

Summary

In late-1998 the Auckland Office of the Health Funding Authority (HFA Auckland) sought proposals from a range of potential providers of forensic post-mortem services in the Auckland region. Proposals were received from three providers. HFA Auckland selected the proposal from Auckland Healthcare Services Limited (Auckland Healthcare).

Clinical Support Solutions Limited (CSS) was part of a joint venture which had submitted an unsuccessful bid. CSS considered that an unfair process had been used to select Auckland Healthcare, and asked the Audit Office to review the process. Some of the concerns raised by CSS appeared sufficiently serious to warrant our review, which we undertook in February 1999.¹ Our conclusion is that the process by which HFA Auckland evaluated proposals and selected a provider of post-mortem services was fair and careful.

HFA Auckland assessed the proposal from Auckland Healthcare as best meeting the specifications for the services. It was also, by a wide margin, the most cost-effective proposal.

HFA Auckland had some difficulties in providing in a timely manner information to all of the potential providers. However, all of the information sought was provided before the closing date for receipt of proposals.

Nationally, the HFA now has a manual that should ensure an ability to demonstrate that purchase arrangements reflect best practice.



¹ We made a report of our review to HFA Auckland in May 1999.

Introduction

- 3.001 In October 1998, the Auckland office of the Health Funding Authority (HFA Auckland) sought proposals from interested organisations to provide forensic post-mortem services in the Auckland region. After evaluating the three proposals received, that from Auckland Healthcare Services Limited (Auckland Healthcare) was chosen.
- 3.002 Auckland Healthcare is the largest provider of health services in the Auckland region and operates Auckland, Greenlane, National Women's and the Starship Children's Hospitals.
- 3.003 One of the proposals was submitted by the New Zealand Institute of Forensic Pathology Limited (NZIFP). NZIFP was a joint venture between Clinical Support Solutions Limited (CSS) and Te Runanga O Ngati Whatua (the Runanga). When the NZIFP proposal was not selected, CSS sought a review by HFA Auckland of the purchase process it used. When HFA Auckland rejected this request, CSS asked us to carry out a review.
- 3.004 In view of the detailed nature of the concerns that CSS raised, and to ensure that proper processes had been followed, we decided to review the adequacy of the procedures applied. We did so in our capacity as auditor of the HFA.



Background

- 3.005 Under the Coroners Act 1988, a coroner has the power to decide whether or not a post-mortem to establish cause of death should be performed and, if so, to instruct a pathologist to conduct the post-mortem. In the Auckland region there are approximately 1,500 forensic (or coroner-directed) post-mortems each year. Four forensic pathologists employed by the Auckland Medical School carry out these post-mortems.
- 3.006 The Auckland Medical School held the contract with HFA Auckland to provide forensic post-mortem services. A May 1998 report on the School's mortuary by the Occupational Safety and Health Service (OSH) found that the facility was well below the requirements of the Health and Safety in Employment Act 1992. Rather than try and upgrade the facility, the School decided to quit the service. The School needed the space occupied by the mortuary for other uses, and decided that provision of forensic post-mortem services was not part of its core business.
- 3.007 The School advised HFA Auckland in June 1998 of its intention to quit the service. The School was agreeable to carrying on the service until July 1999, with the new provider leasing its facility from that date until 30 June 2000. By the latter date the new provider was expected to have found other premises from which to provide the services.
- 3.008 During 1997-98 the Government had also been reviewing the funding arrangements for forensic post-mortem services for the whole country. It decided that from July 1999 the purchase responsibility would transfer from the HFA to the Department for Courts.
- 3.009 Consequently, HFA Auckland had to:
- Ensure continuity of the services in the short term by obtaining the co-operation of both OSH and the Auckland Medical School to continue to use the School's mortuary.

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- Find a new provider to provide, as from July 1999, coroner-directed post-mortem services. The new provider would also have to find new premises as from June 2000.
- Ensure a smooth transfer of responsibility to the new purchaser, the Department for Courts, as from July 1999.



Selecting the Preferred Provider

- 3.010 We compared the process used to select the new provider of forensic post-mortem services against two sets of benchmarks:
- the HFA's procedures for the purchase of a service (dealt with in paragraphs 3.011-3.019); and
 - the guidelines relating to fairness of process in our own publication *Good Practice for Purchasing by Government Departments* (dealt with in paragraphs 3.020-3.058).

