

Centrelink

PROCUREMENT OF OPTIONAL ITEM VIA A REQUEST FOR TENDER

December 2008

*This is an abridged version of report 15/2008.
The full report has not been made publicly available
due to privacy considerations*

Report by the Commonwealth Ombudsman,
Prof. John McMillan, under the *Ombudsman Act 1976*

REPORT NO. **15|2008**

Reports by the Ombudsman

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BACKGROUND

We received a complaint about Centrelink's procurement processes in relation to its acquisition of a particular product.

Centrelink was purchasing some items through a Request for Tender (RFT) in a tight timeframe. The RFT included mandatory items that Centrelink intended to purchase, and optional extra items that Centrelink might acquire later to meet specific business needs. The RFT provided for a deed of standing offer to be entered into, with the optional items included in a catalogue.

The complaint we received related to one of the optional extra items and did not relate to the acquisition of the mandatory items.

In this report the item listed on the catalogue of optional items that was the subject of the complaint is referred to as 'product' and the specific brand of the item that was procured is referred to as 'Product A'.

The RFT had sought responses against a range of criteria related to the product, as one of the set of optional extra items. None of the tenderers submitted proposals for the product that met the tender specifications.

Centrelink decided to continue with the procurement of the product through the RFT process. As part of the negotiations with the preferred tenderer, and following advice from a consultant, Product A was added to the catalogue of optional items. Under the terms of the deed of standing offer, another brand of the product could be substituted for Product A at a later stage, if certain conditions were met.

Some time later, following a detailed evaluation of a number of different brands of the product, including Product A, to see if they met Centrelink's requirements, a delegate under Regulation 9 of the Financial Management and Accountability Regulations 1997 approved the acquisition of Product A, supplied by Company A through the successful tenderer, Company B.

CONCLUSIONS

Government procurement processes must be of the utmost integrity. This means that the processes must not only be undertaken properly, but there must be no grounds for a reasonable apprehension that there was unfair or biased treatment of any party. It is particularly important that adequate records are maintained to demonstrate the probity of the acquisition process.

Procurement process

We formed the view that, in the circumstances, it was not unreasonable to have a set of optional items attached to the RFT, including the product.

Centrelink had contracted the services of a consultant to provide advice on the acquisition of the product and a range of related matters, quite separately from the RFT process. When no suitable product was put forward in the responses to the RFT, the RFT evaluation team asked the relevant area in Centrelink to advise urgently of a suitable brand of the product to be included in the catalogue of optional

items. The consultant communicated directly with Company A about finding a suitable brand of the product, and advised Centrelink of the price and potential suitability of Product A. At Centrelink's request Product A was added to the catalogue of optional items during the contract negotiations with the preferred tenderer. This occurred without any value for money assessment of Product A.

The information obtained during the course of our investigation into this issue raised questions about the role of the consultant in the procurement process. We have not been able to determine the extent to which the consultant was operating under direction from Centrelink officers in his discussions with Company A, due to insufficient documentary evidence and contradictory accounts given by Centrelink officers and the consultant.

Procurement decision

While Product A was later subjected to a detailed assessment of its suitability, no assessment of value for money was carried out. This issue is concerning because it seems that Centrelink did not comply with the Commonwealth Procurement Guidelines.

The brief to the Regulation 9 delegate stated incorrectly that Product A was a tendered item. There is no evidence to suggest that anyone, including the delegate, queried why this product was preferred when the detailed evaluation revealed that it and another product were very similar in performance.

It appears that those involved believed mistakenly that Product A had been assessed in the tender evaluation process because it was on the catalogue, and that as a consequence, no further value for money assessment was required. This was incorrect.

RECOMMENDATIONS

No concluding view was reached as to whether or not the consultant acted with Centrelink's authority in dealing directly with Company A regarding options and prices for the product for inclusion in the catalogue. In the Ombudsman's view, the process of procurement can be criticised. However, criticism of individual actions is not warranted. The Ombudsman made the following recommendations.

- Centrelink should review its procurement processes to ensure that, where a catalogue of optional items is included in an RFT and subsequent deeds/contracts, appropriate processes for assessing value for money are applied at all stages. That is, the evaluation method for RFTs should take proper account of value for money considerations when optional items are included, and similarly when a catalogue item might be substituted or added.
- Centrelink should review its procurement documentation and training procedures to ensure that value for money is always addressed. This may also involve further training of Regulation 9 delegates.
- The role of the contractor should be clearly articulated and all contractors should be required to keep records of communication with vendors and potential vendors. All contractor communication on behalf of Centrelink should be copied to Centrelink.
- Centrelink should ensure that it keeps proper records when it requests contractors to contact third parties.

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- Centrelink should consider requiring a separate conflict of interest statement to be signed by contractors, as currently recommended by both the Australian National Audit Office and the Department of Finance and Deregulation. This statement should cover not only potential conflicts that might arise in the future, but also outline previous, or other concurrent, work or business relationships that might lead to a perception of conflict of interest.

Centrelink accepted all of the recommendations.

Centrelink advised that its current policy and procedure manuals clearly articulate the core principle of 'value for money' in Commonwealth procurement. Centrelink also insists that its employees adhere to the Australian Public Service Code of Conduct. Centrelink requires that all procurement documentation be retained on an official file. Centrelink has undertaken to place stronger emphasis on training and support for employees involved in the procurement process. This includes developing a 'Communication Protocol for Contractors Representing Centrelink', reinforcing the requirement to keep proper records and commencing a review of its standard documentation to ensure that both ANAO and Finance recommendations in relation to conflict of interest are met.