



**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, 27 APRIL 2010

**Secretary to the committee:
Ms A Cullen (Ph: 6205 0142)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Amended 21 January 2009

The committee met at 2.02 pm.

DAWES, MR DAVID, Acting Chief Executive, Department of Land and Property Services

ROBERTSON, MR JOHN, Chief Executive Officer, Land Development Agency

REYNOLDS, MR CHRIS, General Manager, Development, Land Development Agency

THE CHAIR: Good afternoon, gentlemen. Thank you very much for coming to this public hearing of the Standing Committee on Public Accounts inquiry into ACT government procurement. We have privilege cards. I imagine you do not want me to read the statement to you. However, if you would like me to read it, I am happy to do so. You will forgo that; all right. The proceedings are public. If you want to give in camera evidence, you may request that. Do any of you have an opening statement to make?

Mr Dawes: I do not have an opening statement. As far as I am concerned, we are here to answer questions or assist the committee.

Mr Robertson: Similarly, I have no statement to make.

Mr Reynolds: I have no statement to make.

MR SMYTH: Can I ask an information question first. Can you explain the new arrangement and how it works in regard to procurement, before we go into it, so that we know who to ask the questions of?

Mr Dawes: From what I gleaned, you will be wanting to know about some of the procurement processes, so most of the questions can be directed to John Robertson in regard to the Land Development Agency.

MR SMYTH: What is the relationship then between the new department and the Land Development Agency? How does that actually work? Could you share with us your knowledge of how it actually works? What is your responsibility and what is his? And Chris can tell us whether you are right or wrong.

Mr Dawes: He can adjudicate. I think it has been explained in the past. Land and Property Services is the portfolio department for the Land Development Agency. The Land Development Agency is still a statutory authority but we do work closely on a number of issues. As you know, LAPS—the acronym for Land and Property Services—is responsible for the land release program. We set the land release program, which is then endorsed by government, and the LDA implements that particular land release program. Recently, we have realigned some of the things that the LDA undertakes. We now provide corporate and some other services to the LDA. The LDA is there to concentrate and focus on what they were established and set up to do—to deliver land to the ACT community.

THE CHAIR: Does corporate services include procurement?

Mr Dawes: No, corporate services are things like some of the involvement in human

resource processes. The decisions are still made by the LDA but we effectively share some staff. You would be aware of the broader Shared Services arrangements.

THE CHAIR: Yes.

Mr Dawes: This is some of the strategic HR, because the LDA is a relatively small agency, as is LAPS, so we share those things for more efficiencies.

THE CHAIR: So from a procurement point of view it is the LDA; LAPS is responsible for the general aspects of what you are planning to do but you go and do it?

Mr Robertson: As Mr Dawes has pointed out, LAPS is responsible for setting the policy in terms of the land release program, the numbers, and then the LDA seeks to implement that. Of course, as part of that, we use a whole lot of different services, consultancies and physical services, from a wide range of private sector providers, and we manage those processes.

THE CHAIR: I do not know whether you read some of the evidence that we received earlier from the CFMEU but there was a lot of discussion about whether or not all of the contractors actually fulfil their obligations. There were some negative comments made about that. How do you go about ensuring that contractors do fulfil their obligations?

Mr Robertson: I will step back to the start of the processes. The LDA still faces all the provisions of the Government Procurement Act which all ACT government agencies face. With the more significant procurements, those processes are considered and endorsed by the Government Procurement Board. For some of the processes, we do involve some of the Procurement Solutions staff, but predominantly, because of the nature of the work that we are doing in our estates, we are involved in the contract management. Similar to a lot of construction works, both elsewhere within the ACT and interstate, we normally have another service provider who is the superintendent on a contract. So the superintendent is not involved in selecting who the successful tenderer might be. That is a decision that is made ultimately by the LDA. Depending on the delegation, certainly with the big construction contracts, I sign off on those as part of my responsibilities as the CEO.

We have, of course, within the contract, a range of things. When you start up a tender, there are evaluations that are relatively standard for this sort of work. There are a lot of similarities with the provisions that are used in similar capital works procurements. As part of that, there are the ethical suppliers declarations. We assess people based on their experience and their capability of doing the job. Someone cannot walk in off the street to do a major job for us if they have not actually done any work in that field before.

