

PP122/07



**STANDING COMMITTEE ON
PUBLIC ACCOUNTS**

**REPORT ON THE TENDER PROCESS
RESULTING IN THE AWARD OF A CONTRACT
TO ICE MANN FOOD SERVICE LTD**

In Tynwald

REPORT OF THE STANDING COMMITTEE ON PUBLIC ACCOUNTS ON THE TENDER PROCESS RESULTING IN THE AWARD OF A CONTRACT TO ICE MANN FOOD SERVICE LTD

**To: The Honourable President of Tynwald and the Honourable
Council and Keys in Tynwald assembled**

Members of the Committee

Mrs C M Christian MLC (Chairman)
Mr Q B Gill MHK (Rushen) (Vice Chairman)
Mr D M W Butt MLC
Mr G D Cregeen MHK (Malew & Santon)
Mr R W Henderson MHK (Douglas North)
Mr J P Watterson MHK (Rushen)

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Remit of the Committee

- (1) There shall be a Standing Committee on Public Accounts.
- (2) The Committee shall have -
 - (a) a Chairman elected by Tynwald,
 - (b) a Vice-Chairman elected by Tynwald,
 - (c) four other Members elected by Tynwald,and a quorum of three Members.
- (3) Members of Tynwald shall not be eligible for membership of the Committee, if, for the time being, they hold any of the following offices: President of Tynwald, Speaker of the House of Keys, member of the Council of Ministers, member of the Treasury Department referred to in section 1(2)(b) of the Government Departments Act 1987.
- (4) The Committee shall -
 - (a)
 - (i) consider any papers on public expenditure and estimates presented to Tynwald as may seem fit to the Committee;
 - (ii) examine the form of any papers on public expenditure and estimates presented to Tynwald as may seem fit to the Committee;
 - (iii) consider any financial matter relating to a Government Department or Statutory Body as may seem fit to the Committee;
 - (iv) consider such matters as the committee may think fit in order to scrutinise the efficiency and effectiveness of the implementation of Government policy; and
 - (v) lay an Annual Report before Tynwald at each December sitting and any other reports as the Committee may think fit.
 - (b) be authorised in terms of section 3 of the Tynwald Proceedings Act 1876 and the Standing Orders to take evidence and summon the attendance of witnesses and further to require the attendance of Ministers for the purpose of assisting the Committee in the consideration of its terms of reference.
- (5) The Chairman, Vice-Chairman and any member of the Committee shall not sit when the accounts of any body of which that person is a member are being considered.

1. INTRODUCTION

1.1 This matter was raised by Mr P Karran MHK, who at that time was a member of this Committee, in November 2005 as a result of a complaint received by him from Clucas Foodservice Ltd (see Appendix 1). That complaint raised a number of issues, some of which were outwith the remit of this committee. We have therefore concentrated our investigation on the tender process and confidentiality issues, a summary of which is as follows:

- a. In December 2004 expressions of interest were sought by the Department of Health and Social Security and the DHA Prison Service from companies to supply food provision and catering products (Appendix 2).
- b. The closing date for submissions was 11 April 2005.
- c. In a court case on 5th May 2005, Mr Kearns of Icemann Ltd advised the court that he had been verbally notified that his company had been awarded the contract (Appendix 3). In addition, Mr Priest of Jack Frost (Frozen Foods) Ltd maintains that he was advised by one of the DHSS homes on or about 4th May, that they had lost the contract (Appendix 3).
- d. However, the recommendation of the tender evaluation group was not signed until 12th May 2005, the day on which the new contracts came into effect (Appendix 4). Later that day the Catering Services Manager telephoned all the companies who had tendered to advise them of the outcome. Also, on that day letters were hand-delivered to the successful companies and hand-delivered to the unsuccessful companies the following day.

The concern was, therefore, that the tender process may not have been carried out correctly.

1.2 We are concerned that it has taken us so long to complete this Report but, yet again, one of the reasons has been the time taken to obtain responses from Government Departments. We have recently advised the Chief Officers' Group that the Committee will no longer tolerate this practice and that, in

future, Departmental staff will be brought before the Committee to account for any failure to respond in a timely manner.

2. ACTION TAKEN BY THE COMMITTEE

2.1 Internal Audit

Prior to referring this matter to the Committee, Mr Karran had expressed his concerns to Treasury, which resulted in an investigation by the Chief Internal Auditor. His report is set out in Appendix 5.

2.2 Department of Health and Social Security

We wrote to the Department requesting their comments and their responses to that initial letter and to subsequent requests from the Committee are set out in Appendix 6.

2.3 Department of Home Affairs

We wrote to the Department requesting their comments and their response is set out in Appendix 7.

2.4 Icemann Limited

We wrote to Mr Kearns asking who had verbally notified him of his successful tender and his reply is set out in Appendix 8.

2.5 Jack Frost (Frozen Foods) Ltd

We wrote to Mr Priest, asking which of the homes had advised him that his company had not been successful and his reply and the reply from the home in question are set out in Appendix 9.

