



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: ACT government procurement)

Members:

**MS C LE COUTEUR (The Chair)
MR B SMYTH (The Deputy Chair)
MR J HARGREAVES**

TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 30 MARCH 2010

**Secretary to the committee:
Mr D Abbott (Ph: 6205 0443)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Committee Office of the Legislative Assembly (Ph: 6205 0127).

WITNESSES

DUNDAS, MS ROSLYN , Director, ACT Council of Social Service	65
EVANS, MR DAVID , Acting Director, Infrastructure Procurement Group, Procurement Solutions, Shared Services, Department of Territory and Municipal Services.....	47
HARDY, MS ROBYN , Executive Director, Procurement Solutions, Shared Services, Department of Territory and Municipal Services.....	47
VIGOR, MS CATRIONA , Acting Director, Goods and Services Procurement and Policy Group, Procurement Solutions, Shared Services, Department of Territory and Municipal Services	47

Privilege statement

The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings.

All witnesses making submissions or giving evidence to an Assembly committee are protected by parliamentary privilege.

“Parliamentary privilege” means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution. Witnesses must tell the truth, and giving false or misleading evidence will be treated as a serious matter.

While the committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

Amended 21 January 2009

The committee met at 2.33 pm.

HARDY, MS ROBYN, Executive Director, Procurement Solutions, Shared Services, Department of Territory and Municipal Services

EVANS, MR DAVID, Acting Director, Infrastructure Procurement Group, Procurement Solutions, Shared Services, Department of Territory and Municipal Services

VIGOR, MS CATRIONA, Acting Director, Goods and Services Procurement and Policy Group, Procurement Solutions, Shared Services, Department of Territory and Municipal Services

THE CHAIR: Welcome to this public hearing of the public accounts committee. The topic of today's hearing is our inquiry into procurement. Today, we are very pleased to have as witnesses representatives of the Department of Territory and Municipal Services: Ms Vigor, Ms Hardy and Mr Evans. Thank you very much for coming. You all have, I believe, copies of the privilege statement. If you would like, I will read it to you, but I would tend to assume that you have all read it. Are you all happy with it?

Ms Hardy: Yes, thank you.

THE CHAIR: Before we begin asking questions, do you have an opening statement that you wish to make?

Ms Hardy: No.

THE CHAIR: I thought that might be the case, given that we do have a government submission, which I guess really qualifies as your opening statement. I might start off with management of risk, which we could probably spend a few weeks talking about. How do you do that, and, specifically, what risks are you looking at managing?

Ms Hardy: Management of risk commences at an early stage of a project or procurement, even in basically the identification of what it is that you are going to buy, build or purchase. There is a more general discussion rather than a focused discussion on just risk. You begin to consider elements of cost and time and those kinds of things, and then it becomes more formalised in a procurement plan.

In the procurement plan template—and it is a template document—there is a formal risk plan that a procurement officer drafts in consultation with the counterpart officer of an agency. That is Australian standard documentation. It considers all kinds of risk. It is risk in the project definition stage, it is risk in the procurement and tendering stage. It can be risk in relation to the contract management stage or the construction phase—all the way through.

The plan is drafted, as it were, in those kinds of phases, and then there is consideration of the level of risk and mitigation of it. Some risks can be mitigated and others cannot, and therefore they are accepted or not, depending on the client agency. It is the client agency's risk plan, as it were. The delegate in the agency whose project it is actually signs off on the procurement plan, which includes things like the risk plan and evaluation plan et cetera. So that is at the procurement stage.

If we go on further, the risk plan then forms a guide that gets cascaded through. If we talk about a goods and services project, for instance, what would happen then is that the officers on both sides would undertake the tendering and they would look to the risks during the tendering phase and manage them as appropriate. Then, when the contract is formed, for instance, if it identified a certain risk that needed to be articulated or mitigated through contractual elements, that would be put into the contract. The contract would then be handed over to the client agency and that client agency would then have a contract management plan and use that risk plan to form that sort of thing. They would then manage those risks on through the management phase of the contract.

It is a much more detailed process when it comes down to capital works, because, as you can imagine, risks are cascaded through not only the management of them, which is done by Procurement Solutions and also by the agency and the contractor firms themselves. So they have all kinds of management mechanisms which go to risk. It might be, for instance, environmental risks in doing a road, for example. So there will be an environmental management plan there. There could be issues relating to water run-off and all that kind of stuff. That will be articulated and managed. And it will be discussed regularly as part of a PCG, a regular PCG, and they will go through—

MR HARGREAVES: For the record, could you say what PCG stands for, please?

Ms Hardy: Project control group. That is probably fortnightly, depending on the project. Sometimes it might be more frequently. They will then address those risks at the project meeting and say, “Okay, everything’s fine here,” or “We had an issue the other day.” It might have been, say, an OH&S issue: “We had an issue the other day and this is what was done.” So on a construction project, as you can imagine, there are whole numbers of risks like environmental risks, budget risks, time risks, there could be safety things. They are all covered by plans, and then managed and talked about in the process of managing the project.

MR SMYTH: Just on risk, as part of that, what is the quality assurance process inside Procurement ACT? Do you have a process of continuous improvement where you take back the feedback from unsuccessful tenderers, and how do you turn that into a better system?

Ms Hardy: Yes. Because we are a fully third-party quality assured organisation, continuous improvement is part of that. We do have a process of debriefing tenderers about their tenders. That is more a process to give them feedback about how they went. We have a different kind of process, which is broader than a single project, which is Procurement Solutions engaging with stakeholder organisations like the Master Builders Association, the Civil Contractors Association, AIIA—I forget what that is.

Ms Vigor: Information Industry Association.

Ms Hardy: Thank you—as well as the Canberra Business Council and various other peak bodies which we meet with quarterly and sometimes more regularly to discuss how we do business, and also to get feedback on our documentation et cetera. We have got a number of processes ongoing with the AIIA in relation to our contractual

form which we use for IT. We have got a number of consultations going on with the construction industry about our new redrafted project management agreement, our managing contractor agreement.

The civil contractors and the consultants have done a piece of work on our documentation. It is more about how we specify how documents ought to be presented, and that is a piece of work that the civil contractors have been asking to be done for some time. Recently we asked a couple of members of industry to do that on our behalf, and they have done that. So there is a constant flow of information between the two groups, industry and ourselves.

MR SMYTH: Can you outline, for instance, an example of how you have improved the process based on commentary back from those that use the system?

Ms Hardy: Yes. David could probably answer some of that.

Mr Evans: A key part of the system, as part of our certification against Australian standard, is a series of internal audits and external audits. That means we have a small audit team that review what project officers actually do with regard to individual procurements and delivery of those procurements. We also have an external auditor that comes in and does a review of the system that is operating as well as individual projects that are delivered as part of that system.

This information feeds into a management review meeting which our system requires us to have. So we have an internal management review of the findings of those audits, and that leads into our continuous quality improvement system, which is working out how to do things better and responding to our clients' needs and changing the way we do business. So the QA system is very much a living system. It is not necessarily the way the system was when it was originally approved in 2000 or whenever it initially came into existence. It is one that keeps changing and that looks quite different today than it did in previous years.

Ms Vigor: I would like to give another example of feedback from industry and how we have adjusted our processes and practices. From a workshop we had with ICT companies late last year, we went through different statements of requirements that they brought to show us, some of which had been used in other jurisdictions. We also tabled quite a wide selection of ones we have used in the ACT. We went through with that sample of companies how we might improve the statements of requirements and improve the selection criteria. We came out of that half-day workshop with about 10 key areas in which we were going to improve things. I would be happy to table a list of some of those improvements.

MR SMYTH: Sure. Can you perhaps outline, for instance, just one of those improvements and how that actually works? I am more interested in how it has improved the system.