Along the course of the way, we have provisions which have had some airing in the past about paying. We get claims which are certified by the superintendent. Under the contracts, once those claims have been certified by the superintendent, we have a period in which those claims must be paid. We comply with all of those. As part of the superintendent's consideration of these matters, in the first instance, they are the

ones who are getting the statutory declarations. I know there have been comments made before this committee about statutory declarations. Certainly, they seem to attract different views from different people. My view is that they are a sworn instrument and we are entitled to believe that what is in there is correct. Certainly, we make sure that people who are providing services to us understand also that that is our view on it.

THE CHAIR: I thought the superintendent looked at the physical job to see that that was actually being done, not the supplier-type issues.

Mr Robertson: Part of that role, of course, is to certify claims of payment—that someone is not saying, “We’ve done this much work,” when they have really only done this much. So they look at the claims—

THE CHAIR: Yes, you would go out and see that the road has been built or whatever it was. That was what I thought their job was—not to check that the supplier said they had actually paid their staff as well.

Mr Robertson: They are part of the arrangements.

THE CHAIR: Do you ever do anything more than the statutory declaration? Do you ever go and ask questions further than that?

Mr Robertson: Canberra is a relatively small town and if there were issues then people got to hear about them, certainly in relation to the matter that was subject to a lot of discussion here in about August-September last year. It was when this issue was first raised in the ACT. We heard about it fairly promptly and then acted to deal with it. There had been questions about the veracity or otherwise of statutory declarations, but I think, to help the committee in their consideration of this, often what happens with claims and the payment of subcontractors is that you have lags in contracts.

I understand in that particular case the people were being paid about six weeks after they lodged their claims. Those were the contractual provisions that the subcontractors had with the suppliers. There were shorter time frames involved in accordance with the LDA’s contracts, as generally with the ACT government. Depending on the contract terms, there are 14, 28 or 30 days. It depends on the different contracts. At a point in time when people are making statutory declarations it may well be that they are correct in relation to the claims that they are making but there might be work that has been done for which people will be owed money at a point in future.

The other issue that is relevant in this is that when bills are presented people do not necessarily pay them just because the bill has been presented. That is why we have the superintendent arrangements, whereby we have that superintendent verifying that the work has been done. I understand that in construction works generally contractors, subcontractors—whenever anyone has work done for them—want to make sure that the claims they are given are correct and that the work has been done to the required standard in that time frame.

MR HARGREAVES: Madam Chair, could I follow up on the question?

THE CHAIR: Yes, Mr Hargreaves.

MR HARGREAVES: Thank you. I declare my position as a justice of the peace. I am interested in what I hear from you about statutory declarations. It has been a bit of a thread through what we have heard recently. Some statutory declarations are correct at a certain point in time but are proven to be not correct at another point in time. I accept that that may very well occur—not a problem. We have also heard that people have put forward statutory declarations which later on have been found to be incorrect or wrong and therefore fraudulent. What I would like to know is whether anyone has been taken to task over the provision of a statutory declaration which is in fact false, given the punitive provisions which are attached to those declarations.

Mr Robertson: I cannot respond more broadly to that question in terms of what has been the situation across the board, but in relation to any projects that I have been particularly involved with in ACT government procurement—it is probably 7½ years that I have been involved in capital works and more recently land development activities—I have not seen any evidence that any of the statutory declarations were fraudulent.

MR HARGREAVES: If one of your officers brought you evidence that a statutory declaration had been provided and it was in fact not true, do you have processes and procedures in place as to what to do about that?

Mr Robertson: If we had evidence and believed that was the case—it is fraud; money would have been obtained by deception if we had responded in relation to that—it would be my view that we would refer it to the police.

MR SMYTH: You mentioned that certain issues came to your attention back in August-September last year. Was that the first time that the government became aware that there were difficulties with Akron?

Mr Robertson: In terms of the LDA, I understand that some of my officers, a couple of weeks before I became aware of it, had become aware that I think there was a day or two's delay in some payments in relation to the Crace project, which is not administered by the LDA but by our joint venture partners, Crace Developments Pty Ltd, which has a number of private sector shareholders, and also the Defence Housing Authority and Community Housing Canberra. That was a matter that was quickly resolved. I would have to check on the exact date but it was around that September time frame, I think, that some of the LDA staff first became aware of that.

MR SMYTH: Mr Dawes, you were in Chief Minister's at that time. When did they become aware?

