development, environment, equality of employment opportunity and workforce development.

4.1 Procurement and Government Policy

The NSW Government Purchasing Policy was first enunciated by the Hon. N.K. Wran, QC in 1983 and revised in 1986 to comply with the National Preference Agreement signed by the Commonwealth Government and all State Governments.

In 1991, the National Preference Agreement was further revised to incorporate New Zealand and was renamed the Government Procurement Agreement (GPA).

A further review of the Agreement occurred in 1997, and all references to preference

margins were removed. However, each signatory is at liberty to maintain price preference margins provided that they are not applied in a discriminatory manner against suppliers based in other States or New Zealand.

The GPA is binding on all New South Wales Government Departments, Authorities, Instrumentalities, Commissions, Boards etc. The GPA contains the following six discrete elements:-

1. ***Preference Policy*** which gives support to Australian and New Zealand suppliers and, under certain circumstances, to NSW country based manufacturers. Preference for Australian and New Zealand suppliers is provided in the form of a surcharge of 20% on the imported content of the offer or tender. A further New South Wales country preference surcharge is applied if, after the application of this preference, the preferred tenderer is a metropolitan New South Wales or overseas manufacturer. In this case a preference of 2.5 or 5% is awarded in favour of country manufacturers located outside the NSW metropolitan areas of Sydney, Newcastle or Wollongong where there are no preferred tenderers from other Australian States, Territories or New Zealand.
2. ***Post Tender Negotiations*** allow Ministers to enter into negotiations with Australian tenderers to help them obtain contracts where bids are in excess of \$50,000 and, after applying the preference loading, Australian tenderers are within 20% of the lowest bid.
3. ***Ministerial Discretion*** allows Ministers to make the final decision where significant purchases are involved. In respect of all contracts with a value of \$50,000 and over, where an Australian manufacturer is being passed over, the responsible Minister must be advised and Ministerial discretion may be exercised in favour of the Australian tenderer if the Minister believes circumstances so warrant.
4. ***Offset Policy*** applies to purchases with a manufactured content primarily sourced from overseas and exceeding \$1,000,000. The tender for these purchases must contain a requirement for suppliers to include work with Australian manufacturing industry, equivalent to a minimum of 30% of the manufactured content. However, since the Commonwealth Government abolished its offset program in 1992, the NSW Policy has been suspended and no new offsets have been sought.
5. ***The Motor Vehicle Purchasing Policy*** requires all Government Departments, Authorities, Instrumentalities, Boards, Commissions etc., to only purchase locally manufactured or assembled passenger motor vehicles.

6. *Apprenticeship Employment Policy* requires the inclusion of a clause in all tenders over the value of \$250,000 requiring contractors and sub-contractors to maintain a ratio of at least one registered apprentice to every four trades people employed for the duration of the contract or ensuring that 20% of trade work involved in the contract is undertaken by apprentices.

4.2 Procurement Guidelines and Regulations

There are a number of guidelines and regulations which govern the procurement of goods and services in the public sector. These are:

- Public Sector Management (Goods and Service) Regulation 1995.
- Procurement and Disposal Guidelines, Premier's Department, 1995.
- Service Competition Guidelines, Council on the Cost of Government, 1997.

1. Public Sector Management (Goods and Service) Regulation 1995

The main purpose of this regulation is to establish the State Contracts Control Board (SCCB), which is the basis for the acquisition of goods and services and the disposal of goods by the Public Service. The SCCB is the sole authority able to arrange for the supply of all goods and services necessary for the operation of Public Sector agencies.

The regulation also contains provisions for the SCCB to enter into period contracts. A period contract is also known as a 'common-use' contract. It is a formal arrangement with a supplier to provide on request products and/or services at agreed rates and conditions for an agreed period. Through the SCCB the period contract system covers about 100,000 items and services for offices, schools, hospitals and other establishments. If obtaining goods and services covered by the period contract, Departments must utilise this contract.

Agencies located in country areas are, however, exempted from these arrangements. In accordance with the NSW Government Purchasing Policy these agencies may make local purchases up to \$1,000 in value provided the local purchases are administratively advantageous.

Legislation also dictates that a government agency may obtain goods and services not available under a period contract without reference to the SCCB if the value does not exceed \$50,000.

In this regard, the General Purchasing Delegation sets out the requirements for obtaining quotes for goods and services up to the value of \$50,000.

Government agencies need not obtain competitive quotes for goods and services up to \$1,000 in value, provided the rates are reasonable and consistent with normal market rates, the requirements are not being split in an attempt to avoid tender and as long as regular reviews (including random invitations for three quotes to ensure efficiency and effectiveness) are undertaken.

For goods and services over \$1,000 and up to \$10,000 in value departments must obtain three verbal quotes. Three written quotes are required for goods and services between \$10,000 and \$50,000 in value.

For goods and services valued at over \$50,000 and not covered by a period contract, government agencies are required to refer their needs to NSW Supply or Information Technology Services for the invitation of tenders by the SCCB.

Specified in the regulation is the ability for the SCCB to use or authorise any method for obtaining supply of goods or services or disposing of goods it considers provides value for money and achieves the best advantage for the Public Service.

If the Board chooses not to call tenders it must approve of the procurement or disposal plan and record in writing its reasons for the decision. The Board must also report the matter in its annual report.

In an extreme emergency the Chairperson of the Board, a Department head or a specially nominated public servant may authorise the acquisition of goods or services to a value which will meet the particular emergency.

Additionally, a Department may obtain goods and services directly from any Government Trading Enterprise which provides the goods and services in the exercise of its principal functions.

2. Procurement and Disposal Guidelines

These Guidelines apply to all government agencies in relation to the procurement of public infrastructure, equipment, vehicles, goods, materials and services and to the disposal of property, equipment etc.

The guidelines identify government and community expectations for the private and public sectors in procurement and disposal transactions. In brief, these are:-

- that the products reflect the best value obtainable, taking account of quality, reliability, timeliness, service, initial and ongoing costs and other relevant factors;
- that public sector personnel and their agents, in dealings with the private sector, act skillfully and knowledgeably, impartially and fairly, honestly and lawfully;

- that private sector firms, whilst pursuing their own goals, act honestly and lawfully in their dealings with government agencies and seek to provide the community with good value;
- that there are fair opportunities available to persons and firms to bid or re-qualify to bid for public sector business; and
- that the community is entitled to expect that mechanisms of audit and accountability enable reporting of the extent that processes and outcomes match these expectations.

