

**Presentation to the Institute of Public Works Engineering Australia at
Manningham City Council function rooms, Doncaster on Thursday 8
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Presentation made by John R Taylor – Acting Ombudsman.

Lessons learnt from procurement practices

I have been asked to speak on lessons learnt from the investigation into the City of Port Phillip, the report of which was tabled in Parliament on the 13 August 2009. Rather than focus on a specific council, I propose to discuss ten lessons learnt from our investigations into procurement practices in recent years.

Lesson 1

The need for up to date guidelines on tendering and contracting

Not only should agencies have up to date guidelines on tendering and contracting, they should also provide regular training for staff in this regard.

Lesson 2

Document all stages of the process

Once a decision is made to call for a tender or to obtain goods or services the process should be documented throughout the life of the project.

Lesson 3

Maintain good records

In one recent investigation we identified that for a significant financial transaction in relation to a contract involving millions of dollars, the only record we could identify to explain the decision-making processes was on a single sheet of paper. Good record keeping also includes folioing files and maintaining formal files in a secure location.

Lesson 4

The tender evaluation should be transparent and accountable

The evaluation should have a framework developed before the call for expressions of interest or tender.

Lesson 5

Relationships with tenderers

Our investigations have identified occasions where there has been a clear conflict of interest in relationships with contractors and tenderers. This is born out in one example involving the Office of Housing. The report of 'The investigation into the Office of Housing's tender process for the cleaning and

gardening maintenance contract' released in October 2007 (which may be found at <www.ombudsman.vic.gov.au>) is an example.

Lesson 6

Avoid conflicts of interest

Conflicts of interest are broader than simply where there is an actual conflict. Perceptions of conflict of interest or bias should be identified and acted on. An agency should have guidelines on conflict of interest.

Lesson 7

Use a probity auditor in big projects

This is particularly important for projects that have a lengthy implementation time. A probity auditor should be used from the beginning until well into the project particularly if after a contract is signed negotiations continue.

Lesson 8

Avoid bracket creep

If the tender exceeds the prescribed amount for calling for public tenders particularly if this is an accumulated amount over a number of years then consideration should be given to calling for tenders. This means for example where if the amount to be expended is \$50,000 a year over three years this clearly is in the range of needing to call for tenders. It also provides an opportunity to negotiate a contract for that period of time.

Lesson 9

Don't cook the books

We have identified instances where officers with financial delegations of a limited amount (the example of five thousand dollars was noted) meant that a project in excess of the delegated amount was then split in to smaller amounts bringing it within the delegate's financial decision-making. This is inappropriate.

Lesson 10

Gifts and hospitality

While government agencies should have a gifts and hospitality policy, I question the need for public officers to accept gifts or hospitality. Where there is a benefit to the employer, consideration should be given to the employer paying for the activity rather than expecting or accepting hospitality from an organisation with a vested interest in the relationship. I gave examples of invitations to the tennis, Grand Prix and football.