



Mr Andrew Kirkman
Chief Executive Officer
Department of Infrastructure, Planning and Logistics

via email: andrew.kirkman@nt.gov.au

Dear Mr Kirkman

**RE: Final Report – Review of practices, policies and procedures of DIPL Katherine Office –
Operation Southern**

During a meeting on 16 December 2021, I advised you of my intention to conduct a review of the practices, policies and procedures of the Department of Infrastructure, Planning and Logistics (DIPL) in so far as they related to procurement activities in the Katherine office.

On 28 August 2023, my team and I met with the DIPL Acting Chief Executive Officer and executive staff. We presented our observations and recommendations as a consequence of that review.

The purpose of this letter is to finalise the review.

At the outset, I must acknowledge that this review took far longer than it should have. I apologise to you and your staff for the delays associated with the completion of this review. Notwithstanding those delays, I express my gratitude to you and your staff for the cooperation and assistance given to my team during the course of the review.

I also express my appreciation for the manner in which the DIPL Acting Chief Executive and executive team engaged with and embraced the observations and proposed recommendations during the presentation on 28 August 2023.

This letter

This letter constitutes a report as required by section 23(4) of the *Independent Commissioner Against Corruption Act 2017* (ICAC Act).

During the course of the presentation on 28 August 2023, my team and I furnished participants with a Microsoft PowerPoint presentation, together with a number of tables providing examples of matters where observations had been made. Rather than fulsomely repeat that information, I annex a copy of the presentation and the tables to this report.

This report will summarise what I consider to be the salient observations arising from the review and the recommendations I make.

In addition to this report, I intend to deliver a General Report about the review to Parliament. I will separately provide you with a copy of that report for your comment prior to delivery to the Speaker of the Legislative Assembly.

Background

Section 23 of the *Independent Commissioner Against Corruption Act 2017* (ICAC Act) provides that I may:

At any time, audit or review the practices, policies or procedures of a public body or public officer to identify whether improper conduct has occurred, is occurring or is at risk of occurring.

A review of the kind contemplated by section 23 is not the same as an investigation. A review is focussed upon practices, policies and procedures. An investigation focusses upon particular events or conduct.

A review of practices, policies and procedures is, as the phrase suggests, a structured and careful appraisal of the processes in place (whether documented or undocumented) that underpin the operations (or a specific part of the operations) of a public body. That appraisal is intended to inform and assist the public body to identify improper conduct and establish appropriate processes to minimise the risks of such conduct occurring.

The ICAC Act provides that when conducting an audit or review in accordance with section 23, I can exercise certain powers to obtain information.

I am pleased to advise that I did not need to exercise such powers. My team and I received excellent cooperation from you, the Acting Chief Executive, and DIPL staff.

I take this opportunity to particularly thank Tegan Berg and Jessica Ryan of your Department for their outstanding support and assistance.

Decision to conduct review

Public sector procurement activities are universally recognised as a high corruption risk activity.

The Northern Territory (NT) Government spends approximately \$3 billion on infrastructure, goods and services annually.¹ The Department of Infrastructure, Planning and Logistics (DIPL), created in September 2016, is the lead provider and construction authority for public infrastructure across the Territory and is the largest procuring agency. In fact in 2020/2021 DIPL was responsible for 48% of all NTG procurements by contract quantity and 53% by contract value.²

This procurement spend largely results from DIPL's responsibility for infrastructure investment and maintaining infrastructure assets for client agencies through its repairs and maintenance program. In the financial year 2021-22, capital grants and infrastructure related expenses totalled \$876.8 million and repairs and maintenance program totalled \$201 million.³ While DIPL does not hold a centralised system that captures all procurement activities, an estimate of the annual number of procurement contracts in 2021 was just over 30,000.⁴

The framework informing procurement activities apportions responsibility to the Department of Industry, Tourism and Trade for the administration of the *Procurement Act 1995* and the maintenance of Procurement Rules, Governance Policy, circulars and the Procurement Review Board, the Department of Corporate and Digital Development for the support and maintenance of contract and payment management systems, and agencies undertaking procurement activities for the development of delegations, tender specification and the assessment of responses. The framework, while well published and supported with documentation, creates inherent complexities for users interpreting whole of government rules and policies along with their agencies internal policies, practices and procedures.