Ms Vigor: Okay, they are fairly broad. One of those is that, in at least one example, we had asked for some audited financial statements from small businesses when they were submitting their tender. It was pointed out to us that that is a fairly burdensome thing to do, so we have changed that in future tenders. We are not putting in that

requirement up front. We are thinking very carefully about whether to put that requirement on to the preferred tenderer once we have selected the preferred tenderer. Basically, we are looking at ways in which we can reduce the impact of some of the things we do on businesses.

Other examples were having a response sheet instead of leaving it up to industry to decide how they are going to address the selection criteria—make it very clear that you need to fill in answers to these questions and provide us with this much information. They are relatively simple things but they add up to making life easier for the people who are tendering and dealing with us. When issues come up in a debrief or after our tender process and someone wants to lodge a complaint, we make sure that those concerns are looked at and addressed as well.

MR SMYTH: I do not know if you read the *Hansard* from the community groups day at estimates last year, but the Business Council—I think it was the Business Council—said it was easier to do business with the US Department of Defence than it was to do it with the ACT government. I do not know whether it is just a mindset in people’s minds, but a lot of people tell me that they just do not bother bidding for jobs with the ACT government anymore. Is the process that you have here in the ACT any more onerous than in other jurisdictions—the federal government or others?

Ms Hardy: I will answer that. No, it is not. In fact, I sit on the leadership group for the Australian Procurement and Construction Council and, quite frankly, our systems are quite similar. Some of the states, because they are not doing municipal kind of functions, tend to do much larger procurements, I think, and probably are engaging with larger businesses. However, that does not mean to say they are not using the same kind of processes. In fact, when we did our review of prequalification, we found that we sort of sat in the middle of an “onerousness” of processes that we had, if that is a word. New South Wales and Queensland probably had the highest bars in terms of what they required contractors to meet.

MR SMYTH: So, if we are in the middle of the onerousness level, how do we get to the lower segment, and what are your plans to make it more easy for people to deal with the government?

Ms Hardy: I am not sure whether we should be aiming to be at the lowest level. It is basically a case of ensuring that we manage risk to the territory in terms of the money that we are helping to manage and the people that we are engaging to undertake work and supply to us. That being said, we have engaged quite recently through the AIIA network and the Business Council. We conducted a forum the other evening which commenced, we think, a really good relationship with both of those organisations and discussions about how small business might engage with us.

Small businesses engage with the territory often as subcontractors to other head contractors because, other than consultancy services, we do not often buy the kinds of services that very small and micro-businesses actually supply. But there still are, certainly in the IT range, lots of small businesses that could be potential suppliers. The recent moves by InTACT to put in place panel arrangements for consultant services and supplies have actually been able to open the market, I think, probably to a broader range. I believe the information industry are reasonably satisfied with that,

or that is the feedback we have got from them.

Ms Vigor: We also have a tendering guide that back in those dark days that you mentioned we did not have. It is on the homepage of our website and it goes into quite some detail, making our processes very transparent. In fact, I think we are more transparent than a number of places I have worked in in the past in the commonwealth. With public tenders, we publish the draft terms of those tenders for comment and we take the feedback in before we then produce the final version for companies to respond to. That is just one example, and there are many other examples, of where we are a lot more transparent in what we do than, I think, other agencies.

MR HARGREAVES: I just want to go back to the management of risk again for a minute. I am interested in how much weight you give risk in the overall decision-making process. Who decides on whether to carry the risk or not? I presume that financial viability, probity and all that sort of thing are the sorts of things that you would advise your client agency about, but who actually in the final analysis carries that risk? Who is the decision maker in that? And also in terms of prequalification for firms to actually register with you, what weighting does your risk analysis take on the determination of whether somebody is successful in being on the list of prequalified firms? Is that clear, the questions, Robyn?

Ms Hardy: Yes. I can answer it in probably examples of how things are done. The weighting, as you say, is not done as nine out of 10. A risky procurement might be one, for instance, that is risky in terms of time pressure; it might be risky in terms of budget because the market may be uncertain at the time. We would advise that and that would be articulated in the risk plan.

As for insurance, we have principal-arranged insurance of our works, so in a sense some of the risk is taken on by the territory in terms of that. But it will be the executive of the agency whose procurement it is who essentially makes the decision that, “Yes, we will go ahead with that procurement in that risky time frame or with that uncertain budget.” So it is the chief executive who makes that decision based on our and other advice. They will seek advice from all kinds of advisers. The Government Solicitor might be providing advice. If it is contractual risk, it might be the Insurance Authority that might be providing advice. Procurement might be providing advice et cetera.

MR HARGREAVES: Okay. You said something a moment ago that sparked my interest. You talked about the risk in terms of the procurement going ahead, the risk to the territory, I guess, of what would happen in the event of a procurement going ahead—whether it is goods or services, whether it is capital works, it does not matter. But also there is the risk of engaging a firm, a company—whether that company is likely to go belly-up, whether it has a bad record of payment of its subcontractors, whether it has a bad record of payment to the territory for things other than to do with that particular contract. I imagine that there would be a number of companies who would have a contract over here with the territory and end up for another contract somewhere else and the performance of that contract would have a bearing on whether they get the second one, presumably—

Ms Hardy: Yes.

MR HARGREAVES: and that is in your risk analysis, I would imagine. Am I right?

Ms Hardy: Yes, I will answer from the beginning. The prequalification process was instigated a number of years ago through the Australian Procurement and Construction Council, Australia-wide, basically in response to issues which were about companies going into liquidation, poor quality et cetera. Each state has some kind of a prequalification process, but mostly for construction. It is mostly around construction. We cover some other things, like weed spraying, school cleaning and those kinds of things. We cover a few other things in the ACT.

But under construction there are a number of things that are assessed when someone comes to seek prequalification. Depending on what they want to be prequalified to be or at a certain level, they are asked for their financials for a number of years, audited financials if they have them. Those financials are then sent off to a third party assessor who assesses them according to a set number of criteria, which assess basically their financial viability and their fluidity et cetera. They look at age, debtors—those kinds of things—to see how the company is travelling. That is an annual process. We ask for documentation about their insurances. We also ask for the qualifications of their key personnel in there because for certain categories of prequal you have to have certain qualifications—an A-class builders licence or those kinds of things.

We ask them for their record of performance, so they have to give us examples of projects and the value of the projects that they have completed and value of projects that they have on foot, for instance. They also have to have things like occupational health and safety systems. They are asked whether or not they have second or third-party quality assurance systems, and they include environmental systems, those kinds of things. In the ACT we accept both third and second-party assured. So they are the kinds of things that are assessed and there are documents there on our website. Basically they have to fill in a form. They come into my prequalification area to be assessed. If they have incomplete information, basically they will be asked to submit it or the application will not be continued on with. If their financials are found to be lower than 50 per cent, we may actually have a—

MR HARGREAVES: What do you mean by lower than 50 per cent?

THE CHAIR: Do you mean they are more than 50 per cent cheaper than someone else? Is that what that means?

Ms Hardy: What the third party assessors actually do is provide us with a rating, almost a percentage rating, of how viable they believe that they are. They could come with a 98 per cent—really good for a project value of \$50 million, say, and that means it is obviously a really large company that has really large assets, net tangible assets, excellent turnover and very good financial criteria. But for some reason there may be one of the financial criteria which might be lowering that percentage rate. In that particular case, we might sit down and have a conversation with them about that. Sometimes we might ask them for guarantees from their parent companies, because we often get applications for prequalification from subordinate companies within a chain and we might ask for a guarantee from the parent. That is how basically we assess those applications in terms of a risk profile.

Ms Vigor: Just on the goods and services side, we also build into our evaluation methodology and our tendering approach in the goods and services area, in designing those, how we are going to address risk. So we may run an expression of interest process first to look at categories of information or criteria or statements of requirements and whether companies can meet those and then approach a smaller sample of firms to develop more robust bids or pricing for us.