The guidelines also detail ways of achieving these expectations. It does this by answering a number of questions common to all cases of procurement and disposal.

The Guidelines also list the relevant guidelines, manuals, legislation, memoranda etc relating to specific contexts in which procurement and disposal take place.

4.3 Policy Statement for NSW Government Procurement

The Policy Statement sets the strategic framework for achieving the Government's policy objectives through:

- a co-ordinated procurement policy focussed on service delivery outcomes
- procurement as an enabler to achieve economic development, environmental enhancement and equality of employment opportunities
- effective procurement planning
- a program of continuous improvement in systems and procedures, including training and development
- active contract management strategy
- partnership with industry.

The Government's procurement policy goals are:

- to ensure integrity, fairness and consistency in all aspects of the procurement process;
- to develop best practice in procurement through:
 - effective planning;
 - strategic buying;
 - active contract management; and
 - continuous improvement in procurement processes.

Competitive Tendering and Contracting in the NSW Public Service

- to promote economic development by maximising the opportunities for Australian and New Zealand industry to compete for government business, particularly internationally competitive small to medium business enterprises; and
- to promote socially responsible business practice through government procurement policy and practice.

It is clear that the NSW Government is committed to the introduction of a whole-of-government approach to procurement policy. It is anticipated that this approach will apply to the procurement of goods and services of all kinds, including:

- consultancies and professional services;
- service and facilities contracts;
- construction and capital equipment; and
- property and leasing.

As part of this approach, the NSW Government aims to publish a Procurement Manual which would contain whole-of-government procurement policy and best practice guidelines.

In evidence before the Committee, Mr Alan Griffin, Chairman of the State Contracts Control Board, stated that the policy framework which the state Contracts Control Board and the Department of Public Works and Service has issued is based on four key premises:

First of all, we want to increase the accountability for procurement, and this is in line with what is happening internationally, to move it from the low levels up to the senior levels...

We are looking at trying to buy less by obtaining better and more accurate information on procurement expenditure and to use it strategically to try to lead to savings.

We are looking at buying better by reforming procurement processes and using things such as electronic commerce...to get transaction costs well down. And we are looking at benchmarking, and we will be accrediting agencies where agencies can be involved provided that the agencies can be accredited and have a consistent approach.

We are also looking at buying smarter to take advantage of our combined purchasing power. That is through the State Contracts Control Board. On that we have actually benchmarked the savings we have received, not on retail prices, but on wholesale prices, and the worst case scenario shows that we are saving \$50 million per annum by leaving

off our contracts...

The other key thing we want to do is provide the Government's procurement staff with greater co-ordination through those guidelines we are currently developing for procurement. As I said before, they are widely available in the capital works area, and the general consensus is that New South Wales is a lot better to do business with than the other jurisdictions because of the greater consistency and also the degree of probity that those guidelines through the code of practice and the code of tendering have brought to our procurement. In fact Graham Keating is on record saying that this now is the state of probity in procurement. (T1, 7-8)

The whole-of-government procurement reforms will be co-ordinated by the Department of Public Works and Services (DPWS), who will also review procurement plans and strategies throughout government. Undertaking these activities will enable DPWS to:

- identify opportunities to consolidate purchasing;
- identify innovative solutions to procurement; and
- provide advice to government on procurement through the budget process

As part of the reforms to NSW government procurement policy, agencies will be able to obtain advice and assistance on their procurement plans, actions proposed to reform their procurement processes, and the implementation of best procurement practice from DPWS.

The Committee whole-heartedly supports the introduction of these reforms and believes that the introduction of a whole-of-government approach to procurement within the NSW public sector will result in improved cost and time efficiencies for government agencies.

4.4 Streamlining the Procurement Process

During the course of this inquiry, a number of issues have been raised regarding procurement, including:

- streamlining the procurement process through the use of information technology; and
- reviewing the requirement for use of NSW Supply Services for 'specialised' purchases in excess of \$50,000.

4.4.1 Information Technology and Procurement

Numerous submissions to the Committee stated that the implementation of information technology would result in a streamlined procurement process. This streamlining of the process would in-turn result in improved cost and time efficiencies.

This point was commented on by Professor Robert Walker, Chairman of the Council on the Cost of Government who stated:

...technology provides opportunities to re-engineer and redesign processes. So the existing way in which a government agency goes about, say, having a centralised purchasing function may be very suitable for agencies which are involved in particular types of purchases but may not enable them to take full advantage of streamlining their processes in future. (T1, 36-37)

The Committee agrees that the incorporation of technology has the potential to benefit smaller 'off-budget' government agencies. In this way, if the procurement transaction process is streamlined scarce resources can be released and applied to providing services to the public.

On this note, Professor Walker outlines the benefits of integrating procurement and financial management within individual agencies:

The council has undertaken a series of studies of this nature looking at procurement and financial management practices. It has also indicated that there are considerable inefficiencies in the routine transaction processing within government. This extends, of course, not only towards procurement activities, but also towards the further processing of transactions leading to payment for suppliers.

The report notes that most agencies deal with several thousand suppliers each year, but 40 per cent of purchases are one-off, which could create some difficulties for individual agencies perhaps to streamline some of their processes. However, that does not obviate the potential efficiency that might be achieved on a more whole-of-government basis. Currently about 3,500 people are employed in procurement stores in inventory management, accounts payable and associated record keeping. The council suggests that this is relatively high compared to what one might expect by private sector standards.

