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Dear Peter

Review of the tender processes for the operation of the Taumarunui and Ohakune i-Site Visitor Information Centres

Audit New Zealand has completed a retrospective review of processes for procuring contract C60-1554 for the operation of the Taumarunui and Ohakune i-Site visitor information centres. This report documents the issues identified from our review that are relevant to the decision by Ruapehu District Council (RDC) as to the awarding of the contract. Subsequent to our reports of 11 April 2013 and 10 August 2013, RDC provided some additional information and clarification related to the matters that had been considered in this review. We have taken this information into account and made some revisions to our original report. This report is now our final report.

Background

RDC undertook a tendering process to engage a contractor for the operation of the Taumarunui and Ohakune i-Site visitor information centres. A single stage Request for Tender (RFT) process was used by Council. The RFT document set out the criteria against which the tenders would be evaluated. The RFT advised that tenders would be evaluated to “determine which will deliver the best value ...”. The RFT also stated that the purpose of the tender evaluation was to identify a suitable long term partner.

Six tenders were received by the closing date of 20 April 2012. Three tenderers were shortlisted from the initial evaluation process. A report was submitted to Council on 8 May 2012. At this Council meeting a decision on contract award was made, subject to successful negotiation of the contract price and retained levels of service.

The negotiations then proceeded and the contract was signed by the Chief Executive and the successful tenderer on 15 June 2012.

In October 2012 RDC appointed Audit New Zealand to perform an independent retrospective review of the procurement process.

Scope and approach

RDC was seeking to ensure that the processes adopted for the tender of the contract complied with good practice, and were applied as documented in a manner that appropriately addressed probity issues. Our assurance review was designed to assist RDC in achieving that goal by providing it with an independent assessment of the processes that had been followed to procure the contract.

The scope and terms of the retrospective review were set out in our letter of 25 October 2012 and our assurance approach specifically covered:

- A review of documentation.
- Interviews with relevant people including the Chief Executive, members of the evaluation team, some Councillors and the Mayor.

The purpose of our approach was to enable us to understand:

- The processes for receipt, opening and security of responses to the request for tender.
- The processes used for communicating with respondents to the RFT, and in particular any clarifications issued following tender closing.
- The evaluation process, including the steps the evaluation team took to verifying information contained in the tender documents.
- The processes used to identify and mitigate/manage conflicts of interest.
- The processes used to negotiate the price with the ultimate successful tenderer.
- The approach taken by management when reporting and presenting the evaluation results and conclusion to Council.
- The approach taken by Council when making a decision on the award of the contract.

This review did not include:

- Assurance over the outcome of the processes or assurance that RDC's actions comply with all relevant legal and other standards.
- Recommendations to RDC about future possible actions with regards to this contract.
- Interviews of any of the tenderers.
- A broad review of procurement practices at RDC. This assurance review was limited to the tender processes for a contract to operate the Taumarunui and Ohakune i-Site Visitor Information Centres.

Our findings

Our retrospective review of the tender processes for this contract identified a number of weaknesses in the actual practices employed when compared to good practice approaches with public sector procurement. Several of the weaknesses may have affected the robustness of the procurement process. The key findings from our review are:

Governance and management responsibilities

As a general rule the management team of an organisation is responsible for operational matters and the governance team (in this case the elected Council) is responsible for setting policy and making decisions where that power has not been delegated to the Chief Executive.

Conventional practice would usually see the management team taking responsibility for a procurement process. However, for this procurement the tender evaluation group consisted of staff members together with two elected representatives (Councillors). This is an unusual arrangement and creates a risk that the elected representative's ability to contribute objectively to the tender evaluation could be compromised by their political views. Furthermore, the elected representative's ability to contribute objectively to the subsequent Council decision process could be compromised depending on the position they may have taken in the evaluation.

We note that on this occasion there does not appear to have been any obvious consequences arising from the membership arrangement for this tender group. However, we would recommend that this practice be reviewed for future tender processes.

