



28 May 2009

Committee Secretary
Senate Standing Committee on
Education, Employment and Workplace Relations
P O Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam,

Please find attached a submission from MercyCare to the Senate Standing Committee on Education, Employment and Workplace Relations into the “Inquiry into the DEEWR tender process to award Employment Services Contracts”.

Regards

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Jeff Simper
Group Chief Executive Officer
MercyCare

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Submission from MERCYCARE to:

**THE INQUIRY INTO THE DEEWR TENDER PROCESS TO
AWARD EMPLOYMENT SERVICES CONTRACTS**

**Conducted by the Senate Standing Committee
on Education, Employment and Workplace Relations
May 2009**

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Authorised by Dr Maria Harries AM
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Date 28 May 2009



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EXECUTIVE SUMMARY

In the recent DEEWR Tender Process to Award Employment Services, MercyCare tendered for business three Employment Services Areas (ESAs) in Perth. Despite our history of high performance, meticulous compliance and strong focus on supporting the highly disadvantaged in our community, we were not awarded any business. As a result, we are currently dismantling our employment services and dealing with the impact on our dedicated long term staff, the many people who have trusted us to support them and our other areas of community service.

Our response to this Senate Inquiry is therefore, from the perspective and view of a long term, high-performing provider that was an unsuccessful respondent to the recent DEEWR tender process.

MercyCare understands and acknowledges that there are always winners and losers in competitive tender situations and appreciate that the outcome of the recent employment tender process cannot be changed.

In our opinion however, we consider that there are significant shortfalls in the design of the tender process and the communication protocols adopted by DEEWR.

We also consider from a global perspective, that removal of a large number of high performing agencies will impact adversely on many jobseekers and that this will impose significant cost and disruption to the sector generally. It appears that this trend has occurred across Australia. We are aware of many well established high performing agencies that were not successful in their tender proposals.

The networks, partnerships and trust that we have established over many years can not be replicated overnight. New providers will take months, if not years to reproduce what has now been lost. At a time when the need for efficient and compassionate services has grown significantly, the DEEWR process has produced an outcome of increased uncertainty and risk.

Finally, we believe that overall outcome is inconsistent with the Government's commitment to social inclusion and to its commitment to developing a new Compact with the Community Sector. The process of this tender has not considered the consequential adverse effect on other community services provided by non profit agencies that have now been excluded from this employment service.

1. INTRODUCTION

MercyCare is a non profit community organisation that was founded by the Perth Congregation of the Sisters of Mercy. It builds on a proud history of service to the Western Australian Community that commenced when the Sisters first arrived in Perth in 1846.

More than 1,100 staff are employed across four service divisions: Mercy Hospital, Mercy Education, Mercy Aged Care and Mercy Family and Community Services. MercyCare also coordinates and supports 128 volunteers in community projects throughout Perth.

We commenced delivering employment services in 1990 through the SkillShare program and have provided Job Network Services since 1998. In 2005, all of our DEEWR-funded vocational programs were consolidated under the trading name of Mercy Employment. A revised organisational structure incorporated delivery of the Personal Support Program (PSP), Jobs

Placement Education and Training (JPET) and the Indigenous Youth Employment Consultant Strategy.

Mercy Employment had a record of high performance under DEEWR's star rating assessment model, experience in a broad range of vocational services, wide community support, and a strong commitment to supporting the most disadvantaged in our community.

2. MERCYARE'S RESPONSE TO SELECTED TERMS OF REFERENCE OF THE INQUIRY

- (a) The conduct of the 2009 tendering process by the Department of Education, Employment and Workplace Relations to award Employment Services contracts, with particular attention to:**
- (i) The design of the tender, including the weighting given to past performance and the weighting given to the 'value for money' delivered by previous and new service providers;
 - (ii) Evaluation of the tenders submitted against the selection criteria, including the relationship between recent service performance evaluations in various existing programs (such as provider star ratings), selection criteria and tendering outcomes.

Recognition of Past Performance

MercyCare, through its trading entity of Mercy Employment, has maintained a strong record against the Department's Star rating assessment system throughout the term of the contract, including a record of being the highest performing agency in the South Metropolitan Region.

The staff members of MercyCare have been meticulous in all compliance requirements, particularly in the use of the Job Seeker Account which has been very closely monitored and only used in situations where there is a clear value for money throughout the term of our contract. At the end of the current contract, a significant share of our allocated Job Seeker Account, which remains Commonwealth funds, will remain intact.

In recognition of the high performance and compliance, DEEWR has consistently awarded additional business to MercyCare throughout the term of the current contract.