The HFA's Process

- 3.011 HFA Auckland did not have formal guidance by way of documented procedures for issuing the *Request for Proposals* (RFP) to seek responses from potential providers. Staff explained that they would use the RFP approach for only a very small number of the contracts they issued. Rather, they assessed a wide range of RFP documentation from other HFA offices and used parts of that documentation as models for the purpose of this contract.
- 3.012 Under the previous regional health authority structure, each division of the former Northern Regional Health Authority (North Health) was highly specialised and had differing purchase arrangements. Hence, there was no common approach to purchasing. This situation should change with the adoption of common purchasing practices resulting from the creation of the HFA and its implementation of a new purchasing manual.
- 3.013 HFA Auckland staff accepted that the requirements for the forensic post-mortem services were poorly defined. In developing a service description, they had to start from scratch because no documentation was available in their office

that would have assisted in preparing the RFP. However, there were extensive discussions with potential providers to define the service required and the process to be followed in calling for proposals from providers.

- 3.014 One document that is relevant to all purchases made by HFA Auckland is an agreement signed in April 1995 between North Health and the Runanga. The agreement (still current) commits HFA Auckland to consult at an early stage with the Runanga and to involve the Runanga (as a co-purchaser) in all planning, purchasing, and monitoring decisions affecting Maori health. The agreement also provides that the Runanga has agreed not to exercise its co-purchaser role where there is a conflict of interest – for example, where it is the provider of a specific health service.
- 3.015 On 1 October 1998, the Chief Executive of the Runanga sent a fax to the Maori Health Locality Team of HFA Auckland, saying:

It has been brought to the attention of the Runanga that there is to be a meeting of iwi health officials convened at your offices at 1.30pm on Friday, 2 October 1998 to discuss the future of mortuary services provided through Auckland Healthcare. Further, I am given to understand that you may be calling for expressions of interest at the meeting. The Runanga, either through its provider operation or its co-purchaser organisation has not received formal advice from your office and is unable to be represented at the meeting by either myself or a Runanga official because of other commitments.

- 3.016 The Chief Executive of the Tihi Ora MAPO – the co-purchaser arm of the Runanga – had been invited to the meeting of 2 October 1998 and attended the meeting.
- 3.017 The meeting went ahead without the Chief Executive of the Runanga present, but with the Chief Executive of the Tihi Ora MAPO present. A review of the correspondence between HFA Auckland and the MAPO shows that, by inviting the MAPO Chief Executive to the meeting of 2 October 1998, HFA Auckland believed that the correct consultation process was being followed. The Runanga has indicated that neither HFA Auckland nor the MAPO formally informed it of the process. HFA Auckland and the Runanga later had discussions on the matter, and HFA Auckland has told us that:

This difference of opinion between the HFA and the Runanga has been addressed by the parties in order to ensure that operational protocols, including effective communication, are clarified in order to continue the successful and mutually beneficial relationship between the HFA and the Runanga via the MAPO.

Conclusion

- 3.018 HFA Auckland staff involved in preparing the RFP went to considerable lengths to specify a process to be followed, even though no documentation was available to them in their office that specified the process to be followed.
- 3.019 Standard documentation to guide all HFA staff should now be available through the new HFA purchasing manual.



Being Fair in the Process

3.020 We tested the process used for the purchase of forensic post-mortem services against the benchmarks in our guide *Good Practice for Purchasing by Government Departments* relevant to the fairness of the process for inviting proposals to provide the services.

Declaration of Interests

3.021 Staff involved in purchasing should declare any personal interest that may affect, or could be perceived to affect, their impartiality in carrying out any aspect of their work.

3.022 The first meeting of the evaluators to discuss their evaluations of the proposals received was on 12 November 1998. However, because not all evaluators had completed their evaluations, the meeting was adjourned until 19 November 1998.

3.023 At the second meeting on 19 November 1998, a conflict of interest was identified – one of the evaluators was employed by one of the parties submitting a proposal.

3.024 To handle the conflict, HFA Auckland agreed that the evaluator concerned would not participate in the process for scoring each proposal. However, that evaluator would still provide an analysis of each proposal, which would be made available to each of the other evaluators.

Conclusion

3.025 A conflict was identified, and HFA Auckland devised a way of dealing with it. However, if all of the evaluators had completed their evaluations in time for the meeting of 12 November 1998 – before the conflict was recognised – a decision could have been made which may have been challenged at a later date because of the conflict of interest. This highlights the need for clear policies and procedures that allow for an early declaration of any conflicts of interest.