The delivery of DIPL infrastructure projects is supported by 898 full time equivalent staff in eight office locations across five regions in the Northern Territory.⁵ Procurement of works and services is undertaken by departmental staff and is supported by a dedicated procurement team in the Procurement Operations and Delivery business unit which provides staff with procurement training materials, strategic advice and operational support.

DIPL is a public body as that term is defined in the ICAC Act.

As I indicated in my letter of 16 December 2021, my office was in receipt of a number of reports of alleged impropriety arising out of procurement activities in the DIPL Katherine office.

In light of the reports I had received, the high integrity risk nature of procurement activities, together with the significant role played by DIPL in respect of procurement activities, I decided to commence the review, but to focus that review on the Katherine office.

By necessity the review considered, more broadly, policies and procedures of general application in DIPL and the Northern Territory Government, in so far as they were relevant to DIPL's procurement activities in the Katherine office.

¹ <https://nt.gov.au/industry/procurement/how-procurement-works/buy-local-plan>

² DIPL Agency Procurement Management Plan 2021-2022

³ DIPL annual report 2021-22, capital grants and infrastructure related expenses - \$876.8 million. Repairs and maintenance - \$201 million.

⁴ VFT Audit No. 6 – 1 January to 31 December 2021

⁵ See DIPL Annual Report 2021-2022, *Our operating context*.

Scope and process

Due to the size and procurement spend of DIPL the review focussed upon the procurement activities of the Katherine regional office over the period of July 2020-October 2021 and included:

- the governance of procurement processes, including compliance with the Procurement Framework of the Northern Territory Government, and compliance with DIPL policies, procedures, delegations and practices as they relate to procurement;
- information management and recordkeeping in relation to procurement processes; and
- whether those practices, policies and procedures provided adequate protection against the risk of improper conduct occurring.

The review process

The review involved:

- collecting relevant policy, procedure and process documents
- collecting procurement documentation
- inviting submissions
- interviewing staff and stakeholders
- analysing information received
- seeking clarification of matters with the department
- preparing a final report.

With your assistance, I invited submissions from DIPL staff.

I also invited submissions from contractors and relevant stakeholders, including:

- Department of Industry, Tourism and Trade
- Department of Corporate and Digital Development
- the Auditor-General
- the Buy Local Industry Advocate
- the Procurement Review Board
- the Ombudsman NT

I received 11 responses to all invitations for submissions.

To gain an appreciation of Katherine's operations, my team and I travelled to Katherine to speak with DIPL staff. Those discussions were particularly beneficial.

Summary of Recommendations

Section 56 of the ICAC Act provides that I may 'at any time, make recommendations to a public body or public officer in relation to preventing, detecting, investigating prosecuting or otherwise dealing with improper conduct, if the ICAC considers the recommendations are within the functions of the body or officer to implement.

In accordance with section 56(1) of the ICAC Act, I recommend that:

1. the Chief Executive Officer cause relevant DIPL policies and procedures to be amended to require all staff to complete an annual disclosure of interests, including actual and perceived conflicts of interest, and potential conflicts of interest that might arise in the future owing to existing personal interests.
2. DIPL review its policies, guidelines, forms and other directions to staff in respect of conflicts of interest to ensure that they are consistent, and clearly define responsibilities of staff, supervisors and delegates.
3. DIPL update its central repository of conflicts of interests and procurement declarations, in order that managers and supervisors can access and review declarations made by their staff.
4. DIPL's assessment process for declared conflicts of interest, including procurement specific declarations, be amended to include consultation with the declarant's manager or supervisor.

