

From: [REDACTED]
To: [DLGSC Act Review](#)
Subject: Local Government Act 1995 Review
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Hi,

I have been motivated to submit my thoughts into the review. Whilst I filled out the survey, my input is quite narrow so I am forwarding it by email as well.

I have been supplying professional services to entities tendering to local governments since I left the WA State Government Dept of Treasury and Finance in 2003. My title at the time was Director, Telecommunications Procurement. I am submitting my experience as an independent tender consultant to hopefully help my clients.

I am consulted regularly on perceived "irregularities" relating to the tendering process. I refer to the findings of the Auditor General's recent audit on Local Government Procurement Report 5:October 2018-19 and can say that none of the findings were a surprise to me, based on my experience.

In many cases, my own investigation reveals that my clients are not just whinging they lost: their complaints indeed appear to be valid and that the LGA did not follow its own policies and Codes of Conduct so my clients were denied a fair and unbiased process. The most frequent complaint is that the process was subject to a conflict of interest. All too often, investigation reveals relatives and past employees were granted contracts even though they were more expensive and less experienced/qualified to do the work. All too often, these contracts cost more than the published contract rate and other contractors were brought in to backfill. All too often, these ad hoc purchase orders added up to more than \$100k over a year and so should have been put to tender.

In too many other cases the evaluation criteria are just plain silly. For example, recently two LGAs had mandatory requirements for clauses in suppliers' insurance policies that even their own insurer would not allow (advice from WALGA). Failure to include a letter from an insurer agreeing to the clauses made suppliers' tenders non-compliant and hence rejected. Appealing for commonsense to applied to the requirement during the tender open period was, on both occasions, unsuccessful.

In many other instances price is weighted 60%, meaning only the cheapest offer can win. Yet the LGA stated that they would take a value for money approach and the lowest bidder would not necessarily win. This allows an unreasonable latitude to accept the bid they wanted, not the one that won on its merits through the advertised process (process contract).

In one case, my client "somehow" accessed a competitor's bid in a street trees tender. This competitor was new to the industry, and lacked my client's experience and track record and yet somehow won. I don't know how he got a copy and I didn't ask. The tender response submitted by the other supplier was lacklustre but the extensive pricing schedule was most interesting. In every one of the 50-something service lines the winning bid was exactly 5% lower than my client's. Such consistency can not possibly be a coincidence. The more important point is that the LGA's area was quite complex and my client, the incumbent, used specialist equipment unique to the industry to operate for a very low price. A new entrant, operating without this equipment, could not possibly operate profitably for the tendered price and fulfill the contract requirements to an acceptable standard. Appealing to the CEO was unsuccessful. Not surprisingly, the LGA is now experiencing difficulties with this particular contractor, who is struggling to fulfil the requirements. Poor decision making and supplier selection regularly costs LGAs dearly, because their decisions are too often driven by false economies.

I could go on but I think I have made my point. Whilst some LGAs follow excellent procurement practices, most do not, in my experience as an involved industry observer.

My problem is that there is no independent arbiter that can investigate or advocate on behalf of the suppliers. The only advice I can give my clients is to write to the CEO. Generally, by the time they reach out to me for my thoughts, they have exhausted this avenue and are still concerned that the process lacked probity and that they had invested heavily to participate in a flawed, biased process. WALGA is unable to help in any way, since they lack any authority over LGA procurement, even if the LGA is an active member.

If there are no repercussions to an LGA running a "dodgy" tender process, why bother to require the LGAs to go to tender in the first place? It is just adding cost and overhead for the sake of appearances, and is both a waste of time and money, for both the LGAs and the suppliers wishing to do business with them.

I believe that aligning the process to the State Government procurement is a positive step. However there also needs to be an independent appeals process and a will to investigate and prosecute unethical procurement behaviour. Otherwise, lift all requirements to adhere to any process because at the moment the legislation is a toothless tiger allowing LGA procurement officials to follow any process, behave any way they like, and cover their tracks without fear.

I do not support mandating that LGAs must access State Government CUAs (not sure if this is a consideration or not). This will penalise small businesses who are better aligned to working in their local area.

I do, however, support LGAs being able to access State Government CUAs as a general principle, and this fact should be advertised. The Department should liaise with WALGA and work with them to ensure that WALGA is aligning with the Department.

I don't support tender thresholds based on a percentage of operating revenue. This would require small LGAs to go to the time and expense more often. Regional LGAs will likely lack the necessary skills and should be encouraged to use the procurement services of WALGA instead.

I have seen RFQs for \$100k that call for as much, if not more work effort than an RFT for \$2m for the same type of services. Attention needs to be paid to the work involved by both parties in a small procurement, even if is not publicly advertised or tendered. The added cost of procurement is always passed on to the LGA, in one way or another.

My recommendations for the purpose of this review are as follows:

1. Provide an appeals process that is independent of the LGA
2. Give powers to the Ombudsman to investigate procurement irregularities
3. Alter the legislation to provide teeth to the investigative process
4. Increase the Department's powers and roles over the provision of procurement processes
5. Align the process to the State Government procurement process, while recognising that many services are quite different to those required by State Government
6. Provide procurement training to LGAs. Ensure a minimum standard of knowledge and understanding.

I am happy to speak to these further if required.

Kind regards,

Sue Findlay
Managing Director



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