



19 November 2007

Hon Trevor Mallard
Minister for the Environment

Briefing on Ministry for the Environment advice regarding selection process for contract with Clare Curran

Purpose

- 1 This briefing assesses the accuracy of advice provided to you by the Ministry for the Environment (“the Ministry”) on 15 November 2007 regarding the selection process used to contract Clare Curran to the Ministry in 2006. You subsequently provided this advice to the House of Representatives during Question Time on 15 November 2007.

Background

- 2 On 16 November 2007 Mr Hugh Logan, Chief Executive of the Ministry for the Environment, requested the State Services Commissioner to clarify the selection process used to contract Clare Curran and to form an opinion as to whether the Ministry provided the Minister for the Environment with accurate information about this process.
- 3 The State Services Commission has spoken to three current Ministry staff and one former staff member. In addition, we have had access to a range of documentation surrounding the contracting of Clare Curran, including the Ministry’s contract guidelines. The Commission is satisfied that the information provided to us is sufficient to clarify the selection process used to engage Clare Curran and to form an opinion on the accuracy of the information provided to the Minister for the Environment.

Comment

Context

- 4 During the first half of 2006 the Ministry was asked by Ministers to include a communications work stream in the whole-of-government climate change work programme. Throughout this period of time, in order to meet this expectation, the Ministry was seeking to increase urgently its capability around climate change communications.

Clare Curran Contract

- 5 On present information, Clare Curran first contacted the Ministry sometime in late 2005 or early 2006. As a result of this approach, she met with a Ministry official and provided him with information about her work in climate change

communications and public awareness work, particularly in Australia. At that stage, the Ministry did not pursue her services any further.

- 6 At a meeting with the Minister Responsible for Climate Change Issues (probably at a regular status meeting early in May 2006), both the Ministry and the Minister agreed that the work officials had undertaken on the communications work stream did not have a sufficiently strategic focus. Clare Curran's name was mentioned by the Minister as a person who was good at this sort of work. As one of the officials present had met with her a few months earlier also thought she might be a good option, she was contacted and invited to a meeting with Ministry officials.
- 7 After the meeting between Clare Curran and officials, it was agreed that she was of suitable calibre to undertake the work required. Officials also considered that they had sufficient information regarding her proposed hourly rate to make the decision to contract her. The Ministry had previously been actively looking at the communications contracting market. It had written rates information from one firm in April and verbal rates information from another firm from around the same time.
- 8 Given the imperative to avoid losing a suitable candidate, the urgency of the work and the scarcity of suitable communications contractors at this level, it was decided that the exception process (as provided for in the Ministry's contracting policy) to the normal three quotes provision for contracts between \$10,000 and \$50,000 should be followed. The correct paperwork was completed and signed off by the appropriate person, although this was over three weeks after Clare Curran had commenced.
- 9 Negotiations were begun with Clare Curran and a verbal contract was entered into with her on 22 May 2006. Her written contract for the period 22 May 2006 to 28 July 2006 was signed on 13 July 2006. The delay in concluding the written contract reflected, in part, the time taken for the Ministry and Clare Curran to agree on how best to deal with the issue of disbursements.

Advice tendered to the Minister for the Environment on 15 November 2007

- 10 On 15 November 2007, the Minister for the Environment sought advice, via a meeting with officials, from the Ministry about the facts around Clare Curran's contract with the Ministry including whether the selection process used met the Ministry's policy. The Minister was seeking this information as he anticipated that he could be asked a question in the House on this matter.
- 11 At the time the Ministry officials met with the Minister, owing to time constraints, they had not looked at any documentation in relation to this specific contract. In the discussion relating to the policy, the Minister asked officials if three quotes were received in relation to this particular contract. The Minister was advised that they were.
- 12 On the basis of that assurance, the Minister advised the House of Representatives as follows; "On the second part of the question, I advise the contract was between \$10,000 and \$50,000. There is a requirement within the Ministry's operating policy to obtain at least three quotes. I am advised that this was done in this case."

Assessment of the selection process used to contract Clare Curran and the accuracy of the Ministry's advice

- 13 On the basis of the information available to us, the Ministry's advice to the Minister was inaccurate. A competitive selection process involving three quotes was not used to select Clare Curran.
- 14 However, the Ministry's guidelines in relation to the selection process were followed, as they allow in exceptional circumstances for a non-competitive process, provided that documentation is prepared outlining the circumstances and that this is approved by the relevant manager, in this case the General Manager.
- 15 The appropriate documentation was completed outlining the key reasons for not undertaking a competitive selection process and this documentation was approved by the appropriate manager.
- 16 The focus of this briefing is on the nature of the selection process used to retain Clare Curran. However in the process of reviewing the contract documentation we have identified some other issues relating to the contracting process. While we acknowledge the pressure on the manager of the team responsible for contracting Clare Curran through this period and we note that the manager was very transparent in his description of the contracting process, nonetheless, some aspects of the contracting could have been done better.
- 17 A verbal contract for Clare Curran was entered into prior to the agreement on the terms for a written contract. The Ministry's guidelines advise against entering into verbal contracts. We understand that verbal contracts are sometimes entered into across the Ministry and for that matter in other departments. The subsequent discussions between the Ministry and Clare Curran regarding disbursements, which delayed the finalisation of the written contract illustrates one of the potential problems created by engaging a contractor by way of verbal contract.
- 18 Clare Curran was engaged prior to the General Manager's written approval to use a non-competitive approval process. It would have been preferable if this approval had been sought prior to engagement. However, justification for the approach taken by the manager was recorded in a memo attached to the contract documentation at the time, noting the urgent need for a strategic communications person to work on climate change matters.
- 19 The Ministry's 'Contract Management Checklist' has been marked in the affirmative in response to the question "are you confident there is no conflict of interest for any of the parties to the contract?" This assurance was provided on the basis that no issues were identified in the meeting by either officials or Clare Curran. Given that the checklist requires a response about conflicts of interest, this issue should have been canvassed at the meeting.
- 20 In terms of the Ministry's advice to the Minister for the Environment, it was hasty and therefore unwise for the Ministry to provide definitive advice on the selection process to the Minister at the meeting prior to Question Time on 15 November 2007. Departments should provide Ministers with a high degree of confidence around the accuracy of information provided to them, particularly if Ministers are required to provide that information in the House. In this case, there had been no opportunity for the Ministry to review the documentation, recollections of the matter would have been understandably hazy, and the official

most intimately involved was not present at the meeting as he no longer worked for the Ministry. In this situation, the Ministry should have taken the time to clarify all the facts of the situation before providing the Minister with advice.

- 21 I have consulted with the State Services Commissioner and he is in agreement with the judgement that I am making on the Ministry's performance on this issue.

Recommendations

- 22 It is recommended that you:

- 1 **Note** the State Services Commission considers that the Minister for the Environment was provided with inaccurate information by the Ministry for the Environment on 15 November 2007 in respect of the selection process to engage Clare Curran to the Ministry for the Environment in 2006 **Yes / No**
- 2 **Note** that Clare Curran was engaged through a non-competitive selection process that was consistent with the Ministry's contracting guidelines. **Yes / No**
- 3 **Note** that the State Services Commission considers that other aspects of the contracting process could have been handled better **Yes / No**
- 4 **Note** the view of the State Services Commissioner and Deputy State Services Commissioner that the Ministry for the Environment was hasty and therefore unwise in providing the advice on the selection process tendered to the Minister for the Environment on 15 November 2007. **Yes / No**



Iain Rennie
Deputy State Services Commissioner