5. the Chief Executive Officer cause a memorandum to be circulated to all staff reminding them that tender responses are not to be provided to panel members until each panel member has completed a conflict of interest declaration and confidentiality form, and any declared conflicts have been properly assessed and managed as necessary.
6. the requirement to assess and manage conflicts of interest before the circulation of tender responses be embedded in relevant procurement policies and procedures.
7. DIPL establish a system for monitoring and ensuring compliance with mandatory conflict of interest training, and that the identification, disclosure and management of conflicts of interest feature in mandatory yearly refresher training.
8. DIPL introduce changes to the gifts and benefits declaration process to require:
 - i. The declaration of **all** gifts and benefits offered, whether or not the gift or benefit was received
 - ii. Establish a central register of gifts and benefits declarations, accessible by managers and delegates, in order to identify trends and particular points of risk
 - iii. Establish mandatory fields in any declaration requiring the value of any gift or benefit to be included
 - iv. Empower managers and supervisors to verify that compliance with a direction to decline a gift or benefit, or return a gift or benefit, has occurred.
9. the Chief Executive Officer reinforce to all staff that there is no circumstance where tier splitting, or invoice splitting, is appropriate, and that instances of such splitting will be carefully scrutinised.
10. DIPL incorporate into its internal audit program the routine review of contract variations and extensions in order to identify anomalies, trends and weaknesses in process and training, and to develop appropriate responses to internal audit findings.
11. the Chief Executive Officer remind all staff involved in procurement panels of the requirement to independently assess tender responses before discussing a consensus view with other panel members, and that this requirement be embedded in relevant guidance to panel members.
12. the process of shortlisting tender responses before consideration by a tender panel be captured in a document that is publicly available, and include the criterion applied in shortlisting and the information that might be relied upon during the shortlisting process.
13. consideration be given to the matters against which tenders are shortlisted in order to determine whether all, or some, of those matters are better left with the tender assessment panel.
14. the Chief Executive Officer remind staff that delegated limits must be respected and that there is no excuse for acting beyond delegations.
15. DIPL establish a system of routine audit to ensure delegated decision makers stay with their delegations.
16. DIPL review and update its policies and procedures to ensure a clear and consistent approach to the creation, management and storage of records required for procurement processes, and to support those updated policies and procedures with appropriate training.
17. DIPL expand the requirement to undertake online procurement training modules, as available on the Northern Territory Government e-learning platform, to any staff member who sits on a tender assessment panel, or who has a role to play in respect of public procurement activities. That requirement is to apply to a contractor or consultant who is engaged to sit on a tender assessment panel.
18. DIPL conduct a review of the following policies, in light of the observations and recommendations made as a consequence of this review:
 - Disclosure of Interests Policy and Guidelines
 - Conflict of Interest Tool Kit
 - Gifts and Benefits Policy and Guidelines
 - Fraud and Corruption Control Policy
 - Fraud and Corruption Control Plan
 - Fraud and Corruption Reporting Procedure
 - Disclosure of Interests (eForm)
 - Procurement Tier fact sheets

Red flags in procurement

As I have said, government procurement activities are universally recognised to be a high integrity risk activity. There are a number of 'red flags' in procurement which might indicate wrongdoing. The Independent Broad-based Anti-Corruption Commission in Victoria helpfully summarised those red-flags as follows:

- tender specifications written to favour a particular supplier
- frequent use of exemptions, contract extensions, and quicker procurement processes to avoid competitive processes
- undeclared connections, relationships or interests with, and the acceptance of gifts and benefits from suppliers
- incorrect paperwork, incomplete records and minimalistic selection reports
- inadequate segregation of duties allowing a single person to request, award and pay for a service
- varying contracts after award to well over the procurement tier threshold, or to expand supply outside of the initial scope
- invoice splitting to avoid open process or to accommodate an individual's financial delegation limit.⁶

With those red flags in mind, I turn now to the feedback received from suppliers during the course of this review.

Supplier feedback

Disappointingly, very few suppliers were willing to offer responses. While not all suppliers indicated why they were unwilling, at least two suppliers stated to the review team that offering a response might compromise their prospects of securing further government work. That is a view shared by other suppliers who did contribute to the review.

Suppliers raised a number of concerns, including:

- the improper dissemination of confidential information in respect of their bid for work or the procurement process generally
- favouritism of particular suppliers by particular procurement officers / decision makers
- quoting well below anticipated cost in order to secure work, on the anticipation of being able to secure additional payments through contract variations
- a perception that raising concerns about procurement processes will adversely affect a supplier's prospects of obtaining further work (a view echoed by those not willing to provide a response).

I emphasise that the majority of suppliers who did provide responses during the review stated that they had unsuccessfully tendered or quoted for work. As such it is possible that their feedback was coloured by those experiences. Nevertheless, the responses are consistent with responses to a recent public sector procurement survey conducted by the South Australian Independent Commission Against Corruption.