We also learned during our review that the negotiations that followed the Council's decision on a preferred tenderer were conducted by the Mayor and three Councillors. This is also unusual and clearly indicates that the Council had assumed responsibility for what is usually an operational matter. We would question whether the negotiation team had all the experience and skills necessary to plan and undertake negotiations of this nature. However, we acknowledge that some may have.

Planning for the tender process

Good practice recommends that for each specific procurement a public entity should prepare a procurement plan, evaluation plan and scoring templates. During our review we learned that an evaluation plan and scoring spreadsheet had been provided to the tender evaluation group and used to evaluate the tenders received.

In terms of good practice we would usually expect that planning for the replacement or renewal of services would occur sufficiently in advance of the completion of an existing contract to allow an orderly transition to the new service arrangements. We are not satisfied that this occurred.

For this procurement the original contract had to be extended by three months. The decision to extend the contract was made on 14 February only six weeks before the contract was due to end. There was insufficient time for a new contract to be put in place and consequently the existing contract had to be extended. This situation indicates to us that the planning did not occur early enough. A risk of service disruption could have existed if the incumbent provider at that time had been unable or unwilling to agree to a contract extension.

We emphasise the need for good planning with procurement processes. The more critical the goods and services, the more important that the planning be comprehensive and timely. The need for a smooth transition for service arrangements is obviously important.

Tender process

All public sector entities have a public law obligation to act fairly. For a procurement process it is necessary to design and conduct a fair tender process.

Through our review we noted that many aspects of the following processes aligned with good practice:

- Receipt, opening and security of responses to the request for tender.
- Communication with respondents to the RFT.
- The initial evaluation of the tenders with the exception of the selection of attributes as noted below.

However, we also noted several aspects of the tender process for the i-Site services that raise questions about the fairness of the process, at least in terms of perceptions.

Tender evaluation criteria

Criteria or attributes to be used in the evaluation of tenders were identified in the RFT for this process. The attributes were Organisational Capacity and Capability, Methodology and Price. These attributes were further defined in the RFT to include such things as “sustainability of the organisation as a long term partner”, “the ability to meet the Council’s overall goals”, “community fit” and the tenderer’s “vision“. We regard these attributes as being capable of taking a complete view of the relative merits of each tender. As such a substantially objective and balanced evaluation approach to the tenders was possible.

However, we noted that in the evaluation that was actually undertaken the criteria were redefined as “Capability”, “Local Knowledge” and “Price”. We cannot properly match the RFT criteria to the criteria actually used. Changing the criteria in this way is not good practice and may introduce some risk with the process.

Tender evaluation

We are not convinced that the tender evaluation group properly completed its work. Usually we would expect the group that is best informed about the services and most knowledgeable about the tender submissions (having evaluated them) to make a clear recommendation to Council on a preferred tenderer or vendor. That did not occur.

The report presented to Council by the CEO on behalf of the tender evaluation group did not include a clear recommendation for award of the contract. Instead the tender evaluation group’s report identified three shortlisted tenderers that had scored highest in the evaluation process. The report then left it to Council to make the final decision.

We noted the reference in the RFT to Council making the final decision but that needed to be on an informed and fair basis. On this occasion the Council set aside the initial comprehensive evaluation result and selected another tenderer that it considered best. The approach taken could have created a serious risk with the robustness of the Council’s decision.

The purpose of presentations by tenderers

The usual purpose of presentations by tenderers is to allow an opportunity for clarification and refinement of some aspects of a tender. It is not an opportunity for a tenderer to change its tender. Usually the knowledge gained from the presentations is then taken into account through a review of and adjustment to the scoring developed in the initial evaluation. This did not occur during this process.

Selection of a preferred tender

Following the presentations by tenderers we understand that a motion for contract award was put to a Council meeting by the Councillors who had been on the tender evaluation group. The motion proposed that the contract be awarded to the highest scoring tenderer from the evaluation. It is usual for the highest scoring tenderer to be awarded the contract and this outcome would have been consistent with the RFT's stated intention to identify the tender with the "best value". Given that the evaluation was comprehensive and included consideration of both quality and price attributes then the evaluation should have resulted in a "best value" outcome. However, the motion to award the contract to the highest scoring tenderer was not supported by Council.

