



Queensland  
procurement

Final Probity Report on Procurement Process for Gold Coast 2018  
Commonwealth Games Village Master Planning Design Services  
(GOLDOC/2014/401)  
20 February 2015

RTI DL RELEASE - DTESB

Name: Melissa Grainger  
Email: [mel@aprocurement.com.au](mailto:mel@aprocurement.com.au)  
Mobile: 0428 280 422  
Address:  
Level 7  
320 Adelaide Street Brisbane  
Postal: GPO Box 111  
Brisbane QLD 4001  
Web: [www.aprocurement.com.au](http://www.aprocurement.com.au)  
ABN: 89 154 456 630

## Table of Contents

1. Introduction .....	3
1.1 Background .....	3
1.2 Documentation and Information reviewed.....	3
2. Relevant Legislative and Policy requirements.....	4
2.1 Queensland Procurement Policy.....	4
2.2 Public Sector Ethics Act and GOLDOC Code of Conduct .....	4
2.3 GOLDOC Procurement Policy .....	4
2.4 Local Industry Policy and Charter for Local Content .....	5
3. Probity Auditor.....	5
3.1 Role of the Probity Auditor.....	5
4. Project Background.....	5
4.1 RFQ Procurement Process.....	6
4.2 Scope of the CGV Planning RFQ .....	6
4.3 Associated Procurement Process of EDQ.....	6
5. Summary of basis of complaint from Matthew Mahoney Architect .....	7
6. Assessment of complaints from a probity perspective .....	7
6.1 False and misleading statements made by successful tenderer (5 (a) resulting in successful tenderer being awarded a tender and getting a benefit at the complainant's expense (b)) ..	8
6.2 Value for money questionable under sole source (5 (d)) .....	8
6.3 Scope of work did not justify sole source (5 (e)) Scope of work only constituted first phase of CGV master planning and design scope (5 (g)) .....	8
6.4 Sole source not justified as sole source contractor no vast experience in village master planning (5 (f)).....	9
6.5 Sole source unjustifiable based on GOLDOC procurement policy objectives of transparency, accountability, value for money, risk minimisation and a fair go for local businesses (5 (i)) .....	9
6.6 Sole source unjustifiable based on potential conflict of interest of sole source company (5 (h)) .....	10
6.7 Failure to evaluate in accordance with evaluation criteria (5 (c)) and evaluation criteria in sole invitee process arbitrary (5 (k)) .....	10
6.8 Local industry assessment questionable when sole invitee is not gold coast business (5 (j)).....	11
7. Recommended improvements to GOLDOC Procurement Policies and Processes .....	11
7.1 GOLDOC Procurement Policy updated to include a Sole Source Justification template .....	11
7.2 Update of GOLDOC Procurement Policy regarding staged/phased procurements.....	12
7.3 Update of GOLDOC Procurement Policy to require evaluation in accordance with published evaluation criteria .....	12
7.4 Development of standard contract management/variation management template .....	13
7.5 Update of GOLDOC procurement policy to include definition of Local Industry and explanation of application of free trade agreements.....	13
Annex A - Interim Probity Report .....	15
Annex B - Relevant Correspondence .....	16

## 1. Introduction

### 1.1 Background

QProcurement was engaged by the Department of Housing and Public Works (HPW) on the 19 January 2015 to undertake a probity audit for the procurement process relating to the Request for Quotation (RFQ) for the Commonwealth Games Village (CGV) Master Planning Design Services (GOLDOC/2014/401) the "CGV Planning RFQ".

The CGV Planning RFQ was issued by GOLDOC. GOLDOC is a Queensland Government Statutory Authority and is required to comply with the Queensland Procurement Policy in accordance with Schedule 2 of that policy.

An interim probity report was provided on 5 February 2015 providing an interim probity report on the probity of the selection process for the CGV Planning RFQ as part of the Department's commitment to comply with the Queensland Procurement Policy and Gold Coast 2018 Commonwealth Games Corporation (GOLDOC) Procurement Policy. A copy of that interim report is attached at Annex A.

On 6 February 2015 the Department of Housing and Public Works requested that a final probity report be provided following provision of a complaint letter to assess from a probity perspective:

1. the validity of the complaint and
2. if improvements should be made to current GOLDOC procurement processes and policy.

### 1.2 Documentation and Information reviewed

The following documents were reviewed in the preparation of the interim probity report:

- GOLDOC Procurement Policy – Effective from 28 October 2014;
- Delegations of Authority effective from 25 February 2014;
- Procurement Exception Request Memorandum dated 23 May 2014 to the Chief Executive Officer (CEO) and signed by the CEO on the 29 May 2014;
- Procurement Exception Request dated 23 October 2014 to the Chief Executive Officer (CEO) and signed by the CEO on the 24 October 2014 for approval of variation 5;
- Request for Quotation for GOLDOC/2014/401 – Gold Coast 2018 Commonwealth Games Village Master Planning Design Services;
- Quotation Evaluation Report for GOLDOC/2014/401 – Gold Coast 2018 Commonwealth Games Village Master Planning Design Services;
- Confidentiality and Conflict of Interest Declarations from evaluation panel including:
  - Adam Lakeland Project Officer Procurement signed 29 May 2014
  - Mark Cutler Manager Village Planning and Development signed 29 May 2014
- Consultancy Agreement between GOLDOC and Archipelago Architects Pty Ltd dated 26 June 2014 including variations 1-5;
- Various emails from GOLDOC;
- Discussions with GOLDOC on 30 January 2015.

The following additional documents were reviewed in the preparation of the final probity report:

- Email seeking to lodge a complaint regarding the CGV Planning RFQ procurement process dated 2 September 2014;
- Response to email of complaint from GOLDOC to Matthew Mahoney Architect dated 10 October 2014;
- Letter of complaint from Matthew Mahoney Architect to GOLDOC dated 20 October 2014;
- Response to letter of complaint from GOLDOC to Matthew Mahoney Architect dated 27 October 2014;
- Letter of complaint from Matthew Mahoney Architect to Minister for Tourism, Major Events, Small Business and Commonwealth Games dated 17 November 2014; and

- Email from GOLDOC dated 13 February 2015.

## 2. Relevant Legislative and Policy requirements

### 2.1 Queensland Procurement Policy

In accordance with the Queensland Procurement Policy (QPP) effective from 1 July 2013 - GOLDOC procurement processes must be in accordance with a number of principles including:

- Drive value for money in procurement;
- Acting as one government working together across agencies boundaries to achieve savings and benefits;
- Leaders in procurement practice by understanding our needs, the markets, our suppliers and have the capability to deliver better outcomes;
- Using procurement to advance government economic, environmental and social objectives and support long term wellbeing of our community;
- Have confidence of stakeholders and the community in the management of procurement;
- Undertake procurement with integrity ensuring accountability for outcomes.

The QPP requires that all Agencies (which is defined to include Statutory Bodies such as GOLDOC) conduct their procurement activities with the utmost probity. In addition to the requirements placed on the Department by the QPP, it must also ensure that its procurement is carried out in accordance with the obligations placed upon it by the:

- Financial Accountability Act 2009;
- Financial and Performance Management Standard 2009;
- Public Sector Ethics Act 1995;
- GOLDOC Code of Conduct;
- GOLDOC Procurement Policy; and
- such other legislative or policy obligations which may apply to the procurement activities of GOLDOC.