In the South Australian survey, 'one in four suppliers (24.7%) believed that corruption is a major or moderate problem'⁷. Moreover, '[a] third of supplier stated that they had decided not to bid or quote for a contract due to concerns about corruption or impropriety in public sector procurement.'⁸

Supplier feedback ought to be taken seriously and I urge the Department to engage further with suppliers as to how their collective concerns can be addressed.

As it happens, many of the issues raised by suppliers during this review are supported by other information obtained, as will be detailed below.

⁶ Independent Broad-based Anti-corruption Commission (2015) *The red flags of corruption: Procurement* [factsheet] <https://www.ibac.vic.gov.au/publications-and-resources/article/red-flags-of-corruption-procurement>.

⁷ Independent Commissioner Against Corruption South Australia (2023) *Public Sector Procurement* p11 https://www.icac.sa.gov.au/_data/assets/pdf_file/0010/936262/Public-Sector-Procurement-report.pdfhttps://www.icac.sa.gov.au/_data/assets/pdf_file/0010/936262/Public-Sector-Procurement-report.pdf.

⁸ Ibid p12.

Overarching themes

I set out what I consider to be the overarching themes emerging from the review, and which I will explain in more detail in this report.

1. Managing conflicts of interest in respect of procurement activities
2. Procurement tier splitting
3. Adherence to procurement rules, variations and extensions
4. Panel Assessments, Shortlisting and Delegations
5. Recordkeeping
6. Training
7. Internal audit and policy review

I will address each in turn.

Conflicts of Interest

Unsurprisingly, the identification, disclosure and management of conflicts of interest was a prominent theme to emerge in this review. I have commented publicly about the critical importance of effective conflict of interest management, particularly given the small population in the Northern Territory.

The DIPL Disclosure of Interests Policy and Guidelines quite properly places the responsibility for identifying and disclosing conflicts of interest on employees. It is incumbent upon an employee to take reasonable steps to prevent, avoid, and manage conflicts of interest. I think that is appropriate.

However, managers appear to have little responsibility to actively monitor and manage compliance with the policy and guidelines. Guiding documents ought to be reviewed to establish the responsibility to be imposed upon managers, at all levels, in respect of monitoring and managing compliance with conflict of interest policies.

Regular disclosures of interests

Moreover, while the Chief Executive Officer and Executive Contract Officers have a documented obligation to disclose interests on an annual basis, all other employees are not so obliged. Rather, the policy provides that other staff 'should' disclose an identified conflict of interest and that they 'should' be reminded to do so annually.

Requiring all staff to disclose, as soon as reasonably practicable, an identified actual or perceived conflict of interest, is essential. So too is the need for staff to make such declarations on a routine basis. Doing so ensures that staff must consider their interests, and turn their mind to potential conflicts. Interests may change over time. As such, the requirement to submit an annual declaration reinforces the need to continually monitor personal interests and consider how they might conflict with official duties.

Annual declarations allow for managers and the executive to identify potential conflicts that might arise in the future, and take active steps to address those risks before they crystallise.

For all of these reasons, and in light of the significant harm that can arise where conflicts of interest are not properly managed in procurement processes, I make the following recommendation.

Recommendation 1

I recommend that the Chief Executive Officer cause relevant DIPL policies and procedures to be amended to require all staff to complete an annual disclosure of interests, including actual and perceived conflicts of interest, and potential conflicts of interest that might arise in the future owing to existing personal interests.

Inconsistencies in guidance

It was observed that the DIPL Disclosure of Interests Policy and Guideline, Conflict of Interest Toolkit and disclosure forms do not appear to align with other communicated expectations. There were some identified inconsistencies in respect of the content of the guiding documents. Those inconsistencies are addressed in the presentation slides and it is not necessary to repeat them here.

It is sufficient to set out my recommendation.

Recommendation 2

I recommend that DIPL review its policies, guidelines, form and other directions to staff in respect of conflicts of interest to ensure that they are consistent, and clearly define responsibilities of staff, supervisors and delegates.

Conflict of Interest management and visibility

Where a conflict of interest has been disclosed, it is essential to ensure that that conflict is effectively managed.

In the material considered during the review, three instances were identified where a staff member who had disclosed a conflict of interest with construction companies was able to directly engage with businesses with which there was a conflict and award work. As the engagements required an exemption the supervisor, with supposed responsibility for the management of the conflict, approved the exemption recommendation. The total value of those awards was \$468,118.

