

Lang Michener LLP

Lawyers - Patent & Trade Mark Agents

Vancouver
Toronto
Ottawa
Hong Kong

1500 - 1055 West Georgia Street, P.O. Box 11117
Vancouver, British Columbia, Canada V6E 4N7
Telephone (604) 689-9111
Facsimile (604) 685-7084

FRASER HEALTH AUTHORITY

FINAL REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS: RFP STAGE SURREY MEMORIAL REDEVELOPMENT AND EXPANSION

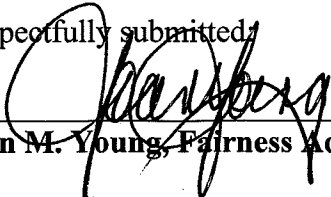
September 25, 2010

To: Ministry of Health Services Project Board

This report covers the following issues:

1. The scope of the review;
2. The purpose of the review;
3. The framework for the review;
4. A statement that the review has been conducted in accordance with this framework;
5. Explanatory details regarding the variables which affect the review;
6. Project Background and Monitoring Activities by Fairness Advisor;
7. Recommendations to improve process for future procurements;
8. Any qualifications on the endorsement of the process; and
9. A statement that the Fairness Advisor has fulfilled the terms of her engagement in order to express an opinion;
10. Findings in the form of an opinion whether the process appears to have been undertaken in accordance with fairness principles expressed or implied in the procurement documents.

Respectfully submitted,


Joan M. Young, Fairness Advisor, Lang Michener LLP

SURREY MEMORIAL REDEVELOPMENT AND EXPANSION PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS

September 25, 2010

Page 2

SCOPE OF REVIEW

I was retained in March 2009 to act as the Fairness Advisor for the Fraser Health Authority's Surrey Memorial Redevelopment and Expansion Project Procurement (the "Project"). My role is to satisfy myself on the overall procedural fairness of the procurement process associated with the Project.

The Fraser Health Authority (the "Authority") issued a Request for Qualifications ("RFQ") on July 23, 2009 to seek responses from qualified parties interested in participating in the Fraser Health Authority's redevelopment and expansion of the Surrey Memorial Hospital. The project is for the development of additional services at the Surrey Memorial Hospital including a new emergency department and consolidated tertiary perinatal program, together with an intensive care unit and a second site for the Authority's academic campus. The Authority indicated that it was looking for partners with demonstrated interest, expertise, innovation, competence, and capacity to ensure the Project's success given the importance and size of the Project.

Out of the RFQ process, three Proponents were selected to participate in the Request for Proposal phase of the procurement:

1. BC HealthCare Solutions
2. ISL Health
3. ITS Health

The terms of engagement state that as Fairness Advisor I was asked to do the following:

1 Role of Fairness Advisor

The Fairness Advisor is an independent third-party whose role is to observe and/or monitor all aspects of the procurement, as defined in the Project Request for Qualifications and Project Request for Proposals, with respect to fairness, and to report as to the fairness of the procurement process observed.

The Fairness Advisor provides a level of confidence to Respondents and Proponents, through all stages of the SMH Competitive Selection Process, that the procurement processes described in the SMH Request for Qualifications and Project Request for Proposals are applied fairly according to the terms described therein. And further, by way of reports that are ultimately made public, the Fairness Advisor provides an independent opinion of this fair application.

2 Scope of Fairness Advisor Duties

The role of the Fairness Advisor will include:

**SURREY MEMORIAL REDEVELOPMENT AND EXPANSION PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS**

September 25, 2010

Page 3

Scope

- The Fairness Advisor will report to the Chair of the Executive Steering Committee comprised of senior officials within the responsible Authority and Partnerships BC, overseeing the Project.
- The Fairness Advisor will act as an independent observer with respect to the fairness of the implementation of the Project's procurement processes.
- The Fairness Advisor will provide advice to the SMH Project Team on matters of fairness.
- The Fairness Advisor will be available to Respondents and Proponents to answer queries relating to fairness.
- The Fairness Advisor will provide formal written reports at specific points during the Procurement Process as described below.
- The Fairness Advisor appointment will commence immediately and will continue until the completion of the SMH Competitive Selection Process at the end of the SMH RFP evaluation stage. The deliverables are written milestone reports on fairness of the procurement presented to the Executive Steering Committee at the end of the RFQ and RFP processes, as well as ad hoc reports if requested or required. At the discretion of the Chair of the Executive Steering Committee, the Fairness Advisor appointment may be extended to the completion of the Financial Close stage.

