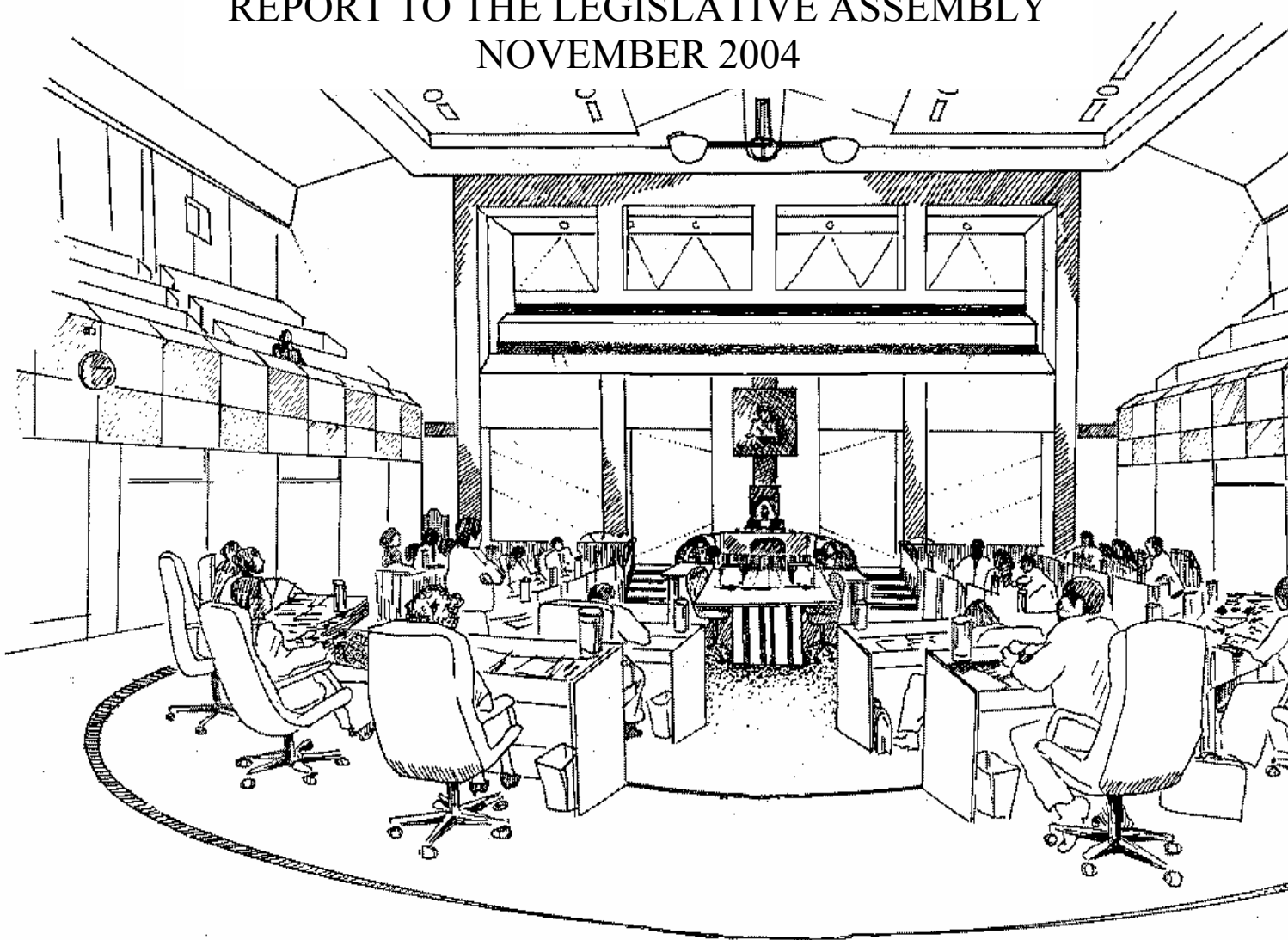




AUDITOR-GENERAL
FOR THE NORTHERN TERRITORY

**EXAMINATION OF CONTRACTS
AWARDED BY GOVERNMENT
AGENCIES TO
METIS CONSULTING PTY LIMITED**

REPORT TO THE LEGISLATIVE ASSEMBLY
NOVEMBER 2004



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Providing independent analysis

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Providing independent analysis

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The cover of the Report depicts an artist's impression of sittings of the Northern Territory Legislative Assembly. In that forum, information provided by the Auditor-General can be used to support questions and debates.