DIPL advised that the Governance and Executive Services team assess the conflict of interests declared through a procurement process. Employees are asked to complete a disclosure form and, if a declared conflict of interest is determined to be of an ongoing nature, the employee is asked to complete the online declaration. However, it is not clear how the assessment of the initial declaration related to the procurement activity is documented and the extent to which local managers and supervisors, who have relevant on the ground knowledge, are consulted on the assessment. Nor is it clear how a manager or supervisor would be able to identify and access conflicts of interest declarations previously made by staff within their line of responsibility. It is important that such access is available, in order for those individuals to actively manage conflict risks on a day to day basis.

It is important that local managers and supervisors have a role in assessing conflicts of interest identified by their staff. Not only do they have a day to day responsibility for managing their staff, their local knowledge may be of particular relevance to assessments of conflicts of interest, particularly where the manager or supervisor is aware of information that may be relevant to the disclosure.

I make the following recommendation.

Recommendation 3

I recommend that DIPL update its central repository of conflicts of interests and procurement declarations, in order that managers and supervisors can access and review declarations made by their staff.

Recommendation 4

I further recommend that DIPL's assessment process for declared conflicts of interest, including procurement specific declarations, be amended to include consultation with the declarant's manager or supervisor.

Provision of tender documents

In the course of the review we considered 20 tender processes. In 18 of those 20 processes, procurement documentation, including tender responses, were provided to panel members before conflict disclosure forms were completed.

While panel members ought to be advised of the name of tenderers in order to permit a consideration of potential responses, it is inappropriate for panel members to be provided the whole of the tender responses before a conflict of interest disclosure form is completed.

Recommendation 5

I recommend that the Chief Executive Officer cause a memorandum to be circulated to all staff reminding them that tender responses are not to be provided to panel members until each panel member has completed a conflict of interest declaration and confidentiality form, and any declared conflicts have been properly assessed and managed as necessary.

Recommendation 6

I further recommend that the requirement to assess and manage conflicts of interest before the circulation of tender responses be embedded in relevant procurement policies and procedures.

Conflict of Interest training

Conflict of interest training is reported to be a part of the DIPL induction for new staff. Submissions to the review indicated that training on conflicts of interest was not consistently delivered. While some staff indicated a strong focus on conflicts of interest, other indicated that they had received little, if any, training on the topic.

While we were advised that conflict of interest training is mandatory, it was unclear who was responsible for ensuring such training was undertaken and how failures to complete training was addressed.

The risks associated with failing to properly identify, disclose and manage conflicts of interest in procurement are significant. Ongoing reinforcement is essential. To that end, frequent training, and refresher training, is vital.

Recommendation 7

I recommend that DIPL establish a system for monitoring and ensuring compliance with mandatory conflict of interest training, and that the identification, disclosure and management of conflicts of interest feature in mandatory yearly refresher training.

My office and I would be pleased to work with your Department in terms of the development and delivery of refresher training.

Gifts and Benefits

The provision of gifts and benefits can be used to establish rapport with procurement decision makers with a view to influencing procurement decisions in favour of the provider. The offer, and acceptance, of gifts, benefits and hospitality can not only influence decision makers, but can lead to perceived conflicts of interest that become difficult to manage.

Of course, engagement with industry is a core feature of government work and that engagement will take many forms. On occasion, such engagement will involve the provision of hospitality, and such occasions ought not create difficulty, **provided** the hospitality is a part of an activity that advances the public interest, not an individual's private interests.

During the review we identified some anomalies in respect of gifts and benefits reporting requirements. They were explained during the presentation and are addressed in the attachments.

There are three matters that I will address here.

The first relates to declaring gifts and benefits offered, even if not accepted. As I have said, the offer of gifts and benefits may be a tactic used to ingratiate a supplier to a decision maker, thereby influencing that decision maker to make favourable decisions. It is therefore important to know whether a particular supplier, or particular suppliers, have and are engaging in a practice of regularly offering gifts and benefits to staff. That is so even if such gifts and benefits are declined.

By requiring such declarations, and placing those declarations on a central register, areas of particular risk, or suppliers who have a tendency to offer gifts and benefits, can be identified and appropriate action can be taken.

