



Contracting for energy efficiency under the VEET scheme

Maddocks

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In *The One Solution Group Pty Ltd v Watts Green Pty Ltd (Civil Claims)* [2015] VCAT 374, the Victorian Civil and Administrative Tribunal (VCAT) highlighted the importance of 'Approved Providers' under the Victorian Energy Efficiency Target (VEET) scheme ensuring that their contractors understand the circumstances in which it is appropriate for energy efficient devices to be installed in households and that this understanding is appropriately reflected in contractual documentation.

Energy efficiency schemes

There are various energy efficiency schemes operating at the State and Commonwealth levels. We have previously [summarised the key elements of the VEET scheme](#), the NSW Energy Savings Scheme and the Emissions Reduction Fund (ERF). The ERF has now formally kicked off and the first auction took place in April 2015.²

The VEET scheme is a Victorian-based energy reduction scheme providing incentives to businesses and individuals to install energy efficient devices. In May 2014, the then Victorian Government announced that the VEET scheme would cease at the end of 2015. However in December 2014, the newly elected Labor Government announced that the VEET scheme will be maintained.³

A certain aspect of the operation of the VEET scheme was tested in the case of *The One Solution Group Pty Ltd v Watts Green Pty Ltd (Civil Claims)* [2015] VCAT 374.

The facts

Watts Green Pty Ltd (WG) is an 'Approved Provider' under the VEET scheme, authorised to arrange for the installation of energy-saving and water saving devices.

The One Solution Group Pty Ltd (TOSG) is a contractor who, by written agreement dated 11 September 2012, was engaged to perform installations for WG. In turn, TOSG engaged sub-contractors to perform the installations.

The written agreement provided that TOSG would be compensated by WG when WG was provided with assignment forms signed by a householder confirming they had installed an energy efficient device. These assignment forms would then result in certifications being issued to WG under the VEET scheme which WG could use to trade on the 'green market' and be remunerated.

When installing devices, sub-contractors were tasked with asking the householder whether they had a shower head installed within the last two years and if not, a bucket test was to be performed. WG also engaged a company to check whether the sub-contractors followed this process by calling the householder after the installation. If this process was followed correctly, TOSG would submit an

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² Jake Sturmer and Lisa Main, "Emissions Reduction Fund: Government purchases 47 million tonnes of carbon abatement in first auction", 23 April 2015, accessed at: <http://www.abc.net.au/news/2015-04-23/government-buys-47m-tonnes-of-carbon-abatement-in-erf-auction/6415532>.

³ John Conroy, "Vic Govt commits to VEET scheme", 19 December 2014, accessed at <http://www.businessspectator.com.au/news/2014/12/19/policy-politics/vic-govt-commits-veet-scheme>.



invoice to WG for payments. The standard practice of WG was to pay TOSG even before a certificate had been generated under the VEET scheme.

A dispute arose between WG and TOSG after claims submitted by WG had been rejected under the VEET scheme. The installations were deemed unnecessary by the administrators of the VEET scheme as they involved the replacement of existing water-saving shower heads. WG stopped payments to TOSG for installations and claimed that TOSG was liable to WG for any 'duplications' as well as money to recover the value of the devices it had provided to TOSG. TOSG counterclaimed for unpaid installations it had completed.

Duplications

There were number of issues in dispute. However the most contentious claim related to whether TOSG was required to compensate WG for any 'duplications', and, if so, what kind of 'duplications' did this liability extend to?

Senior Member Vassie considered the written agreement between the parties. 'Duplication' was only used once in the written agreement under Schedule 3A which provided that TOSG would be charged for costs relating to 'duplication addresses' at a fee of \$15.00 per duplication, in addition to other expenses incurred under the agreement. Clause 6.5 also provided that WG reserved the right to refuse payments to contractors if there was reasonable cause that the contractor engaged in any unscrupulous, deceptive or fraudulent conduct.

While describing the agreement as 'an unsatisfactory document, drawn in an amateurish fashion'⁴, Senior Member Vassie gave the agreement a commercially sensible construction. When reading Schedule 3A with Clause 6.5, this meant that WG could deduct amounts payable to TOSG for 'duplications'. Where a payment had already been made to TOSG, Senior Member Vassie found that WG was entitled to claim back money it had already paid TOSG.⁵

Senior Member Vassie found that it did not matter whether the duplications were 'internal' or 'external'. Internal duplications related to those installations where WG was the Approved Provider (that is, the devices would have been supplied by WG and installed by another installer that may not have been TOSG). External duplications related to those installations that were organised by another Approved Provider (given that there were other Approved Providers under the VEET scheme). These devices would not have been supplied by WG. Rather, the VEET scheme operated irrespective of who had installed the device. If the device was unnecessarily installed, this could not entitle WG to certification.⁶

TOSG also argued that WG was estopped from claiming compensation for duplications as a result of a meeting that took place between the parties. TOSG claimed that WG represented to them that they would not seek compensation for 'duplications' unless they were fraudulent. However, this was not accepted by the Senior Member given the number of duplications that had been installed.

In determining the quantum of the claim, Senior Member Vassie found that WG was entitled to the cost of the shower head for the 1099 duplications performed. Senior Member Vassie found the amount of \$15.00 chargeable under Schedule 3A for 'duplication addresses' appeared to be claimed by WG in relation to 'internal duplications' only and, therefore, this additional amount was limited to these duplications only (which amounted to 347 in total).

⁴ Ibid, paragraph 68

⁵ Ibid

⁶ Ibid, paragraph 70

Retained goods and missing stock

Senior Member Vassie also considered a number of other claims raised by WG and found that TOSG was liable to WG:

- for goods that it retained from WG which it claimed it had a lien over for the unpaid installations they had performed
- for 'missing stock' in relation to brasshard shower heads, chimney balloons and pumps it had supplied.

Senior Member Vassie noted that Clause 5.4 of the agreement imposed an obligation on WG to return any 'unused stock' that it had provided to TOSG (whether it be in their possession or 'missing') with WG being liable to pay for 'the costs' of the stock if it failed to do so. Senior Member Vassie ordered that TOSG pay WG for any stock that it retained which was now 'unusable' and return any 'usable stock'.

Conclusion

The case highlights the importance of Approved Providers establishing proper auditing and governance structures when dealing with contractors under the VEET scheme. To avoid being exposed, Approved Providers need to ensure contractors understand the circumstances in which energy efficiency items can be installed to avoid unnecessary duplications and document this understanding accordingly.