### 2.2 Public Sector Ethics Act and GOLDOC Code of Conduct

GOLDOC employees are required to comply with the GOLDOC Code of Conduct (the Code) and the Public Sector Ethics Act 1994 (the PSEA). The GOLDOC Code of Conduct aligns with the PSEA which sets out the following fundamental ethical obligations:

- respect for the law and system of government;
- respect for persons;
- integrity;
- diligence; and
- economy and efficiency.

### 2.3 GOLDOC Procurement Policy

GOLDOC procurement policy (effective from 28 October 2014) section 7.6 requires that procurement processes with an estimated expenditure of between \$50,000 and \$100,000 seek 3 written quotations or procure from an SOA for low/medium risk procurement activities. For high-risk procurement activities an open tender process is required under the same section of the GOLDOC procurement policy.

Section 7.2 of the GOLDOC Procurement Policy sets out the role of the Chief Executive Officer:

*The Chief Executive officer is responsible for ensuring compliance with the Queensland Procurement Policy and other relevant legislation, policy and agreement.*

...

The Chief Executive Officer may approve an exception to the procurement approach's set out below, subject to a written justification.

## 2.4 Local Industry Policy and Charter for Local Content

This procurement process spanned both the Local Industry Policy and the subsequent Charter for Local Content. Local industry policy and the subsequent Charter for Local Content applies to infrastructure projects and capital acquisition projects of over \$5 million dollars per contract (excluding ICT). The definition of local industry under that policy includes:

*For the purposes of Government projects, 'local industry' is defined as Queensland and Australian small and medium- sized enterprises (SMEs) in the manufacturing or service sector and New Zealand suppliers of goods or services.<sup>1</sup>*

A SME is defined as an Australian or New Zealand supplier with less than 200 full time employees<sup>2</sup>. The operation of free trade agreements for example the Australian and United States and the Australian and New Zealand Free Trade Agreement (AUSFTA, ANZGPA respectively) so as to in effect bring United States and New Zealand suppliers within the definition of "local" for the purposes of the application of the policy/charter.

It is noted due to the value of the contract the Local Industry policy per se does not apply to this procurement. However an overarching Local Industry Participation Plan was developed for the GOLDOC project.

## 3. Probity Auditor

### 3.1 Role of the Probity Auditor

Probity is the process of ensuring that all aspects of the procurement process are fair and transparent for all parties involved. The term probity means integrity, uprightness and honesty. The role of a Probity Auditor is to provide independent scrutiny of the procurement process and provide a report on the process giving an independent view of how the procurement process was undertaken and managed. Principles of probity in procurement processes include:

- Fairness and Impartiality;
- Accountability and transparency of process;
- Confidentiality and security of information and materials and
- Effective management of conflicts of interest.

A procurement process that conforms to the expected standards of probity is one in which clear procedures that are consistent with Government policies and legislation are established, understood and followed from the outset. These procedures need to consider the legitimate interests of suppliers and ensure that all potential suppliers are treated equitably.

Probity principles should be integrated into all procurement planning, and should not be a separate 'bolt-on' consideration. Procurement must be conducted with probity in mind to enable purchasers and suppliers to deal with each other on the basis of mutual trust and respect and enable business to be conducted reasonably and with integrity. Achieving an ethical, transparent approach requires that the procurement rules be clear, open, well understood and applied equally to all parties to the process.

## 4. Project Background

<sup>1</sup> <http://www.icnqld.org.au/media/documents/local-industry-policy.pdf>

<http://www.dsdip.qld.gov.au/resources/charter-for-local-content.html>

<sup>2</sup> <http://www.hpw.qld.gov.au/SiteCollectionDocuments/ProcurementGuideSellingToQldGov.pdf>

#### 4.1 RFQ Procurement Process

Approval to release the RFQ was obtained via the Procurement Exception Request dated 23 May 2014 and signed by the Chief Executive Officer on the 29 May 2014.

The Procurement Process adopted was a sole source Request for Quotation (RFQ) process issued to Archipelago Architects. The RFQ was released on the 30 May 2014. The RFQ did not allude to being a sole source RFQ and specified at section 12 that responses to the RFQ "will be evaluated" against the following criteria:

- Local industry
- Value for money
- Ability to meet the corporations timeframes
- Corporate experience and track record
- Ker personnel experience and capability

The RFQ closed on Monday 9 June 2014 at 12noon.

#### 4.2 Scope of the CGV Planning RFQ

In accordance with section 4 of the RFQ the scope of work for the CGV Planning RFQ is the first phase of work required to appropriately master plan and design the GC2018 CGV Games Overlay.

*The subject of this scope of work is the schematic master planning of the entire CGV site, incorporating the CGV base works to be designed and constructed by EDQ and its contracted Developer, and the temporary Games Overlay facilities, which are to be designed and supplied by GOLDOC. The schematic CGV master plan is required to meet the requirements of the CGF Village Manual, respect the schematic master plan for the CGV site as delivered by the preferred proponent to EDQ Request for Proposal (RFP), and accommodate GOLDOC's operational workflow requirements for the CGV.*

*The intent of the development of the schematic CGV master plan is to inform the siting, serviced platform design, utilities distribution design, and surface water management design associated with each of the temporary Games Overlay facilities. These designs will be produced by EDQ's Developer, in response to the schematic CGV master plan and related requirements in EDQ's Developer RFP.*

*The scope of service shall also include the development of information regarding the demand for servicing provisions, including hydraulic services, electrical, natural gas and telecommunications services. This information will include but not be limited to the number of people planned to be occupying each facility in the CGV during Games mode, activities planned to be undertaken in each facility, equipment to be located in each facility, hours of operation etc. The information will be used as a basis for calculating estimated loads for services / utilities to each Games Overlay facility. This deliverable will include information (where relevant) relating to the appropriate connection locations of utilities for each of the Games Overlay facilities in order to ensure optimally performing and cost-efficient delivery of utility services. The information developed from this work will inform the engineering design for CGV site engineering systems and utilities to be distributed to each of the Games Overlay facilities. These designs will be produced by EDQ's Developer, in response to this information.*

*It is envisaged that the contractor will be a multi-disciplinary team including site master planning design professionals and engineering design professionals with specific expertise in site hydraulic and electrical engineering disciplines.*

#### 4.3 Associated Procurement Process of EDQ

Economic Development Queensland (EDQ) undertook a competitive tender process for the overall design and construction of CGV/Parkland. That contract was awarded to Grocon who engaged

Archipelago Architects as their designers. That contract is ongoing and to date Archipelago Architects are still undertaking that engagement.

As part of the scope of the CGV Planning RFQ contract Archipelago Architects are regularly required to engage with Grocon, EDQ and GOLDOC to coordinate the GOLDOC design outputs with the current Grocon design.

## 5. Summary of basis of complaint from Matthew Mahoney Architect

Based on the correspondence reviewed from Matthew Mahoney Architect via email dated 2 September, and letters dated 20 October and 17 November 2014, the following is a summary of the basis of complaints raised:

### False and misleading statements made by successful tenderer

- (a) Another architectural practice in the course of seeking (an winning) an architectural commission has published false and misleading material about Matthew Mahoney Architect Pty Ltd within their offer submitted to GOLDOC in June 2014. The basis of the false and misleading conduct was to represent that Matthew Mahoney was an employee of that practice in the knowledge that the experience and capability of professional personnel proposed for the GOLDOC commission formed part of the tender assessment criteria.
- (b) The publication of the false and/or misleading information has in part allowed the architectural practice in question to gain financial benefit at Matthew Mahoney's expense and disadvantage other architectural practices, which may have lodged conforming tenders for the commission.

