

Code of Tendering - May 1994

CHAIRMAN'S INTRODUCTION

This is the fourth report of the Economic Development Committee of the Parliament of Victoria which under its terms of reference is conducting an inquiry into the Victorian Building and Construction Industry (VBCI) together with the tendering procedures for government works and services.

As has been indicated previously the Terms of Reference before the Committee are far reaching.

The Committee has thus far tabled three reports in response to its terms of reference.

This report, Code of Tendering provides an overview of the economic contribution of the VBCI and reports on Public Tendering Provisions for Government Works.

It makes no recommendations in relation to the purchase of non building and construction goods and services. It is the Committee's intention to report separately on these purchases.

The Victorian Building and Construction Industry (VBCI) has only recently been subject to overseas competition. It is important that all the participants recognise the need to compete on the basis of price, quality of product, standard of service and to adopt the highest standards of business ethics to achieve a competitive edge over their competitors.

During the course of its inquiry into the VBCI, the Committee became aware of the need to maximise the degree of competition in respect of public sector tendering processes to ensure that the public secures "value for money" and is confident that participants in the tendering process for the procurement of public works and services (including public servants), do not engage in collusive practices.

The Committee recognises that not all VBCI participants will accept the need for increased competition in relation to public sector tendering processes, or the need to act according to the highest standards of business ethics. There will no doubt be those individuals or organisations which will seek to achieve a competitive advantage by engaging in anti competitive practices through collusive tendering activities. However, where this situation arises governments are duty bound to protect the public interest through the introduction and application of appropriate legislation.

The Committee believes that collusive practices which restrict competition and hence lead to higher prices should where possible be eliminated. To this end, it is our firm view that the Collusive Practices Act 1965, Crimes Act 1958, Public Sector Management Act 1983 should all be used to the fullest extent to protect the public interest.

During the inquiry the Committee discussed tendering related issues with a number of officers from government departments and agencies. These officers provided information openly and freely to the Committee for which we are most grateful.

The Committee would be concerned if any of these officers were to become subject to any form of victimisation by management or other persons. The same concern is also expressed in relation to other witnesses or individuals who provided information to the inquiry.

Should such victimisation occur, it would constitute a breach of Parliamentary Privilege and would be viewed most seriously by the Committee.

Finally, in tabling this report I would like to recognise the support and efforts of Committee members, staff and in particular our researchers Mr Terry Ritson and Mr Walter Broussard and consultants.

The Honourable Gerald Ashman, MLC
Chairman
Economic Development Committee

FINDINGS

Finding 1.1

The Committee finds that given its importance to the growth of the Victorian economy, the VBCI should be classified as a key industry sector in terms of the State Government's Industry Policy and be provided with industry and facilitation assistance available to other key industry sectors identified in the Industry Policy.

Finding 2.1

The Committee finds that:

- + There is scope for the development and implementation of uniform tendering policies, procedures and guidelines for public sector works and services to improve standards of public service accountability, probity, equity and overall efficiency of the tender process.
- + Where Bills of Quantities are provided there is less scope for variations in contract tendering prices to occur and where such variations do occur they are more easily identified.
- + The use of Bills of Quantities reduces tendering costs and results in savings on project costs.

Finding 2.2

The Committee finds that:

- + State Public sector tendering processes need to be audited and reviewed periodically to ensure that inefficient tendering practices are addressed; that probity and accountability of all VBCI participants is maintained; and that high tendering standards are set for the private sector to emulate.
- + Independent audits of tendering processes need to be conducted to ensure that departmental/agency conflicts of interest do not arise.

Finding 2.3

The Committee finds that uniform tendering policies and procedures need to be developed and implemented across all State Government departments and agencies in accordance with strategic management principles.

Finding 3.1

The Committee finds that Open Tendering, in conjunction with project specific and other general tender criteria, should be fully adopted (for State Public Sector Projects with a value in excess of \$50,000) by all public sector departments and agencies, to increase the efficiency of public sector tendering practices and enhance competition within the VBCI.

Finding 3.2

The Committee finds that:

- + Tender assessment and selection for State public works and services in excess of \$50,000 should be based on project specific and general tender selection criteria, and lowest price tendered; and
- + The financial viability of the lowest tendered should also be assessed in conjunction with financial capability and the credit rating of the tenderer.