It is expected that the activities of the Fairness Advisor will be self-determined but are likely to include the following and should be sufficient to enable the delivery of the reports described below:

- Review RFQ and RFP documentation and comment on whether, and the extent to which, the process described may potentially cause a fairness issue.
- Observe and/or monitor that consideration, communications, and responses undertaken during the RFQ and RFP process are undertaken in accordance with the RFP terms.
- Observe and/or monitor bilateral discussions and meetings.
- Observe and/or monitor the RFQ and RFP evaluation process.
- Observe and/or monitor relevant (as determined by the Fairness Advisor) meetings where proponent comparisons are made and the criteria, weighting and rating systems are applied.

**SURREY MEMORIAL REDEVELOPMENT AND EXPANSION PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS**

September 25, 2010

Page 4

My role as the Fairness Advisor is not to validate the Evaluation Committee's recommendation of the selected Proponent; but, rather is to provide oversight and assurances regarding the processes applied in making the recommendation.

PURPOSE OF REVIEW

The purpose of my review is to provide arm's length advice to the Fraser Health Authority and independent assurance for the Project as to the fairness and appropriateness of project management activities related to the procurement process for the Surrey Memorial Redevelopment and Expansion Project procurement transaction.

FRAMEWORK FOR REVIEW

At each stage of the procurement process covered by my engagement, I undertake the following review activities in order to meet the terms of my review:

- (a) Review standards for handling of documents, security of documents, procedures for clarifying or rectifying errors by the owner and/or proponents,
- (b) Conduct a review of selected documentation issued by the Fraser Health Authority to proponents including all procurement documents and addenda;
- (c) Ascertain whether each proponent was provided with access to the same information as other proponents for the purposes of responding to the various procurement stages;
- (d) Ascertain whether Evaluation Criteria was established in advance of evaluations being undertaken;
- (e) Review the measures for avoidance of conflict of interest, unfair advantage and confidentiality and the procedures for resolving issues which may arise during the procurement process;
- (f) Review the Evaluation criteria proposed for the various stages of the procurement to determine that they were reasonably and rationally connected to the stated Project objectives;
- (g) Review responses, as necessary, submitted by proponents to ensure an adequate familiarity with the terms of the responses in order to undertake the Fairness Review;

SURREY MEMORIAL REDEVELOPMENT AND EXPANSION PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS

September 25, 2010

Page 5

- (h) Review the procedure for maintaining records regarding verbal and written contact with proponents were prepared and retained.

REVIEW CONDUCTED IN ACCORDANCE WITH THIS FRAMEWORK

My review was conducted within the framework for review set out above.

EXPLANATORY DETAILS

None.

PROJECT BACKGROUND AND MONITORING ACTIVITIES OF FAIRNESS ADVISOR

A. Appointment of Fairness Advisor

The role of Fairness Advisor is to provide oversight on the procurement process to ensure that the process for selecting a preferred proponent is open, fair and equitable. A Fairness Advisor also provides advice on issues which may arise during the procurement process which could impact on the overall fairness of the process. Fairness Advisors are typically used in public-private partnerships and, to a lesser extent but with increasing frequency, in other public sector procurements such as design-build procurements where a standard tendering process is not being utilized.

A Fairness Review typically follows four phases of the procurement process:

1. Before closing of the procurement process;
2. After closing of the procurement process;
3. Procurement Evaluation Stage; and
4. Post Procurement Evaluation.

In this project I was engaged at phase one before the closing of the RFQ procurement process.

As stated above, the role of the Fairness Advisor is not to validate the Evaluation Committee's recommendation to the Executive Steering Committee of the selected Respondents; rather, it is to provide oversight and assurances regarding the processes applied in making the recommendation.

B. Procurement Process for the Surrey Memorial Critical Care and Expansion Project

SURREY MEMORIAL REDEVELOPMENT AND EXPANSION PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS

September 25, 2010

Page 6

This Final Report covers the phase of the procurement process involving a Request for Proposals to select a preferred proponent who would be invited to engage in negotiations with the Fraser Health Authority to reach final commercial and financial agreement regarding the project.

C. Request for Proposals

The Request for Proposals (“RFP”) was issued on February 15, 2010 with a closing date of July 21, 2010 requiring the three proponents to submit their proposal(s) for the Project.

I was provided with an opportunity to review the draft RFP before it was issued. I was satisfied with the form of proposal from a fairness perspective.

A Proponent’s webinar was held on February 24, 2010. All three Proponents attended and they were briefed on the technical and financial aspects of the project.