Mr Dawes: I would have to go back and double-check the records, but it would probably have been in conversation I had with the LDA in that capacity as well, so it was later in the year. We did not tend to—

MR SMYTH: So that is August-September 2009?

Mr Dawes: I will have to check back when it was, as I said, but it was the latter part of last year.

Mr Robertson: From my perspective it was some time in October that I became aware that there were claims that some local subcontractors were not being paid. That is when—I think it has been put on the record by others; maybe not me in this forum—there were some meetings with the CFMEU and some subcontractors. We then had some discussions with the representatives of Akron and pointed out the fact that it was very important that people got paid for the work they had done.

A process was then put in place whereby over the following months amounts other than those which were in dispute were paid progressively on the Bonner projects. Arrangements were put in place in relation to Crace. I think it was 1 February when the administrators were appointed to Akron. At that point one of the Bonner contracts had been completed. They were practically completed and the other Bonner project was probably about 95 per cent of the way through. There were some amounts, some of which, I think, were retentions and some of which were unresolved disputes, between the contractor and the subcontractors which were outstanding at that point.

MR SMYTH: So in terms of the process that you went through—the procurement process, as it were, that saw Akron get this contract—what failed in that the government was not aware of this potential for Akron to fall over?

Mr Robertson: I think it is worth noting: when were the contracts awarded, when were the tenders closed and when did the problems arise? The first of the contracts that the LDA entered into in Bonner were awarded in about April 2008, with the tender in January-February—I cannot recall the exact dates—2008. So a bit over two years ago it went out to tender and about two years ago it was awarded. With the second contract, the tenders were in the middle of the year. I think a recommendation would have come to me probably in August-September and the contract—this is for Bonner 1B2—started then. The Crace contract was also in 2008.

What members of the committee may well recall is that it was around August, September, October, November, December, January—January 2009—when the global financial crisis was really starting to run. There has been commentary in the media and also by the administrator and others that part of the problems in Canberra and other places arose because of one or two specific projects that Akron was involved in in Victoria. This was the advice we were getting through late 2009 from the Akron people as well. They were experiencing some cash flow issues because of some problems in Victoria where developers basically stopped paying them for work that they were owed. Akron was a company that had stood up very well in the prequalification assessments when we first appointed it. I understand that there was a prequalification refresh done a bit over 12 months ago when the ACT's prequalification levels were changed, recognising the scale of contracts that was happening here. They had increased significantly over the previous couple of years. At that time—and that is 10 to 12 months ago; I do not have the exact dates—Akron was seen to be still quite sound. A lot happened in a few months.

Mr Dawes: John, it might be fair if you just explain the fact that with procurements, when they are looking at the thresholds, there is an independent financial analysis

done.

Mr Robertson: Yes, thank you, Mr Dawes. In relation to that, there was work done by interstate experts, Sydney based, with a lot of experience in doing prequalification work for the ACT but also for other jurisdictions, and they were the people that were then doing the assessment and found that they were capable, in terms of our schemes, of getting jobs of over \$50 million; that is my understanding. It was nearly 12 months ago when that was made, so it was really in the middle of last year when some of those issues with availability of financing for some of those private sector developers in Melbourne arose; that is based on the conversations that I have had with different people.

MR SMYTH: I understand their offer was considerably cheaper than most of their competitors.

Mr Robertson: I would have to go back and look at the exact documents, but the way these methodologies work is that when you are specifying something precisely with construction works you do not want someone coming and delivering you apples and someone delivering oranges or anything else, so people are all tendering on the same basis. So then it was based on a risk assessment methodology, looking at the capabilities of the people, the teams, the experience they had in doing things and some mandatory issues around prequalification and compliance with the equal opportunity for women in the workplace legislation. So they satisfied the mandatory criteria, they presented acceptable risk tenders and again I will just remind the committee that that was in early to mid-2008, so almost two years to over 18 months from when they went into administration, so a long time, and they had completed most of the work in the ACT. In relation to ACT government contracts like the Bonner ones, they had been paid in the order of \$20 million and a lot or most of that probably did go to subcontractors.

MR SMYTH: But they got the contract on the basis of being the cheapest?

Mr Robertson: They were the lowest price acceptable risk conforming tender.

MR SMYTH: And at that time what was their presence in the ACT?