It is also important for declarations to be properly scrutinised to ensure that gifts and benefits that have been received have their value recorded and that managers and supervisors can give instruction as to the return of gifts or benefits where their acceptance is not appropriate, and that compliance with that instruction can be verified.

Recommendation 8

I recommend that DIPL introduce changes to the gifts and benefits declaration process to require:

- a. The declaration of all gifts and benefits offered, whether or not the gift or benefit was received**
- b. Establish a central register of gifts and benefits declarations, accessible by managers and delegates, in order to identify trends and particular points of risk**
- c. Establish mandatory fields in any declaration requiring the value of any gift or benefit to be included**
- d. Empower managers and supervisors to verify that compliance with a direction to decline a gift or benefit, or return a gift or benefit, has occurred.**

Procurement tier splitting

Value for Territory Audit Number 2 recommended that proper analysis of the transactions be carried out to identify transactions that could be combined under one contract and carried out under the relevant procurement tier. That recommendation was closed in the *Value for Territory Audit Number 6 (1 January to 31 December 2021)* after 'no issues noted in the current audit year'⁹.

During the review we identified three instances of what appeared to be tier splitting to circumvent tier 2 procurement requirements. Those instances are outlined in more detail in the annexures.

It is critical that procurements are not manipulated to avoid the requisite scrutiny imposed by reference to procurement tiers. Such conduct, as well as invoice splitting, is a significant red flag for impropriety.

Recommendation 9

I recommend that the Chief Executive Officer reinforce to all staff that there is no circumstance where tier splitting, or invoice splitting, is appropriate, and that instances of such splitting will be carefully scrutinised.

Adherence to procurement rules, variations and extensions

The selection of an appropriate procurement tier is informed by the expected value of the goods or service(s). Existing volatility in supply chains, commodity prices and economic factors are impacting upon the capacity to accurately predict expected value, even by experts.

⁹ Department of Infrastructure, Planning and Logistics (2022) *Value of Territory Audit No. 6* [Internal Audit] p39.

Noting those inherent challenges, a DIPL Project Management Office Expert Focus Group proposed the creation of documented guidance to assist staff in determining estimates for goods and services. It does not appear that that proposal has been actioned.

Of course, estimates may also be inaccurate as a consequence of poor planning, and poor attention to detail at the scoping stage. In that regard, I appreciate the challenges that are occasioned when it is the client agency, rather than DIPL, that seek to change the scope of a procurement at different points in the process. Nevertheless, poor planning can result in circumstances where contract variations are required, which can compromise value for public money and otherwise impact upon the openness and competitiveness of the procurement process itself.

Planning and scoping is a fundamental part of the procurement process. Accurately identifying the goods and services required and accurately determining the expected value of those goods and services, supports the proper alignment to procurement tiers and consequential rules and guidelines.

Deficiencies in planning can result in a number of adverse consequences, including:

- The need for one or multiple contract variations
- Tender submissions received that fall outside of the anticipated procurement tier
- Cost overruns and contract extensions
- The inability to effectively manage a contract in light of its ambiguous scope

Feedback received during the review identified the following issues:

- The perception that overly specific requirements in scope was substantially limiting who could tender
- 'copy and paste' scopes from one procurement to another, without consideration as to the fitness of that scope to the extant procurement
- Incorrect documentation used by reason of adopting the wrong procurement tier
- The quality of the scope directly connected to the experience of the project manager and their technical expertise.

Contract variations and extensions

During the course of the review a number of contract variations were analysed. In some cases, there was no, or inadequate, explanation for the variation. In two cases, the explanation was 'time constraints'.

There were six instances identified where a contract was extended for a period of 6 to 13 months. Occasions were identified where contracts were extended on multiple occasions. Reasons provided were 'Time to Advertise'.

Ongoing review and assessment of contract variations and extensions will assist the department to identify trends, issues, and weaknesses in process and training. Accordingly I make the following recommendation:

Recommendation 10

I recommend that DIPL incorporate into its internal audit program the routine review of contract variations and extensions in order to identify anomalies, trends and weaknesses in process and training, and to develop appropriate responses to internal audit findings.

