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| Request for tender submission pricing schedule |
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| Legislation Official Information Act 1982, s 9(2)(b)(ii)Agency Land Information New ZealandOmbudsman David McGeeCase number(s) 281322Date August 2010 |

*Section 9(2)(b)(ii) applies to detailed pricing schedule but not total price—strong public interest in disclosure of total price*

An unsuccessful tenderer asked Land Information New Zealand (LINZ) for *‘all information to do with Waste Tyre Solutions (WTS) Proposal as submitted for the Tender for the Removal of Tyres from 50 Mersey St, Napier’*. He noted he was particularly interested in the methodology, and what WTS proposed to do with the tyres. LINZ released a copy of the ‘method statement’ from the WTS tender submission.

The requester was dissatisfied and reiterated his request for all information to do with the tender submission. LINZ then disclosed a copy of the submission without the pricing schedule.

The requester further reiterated his interest in the pricing schedule, which LINZ then refused to supply under section 9(2)(b)(ii) (unreasonable commercial prejudice). The requester complained to the Ombudsman. He argued that the price submitted was only one total price, and that as there was ‘no reference to price per unit’, releasing the pricing schedule could not prejudice the successful tenderer’s commercial position.

LINZ confirmed that the price submitted by WTS was a fixed price for the removal of 15,000 cubic metres of car tyres, but from this ‘it [was] a simple matter to calculate the cost of the removal of car tyres to the [cubic metre]’. Revealing the pricing strategy used by WTS would provide an unfair advantage to their competitors.

The Ombudsman concluded there was good reason to withhold the pricing schedule. Given the manner in which this particular tender proposal was structured, release of the pricing schedule would allow calculation of the unit price upon which the WTS bid was partly based (that is, the price per cubic metre for disposal of tyres). Access to such information would provide competitors of WTS with a competitive advantage in the marketplace for tyre disposal. This, in turn, would be likely unreasonably to prejudice the commercial position of WTS, particularly in the context of future tender bids.

However, the Ombudsman acknowledged the strong public interest in disclosure of information about successful tender bids. In his opinion, the public interest required release of information about the total contract price agreed to between the parties, rather than the unit price used by WTS in its initial bid.

In response, LINZ noted it had already disclosed the contract value on the GETS website, which it believed was sufficient. It also noted that the requester had declined the opportunity to be debriefed on his submission.

The Ombudsman said the fact that the requester chose not to attend a debriefing on his tender submission did not affect his right to request information under the OIA. The Ombudsman was also aware that the contract price, in a $250,000 band, was available on the GETS website. However, he could not identify any good reason under the OIA for withholding the precise total price paid by LINZ for the contract. The total tender price did not reveal the tenderer’s pricing strategy or costing structure, and therefore section 9(2)(b)(ii) of the OIA did not apply. The Ombudsman noted his opinion in this regard was consistent with the approach taken by successive Ombudsmen that good reason does not exist to withhold total tender prices.

LINZ agreed to release the total tender price and the complaint was resolved.

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