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PROCUREMENT – METIS CONSULTING PTY LIMITED

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The Honourable Loraine Braham MLA
The Speaker of the Legislative Assembly of the Northern Territory
Parliament House
DARWIN NT 0800

30 November 2004

Dear Madam Speaker,

I request that you table this report today in the Legislative Assembly.

It contains findings from an audit into the awarding of contracts by Northern Territory Government agencies to Metis Consulting Pty Limited.

Yours sincerely

Frank McGuinness
Auditor-General for the Northern Territory

PROCUREMENT – METIS CONSULTING PTY LIMITED

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Introduction

During the June 2004 sittings of the Legislative Assembly, concerns were expressed by some Members about the extent to which the requirements of the *Procurement Act 1995*, Regulations made under that Act, Procurement Minister's Directions and Guidelines issued by the Procurement Review Board, collectively referred to as procurement policy in this report, may not have been complied with in relation to the awarding of contracts by Northern Territory Government agencies to Metis Consulting Pty Ltd (Metis).

On 25 June 2004 the Honourable Member for MacDonnell wrote to the then Acting Auditor-General setting out specific concerns with the procurement process in relation to contracts awarded to Metis.

Mandate

Whilst the Auditor-General is not obliged to investigate matters that may be referred to him, in this instance the then Acting Auditor-General elected to exercise his prerogative under Section 13(1) of the *Audit Act* and to conduct an audit into consultancy contracts awarded to Metis by Government agencies. The basis of that decision was that the conduct of this audit would complement Agency Compliance Audits and other audits of agencies, and that it would contribute to the audits of the Public Accounts and the Treasurer's Annual Financial Statements.

Objectives

The objective of the audit was to assess the extent to which the processes adopted by agencies in awarding contracts to Metis complied with the requirements of Procurement Policy.

Results of a previous audit of Certificates of Exemption

A previous audit was conducted of Certificates of Exemption during 2003. The scope of that audit extended to include 12 agencies and the results of the audit were included as part of the report by the Auditor-General to the Legislative Assembly in October 2003.

The principal findings of that audit are reproduced below:

- *“Key procedures over the use of Certificates of Exemption in the cases selected for review were found to have operated. The review did, however, identify a number of issues for further consideration.*
- *The procurement guidelines are not completely clear as to the costs to be included in determining the various monetary thresholds applied to Certificates of Exemption relating to consulting engagements.*
- *Consultancy engagements reviewed did not always include clear outcomes anticipated from the transactions entered into. This should become a standard requirement so that neither party is in any doubt as to what is expected of the other.*
- *Respective responsibilities for workers compensation insurance cover are not clear with regard to employees working for consultants.”*

Introduction (cont'd)

Approach

The audit that is the subject of this report was limited to the contracts awarded to Metis during the 18 months ended 30 June 2004.

In conducting this audit I have:

- reviewed documents retained by the Department of Corporate and Information Services – Contract and Procurement Services (CAPS), the Procurement Review Board, and the Agencies concerned;
- discussed matters that have come to my attention as part of the audit with personnel from CAPS, the Procurement Review Board, and the Agencies; and
- discussed matters that have come to my attention as part of the audit with relevant officers of the Agencies in question and with the Chief Executives of each of those Agencies.

I have not held discussions or corresponded with representatives of Metis.

Contracts and Payments Examined

The following contracts and payments were examined during the course of the audit:

Department of the Chief Minister

Contract No. D04-0599 – awarded for the review of the Office of Central Australia. A total of \$25,018.45, including reimbursement of travel related expenditure, has been paid against the contract.