Also we build into our selection criteria and into our statements of requirements, and potentially into our evaluation methodology, where we do financial checks as a part of our evaluation steps. They might include a number of other things, like best and final offers or doing some further checks on whether quality standards are in place and being met by the companies.

So we do, in the goods and services area also, although we make less use of prequalification, put in place arrangements where we are addressing risks identified in the risk plans and panel arrangements, in a sense, largely setting up an arrangement where, if you like, you prequalify companies anyway and then that ongoing contract management allows you to seek quotes or sometimes just seek suppliers off the panel under a prearranged work allocation method. Is that clear?

MR HARGREAVES: Thank you for that. I think that describes the prequalification system quite well. It is very detailed, and I think the committee appreciates that. With respect to single contracts, though, presumably the same process occurs, only it is more specific and it is more targeted. Am I correct in assuming that the same process applied to the waste management contracts at Mugga and at Mitchell that have been in the news lately?

Ms Hardy: I would have to—

MR HARGREAVES: This detailed examination of the viability of companies and all of that?

Ms Hardy: I will answer that. I would have to actually get back to you on the specifics of those specific two projects. But what would normally happen in large procurements is that the risk plans would be in the procurement plan. There would be also ASIC searches done. The other one is a financial viability search as well.

Ms Vigor: And referees.

Ms Hardy: And referees, so there are a number. We do not use prequalification for goods and services.

MR HARGREAVES: No. I know.

Ms Hardy: But we tend to use company search facilities. We have two facilities, the ASIC one and another one, which we use to search on whether or not there are any issues related to those companies.

MR HARGREAVES: What happens then, as I read what you said before, is that you

look at all of this sort of stuff and do a risk analysis on whether the company is big enough, like Thiess with something huge—they can buy South America if they want to—and bang, we can feel comfortable that, at the end of the day, financially they may deliver the thing but then the little ones on it—

Ms Hardy: But—

MR HARGREAVES: Just hang on a tick. What I would like to know is not so much the detail of the contract—my colleagues might want to go down there; I do not—but who accepts the risk. You guys look into it. I just used that one as an example. It could be the delivery of eggs to Canberra Hospital. It really does not matter to me. You look into the viability of the company to deliver the service that your client has asked you to do and then you say, “Right, here’s the picture of risk. Now, this is our advice.” Who carries the can at the end of the day?

Ms Hardy: In the case of respondents to a goods and services tender or a capital works tender, what happens is that an evaluation of those tenders is undertaken. In capital works we may require prequalification and that status has to be recognised in the tenders. An evaluation plan is then written up of all of those tenders responded to and a preferred tender is then selected by the evaluation team.

That report is then sent to the chief executive or the delegate of the agency, whoever that may be. Any risks associated with those tenders that have come in—for instance, it may be that we believe tenderer A is cheaper than tenderer B but tenderer A represents some risk to the territory in terms that we believe that there might be some issues with that tender, so we will have articulated that in the tender evaluation report for the delegate to see. Then a recommendation is made and it is up to the chief executive and the delegate to accept or not the risks that have been articulated in that report.

MR HARGREAVES: So where we are at this particular point is that the chief executive of the client agency is the one that cops the risk and accepts or rejects the risk. What is the role of the Procurement Board in that process then?

Ms Hardy: The Government Procurement Board forms part of the advisory process to the chief executive or the delegate. In large procurements, the procurement plan and sometimes associated documents—often project officers will go along and present to the Government Procurement Board. They are required to go to the Procurement Board for their endorsement and consideration of large projects. The board will often seek information and have a conversation with project officers and agency clients about that procurement. They will discuss risk. They will discuss all kinds of things related to that procurement coming from their own expertise. If they see fit, they will endorse it and, if not, they may ask for amendments to the plan. They might ask for further information. Then a written endorsement or whatever is sent to the project officer and the chief executive and then it goes on. But that is before it is tendered out.

MR HARGREAVES: So the chief executive advises the board of what the agency feels about it.

Ms Hardy: Wants to do.

MR HARGREAVES: And then when they are in agreement the document is signed off.

THE CHAIR: Basically, though, the risk goes to the client agency. You do not bear the—well, I suppose it is all the ACT government but effectively it is the client agency that bears the risk.

Ms Hardy: The risks are apportioned appropriately through the contractual model that is formed in the end. The chief executive will consider risks that are involved in that procurement. However, in a contract risks are assigned either to contractors to manage or to the territory to manage.

THE CHAIR: What about risks which are not assigned? For instance, you are doing a development and you do not expect to find it is a contaminated site. No-one knew there was a sheep dip there, so that risk—

Ms Hardy: That is still covered within the contractual model. A normal AS 2124 lump sum contract has a thing called latent conditions. It is one of those things where, if something you never knew about came up, unfortunately, the territory would wear the cost of that, because you could not possibly apportion that risk over to a contractor because they did not know it was there; you did not know it was there. Someone has to pay for it to be avoided and it can only be the territory, the client.

THE CHAIR: It would be the client part of the territory—not Procurement Solutions but the territory?

Ms Hardy: That is correct.

MR SMYTH: Just following up—

THE CHAIR: Have you got more on that because I have—

MR SMYTH: Yes, just following up on that. If someone was upset or unhappy with the outcome, what would be the concerns and the complaints process?

Ms Hardy: Procurement Solutions advises that the Executive Director of Procurement Solutions is the point of contact for complaints about tender processes. Is that what you mean?

MR SMYTH: Yes.

Ms Hardy: Yes.

MR SMYTH: And if I am unhappy with the outcome and I think something is shonky, what do I do? How do I go about getting a resolution?

Ms Hardy: They can actually come to me to talk to me about it or telephone me or email me, which occasionally people do because they get a perception that something

is strange. Most often than not I am able to explain to them what happened. There is still a perception out there that the lowest price tender is the best value for money. I keep trying to explain to people that value for money does not necessarily mean the lowest price. People can actually come to my position to complain. However, that being said, if that did not give them satisfaction, I am sure they would complain to the minister or the Auditor-General about it.

MR SMYTH: On page 23 of the document you just tabled, which is the concerns and complaints section under “Approach the responsible Territory entity”, it says:

Be aware, however, that unless there are exceptional circumstances or significant legitimate issues raised regarding the procurement process, your concerns are unlikely to change the outcome.

Why would anybody bother approaching the organisation if you have got that statement there—“your concerns are unlikely to change the outcome”?

Ms Hardy: After Procurement Solutions has entered into a contract, it will be entirely difficult to stop a contract to take the person’s complaints into consideration. Stopping a contract is an extreme measure. That is what that is articulating there. What would normally happen is that we would say, “Yes, in this particular process you were unsuccessful. You may have been the cheapest, but in this case it was not considered value for money. We would hope that you would come back and tender for it next time.” It is the issue of actually stopping that contract which would already be in place.

MR SMYTH: Once a successful tenderer is declared, is there a cooling off period before the contract is signed in which people can get their debrief and, if necessary, make a complaint?

Ms Hardy: There is no cooling off period in the same understanding as you would have in a purchase of goods cooling off period, no. Basically, there is only the time that we take in sending out to the preferred supplier letters of intent and letters of acceptance. Following that we conduct debriefs for people who have been unsuccessful. So it may be a very short period of time, in which case we would already be in contract.

MR SMYTH: Is that time frame appropriate then? If it is a closed door because you have already signed the contract—I think we all understand how difficult it is to get out of a contract—is the complaints process then just a farce in that you have got no option because you guys have signed the contract anyway?

Ms Hardy: No, I do not believe so. Probity also goes to the fact that you could not entertain almost second offers, as it were. If everyone put in tenders and then someone got to put in another offer later which was different, because they did not like the process they had undergone, it would be unfair to all the others. So probity would not be served by accepting that kind of approach, as it were. It is very difficult to make sure that you are being fair to everyone who put in. You might have 10 or 15 tenderers in and one person says, “It’s not fair. I was the lowest and I want to have another go at this.” It would be unfair to allow that person to do it because you did not ask or let the other 11 have a go then.