Mr Robertson: At that time they did not have a lot of presence in the ACT but I think members of the committee might also recall that that was probably about seven or eight months after Mr Dawes joined the ACT government, seven or eight months after there were some changes on the LDA board and six months after I joined the LDA, and at that point the government decided to increase the land release program, the residential component, from 2,200 blocks during 2007-08 to over 3,000 and the target for the subsequent years was also increased. So we were at a stage where we were putting out a lot of work. There was a lot of work on the government's capital works program and it was a matter of there being a desire to attract more resources and more activity to the ACT because basically the local suppliers had a very large amount of work on their plate.

I notice that we are getting to that situation again, from the submissions and the commentary from the MBA and others before this very committee; that they are

worried about whether there is enough industry capacity to do it.

We do advertise our tenders to the world. We cannot discriminate on the basis of anything. There were a number of firms with good reputations that started tendering for ACT government jobs, from Queensland, New South Wales and a couple from Victoria. One of the Queensland or New South Wales firms won one of the stages at Franklin and the first work at Bonner was won by Akron. One of the other firms was not successful in that process but it was a matter of us wanting competitive tenders, and local suppliers, as I said, had a lot of work on their plate.

MR HARGREAVES: I have a simple question and you can take it on notice, please. I would like to know the number of non-conforming tenders and the number of conforming tenders. You said earlier on that—

Mr Robertson: This is for each of the processes?

MR HARGREAVES: This is for the one that Akron was involved in. You said that Akron was the lowest price conforming tender. What I want to get is a picture of how many non-conforming tenders there were—I do not want names, just those numbers—to give us a picture of how many people were in the game.

Mr Robertson: I am happy to take that on notice, but as a general comment we do not get very many non-conforming tenders because we are very clear that you have to be prequalified, you have to meet the commonwealth statutory requirement and other things.

I mentioned the acceptable risk criteria and obviously as part of the tender evaluation we seek referees. We seek advice from interstate. We basically do check. Someone does not just come to us and say, “I am capable of doing this work.” In relation to Akron—and it is the one that seems to attract the most comment in this committee’s process—they came with a very strong reputation. They were well established over decades and had a strong reputation. We did formal referee checks and informal checks as well.

MR HARGREAVES: What I am interested in doing is just taking this one as a test case. I am not terribly interested in the actual bits and pieces of it. You talked about doing the risk analysis on it all and one of the things that the committee has been a bit concerned about is the notion that the cheapest tender is picked up. I do not believe that is so and I do believe that the risk analysis process is the one that has been used. It would be good if we could get a bit of an idea of the numbers involved. Also, John, you talked about having risk analysis criteria. Prequalification is one, business health is another, previous experience in a similar game is another. Is that a list with “tick the box” stuff or is it—

Mr Robertson: In relation to Akron it has actually been—

MR HARGREAVES: Not Akron; this is just—

Mr Robertson: No, just generally but using that one as an example, recently there were some questions on notice that were taken after the annual reports hearings and in

response to one of those questions the details were provided.

MR HARGREAVES: Could you drag that out and give it to us, please, because, quite honestly, I do not take a blind bit of notice of questions put on notice by the Liberal Party, so I need refreshment about that. I know that at the end of the day, when I wake up in the middle of the night, Brendan is always there to answer those questions.

Mr Robertson: Just on that, Mr Hargreaves, I am aware that more generally, whilst we do not get a lot of non-conforming tenders, we also from time to time definitely do not take the cheapest price, because we have that acceptable or unacceptable risk and if someone was the lowest price tenderer and they did not meet the acceptable risk criteria we step straight over them to—

MR HARGREAVES: What I am looking at are those acceptable risk criteria. If we could get a handle on that, that would be great.

Mr Robertson: Given the estimates committee—

MR HARGREAVES: Just give us another look at the stuff.

Mr Robertson: We will give you generally what the criteria are. We can provide that as something new and fresh.

THE CHAIR: With the number of tenderers, could you also put in whether they are ACT based or otherwise? Again, we do not need their names but I am interested in whether they were from here or not.

Mr Robertson: Yes, but I am also conscious that we do tender in the context of the Australia-New Zealand government procurement agreement and the Australia-US free trade agreement—

THE CHAIR: I know. I do appreciate that you have to do it.

Mr Robertson: Clearly, with a lot of these things the work happens in Canberra and one of the things that it would be fair to say is that there were people in the system who were disappointed that some of the tenderers who did come to the ACT did not bring more of their own resources, and then it became a bit of a bidding game for some of the local subcontractors.