The terms of the Request for Proposal contemplated that the parties would engage in bilateral collaborative meetings to assist each Proponent in preparing their proposal. The meetings were “off the record” in that if any Proponent wanted to rely on information they sought or obtained at such meetings, they would be required to issue a Request for Information to the Fraser Health Authority for an “on the record” response which would typically be provided to all Proponents. Commercial in Confidence questions and responses were permitted if the question was one which would disclose commercially sensitive information of one Proponent.

Four sets of bilateral collaborative sessions were held with each Proponent on March 16, 17 and 18, 2010; April 13, 14, and 15, 2010; May 11, 12, and 13, 2010; and June 15, 16 and 17, 2010. The Fairness Advisor was present for these bilateral collaborative sessions for all Proponents. Two sets of interim bilateral collaborative sessions were also held on April 29, 30, May 4 and 28, 2010. I attended a sampling of the interim sessions.

The Request for Proposals was modified during the course of the RFP phase of the procurement. I am satisfied that such amendments were appropriately within the scope of the RFP and were not unfair to any Proponent. In many cases, the amendments were discussed with the Proponents before changes were made. For example, the date for the submission of the Technical and Financial proposals was changed to split the dates so that the Technical Proposal was due on July 21, 2010 and the financial Proposal was due August 18, 2010. A final Financial Confirmation was due on September 15, 2010.

During the course of the entire procurement process, all Proponent teams were introduced to me and invited to contact me should any process related concerns arise. I am pleased to report that no consultations were required or complaints lodged by any Proponent during the RFQ or RFP phases.

**SURREY MEMORIAL REDEVELOPMENT AND EXPANSION PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS**

September 25, 2010

Page 7

All three Proponents submitted Technical Proposals at the submission location on or before the deadline. Two Proponents submitted one proposal each, while one Proponent submitted two proposals. After discussions with the Project Team leader and counsel, I was satisfied that the submission of two proposals by one Proponent was within the scope of the RFP. No submissions were rejected. Each of the submissions was subjected to a high level completeness review, and no deficiencies were noted. Similarly all three Proponents submitted Financial Proposals and Financial Confirmations on or before the two deadlines for this aspect of the Project.

An Evaluation Committee and various sub-committees were established in advance of the evaluations. The Evaluation Committee had the responsibility to evaluate and score the various Responses based on their review of the Responses and provide a recommendation for the preferred Proponent to the Ministry of Health Services Project Board. The roles of the Sub-committees were established to assist the Evaluation Committee with the technical, financial and legal aspects of the responses. The sub-committees played an advisory role to the Evaluation Committee.

After the initial review of the Proposals, each of the Proponent teams was issued a number of clarification questions in connection with their Responses. I reviewed a selection of the clarification questions and they appeared to be appropriately within the scope of the RFP. All of the responses were received and provided to the Evaluation Committee and the sub-committees, as appropriate.

All of the Evaluation Committee members and the sub-committee members were required to execute Relationship Disclosure and Confidentiality forms before being provided access to the Proposals. I was advised that the Project Director also provided a briefing to all personnel involved in the procurement evaluation about the need for confidentiality during the procurement process. For those parties who disclosed prior relationships or connections in their disclosure forms, a further conflict of interest review was undertaken by Partnership BC's corporate counsel. Several of the committee members had connections with various proponent teams due to prior projects and other similar engagements. This was not surprising given that many of the Proponent team members were drawn from local construction, engineering, architectural, and services companies. Many of these players had previously done work or performed services for the Fraser Health Authority. After a review, none of the connections was deemed sufficient to disqualify the team members from participating in the evaluation process.

An Evaluation Manual for the RFP Stage was developed based on the evaluation criteria set out in the RFP and was finalized before the closing date for submissions. The evaluation was based on published criteria set out in the RFP. I was provided with the Evaluation Manual in advance of the evaluation meetings. Each of the evaluators was also provided with the manual. Eventually all evaluators were provided with a final form of manual before the evaluation began and this manual formed the basis of the scoring done by the Evaluation Committee.

SURREY MEMORIAL REDEVELOPMENT AND EXPANSION PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS

September 25, 2010

Page 8

All of the Proponents were invited to make a presentation on their technical submission to members of the Sub-committees and Evaluation Committee on July 28, 2010. The Fairness Advisor attended all presentations. Each Proponent was provided with the identical amount of time to make their presentations. The purpose of the presentations was not to allow Proponents to enhance their responses with new information or rectify deficiencies, but rather to highlight and visually depict the key aspects of their technical solution to the Fraser Health Authority, and to describe their team's solution for undertaking the project successfully. My observation is that these activities were all appropriate and conducted in a fair manner.

