

CASE STUDY NO. 1 – CORRUPTION IN THE PROCUREMENT OF SERVICES

DESCRIPTION¹

Bill, the Head of a Unit, is working with Ruth, the Finance Manager in the Unit, to arrange for an external firm to perform a series of consulting activities for the University. The value of the work will be in excess of \$250,000.

The principal of one of the tenderers to the work, Tracey, is a close personal friend of Bill, but this is unknown to Ruth (or in fact to anyone in the University). In reviewing the tender submissions with Ruth and scoring the tenderers, one of the tenderers is found to be clearly the top contender for the job, with Tracey's firm being second (in a group of four tenderers). Bill, in his deliberations with Ruth, states that he prefers Tracey's firm on the basis of certain strengths that were not weighted highly in the original tender document. He indicates to Ruth that the weightings that were communicated to tenderers in the original proposal were in fact wrong and argues that to proceed with the current top contender would be to do a disservice to the University. None of tenderers are told of this change in requirements, and Bill decides to proceed with Tracey's firm, despite protestations from Ruth. The overall cost to the University is fixed at \$270,000, as per the submission by Tracey's firm (and is about \$20,000 dearer than the original top tenderer).

Bill tells Ruth not to worry about getting a contract in place with the firm because there is no time and the work has to be done quickly. Instead, he rings Tracey to tell her that her tender is successful. Ruth is also requested by Bill to liaise with the firm and manage the relationship to ensure that the University's requirements are fully met.

The consulting work is eventually completed but not to the satisfaction of Ruth. Not only does the quality of work completed not meet the tender requirements, but one of the line items on the final invoice (worth \$2,500) refers to "unspecified costs outside of the firm's control" and makes the overall payments to be made to the firm in excess of the agreed \$270,000 figure. Ruth contacts Tracey's firm to question the request for extra payment and complain about the quality of outcome but does not get an adequate response. She brings the matter to Bill, but he indicates that there is nothing that can be done in terms of the outcome, plus there is no time to pursue the matter further. He authorises the final requested payment for the consulting work, but rejects payment of the extra line item.

A week later, another invoice is received from the firm, for exactly the same amount originally specified in the above referred invoice line item that was not paid, but with a different description. Ruth refers the matter to Bill who indicates that the invoice is for some extra work that he had agreed to. He tells Ruth he will take care of it. Two days later, Bill indicates to Ruth he is not happy with her overall performance and indicates she will be performance managed. Ruth immediately goes on sick leave and contacts her union.

¹ Adapted from the ATO's "Play it Again Sam" or "Judge for Yourself" Presenters' Guides.

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WHAT ARE THE RISK ISSUES, AND WHAT MEASURES COULD HAVE BEEN/SHOULD BE TAKEN TO PREVENT, MINIMISE OR MANAGE THEM?

Risk Issues:

1. Multiple breaches of the University's Code of Conduct.
2. Undeclared/unmanaged actual conflict of interest resulting in biased decision-making and financial loss to the University. Refer to Conflict of Interest Procedures. Possible bribery or kickbacks involved.
3. Tainted tender evaluation process. Unfair, not transparent, biased.
4. Tender requirements changed during evaluation without notifying all tenderers (breach of "process contract") – possible civil action from unsuccessful tenderers, claims for damages equivalent to value of work lost.
5. Procurement procedures and guidelines not adhered to e.g. mandatory participation by the Strategic Procurement Group in the tender process. Refer to Strategic Procurement website.
6. Approval to proceed without a formal contract – University at a legal disadvantage should disputes arise (what was actually agreed to?). Again, refer to the Strategic Procurement website.
7. Breach of delegated authorities. Authority to approve expenditure exceeded - University still held to be liable. Refer to delegated authorities website.
8. Staff frustration, anger, helplessness leading to physical, mental or emotional problems and accusations of bullying (Occupational Health and Safety issues).
9. Loss of confidence in managers and supervisors.
10. Poor management of staff leading to IR issues.
11. Adverse reputation effect should the outcome be reported in the press.
12. Corrupt behaviour by a public officer; possible criminal charges.

Measures:

1. Declare any potential or actual conflict of interest and take appropriate action in accordance with the Conflict of Interest Procedures.

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2. Get your request for tender right in the first place and treat all tenderers and their submissions fairly and equally. Obtain advice from the Strategic Procurement area in relation to the tender process.
 3. Use independents in the tender evaluation process. Be transparent in all dealings.
 4. If University tender documents have to be changed after submissions are received, inform all tenderers and given them an equal opportunity to re-submit on the basis of the changed tender.
 5. Liaise with Legal in relation to formal agreements to be signed. See Legal & Compliance Services website, Procurement Procedures. Don't proceed on significant service/goods arrangements without signed contracts in place.
 6. Review the Register of Functions and Delegations, and only operate within the authorities you have.
 7. Manage staff in accordance with People & Culture policies and procedures. Seek advice from People & Culture officers if necessary.
 8. Seek advice from or make a report to the Integrity and Standards Unit or a higher level manager where there is a suspicion of workplace misconduct.
 9. In relation to reporting possible misconduct or improper conduct, there are other options available to you:
 - Contact the Corruption and Crime Commission or another external oversight or regulatory body direct (e.g. the Public Sector Commission, OAG or the Ombudsman); or
 - Make a protected disclosure under the *Public Interest Disclosure Act 2003 (WA)*, via the University's Public Interest Disclosure (PID) Officer – refer to the Curtin PID website for more information.
 10. Always act within the law – The University is a public authority operating within a state public sector legal and accountability framework and you have a responsibility to perform your duties professionally, both as a public officer and in accordance with expected internal standards of behaviour – again refer to the Code of Conduct.
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