MR SMYTH: That is where I was heading with my question. You said they had some presence in the ACT. What exactly was their presence in the ACT?

Mr Robertson: I certainly do not recall saying that they had any presence in the ACT. They tendered. We were seeking to have more firms operating here in the ACT because of the volume of work.

MR SMYTH: Sure. So at that stage they had no presence in the ACT?

Mr Robertson: I do not know what presence they had. They certainly were not doing

any work for the LDA at that time, which is why we very thoroughly did the referee checks.

MR SMYTH: Are you aware of what workforce they brought with them from Victoria or interstate or did they simply get involved in, as you say, a bidding war for local subbies?

Mr Robertson: I think there are different views on that. I have read the *Hansard* in relation to evidence from some of the other people who have appeared before the committee. That indicated they brought in a lot of people, but in our case, with some of the subcontractors, they were obviously locally based subcontractors.

MR SMYTH: So in their bid—or when they bid—we are not aware of what resources they had to carry out the job in Canberra?

Mr Robertson: I certainly cannot recall what they put into a tender two years ago, but certainly we would have been satisfied at the time that they had the management capability and that the resources they were bringing would have been adequate to do the job. What we need to remember is that it was basically a bit under two years after the first tender was awarded and the work had been finished on that first contract—it was subsequent to that that the administration issues appeared.

MR SMYTH: That is fine. My concern would be that we are giving contracts to interstate firms that really then rely on the local pool. If you are truly broadening the local capability, rather than just feeding on the same workforce, that would be a good thing. But if the problem is that we are then just bidding up the prices, I have some concerns about that.

Mr Robertson: I am aware that there were people who did come from interstate. I have mentioned that there were two firms from interstate that won work, and that was a point of particular heat in the market. They did bring some engineers and they brought some others. There were also subcontractors who came from other places to work on those projects, but they still used a lot of local people, as you would expect.

Mr Dawes: If I can just add to that, there have been a couple of civil contracting firms that have come to the territory and performed extremely well, and one is still here as well—it is a major civil contractor on the eastern seaboard. And one did the harbour job. So we have had some very good experience with some interstate contractors as well, because, obviously, the MBA has been lobbying the ACT government to slow down the capital works program.

MR SMYTH: We might get to that in a minute. Because of the Akron issue, is there any liability to the LDA or the ACT government—have we been exposed? Are there any extra payments we have had to make?

Mr Robertson: I am not sure what the niceties are, but there are also questions on notice around this, which are in the process, I think, of being answered. I think they might have come from Mr Seselja. With construction contracts there are a number of elements at any point in a contract, and there are contract time frames. There are provisions, certainly in our contracts on civil engineering, in that we have people who

are basically purchasers of our blocks and so we put time frames in the contracts that we seek to enforce. In relation to those, I think we are still within the contract settlement time frames. But we had a range of protections in there for the LDA's position. We also have some contractual rights, which we have advised to the administrator, and at this point we do not know how much the administrator will be distributing to people.

MR HARGREAVES: But is it the answer to a fair question that there may very well be a financial exposure to the territory—that there might be some liability that we might have to wear ourselves?

Mr Robertson: I would not want to prejudice our position in relation to the administrator but, with some of those, I do not think in the end it will be particularly large.

MR HARGREAVES: What do you mean by “not particularly large”?

Mr Robertson: I do not believe that it will be—and I have to be careful how I phrase this—but we will not be chasing money that we have paid out and need to get back; it will really relate to the liquidated damages and opportunities forgone, effectively.

MR HARGREAVES: And when you talk about those sorts of sums, I am not familiar with those sorts of sums. In other contracts, I am. But what sort of size liquidated damages—ballpark sorts of figures—are we talking about: thousands, hundreds of thousands or millions?

Mr Robertson: I think our claim, which we have notified to the administrator—the liquidated damages component—would have been a bit over a million dollars. So in excess of a million dollars.

MR HARGREAVES: In the ballpark, yes. Thank you for that.

Mr Robertson: But, of course, on some of those matters, if they had not gone into administration, there would have been discussions anyway between us and Akron, and we then would have worked out what the claim was actually worth.

MR HARGREAVES: That would have been more about the delay to the delivery rather than—

Mr Robertson: Indeed.