Prior to the Evaluation Committee meetings, the various sub-committees met to review the Proposals in detail and prepare reports for the Evaluation Committee. I attended a sampling of these meetings and had the opportunity to also review each of the written reports prepared by the various sub-committees. I also reviewed each of the Proposals submitted by the Proponents.

A Due Diligence Committee was also formed to, in essence, "shadow" the sub-committees and the Evaluation Committee during their work on the evaluation phase of the procurement. The Due Diligence Committee did not raise any issues with me during the course of their work.

I attended a series of lengthy Evaluation Committee meetings on September 7, 8, and 23, 2010 in person to observe the proceedings. Legal counsel for the Project was also in attendance as an observer, as was a representative from the Ministry of Health. Each of the Evaluation Committee members was required to provide a final verbal declaration of relationships post-dating their original conflict declaration forms. There were no new or additional disclosures made. The observers also executed declaration forms.

The Evaluation Committee discussed the relative strengths and weaknesses of each individual proposal. The chair of each of the four evaluation sub-committees was invited to make a presentation to the Evaluation Committee and provided commentary on each of the Proposals. Each committee member discussed the Proposals in depth and had an opportunity to make comments. The discussions were robust and the Evaluation Committee members challenged each other on scores and ranking. A final horizontal and vertical review of scores was performed to ensure consistency and fairness. Scoring was then finalized and the consensus ranking of the four Proposals was completed. I have reviewed the Report to the Project Board and I am satisfied that it accurately reflects the decisions made by the Evaluation Committee. I have also confirmed with legal counsel to the Fraser Health Authority that he is unaware of any legal impediments to the selection of preferred proponent.

The Evaluation Team had occasion to seek the advice of the Fairness Advisor during the evaluation process on several points, and I am satisfied with the resolution of the issues

**SURREY MEMORIAL REDEVELOPMENT AND EXPANSION PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS**

September 25, 2010

Page 9

raised. The Fairness Advisor also raised a matter with the Evaluation Committee which was also resolved to my satisfaction. I am satisfied that overall the process leading to the recommendation of the Preferred Proponent was in accordance with the process set out in the RFP documents and was conducted in a fair manner.

I am satisfied that each of the Proponents was provided with a fair opportunity to have its Proposal considered by the Evaluation Committee in accordance with the terms of the RFP. The evaluation criteria appear to have been applied consistently and in accordance with the pre-determined evaluation criteria in the RFP and Evaluation Manual. My observations of the process are that it was fair and transparent to all Proponents, and that the public was well served by the process followed in the procurement.

RECOMMENDATIONS TO IMPROVE THE PROCESS FOR FUTURE PROCUREMENTS

No recommendations. The procurement process was very well run.

ANY QUALIFICATIONS ON THE ENDORSEMENT OF THE PROCESS

My fairness review has been based on my own review of selected documentation and records; my discussions with the Evaluation Committee and its sub-committees; my observations of the activities of the Evaluation Committee and sub-committees; answers to questions posed by me and my observations of meetings. I have reviewed a sampling of project related documentation, but not all documents created by each and every staff member or advisor.

My review findings are based on the assumption that I have been provided access to all relevant information in connection with the project and that I have been advised of all key project management meetings and decisions.

FINDINGS

The RFP procurement process associated with the Surrey Memorial Redevelopment and Expansion Project Procurement has been conducted in a fair manner in accordance with the procedures established in the Request for Proposals stage.

**SURREY MEMORIAL REDEVELOPMENT AND EXPANSION PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS**

September 25, 2010

Page 10

I am satisfied that:

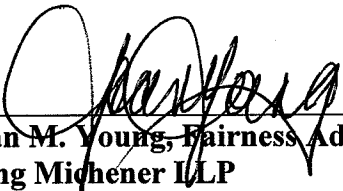
1. The FHA Project team members, and their advisors, followed the procedures and fairly applied the evaluation criteria specified in the procurement documents and subsequent documents; and
2. Where judgment and interpretation were allowed or required, the project team exercised reasonable judgment and made interpretations in a fair and impartial manner.

I am satisfied that I have been provided with the appropriate access and information to render this fairness opinion to the Project Board.

FULFILLMENT OF REVIEW TERMS

I confirm that I have fulfilled the terms of my engagement based on the activities described to you above.

Respectfully submitted,



Joan M. Young, Fairness Advisor
Lang Michener LLP

Dated at Vancouver, BC this 25th day of September 2010