### Failure to evaluate in accordance with the evaluation criteria

- (c) Documents published by GOLDOC in relation to the applicable contract state "Responses will be evaluated" against the criteria set out at section 12 of the request for quotation document. If GOLDOC is awarding contracts based on non-standard evaluation criteria or contrary to stated evaluation criteria which may be prejudicial to the rights of another party it may raise broader questions about the governance and procurement practices.

### Decision to sole source unjustifiable and questionable based on:

- (d) how GOLDOC could assess value for money under a sole source arrangement without a valid market comparison;
- (e) the work not being sufficiently complex or specialised so as to exclude other equally competent professional services providers from competitively tendering for the work;
- (f) The company awarded the work having no vast experience in village master planning design for international sporting events;
- (g) Scope of work constituting only the first phase of CGV master planning and design;
- (h) The potential conflict of interest of the sole source company based on existing commercial arrangement with Grocon Pty Ltd;
- (i) Sole Source procurement is inconsistent with GOLDOC procurement policy objectives of transparency, accountability, value for money, risk minimisation and a fair go for local businesses.

### Decision to sole source questionable from local industry assessment

- (j) Local industry assessment must be questioned when the sole invitee is not a local gold coast business.

### The concept of an evaluation criteria arbitrary in sole source invitation

- (k) The concept of evaluation criteria is in every sense arbitrary in circumstances where only one company is invited to submit an offer.

## 6. Assessment of complaints from a probity perspective

Addressing each of the above complaints in turn this section sets out whether in our view the complaints are justified from a probity perspective.

**6.1 False and misleading statements made by successful tenderer (5 (a)) resulting in successful tenderer being awarded a tender and getting a benefit at the complainant's expense (b))**

Based on the information provided it is not possible for us to conclusively determine if a misleading statement was made as we have not been provided with information as to whether Matthew Mahoney was an employee of AA at the time the quotation was submitted. From our review of the material provided it is clear as follows:

- Matthew Mahoney was listed as a key person and not listed as a subcontractor;
- Schedule 3 - 'key personnel' listed 3 key personnel : Matthew Mahoney as 100% allocated to project, Peter Edwards as 20% allocated to the project and Mark Haysom "as required";
- RFQ Evaluation Report which stated "Archipelago Architects was deemed to be the expert in this specific field pertaining to the CGV/Parkland project... As only one company was sought no scoring was necessary. Price and ability to complete the work within GOLDOC's timeframes was the focus of the evaluation."
- Electronic communication from GOLDOC dated 15 February 2015 stating the inclusion of Matthew Mahoney in the AA offer was irrelevant to the decision to award to AA. The decision to award to AA was based on the inclusion of Peter Edwards (Project Director) who was the project director of the Grocon piece and had intimate design knowledge.

Based on the information provided it is possible that a misleading or deceptive statement was made by AA in relation to the employment or otherwise of Matthew Mahoney. However there is no evidence to suggest that the award of the contract to AA was based the potential misleading or deceptive representation. Nor is there any evidence to justify that the award of the contract to AA was at the complainant's expense.

**6.2 Value for money questionable under sole source (5 (d))**

Generally speaking, (refer to both section 7.1 below and in the interim report) sole source decisions are often questionable from a value for money perspective and for this reason should be used in very limited circumstances.

In this instance it is noted value for money was addressed (although briefly) in the procurement exception request that included a list of the rates of service providers under the Standing Offer Arrangement. This list inferred that the rate provided by Archipelago Architects was comparable and in the lower price range when compared to other designers under the panel. This basis for assessing value for money may not be applicable however in relation to the quotation provide for variation 4 (refer to section 6.4 of the interim probity report).

In this instance there is evidence to suggest that value for money was considered as part of the procurement exception request and RFQ evaluation report. Whether or not the value obtained by GOLDOC was sufficient enough to justify the sole source process is not a matter for the probity advisor to determine.

**6.3 Scope of work did not justify sole source (5 (e)) Scope of work only constituted first phase of CGV master planning and design scope (5 (g))**

It is not for the probity advisor to indicate if the sole source decision was justified or otherwise based on the scope of work. The discretion to exercise that power is for the CEO to determine as per the GOLDOC procurement policy.

Strictly speaking, the GOLDOC Procurement policy allows for the CEO to approve a sole source. So the basis of this complaint is not justified based on current wording of the GOLDOC Procurement policy.



In our view however in light of the number of other suppliers in the market capable of providing the services the decision to sole source was high risk from a probity perspective.

Furthermore this complaint does give rise to some interesting questions regarding why the procurement was undertaken in a segmented /staged process. In our experience value for money is greater when you can tender for a full bundle of related works – rather than awarding a contract for an initial phase and then undertaking variations with a contractor. Similarly if your scope of work is likely to include a number of different stages then it is good procurement practice to list all of the scope out and assess tenderers experience against all aspects of the scope of work.

#### **6.4 Sole source not justified as sole source contractor no vast experience in village master planning (5 (f))**

It is not appropriate for a probity auditor to assess the experience of the sole source contractor as part of this probity audit report. It is a matter for the evaluation panel to assess experience where experience forms part of the evaluation criteria.

It is noted that "corporate experience and track record" was one of the published RFQ evaluation criteria and as a result there should have been some assessment by the evaluation panel as to corporate experience and track record. It is also noted that AA did provide as part of their response to Schedule 2 "Corporate Capability" details regarding the experience in village master planning.

It is noted there was a statement made in the evaluation report indicating AA "was deemed the expert in this specific field pertaining to CGV/parklands projects". GOLDOC advised that they assessed corporate experience as part of the procurement exception report for the sole source process but not as part of the evaluation process after AA submitted their offer. While we believe the complaint is justified in so far as it relates to not assessing against the evaluation criteria (see section 6.7 below), it is not appropriate for a probity auditor to assess the level of experience of the sole source contractor as part of this probity report.

Whether or not the experience was significant enough to justify the sole source process is not a matter for the probity advisor to determine.

#### **6.5 Sole source unjustifiable based on GOLDOC procurement policy objectives of transparency, accountability, value for money, risk minimisation and a fair go for local businesses (5 (i))**

It is not for the probity advisor to indicate if the sole source decision was justified or otherwise based on the circumstances – the discretion to exercise that power is for the CEO to determine as per the GOLDOC procurement policy.

Strictly speaking, the GOLDOC Procurement policy allows for the CEO to approve a sole source. So the basis of this complaint is not justified based on current wording of the GOLDOC Procurement policy.

However in our view the risks<sup>3</sup> that form the basis of the justification for the sole source could have been mitigated or addressed in other ways. For example on comparable infrastructure projects in such circumstances (for example where a multiple designs are being developed on a project or related program of works) the procurement team can do a number of things including:

<sup>3</sup> Justification provided in the Procurement Exception Request included:

- Tight timeframes require close coordination with Grocon design for the CGV/Parklands project;
- Familiarity with CGV planning work for the 2018 bid and CGV games mode requirements;
- Ensure provision of information to EDQ and Grocon that enables necessary design coordination between GOLDOC design outputs and Grocon design.