Department of Employment, Education and Training (DEET)

The Department instigated procurement arrangements that involved Metis on two separate occasions:

- In the first instance – payments totalling \$24,701.12 were made in April 2004 relating to developing a brief for a consultancy to develop a new four-year Indigenous Education Plan; and
- In the second instance – public tenders were called to develop the Indigenous Education Action Plan for 2005-2009. This tender process has closed and I have been informed that no contract is to be awarded.

Office of the Commissioner for Public Employment (OCPE)

A contract for \$26,000 relating to a change management plan and approach to implement Cabinet's decisions on the restructure of the NT Fire and Rescue Service. A total of \$23,758.71, including reimbursement of travel expenditure, has been paid against the contract.

Department of Health and Community Services

Contract No. D03-0064 – awarded to provide advice and assistance with planning necessary to implement the recommendations of the Bansemer Review.

Contract No. D03-1105 – awarded to provide high level consultation and the provision of strategic advice to the Minister and the Chief Executive Officer on health and community service issues in the Central Australian region; and

Contract No. D03-1129 – awarded to provide management coaching and to develop strategies for specific scenarios for mid-level executives and senior managers.

A total of \$78,328.08, including reimbursement of travel related expenditure, has been paid in respect of these contracts.

Northern Territory Police, Fire and Emergency Services (NTPFES)

Contract No. D03-0627 – awarded to assess the organisational effectiveness and human resource management systems within the Northern Territory Fire and Rescue Service. A total of \$195,329.88, including reimbursement of travel related expenditure, has been paid against this contract.

Audit Opinion

Department of the Chief Minister

Department of Health and Community Services

Northern Territory Police, Fire and Emergency Services

The contracts awarded were found generally to comply with the requirements of the Procurement Act 1995, the Regulations made under that Act, Procurement Minister's Directions and Guidelines issued by the Procurement Review Board although specific issues requiring action by the Agencies were identified.

Department of Employment, Education and Training

Office of the Commissioner for Public Employment

The following contracts awarded did not adhere to the requirements of the Procurement Act, Regulations, Directions and Guidelines in respect of:

1. payments by DEET relating to the development of a brief for a consultancy to develop a new four year Indigenous Education Plan; and
2. the contract awarded by OCPE for a change management plan and approach to implement Cabinet's decisions on the restructure of the NT Fire and Rescue service

The public tender process initiated by DEET to develop an Indigenous Education Plan for 2005-09, was examined and found to comply with the requirements of the Procurement Act 1995, the Regulations made under that Act, Procurement Minister's Directions and Guidelines issued by the Procurement Review Board.

Failure by Agencies to Adhere to Promulgated Procurement Policies

Department of Employment, Education and Training

Payments made by DEET to Metis in April 2004 totalling \$24,701.12 did not comply with the requirements of Procurement Policy.

The agency provided no documentation that set out the processes that it followed in engaging Metis. In the absence of any documentation I am forced to conclude that the Agency did not comply with procurement policy in this instance.

In particular, I have not been provided with evidence that:

- supports the initial view by DEET that the estimated cost of the contract was less than \$10,000 (selective tender contracts under \$10,000 do not require a Certificate of Exemption to engage interstate consultants);
- DEET obtained the required number of quotations based on the expectation that the cost of the contract would be less than \$10,000;
- indicates that the scope of the engagement was defined appropriately by DEET;
- the required approval was sought from the Northern Territory Industry Capability Network;
- a formal contract between DEET and the consultant was executed;
- a Certificate of Exemption was obtained;
- the transaction was gazetted.

In reviewing the process that surrounded the payments to Metis I have formed the opinion that no impropriety existed, but that a general weakness in the Department's controls existed at the time that led to the breaching of the promulgated requirements that govern procurement. The Department has advised that it will review its internal control procedures to ensure that breaches of this nature do not occur in the future.