The Council's view is that procurement systems must be integrated with financial management systems...developments in information technology have enormous

potential to enable re-engineering of business processes, which can speed up procurement, hence, free up capital that was otherwise tied up in inventories, and can substantially reduce transaction costs and enable the government to obtain better prices through using its purchasing power more effectively. (T1, 31-32)

Professor Walker continued:

This is a whole-of-government issue, because these days there are opportunities to redesign procurement processes and to put a great deal of responsibility onto suppliers to provide information about what is going on. The view of some members of the council is that it is possible, if one has a range of agencies dealing with a particular supplier for major purchases—for example Boral, CSR or someone else—to work towards the responsibility being put on the supplier to give the Government one invoice for all of its sales to all government agencies. That one invoice would detail particulars of what goods were supplied and to whom. It could be on a computer disc and it might even be provided weekly. In return, to give benefit to the supplier, the supplier could be paid within seven days rather than within 30 or 60 days.

It would be possible, using information technology, to put some responsibility onto suppliers to provide better details. But before one gets to that point, one needs to know who the big suppliers are and what is bought from them. The existing systems are so fragmented that one does not have the opportunity to do that. If we were to standardise the use of management information systems that use relational database technology, it would be possible to make inquiries about what has been bought from which company and to develop a better picture. If we were to use electronic commerce to order goods and services, a profile of purchases would be automatically developed and upgraded over time. (T1, 39)

The Committee believes that the application of information technology to procurement in the NSW public sector will provide numerous benefits for both government agencies and supplier.

It is, therefore, pleasing to see that the Australian Procurement and Construction Council currently have a project underway which provides an overview of the use of electronic commerce by governments in Australia. The project also intends to provide an oversight of electronic commerce use internationally to provide a comparison.

4.4.2 Specialised Procurements

It is estimated that specialised 'one-off' procurements comprise 40% of all

government purchases. It is surprising, therefore, that there are no separate policies and guidelines covering these procurements.

Currently, the Public Sector Management (Goods and Service) Regulation states that government agencies need not obtain competitive quotes for goods and services less than \$1000 in value.

For goods and services between \$1000-\$10,000 in value, agencies must obtain three verbal quotes. For goods and services between \$10,000-\$50,000 in value, agencies must obtain three written quotes.

For goods and services valued at over \$50,000 and not covered by a period contract, agencies are required to refer their needs to NSW Supply for the invitation of tenders by the SCCB. It should be noted that the Regulation does enable agencies to obtain goods and services not available under a period contract without reference to the SCCB if the value does not exceed \$50,000.

In evidence before the Committee, Mr Alan Doyle, Director of Operational Support, NSW Fire Brigades, noted that the existing procurement arrangements were fundamentally sound for the purchase of major items:

Contracts for supply of minor items of equipment is also established through New South Wales Supply, the arrangement fundamentally works quite well. This covers equipment provided to the rural fire services, the State Emergency Services and other similar agencies. However, our point is that there are significant costs incurred using this process, typically between \$5,000 and \$20,000 to establish a contract, a percentage of the item procured (2%) goes to Public Works, that is over the life of the contract. (T2 -30)

Mr Doyle continued:

Purchases of equipment and services over \$10,000 but under \$50,000 are handled internally, on the basis of three written quotations as is customary. For purchases that are technically complex or have several potential vendors offering very similar items, a formal mechanism is encouraged particularly where the purchase may be over say, \$35,000. A technical specification is prepared, it is appended to the Brigades' commercial terms and conditions and forwarded to known providers with a closing date, requiring written lodgement of the offer.

Quotations invited under this arrangement are invited by the Supply Services, our own group, on behalf of the section requiring the equipment or service. Purchases and/or services are therefore arranged by dedicated, professional supply

officers working independently from the end-user, which we regard as very important for probity. The Brigades' processes have been examined by the audit bureau and no abnormalities have been found.

The disadvantages of the current process is that whilst the supply service system works fundamentally it tends to take an inordinately long time frame, it is expensive and on occasions is an overly complex process for relatively little return. Interested parties must purchase the tender documents, usually for around \$100, which is non-refundable.

I heard reference in a previous submission to the impact put on tenderers with the complexity of the system. We see this as a particular problem if the contract value is between \$50,000 and say \$200,000. Where a no-bid situation occurs and re-tendering is required, often with a partially re-written specification, significant charges accrue from New South Wales Supply; second bite of the cherry, second charge.

In instances where no offer was received, due to the inordinate amount of preparatory work required of a vendor in preparing a tender - for perhaps a relatively small return - it is simply not cost effective. (T2, 30-31)

Mr Doyle provided a case example to show the effect that NSW Supply requirements had on the procurement of specialised purchases:

By way of example, a firefighting vehicle located at Queanbeyan fire station was identified as in need of significant repairs to its fibreglass body. We went to fibreglass bodies about ten years ago with the idea of a trial, along with other fire services, and well ten years on it, with that manufacturing technique, is not a good idea.

Due to the high incidence of rust in firefighting vehicles, it was felt at that time that fibreglass was a good idea, well in hindsight no. It is also starting to show surface cracking and ongoing maintenance, so it has to come off the road.

We have got to replace the body with a new one - one. We have a line of vehicles of very similar age and design and they were fitted with aluminium bodies and made by a firm in Sydney called Alexander Perry, who supply many of the Fire Brigade vehicles, and also for the rural fire services, which is done under tender.

Previous bodies were bought before the Brigades was in a budget sector agency, when we were effectively a statutory authority. I would suggest we have got a lot smarter since 1990, we now claim intellectual property rights and we own the

drawings of finished product. We maintain the right to go out to tender using those documents as the basis for the next tender, rather than saying they belong to the contractor, "They are mine and you cannot use them again" however this is pre 1990.

We have, as I said, a line of similar vehicles fabricated by Alexander Perry in aluminium, which did very well. Enquiries revealed the company still had the detailed assembly drawings and so were approached in 1997 for a quotation to fabricate one more. They submitted a price of \$93,330. Being well over the quotation threshold a detailed specification had to be prepared. Tenders were called in July 1998, because it took us a while to write the tender specification. No bids were received - not one.

Subsequent discussion with Mr Perry was reported as:

"Quite frankly, we are not interested in quoting for this work in the format required by New South Wales Supply."

The process in their view was simply too cumbersome and not commercially viable. Of the five companies approached, three indicated that the job was beyond the scope of the company.

Representations to New South Wales Supply Service and the State Contract Control Board, who oversee the process, resulted in a direction that Brigades could negotiate with the preferred supplier, Alexander Perry, on the basis that it was appropriately documented and we got good value for money and probity was to be monitored.