- (a) Making the master plan design available for review / access by the related designer (in some instances this can be provided via access to a data room or design software);
- (b) Including as part of the evaluation criteria a request for their methodology and proposed approach to coordinate efficiently and effectively with other design consultants/contractors;
- (c) Including as part of the evaluation criteria examples of previous projects where they have successfully coordinated with other design consultants/contractor to meet tight timetables and undertake reference checks regarding their performance in this area;
- (d) Including as part of the evaluation criteria a request for their methodology and proposed approach to ensuring familiarity regarding the 2018 bid and CGV games mode requirements.

In our view these risks and potential mitigation approaches should be clearly set out in a procurement exception request to ensure the CEO has all relevant information available to them at the time of making an assessment regarding a sole source request. Refer to the recommendations below at section 7.

#### **6.6 Sole source unjustifiable based on potential conflict of interest of sole source company (5 (h))**

As stated in our interim report in our view there was a potential conflict of interest and confidentiality issue that may have arisen as a result of Archipelago Architect dual role.

It is clear GOLDOC did consider aspects of this potential conflict of interest in consultation with both EDQ and Grocon prior to the decision being made to sole source. A meeting was held between GOLDOC, EDQ and Grocon to discuss the potential of inviting Archipelago Architect to bid for the RFQ, (refer to Interim Report Annex A).

It is noted that while aspects of the potential conflict of interest risk were considered and dismissed, these considerations were not documented in the procurement exception/sole source justification request.

It is not for the probity advisor to indicate if the sole source decision was justified or otherwise based on these circumstances – the discretion to exercise that power is for the CEO to determine. However we do believe that the sole source decision did give rise to conflict of interest issues that should have been acknowledged in the procurement exception/sole source justification request. In our view prior to making a determination as to whether to approve a sole source request the CEO should be provided with all relevant information.

#### **6.7 Failure to evaluate in accordance with evaluation criteria (5 (c)) and evaluation criteria in sole invite process arbitrary (5 (k))**

In our view the complaint regarding failure to assess in accordance with published evaluation criteria is justified.

In accordance with best practice procurement methodology, probity related case law<sup>4</sup> and relevant legislation<sup>5</sup> evaluation processes **must** be undertaken in accordance with the representations made to tenderers through the tender documents. Regardless of whether one offer is received that offer should always be assessed in accordance with the full criteria and process published in the invitation document.

Even if only one offer is received or in circumstances of a sole source procurement – a full evaluation should always be conducted based on the published evaluation criteria. In some instances the result of the evaluation may result in an evaluation panel making a recommendation that no tenderer is awarded the works or that the process be set aside and a new procurement process commenced. Refer to recommendations below at section 7.

<sup>4</sup> Refer to Hughes Aircraft Systems International v Airservices Australia (No. 3) [1997] FCA 1537

<sup>5</sup> Refer to Section 18 of the Australian Consumer Law (ACL), found in schedule 2 of the Competition and Consumer Act 2010 (formerly the Trade Practices Act 1974) which prohibits conduct by corporations in trade or commerce which is misleading or deceptive or is likely to mislead or deceive.

## 6.8 Local Industry assessment questionable when sole invilee is not gold coast business (5 (j))

The evaluation criteria included local industry, and as a result local industry must be assessed in accordance with the local industry policy definitions, (refer to section 2.4 above). It is noted RFQ schedule 12 did obtain the information necessary to assess if AA was "local" according to the Local Industry Policy criteria. In accordance with the definitions a company need not be a gold coast company to achieve a high score for local industry, they must simply fall within the definition of a SME.

It appears the complainant may have been confused as to the definition of local. In our view it is possible this confusion may be the result of poorly placed references to "Gold Coast" businesses in the existing GOLDOC policies regarding procurement document. Refer to recommendations below at section 7.

In our view this complaint not justified.

## 7. Recommended improvements to GOLDOC Procurement Policies and procurement procedures

While the decision to sole source the CGV Planning RFQ was consistent with of the GOLDOC Procurement Policy (refer to interim probity report at Annex A) the procurement process does give rise to some probity issues/risks. In our view there are improvements that can be made to address some of the probity issues / risks going forward. This section sets out those recommendations and suggested improvements.

### 7.1 GOLDOC Procurement Policy/Procedures updated to include a Sole Source Justification template

In our view a sole source procurement process should be used as an absolute last resort and only in circumstances that truly justify sole source (ie only one supplier capable of providing the service). A sole source process has implicit with it a number of probity risks. They include:

- Sole source processes make it difficult to demonstrate how value for money has been achieved;
- Sole source processes decrease supplier confidence in government and perception of fairness regarding government procurement processes;
- Sole source processes often give rise to probity complaints, that in turn have cost and value for money implications in the management and resolution of a complaint.

In our view while it is appreciated that the sole source decision was approved in accordance with the GOLDOC procurement policy the decision to sole source was not the lowest risk decision from a probity perspective. In our view there may have been other ways that the project risks justifying the sole source decision could have been managed that avoided the implicit probity risks associated with the sole source activity (refer to section 6.5 above by way of example).

Ultimately it is up to the CEO in reliance on information from the project and procurement team to weigh up the probity and project risks (and potential mitigations to those risks) associated with a procurement process before a decision is made to proceed with a sole source procurement activity. Those risks should include project, probity, confidentiality, conflict of interest, value for money and any other risks (and proposed mitigations) associated with the sole source process. As a probity advisor we would always recommend that sole source procurement occur only in the most limited of circumstances - ie where only one supplier is truly capable of providing the services.

In our view to promote transparency and best practice a complete list of benefits/risks should be documented in a sole source justification to allow for the relevant officer to consider all factors prior to granting a procurement exception request. An easy way to achieve this may be to prepare a Sole

Source Justification Template and attach it as a requirement under the GOLDOC Procurement Policy or GOLDOC procurement procedures. The template could also include guidance notes to help procurement personnel weigh up and communicate the risks associated with sole source procurement processes. In preparation of the template GOLDOC should refer to supporting information available from HPW<sup>6</sup>.

## 7.2 Update of GOLDOC Procurement Policy/GOLDOC procurement procedures regarding staged/phased procurements

The fact that only the first phase of the CGV master planning and design scope was issued as part of the RFQ raises some interesting questions.

In our experience value for money is greater when you can tender for a full bundle of related works – rather than awarding a contract for an initial phase and then undertaking variations with the successful contractor. Similarly if your scope of work is likely to include a number of different stages then it is good procurement practice to list all of the scope out and assess tenderers experience against all aspects of the scope of work.

Furthermore by breaking down larger projects into smaller phases of a project the effectiveness and usefulness of the thresholds at section 7.6 of the GOLDOC procurement policy may be questionable. Procurement thresholds exist so that procurements of high value are competitively tendered (both to increase value for money and to reduce the potential for fraud). In our view in light of best practice procurement methodology and recommendations from the Queensland Audit Office procurement thresholds should relate to the total estimated value of the anticipated scope of the services.

It is recommended that the GOLDOC Procurement Policy/ GOLDOC procurement procedures are updated to highlight that the thresholds should be reflective of the total scope of the project in instances where there is a staged /phased scope of work.