Failure by Agencies to Adhere to Promulgated Procurement Policies (cont'd)

Office of the Commissioner of Public Employment

In the case of OCPE, departures from the promulgated procurement policies and procedures occurred.

I was unable to sight evidence that the contract was gazetted in a timely manner. This omission was detected during the course of the audit and OCPE was notified at the time with the result that the appropriate notice was gazetted on 1 September 2004.

As the value of this contract was expected to exceed \$10,000 it should have been processed through CAPS, which has sole responsibility for the management of the tender process for all contracts greater than that amount. This did not occur in this instance.

The reason given by the Actioning Officer to the Commissioner for Public Employment and the Procurement Review Board in support of the exemption from the requirement to seek tenders for the provision of change management consultancy services was that “*the first stage of the project (Review of Northern Territory Fire and Rescue Service) was subject to general tender*”. This comment was not correct, as the engagement of the consultant to assist with the original review had also been the subject of a Certificate of Exemption and was not put to a general tender.

Other Key Findings

Documentation

A notable issue arising from this audit is the quality of the documentation of the processes that restricts my ability to form a clear opinion about the decision-making processes leading up to the engagement of the consultants.

Issues noted in respect of each of the Agencies, to which this matter relates, are as follows:

- Department of Health – The Department advised that interstate consulting firms were approached initially with a view to selecting one firm to assist with the implementation of the recommendations of the Bansemer Review. I was advised that Metis was the only firm that was in a position to respond within the short timeframe specified by the Department. The unavailability of other firms at the time may have been an influential factor in the decision to engage Metis on the basis of a single selective tender. While the promulgated procurement guidelines permit tenders to be sought from a selected supplier where urgency is a factor, they also require that due regard be given to the number of potential suppliers available and that, wherever possible, competitive tenders be obtained. I was informed that, in this instance, the number of firms with the required capability was small and the initial approach by the Department appears to have been informal. The transparency of the process would have been enhanced by the creation and retention of records showing the decisions made in the period leading to the issue of the Certificate of Exemption by the Procurement Review Board;
- Department of Health – An “Application for Approval to Source from Suppliers Outside of the Northern Territory” had been completed and signed, but the Delegated Officer’s Acceptance did not clearly indicate that the application was approved and an “Agency Recommendation to Accept Tender” had not been signed or dated by the actioning officer and the Delegated Officer’s Acceptance was undated;
- Department of the Chief Minister – The “Agency Recommendation to Accept Tender” submitted to CAPS had been completed and signed however the Delegated Officer’s Acceptance had not been dated; and
- Office of the Commissioner of Public Employment – The Consultancy Agreement between the Northern Territory of Australia and Metis did not bear evidence of having being witnessed.

Gazettal

Following the award of the Northern Territory Police, Fire and Emergency Services contract to Metis Consulting details of the contract were gazetted by the Agency on 3 September 2003, with a contract value of \$170,000 being reported. The contract details were again gazetted by CAPS on 31 March 2004, with the value on this occasion being reported as \$187,000.

Other Key Findings (cont'd)

Personal and professional relationship

While there is no record of formal, written advice to the relevant Minister or to the Procurement Review Board to the effect that a personal and professional relationship existed between a Chief Executive and the principals of Metis Consulting, I was informed that the Chief Executive Officer concerned had advised the Minister of the existence of the relationships during discussions immediately prior to the awarding of contract to Metis.

Classification as a 'local' company

One contract was awarded on a 'local', sole tender basis with Metis' knowledge of the issues, and their proven capabilities, being the predominant reasons for the certificate of exemption.

Metis was classified by the Agency as a 'local' company on the basis that the company had provided a Darwin address. Whilst it appears to be a generally accepted practice that an office within the Northern Territory qualifies the tenderer as being a 'local' company for Procurement Policy purposes, the NT Procurement Policy and Strategies document provides the following definition of "Territory Business and Industry" which is used by the Procurement Review Board in determining whether, or not, a company is 'local':

"Business and industry known to be participating in and assimilated with the Northern Territory private sector. This participation is reflected in its financial commitment to the Northern Territory, its interaction in the Northern Territory economy, its use and training of local labour, and its utilisation of Northern Territory suppliers of goods and services".

