



Tasmanian
Audit Office

Procurement in Local Government

Report of the Auditor-General

No. 1 of 2019-20

Today's presentation

- Why we undertook the audit
- Compliance focus
- Examinations of:
 - Devonport City Council
 - Dorset Council
 - Glenorchy City Council

Why this audit?

- Previous CT Management audit
 - What was happening in other councils?
- A number of councils do not have Internal Audit
 - How do they get assurance over their procurement activities?
- A number of referrals received on:
 - Devonport Living City Project
 - Dorset's Blue Derby Bike Trails
- Board of Inquiry recommendations
 - Glenorchy City Council

Compliance Focus

- Audit approach:
 - compliance focus and conducted in accordance with sections 23(d) and 23(e) of the *Audit Act 2008*
 - also considered effectiveness of governance and procurement processes for Devonport Living City project
- Compliance requirements:
 - *Local Government Act 1993* (LGA)
 - *Local Government (General) Regulations 2015* (and former regulations where applicable) (LGR)
 - Council codes for tenders and contracts (Code)

Extenuating Circumstances

Regulation 27. Non-application of public tender process

The following situations and contracts are prescribed for the purposes of section 333A(3) of the Act:

- (i) a contract for goods or services, if the council resolves by absolute majority and states the reasons for the decision, being that a satisfactory result would not be achieved by inviting tenders because of –
 - (i) extenuating circumstances; ...

The LGA and LGR do not define 'extenuating circumstances'

Devonport City Council (DCC)



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Audit Criteria

1. Did the engagement of contractors and consultants comply with DCC procurement policies and the LGA?
2. Did DCC takes steps to assess the commerciality of the Project Development Management Agreement (PDMA)?
3. Did DCC follow sound commercial and governance processes in entering into the Providore Place head lease?
4. Did DCC follow appropriate commercial and governance processes for the sale of land for the Stage Two hotel development?
5. Did DCC adhere to its budget for Stage One of the Living City project?

1. Did the engagement of contractors and consultants comply with DCC procurement policies and the LGA?

Findings:

- DCC undertook procurement processes that complied with its Code, the LGA and LGR
 - 12 contracts were tendered
 - 2 contracts engaging Project & Infrastructure Holdings Pty Ltd (P+i) used exemptions
- ‘Extenuating circumstances’ used for these exemptions
 - clarity could be improved with a definition within the LGA or LGR
 - apply the exemption in truly exceptional circumstances
- In general, DCC complied with the annual reporting requirements except in one instance
 - total value of the goods or services acquired was not disclosed

2. Did DCC take steps to assess the commerciality of the PDMA?

Findings:

- DCC had taken reasonable steps to assess the commerciality of amounts payable under the PMDA and obligations of both parties under the agreement
- Documentation of the assessment could have been improved
- DCC took reasonable steps to assess and document a subsequent amendment to the PDMA
- Payments made to consultant were made in accordance with the terms of the PDMA



3. Did DCC follow sound commercial and governance processes in entering into the Providore Place head lease?

Findings:

- DCC complied with the LGA in regard to obtaining an independent valuation for Providore Place head lease which indicated it provided an appropriate commercial return to DCC
- Head lease was primarily drafted by P+i
 - appeared to be missing a number of standard lease clauses
 - based on an agreed ‘term sheet’ approved by DCC
 - expected that it would not be a traditional lease arrangement but more akin to a cooperative shared arrangement

3. Did DCC follow sound commercial and governance processes in entering into the Providore Place head lease?

Findings (continued):

- DCC did not obtain independent legal advice on the head lease agreement prior to signing the lease
- The close relationship risk between DCC and P+i in entering into the head lease was not adequately managed
- DCC had not met good governance principles relating to:
 - transparency
 - equity
 - participation and inclusion, and
 - effective and efficient decision making.

4. Did DCC follow appropriate commercial and governance processes for the sale of land for the Stage Two hotel development?

Findings:

- DCC complied with the requirements of the LGA for the sale of land for the hotel development
- The sale price for the site was \$1.18m with Fairbrother responsible for required building demolition costs
- All future hotel development project and financial risks rest with Fairbrother

5 Did DCC adhere to its budget for Stage 1 of the Living City project?

Findings:

- DCC and its project manager P+i adequately documented, monitored and reported the progress of the project against budget
- At 30 June 2019, Stage One of the project was substantially complete and in accordance with planned budget

Dorset Council

Audit Criteria

1. Did Dorset Council comply with its Code, the LGA and LGR in awarding the contract for Stage Two of the Blue Derby Bike Trails to World Trail?
2. Did Dorset Council comply with its annual reporting requirements relating to the contract for Stage Two of the Blue Derby Bike Trails?

1. Did Dorset Council comply with its Code, the LGA and LGR in awarding the contract for Stage Two of the Blue Derby Bike Trails to World Trail?

Findings:

- The procurement process followed by Dorset Council in applying the exemption met the procedural requirements of the LGA and LGR
- The extension clause included in the contract for Stage Two by Dorset Council, if used, would contravene the LGA

2. Did Dorset Council comply with its annual reporting requirements relating to the contract for Stage Two of the Blue Derby Bike Trails?

Finding:

- Dorset Council did not fully comply with its reporting obligations
 - failed to disclose the application of the exemption in awarding the contract
 - did not provide a brief description of the reason for the exemption

Glenorchy City Council (GCC)

Audit Criteria

1. Does GCC's Code comply with the letter and the spirit of the LGA?
2. Did GCC comply with regulation 27(i) of the LGR?
3. Did GCC comply with regulation 29 of the LGR.

1. Does GCC's Code comply with the letter and the spirit of the LGA?

Finding:

- GCC's current Code complied with the letter and spirit of the LGA and the requirements of the LGR.

2. Did GCC comply with regulation 27(i) of the LGR?

Finding:

- No contract exemptions under the LGR were identified.
- All significant procurements related to major projects complied with the LGA and LGR
- Two procurements, out of 67 examined, exceeded the prescribed amount and contravened GCC's previous Code and the LGA.

3. Did GCC comply with regulation 29 of the LGR?

Finding:

- GCC complied with its annual reporting requirements required by the LGR.

Conclusion

- Overall all three councils, in all material respects complied with the procedural requirements under LGA and LGR
- DCC's governance and procurement processes for management of the Living City project were effective except for DCC:
 - failing obtain independent legal advice prior to entering into the Providore Place head lease.
 - not adequately managing the relationship risk between DCC and P+I in entering into the head lease.

Recommendations

- The Government consider reviewing the :
 - circumstances in which the exemption from public tender under the LGR can be applied, including providing a definition of extenuating circumstances
 - LGA and LGR to strengthen requirements relating to the lease of property. Specifically, significant lease opportunities should be open to all interested market participants.

Recommendations

- The Director of Local Government consider:
 - providing guidance on minimum documentation requirements where the exemption from public tender is applied, including a requirement for detailed market research and analysis to be undertaken.

Recommendations

- Devonport City Council:
 - review internal processes and procedures to ensure future compliance with annual reporting requirements in relation to tenders and contracts
 - should sufficiently document its assessment of the reasonableness of amounts payable for contracts not subject to Public Tender
 - update its policies to provide guidance relating to property lease transactions

Recommendations

- Devonport City Council (continued):
 - amend its policies to clarify when independent legal advice should be obtained in connection with property leases
 - review its measures to mitigate risks arising from contracts entered into where potential conflicts of interest may arise

Recommendations

- Dorset Council:
 - should not use the extension clause included in the Stage Two contract with World Trail
 - review its internal processes and procedures to ensure future compliance with the annual reporting requirements of the LGR

Thank you



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