## 7.3 Update of GOLDOC Procurement Policy/GOLDOC procurement procedures to require evaluation in accordance with published evaluation criteria

In accordance with best practice procurement methodology, probity related case law<sup>7</sup> and relevant legislation<sup>8</sup> evaluation processes must be undertaken in accordance with the representations made to tenderers through the tender documents. Regardless of whether one offer is received that offer should be always be assessed in accordance with the full criteria and process published in the invitation document.

It is recommended that GOLDOC procurement policy and/or GOLDOC procurement procedures are updated to make this a clear requirement in all procurement processes (regardless of the number of offers received).

<sup>6</sup> <http://www.hpw.qld.gov.au/SiteCollectionDocuments/ProcurementGuideSignificantProcurement.pdf>

in particular refer to page 31 which sets out considerations for sole source justifications as follows: "Sole source procurements should be used in very limited circumstances where there may be one supplier with the requisite capability to meet the need. Any decision to use a sole source strategy should be based on a sound supply market analysis and market soundings—as documented in the significant procurement plan. Note There is a significant difference between justifying a sole source market engagement strategy on the grounds of there being one viable supplier in the market, and approaching one supplier on the grounds of genuine urgency. In the latter case, there may be a competitive market, but the real reason for the sole tender is because of genuine urgency, not the market situation. Repeated use of the 'urgency' justification may also be symptomatic of poor procurement planning."

<sup>7</sup> Refer to Hughes Aircraft Systems International v Airservices Australia (No. 3) [1997] FCA 1537

<sup>8</sup> Refer to Section 18 of the Australian Consumer Law (ACL), found in schedule 2 of the Competition and Consumer Act 2010 (formerly the Trade Practices Act 1974) which prohibits conduct by corporations in trade or commerce which is misleading or deceptive or is likely to mislead or deceive.

In our view the importance of evaluating in accordance with published evaluation criteria should be stressed to GOLDOC procurement personnel. In addition it is recommended that GOLDOC procurement personnel and GOLDOC project team members be required to attend and undertake probity training and awareness prior to being involved in a tender evaluation process.

#### 7.4 Development of standard contract management/variation management template

It is noted that via variation 4 Archipelago Architects increased the hourly rate of their director Peter Edwards from \$250 to \$300 per hour. In accordance with section 9.5 of the Special Conditions of the Consultancy agreement variations should be in accordance with Schedule of Rates at Appendix 4. Appendix 4 sets out that the schedule of rates for a director is \$250 per hour.

While this is more a contract management issue than a probity issue the increase of the rate of the consultant affects the original value for money assessment undertaken as part of the original sole source justification and RFQ evaluation process.

It is recommended that GOLDOC consider developing standard contract management plan templates for all contracts that ensure that the GOLDOC contract manager has all information before them in order to assess whether or not a variation is acceptable. Alternatively (or in addition) an approval process template for variations may be developed requiring that the contract manager check and validate that the variation:

- (a) Is in accordance with the terms of the original agreement (ie the schedule of rates)
- (b) Represents value for money to GOLDOC (and any supporting reasons)?.

Where any of the conditions are not satisfied the variation should be rejected and GOLDOC should consider going back out to market for the variation or negotiating further with the contractor.

#### 7.5 Update of GOLDOC procurement policy/GOLDOC procurement procedures to include definition of Local Industry and explanation of application of free trade agreements

It is noted GOLDOC "policies regarding procurement document"<sup>10</sup> available on the internet specifies as follows:

*On 3 December 2012, GOLDOC invited applications from business to be specialist advisers for a two year period. (The City of Gold Coast had not issued its new procurement policy at this time). The documents issued on 3 December 2012 stated as a selection criteria: "Local sourcing: Demonstrated capability to utilise Gold Coast based service providers and employees to enhance local business opportunities".*

In our view this statement is not consistent with the definition of local content under the Local Industry Policy (refer to section 2.4 above) and in breach of Australian obligations under the ANZGPA. The ANZGPA applies to statutory bodies including GOLDOC in certain instances.

GOLDOC should be careful that that the GOLDOC procurement policy & GOLDOC policies regarding procurement do not conflict with Australia's obligations under AUSTFA, ANZGPA and ACIFTA and is not inconsistent with the Local Industry Policy. Any conflicts with existing government policies and trade agreements should removed from GOLDOC policies regarding procurement document.

It is recommended GOLDOC procurement policy/procurement procedures and GOLDOC policy regarding procurement document is updated to clearly specify the definition of local industry and in

<sup>9</sup> Refer to

<http://www.hpw.qld.gov.au/Procurement/Buyers/HowToBuy/PolicyAndGuidance/ContractManagement/Pages/EndingRenewingContracts.aspx> for guidance on information that would be useful in preparation of a variation template.

<sup>10</sup> <http://www.qc2018.com/?name=GOLDOCs-policies-regarding-procurement>.

what circumstances chapter 15 AUSFTA<sup>11</sup>, ANZGPA and ACFTA apply to GOLDOC and its associated procurement procedures. Guidance can be provided from the Procurement Transformation Division of the Department of Housing and Public Works<sup>12</sup>.

QProcurement kindly thanks Sandy Reiser Manager Procurement in the timely provision of information and documentation in the preparation of this final probity report.

Dated this 20 February 2015.

sch4p4(6) Personal information

Melissa Grainger  
Probity Auditor  
QProcurement Pty Ltd

RTI DL RELEASE - DTESB

---

<sup>11</sup> <http://www.dfat.gov.au/about-us/publications/trade-investment/australia-united-states-free-trade-agreement/Pages/chapter-fifteen-government-procurement.aspx>  
<sup>12</sup> <http://www.hpwr.qld.gov.au/SiteCollectionDocuments/ProcurementGuideInternationalTrade.pdf>

---

Annex A – Interim Probity Report

RTI DL RELEASE - DTESB



Queensland  
procurement

Interim Probity Report on Procurement Process for Gold Coast 2018  
Commonwealth Games Village Master Planning Design Services  
(GOLDOC/2014/401)  
5 February 2015

RTI DL RELEASE - DTESB

Name: Melissa Grainger

Email: [mel@gprocurement.com.au](mailto:mel@gprocurement.com.au)

Mobile: 0428 280 422

Address:

Level 7

320 Adelaide Street Brisbane

Postal: GPO Box 111

Brisbane QLD 4001

Web: [www.gprocurement.com.au](http://www.gprocurement.com.au)

ABN: 89 154 456 630



**Table of Contents**

1. Introduction ..... 3

    1.1 Background ..... 3

    1.2 Documentation and Information reviewed ..... 3

2. Relevant Legislative and Policy requirements ..... 3

    2.1 Queensland Procurement Policy ..... 3

    2.2 Public Sector Ethics Act and GOLDOC Code of Conduct ..... 4

    2.3 GOLDOC Procurement Policy ..... 4

3. Probity Auditor ..... 4

    3.1 Role of the Probity Auditor ..... 4

4. Project Background ..... 5

    4.1 RFQ Procurement Process ..... 5

    4.2 Scope of the CGV Planning RFQ ..... 5

    4.3 Associated Procurement Process of EDQ ..... 6

5. Report on whether the Procurement Process was in accordance GOLDOC Procurement Policy ..... 6

6. Identification of potential probity issues associated with the procurement process ..... 6

    6.1 Potential/Perceived Conflict of Interest associated with dual role of Archipelago Architects ..... 6

    6.2 Inherent Probity Risks associated with sole source activity ..... 7

    6.3 Evaluation in accordance with evaluation criteria set out in the RFQ ..... 8

    6.4 Increase in schedule of rates during term of agreement ..... 8

Annex A – Correspondence with GOLDOC ..... 9

RTI DL RELEASE - DTESB

## 1. Introduction

### 1.1 Background

QProcurement was engaged by the Department of Housing and Public Works (HPW) on the 19 January 2015 to undertake a probity audit for the procurement process relating to the Request for Quotation (RFQ) for the Commonwealth Games Village (CGV) Master Planning Design Services (GOLDOC/2014/401) the "CGV Planning RFQ".