In the South West Metro (SWM) ESA the share of business grew from 19% in to 2006 to 33.2% by 2009, an increase of approximately 60% in market share. In the North Metro (NM) ESA additional allocations resulted in a 43% increase in market share.

MercyCare began delivering Personal Support Services in 2002 with 55 places in NM ESA, and commencing in SWM ESA with 40 places in 2003. MercyCare PSP has had an overall total of 364% growth in places since 2002 due to superior performance on all KPIs and has been awarded contract extension to 2009.

MercyCare began delivering JPET with 15 places in SWM ESA in July 2006, with a subsequent 53% increase in places.

These increases provide direct evidence of ongoing high performance and compliance.

In its assessment of proposals, DEEWR allocated a 30% weighting to past performance. Given that MercyCare's record of performance is clearly superior to the published star ratings of successful tenderers, we are at a complete loss to understand how the balance of our tender proposal could have caused us to receive such a low overall rating.

On 5 May 2009, MercyCare received verbal feedback from four officers from DEEWR on our tender document.

At this meeting, we were advised that our tender was strong in the following areas:

- Knowledge of Job Services Australia and integrated services (stream services).
- Knowledge of developing the Employment Pathway Plan and the Employment Pathway Fund.
- Demonstrated that we can work with a range of job seekers.
- Demonstrated we will provide ongoing support for job seekers, including those in the work experience phase.
- Demonstrated that we will work with employers and provide opportunities for job seekers.
- Clearly demonstrated support for highly disadvantaged job seekers and how we will overcome multi non-vocational barriers.
- Good linkages with other services and organisations (referring to a number of established examples included in our proposal).
- Strong support for the high frequency contact model that we proposed.
- High compliance with all Governance arrangements and criterion 4 generally.

In a memorandum posted on the DEEWR website in April 2009 entitled "Job Services Australia" (Refer Appendix 1), the following points were identified as areas that "Successful Tenderers were able to establish":

- Demonstrated past performance in helping job seekers.
- Understood how the new employment services should be used to help job seekers obtain skills and jobs, and employers to meet their labour needs.
- Had in place sound local strategies to help job seekers and employers and have strong linkages with other organisations offering services in the community, like training, housing or community services.
- Had sound Governance arrangements.

It is clear that there is strong correlation between the strengths of MercyCare's proposal, as assessed by DEEWR (relative to other tenderers) and the attributes of successful tenderers as published by DEEWR.

Given our record of high performance, there appears to be an anomaly between the feedback that we have received from DEEWR, regarding the strengths of proposal, and the attention paid by DEEWR to past performance in the assessment of our tender proposal.

Design of Tender Process

The Government has called for a creative and innovative response to meet the challenges of increasing unemployment. The format required by DEEWR to respond to its employment tender however mitigated against this position for several reasons, as follows.

The only way to respond to the tender was by a character limited, electronic word document. Although it is acknowledged that some degree of uniformity is required to enable practical evaluation, MercyCare believed that this process was too restrictive and did not allow for the full extent of the innovation, relevance, passion and commitment of the organisation to be expressed.

While we are unable to comment on the internal workings of DEEWR in this process, there are a number of aspects of the design and assessment that we consider to need further investigation.

These include:

- A common thread of selection criteria focussed on what tenderers “will” and “would” do if successful. It appears that promises of new partnerships were more highly valued than effective existing partnerships and networks. It is difficult to understand the logic of this approach, given the pressures and need associated with the current economic conditions.
- MercyCare was not contacted at all during the evaluation and assessment period by DEEWR. We have subsequently contacted a number of agencies listed in our tender and note that none of those agencies were contacted by DEEWR to confirm if the relationships stated were real or effective. This raises the question as to whether any or all of the statements and claims made by tenderers respondents were validated by DEEWR.

An analogy to this process could be made to that of making an appointment to a senior position only on the basis of receiving a written response to an advertisement. There was no interview, seemingly little account of past performance and full acceptance of claims about what might happen in the future, with no reference or validation checks undertaken of the claims or statements contained in written application.

(b) The level of change of service providers and proportion of job seekers required to change providers, and the impacts of this disruption in communities with high levels of unemployment or facing significant increases in unemployment;

As an individual job network agency, MercyCare is not in a position to provide sector wide analysis of the impact of the requirement of change of providers on the wider community. We do note, however, that a number of existing clients are very disappointed that MercyCare will not be assisting them in the future, given the effective and supportive assistance they have received from MercyCare in the past.

We currently provide a number of informal services, often provided on a voluntary basis by staff, that supports our employment service. A number of these now face closure. This includes services such as conversational English classes for new Australians, a community choir for social networking, and job coaching services to assist the most disadvantaged people in our community to obtain and maintain employment.