*Alexander Perry's new quotation was \$105,936, or about 13% more.
(T2, 31-32)*

The Committee finds it difficult to understand why, in instances where re-tendering is required, government agencies are required to have NSW Supply prepare new tender specification.

From the Committee's perspective, it would be far more cost and time efficient if government agencies were able to utilise a formal quotation process in certain instances.

Agency dissatisfaction over their inability to obtain goods and services not available under a period contract but in excess of the \$50,000 limit, and hence requiring reference to the SCCB, was also commented on by Mr Doyle:

In essence, the Brigades' \$50,000 tendering threshold has not kept up with inflation and contemporary management processes remain in the highly controlled centralised system which results in applying a detailed, costly, time-consuming process to what really can be termed as minor tenders in our view.

The New South Wales Supply Service arrangement is very complex and capable of responding to the dynamics of an emergency service such as the Brigades, which has an obligation to provide continuance of service to the community, and often relies on a relatively small number of highly focused providers due to the specialist nature of the equipment. (T2-33)

The development of a formal quotation approach to the procurement of specialised items was commented on extensively by Mr Doyle who noted that government agencies which have a demonstrably efficient internal purchasing unit in place, should not be required to engage NSW Supply for specialised purchases valued between \$50,000 and \$300,000.

The Committee believes that such a proposal does have merit. If such a proposal was to be adopted, it would be necessary to develop a protocol incorporating the necessary checks and balances to ensure value for money, probity and transparency.

The Committee believes that the proposal should discern between specialised procurements and more common procurements which would still be sourced through NSW Supply.

RECOMMENDATIONS

The Committee recommends that the NSW Government reviews the use of information technology for purchases within the NSW public sector.

The Committee recommends that a Review Committee comprising Treasury, Premier's Department, Council on the Cost of Government, Cabinet Office, and the Department of Public Works and Services establish a mechanism for government agencies to formally call for quotations for specialised procurements.

The Committee further recommends that the \$50,000 threshold for specialised procurements be increased and pegged to the Consumer Price Index (CPI).

5. THE NEED FOR PROBITY

Probity is a key aspect of the competitive tendering and contracting process. As CTC becomes more prevalent within the public sector, however, so does the risk of corruption. It is no surprise, therefore, that given that CTC in the NSW public sector involves more than 80,000 contracts and is valued in excess of \$1.762 billion significant steps are being taken by government agencies to minimise the potential for corruption.

One of the main probity issues is that government agencies remain accountable for the operations of any contractors and that they ensure that services provided are effective and efficient. As is noted in the ICAC Report, *'Contracting for Services: The Probity Perspective'*:

Contracting for services can add flexibility, provide access to a wider range of skills and save money. However, unless managed properly, it can result in additional expense, wasted resources, impaired performance and public concern. Opportunities for corruption can also be created.

In order to enhance accountability amongst management and reduce opportunities for corruption, a number of guidelines have been developed by both the Premier's Department and the Independent Commission Against Corruption (ICAC). The aim of these guidelines is stated as being, "to minimise opportunities for corruption and to provide practical advice to public sector agencies to maintain integrity and probity."

The probity guidelines were developed as part of a joint project between the Attorney General's Department, the Property Services Group and ICAC and aimed to provide a best practice model for the procurement as well as a probity checklist which could be adapted for use by individual agencies.

ICAC did note, however:

The best practice model and accompanying probity checklist are not intended to be used as a rigid set of rules. They complement existing guidelines and procedures - including the Public Sector Management (stores and services) Regulation 1988, the NSW Premier's Department's Guidelines for the Engagement and Use of Consultants, the Procurement and Disposal Guidelines and Contracting and Market Testing Policy. Organisations should review their internal policies and procedures regarding contracting for services to ensure they reflect the

principles underlying the probity checklist.

There is no doubt that improved probity guidelines will assist government agencies in the development of corruption prevention strategies and hence accountability. It is debatable, however, whether the use of numerous guidelines are an assistance or a hindrance to improved probity.

5.1 Ensuring Probity

Maintaining probity throughout the competitive tendering and contracting (CTC) process is vital for government agencies.

The ICAC report *Contracting for Services: The Probity Perspective* stated:

The necessity of ensuring probity in the purchasing process applies equally to the purchasing of services and goods. Probity is an integral part of any purchasing process and should not be a last minute consideration.

As such, there are five essential factors which should be considered throughout all stages of the CTC process. These are:

1. Obtaining best value.
2. Transparency of process.
3. Dealing with conflicts of interest.
4. Accountability.
5. Monitoring and evaluating performance.

Obtaining Best Value

Deciding what constitutes value for money requires a range of evaluation criteria, incorporating both quantitative and qualitative analysis.

Although pricing may be an important criteria, there are other factors which play a significant role in the selection of services. These include quality; experience; reliability; knowledge of the organisation's need; continuity; qualifications of personnel; checking references from other organisations on previous performance; and examples of relevant work

In order for government agencies to formulate appropriate evaluation criteria, it is necessary to develop clear and comprehensive project specifications and objectives.

Specifications should include the approximate costs and benefits of the project, the expected outcome of the project and the skills expected of the contractor.

If specifications are not clearly defined from the outset, the evaluation of the outcomes of the project or service will be difficult to measure as will monitoring contractor's performance and assessing whether the tendering of services has achieved value for money. Identifying whether a government agency has obtained value for money in the tendering of a project or service can be gained through regular market testing.

Transparency of Process

In order to reduce the opportunity for fraud or corruption it is necessary to establish a transparent tendering or purchasing process. Transparency in the tendering process can be achieved through a clear, structured decision making process.

Dealing with Conflicts of Interests

Inadequate systems for dealing with conflicts of interest provide opportunities for corruption. In order to ensure conflicts of interest are disclosed, government agencies should implement systems, policies and procedures which encourage employees to identify possible conflicts of interest.

Accountability

Public sector accountability is an essential requirement of modern government. As such, government agencies are required to be accountable for their purchasing practices and decisions and to remain accountable for the effective, efficient and equitable provision of goods and services for which they have responsibility.

