

22 August 2016

Roger Murrow  
[Fyi-request-4306-fb6d3abd@requests.fyi.org.nz](mailto:Fyi-request-4306-fb6d3abd@requests.fyi.org.nz)

Dear Mr Murrow

**LGOIMA REQUEST – DISCLOSE DETAILS ON THE APPOINTMENT PROCESS USED TO EMPLOY A PRIVATE COMPANY TO ASSIST IN CONDUCTING COMPLIANCE SCHEDULE RANDOM INSPECTION AUDITS**

I refer to your email dated 26 July 2016 in which you requested answers to a range of questions regarding a private company, namely Property Brokers Compliance Ltd (*PBCL*), conducting compliance schedule random inspection audits, under the Local Government Official Information and Meetings Act (LGOIMA). In particular you asked for responses to the following questions:

1. What is the Council's policy regarding the awarding of contracts to the private sector?
2. How was the appointment process managed in this instance?
3. Was more than one company considered?
4. How did the company that has been awarded the contract come to be considered for this contract?
5. What are the selection criteria?
6. Was consideration made regarding the competitive advantage the council was handing to the company concerned? And was there any agreement entered into, to mitigate any advantage perceived or otherwise? If not why not?

The decision to engage an external resource arose from issues identified in a technical review of Council by the Ministry of Business Innovation and Employment (MBIE) between the 8<sup>th</sup>-10<sup>th</sup> October 2014 regarding Palmerston North City Councils (PNCC) performance in delivering Territorial Authority (TA) functions. In particular to monitor and assess the performance of Council in respect of amending compliance schedules not captured by the building consent process, the enforcement of the building warrant of fitness (BWoF) system, which includes site audits, notices to fix (NTFs) and infringement notices.

The review determined that there were a number of improvements that needed to be made in the delivery of TA functions particularly in addressing a back log of approximately 1275 compliance schedules that were required to be amended to meet the Building Amendment Act 2012 and the need to undertake routine on site BWoF audit inspections.

MBIE recommended, in part, that PNCC needed to employ additional staff resources (2 FTE's) to enable its responsibilities to be fully undertaken in a timely manner. At that time PNCC only employed 1 technical officer and 1 part time administration officer. Please find *attached* a copy of the audit report for your information.

Given the findings of the review PNCC approved, in the 2015-25 Long Term Plan, funding to employ additional resources in the building compliance area. Though additional administration resource was engaged in 2015 Council had great difficulty in filling the vacancy for a technical officer due to a nationwide shortage of suitable skilled and experienced candidates.

Given the public safety risk that existed with approximately 1275 compliance schedules not updated, and no meaningful audit process having been undertaken for many years on the remaining buildings subject to a BWoF, it was determined that there was a need to engage an additional resource from the private sector, on a temporary basis, to undertake BWoF audits whilst the recruitment process was undertaken. It was determined that each BWoF needed to be audited every 5 years. This would have required approx. 300 audits to be undertaken each year. This could have not been achieved based on the then staffing resource.

In March 2015 PNCC was approached by PBCL with an offer to undertake compliance work in the area of building warrant of fitness etc.

PNCC entered into a contract with PBCL for the period 1 February 2016 to 27 January 2017. To carry out inspection services as an agent for Council as described in section 111 of the Building Act.

In May 2016 the vacancy was finally filled with that officer currently undergoing intensive training.

In terms of the questions you raised I respond as follows:

1. The awarding of contracts is governed by the Management Team Policy (MT70) entitled "Purchasing" (copy *attached*). The Policy defines what must be considered in purchasing services based on the principal of best value for money, sustainability, buy local, market comparability, competitive purchasing, health and safety and conflicts of interest. I refer in particular to the flow chart on page 2 and Clause 6(b) on pages 4 & 5 of the Policy regarding entering into a contractual arrangement with a sole supplier. Further authority to enter into contracts is defined in Council's Delegations Manual, particularly clauses 120, 194 and 194.3 (copy *attached*) in respect of the authority of the General Manager Customer Services to enter into such arrangements.
2. Given the delay in recruiting to the compliance vacancy, the uncertainty as to how long it would take to fill the vacancy and resulting risk to public safety from further delays in starting the audit programme to address compliance issues, it was felt a temporary solution needed to be implemented so auditing could start whilst the recruitment process continued. For this reason the offer by Property Brokers was considered. This took into account the following issues;
  - a) type of work required to be undertaken.
  - b) period of the contract.
  - c) value of the contract.
  - d) whether in the view of the senior Building Services staff there was more than a single supplier with the requisite skills, structure and resources in place to adequately undertake the required work.

- e) practicality of undertaking a full tendering process.
- 3 In terms of the issues required to be considered (as outlined in point 2 above) it was determined that only PBCL would be approached to deliver BWoF audit services, for the reasons that;
- a) the work required to be undertaken was to carry out building warrant of fitness audit inspections as detailed in section 111 of the Building Act 2004.
  - b) the period of the contract would only be for 12 months.
  - c) the value of the contract would only be between \$40,000 and \$45,000.
  - d) PBCL was considered to be the only company at that time with the appropriate skills, structure and resources in place to undertake the required work.
  - e) given the very limited period of the contract, the limited range of companies able to undertake the work and the low value of the work it was not considered practical for a full tender process to be undertaken.
4. As previously detailed PBCL initially approached Council in March 2015 with an offer to undertake compliance work in the area of building warrant of fitness etc. Despite this approach their offer was rigorously assessed before a decision was made on whether to engage them. This took into account their suitability, Council business needs and the requirements of Councils Purchasing Policy (MT 70) and Delegations Manual as outlined above.
5. The selection criteria are detailed in point 2 above.
6. In terms of any competitive advantage arising from the contract I have no evidence that supports your claim. During the negotiations over the contract such an issue was discussed. I made it quite clear that the company must ensure they keep the compliance and commercial sides of their operations completely separate and that any information gained from undertaking audits could not be used to pursue any business opportunities. They accepted this requirement. PBCL have since given me repeated assurances that they do not use any of the information gained from undertaking audits for a competitive advantage. That in their view they consider such an approach would be unethical.

For your information PNCC was also very conscious of the need to ensure there was no conflict of interest arising from any audits they undertook. Accordingly a clause was included in the contract stating the following;

*"In the event PNCC requests Property Brokers Compliance Limited (PBCL) to carry out an inspection and PBCL has, with the owner or occupier of the building, any type of service contract or customer relationship then PBCL shall immediately notify details of this to PNCC in which case the request for the inspection shall be deemed cancelled and the inspection shall not take place unless PNCC requests, in writing, for the inspection to proceed."*

Leaving aside the contractual provision governing such an issue PBCL have consistently demonstrated over the period since the contract took effect a strong commitment to promptly addressing any concerns raised by any party over any actual or perceived conflict of interest.

I hope my response addresses the questions you have raised.

Please contact me on phone 06-356-8199 or by email at [peter.eathorne@pncc.govt.nz](mailto:peter.eathorne@pncc.govt.nz) if you require any further information on this matter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Peter Eathorne', with a stylized initial 'P' to the left.

Peter Eathorne  
**GENERAL MANAGER, CUSTOMER SERVICES**