MR SMYTH: So in terms of flow of information, if I am tendering for something and I ask a question and you give me some information that is not in the tender documents, is that information then given to all the other applicants?

Ms Hardy: Absolutely. What happens is that we seek to have that question put to us in writing and it goes out as an addenda to everyone who downloaded the tender, as it were.

THE CHAIR: I am not sure whether you were aware of the public hearing we had with the CFMEU a few weeks ago. One of the things they talked about was compliance issues. They were fairly scathing about the use of statutory declarations to say whether people had been paid. Could you talk to us a bit about how you check that payments are being appropriately made?

Ms Hardy: Procurement Solutions is not a regulatory organisation. We use a number of steps but we also interact with other agencies in the ACT government, such as the Office of Regulatory Services and the Long Service Leave Board. I will give you a number of steps. When tenders are submitted and opened at Procurement Solutions the list of open tenders that you might see on our website and which also goes up on our board is sent to various organisations. It is sent to UnionsACT. It is sent to that list. It is put up on our website. It is also sent to the Long Service Leave Board. It is sent to the Environment and Protection Authority and the Office of Regulatory Services.

That basically gives them an early advice—they can get onto the website and have a look at it anyway—to say these tenderers have submitted for a tender to do work or whatever it is with the ACT government. Following that process, after the tenders are evaluated and a contract is formed, each of the contractual models that we have, which are prepared by the Government Solicitor's Office et cetera, have clauses in them which require compliance with legislation. That manages them when the contract is on foot.

Prior to that, if you are prequalified we require you to have certain systems. We require you to have OH&S plans—all those kinds of things. Our project management agreements, our other agreements, require compliance with legislation and also require that subcontractors are managed in the same way. We ask for assurances generally at start-up meetings and various documents. I might get David to answer that one.

Mr Evans: It can be part of the tender negotiation phase where we talk about industrial relations, compliance with various pieces of legislation and things like the Long Service Leave Board and workers compensation. We might get copies of the certificates of currency and things of that nature. That forms part of the evaluation and in some regards goes to management of risk which we spoke about earlier on.

That is evaluated if we go into contract. We have recently changed our systems where we advise the Office of Regulatory Services and also the Long Service Leave Board on entering into a contract with contractor A. The compliance with those pieces of legislation is really up to those bodies. We advise them that we have entered this

contract and that is in place.

THE CHAIR: So you do not have any ongoing role in monitoring then? The compliance is up to the Long Service Leave Board, the workers comp board et cetera. You check at the beginning that the firm seems to be A-okay and then if it does not continue to be A-okay you are not involved with that?

Ms Hardy: No. We work in concert with them. If issues are raised with us—

Mr Evans: There are two slightly different issues but it goes to the same matter. One is contractual compliance and the other is the regulatory compliance with the piece of legislation. We work with those bodies to ensure they have information so that they can drive the compliance with the acts, the regulation. We look at managing the contract and, if there is a breach of contract, we will take contractual action rather than a regulatory-style action.

THE CHAIR: The contract, I understand, does include things like paying workers and paying subcontractors their entitlements?

Mr Evans: Yes.

Ms Hardy: Yes.

THE CHAIR: How do you monitor that they are actually complying with that? The hub of some of the CFMEU's evidence was around the territory basically being the body that was paying, but the people who did the work ultimately have not all been paid, from what they said.

Mr Evans: I am sorry; I missed that.

THE CHAIR: The territory was paying the money to the principal contractor but ultimately the people a number of steps down who did the work did not receive the payment.

Mr Evans: We seek an undertaking from the head contractor that they have paid their subcontractors or the previous payments and moneys due to their subcontractors. Anecdotally, nearly every subcontractor I have ever come across is very willing to step forward to say he has not been paid. You generally hear about it fairly rapidly and you start asking questions and try to get to the bottom of the matter. On occasion, it might be some contractual issue between the two parties or something of that nature or matters around that. You generally get told fairly quickly. You will not die wondering whether a subcontractor has been paid or not.

THE CHAIR: So you have to wait for someone to complain—some subbie to complain to you that it is a government-funded job but they have not been paid. That is your compliance mechanism?

Mr Evans: The first step that happens is that, for each month where a head contractor seeks to submit their invoice for that month, you have got a progress claim number—6, whatever it might be—on a particular job. Part of that is an undertaking that they

have paid all of their subcontractors money due from the previous payments. So that is the first control mechanism. All of our control mechanisms under the contract are with the party that we are in contract with rather than with other parties that we are not in contract with. That is what I was trying to explain a moment ago. We have a contract management issue in a contractual environment to manage. We do not have a regulatory environment to operate in.

MR HARGREAVES: Is it the same in the private sector?

Mr Evans: I really could not go to the systems that they apply.

MR HARGREAVES: You have got all these systems which are designed to protect—this is what Madam Chair was going on about—the subcontractor from the head contractor not doing the right thing. We have seen ample examples of how that can happen in this territory—one real ripper recently.

THE CHAIR: Yes.

MR HARGREAVES: I am interested in whether or not the processes that you have in place are the same, less than or more robust than in the private sector. I suspect—

Ms Hardy: I would have thought it would be more robust.

MR HARGREAVES: it would be more robust. I was wondering if there was any way that the committee could find that out.

Ms Hardy: The only way you may be able to find out is to ask the Master Builders Association or, for instance, the HIA how they would work in private enterprise. Essentially, it is the contractual model between the territory and the contractor and we rely on the legislative provisions in there. As well as that, there is the law. The Office of Regulatory Services do inspections and seek documentation, and the long service leave board have inspectors as well. If we raise an issue with either of those two bodies, they will go out and inspect and follow up that issue.

MR SMYTH: On some procurement jobs, the government will ask for a project manager to run the operation—they will put out design specs and get somebody just to build the whole thing for them. But where the government has employed a project manager and in effect they are the head contractor, have the government always paid their bills on time? Have you had complaints from subcontractors that they have not been paid by the government?

Ms Hardy: Certainly, Procurement Solutions endeavours to pay our bills on time. How it works is that if the territory has engaged in a capital works project that Procurement Solutions is managing, accounts come into David's branch of project officers. They process those claims within a very short time frame. I do not know that we have had very many at all. I cannot remember any that might have been processed late for other than legitimate reasons. There may be questions about the invoice. But what happens is that Procurement Solutions pays the invoice and then seeks back the money from the agency to ensure that the contractors are paid well and truly on time.

MR SMYTH: The case quoted by the CFMEU involved the super school in Belconnen. Were all those payments made by the government on time?

Mr Evans: There was one contractor there that went into administration which caused some hiccups. I do not know whether it is a reference to that particular case or not. We were looking to manage the territory's risks in terms of the contract. As Robyn mentioned, some of the payments are not made, but I would suggest that they were all done in accordance with the contract. If works have not been performed or there are issues over the ability of the entity to finish the works and we have got to get someone else in to do the works, there might be back-charging or various other things done under the contract to ensure that the territory's risk is managed. I would not like to say there has never not been a payment made on time. There are thousands and thousands of payments made a year. I would think it is very good in comparison to other jurisdictions.

MR HARGREAVES: They are pretty speedy in taking the old time discount, though. We always take it three months after it is due. That is the way it works, isn't it? It says 1½ per cent discount after seven days and if you do not get around to it in three weeks you still take the 1½ per cent discount.

Ms Hardy: That is not how it works with us.

MR HARGREAVES: I believe you, Robyn!

MR SMYTH: Could I go back to a point you made earlier. You said that you inform UnionsACT of various things. Why do you do that?