3. CONCLUSIONS

3.1 Timescale

- 3.1.1 The advertisement for expressions of interest was placed in newspapers on 18th December 2004, for contracts to commence on 1st April 2005. However, by the time that the replies had been audited, the tender invitation documents were not sent out until 21st March 2005 with a closing date of 11th April 2005. The date of commencement of the contracts as set out in the tender documentation was 1st May 2005.
- 3.1.2 However, the costs analysis and tender evaluations were not completed until 2nd May and the recommendations were made that day. The contracts were signed on 12th May and all the tenderers advised that day. DHSS confirmed that the contracts commenced on 12th May (Appendix 4). However, Mr Kearns of Icemann Ltd was under the impression that the contract commenced on 1st May 2005 (Appendix 8) as stated in the Form of Tender documentation.
- 3.1.3 We queried with DHSS whether it was practical to inform successful tenderers on the day on which the contract was due to commence and the reply is set out in Appendix 6.
- 3.1.4 We have noted the DHSS comment that *"It is not Noble's Hospital's policy to provide prior notice to contractors in order to enable them to make contract supply preparations; the tendering process makes it explicit that only contractors who are able to supply from the proposed award date will be considered"*, but we have doubts about the efficiency of this policy. A company may confirm in their tender that they are able to supply the required goods, but it is not reasonable to expect every tenderer to have sufficient stocks of everything which may be required (particularly goods which have a limited shelf-life) on the day of commencement of the contract, just in case they may be notified on that day that they have been successful. In addition, it is inconsiderate to expect an existing contractor to maintain sufficient stocks to enable him to continue to meet his contractual obligations should his contract be renewed, but give no prior notice of the termination of his contract.

3.1.5 DHSS advised us that the delay in appointing suppliers was the result of “additional time taken regarding the clarification and evaluation of the tender submission.” However, as can be seen in paragraph 3.1.1 above, it appears that the timetable was unrealistically tight.

3.1.6 We therefore recommend that Departmental tendering procedures should commence sufficiently in advance of the expiry of existing contracts to ensure that all tenderers can be given reasonable prior notice of whether or not their tender has been successful.

3.2 Tender Evaluation Process

3.2.1 In his Internal Audit Report (Appendix 5), Mr McGreal stated that “*there is no requirement to declare the financial condition of the company at the time of the tender, or to declare any ongoing legal action by which the company would be wound up.*”

3.2.2 Within the tender contract document there is a clause (19) which clarifies the contract with regard to issues of insolvency; however this relates to awarded contracts already in place. That clause is set out in the letter from DHSS dated 6th June 2007 in Appendix 6. That letter also advises that a revised procedure for undertaking financial checks on potential suppliers has now been introduced.

3.2.3 We appreciate the point made by DHSS that the level of prior financial checks on tendering companies varies “*according to the type and nature of the contract and the degree of associated risk.*” However, even in the case of suppliers of easily obtained goods, there is a risk of an interruption of supplies and also potential financial loss, in the case of a company becoming insolvent.

3.2.4 We therefore recommend that all tender documentation should include a requirement for all tenderers to declare any ongoing legal action which may have a material effect on the company.

3.3 Confidentiality

- 3.3.1 Both the Department of Health and Social Security and the Department of Home Affairs have carried out an investigation as to how any leak of information could have occurred prior to the official notification date of 12th May, but have not been able to conclude how that leak had occurred, although the investigative process was not vigorous. The Chief Internal Auditor in his report (Appendix 5) also investigated the leak and concluded *“I am unable to provide any answers to Mr Salmon’s question regarding how and when the Directors of Icemann Food Services Limited learned of the Company’s success. The only direct contact was with the General Manager by telephone and by letter addressed to the Company.”*
- 3.3.2 DHSS stated in their letter dated 6th June 2007 (Appendix 4) that *“Hospital staff are regularly reminded about the importance of confidentiality. The matter is clearly covered for all government employees within the Isle of Man Government financial regulations.”* However the only reference to confidentiality regarding the tender process in Financial Regulations is in FD8, para 10, which states *“A person whose tender is unsuccessful should be notified of that fact, and, if so required, be given an indication of why the tender was not accepted, but without breaching the confidence of the successful tenderer.”*
- 3.3.3 There is no suggestion that in this case information was leaked because that information was not perceived as being confidential. However, we do believe that clear guidance should be given as to what information is to be classed as confidential.
- 3.3.4 **We therefore recommend that all those privy to information about tenderers should be advised at the outset that no information should be released to any tenderers other than by those officers authorised to do so, who shall not release any information prior to the official notification date.**

4. SUMMARY OF RECOMMENDATIONS

4.1 Paragraph 3.1.6

We therefore recommend that Departmental tendering procedures should commence sufficiently in advance of the expiry of existing contracts to ensure that all tenderers can be given reasonable prior notice of whether or not their tender has been successful.

4.2 Paragraph 3.2.4

We therefore recommend that all tender documentation should include a requirement for all tenderers to declare any ongoing legal action which may have a material effect on the company.

4.3 Paragraph 3.3.4

We therefore recommend that all those privy to information about tenderers should be advised at the outset that no information should be released to any tenderers other than by those officers authorised to do so, who shall not release any information prior to the official notification date.

5. TREASURY RESPONSE

In accordance with a resolution of Tynwald in July 2006, Reports of the Public Accounts Committee which contain recommendations are now submitted to Treasury for a response prior to the Report being laid before Tynwald. That response is set out in Appendix 10.

C M Christian
Q B Gill
D M W Butt
G D Cregeen
R W Henderson
J P Watterson

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