There is no documentation indicating that the Agency assessed Metis' classification as a 'local' company based on the criteria set out above. However it is apparent that, after consultation with the Procurement Review Board, the Agency assessed Metis as 'local' based on Metis having established an office in the Northern Territory.

As local employment is not necessarily a practicable option for small consulting firms the definition provided by the NT Procurement Policy and Strategies document appears to be difficult to apply. In the case of small consulting firms with a local address, the appropriateness of the definition "Territory Business and Industry" as a benchmark for 'local' is questionable and further guidance should be provided by the Procurement Review Board.

Recommendations

1. The Department of Employment, Education and Training

The Department should review its processes and implement changes where necessary to ensure it complies with Procurement Policy.

Department of Employment, Education and Training has commented:

Senior management of DEET became aware, before this audit commenced, of the lapse of standard procedures in relation to payments made during April 2004 and the Chief Executive had notified the Minister of this lapse in May 2004. The officers concerned have been counselled regarding this.

Since that date DEET has implemented procedures to ensure there will be compliance with Procurement Policy.

2. The Office of the Commissioner for Public Employment

The Office should ensure that:

- contracts are gazetted within the required timeframe and CAPS is utilised in accordance with Procurement Policy; and

The Office of the Commissioner for Public Employment has commented:

It is noted that the two procedural matters were found not to comply. The full recommendation proposed is accepted. In respect to the two instances identified in the report the following comments are offered.

Instance 1: a review and updating of current internal procedures, requiring the gazetting of notices to be actioned in a more timely manner, is expected to prevent future reoccurrences of this type of oversight.

Instance 2: it is accepted that “CAPS has sole responsibility for the management of the tender process for all contracts in excess of \$10,000”, however, it does not appear the intent of this is fully understood either within CAPS or across the NTPS. It should be noted that this point has been an area of uncertainty within this Office as CAPS do not enforce this requirement and the advice provided by the various staff within CAPS apply the responsibility inconsistently. This Office does submit all tender processes in compliance with the above to CAPS for processing with the exception of tenders involving a sole supplier. Also, when these ‘exceptions’ have been submitted to the Procurement Review Board for approval no feedback has been provided to this Office highlighting the requirement to use CAPS. Similarly, when the assistance of the Department of Justice is sought to draft appropriate consultancy agreements to expedite these ‘exceptions’ no feedback or comments are provided to indicate that the requests should be either submitted through CAPS or contain a CAPS reference.

Recommendations (cont'd)

2. The Office of the Commissioner for Public Employment: (cont'd)

- all documentation is factually accurate and not likely to mislead.

The Office of the Commissioner for Public Employment has commented:

It is acknowledged that a component of the reason provided contained a factual error and therefore the full recommendation proposed in the schedule is accepted. A review and updating of current internal procedures is expected to prevent this error from occurring in the future.

It should be noted that there was no intention to mislead. The inaccuracy of the statement contained in the original Certificate of Exemption was previously discovered and the correct information was provided in the ministerial briefing prepared for the Estimates Committee process. While it is regrettable the error occurred, it would have been preferable if the mistake had been detected by the Procurement Review Board at the time it considered and subsequently granted approval for the Certificate of Exemption.

In addition to the above, arrangements have been made to invite a CAPS' representative to provide a briefing on the procurement process to all Office staff, to clarify each parties roles and responsibilities.

3. Documentation

- Steps in the tendering and contracting process should be well documented and the documentary evidence relating to all aspects of the selection process should be retained. Whilst I do not question the expertise of Metis, to ensure that more cost-effective suppliers are not available elsewhere in Australia the Agencies should, where practicable, consider advertising more broadly.

Department of Health and Community Services has commented:

The two sole supplier and one select tender contract let by DHCS were for relatively small amounts of work. The amounts for this work fell well within the allowance under the Procurement Guidelines specifically for CEOs to engage highly specific service of this nature.

