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C1: Contracts

Procurement – council refused consideration of contracts – assumptions made about policy – no policy in place

Background

The complainant was the chief executive of an electrical competency registration group. He complained that the council was unreasonably refusing to consider awarding contracts to members of the group, resulting in members losing business if they did not join the electrical registration group accepted by the council.

When the complainant raised the matter with the council, and offered to supply supporting evidence, he was advised that it was the council's policy only to award contracts to members of a particular registration group. He argued that the policy, which he was informed had been in place for 20 years, was unreasonable and outdated.

The council's response to the Ombudsman

The council said it had contract procedure rules that applied to all construction trades. The restriction to a single electrical registration body was not specifically referred to in the council's policy but the policy did refer to evaluation of technical capacity as part of the process. The council relied on a parliamentary debate that took place in 1988 during the introduction of the relevant legislation, which referred to membership of a particular electrical registration organisation as an example of a means for verifying technical capacity. Officers interpreted this as a requirement and did not consider tenders from members of any other registration organisation.

The Ombudsman's view

The Ombudsman's investigator said that the parliamentary debate had used the phrase "such as" when referring to other organisations, which would not preclude consideration of alternatives. In addition the complainant's organisation was not set up until 1992 so could not have been considered as part of the parliamentary debate. It appeared that the council had not taken these factors into account when rejecting tenders.

The outcome

The council agreed to review its procurement procedures and to consider the supporting information that the complainant's organisation had offered to supply.

(Case reference confidential)



B2: Licensing

Tendering for ice cream concessions on council-owned site – tender for 12-month concession, but licences granted for three years – unfair practice – loss of business

The complaint

Mr W complained about a council's handling of tenders for ice cream concessions. He applied unsuccessfully for three concessions that were offered for a 12-month period. The following year he was told the sites were not available, as the council had granted three-year concessions in each case.

The Ombudsman's view

The Ombudsman found that, in each case the highest bidders were the current licence holders. The council said it granted three-year licences because the successful bidders were experienced traders and the amounts they bid represented a good return for the council. But the Ombudsman found that the council deprived Mr W of the business opportunity to bid for these licences for the following two years.

The Ombudsman said:

“There is no way of knowing if [Mr W] would have been successful had he been able to bid again the following year. But I consider that the council's actions deprived him of business opportunities over a two-year period and were unfair.”

Outcome

The council changed the wording on its tender forms to say that licences would be granted for a period of *up to* three years.

The Ombudsman found maladministration causing injustice and the council agreed to:

- pay Mr W £2,500 for lost opportunities; and
- review its arrangements for the granting of licences to sell ice cream from its land, and to consider whether these duties should be assigned to different officers from those who have operated these arrangements in the past.

(Report 07B14737)