MR HARGREAVES: So it would not matter whether they went into liquidation—just if they did not deliver on the time frames, it would have applied?

Mr Robertson: Yes, we had a time frame in the contract. Clearly, in construction works, you do not know whether it is going to rain, and when you are out in the paddocks rain delays works.

MR HARGREAVES: They are usually exceptions, though, aren't they?

Mr Robertson: They are, particularly over the last few years here—we have had a pretty good run. But then we set our contract settlement time frames and, if they had settled on the contract time frame, that might have meant we might have been able to get some revenue in a little earlier than we have.

MR SMYTH: Just as a follow-up, you mentioned that we paid out and need to get it back. What have we paid out and what do we need to get back?

Mr Robertson: What I meant was—

MR HARGREAVES: You don't have to do that.

Mr Robertson: Yes. These are not moneys that essentially we have had to pay and then get back.

MR SMYTH: So we have not made any overpayments or early payments that we are due back?

Mr Robertson: We did rate one overpayment, which was based on certification from the superintendent. That was subject to a bit of scrutiny within the LDA, but in accordance with the contracts we had no option but to pay that out. We then had the matter reviewed by the superintendent, and the superintendent, basically on the technical merits of it, concluded that we were right and that therefore there was an amount that had been overpaid. In the context of us seeking to ensure that other amounts that were owed to Akron continued to be paid, so that subcontractors could then be paid, we put in place a guarantee. Is it possible for this last couple of minutes to be in camera? I am trying to be helpful to the committee, but I would not want to be in a situation where some of this might be taken out of context in any discussions that might end up happening with the administrator.

THE CHAIR: We will now move to an in camera hearing.

Evidence was then taken in camera but later resumed in public.

THE CHAIR: We will now resume the public hearing.

Mr Robertson: In relation to this sort of function, Mr Hargreaves asked me a question about how often this happens where there might be overpayments. It does happen from time to time in contracts. We certainly make sure that, as we are managing our contracts, we monitor it. But it is not unusual and it is normally caught up over the subsequent adjustments to claims over the course of the contract. The other thing that is worth mentioning and that has not really come up specifically in questions is that, in relation to this issue about subcontractors not being paid and the substantial problems, this is the exception rather than the rule with ACT government contracts. Certainly, in the 7½ years that I have been involved with the ACT government, it is the first time on any significant construction contracts that any of the contractors for the ACT have gone into voluntary administration or subsequently liquidation. So the processes have been quite robust in protecting us from this situation in the past.

MR SMYTH: You said earlier that your joint venture partners were responsible. When you are in a joint venture, how is the ACT protected and what say do we have in the arrangements between the joint venture and subcontractors?

Mr Robertson: Normally, what happens is that the administration of the project itself is done by the joint venture partners—the vehicle that is used by the joint venture to manage the project, particularly in cases where you might have a couple of partners with the ACT government. Forde is an example where we have two partners who each own 25 per cent of the project and we own 50 per cent, so there is a company that represents their interests and provides administrative services for us.

What happens on all of our joint ventures is that we actually have project control groups, we have joint venture management committees. So, depending on the size of the contract, decisions are made by the joint venture management committees—normally two from each and sometimes an independent chair. So there are four or five-member joint venture management committees. With the ACT government's representatives or the LDA's representatives on those joint venture management committees, they are advised by our officers who are involved in the project control groups. So we see tender evaluation reports coming through on that. Certainly, we had no cause for concern when Crace awarded the tender. It has also been the subject of comment in this committee's hearings.

THE CHAIR: I have an unrelated question. When you decide what method of land release to use, whether it is englobo or whether you do it yourself, do you look at procurement issues when you do that and do you look at the effect on local industry and whether there is capacity?

Mr Robertson: With residential land releases you are talking about the greenfield subdivisions, I assume.