Finding 3.3

The Committee finds that a central computerised database is needed for the purpose of ascertaining the historical performance capability of tenderers including their work performance and management and technical capabilities.

Finding 3.4

The Committee finds that the proposed public sector open tendering system for State public sector works

and services in excess of \$50,000 in value should be open to both domestic and international firms so that market competition is maximised. Also, new entrants should be encouraged to submit expressions of interest for the tendering of minor works and services of up to \$50,000.

Finding 3.5

The Committee finds that:

- + The introduction of competitive tendering and the reform of the building certification system throughout Local Government provides a useful precedent for the application of competitive tendering principles in respect of all public sector building and construction works and services.
- + Competitive open market tendering should be applied within the State public sector over a three year period to achieve maximum benefits from competitive tendering.

Finding 3.6

The Committee finds that selective lists or Invitations-to-tender restrict competition and may result in corruption of managers of the tender process.

Finding 3.7

The Committee finds that the tendering process for State public works and services should provide for the payment of tenderers' fees only in circumstances deemed exceptional by the Minister concerned. Such circumstances could include situations where tenders are called and the project does not proceed or where the State might wish to acquire the technical expertise and intellectual property design.

Finding 3.8

The Committee finds that State Government departments and agencies should advertise on an annual basis, for expressions of interest from suppliers, for the submission of tenders in respect of minor works and services less than \$50,000 in value.

Finding 3.9

The Committee finds that chief administrators of State government departments and agencies and senior managers should ensure that managers of the tender process are accountable and receive appropriate training (particularly in regard to the development of tender selection criteria, tender assessment, performance based measures, and business ethics).

Finding 3.10

The Committee finds that regular meetings of senior officers from all agencies involved in the letting of tenders should be held frequently for the exchange of information on tender activities and practices, and the reinforcement of public sector business ethics. There also needs to be more interaction between public and private sector managers involved in the tender process through interchange programs and seminars/workshops. Joint private and public sector participation is required if existing culture/practices are to be reformed.

Finding 3.11

The Committee finds that "purchasing" is not recognised as a career stream in the public service and this can be detrimental to the efficiency and probity of the tendering process.

Finding 4.1

The Committee finds that:

- + There is a need to develop codes of tendering and practice for all public sector projects (and guidelines which will assist in the interpretation of the codes) to reduce unethical practices and increase accountability of all VBCI participants.
- + The NSW Code of Practice and Code of Tendering, the Western Australian Code of Practice and the CIDA Code of Tendering, provide useful models for the development of similar Victorian codes.

Finding 4.2

The Committee finds that a joint VBCI public/private sector working group should be established to develop and implement codes of tendering and practice. Membership of the group should be on a non tenured basis so that private and public sector organisations have the opportunity to nominate new representatives every two years. The group should also develop initiatives to encourage industry self regulation; increased efficiency, and productivity; high quality standards; and high standards of business ethics by all industry participants. In view of the industry issues involved, the group should report to the Minister for Industry and Employment and receive policy/administrative support from his Department.

Finding 4.3

The Committee finds that the Victorian Codes of Tendering and Practice should clearly define the responsibilities of all VBCI parties, particularly in relation to industrial relations issues, contract administration requirements, and the achievement of best practice. The Codes should also detail sanctions

for non compliance with the Codes and clearly define and prohibit, unethical tendering practices.

Finding 4.4

The Committee finds that the State Government can introduce a number of non legislative initiatives to encourage compliance with Victorian Codes of Tendering and Practice, these include:

- + The provision of networking and industry facilitation experience to firms which comply with the Codes.
- + The promotion of the benefits of the Codes to all VBCI parties through the media and educational programs.
- + The use of tender selection criteria which requires prospective tenderers to comply with all components of the Codes.

Finding 4.5

The Committee finds that there is scope to strengthen the Collusive Practices Act 1965 to support compliance by all VBCI parties with the Victorian Codes of Tendering and Practice.

Finding 4.6

The Committee finds that statutory declarations are a useful deterrent against tenderers engaging in collusive tendering practices

Finding 4.7

The Committee finds that the use of State Government purchasing power is available to encourage compliance with proposed Victorian Codes of Tendering and Practice.