One of the problems encountered by the private sector with the CTC process, has been the rigid accountability standards of the public sector. The private sector has argued that the public sector's demands for accountability and probity have imposed additional costs on the private sector.

It has also been claimed that there is often more emphasis placed on the process rather than on the final product or outcome.

ICAC has, however, demonstrated that focussing on accountability and probity need not be at the expense of effective outcomes and value for money. Public sector accountability should save money, resources and time in the long term and prevent corruption, maladministration and substantial waste of public resources.

Monitoring and Evaluating Performance

Evaluation is an important aspect for determining whether value for money is realised

from the contract. In order to enable effective post-implementation evaluation, it is important that specifications and objectives are clearly defined in order to measure performance indicators prior to the commencement of the project.

The criteria used to evaluate performance will depend on the type of service contracted. There are, however, a range of criteria that provide assistance in determining performance. These may include:

- timeliness;
- provision of regular reports;
- adherence to budget; and
- meeting predetermined performance indicators that demonstrate quality and quantify the services provided.

The Committee believes that the creation of a best practice model is a necessity for ensuring efficient and effective contracting out and procurement. The operations of individual agencies are, however, unique. As such, each agency may have different requirements which must be addressed in any best practice model.

In order to create probity within the CTC process, the Committee believes that a central agency should be established who would, in conjunction with individual agencies, be responsible for the development of agency specific 'best practice' contract/procurement models.

5.2 Developing Probity through Best Practice

The use of a planned approach to CTC is essential if agencies wish to achieve the best value outcomes possible. In order to enable agencies to strive to achieve this, the Office of Public Management in the NSW Premier's Department has developed a best practice model.

The best practice model provides a guide for those organisations which have decided to contract for a service. The aim is to ensure that CTC obtains the best value for money and that the process is conducted equitably and impartially. In this regard, the model focuses specifically on probity issues that need to be considered when contracting for services.

The key steps to this model are:

1. Establishing the need to contract for a service - defines the project

requirements, objectives, expected outcomes, options and projected costs.

2. **Planning and supervising the process** - determine who will oversee the project, composition of the assessment panel, establish reporting requirements.
3. **Designing the project specifications** - determine the service to be provided and desired outcomes, selection and evaluation criteria for assessing proposals, define performance measures, define how the market will be tested, specify ownership of intellectual property, prepare a project brief for potential suppliers.
4. **Market testing/inviting submissions** - invite submissions using methods that encourage the greatest competition, provide equal opportunity to all who submit a proposal. All suppliers should have access to the same information, all respondents should be notified of any change in the project requirements, proposals should remain confidential.
5. **Evaluating proposals** - conflicts of interest should be disclosed by bidders and the assessment panel, selection criteria must be applied consistently, negotiations should be documented, all steps in the process should be documented, recommended proposal should be approved by the appropriate officer.
6. **Managing the contract** - oversee the project according to the established reporting requirements and procedures, undertake performance reviews based on predetermined performance measures.
7. **Evaluating performance** - complete a post project evaluation, provide feedback to the consultant/contractor.

5.3 Probity Guidelines for the New South Wales Public Sector

Presently, there are a number of guidelines which have been developed to assist public sector organisations in maintaining integrity when contracting for services and to provide information on the ethical standards expected from organisations contracted to provide services for the public sector.

The issuing of these guidelines is designed to provide government agencies with an acute awareness of potential problems and the means to develop effective corruption prevention strategies.

As such, ICAC has released a number of documents which aim to provide guidelines for tendering and purchasing, service contracting, procurement and disposal of goods and corruption prevention.

A number of these guidelines are considered below:

1. *Pitfalls and Probity: Tendering and Purchasing Case Studies*, ICAC, June 1993

This publication is written for all parties involved in government tendering. It addresses the principles which apply to various aspects of tendering and purchasing and complements the procedures followed by each agency.

The publication uses case studies to focus on commonly occurring problem areas and suggests ways of minimising the opportunities for corruption and the perception that corruption may have occurred.

2. *Contracting for Service: The Probity Perspective*, ICAC, May 1995

This publication provides guidelines for public sector organisations when contracting for services. The guidelines stem from a joint project undertaken by the NSW Attorney General's Department, the Property Services Group and the ICAC. The project sought to minimise opportunities for corruption and to provide practical advice to public sector agencies seeking to maintain integrity and probity.

The publication presents a best practice model of the purchasing process along with a probity checklist which can be adapted for use by individual organisations.

3. *Direct Negotiations in Procurement and Disposals: Dealing Directly with Proponents*, ICAC, June 1997

The publication covers all types of procurements and disposals ranging from small scale purchases to large infrastructure construction projects. It deals with direct negotiations such as those entered into by an organisation with a prospective provider or buyer without first using a competitive process. Direct negotiations also include negotiations to extend an existing contract for a longer period or to include substantially different goods or services than originally were envisaged.

ICAC suggests that direct negotiations should be avoided, as a general rule, because their closed nature provides an opportunity for accusations of improper behaviour and increases the opportunity for corruption. The publication uses case studies to highlight issues relating to direct negotiations and corruption. It also contains criteria for deciding whether direct negotiations are appropriate and a summary of legislative and other guidelines and controls associated with contracting and tendering.

4. *Practical Guide to Corruption Prevention, ICAC*

The Guide provides information to help public agencies establish systems which will prevent corruption. It covers a range of topics including purchasing, disposal and sale of assets and plant hire.

The modules on purchasing and disposal of assets identify five issues which organisations should consider at all stages of the purchasing and disposal process. They are:

- obtaining best value for money;
- ensuring accountability;
- promoting fairness and impartiality; and
- handling gifts and benefits and avoiding conflicts of interest.

Despite the availability of these guidelines, it was noted by ICAC that:

The ICAC's experience in investigating corrupt conduct indicates that agencies need to develop and carry out their own corruption prevention strategies when contracting for services.

The Committee agrees that it is desirable for individual agencies to develop corruption prevention strategies to meet their own requirements. In this regard, there are a number of agencies who have, in conjunction with ICAC, developed unique corruption prevention strategies.

Two such agencies, FreightCorp and the Rail Access Corporation (RAC) were praised by ICAC for their corruption prevention strategies in the report *A Major Investigation into Corruption in the Former State Rail Authority of New South Wales, June 1998*.