Ms Hardy: Basically so that the union groups can raise issues such as industrial relations issues that they might have about a firm that we might be thinking of engaging with. It is just about being very open and transparent to stakeholders.

MR SMYTH: What business groups do you raise concerns with or provide notification to?

Ms Hardy: The MBA can interrogate the website any time they like and all of the tenderers are listed up there as well. It is publicly available.

MR SMYTH: But surely UnionsACT can do that as well. Why are they informed specifically?

Ms Hardy: Only because they probably have industrial relations issues that they might have with certain companies. I do not know of any that have been raised during that process, though.

MR SMYTH: If the unions have an issue with a company, why is that of concern to Procurement?

Ms Hardy: If they have an issue, say they believe that a company is not paying its long service leave or not appropriately covering workers compensation, they would advise us. I would then advise the long service leave board or the Office of

Regulatory Services of that and that would then be taken up by those two organisations and they would investigate it to see if it was correct or not.

MR SMYTH: Why is it your job to do that? Why isn't the long service leave board following this up?

Ms Hardy: Because Procurement is a centralised organisation undertaking these procurements, we actually become a focus for the receipt of this sort of information. The Office of Regulatory Services under its legislation cannot share information with Procurement Solutions. We can refer issues to them; they can investigate. With the long service leave board, I am not quite sure that their legislation is exactly the same as that. But it is a case of complaints or issues being focused on Procurement Solutions. We are the tendering organisation on behalf of agencies, so it is essentially a mechanism for complaints, if there are any.

MR HARGREAVES: So it is just part of your risk management process—

Ms Hardy: Yes.

MR HARGREAVES: and you do not actually do much with the information other than pass it on to someone that can deal with it?

Ms Hardy: Exactly, because, as I said, I am not the regulatory agency. However, the territory would want to know if there was a prospective tenderer in the group of tenderers that was legitimately poor—had a poor industrial relations record. That would form a serious part of the tender evaluation because if they were continuously underestimating their workers comp or not joined up to the ACT long service leave board then that is quite a risk to the territory if we actually engaged with them and formed a contract with them.

Ms Vigor: Under natural justice we would make sure that the company concerned knew about that complaint coming to us and had an opportunity to respond and we would consider that in the tender evaluation process.

THE CHAIR: In the couple of instances that the CFMEU talked about a couple of weeks ago, prior to the end of the process, did you have complaints from anybody about payment issues? Was there anything which could have alerted you to the eventual major problems?

Ms Hardy: Which project are you talking about?

THE CHAIR: There was Kingsford Smith and there was another project, wasn't there?

MR SMYTH: I think it was mainly Kingsford Smith.

THE CHAIR: I vaguely thought there was another one, but at least Kingsford Smith. There was the construction out at a suburb in Gungahlin.

Ms Hardy: Crace?

THE CHAIR: Yes, it was construction at Crace and Kingsford Smith. They were the two.

Ms Hardy: We do not manage the Crace development. That is actually an LDA project. That question ought to be directed to LDA. In relation to the school, no, the issues that were raised in your previous hearing were not raised with us during the course of the management of the project. Had they been, we would have immediately investigated them.

MR SMYTH: In the case of Kingsford Smith school, who is making the payments? Are the government making the payments or are they paying the project manager to make the payments?

Ms Hardy: Procurement Solutions pays the contractor, the head contractor. There would have been a project manager on that.

Mr Evans: There are two types of contractual relationships that come underneath a project manager. One is where there is a contract directly between the territory and a trade contractor—plumber, electrician, bricklayer—and then there are others which are subcontracts which tend to be smaller contracts which the project manager enters directly with a subcontractor. It might be the tile layer or someone doing a small amount of work.

The distinction between the two tends to be on a financial threshold. So at the end of each month the project manager gets all the claims from the contractors, both sub and trade contractor, and they go to the project manager. The project manager undertakes a certification role for the trade contracts: “Yes, this amount of work has been done. The bricklayer has laid this many bricks.” He will pass that along to us and we will make that payment directly for an agreement with that valuation of works completed. He draws together the subcontracts and gives us a single claim for all of those subcontracts. We go through that list, make the payment into an account he operates in trust for the territory and he then disburses that money amongst the subcontractors. So we do all of the payments but they go through a couple of different vehicles.

MR SMYTH: So with the Kingsford Smith school, some of the late payments may in fact have been payments for and on behalf of the government—that the union mentioned?

Ms Hardy: I am not aware, and certainly when I read the *Hansard* I was not aware that there was an issue related to late payments on Kingsford Smith.

MR SMYTH: There was an allegation that contractors had not been paid.

Ms Hardy: I thought that was related to the Crace one.

Mr Evans: There were some disputed payments over valuations, particularly with the electrical contractor, who was unable to discharge all of his obligations under the contract as a result of going into administration, and works being done by other electricians. So there were adjustments made. But I am not aware of late payments. I

would have to seek some advice on what they were and investigate them.

MR SMYTH: I thought the organisation responsible for the plastering of the school had not received payments on time. In a school there is a fair amount of plastering done.

Mr Evans: The plasterer?

MR SMYTH: Yes.

Mr Evans: We are aware of the matters raised in previous hearings about industrial relations but certainly not about late payments.

MR SMYTH: Okay.

THE CHAIR: We are just about out of time. Mr Hargreaves?

MR SMYTH: I have a final one.

THE CHAIR: Okay, very quickly.

MR SMYTH: Community consultation: before you go out to tender or a request for tender, what consultation processes do you follow?

Ms Hardy: On larger procurements over \$1 million, we would advertise often a draft tender document and seek consultation. Sometimes, if it is a large program like the CADP program for Health, we might undertake forums where we describe the kinds of projects that are coming up, to give industry a heads-up about what might be coming through. On specific tenders, often there is an advertisement in the newspaper that we are coming out with a tender, these are the draft documents and we welcome comments. We also do a call tender schedule for capital works. That is really a heads-up on things that are coming out. We are also doing a call tender schedule on goods and services contracts that might be coming out. So we try and give industry a little bit of a heads-up on what is happening.

MR SMYTH: I suspect it is not for a capital work but if you were out for a tender for goods and services, or particularly services, and you put out a draft contract in which you specify a price, if the community comes back and says, "Well, we can't do it for that price," how does the process work in varying what you have put out? Does it have any effect? Do you therefore change your draft contracts? Do you go back to the people who have had input and say, "Look, we've changed it in this regard"?

Ms Hardy: We do not often declare a budget. You just mentioned that we declare that we have got, say, \$5 million to do something. Occasionally that happens, particularly in consultancy services. We might say, "We need to do something and this is our budget that we have got; what can you do for us?" That would be rare on a really large project, I would have thought. Comments do come back from industry. They say: "You're actually specifying too closely here. We could get something more innovative if you didn't specify that." We often will get written comments back from them which we then incorporate into the revised documents.

MR SMYTH: Would the revised document therefore go out to all the people who have had input?

Ms Hardy: That then forms the new tender, the actual tender that goes out, if you know what I am saying, because previously you do not—

MR SMYTH: Sure, but are those who have input specifically informed that the tender has changed or do you just assume that they are monitoring the website and they will pick it up there?

Ms Hardy: I think it would vary. It would depend on the kind of comment that they might make. Sometimes they might make extensive comment about the drafts. In general, we would thank them for their comments and say, “We will take them on board,” or not, because that is a discussion really with the client agency and what they essentially want to do. It might mean that, despite industry’s comment, the client agency wishes to remain holding to whatever specification they have made.

MR SMYTH: Thank you.

THE CHAIR: Thank you very much for your attendance. We will adjourn for 10 minutes to have afternoon tea. You are very welcome to stay for a cuppa with us.

Ms Hardy: Thank you very much.

Meeting adjourned from 3.32 to 3.46 pm.