Finding 4.8

The Committee finds that there is scope to provide increased training opportunities, for sub contractors and contractors to enable them to acquire small business management skills, contemporary knowledge of business ethics, and an understanding of basic contract law and tendering procedures.

RECOMMENDATIONS

Recommendation 1.1

The Committee recommends that:

- + The VBCI be recognised as a key industry sector by the State Government in terms of its Industry Policy Statement.
- + The Department of Business and Employment develop a detailed sector strategy for the VBCI industry sector, with the aim of improving the industry's efficiency and international competitiveness.

Recommendation 2.1

The Committee recommends that:

- + Uniform tendering policies, procedures and guidelines be developed and implemented for the procurement of public works and services by all State Government departments and agencies.
- + To improve the efficiency of the tender process and reduce associated tender costs, Bills of Quantities should be provided on all projects above \$2 million and be considered for projects less than \$2 million.
- + The accuracy of Bills of Quantities, where used, should be guaranteed by the contract and that "Concise" or "Abridged" Bills of Quantities should not be used by departments and agencies.
- + To reduce the incidence of risk, Australian Standard Contract (AS124), with appropriate special conditions of contract, should be used by all State Government departments and agencies.
- + The tender period should be extended where addenda are issued.
- + Tender receipt times should be at least:
 - 14 days for minor works and services;
 - 21 days for works and services up to \$200,000; and
 - Up to three months for large complex projects where detailed design work is required.
- + A State public sector Policy, Co-ordination and Review Working Group be established to develop uniform statewide tendering policies, procedures and guidelines for the acquisition and maintenance of public works and services.
- + The Policy Co-ordination and Review Working Group should comprise private sector consultants, senior managers from the Departments of Finance, Treasury, Planning and Development, and Business and Employment and other departmental/agency representatives on a rotational basis.
- + The Policy Co-ordination and Review Working Group should be chaired by a suitably qualified person and report to the Government through the Minister for Finance.

Recommendation 2.2

The Committee recommends that:

- + Random independent audits of departmental/agency tendering activities should be conducted regularly by the Auditor-General, to ensure maximum accountability and probity in the tendering process.

- + Audits should cover all project related tendering activities from the time tenders are let to the final completion stage of the project(s).
- + The Auditor-General must be provided with sufficient funds to conduct audits of the tendering process through employment of private sector consultants skilled in quantity surveying and audit techniques. These consultants should report directly to the Auditor-General.
- + The Auditor-General should investigate instances where departments have let a number of tenders for minor works and services instead of a single tender for a whole project as a means of circumventing open tendering principles.
- + Chief executives and senior managers of government departments and agencies must be accountable through their employment contracts for the efficiency and effectiveness of the tender process under their control.

Recommendation 2.3

The Committee recommends that strategic management principles should be applied to enhance the development and implementation of uniform tendering policies and procedures for all State Government works and services.

Recommendation 3.1

The Committee recommends that State public sector building and construction projects in excess of \$50,000 in value should be subject to open market tendering in conjunction with project specific and other general tender selection criteria.

Recommendation 3.2

The Committee recommends that:

- + Project specific and general tender selection criteria should be developed in support of the proposed open market tendering system for State public works and services;
- + Project specific and general tender selection criteria guidelines should be developed by the proposed Policy Coordination and Review Working Group. Where cost effective, project specific selection criteria should be outsourced to the private sector;
- + Project specific tender selection criteria should include benchmarks (set at international standards) which would need to be met or exceeded by tenderers; and
- + Tender selection and assessment for State public sector works and services should be based on the most appropriate lowest price in conjunction with project specific and general tender selection criteria.

Recommendation 3.3

The Committee recommends that:

- + A central computerised database should be established for the purpose of ascertaining the historical performance capability of tenderers including their work performance and management and technical capabilities.
- + This database containing the past history of work performance of tenderers should be put to open tender to ensure "value for money" and access to the latest technology.
- + Tenderers should have the right of appeal against records of their past work performance, as recorded on the central database, initially to the officer-in-charge of the database, and finally, to the Ombudsman.
- + The Minister for Finance should be responsible for the letting of the tender for the central database and selection of the successful tenderer.
- + Cabinet should determine the appropriate Ministry for administration of the database.

