

Regional Authority's tender process inadequate

Legislation	Ombudsmen Act 1975, Resource Management Act 1991
Agency	Local Authority
Ombudsman	David McGee
Case number(s)	W59985 (previously unpublished)
Date	2009

Regional Council's tender processes unreasonable, although the tender was incomplete, the Council officer contacted complainant after close of tenders to clarify his tender—having allowed an incomplete tender to proceed and provided complainant with an opportunity to clarify the tender, it was unreasonable for that clarification not to have been provided to the Tender Committee

The complainant had entered a tender process to purchase vehicles from a Regional Authority. The complainant was unsuccessful with his tender and complained that the Council's tender processes had been unreasonable.

Upon investigation, the Ombudsman noted that the complainant had submitted an incomplete form because he had not specified the number of vehicles that he wished to purchase. In the circumstances, it was open to the Council to disqualify his tender on that basis.

However, this was not the approach that was taken. Instead, the Council staff member allowed the complainant's tender to proceed and even telephoned the complainant in an attempt to confirm how many vehicles he wished to purchase. The Ombudsman considered that the staff member was acting in good faith when he attempted to contact the complainant to clarify his tender bid. However, having allowed the incomplete tender to proceed and providing the complainant with an opportunity to clarify his tender after the tenders had closed and receiving information from the complainant about the number of vehicles he wished to purchase, the Ombudsman concluded that it was unreasonable for the Council not to have

provided this information to the Tenders Committee so that it could form its view with a full picture of the complainant's intentions.

The Ombudsman sustained the complaint to the extent that, having allowed his incomplete tender to proceed and given him an opportunity to clarify his tender after the tenders had closed, it was unreasonable not to pass on the advice that he wanted to purchase four vehicles to the Tenders Committee.

However the Ombudsman also noted that the Council does not bear full responsibility for the way in which events unfolded. The complainant's tender was incomplete and therefore, the complainant must take responsibility for creating a situation to his disadvantage. Furthermore, even if the Tenders Committee had known of his interest in purchasing more than one vehicle there is no guarantee that the second vehicle on which he submitted the highest bid would have been awarded to him. For this reason no recommendation was made to the Council.

The Council advised that as a result of this complaint, the Council reviewed its procedures for motor vehicle tenders. In future, the Council will have no contact with the tenderers once a tender has been submitted and received, whether to clarify ambiguity or otherwise. The Council apologised to the complainant for the failure to pass on to the Tenders Committee, the advice that he wanted to purchase four of the vehicles on offer.

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