5.3.1 Development of Corruption Prevention Strategies

FreightCorp

As a result of the probity problems which were prevalent in the former State Rail Authority (SRA), FreightCorp have developed comprehensive corruption prevention strategies.

ICAC have supported FreightCorp's corruption prevention strategies, noting that they had created:

an impressive package of measures which aims to integrate ethical behaviour into the fabric of its operations. It has committed resources

to ethics training for all staff.

Strategies include:

- the promotion of shared corporate values which have been developed through extensive consultation;
- the introduction of an accreditation system for procurement staff, with a requirement of annual re-accreditation. This is in recognition of the need for high-level expertise in that function and for regular refreshing of knowledge and skills;
- a comprehensive training program throughout the organisation which includes 'the way we work-ethics', and leadership management training; and
- an 'ethics hotline' for employees for advice and information.

Many of the initiatives currently being implemented by FreightCorp are seen by the Commission as innovative and some are being used as 'best practice' examples for other agencies.⁵

In evidence before the Committee, Mr Raj Saini, Chief Manager, Projects and Procurement, FreightCorp, stated that FreightCorp had adopted a number of innovative practices in procurement and ethical management:

To have ethical practices in procurement one needs to look at what is the overall business ambition of the organisation, and from there one needs to drive at what the business's critical success factors are and that in turn will lead to business strategic procurement strategies and eventually to the development of a procurement policy.

As in the past a procurement policy is usually developed in isolation of the people who are responsible for ethics and probity in the organisation, so this is an attempt to look at the overall focus of the organisation and try to bring procurement which meets corporate objectives and at the same time look at the ethical side of the issues as well.

The procurement policy is then underpinned by corporate values and in our case we have got a set of procurement guidelines. We have tried to be less prescriptive as to what you can do and what you cannot do, but to give an overall set of

⁵ ICAC: *A Major Investigation into Corruption in the Former State Rail Authority of New South Wales*, June 1998, p138.

guidelines which give people sufficient flexibility to operate in a manner that meets their needs and at the same time achieves the ethical objectives as well.
(T2, 1-2)

One of the main developments in FreightCorp's corruption prevention strategy has been through enhancing the involvement of staff in the procurement process. This has been achieved through development of a Procurement Manual which outlines:

- procurement policy;
- ethics and probity;
- legal issues;
- procurement framework;
- procurement guidelines;
- departing from guidelines;
- procurement procedures;
- standard documents; and
- training and accreditation.

The Committee was especially impressed that FreightCorp have developed a 'Summary of Procurement Guidelines' covering all aspects of the tendering process for employees. This document is on-hand at all times and provides employees with a clear outline of their responsibilities for procurements of different categories and value. The 'Summary of Procurement Guidelines' is attached as Appendix 1.

The Committee believes that the FreightCorp Procurement Manual is a good example of how government agencies can address situations which usually fall outside guidelines parameters. This aspect was commented on by Mr Saini:

One of the failings in many cases is that once the guidelines have been issued people expect that will cover every situation. We do not believe that is possible and so we, in our policy, have stated a process that if the guidelines do not meet what you want to do there is then a process where you can depart from the guidelines, which requires a review of the normal delegations, that somebody else has to review what you are doing and give you a tick before you can go ahead with it.

Some of the considerations for ethical management in procurement are that you need to give the staff sufficient flexibility so that they can select a procurement

strategy that is going to meet their objectives. (T2, 3)

The Committee also received evidence from Mr Saini outlining how FreightCorp has improved accountability throughout the procurement process by streamlining the approval process:

... (there is) one person who eventually at the end of the day takes responsibility for it (the procurement), rather than a series of people who have also signed the approval process and none of them are accountable for it, therefore clearly defining accountability and at the same time giving sufficient empowerment to the staff to enable them to do their tasks. (T2,3)

Rail Access Corporation (RAC)

ICAC was also impressed with the steps taken by the RAC to develop effective corruption prevention strategies. The RAC has developed key corruption prevention policies and procedures including:

...a Strategic Plan for Fraud and Corruption Control. A Fraud and Corruption Taskforce comprising a Fraud and Corruption Officer from each Division...In June 1997 the RAC launched its Corruption and Fraud Control Program. This is an impressive package of materials which includes a Policy on Fraud and Corruption, a Code of Conduct, Guidelines on Conflicts of Interest, Guidelines on Gifts and Benefits and a Policy on Information Security.

One of the key ways in which the RAC has demonstrated its commitment to probity concerns is through its alliance contracting framework. It has developed a detailed Probity Plan - Assessment and Selection Process for RAC's contracting Strategy which requires an ethical framework and best practice prevention policies and procedures from contractors.⁶

In evidence before the Committee Mr Peter Hicks, General Manager, Network Assets, Rail Access Corporation (RAC) stated that alliance contracting has helped to ensure probity by requiring:

a completely open book with the alliance. They declare everything is open book to us. We can see everything they purchase. We have total transparency. (T2, 15)

⁶ ICAC: *A Major Investigation into Corruption in the Former State Rail Authority of New South Wales*, June 1998, p139.

Additionally, the RAC have also taken steps to ensure that probity is also present in the selection process through the use of the Probity Auditor to advise how to establish transparency when selecting people for panels.

In evidence before the Committee, Mr Hicks was asked to outline the selection process:

Our particular focus was in the selection area, and in the selection area we have a series of tiered committees that looked at the selection and overviewed each other. So we actually had three committees, and in each of those there was a probity auditor, an independent, and a member of the labour council, in seniority moving up through the three committees. So each committee could not move to the next step without referring it to the next committee group above. Then we had a final review committee, which I chaired, which had an independent, a probity auditor, and a cross functional team from our own organisation. It was all unanimous decisions, it was not a vote. (T2, 25)

The Committee is impressed with the efforts of both FreightCorp and RAC in developing corruption prevention strategies. It is clear that both organisations have placed increased emphasis on ensuring probity throughout the contract process - from selection of tender panels to the post-implementation review of projects.