In a subsequent motion Council decided to award the contract to the second ranked tenderer. There does not appear to be a clearly documented rationale for this decision. We understand that all the shortlisted tenderers were regarded as competent. However, this situation creates a perception of unfairness.

In these circumstances, if the Council was unable to agree with the outcome of an objective tender evaluation process (i.e selecting the highest scoring tender as the preferred tender) then Council should have had very good reasons for making a different decision. Council may have wished to put greater emphasis on the other objective of the evaluation process which was to identify a suitable long term partner. However, if this was Council's wish then it does not appear to have been recorded and the decision made on this process appears to be unsupported. Council could have also sought further clarification from management and from the tender group on any matters of concern before it made its decision. However, we understand that management had no involvement in Council's debate on this decision.

Tender submissions

A Request for Tender (RFT) document usually sets out the requirements that submitters must comply with when providing a tender response. It is usual in the tender evaluation process for a compliance check to be undertaken in the first instance to confirm that the submission requirements have been met. Where there is evidence of a significant non-compliance then, in fairness to other tenderers, the submission may need to be set aside and not evaluated.

The RFT document for this process did set out the requirements mentioned above. We found with this process that some submissions were incomplete, for example one tenderer did not provide cash flow information as had been requested under "Price" in the RFT. We are not fully aware of the significance of the departures. However, these incomplete submissions were taken forward for further evaluation. It is important that only substantially compliant tenders are taken forward for evaluation. This is a good practice expectation for a fair tender evaluation process.

The negotiation process

Negotiation is a very important (and usually the last) stage in a procurement process. As for earlier tender stages there should be a planned approach to the negotiation. It is more usual for the negotiation to be seen as an operational function i.e undertaken by management. However, in this instance elected members of Council managed the negotiation process. We did not find evidence of planning for the negotiation. There were discussions by phone with the tenderers that were not documented and possibly not witnessed from the Council's point of view. The records of this process are incomplete. Improper approaches to negotiation can lead to risks with the tender process.

Price adjustments

The tenderer that had been ranked first in the initial evaluation and with the lowest price (but had not been selected as the preferred tenderer) was contacted by the Mayor by phone on 8 May and asked to provide further financial information. On 11 May this tenderer provided the requested information and, although not solicited by Council, also offered a price reduction. The Mayor also contacted the preferred tenderer on 8 May and advised it of its "preferred status". The preferred tenderer wrote to the Council and offered a price reduction that resulted in it being the lowest priced tender by \$3,000. This letter is dated 21 May but all Council members involved in the negotiation informed us that they received both letters on 15 May when they met with the preferred tenderer. As already stated above, the records of the process are incomplete and unfortunate perceptions could therefore be gained from the way in which the negotiations were conducted and the price reductions achieved.

Conflict of interest

Conflict of interest issues are one of the most common problems we identify with procurement processes. Consequently, we considered this matter as part of the review.

It is important that all those involved in a tender process are familiar with the Council's policy on conflict of interest and with good practice expectations. All those involved need to be free of any actual and perceived conflicts of interest.

Some concerns were raised with us during interviews. However, we sought clarification on these matters and received written declarations from most Councillors and the Chief Executive. This indicated to us that there were no conflict of interest issues. One Councillor did not provide us with a written declaration.

Overall conclusion

We are not satisfied that this tender process fully conformed with expectations for good practice in the public sector. Some of the issues that we identified can be addressed in future procurement processes. Some of the issues could have impacted on the integrity of the decision made on contract award. There is no clear evidence that they did. However, some risk may exist.

Way forward

This report completes our work on this assurance engagement. If you have queries about any aspect of this report, or any other matter, please contact me by phone on (021) 222-6027, or e-mail leon.pieterse@auditnz.govt.nz.

Yours sincerely

A handwritten signature in black ink, appearing to be 'L. Pieterse', written in a cursive style.

Leon Pieterse
Director

cc Peter Davies, Director, Specialist Audit and Assurance Services
Clarence Susan, Audit Director