The CGV Planning RFQ was issued by GOLDOC. GOLDOC is a Queensland Government Statutory Authority and is required to comply with the Queensland Procurement Policy in accordance with Schedule 2 of that policy.

This document has been developed by the Probity Auditor to provide an interim probity report on the probity of the selection process for the CGV Planning RFQ as part of the Department's commitment to comply with the Queensland Procurement Policy and Gold Coast 2018 Commonwealth Games Corporation (GOLDOC) Procurement Policy.

### 1.2 Documentation and Information reviewed

The following documents were reviewed in the preparation of this probity report:

- GOLDOC Procurement Policy – Effective from 28 October 2014;
- Delegations of Authority effective from 25 February 2014;
- Procurement Exception Request Memorandum dated 23 May 2014 to the Chief Executive Officer (CEO) and signed by the CEO on the 29 May 2014;
- Request for Quotation for GOLDOC/2014/401 – Gold Coast 2018 Commonwealth Games Village Master Planning Design Services;
- Quotation Evaluation Report for GOLDOC/2014/401 – Gold Coast 2018 Commonwealth Games Village Master Planning Design Services;
- Confidentiality and Conflict of Interest Declarations from evaluation panel including:
  - Adam Lakeland Project Officer Procurement signed 29 May 2014
  - Mark Cutler Manager Village Planning and Development signed 29 May 2014
- Consultancy Agreement between GOLDOC and Archipelago Architects Pty Ltd dated 26 June 2014 including variations 1-5;
- Various emails from GOLDOC;
- Discussions with GOLDOC on 30 January 2015.

## 2. Relevant Legislative and Policy requirements

### 2.1 Queensland Procurement Policy

In accordance with the Queensland Procurement Policy (QPP) effective from 1 July 2013 – GOLDOC procurement processes must be in accordance with a number of principles including:

- Drive value for money in procurement;
- Acting as one government working together across agencies boundaries to achieve savings and benefits;
- Leaders in procurement practice by understanding our needs, the markets, our suppliers and have the capability to delivery better outcomes;
- Using procurement to advance government economic, environmental and social objectives and support long term wellbeing of our community;
- Have confidence of stakeholders and the community in the management of procurement;
- Undertake procurement with integrity ensuring accountability for outcomes.

The QPP requires that all Agencies (which is defined to include Statutory Bodies such as GOLDOC) conduct their procurement activities with the utmost probity. In addition to the requirements placed on the Department by the QPP, it must also ensure that its procurement is carried out in accordance with the obligations placed upon it by the:

- *Financial Accountability Act 2009;*
- *Financial and Performance Management Standard 2009;*
- *Public Sector Ethics Act 1995;*
- *GOLDOC Code of Conduct;*
- *GOLDOC Procurement Policy;* and
- such other legislative or policy obligations which may apply to the procurement activities of GOLDOC.

## 2.2 Public Sector Ethics Act and GOLDOC Code of Conduct

GOLDOC employees are required to comply with the GOLDOC Code of Conduct (the Code) and the Public Sector Ethics Act 1994 (the PSEA). The GOLDOC Code of Conduct aligns with the PSEA which sets out the following fundamental ethical obligations:

- respect for the law and system of government;
- respect for persons;
- integrity;
- diligence; and
- economy and efficiency.

## 2.3 GOLDOC Procurement Policy

GOLDOC procurement policy (effective from 28 October 2014) section 7.6 requires that procurement processes with an estimated expenditure of between \$50,000 and \$100,000 seek 3 written quotations from an SOA for low/medium risk procurement activities. For high risk procurement activities an open tender process is required under the same section of the GOLDOC procurement policy.

Section 7.2 of the GOLDOC Procurement Policy sets out the role of the Chief Executive Officer:

*The Chief Executive officer is responsible for ensuring compliance with the Queensland Procurement Policy and other relevant legislation, policy and agreement.*

...

*The Chief Executive Officer may approve an exception to the procurement approach's set out below, subject to a written justification.*

## 3. Probity Auditor

### 3.1 Role of the Probity Auditor

Probity is the process of ensuring that all aspects of the procurement process are fair and transparent for all parties involved. The term probity means integrity, uprightness and honesty. The role of a Probity Auditor is to provide independent scrutiny of the procurement process and provide a report on the process giving an independent view of how the procurement process was undertaken and managed.

Principles of probity in procurement processes include:

- Fairness and Impartiality;
- Accountability and transparency of process;
- Confidentiality and security of information and materials and
- Effective management of conflicts of interest.

A procurement process that conforms to the expected standards of probity is one in which clear procedures that are consistent with Government policies and legislation are established, understood and followed from the outset. These procedures need to consider the legitimate interests of suppliers and ensure that all potential suppliers are treated equitably.

Probity principles should be integrated into all procurement planning, and should not be a separate 'bolt-on' consideration. Procurement must be conducted with probity in mind to enable purchasers and suppliers to deal with each other on the basis of mutual trust and respect and enable business to be conducted reasonably and with integrity. Achieving an ethical, transparent approach requires that the procurement rules be clear, open, well understood and applied equally to all parties to the process.

## 4. Project Background

### 4.1 RFQ Procurement Process

Approval to release the RFQ was obtained via the Procurement Exception Request dated 23 May 2014 and signed by the Chief Executive Officer on the 29 May 2014.

The Procurement Process adopted was a sole source Request for Quotation (RFQ) process issued to Archipelago Architects. The RFQ was released on the 30 May 2014. The RFQ did not allude to being a sole source RFQ and specified at section 12 that responses to the RFQ would be evaluated against the following criteria:

- Local industry
- Value for money
- Ability to meet the corporations timeframes
- Corporate experience and track record
- Key personnel experience and capability

The RFQ closed on Monday 9 June 2014 at 12noon.

### 4.2 Scope of the CGV Planning RFQ

In accordance with section 4 of the RFQ the scope of work for the CGV Planning RFQ is the first phase of work required to appropriately master plan and design the GC2018 CGV Games Overlay.