The process which both FreightCorp and the RAC have gone through has proven to be particularly effective for both CTC and procurement projects. The benefits of undertaking this process are numerous and as such, the Committee believes that other government agencies should follow the initiative of FreightCorp and the RAC and develop their own Manuals.

6. THE NEED FOR CENTRALISED POLICY AND GUIDELINE FORMULATION

Throughout the inquiry into competitive tendering and contracting in the NSW Public Sector, the Committee has raised concerns over the numerous guidelines which have been developed to cover all aspects of the process.

There are over ten different guidelines and regulations overseeing CTC activities. These include:

- Service Competition Guidelines
- Local Government (Tendering) Regulation 1993
- Dept of Local Government Competitive Tendering Guidelines
- Pricing and Costing for Council Business - A Guide to Competitive Neutrality
- Public Sector Management (Goods and Service) Regulation 1995
- Procurement and Disposal Guidelines, Premier's Department 1995
- Service Competition Guidelines, Council on the Cost of Government, 1997
- Pitfalls and Probity: Tendering and Purchasing Case Studies, ICAC, June 1993
- Contracting for Service: The Probity Perspective, ICAC, May 1995
- Direct Negotiations in Procurement and Disposals: Dealing Directly with Proponents, ICAC, June 1997
- Practical Guide to Corruption Prevention, ICAC

Individual agencies have also been encouraged to develop their own policies and procedures for CTC and procurement. FreightCorp and the RAC have been cited previously as successful examples of government agencies which have developed their own guidelines and plans for procurement and probity.

Although the guidelines and regulations listed above have been developed in response to specific problem areas, it is clear that the separation of policy development and implementation has led to a lack of cohesiveness in CTC guidelines.

In evidence before the Committee, Ms Happ, Industrial Officer, Public Service Association made the following comments about policy and guideline fragmentation:

I began to allude to that previously in terms of the role of Treasury, the Council on the Cost of Government and the Cabinet Office. I am talking about institutional responsibility that

facilitates a tendency towards policy fragmentation. The New South Wales Government procurement policy that was launched a couple of weeks ago on 16 March—the green paper, the code of practice, et cetera—comes from the Department of Public Works and Services and has one mention of service competition. The service competition guidelines were produced by the Council on the Cost on Government. In negotiations with the Council on the Cost of Government about the guidelines we were told, "We do not have responsibility for employment. You will have to go and negotiate something with the Public Sector Management Office—PSMO." So there are many institutional players in this whole area of contracting out government goods and services. The employment aspect seems to fall through the cracks; that is the last thing that is considered...

At the level of policy around contracting out and competitive tendering there are so many institutional players in the question of implementing competition strategies that it is not clear who is responsible. Treasury and the Council on the Cost of Government has a bit of the action, and also the Department of Public Works and Services as part of its charter managing contracts. (T1, 20-21)

The Committee is concerned that NSW government agencies have made little, if any, attempt to co-ordinate CTC and procurement policy development.

When asked by the Chairman of the Committee whether the policy process was too fragmented to be effective, The Chairman of the Council on the Cost of Government, Professor Robert Walker stated:

Private sector members of the council would certainly agree with the Committee on that point. I recall members observing that the proliferation of guidelines would be an annoyance to a manager and would be confusing and create difficulties. A manager would rather be told what to do rather than observe a complex mix of blueprints, guidelines and rules. There is a view that it is much more efficient to have a single set of procedures. However, that is not to say that one size fits all—there may be a need for a localised variation and a departure from the rules. In relation to procurement, contracting out and the like it is unfortunate that there are so many sources of guidance, advice, guidelines and rules. It would be far better to consolidate these in one form.

One of the council's current projects is to look at the potential for consolidating guidelines on accounting of financial management practices. At the moment there is a legislative requirement for each agency to develop its own manual. We found that the total cost of accounting and financial management policy advice was estimated by staff at \$20 million per annum, which we consider to be rather high. A lot of that seems to be attributable to the fact that each agency has to produce its own set of guidelines on a range of issues. We are currently working on a survey of some of those guidelines and finding interesting inconsistencies and, more significantly, that some key things are not mentioned. We are working on ways of advancing a program of consolidating those

guidelines to minimise the confusion that appears to exist in the sector and to try to promote better practices. (T1, 35-36)

The Committee agrees that the fragmented approach to both CTC and procurement policies and guidelines has clearly hampered the effective implementation of contract tendering within government agencies. Without a structured and co-ordinated approach to CTC, procurement and probity issues, government and agencies are left to interpret and adapt numerous guidelines as best they can.

Although CTC and procurement process need to be adapted by individual government agencies to meet their requirements, there is also a need for these agencies to be provided with consistent policy guidelines. As it stands, the availability of consistent CTC and procurement policy guidelines is questionable.

In order to redress this situation the Committee believes that a 'whole-of-government' approach needs to be taken for the co-ordinated development of CTC and procurement policy. Such an approach would be conducive for CTC and procurement policy being co-ordinated by a single central agency with input on key policy issues provided by other central agencies, for example ICAC's input on probity related issues.

Such a co-ordinated approach has already been adopted in Western Australia through the creation of the Department of Contract and Management Services (CAMS) which was formed in July 1996. In conjunction with the State Supply Commission, CAMS is responsible for a whole-of-government approach to procurement.

Responsibility for procurement policy development and policy implementation has been divide between CAMS and the State Supply Commission. The State Supply Commission is responsible for policy development, monitoring compliance, managing exemptions and facilitating contract training. CAMS is responsible for developing and awarding contracts, promoting whole-of-government contracts, managing contracts and providing advice.

The Committee believes that this model warrants further investigation by the NSW Government. A thorough examination of this model may lead to the development of an effective blueprint for New South Wales procurement policy and implementation.

The Committee remains convinced, however, that a co-ordinate whole-of-government approach for procurement policy would be more effective and efficient if undertaken by a single central agency.

RECOMMENDATIONS

The Committee recommends that the Review Committee provide periodic assessments of CTC and procurement 'whole-of-government' policy formulation.

The Committee recommends that the Review Committee appoint a central agency who would, in conjunction with individual agencies, be responsible for the development of agency specific contract and procurement processes

The Committee further recommends that the Review Committee appoint a central agency to become the principal contact for all matters concerning the implementation of CTC or procurement in government agencies.