Procedural Fairness

- 3.026 A strong theme of our guide *Good Practice for Purchasing by Government Departments* is the need to ensure the fairness of the purchase process. In its complaint to us, CSS pointed to two actions by HFA Auckland that in its view suggested that the process in this case was not fair.
- 3.027 First, at the meeting of 2 October 1998, HFA Auckland staff handed out a draft service specification for comment. CSS representatives were not at this meeting, as it was essentially a meeting of Maori health leaders – except that Auckland Healthcare staff attended. CSS suggested that giving Auckland Healthcare an early opportunity to review and comment on the specification gave the latter an unfair advantage.
- 3.028 The minutes of the meeting of 2 October 1998 record the consultant to the HFA as also asking whether it was appropriate for staff from Auckland Healthcare to comment on the draft documentation, given that Auckland Healthcare could be tendering for the service. The Auckland Healthcare staff present at the meeting gave assurances that they were commenting as Maori, not as Auckland Healthcare staff. Following this meeting, the Change Management Analyst at Auckland Healthcare wrote to HFA Auckland on 5 October 1998 expressing thanks for allowing *Maori Health Management, Auckland Healthcare the opportunity to participate in discussions on the future provision of Post Mortem Services and to comment on draft service specifications*.
- 3.029 While it may be possible to read too much into this comment, it appears from that letter that the Auckland Healthcare staff who attended the meeting might indeed have seen themselves as representing Auckland Healthcare. In this sense, there could be a perception of unfairness in the process. That is, if a draft service specification is to be circulated for comment – including comment from the staff of one of the potential providers – then it should be made available to all interested parties. Nevertheless, in this case the draft specification was circulated to all parties several days later.
- 3.030 Secondly, CSS expressed concern that one of the forensic pathologists at the Auckland Medical School had assisted in writing the service specification even though (CSS understood) the pathologist may also have had a part-time

appointment with Auckland Healthcare. In fact, all of the forensic pathologists at the Auckland Medical School assisted with the preparation and clarification of the service specification. No-one else had the necessary knowledge about how forensic post-mortem services in Auckland were provided.

- 3.031 Forensic pathology is a highly specialised branch of medicine. Of the five forensic pathologists in New Zealand, four work at the Auckland Medical School. Of necessity, HFA Auckland had to rely on the forensic pathologists at the School for an accurate description of the services being provided.

Conclusions

- 3.032 In our view, it was reasonable for HFA Auckland to seek the assistance of the forensic pathologists in preparing the service specification.
- 3.033 Handing out the specification to a meeting attended by staff from one of the potential providers could have been perceived as providing an unfair advantage to that provider. However, the draft specification was circulated to all parties several days later.
- 3.034 In our view, the fact that one potential provider received the draft specification several days before other potential providers would not have altered the final outcome in this case.

General Requirements for Specifications

- 3.035 Our guide *Good Practice for Purchasing by Government Departments* recommends that:

Specification documents should be clear, concise and accurate so that they can be understood by all parties having an interest in them.

- 3.036 CSS questioned the adequacy of the information in the service specification. In particular, it questioned whether the information in the specification was sufficient to allow a full costing of the service.

3.037 The RFP documentation contained the following pricing information:

Volumes: The expected number of coroner-directed post-mortems in the Auckland area is 1,500 per annum. The annual price may be reviewed if volumes increase or decrease by more than 7.5% per annum.

Price and

Term: Please note that if the proposal meets the Health Funding Authority and Department for Courts criteria, it is our policy to offer a contract at a base price for a minimum period of three years after which the price will be reviewed.

3.038 CSS asserted that this level of information was insufficient to prepare a response. It sought a meeting with the forensic pathologists in order to ensure that it had all the relevant information. This meeting was held on 28 October 1998 and all respondents to the RFP were present. Arising from this meeting, the following additional information needs were identified:

- costs associated with the tissue donation service;
- amount of out of hours work;
- a list of the equipment held by the Auckland Medical School; and
- workload levels of the histology service.

3.039 This information was provided to all potential providers on 30 October 1998. Also on 30 October, arrangements were made for respondents to inspect the mortuary at the Auckland Medical School. The successful tenderer would need to operate at this mortuary for 12-18 months before transferring to a new building and one of the respondents had pointed out that they had not been allowed to view the existing facility.

3.040 Forensic pathology is a clinically and culturally complex specialist service. Developing an appropriate service description was not easy and – while aspects of the service specification were detailed – respondents believed that there was insufficient detail on service levels to properly cost their proposals. All the required information was provided

– although most of the additional information requested relating to equipment was not available until the evening of Friday, 30 October 1998 (five days before the deadline for submitting proposals).

- 3.041 HFA Auckland considered that the service specification contained all the necessary information. Nevertheless, it was not until respondents were able to question the pathologists and view the mortuary that they became aware that they needed additional, crucial information to complete their costing.