THE CHAIR: Primarily, but—

Mr Robertson: When we talk about broad procurement approaches, probity and those sorts of issues are very important and we make sure that when we are selecting joint venture partners their processes are very robust and stand up to scrutiny. When we are having auctions or tender processes for the englobo releases or small sites, we make sure that probity is absolute and that we are protecting the territory's position. We make sure that, in accordance with our broader Financial Management Act responsibilities, we are protecting the territory's assets and getting the appropriate return. When you are doing greenfields residential development, it does not really matter whether it is an LDA project, a joint venture project or englobo. The physical work needs to be done around industry capability. We go out to tender and, to my knowledge, we have competitive processes. I am not aware of any tenders where only one person has responded. That way you have got—

Mr Dawes: If I can just add to that, we are working with industry to look at capacity issues in developing the land release program. All processes can be improved. It is something we are always looking at—continuously improving processes. We are in the process of organising a civil construction panel that we can draw off. We advertised last Saturday for expressions of interest from civil contractors to join that

panel. We are looking at potentially awarding larger civil contracts rather than gearing up. I do not think there is such an issue about capacity in the industry. It comes back to the certainty of work. If they know they are only going to be doing 200 here and 200 there, the point comes down to how do they invest, one, in resources and, two, in equipment.

One of the things that we are looking at doing in moving forward in that first part of Molonglo, which is the suburb of Wright, is how we can, by establishing the panel, let a larger contract. Obviously checks and balances and so on will be put in place to ensure that the territory is well protected, but it will also allow a potential civil contractor to gear up over time. For example, if they know that they have 1,000 blocks to develop they can ensure that they can invest in their equipment and resources. That seems to be where the industry is coming from. That is how it operates around the rest of the country and with the private sector. That will, I think, help alleviate some of the—

Mr Robertson: This complements some of the earlier work that has been done across the ACT government. We had the call tender schedule and the other document last year which talked about the broader work. It was not just the ACT government's call tender schedule. It also included some commonwealth and private sector jobs. It is so industry understands what is coming and it can then start to invest and grow that capacity.

THE CHAIR: I follow up on a question by Mr Hargreaves. He talked about having a risk assessment in terms of deciding the successful tenderer. As well as looking at risk, do you also look at positives? In other words, if someone puts in a tender for a development and they are going to be environmentally or socially exemplary, do you look at that and, if so, how do you look at that?

Mr Robertson: Normally we would try, as part of our estate development planning or whatever, to put in those arrangements either as part of what people have to deliver or how they need to do something. The best example I can think of at the moment is in relation to the Bonner display village, the sustainable living precinct at Bonner, which opened only about a fortnight ago. Initially, it was for those who have purchased blocks in Bonner and then others. I think next week it is going out more broadly to general public advertising because we have been getting a large number through.

As part of that, one of the requirements we had put on the people involved was the recycling of building waste. When you build houses and other things there is scope for waste to be generated. We put in place arrangements for the people who were delivering on their obligations and we have cut building waste by 95 per cent. We have arrangements to recycle a lot of that—the bricks, the bits of concrete, the timber off-cuts and things. So 95 per cent of the things that would otherwise have gone to landfill are now being recycled.

When it comes to broader sustainability issues, I mentioned earlier comparing apples with apples and, rather, apples with oranges. We try and build those things. Whether it is water sensitive urban design or around-the-block orientational things, we really want the construction firms to deliver us something that we have actually contracted for, because part of getting value for money is getting what we have asked for. We

have got pretty stringent environmental requirements. I am aware that nationally over this last week the Civil Contractors Federation have been talking to people in the LDA about using some of the ACT documents around sediment control and erosion control in estate developments. Some of those things which are being looked at now are things which have been pretty standard in the ACT for more than 10 years. With our colleagues in Environment ACT, TAMS or ACTPLA, depending on what the issue is, we are trying to improve those standards. I think we do pretty well on that.

MR SMYTH: The MBA in their submission talk about the need to dramatically improve the time taken to let tenders after tenders have closed. What is the LDA's record? Do you have a standard you set yourself in which to make an announcement? Also, how many tenders, once they have been called, are not completed?

Mr Robertson: In relation to the first one, our standard is to get them done as quickly as we practically can. I think our record over the last six to 12 months has been better than it was a year or two before that. We are certainly getting better with those time frames. We have had some which have been awarded—and it is a difficult time with the scale of projects, because of the approval arrangements—within a fortnight of close of tender. Certainly, most of those over the last year to 18 months would have been done within three to four weeks. Sometimes they take a little bit longer if you are doing some of the other checks and referee checks. We use different evaluation methodologies for different tenders. With the civil engineering ones, if there are issues around referee checks or other matters, I think our record has been pretty good over that time frame.