DUNDAS, MS ROSLYN, Director, ACT Council of Social Service

THE CHAIR: We will resume this hearing of the public accounts committee procurement inquiry. We welcome Roslyn Dundas, the Executive Director of ACTCOSS, this afternoon. I imagine that you are well aware of the privilege statement?

Ms Dundas: Yes, I am, Madam Chair.

THE CHAIR: You do not really want me to read it out to you. Thank you very much. Do you wish to make an opening statement?

Ms Dundas: I will, Madam Chair. I want to thank the committee for undertaking this inquiry at this point in time. It is very timely for the community sector as more and more of the work that the community sector currently does is being asked to be put through a tender procurement process.

We are interested in the impact that this move to using Procurement Solutions will have on the ACT community sector and whether or not it will achieve the outcomes that we are all looking for in terms of delivery of community-based services and supports for those who are most vulnerable in our community. On this point, I would like to draw the committee's attention to a report that was done by the New South Wales government. I am sorry that I do not have enough copies for you all, but I am happy to provide it at the end of the meeting.

MR HARGREAVES: Has it got an internet link?

Ms Dundas: It does.

THE CHAIR: If you just provide that, the secretary can do the rest.

Ms Dundas: I will. The New South Wales Department of Premier and Cabinet undertook a report titled *Non-government organisation red tape reduction*. This report was released in December 2009 and it had a specific focus on the selection process for non-government services and contracts and looked at procurement in New South Wales.

Some of the red tape burden that has been identified through this report included the need to repeat information that should already be available to funders and government agencies; limited capacity for e-lodgement of tenders or expressions of interest which can lead to costly copying and the sending of multiple copies of documents; the timing of tender processes may not be coordinated, with overlapping processes placing heavy demands on limited administrative resources of non-government organisations; some inconsistent tender requirements across agencies, programs and regions resulting in organisations having to develop new proposals or meet new quality assurance processes for similar services; and the amount and complexity of tender information and processes can be disproportionate to the amount of funding involved or the type of service or program being funded.

These particular issues have been identified in New South Wales, and we are

becoming increasingly aware that these issues are arising for organisations in the ACT. So if we can work together on some solutions around these burdens before they become too onerous, that would be most welcome.

It is still unclear when and why funding for community service programs will be put through a tender process or continued through the normal agency grants or service funding agreement process. There is concern about inconsistency at the moment. There is also concern about the growing use of select tender processes in the community sector. We recognise that there are benefits in going to a select tender process in terms of reducing the administrative burden on a range of organisations who might not be deemed suitable for delivering the service. Again, it is unclear—the process behind the decision for a select tender process. We are looking for greater transparency in how these decisions are being made.

We are also concerned that the current procurement model, because it is based, as you have been talking about, on very much a business-based model, is not supportive of innovation and collaboration between community organisations, which we know would benefit those who are most vulnerable and the organisations in the delivery of a wide range of services.

The other point that I wanted to raise for the committee's awareness goes to your terms of reference in relation to the social outcomes of the value-for-money equation. As we outlined in our submission, there is work happening at the Brisbane City Council to implement a social tendering program that supports specific programs being targeted at what are called disadvantaged groups in the Brisbane City Council program, so that small organisations who are working with individuals who may have a disability or may not fit into a rigorous business model are still eligible for government-tendered contracts to provide small services. That can support employment programs and community organisations in the delivery of their work.

We know in the ACT there are a growing number of social enterprises being established that work specifically with people with a disability and the long-term unemployed. If there was a way that these organisations, who may not look like obvious winners in a tender process, could be supported to deliver government services, be that through catering or through the provision of paper for special occasions, which I know some ministers have done in the past, and other small works, that has a long-term benefit for the community as a whole, not just for that organisation but for helping long-term unemployed and people with disabilities to access ongoing work.

I am happy to explore those two separate but linked issues further.

THE CHAIR: Thank you. I might start on the second one, given that is where we ended up. We talked a bit about this with Procurement Solutions, and they said that if there was to be any consideration of social tendering, it would have to come from the client, and the client would have to say: "This is specifically what we want. We want a social tender and a disadvantaged group to be considered or to get the contract." Obviously, that is one way of doing it. Do you think there is a way that it could be broadened out so that Procurement Solutions could be looking at social tendering for a wider range, not just when there is a client who happened to be interested in it?

Ms Dundas: I think that Procurement Solutions could have a leading role in the options that it presents to a client. If a client is looking for a big program or a big rollout of services, Procurement Solutions could say, “Break this into three different components, and component A might be right for social tendering, leaving B and C to go through a normal process,” and a slightly less onerous process could be put in for part A.

I think Procurement Solutions does have a role in providing the framework to support the clients and the agencies to make these decisions. Certainly, there needs to be an educative process by agencies and Procurement Solutions about social tendering and about the benefits it can bring and how it can be accessed. I would like to see the Procurement Solutions application processes streamlined in some of the ways that are put forward in the New South Wales government report, so that small social enterprises can actually get a toe in the door in terms of the application process.

I know a number of community organisations have been working today on an application process that closed at 2 pm. It is quite an onerous and lengthy process for organisations that are in the business of caring for vulnerable people, not necessarily in preparing vast written documents that support the work that they do.

THE CHAIR: If there was more social tendering would this need to be supported by something like a financial allowance so that, if the group who got the tender comprised vulnerable groups, the government would be prepared for the tender to cost more? Would that sort of support be needed or do you think that it could be done without it?

Ms Dundas: I certainly think that we can progress social tendering on a value-for-money basis. It might not always be the cheapest but we know that value for money is not always the cheapest. But the outcomes would be very beneficial, I believe, for the client and for the service providing the requirements of the tender. I think it is more at the process end and how the procurement is undertaken rather than at the cost end and the delivery from the organisations.

MR HARGREAVES: I am interested in the notion of social tendering and also the notion that you raised a minute ago, which we have heard before, which is that it is like a discount, if you like, or an allowance, which says, “If you can show a social benefit in the context of your submission in a tender process then we will discount the additional amount of your tender by some value to make it an even playing field in the cheapest rate comp.”

I am interested, in that sense, in whether or not you see that there is currently, and should be, a conflict between the social tendering and the fiscal value for money. I guess the thing that I am struggling with in my mind is: can we actually quantify the social benefits? If you think we can, how do you think we can actually do that? I have a difficulty in coming up with some sort of formulaic approach to quantifying the social benefit.

Ms Dundas: Certainly, there has been a lot of work over the last 12 months on social inclusion indicators. The work has been led by the federal government in developing

whole-of-community understanding of social benefits. This work is still progressing, and whether or not it is at a stage so that Procurement Solutions would be comfortable in applying it in their procurement processes is yet to be seen. We also know that there is work happening with Chief Minister's in terms of their last annual report, which looked at social and environmental as well as economic indicators in terms of the report that they put out publicly.

So there is some work that is happening that we can progress, but if you are looking at weighted criteria, if you can demonstrate a social benefit as much as you can demonstrate the ability to ensure that the catering arrives on time or the ability to ensure that the lawns around a school are mowed on time, I think that could be a simple part of the weighted criteria.

MR HARGREAVES: One of the things that I noticed in some discussion some years back—and, Madam Chair, you would probably remember this, and Mr Smyth—was a statement that we could not put a dollar value on the environmental benefits, a dollar value on water in the catchment, a dollar value on trees in the catchment and things like that. But over the last probably 10 or 15 years, there has been a formula developed as to how we can put a value on the environmental benefits. Do you think that the reason why we cannot actually put a dollar value on the social benefit is a lack of will to actually come up with that formula?

Ms Dundas: It also becomes a question of what we value. What we can certainly quite easily calculate is the difference between paying somebody an income and a wage and compare that to the social security benefits that they would be receiving from the federal government, and you get a dollar-for-dollar comparison. You also look at their contribution through tax, which you then start to pay once you move on to a wage and the contribution that makes to the community.