The job network service also had strong synergies with a number of other funded services including our addiction counselling services, our Settlement Grants Program and our Community Support Program. Each of these services, which provided support for the most vulnerable and disadvantaged in the community, worked closely with our personal support and job network services.

(d) the transaction costs of this level of provider turnover, the time taken to establish and ‘bed-down’ new employment services, and the likely impacts of this disruption on both new and existing clients seeking support during a period of rapidly rising unemployment;

The loss of the job network service will have a significant short and long term effect on this organisation.

In the short term, there is significant cost and dislocation associated with requirement to make approximately 50 people redundant and close at least two offices. In the longer term, the employment service complemented a number of our related community services which will now be required to find alternative options for finding employment for their clients.

In addition, the surplus generated from our employment service has been fully reinvested back into our other community services, which will now be required to either close or significantly reduce the scope of their services.

MercyCare is well-experienced in managing transition to new contracts. The loss of an organisation with this expertise and the introduction of many new providers in these ESAs will cause significant disruption in the market. All of our staff had been well trained in the operation of the new employment model and were well prepared to transfer to the new contract had, we been awarded ongoing business.

MercyCare would strongly support the introduction a system to measure cost to the system generally and disruption to jobseekers as a result of this magnitude of change so that a more effective model can be adopted in the future.

(e) communication by the department to successful and unsuccessful tenderers, the communications protocol employed during the probity period, and referrals to employment services by Centrelink during the transition period;

We believe that the communication processes adopted by DEEWR throughout the entire process have been deplorable, resulting in significant disruption, cost and unnecessary upset to the staff of this organisation.

The areas of concern include:

1. The fact that the entire tender lodgement and assessment process was done with no discussion, validation or correspondence between DEEWR and the tenderers. This limited the scope of responses and significantly reduced its effectiveness of the tender process.

2. The failure to notify non-preferred tenderers on 17 March 2009 was totally unprofessional and insensitive, causing great uncertainty and upset to staff and management.
3. The ongoing statements issued on the DEEWR website between 17 March 2009 and 1 April 2009, along the lines of “no decisions or allocations of business have been made” added to this uncertainty and confusion. At that time, we were obliged to keep our concerned staff as informed as possible, as well as implement a number of significant commercial decisions such as relinquishing leases on our offices. This required us to make a number of judgement calls on the results of our tender, with no formal communication of the outcome from DEEWR. We consider the lack of respect and insensitivity of the DEEWR process on this matter to be appalling.
4. On 2 April 2009, the results of the tender were to have been published on the DEEWR website. The fact DEEWR blamed the website crash on that day for inadequately communicating results added further to the distress felt by staff. As events unfolded on the day, we actually received notification via a source other than the Department itself.
5. We were very disappointed with the information provided by DEEWR at our feedback session on 5 May 2009 for the following reasons:
 - The DEEWR officers who provided the feedback advised that none of them had actually read our tender documents and were just relaying advice from other officers. We consider that this in itself showed a complete lack of respect for a high performing agency that has gone to great expense to prepare a comprehensive tender document and partnered with them in delivering services for over 10-years; we consider that it also resulted in specific questions regarding our proposal not being adequately addressed.
 - The DEEWR officers failed to identify which criterion was being referred to in respect of the specific weaknesses that were provided. This reduced further the value of the feedback, as some topics were referred to in several criteria.
 - A DEEWR officer representing the probity team, aggressively confirmed that only verbal feedback would be provided, although no reason was provided for this position. Given the cost of preparing the tender document and the significance of the outcome to this organisation, we consider that formal written feedback should be provided in order that the results could be better understood.
 - A common theme of the feedback from the DEEWR Officers was along the lines that our tender “could have been better explained” or words to that effect. On subsequent review, we consider a number of areas that were identified in this manner were well written and in fact, strengths of our proposal.
 - We also consider that some statements by DEEWR officers indicated a lack of understanding of our proposal, with the feedback having no relevance to the criteria being assessed.

Given the feedback regarding the strengths of our proposal and the lack of clarity regarding the weakness of our proposal, the formal feedback sessions provided no insight to the reasons for not being awarded any business under the new contract. This process was ineffectual and failed to meet the standard of care that should be expected of a large public body such as DEEWR.

3 **SUMMATION**

We appreciate the opportunity to comment on the process and outcome of the tender process.

We hope that our submission assists the Senate Inquiry in its work and trust that the findings of the Inquiry will provide for improved tender processes in the future

We would be pleased to provide any further information to assist the work of the “Senate Inquiry into the DEEWR Tender Process to Award Employment Services Contracts”.

I would also be happy to attend and give evidence at a public hearing of this senate inquiry to the Inquiry if invited.