In two cases documentation from NTICN and in the other from the PRB, on which NTICN is represented, noted in effect that there were no local competitors for this work. DHCS did consider other alternatives, as suggested by the NTICN documentation, but opted for direct or select engagement for these specific assignments as is allowed under the Guidelines.

That said, the Department accepts the point that recording the process of consideration better, including the elimination of viable alternatives, would have been prudent.

Recommendations (cont'd)

3. Documentation (cont'd)

- All documentation should be properly completed, prior to being forwarded to CAPS and/or the Procurement Review Board.

Department of the Chief Minister has commented:

It is agreed the delegate inadvertently neglected to date the 'Agency Recommendation to Accept Tender'. All other documents were signed, dated and complete. The Department will endeavour to ensure that all documents are dated prior to submission in future.

Department of Employment, Education and Training has commented:

DEET will ensure that all Ministerial correspondence is correctly dated and logged.

Department of Health and Community Services has commented:

This recommendation is noted and I have put in place measures to ensure that documentation is fully completed by the appropriate delegated officer.

The Office of the Commissioner for Public Employment has commented:

It is noted that a procedural matter was incomplete and therefore the full recommendation proposed in this schedule is accepted. An instruction has since been issued requiring;

- *all future contracts to be witnessed by a designated position;*
- *internal administrative procedures to be reviewed and updated, and*
- *appropriate monitoring and checking protocols to be applied.*

4. Gazettal

- CAPS should initiate all Gazettal notices over \$10,000.

Northern Territory Police, Fire and Emergency Services has commented:

The Agency agrees with the finding relating to the Gazettal of the Police contract and has already implemented the recommendation.

It should also be noted that the NTPFES only selected Metis after a merit based selection process using an agreed set of selection criteria.

Recommendations (cont'd)

5. Personal and professional relationship

- Any potential for a conflict of interest that arises through personal or professional associations between senior staff of the Agency and the potential tenderer should be disclosed, in writing, to the CEO, or other suitable person, prior to any contracts being considered.

Department of Health and Community Services has commented:

The CEO verbally informed ministers involved at the time of the two sole tender contracts between DHCS and Metis of his prior social and professional relationship with Metis principals, as well as of their capacities.

This is in the context that the CEO and most of the Department's staff have worked for most of their careers in the health or community services systems and know a significant proportion of consultants in that world. The two sole tender contracts let were not large and required immediate commencement and a high level of trust to be placed in the consultants. It was therefore likely that consultants engaged for these two assignments would be well known to a senior member of the Department's management team.

Nonetheless the recommendation that a written note of the prior relationships would have been prudent and should be required in future contracts is accepted.

6. Classification as a 'local' company

- Procurement policy should provide further guidance to Agencies as to what is deemed to be a 'local' company for the purposes of Procurement Policy, with particular reference to consulting firms having special skills whose presence may be limited to a local office or postal address.

Department of the Chief Minister has commented:

The Department assessed Metis as a 'local' company based on general practice and advice from the relevant procurement authorities, and will undertake to keep more detailed documentation in regard to this process. The Department maintains its position in regard to the assessment, however, fully supports the development of clearer guidelines to enable a consistent approach regarding the definition of a 'local' company and how this relates to smaller consultancy firms.

Specific Concerns Raised by MLA's

The Member for MacDonnell, in his correspondence to the then Acting Auditor-General, raised a number of specific issues and sought information about each of the matters of concern. These are discussed below:

1. Did the CEO of Health declare his relationship with a director of Metis to the Procurement Review Board (PRB)?

The Chief Executive of Health has advised me that he notified the Minister of the existence of a prior personal and professional relationship at the time Metis was selected. I am not aware of similar advice having been provided to the Procurement Review Board.

2. Was a second C of E issued to Metis when the Government changed the contract price from \$170,000 to \$187,000 or was the signature signed by the Procurement Review Board on the PF102 tabled in parliament used to make the adjustment? The Minister claimed in estimates only one C of E was ever issued for \$187,000. This cannot be true as the September Gazette in 2003 had the contract price at \$170,000. The Procurement Review Board must have signed off on the \$170,000 not on the \$187,000 amount.