Panel Assessments, Shortlisting and Delegations

Independent assessments by tender panel members

Members of procurement panels are entrusted with a significant responsibility. Panels are responsible for applying weighted assessment criteria to identify and recommend the most suitable tenderer. In order to come to the best recommendation, it is an essential feature of the panel process that each panel member first independently assess tender responses against weighted criteria, before coming together to share and compare each panel member's assessment.

During the course of the review 6 instances were identified where each tender panel member may not have independently assessed tender responses. In one instances, purported independent assessment documents were largely identical between all panel members.

Such apparent lack of independent assessment tends to undermine the very purpose of the panel process.

Recommendation 11

I recommend that the Chief Executive Officer remind all staff involved in procurement panels of the requirement to independently assess tender responses before discussing a consensus view with other panel members, and that this requirement be embedded in relevant guidance to panel members.

Shortlisting

Shortlisting is applied to some tender processes, wherein Procurement Operations and Delivery Team staff will assess and remove tender applications from panel consideration, on the basis that they do not meet the requirements of the application process.

I understand that this shortlisting process is generally supported by industry.

However, the process itself is not without risk.

For example:

- The process applied in shortlisting is not publicly available. Nor is the detailed criterion against which tender submissions are assessed during the shortlisting process.
- There does not appear to be a documented requirement in respect of declaring a conflict of interest by the staff member conducting the shortlisting, and this process appears to be largely self-managed in accordance with the Disclosure of Interests Policy and Guidelines.
- The shortlisting form requires an assessment of the perceived capacity of a tenderer, but it is not clear how that assessment is to be performed and what information is relied upon to make that assessment. Given capacity is often a weighted criteria for assessment by panel members, it is unclear why this might be left to a single individual to determine at the shortlisting stage.

Assuming shortlisting is an accepted process that advances the public interest, that process ought to be more clearly defined and tenderers should know, through publicly available information, how that process is conducted.

Recommendation 12

I recommend that the process of shortlisting tender responses before consideration by a tender panel be captured in a document that is publicly available, and include the detailed criterion applied in shortlisting and the information that might be relied upon during the shortlisting process.

Recommendation 13

I further recommend that consideration be given to the matters against which tenders are shortlisted in order to determine whether all, or some, of those matters are better left with the tender assessment panel.

Delegations

Delegates are empowered to make a range of decisions, such as approving panel members to take part in a procurement assessment, the award of a tender, exemptions to procurement rules and variations to contract.

During the course of the review we identified a number of occasions where delegates purported to make decisions outside of their delegation. In particular, numerous examples were identified where delegates had approved contract variations beyond their delegations. In many cases the reasons for those decisions were poorly documented or as a result of a poor understanding of delegations and their limitations.

Such behaviour is a red flag for impropriety and must be addressed.

Additional clarity ought to be provided in respect of the importance of staying within delegated limits and that clarity should be accompanied by routine audits to identify failures to comply.

Recommendation 14

I recommend that the Chief Executive Officer remind staff that delegated limits must be respected and that there is no excuse for acting beyond delegations.

Recommendation 15

I further recommend that DIPL establish a system of routine audit to ensure delegated decision makers stay with their delegations.

Recordkeeping

I have already spoken, albeit indirectly, about some identified weakness in record keeping.

As a general observation, we found that direction on record keeping was inconsistent. We identified inconsistent naming conventions applied on records systems, inconsistencies in understood requirements for record keeping and, in some cases, an apparent absence of record keeping requirements.

Within the Katherine office there were multiple approaches to record keeping. Some staff used network drives exclusively, while other retained records on work email accounts. Others still were highly engaged on the use of the TRM system.

Staff offered a range of responses to record keeping, including:

- Records management is not 'their job' and that other staff should be responsible for records
- Difficulty in using the TRM system, resulting in staff reverting to other systems, such as network drives
- Training on the TRM system had not been provided, or had been provided so long ago that staff no longer had confidence in using the system
- A lack of understanding of what constitutes an official record and record keeping obligations
- Lack of consequences for not using the TRM system, resulting in staff determining for themselves how to maintain records.

A number of examples of inadequate record keeping were identified and referenced in the annexures. They need not be repeated here.

Importantly, procurement fact sheets themselves were unclear as to record keeping responsibilities.

For example, Tier 3 factsheets makes no reference to record keeping obligations, while Tier 4 and 5 factsheets state that TRM 'should' be used.