A handwritten signature in black ink, appearing to read 'Jeffrey M Simper', with a large, sweeping flourish extending to the right.

Jeffrey M Simper
Group Chief Executive Officer
MercyCare

28 May 2009

JOB SERVICES AUSTRALIA — THE TENDER PROCESS

The Rudd Government is investing more than \$4 billion over the next three years in new, more effective employment services.

Job Services Australia will start on 1 July 2009. It will provide job seekers with more personalised help, better targeted services and greater access to training opportunities and work experience in areas of skill need.

Job Services Australia will also provide more help for employers to find the workers that have the skills they need.

There will be stronger linkages to the Government's \$2 billion Productivity Places Program with 319 000 of the 711 000 extra training places dedicated to job seekers, including 20 000 places for newly redundant workers.

Job Services Australia was designed in consultation with employers, job seekers, employment service providers and other stakeholders. The release of the tender on 27 September 2008 was preceded by an extensive process over nine months. This included an invitation for initial submissions, a discussion paper responding to those submissions, an exposure draft of the tender and two nation-wide consultation periods.

<p>The tender process</p>	<p>There was a high level of support for the tender. In all, 438 tenders were received with almost 3 000 bids across the country.</p> <p>Selection of successful providers was through a tender process conducted by the Department of Education, Employment and Workplace Relations and overseen by an independent probity advisor.</p>
<p>Probity and integrity</p>	<p>Decisions at every level were made by the Department at arms length from Government.</p> <p>The tender process for the new employment services was overseen by an independent probity advisor.</p> <p>The independent probity advisor reviewed all documents published in connection with the tender process, and all actions taken by the Department in the tender process. This included the assessment of bids from tenderers, the selection of successful tenderers, and the recommendations for business allocations.</p> <p>The independent probity advisor has confirmed in writing that all decisions were made in accordance with probity requirements.</p> <p>The role of 'probity' in a tender process is about fairness, transparency and impartiality. It is about ensuring that every tenderer is given the opportunity to compete as equally as possible.</p> <p>Probity ensures that the Department conducts a tender process in an ethical and equitable way and that due process is followed (for example, that the procedures set out in the Request for Tender document for the assessment of tenders are followed in practice).</p>
<p>Steps in decision making</p>	<p>The Department's tender process included seven levels of consideration and quality assurance:</p> <ol style="list-style-type: none"> 1. A team of two experienced Departmental staff undertaking initial assessment of each tender;

	<ol style="list-style-type: none"> 2. Senior account managers reviewed the assessment and moderated for consistency; 3. Legally qualified staff oversaw a formal quality assurance process; 4. State managers undertook a further review and consistency check; 5. The Department's Tender Review Committee (TRC), comprised of senior departmental officials, reviewed each proposed business recommendation; 6. The TRC further considered the assessment and reviewed tenderers' capacity to deliver; and 7. The TRC conducted a final end-to-end review to ensure the best results for job seekers.
<p>Assessment of tenders</p>	<p>The Department undertook a rigorous and comprehensive assessment of all Tenders to select the best service providers for job seekers, including those who have special needs, and for local employers.</p> <p>Tenderers were required by the process to nominate areas they wished to work in, and were measured against each other on an area by area basis. These areas are known as Employment Service Areas (ESAs).</p> <p>Successful Tenderers were able to establish that they:</p> <ul style="list-style-type: none"> • had demonstrated past performance in helping job seekers; • understood how the new employment services should be used to help job seekers obtain skills and jobs, and employers to meet their labour needs; • had in place sound local strategies to help job seekers and employers and to have strong linkages with other organisations offering services in their community, like training, housing, or community services; and • had sound governance arrangements. <p>The Department also made sure the results will be in the interests of job seekers overall and will deliver value-for-money by making sure:</p> <ul style="list-style-type: none"> • job seekers will have a choice in provider; • appropriate service coverage across Australia; • providers are available to assist job seekers with special needs, like young people, the homeless, or people from a non-English speaking background; • the interests of job seekers overall are considered; and • there is a diverse mix of providers across the country.
<p>Next steps</p>	<p>Tenderers are informed of these outcomes, and will be provided with an opportunity to be informed how their own organisations' results were determined.</p> <p>Assistance to unsuccessful providers and their staff will be provided to assist them identify new opportunities (<i>see</i> Job Services Australia fact sheet – Help for Affected Providers and Staff).</p> <p>Enquiries from Tenderers should be directed to espurchasing@deewr.gov.au or the DEEWR Employment Services Purchasing Hotline on 1300 733 514. The Probity Advisor may be contacted directly about the integrity of the purchasing process idejong@claytonutz.com.</p>