Recommendation 3.4

The Committee recommends that:

- + Market competition should be maximised under the proposed open market system for State public sector works and services, by opening the tender system (for works and services in excess of \$50,000) to both domestic and international firms;
- + The tender period should be set at a sufficient minimum (14 days) for all projects in excess of \$50,000; and
- + There should be no barriers to tendering thus providing every encouragement for new entrants to tender for State public sector works and purchasing contracts.

Recommendation 3.5

The Committee recommends that open market tendering for State Government public sector works and services in excess of \$50,000 should be introduced over three years across all State Government Departments and agencies.

Recommendation 3.6

The Committee recommends that:

- + Selective lists or invitations-to-tender should only be used with ministerial approval in circumstances such as the acquisition of works and services with specialised applications, responses to emergency situations or in situations where there is a single source of supply.

Recommendation 3.7

The Committee recommends that:

The tendering process for State Government works and services should include provision for the payment of tenderers' fees in exceptional circumstances and only with the approval of the Minister concerned.

Recommendation 3.8

The Committee recommends that tenders in respect of State public sector minor works and services of less than \$50,000 in value should be selected on the basis of lowest price and quality assurance standards.

Recommendation 3.9

The Committee recommends that chief administrators of State government departments and agencies and senior managers, should provide appropriate training opportunities for staff involved in the management of the tender process.

Recommendation 3.10

The Committee recommends that Victorian public sector efficiency be enhanced through inter-departmental/agency exchange of information on tendering activities and joint public/private sector interchange programs. This should be the responsibility of the Minister for Finance.

Recommendation 3.11

The Committee recommends that the Public Service Commissioner investigate the feasibility of establishing a purchasing career stream within the Victorian public sector to raise ethical standards and efficiency levels in respect of all tendering activities.

Recommendation 4.1

The Committee recommends that:

- + Codes of tendering and practice and associated user guidelines should be developed to provide minimum standards of acceptable behaviour within the VBCI.
- + The Victorian codes of tendering and practice should be tailored to meet VBCI specific needs.
- + The NSW Code of Practice and Code of Tendering, the Western Australian Code of Practice and the CIDA Code of Tendering should be used as guides for the development of the Victorian codes.

Recommendation 4.2

The Committee recommends that a VBCI working group, with joint public/private sector membership, should be established to develop and implement Victorian Codes of Tendering and Practice and initiatives which will encourage VBCI self regulation, and efficiency.

The proposed VBCI working group should, in particular, consider ways by which unethical tendering practices can be addressed; whether it is feasible to introduce standard contracts for both public and private sector building and construction projects. It should also consider VBCI training requirements, quality assurance initiatives, and other EDI techniques to improve the productivity of the tender letting process.

Recommendation 4.3

The Committee recommends that the Victorian Codes of Tendering and Practice:

- + Reflect the current State Government's industrial relations Initiatives to reform workplace practices in the VBCI.
- + Clearly define the responsibilities of all VBCI parties in respect of all elements of the Codes.
- + Discourage unethical tendering practices.

Recommendation 4.4

The Committee recommends that the State Government encourage VBCI parties to comply with the Victorian Codes of Tendering and Practice by promoting the benefits of the Codes to all parties; by providing networking and industry facilitation assistance to firms/individuals willing to comply with the Codes; and by ensuring that tender selection criteria requires all tenderers to act in accordance with the Codes.

Recommendation 4.5

The Committee recommends that the Attorney General review the Collusive Practices Act 1965 to provide for:

- + Increased and wider ranging penalties for collusive tendering practices.
- + Clearer definitions of collusive tendering practices, "goods" and "services".

Recommendation 4.6

The Committee recommends that the proposed Victorian Codes of Tendering and Practice should stipulate the use of statutory declarations to limit collusive practices.

Recommendation 4.7

The Committee recommends that State Government Departments and Agencies should utilise Government purchasing power as the last resort to ensure that tenderers comply with the proposed Victorian Codes of Tendering and Practice.

Recommendation 4.8

The Committee recommends that the Minister for Tertiary Education and Training request the State Training Board to examine the feasibility of including small business management subjects in TAFE related building and construction training courses.

Last Updated on Wednesday, 07 October 2009