MR HARGREAVES: Isn't that cost shifting from the federal government to the ACT territory's bucket?

Ms Dundas: I think the long-term benefit of supporting people to be employed has a greater than unquantifiable social benefit that comes through in terms of levels of social inclusion and standing in the community.

MR HARGREAVES: And then I will come back to the original question. Do you think it is a lack of will from the work of people whose actuarial expertise could actually start to quantify that social benefit to the community at large in situ rather than global? If you are talking to a Treasury official, he does not give a damn about your smile or how much that is worth; he is concerned about the dollar in your pocket and he wants it. So is it really a case that we need to do some work in actually quantifying what the value of that smile is worth?

MR SMYTH: It is a dreadful slur on Treasury.

MR HARGREAVES: Sorry, guys.

Ms Dundas: Mr Hargreaves, I certainly believe that there is significant work to be done, but I would not want to see social tendering delayed while that work is

undertaken. There are ways that we can start to consider social tendering right now. Yes, that will take a little bit of shift of thinking in people who are quite rightly used to looking at numbers and making some weighted judgements there. But we can certainly make some inroads while we wait, or help progress some of this other work around quantifying such—

MR HARGREAVES: But this is the same argument we had in justifying the existence of a prison in the ACT, if I remember correctly, Ms Dundas: mutual work.

Ms Dundas: Yes.

MR SMYTH: Your recommendation is to develop a social tendering process within the ACT government procurement process to provide social enterprises with an opportunity to deliver against the tenders. Is there a process anywhere in Australia that we could model that on?

Ms Dundas: Certainly the Brisbane City Council has undertaken some work—and the Brisbane City Council is of similar size to our jurisdiction here—that we could certainly look at. I think it would need to be expanded a little in terms of some of the social enterprises that are currently on offer in the ACT, but there is work progressing in other jurisdictions that we can learn from.

MR SMYTH: For instance?

Ms Dundas: The Brisbane City Council is one.

MR SMYTH: Yes.

Ms Dundas: But I believe there is some work also happening internationally.

MR SMYTH: Thank you. You have divided your submission up into four areas. The first area you have called the community sector, and in the text you speak about how well each of the groups in the 30 providers are known to, for instance, HACC or to the various departments, and your recommendation says:

Examine the role of Procurement Solutions in the development and selection of community sector tenders, including opportunities for them to play a greater role in ensuring processes are objective.

Is there an implied criticism that processes are not objective currently?

Ms Dundas: What we are looking for in terms of that recommendation is: what is the value add that Procurement Solutions bring to the relationship between a funding body and a funded organisation, considering that we have had varying ways of doing this since self-government? What we are looking for is Procurement Solutions to develop an accessible, robust and transparent process if we are going to continue down a procurement model, and that to be the value add that they bring.

MR SMYTH: Sure. You spoke in your introduction, though, of grants versus tenders. How deep is the concern over the process where it may be used as a grant in one area

but it goes out to tender as the other? And what is the answer to achieving fairness for all who might apply?

THE CHAIR: And do you have a view as to when it should be grant and when it should be a tender? Is there an obvious way of deciding between the two?

Ms Dundas: I certainly do not know how decisions are being made at the moment, so I do not have anything to provide feedback on. I know that some are and some are not. It may be historical. We are starting to see, where it is new programs coming in or new moneys being allocated to the sector, that that is going out to tender. But, where there are existing funding programs that are ongoing, that is being rolled over in a service funding model. So it is not about necessarily the amount; it is about the time line. That is what it looks like to me from the outside.

In terms of where this might go in the future, there is work, I understand, happening in the Department of Disability, Housing and Community Services on community sector tender processes into the future. But it is a long-term project and I would let them talk to you about it more because it is not my project to talk about. But we are welcoming the fact that that work is happening in a staged way, that we can work through some of these questions with the department to try and come up with the best model and the best solution.

The problem before us at this point in time is that there is a lot of new money coming into the sector through federal government initiatives. We are expecting that that will go out to a tender process, but the tender process is significantly more onerous than the grants process and organisations are not necessarily supported or resourced or prepared for that kind of process and the impact it is having today.

MR HARGREAVES: Isn't it also true that the problem for a lot of smaller organisations is that, when you have to do a tender as opposed to a couple of quotes, the amount of moneys going out in the grants process is very rarely anywhere near the amounts dictated by a tender process per se, which is a competitive thing through the tender box? Whereas a lot of them, say, \$20,000 and less, are not in the tender process, they are still in a procurement process and the value of the work that they are not doing in the community sector almost makes that \$20,000 unviable. Is that true?

Ms Dundas: Yes, Mr Hargreaves. There are a range of considerations that organisations need to make when they are applying for funding—whether or not the cost of the application is going to be worth the outcome of the funding, if it comes through, and, as outlined in the New South Wales government report, even little things like the costly copying for applications put into the tender box. You need four; you need your original and three copies, plus four versions of any attachments to be also provided.

When you are a small organisation that has a low administrative overhead because you are doing a lot of your work out in the community, that is actually a significant time resource and a significant cost resource that puts a lot of pressure on an organisation that is, in effect, just looking for some money to continue to do the work that it does.

MR HARGREAVES: Are you finding that the change to project funding, which is where, for the record, the government will give the money just for an outcome and not for core funding or administrative purposes, is actually having a particularly significant detrimental effect on the community?

Ms Dundas: Certainly, as we outlined in the submission, we know that there have been some moneys rolled out recently—maybe I did not outline it in the submission; I outlined it in another submission—that I do not think went through a procurement process but were provided with minimal administrative support, despite the fact that the delivery of the new service attracted a lot of attention and attracted a lot of community interest and put extensive administrative demand on the organisations that were rolling out that program. So there are a range of issues that need to be worked through in terms of procurement processes for the community sector.

An example that is also springing to mind is the timeliness. Some new decisions were made by government in relation to out-of-home care. That went through a proper procurement tender process. Applications closed in August 2009. Responses have still not been received by organisations. That tender is still in consideration and organisations do not yet know the outcome of it.

MR HARGREAVES: Where do the community organisations get the money to provide that administrative support if we have now moved federally and territorially towards project funding?

Ms Dundas: Some organisations have been quite proactive in their stance about building administrative support into their tenders and also their grants. In some places that has been accepted by government and so there is support in that way. Other organisations are working on the theory that if you get enough project funding you can pool the project funding and ensure that there is administrative support there. Other organisations rely on their other fundraising capacities, be that through retained interest off deposits, be that through fundraising initiatives that they undertake, to share the administrative burden around the different projects that they work on.

THE CHAIR: Another point of the industry's burden I would like to touch on is that it must cost each organisation money to do the tenders. What proportion of the costs of a tender would normally be the cost of doing the tender? In other words, you could say almost where is the break-even point? If we have 10 groups competing for one tender, have we worked out that the community groups are spending more on trying to get that tender than the value of the tender and we are having a zero sum gain here?

Ms Dundas: Yes. It would be different from every organisation's perspective in terms of how the cost is shared across their organisation and their ability to take on the work and how different organisations are structured. One of the benefits of the community sector is that it is diverse in terms of how services are delivered. So it is then difficult to compare apples with apples, because we are comparing apples with oranges and there are values that come from that. But how do you compare the amount of time it then takes departments to process and receive? The fact that a tender has been in consideration for over three months, nearly six months; that has taken significant time from the department's perspective as well, over a very significant amount of money, a very significant delivery of service. But I think we have lost a lot of the benefit that

was meant to be done by doing it through the procurement process already in terms of the amount of time that it has taken the organisations to apply and the amount of time it is now taking government to consider.

MR SMYTH: Are you aware of any disquiet at the cancellation of tenders after organisations have gone to the effort of putting in a tender but it is never resolved?

