

Request for price of successful tender to supply disposable syringes and needles

Legislation	Official Information Act 1982, ss 9(2)(b)(ii), 9(2)(i)
Agency	Area Health Board
Ombudsman	John Robertson
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Sections 9(2)(b)(ii) and 9(2)(i) do not apply—public interest in release to promote integrity and transparency of tender process

The tenders in question were for a two-year supply of surgical dressings and appliances for all area health boards, that period being broken into six monthly reviews to allow reassessment of supply requirements. The tenders were advertised internationally. Selection of the successful tender was based on price, quality and past performance.

It became clear that the main concern with the release of the information requested was that it would enable competitors in the market for the products to undercut the tender price. Section 9(2)(b)(ii) of the OIA is the withholding provision most closely associated with this type of concern.

The prejudice to the commercial position of the successful tenderers was seen as occurring because those tenderers' prices were based on the initial estimated quantities. If the actual quantities required fell too far below the initial estimate, the tenderers would lose out. Furthermore, it was argued that the actual quantities required could potentially be much lower than predicted if unsuccessful tenderers (knowing the actual tender price) went to individual boards and offered supplies at a lower price.

It was also suggested that the commercial position of the board responsible for carrying out the tendering exercise would be prejudiced by the supply of the information at issue on the basis that if the successful tender prices became known it would affect the pricing strategy of future tenderers and prices would go up to counter the potential loss from 'under-cutters'.

A worst case scenario was advanced that repeatedly successful tenderers, both past and present, might pull out of the small New Zealand market altogether, leaving boards at the mercy of ‘under-cutters’. This concern appeared to be related most closely to section 9(2)(i) of the OIA.

In line with the general approach taken to requests for tender information, the Chief Ombudsman:

- sought further information about the prejudice to the commercial position of both the successful tenderer and the area health board itself;
- examined the relationship between that board and the other boards on whose behalf it carried out the tendering process; and
- outlined the public interest considerations favouring disclosure in terms of section 9(1) which had been identified in previous cases.

Those public interest considerations were:

- the public interest in public sector purchasing procedures being seen to be beyond reproach; and
- the public interest in the New Zealand public having access to how departments and organisations spend public funds.

The board consulted the successful tenderers and then accepted the Chief Ombudsman’s view of the public interest considerations relevant to the question of release of tender price information. The board agreed that if the Chief Ombudsman so recommended, it would release the prices of all tenderers. Accordingly, the Chief Ombudsman made a formal recommendation and the board released the information.

In addition, the board advised that in inviting tenders in future it would advise prospective tenderers that the names and finally negotiated prices from all tenderers would be released to those tendering and to requesters under the OIA. Such a policy of disclosure can only enhance and promote the purposes of the OIA in the eyes of the public.

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