The contract in question was that issued by the Northern Territory Police, Fire and Emergency Services (NTPFES). Only one contract was issued to Metis by NTPFES (D03-0627). However, that contract was inadvertently gazetted twice, with the first notice being inserted in the Gazette by the Agency and showing a contract value of \$170,000. That figure was incorrect, as it did not include the value of the associated Goods and Services Tax (GST). Accordingly, a second notice was inserted by CAPS, reporting a contract value of \$187,000, which correctly included GST.

The Procurement Review Board endorsed the contract for \$187,000.

3. Why did Metis receive a \$40,000 contract to review the Office of the Chief Minister in Alice Springs? This office employs 6 people.

I do not believe it is appropriate that I make any comment about the decision that lay behind the engagement of a consultant as this falls outside the powers granted to me under the *Audit Act*.

4. Why did Charles Darwin University miss out on a contract to review the Indigenous Education Strategy 2005 – 2009, which was won by Metis when the CDU was established in the field in Central Australia with education skills in the area? Metis is a Sydney based firm with no skills in education with an office in Darwin.

No contract relating to the Indigenous Education Strategy 2005 – 2009 has been awarded.

Specific Concerns Raised by MLA's (cont'd)

5. Why has Metis won contracts to do work when there is no evidence to support any expertise in the fields that they have won contracts in?

There is evidence that Metis did possess the expertise that was sought by the Departments referred to earlier in this report.

6. Where were their names obtained from when being considered by the NTPFES to do the Fire Service Review?

I have been advised that Metis had previously approached the Office of the Commissioner of Public Employment to make that Office aware of the firm's capabilities. This appears to be a part of the strategy by the firm to establish a presence within the Northern Territory. This form of approach is not unusual and most Agencies have experience of consultants making unsolicited approaches with a view to winning future business.

The Commissioner for Public Employment advised that the initial approach by Metis was his first encounter with the company.

7. What were the complete circumstances of the departure of Darryl Pepper, the former head of the Fire Service?

I have not addressed this issue as part of this audit as I believe it falls outside the mandate given to me pursuant to the *Audit Act*.

8. Did the Northern Territory Government demonstrate compliance with the *Procurement Act* or its procurement policies?

The contracts issued were found generally to comply with the requirements of Procurement Policy with the following exceptions:

- The Department of Employment, Education and Training payments that were examined in relation to the development of a brief for a consultancy to develop a new four year Indigenous Education Plan, breached the requirements of Procurement Policy. Given the lack of any supporting evidence that would indicate compliance, I have formed the opinion that a breakdown in internal controls occurred in this instance.
- The Office of the Commissioner for Public Employment contract did not comply with the requirements of Procurement Policy in that OCPE did not utilise CAPS to process a contract having a value greater than \$10,000, did not Gazette the contract in a timely manner, and provided erroneous information in support of issue of a Certificate of Exemption.

Specific Concerns Raised by MLA's (cont'd)

9. Did the Government's actions represent the spirit of the policy?

With the exception of the matters noted earlier in this report, nothing has come to my attention that would suggest that there was a departure from the 'spirit of the policy'. What is more apparent is that internal control weaknesses existed in each of the agencies at the time and these weaknesses led to a failure to ensure that the requirements that govern procurement were complied with fully. Suggested improvements to internal controls and disclosure practices were noted and reported to the Agencies concerned, with recommendations being made relating to the issues raised.

The following specific concern, not previously addressed, was raised in the Legislative Assembly:

During debates the Leader of the Opposition, the Honourable Member for Blain, raised a concern about a possible perception of bias in the awarding of the contracts. The concern arose as a consequence of links between the principals of Metis and the Australian Labor Party.

I find no evidence that the links referred to above were a factor in the decision to award to Metis the contracts that are the subject of this report.

PROCUREMENT – METIS CONSULTING PTY LIMITED

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