Conclusions

- 3.042 Forensic post-mortem services are complex. HFA Auckland sought to provide all necessary information, but the need for some further information was not identified until just before the deadline for receipt of proposals.
- 3.043 This suggests that – when seeking proposals for the provision of health services, and particularly complex services – meetings should be held at an early stage between potential new providers and the staff currently providing the service to ensure that all information needs are identified. This step should be incorporated in the formal documented policies and procedures.

Evaluation of Proposals

- 3.044 Our guide *Good Practice for Purchasing by Government Departments* stresses the importance of a sound evaluation process for assessing proposals. It suggests that:

The people appointed as evaluators should bring to the task the required technical and (in most cases) legal knowledge and experience as well as the ability to make a balanced judgement and avoid any suggestion of bias. The task of evaluation is often big enough to justify an evaluation panel. In this event, the work of the panel can be better served if the requisite skills are spread amongst the members. The membership of the panel could also be varied for different aspects or stages of the evaluation.

3.045 Items to be included in the evaluation criteria are also suggested, including:

- *the need to address compliance with the specification; and*
- *the need to enable, for more complicated evaluations, meaningful “weightings” or relative values to be assigned to different features, together with a method for combining weightings for ranking purposes.*

3.046 HFA Auckland followed this evaluation process:

- A panel of evaluators was appointed – including people with cultural, financial, legal and technical evaluation skills.
- Each evaluator was provided with a copy of each proposal, which was not identified by the name of the provider.
- Each evaluator was also provided with a copy of the evaluation score sheet, which they completed in isolation from the other evaluators.

3.047 The evaluation score sheet had the following seven categories:

Quality of Service. Evaluators had to score protocols, accreditation, safety standards, service provision, and complaints.

Staffing. Items included experience of staff, cultural awareness, qualifications, and management team.

Management Structure. Items included reporting lines, accountability, subcontracting arrangements (laboratories, etc), board composition, and ability to monitor and provide reports.

Acceptability. Items included Coroner, Police, cultural, religious, sensitivity, Hospital/University.

Facility. Items included safety standards, size and capability, national referral centre status, accessibility.

Location. In relation to laboratory services, radiology, and key interest groups.

Viability. Items included operational, financial, guarantees, price, contract term, facility costs.

- 3.048 Weightings were applied to each category.
- 3.049 The result of the scoring was that Auckland Healthcare outscored CSS and South Auckland Health in all but one of the categories (where CSS outscored the other contenders).
- 3.050 As part of the evaluation process, HFA Auckland sought the views of an overseas forensic pathologist. He reviewed all three proposals and considered that the Auckland Healthcare proposal best met the requirements set.
- 3.051 After selecting the Auckland Healthcare proposal, HFA Auckland entered into discussions with Auckland Healthcare to clarify details of its proposal. In particular, clarification was sought on how Auckland Healthcare was to demonstrate improved cultural awareness, evidence of religious and cultural sensitivity, and several other matters.
- 3.052 CSS argued that this demonstrated that Auckland Healthcare did not meet many aspects of the tender criteria. However, the RFP document made it clear that acceptance of a proposal did not mean that a contract would be entered into. Auckland Healthcare's proposal was selected as the superior of the three but, in HFA Auckland's view, it needed more work before a contract was signed. We consider that to be an acceptable approach.

Conclusions

- 3.053 HFA Auckland undertook a rigorous and fair evaluation of the three proposals received. The process was well documented and resulted in the selection of a preferred provider. As is recognised practice, HFA Auckland entered into negotiations with Auckland Healthcare before signing a contract.



Briefing Unsuccessful Tenderers

- 3.054 Our guide *Good Practice for Purchasing by Government Departments* suggests that it may be appropriate to explain to unsuccessful tenderers why their proposals were not successful. Such a briefing should focus on the evaluation of the proposal. This course of action is suggested in order to lessen the possibility of discouraging bids for future purchases. We see a healthy response to purchasing proposals as ultimately in the public's best interests.
- 3.055 After selecting Auckland Healthcare, HFA Auckland telephoned the unsuccessful bidders to advise them of the outcome.
- 3.056 Following this telephone call, CSS asked HFA Auckland to review the process by which it selected Auckland Healthcare. CSS was told that such a review was not necessary as *Auckland Healthcare emerged as a very clear leader over and above the other two respondents who scored relatively equally, but a long way behind Auckland Healthcare.*

Conclusions

- 3.057 Rather than just a telephone call, a briefing of CSS would have clarified the fact that CSS did outscore the other contenders in one area and that CSS did score well on some of the other evaluations.
- 3.058 As a rule, briefing unsuccessful tenderers would assist them to understand why their bids were unsuccessful and how future bids could be improved. This may also assist in encouraging a healthy response to future purchase proposals.