LIST OF SUBMISSIONS

1. Mr John Curley
2. Strategic Thinking Pty Ltd
3. Anonymous
4. Upper Parramatta River Catchment Management Coalition
5. Dr Graeme Hodge
6. Office of Information Technology
7. The Hon Ernie Page MP, Minister for Local Government
8. Public Service Association of New South Wales
9. Australian Procurement and Construction Council
10. The Hon Michael Egan MP, Treasurer
11. The Hon Gabrielle Harrison MP, Minister for Sport and Recreation
12. P.A. Consulting Group
13. The Hon John Aquilina MP, Minister for Education and Training
14. Department of Housing

LIST OF WITNESSES

1. **Mr Anthony Harris** - Auditor-General of New South Wales
2. **Ms Gwenda Happ** - Industrial Officer, Public Service Association of New South Wales
3. **Mr Raymond Cork** - Manager, Operations Services, Sydney Water Corporation
4. **Mr Arthur Butler** - General Manager, Corporate Finance and Company Secretary, Sydney Water Corporation
5. **Mr Ronald Quill** - Acting Corporate General Manager, Utilities, Sydney Water Corporation
6. **Professor Robert Walker** - Chairman of the Council on the Cost of Government
7. **Mr Alan Griffin** - Director, Policy Division and Chair of the State Contracts Control Board of the Contract Division , Department of Public Works and Services
8. **Ms Rosemarie Risgalla** - Acting Manager, Policy and Policy Reform Branch, Policy Division, and Acting Executive Director of the construction Policy Steering Committee, Department of Public Works
9. **Mr Rajinder Saini** - Chief Manager, Projects and Procurement, FreightCorp
10. **Mr Alan Gray** - Chief Financial Officer, Rail Access Corporation
11. **Mr Peter Hicks** - General Manager, Network Assets, Rail Access Corporation
12. **Mr Roger Doyle** - Director of Operational Support, New South Wales Fire Brigades

APPENDIX 1

Summary of Procurement Guidelines

Category	Value	Quotation/Tender Methods	Award Process	Approval Delegations	
				Personnel	Financial
Forward Purchase Agreements		Where a purchase agreement is entered into for the purchase of goods or services, the contract award process is not applicable.	Purchase Order	MANAGEMENT	
Material, Equipment, Construction Work and General Services	Up to \$100	Value for money/Reasonable market rate	Petty Cash	Up to the limit of Financial Delegations	
	Over \$100 to \$5,000	Value for money/Reasonable market rate	Purchase Order		
	Over \$5,000 to \$20,000	Minimum of three written quotations using Quotation Form	Purchase Order		
	Over \$20,000 to \$50,000	Minimum of three written quotations using Quotation Form with written Brief	Purchase Order		
	Over \$50,000 to \$100,000	Manager Contracts and Procurement to invite the selected suppliers for quotations or to advertise for quotations, as appropriate. Quotations to close with the Tender Board. Evaluation and placement of order by line management	Purchase Order		
	Over \$100,000	Tendering & Contract award process through Contracts & Procurement Unit	Letter of Acceptance		
Using Registered Panels	Up to the limit of the personnel and financial delegations	Registered Panels enable the users to call selective tenders/quotes or sole tender/quote or appoint service providers on other basis dependent upon the terms of the establishment of the panel	Purchase Order or Letter of Acceptance dependent upon the value of the order	Personnel delegations apply for Professional and Consultancy Services	
Professional Services	Over \$50,000	Value for money/Reasonable market rate	Purchase Order	Manager Level 1	
	Over \$50,000 to \$100,000	Minimum of three written quotations using Quotation Form with written Brief	Purchase Order	Manager Level 2	
	Over \$100,000 to \$200,000	Tendering & Contract award process through Contracts & Procurement Unit	Letter of Acceptance	Chairman of the Board	
	Over \$200,000 to \$1M	Tendering & Contract award process through Contracts & Procurement Unit	Letter of Acceptance	Board	
Consultancy Services	Up to \$50,000	Value for money/Reasonable market rate	Purchase Order	Manager Level 2	
	Over \$50,000 to \$100,000	Minimum of three written quotations using Quotation Form with written Brief	Purchase Order	Manager Level 2	
	Over \$100,000 to \$1M	Tendering & Contract award process through Contracts & Procurement Unit	Letter of Acceptance	Chairman of the Board	
	Over \$1M	Tendering & Contract award process through Contracts & Procurement Unit	Letter of Acceptance	Board	
Departure from Procurement Guidelines	Up to \$100,000	Approval must be obtained from 1 level higher than the officer with sufficient financial delegation			
	Over \$100,000	Approval must be obtained from 2 levels higher than the officer with sufficient financial delegation			

Category	Descriptions	Award Process	Approval Delegations	
			Personnel	Financial
Acquisition of Motor Vehicle	Additional Vehicle	Purchase Order by Corporate Services	Manager Level 2	Up to the limit of Financial Delegations
	Replace Vehicle	Purchase Order by Corporate Services	Manager Level 2	
Hire of Motor Vehicle	Up to 4 weeks	Purchase Order	Manager Level 3	
		Purchase Order	Manager Level 2	
		Purchase Order by Corporate Services	Manager Level 2	
Mobile Phone		Purchase Order by Corporate Services	Manager Level 2	
Business Lunches and Hospitality		Purchase Order	Manager Level 2	
Personal Computers and Software	Desk Top and Standard Software	<div style="border: 1px solid black; padding: 5px;"> Items on FPA. Purchase Order issued by Line Management. Items not on FPA. Purchase Order to be issued by I.T. Section </div>	Manager Level 3	
			Manager Level 2	
Air Travel	Domestic: book directly with FreightCorp approved Contractor	Purchase Order Payment by Corporate Services	Manager Level 2	
	Overseas: book directly with FreightCorp approved Contractor	Purchase Order Payment by Corporate Services	Manager Level 2	
Attendance at Conference	Attendance at conferences can be approved by Managers Level 2 after advice to other Level 2 Managers	Purchase Order	Manager Level 2	
Office Furniture and Fittings		Purchase Order by Corporate Services	Manager Level 2	