In terms of tenders not being concluded, I can only recall one in the period that I have been with the LDA, which is 2½ years, where a tender process did not run through to completion. That was more for services than civil construction. That would have been probably 15 or 18 months ago—early last year or late the year before in terms of the time frame. That was around making sure that the process itself would stand up to scrutiny. I think there were some issues where some of the documentation could have been a little better. We just wanted to make sure that we protected the probity of the situation and could get value for money. This is drawing on memory from a long time ago, but there was that one. I remember enough about it because it was unusual. It is about the only one I have ever stopped in the last, as I say, 7½ years in ACT government procurement.

MR SMYTH: The HIA in their submission makes the statement that at the present time there seems to be a one-size-fits-all approach that is skewed towards larger businesses that have unlimited resources and familiarity with and experience in the procurement process. Is any endeavour made to look after small and medium sized businesses?

Mr Dawes: If I can just comment there, when you look at the LDA and some of the panels that have been established there are quite a number of smaller builders whom the HIA would be mostly representing and have certainly been able to participate in both display villages but also in OwnPlace panels and all of that, so there has been a mix of small and larger ones. I am not sure if the HIA is addressing that to us specifically. It might be some of the larger commercial contracts, I suspect.

Mr Robertson: Certainly with our processes—Mr Dawes is right—we give the opportunities that we can and the nature of a lot of the work we do, though—consultancies and some of those advisory technical services—does go to quite small firms. But, if you are building subdivisions and things like that, when you are going out and tendering you want someone who is big enough to be capable of delivering a couple of hundred blocks within the time frame.

Mr Reynolds: You also do not want half a dozen contractors all accessing the one site and tripping over each other, so there is like an economy of scale but also a certain amount of logistics in how you parcel up the work.

Mr Robertson: It is the old story of how long it takes one man to dig a hole compared to 5,000.

Mr Reynolds: Even simple things like accessing the site—haulage routes, the site safety, the environmental systems.

THE CHAIR: It is now 3 o'clock. I guess we will send you questions on notice unless you are happy to stay?

Mr Dawes: We are happy.

MR SMYTH: Maybe just a broader question to finish. The Property Council in their submission talks about alignment with federal, state and territory jurisdictions; for instance, a recommendation that project management be named construction management. How closely are we aligned with the other jurisdictions? Is there much more that we could do to make it simpler and what is the process that is happening to ensure that?

Mr Dawes: I think I can answer that. There has been a lot more collaboration between the jurisdictions in the last couple of years than there has been previously. We do try to anticipate. One of the goals and objectives of the snapshot that was launched last year—and we will be having follow-up versions of that snapshot—is to try and align the stars so that we do know and we encapsulate all of the major works that are happening within the region, not just with our commonwealth colleagues but what is happening across the border. Having that centrally located into one document allows professional organisations such as engineering firms, cost estimators and all of that, civil contractors, commercial builders and subcontractors to know what work is occurring within the region so that they can hopefully prepare their resources and the tenders.

I think the government in the last couple of years with their calls for tender schedule have been conscious of some of the major works occurring. We cannot always control what happens across the lake at all but we do try to collaborate with the commonwealth agencies, where we can, to look at work flows. But it can be improved, just like anything.

Mr Robertson: The other thing—and this is probably more so on goods and services than on capital works—is that through the Australian Procurement and Construction Council there has been a lot done to jointly develop things around sustainable

procurement. The Australian Procurement and Construction Council have issued some documents around that, around insurance and a whole lot of matters where there has been collaboration between the jurisdictions so that it is not too costly just to deal in jurisdiction A compared with maybe the rest or other things. To the extent there are things that can be applied here, there was even discussion at different points about common use contracts that could be drawn on across the country that offered some advantages to the ACT where you are doing things in tandem with some of the bigger jurisdictions; I think through some of the electronic equipment that might be used at different points there was consideration of that.

THE CHAIR: Thank you very much. Could we have questions by, say, the end of the week because next week we will be too busy to write questions.

Mr Robertson: And in terms of us answering them? That was an aside, not an answer.

THE CHAIR: I suspect probably a month. We will be totally busy with estimates. Would a month be okay?

Mr Robertson: So a month after we receive the questions?

THE CHAIR: We will try and get them in before estimates.

Mr Robertson: There have been a lot of questions taken on notice recently, some on Akron, so they might pre-empt some of the ones you have otherwise got.

THE CHAIR: Thank you.

The committee adjourned at 3.05 pm.