*The subject of this scope of work is the schematic master planning of the entire CGV site, incorporating the CGV base works to be designed and constructed by EDQ and its contracted Developer, and the Temporary Games Overlay facilities, which are to be designed and supplied by GOLDOC. The schematic CGV master plan is required to meet the requirements of the CGF Village Manual, respect the schematic master plan for the CGV site as delivered by the preferred proponent to EDQ Request for Proposal (RFP), and accommodate GOLDOC's operational workflow requirements for the CGV.*

*The intent of the development of the schematic CGV master plan is to inform the siting, serviced platform design, utilities distribution design, and surface water management design associated with each of the temporary Games Overlay facilities. These designs will be produced by EDQ's Developer, in response to the schematic CGV master plan and related requirements in EDQ's Developer RFP.*

*The scope of service shall also include the development of information regarding the demand for servicing provisions, including hydraulic services, electrical, natural gas and telecommunications services. This information will include but not be limited to the number of people planned to be occupying each facility in the CGV during Games mode, activities planned to be undertaken in each facility, equipment to be located in each facility, hours of operation etc. The information will be used as a basis for calculating estimated loads for services / utilities to each Games Overlay*

facility. This deliverable will include information (where relevant) relating to the appropriate connection locations of utilities for each of the Games Overlay facilities in order to ensure optimally performing and cost-efficient delivery of utility services. The information developed from this work will inform the engineering design for CGV site engineering systems and utilities to be distributed to each of the Games Overlay facilities. These designs will be produced by EDQ's Developer, in response to this information.

It is envisaged that the contractor will be a multi-disciplinary team including site master planning design professionals and engineering design professionals with specific expertise in site hydraulic and electrical engineering disciplines.

#### 4.3 Associated Procurement Process of EDQ

Economic Development Queensland (EDQ) undertook a competitive tender process for the overall design and construction of CGV/Parkland. That contract was awarded to Grocon who engaged Archipelago Architects as their designers. That contract is ongoing and to date Archipelago Architects are still undertaking that engagement.

As part of the scope of the CGV Planning RFQ contract Archipelago Architects are regularly required to engage with Grocon, EDQ and GOLDOC to coordinate the GOLDOC design outputs with the current Grocon design.

### 5. Report on whether the Procurement Process was in accordance GOLDOC Procurement Policy

In accordance with the information provided by GOLDOC and reviewed by the Probity Auditor, it is our opinion that the procurement process:

- was compliant with the GOLDOC Procurement Policy. The GOLDOC procurement policy permits exceptions to that policy on approval from the Chief Executive Officer. Approval from the Chief Executive Officer (CEO) was obtained via Procurement Exception Request memoranda signed by the CEO on the 29 May 2014 prior to release of the RFQ;
- was not in breach of the Queensland Procurement Policy or PSEA obligations requiring integrity from agency employees. All parties involved in the assessment of the quotation signed the relevant conflict of interest declarations. All GOLDOC personnel associated with the selection process did not declare any actual perceived or potential conflicts of interest; and
- was not in breach of any obligation of confidentiality.

### 6. Identification of potential probity issues associated with the procurement process

While the decision to sole source the CGV Planning RFQ was not in breach of the GOLDOC Procurement Policy the procurement process does give rise to some potential probity issues/risks. These potential risks are set out below.

#### 6.1 Potential/Perceived Conflict of Interest associated with dual role of Archipelago Architects

The PSEA and GOLDOC code of conduct requires that agency personnel do not have conflicts of interest it does not place obligations on GOLDOC to ensure that GOLDOC contractors and consultants (such as Archipelago Architects) avoid conflicts of interest. The obligation of Archipelago Architects to avoid conflicts of interest is set out in clause 19 of their consultancy agreement that states:

19.2 The Consultant represents that to the extent reasonably ascertainable at commencement of this Contract, after making all reasonable enquiries, no conflict of interest exists or is likely to arise except as set out in Item 17.

19.4 The Consultant must notify the Client immediately on become aware of a conflict of interest or a significant risk of a conflict.

Based on the limited information provided in our view there is a potential conflict of interest and confidentiality issue that may occur as a result of Archipelago Architect dual role. For example the scope of Archipelago Architect is to document the design requirements for GOLDOC as the client. However they also have a role in providing design services to Grocon for the CGV/Parkland design. As a result it is possible that Archipelago Architect may provide advice to GOLDOC that benefits their relationship or interests under their contract with Grocon. Similarly Archipelago Architect could be receiving confidential information belonging to EDQ through their GOLDOC engagement relating to the project that EDQ may not wish for Archipelago Architect or Grocon to become aware of.

It is clear GOLDOC did consider aspects of this potential conflict of interest in consultation with both EDQ and Grocon prior to the decision being made to sole source. A meeting was held between GOLDOC, EDQ and Grocon to discuss the potential of inviting Archipelago Architect to bid for the RFQ, (refer to annex A setting out correspondence from Grocon dated 29 May 2014 providing consent to the potential invitation).

It is noted that while aspects of the potential conflict of interest risk were considered and dismissed, these considerations were not documented in the procurement exception request.

## 6.2 Inherit Probity Risks associated with sole source activity

In our view a sole source procurement process should be used as an absolute last resort. A sole source process has implicit with it a number of probity risks they include:

- Sole source processes make it difficult to demonstrate how value for money has been achieved;
- Sole source processes decrease supplier confidence in government and perception of fairness regarding government procurement processes;
- Sole source processes often give rise to probity complaints, that in turn have cost and value for money implications in the management and resolution of a complaint.

In our view while it is appreciated that the sole source decision was approved in accordance with the GOLDOC procurement policy the decision to sole source was not the lowest risk decision from a probity perspective. In our view there may have been other ways that the project risks justifying the sole source decision could have been managed that avoided the implicit probity risks associated with sole source procurements. Ultimately it is up to the project team in consultation with the procurement team to weight up the probity and project risks (and potential mitigations to those risks) associated with a procurement process before a decision is made to proceed with a sole source procurement activity.

Regarding value for money it is noted that the procurement exception request did include a list of the rates of service providers under the Standing Offer Arrangement which showed that the rate provided by Archipelago Architects was comparable and in the lower price range when compared to other designers under the panel. This basis for assessing value for money may not be applicable however in relation to the quotation provide for variation 4 (refer to section 6.4 below).

In our view to promote transparency and best practice a complete list of benefits/risks should be documented in a sole source justification to allow for the relevant officer to consider all factors prior to granting a procurement exception request.

### 6.3 Evaluation in accordance with evaluation criteria set out in the RFQ

As stated in section 4.1 above, the RFQ issued to Archipelago Architects set out the evaluation criteria that would be used to assess responses to the RFQ. However the evaluation report stated at section 7:

"As only one company was sought, no scoring was necessary. Price and ability to complete the work within GOI DOC timeframes were the focus of the evaluation".

While it is noted failure to undertake the assessment in accordance with the RFQ may not have had any implications on the evaluation result or outcome, in our view evaluations should be undertaken in full in accordance with the published evaluation process and criteria.

In accordance with best practice procurement methodology, probity related case law<sup>1</sup> and relevant legislation<sup>2</sup> evaluation processes must be undertaken in accordance with the representations made to tenderers through the tender documents. Regardless of whether one offer is received that offer should be always be assessed in accordance with the full criteria and process set out in the RFQ.

### 6.4 Increase in schedule of rates during term of agreement

It is noted that via variation 4 Archipelago Architects increased the hourly rate of their director Peter Edwards from \$250 to \$300 per hour. In accordance with section 9.5 of the Special Conditions of the Consultancy agreement variations should be in accordance with Schedule of Rates at Appendix 4. Appendix 4 sets out that the schedule of rates for a director is \$250 per hour.

While this is more a contract management issue than a probity issue the increase of the rate of the consultant affects the original value for money assessment undertaken as part of the original sole source justification and RFQ evaluation process.

