

## Request for names of tenderers and prices

<b>Legislation</b>	Local Government Official Information and Meetings Act 1987, s 7(2)(b)(ii)
<b>Agency</b>	Masterton District Council
<b>Ombudsman</b>	David McGee
<b>Case number(s)</b>	178592
<b>Date</b>	May 2009

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*Release of names and total prices, as opposed to detailed pricing or market strategy, would not be likely unreasonably to prejudice the tenderers' commercial positions—public interest in release to promote integrity and transparency of the tender process—s 7(2)(b)(ii) does not apply*

Masterton District Council refused a request for the names of all tenderers and prices submitted for the Riversdale Beach Professional Services Contract under section 7(2)(b)(ii) of the LGOIMA (unreasonable commercial prejudice). The requester complained to the Ombudsman, noting that this decision appeared to be inconsistent with the Council's release of the same information in relation to a different contract.

The Council acknowledged the inconsistency, saying it normally disclosed the names of companies which tender and tender prices. However, in this case, the Council was procuring 'a person's skill set', rather than products, and although the label 'tender' was used at times, this process was an assessment of individuals' responses to a request for proposals.

The Ombudsman was not persuaded that tender processes could be distinguished on this basis. In his view, the same principles applied, notwithstanding the subject of the good or service being procured or the label given to the procurement process. He stated:

*Ombudsmen have generally accepted that, where disclosure of tender information would be likely to reveal a tenderer's pricing/market strategy in a competitive market, such information is protected by section 7(2)(b)(ii). However, in respect of requests for total tender prices (as opposed to details of how the total price is made*

*up) and the identities of successful and unsuccessful tenderers, the Ombudsmen would have to be persuaded in a particular case that such information requires protection under the official information legislation. There is no evidence to suggest that previous disclosures of such information have deterred participation in public tenders.*

The Council raised a concern that the disclosure of information such as the assessment of weighted attributes, personnel details, charge out rates, and pricing strategies of the unsuccessful proposals would compromise the Council's relationship with the tenderers. However, this level of detail was not sought by the requester, and the fact that it might be sought in the future was not relevant to this investigation and review.

There was a public interest in public sector tendering procedures being seen to be beyond reproach. Integrity and transparency in the tendering process is important and the release of adequate information about the successful and unsuccessful bids assists in achieving these objectives.

The Ombudsman concluded there was no good reason to withhold the information and the Council agreed to disclose it.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*