It is important that the department develop a clear and consistent approach to records management. This includes both the obligation to create and store records, and the approved systems for such storage. Once clear and consistent policies, procedures and guidelines have been developed, an appropriate training and dissemination strategy should be implemented so that all staff have clarity as to what is required. Of course, adherence to those processes should be reviewed and addressed as required.

Recommendation 16

I recommend that DIPL review and update its policies and procedures to ensure a clear and consistent approach to the creation, management and storage of records required for procurement processes, and to support those updated policies and procedures with appropriate training.

Training

A common response to assertions that an individual has departed from proper process is that that individual had not received appropriate or adequate training. Providing appropriate training, and ensuring that training is undertaken as required, is an important part of ensuring integrity in public administration.

There is an abundance of training developed, or at least available, to DIPL staff in respect of procurement.

That is to be applauded.

The DIPL intranet contains helpful instructional presentations on the procurement life cycle and the processes to be followed. However, viewing these presentations does not appear to be a requirement.

The Northern Territory Government e-learning platform offers six procurement modules, all of which are most informative.

However, I understand that participating in those modules is not mandatory, except for staff within the Procurement Operations and Delivery Team.

In all, we identified that only 10% of DIPL staff had completed the online procurement modules.

Of particular relevance, only 16% of staff in the Katherine office who had participated in a procurement panel had completed the modules (as at January 2022).

It does not appear that consultants engaged to sit on panels are required to undertake the modules, or indeed any training at all.

Recommendation 17

I recommend that DIPL expand the requirement to undertake online procurement training modules, as available on the Northern Territory Government e-learning platform, to any staff member who sits on a tender assessment panel, or who has a role to play in respect of public procurement activities. That requirement is to apply to a contractor or consultant who is engaged to sit on a tender assessment panel.

Internal Audit and Policy Review

Internal Audit

In 2020, the Western Australian Joint Standing Committee on the Corruption and Crime Commission published a report: Red Flags...red faces: Corruptions risks in public procurement in Western Australia.

The report made the following important point:

Evidence shows that despite recent discoveries of fraud and corruption in areas of the public sector, internal audit does not receive the attention it deserves at the senior government level.¹⁰

The corruption and improper conduct risks that we have identified in this review are not dissimilar to risks identified by DIPL internal audit processes. Such risks include the disclosure and management of conflicts of interest, the over reliance upon contract variations and compliance with procurement rules.

Internal audit processes are only effective if their findings and recommendations are taken seriously and implemented.

While I do not propose to make a recommendation in that regard, it is important for all government agencies to take stock of the important lessons to be learned from internal auditing processes.

¹⁰Joint Standing Committee of the Corruption and Crime Commissioner (2020) *Report 14 Red flags...red faces: Corruption risk in public procurement in Western Australia* p77.

Policy Review

As a consequence of this review and the observations made within this report, and the accompanying annexures, a number of policy documents would benefit from review.

Recommendation 18

I recommend that DIPL conduct a review of the following policies, in light of the observations and recommendations made as a consequence of this review:

- Disclosure of Interests Policy and Guidelines
- Conflict of Interest Tool Kit
- Gifts and Benefits Policy and Guidelines
- Fraud and Corruption Control Policy
- Fraud and Corruption Control Plan
- Fraud and Corruption Reporting Procedure
- Disclosure of Interests (eForm)
- Procurement Tier fact sheets

Response to recommendations

I am pleased to have received in principle support for all of the recommendations by the Acting Chief Executive Officer. However, I now request confirmation as to your, and DIPL's, position in respect of each of the recommendations I have made.

I propose to incorporate your response to the recommendations in my General Report to Parliament. I will also incorporate reference to any progress that has already been made on the recommendations.

In accordance with section 57(1) of the ICAC Act, I request that you provide me with written notice, within 21 days of the date of this report, on the steps taken, or proposed to be taken to implement the 18 recommendations I have made.

Acknowledgements

Once again I acknowledge the cooperation and assistance given by you, the Acting Chief Executive Officer and DIPL staff.

I take this opportunity to record my appreciation for the efforts of Ms Anna Collins and Mr Orlando Gollop, both employees of my office, for their efforts. This review has been conducted largely as a result of their efforts.

Yours sincerely



Michael Riches
Independent Commissioner Against Corruption

16 October 2023