Recommendations to better manage the probity issues identified above will be provided as part of the final probity report on the procurement process.

QProcurement kindly thanks Sandy Reiser Manager Senior Procurement in the timely provision of information and documentation in the preparation of this interim probity report.

Dated this 5 February 2015.

sch4p4( 6) Personal information

Melissa Grainger  
Probity Auditor  
QProcurement Pty Ltd

<sup>1</sup> Refer to Hughes Aircraft Systems International v Airservices Australia (No. 3) [1997] FCA 1537

<sup>2</sup> Refer to Section 18 of the Australian Consumer Law (ACL), found in schedule 2 of the Competition and Consumer Act 2010 (formerly the Trade Practices Act 1974) which prohibits conduct by corporations in trade or commerce which is misleading or deceptive or is likely to mislead or deceive.

## Annex A – Correspondence with GOLDOC

From: Sandy Reiser <[Sandy.Reiser@goldoc.com](mailto:Sandy.Reiser@goldoc.com)>  
Date: Thursday, 29 January 2015 12:24 pm  
To: QProcurement PL <[mel@qprocurement.com.au](mailto:mel@qprocurement.com.au)>  
Subject: conflict of interest consideration

Hi Mel

In relation to your question this morning re: conflict of interest, I had discussed it with our project manager and he in turn with Legal prior to requesting the initial RFG and as it was low risk I had not included anything in the documentation. To refresh my memory I've revisited the conversation with him today and can advise as follows:

In considering whether to engage AA it was considered to be low risk of any actual conflict arising between the work to be completed for GOLDOC versus the work being completed for Grocon. This low risk did not outweigh the potential cost and time savings to GOLDOC, and ensuring a design process consistent with the MEDQ-issued Developer RFP to which Grocon responded.

To explain, Grocon is responsible for the Base Building Design and GOLDOC is responsible for its overlay (temporary works to convert the area's into a major event area). Given GOLDOC's overlay will be installed within the base building and on suitably serviced sites prepared by Grocon there is necessarily a lot of coordination between the parties as to what is suitable for both parties. This often requires Grocon and GOLDOC to negotiate a position suitable to both parties, noting that GOLDOC has an interest in ensuring that Grocon succeeds in fulfilling its contracted commitments. The design approvals remain with GOLDOC and negotiations with Grocon. GOLDOC directs the designer (AA) is to take a particular path for the Overlay, understanding the implications of cost and program for both Grocon's work and GOLDOC's work. The designer is not authorised to make any decisions for GOLDOC.

So to answer your question no chinese walls or other such mechanisms are in place.

I trust this assists.

Kind regards

Sandy Reiser Manager Procurement Gold Coast 2018 Commonwealth Games Corporation  
Further contact information [facebook.com/goldoc](https://www.facebook.com/goldoc) [twitter.com/goldoc](https://twitter.com/goldoc) [goldoc.com](http://goldoc.com)

---

From: Sandy Reiser <[Sandy.Reiser@goldoc.com](mailto:Sandy.Reiser@goldoc.com)>  
Date: Thursday, 5 February 2015 12:29 pm  
To: QProcurement PL <[mel@qprocurement.com.au](mailto:mel@qprocurement.com.au)>  
Subject: RE: GOLDOC - potential engagement of Archipelago

Sorry for the delay in responding – conversations had were very much around inviting them to bid – not that they were intended to be a sole invitee.

Kind regards

Sandy Reiser Manager Procurement Gold Coast 2018 Commonwealth Games Corporation  
Further contact information [facebook.com/goldoc](https://www.facebook.com/goldoc) [twitter.com/goldoc](https://twitter.com/goldoc) [goldoc.com](http://goldoc.com)

---

From: Sandy Reiser <[Sandy.Reiser@goldoc.com](mailto:Sandy.Reiser@goldoc.com)> Date: Wednesday, 4 February 2015 2:41 pm To: QProcurement PL <[mel@qprocurement.com.au](mailto:mel@qprocurement.com.au)> Subject: RE: GOLDOC - potential engagement of Archipelago



Hi Mel

The question in relation to consent was asked collectively in a meeting environment (Grocon and MEDQ). Grocon responded as it was their contractor, not MEDQ's. However MEDQ were aware of the consent given as they were cc'd on the email.

I can confirm:

Ian Hatton and Mark Hargraves are from MEDQ  
John Wilson and Scott Ponton are from Grocon

I hope this assists.

Kind regards

**Sandy Reiser** Manager Procurement Gold Coast 2018 Commonwealth Games Corporation  
Further contact information [facebook.com/goldoc](https://www.facebook.com/goldoc) [twitter.com/goldoc](https://twitter.com/goldoc) [goldoc.com](http://goldoc.com)

**From:** John Tyson [<mailto:JohnTyson@grocon.com.au>] **Sent:** Thursday, 29 May 2014 5:20 PM **To:** Mark Cutler **Cc:** Ian Hatton; Mark Hargraves; John Wilson; Scott Ponton **Subject:** GOLDOC - potential engagement of Archipelago

Dear Mark,

As discussed, we have considered your request and confirm our consent to the potential engagement of Archipelago by GOLDOC for the provision of architectural services for GOLDOC matters.

Regards,

**John Tyson** | Development Manager | Grocon Group

RTI DL RELEASE - DTESB

## Annex B – Relevant Correspondence

**From:** Sandy Reiser <[Sandy.Reiser@goldoc.com](mailto:Sandy.Reiser@goldoc.com)>  
**Date:** Friday, 13 February 2015 1:35 pm  
**To:** QProcurement PL <[mel@gprocurement.com.au](mailto:mel@gprocurement.com.au)>  
**Subject:** RE: Request For Quotation - CGV Master Planning Design Services - GOLDOC/2014/401

Hi Melissa

I wasn't present at the evaluation – however as you are aware the whole basis of the exception for a sole invitee was Archipelago's role with Grocon for the parklands project. Peter Edwards is the project director for the Grocon piece and as such has the intimate design knowledge. The project director role is the key role in relation to the engagement for GOLDOC as the other personnel work under the direction and supervision of the project director.

So for us his inclusion was a given and any other resource was irrelevant. As it was identified from the submission he was the project director the evaluation really then was around timing and value money. If Peter had not been included in the submission – it could not be said that value for money would be achieved.

This is why when Archipelago removed Matthew Mahoney from the contract at the time of executing it, it was not an issue for us as his participation had not been a determining factor.

I have validated this with Mark Cutler and Adam Lakeland.

I hope this helps.

Kind regards

Sandy

**From:** Melissa Grainger [<mailto:Mel@gprocurement.com.au>] **Sent:** Friday, 13 February 2015 12:39 PM **To:** Sandy Reiser **Subject:** Re: Request For Quotation - CGV Master Planning Design Services - GOLDOC/2014/401

Hello Sandy

Thanks for all the additional information. Apologies it has been a few days since we have been in touch!  
sch4p4(6) Personal information

I note that the evaluation report said "Price and ability to complete the work within GOLDOC timeframes were the focus of the evaluation".

On that basis it appears no consideration was made as to the experience of the nominated staff. Is that strictly correct?

Were you present during the evaluation? If not could you please check with the panel members Mark Cutler / Adam Lakeland.

Feel free to give me a call if you like.

Thanks  
Melissa Grainger