Ms Dundas: I think “never resolved” is the wrong term at the moment for the community sector because we have not been through enough that have not yet not been resolved.

THE CHAIR: Yes. We could get that, but they could still be resolved, the currently unresolved ones. You have not given up hope.

Ms Dundas: Yes, and there have been some that have progressed and been resolved, but what we are learning, as this is a new process for many organisations to undertake, is that there are just some things that could be worked out better as the process continues to unfold for more and more community targeted initiatives being taken through a procurement process.

MR SMYTH: You also mentioned in your introductory remarks that the process stifles innovation. What is the answer to that? How would you make it work better?

Ms Dundas: I think this requires a conversation between government agencies, to use that language, Procurement Solutions and the community sector more broadly, about how do we meet the needs of the community at large; how do we meet the requirements of the probity of the Assembly and the taxpayer in terms of how the dollar is spent, but at the same time supporting innovation and development across all three players in that market?

The tender process for the community sector has been in contrast to what has been put forward in terms of the evidence just given in relation to the business sector. The tenders that I have seen for the community have had a budget dollar on them, have had some quite significant frames around what the service is and how the service can be delivered. So the procurement document in and of itself is quite specific in what it is looking for because it is obviously what the government is looking for. But it does not leave the room for a community organisation to go, “If the outcome we are looking for is X, we think we can do it in a better process as opposed to that particular process.”

Because a number of the initiatives that are coming out through the procurement process are based on budget initiatives, we know the dollar term that is there and there is very little room to move within that dollar figure even though start-up costs might not be included in that figure, bringing together consortiums and developing innovation might not be considered in that figure, but we can tell you that we believe the long-term impact of doing it slightly differently will have greater social benefit.

MR SMYTH: Is there anything that stops that innovation from happening now? There is nothing to stop—

Ms Dundas: Like I was saying—the confines of the tender document in and of itself. In comparison to what Procurement Solutions does, because the amount of money we are talking about is relatively small, they do not often go out for that expression of interest or draft tender consultation. Where there is consultation it will probably happen prior to the request for tender process being started with the agency directly. But whether or not the Procurement Solutions model works best in supporting innovation in the community sector is yet to be proven. That is where I think there are some challenges ahead of us. Time lines, from the date the tender goes out to the day it closes, when there has been no draft or pre-warning about what the actual outcomes might be, leaves little room to build new partnerships and consortiums whilst still developing an extensive application process.

THE CHAIR: You implied in the discussion earlier that previously most of these things have been done as grants and they have now been turned into tenders. For someone like me who does not know all the history, could you briefly tell us when this change happened. You are implying that it is fairly recent and we have not had a round of it.

Ms Dundas: There has been a range of changes that have happened in terms of government-community-org funding relationships over the history of self-government. I think there would be others best placed to give you that history. Certainly, when the current social compact was undertaken—and it was signed in 2004—it supported the move to funding programs so that the community services program, the youth services program or the family support program would be considered as a whole program and that the government would then work with a range of organisations under that program to deliver broad outcomes that are always fed back into the overarching goals. We also have that in terms of social housing at the moment.

With new money coming in through things like—not the nation-building initiatives because they are at schools but the things that were caught up in some of the federal stimulus packages, reforms that are happening in the homelessness sector and caught up again in the national partnership agreements, we are anticipating that a range of these will go out through procurement processes. We know some of them already have. Starting 2008, these kinds of things really started to pick up, but there would have been a few before then in different areas. I will leave it there.

MR HARGREAVES: But it is an evolutionary process, isn't it?

Ms Dundas: Yes, absolutely.

MR HARGREAVES: We had issues going back as far as 1998 and 2001 where the whole nature of the—

Ms Dundas: Purchaser-provider relationship.

MR HARGREAVES: The purchaser-provider one was, I think, the big paradigm shift.

Ms Dundas: Yes. That was what happened with the new compact and the new program-funded regime. We are now seeing some significant changes happening

progressively to that.

MR HARGREAVES: With the purchaser-provider model, my understanding is that the community sector became better off because of the prior need to spend so much money on the administrative side and the accountability side for no good purpose. That money was able to be put into the sharp end so long as the process was right. Am I correct in thinking that there seems to be a back-to-the-future approach with this seeming obsession with project funding now and that we are not allowing the community sector to have any administrative component within that? All of the money is supposed to go to the sharp end. Therefore, whereas once upon a time you could actually skim a piece off the top to make the organisation viable so it had something to sell, now it has gone.

Ms Dundas: Certainly the work that ACTCOSS undertook in 2008 on the community sector viability project that we are still trying to progress looked at that issue in depth. It raised a number of concerns and put forward a number of recommendations about how the viability of the sector, in and of itself, was able to be supported to ensure that there was robust delivery of support for those who are most vulnerable in our community. That work is not finished at all. There is still a lot of room to work with government through different programs and procurement processes to ensure that organisations are able to meet the needs of the community while ensuring that they are meeting the needs of their own staff.

THE CHAIR: You may not be able to answer this, but would you have any idea, while we are at the social services part of the community sector—your part of the community sector in the ACT—of the comparative value of the different funding sources, be it commonwealth government, ACT government, their own fundraising or retained funds? Is it basically the ACT government providing major funding? I assume that, in fact, the commonwealth has—

Ms Dundas: Let me see if I have the answer in my handbag.

MR SMYTH: I would be impressed.

Ms Dundas: Every year the Australian Council of Social Service undertakes a survey of the community sector. The ACT report may tell me the split from organisations who answered that survey in the ACT of federal versus local funding.

THE CHAIR: This is their own fundraising, which I assume is the minor part of—

MR HARGREAVES: While you are looking, Ros, is it true to say that it varies from aspect of the sector to aspect?

Ms Dundas: Certainly, it does. There are a number of agencies who are funded under what I am calling national partnership agreements or jointly funded commonwealth and territory funded projects, such as home and community care, disability services or some of the family support program joint initiatives. Some of the funding comes from the federal government. Some of the funding comes from the ACT government and then it is administered through the ACT government.

MR HARGREAVES: And some of it comes, does it not, from the federal government in through the ACT as a post office and goes out?

Ms Dundas: Yes.

MR HARGREAVES: So there is that third aspect as well.

Ms Dundas: Yes.

THE CHAIR: Do you have specific issues with the difference between advocacy organisations such as yours versus service delivery organisations? Is one of them more suitable for projects for tender-type funding and the other for grant-type funding?

Ms Dundas: No.

MR SMYTH: Good answer.

Ms Dundas: My initial response to that is no, because what we have in the ACT, irrelevant of the organisations delivering systemic advocacy or on-the-ground services, is just a diversity of size. An organisation could have three staff but still be delivering a significant disability support program or it could have 300 staff and be funded under the same program or under the same means and be delivering a similar program, just meeting a different sub-community's particular needs or wants. It is not necessarily about the type of service being delivered; it is actually about recognising the diversity of organisations that are currently operating in the ACT and the benefit that is bringing to our clients and those who are most vulnerable.

To go back to your original question, the 2009 community sector survey for the ACT tells me that the majority of respondent organisations reported that their primary source of funding was from the territory government, which is around 44 per cent, with the commonwealth government being the primary source of funding for 28 per cent of organisations. But we know that—

THE CHAIR: Some of that ACT was being passed through probably—

Ms Dundas: client fees make up 11 per cent of organisations' primary source of funding—so that is small service fees—whereas donations make up around 17 per cent.

MR SMYTH: Thank you.

THE CHAIR: Thank you very much, Ms Dundas, for your evidence today. This will finalise our formal evidence. The *Hansard* will be sent out to you. You know all about that so I do not need to tell you.

Ms Dundas: Thank you. I look forward to the committee's progress on this report. I hope that the examination of our procurement processes in the ACT can lead to a more robust and developed process for the community sector and its engagement in such procurement processes.

The committee adjourned at 4.26 pm.