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FRASER HEALTH AUTHORITY

FIRST REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS: RFQ STAGE: SURREY MEMORIAL REDEVELOPMENT AND EXPANSION

January 12, 2010

To: Project Board, Fraser Health Authority

Attention: Peter Milburn(Chair), John Dyble, Manjit Sidhu, Peter Goldthorpe,
Larry Blain, Frank Blasetti

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

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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 purpose of the RFQ is to identify and select up to three Respondents who will be invited to respond to the Request for Proposals ("RFP"). The RFQ sets out that 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 who have demonstrated the interest, expertise, innovation, competence, and capacity to ensure the Project's success given the importance and size of the Project.

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:

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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.

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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 all 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;

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- (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

The Fraser Health Authority is the public agency responsible for delivering health care to a variety of communities from Burnaby east to Hope. The Fraser Health Authority serves approximately 1.5 million people. In 2005 the government directed the Authority to complete planning for the intermediate, medium and long terms needs of Surrey and those people served by the Surrey Memorial Hospital. The need for additional acute care capacity for the Fraser Health Region was identified in the report which was produced as part of the review. One of the key elements of the strategy for creating capacity was the development of a critical care tower.

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.

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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

This phase of the procurement process involved a Request for Qualifications to select up to three proponents who would be invited to participate in a Request for Proposals stage.

C. Request for Qualifications

The Request for Qualifications ("RFQ") was issued on July 23, 2009 with a closing date of September 16, 2009 requesting interested parties to submit their qualifications for the Project. I was provided with an opportunity to review the draft RFQ before it was issued. A Respondent's Information session was held on August 18, 2009 by internet conference, which I attended.

Six Respondents submitted responses at the submission location on or before the deadline. No submissions were rejected. Each of the submissions was subjected to a high level completeness review, and no deficiencies were noted.

An Evaluation Committee was 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 recommendations to the FHA Executive for up to three qualified Respondents to proceed to the Request for Proposals stage. 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 Responses, each of the Respondent teams was issued a number of clarification questions in connection with their Responses. I was advised of the proposed clarification questions before issuance and, after some modifications, I was satisfied that they were within the scope of the RFQ document. All of the responses were received and provided to the Evaluation Committee and the sub-committees.

All of the Evaluation Committee members and the sub-committee members were required to execute Relationship Disclosure forms before being provided access to the Responses. For those parties who disclosed prior relationships or connections, a further 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 Respondent team members

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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. One proposed Evaluation Committee member was removed from the Evaluation Committee before the December 2 and 3, 2009 evaluation meetings due to a concern that prior interactions and knowledge of one of the Respondent teams may colour his evaluation. I was advised of this change and agreed that it was appropriate under the circumstances in order to maintain the appearance of fairness and lack of bias in the evaluation process. I note that no actual bias was identified regarding this particular person.

An Evaluation Manual for the RFQ Stage was developed based on the evaluation criteria set out in the RFQ and was finalized before the closing date for submissions. The evaluation was based on published criteria set out in the RFQ. 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.

All of the Respondent teams were invited to an interview with the Evaluation Committee on December 2, 2009. The Fairness Advisor attended all interviews. Each Respondent Team was provided with the identical amount of time to make their presentations and was asked a series of pre-determined questions by the Evaluation Committee. The purpose of the presentations was not to allow Respondents to enhance their responses with new information or rectify deficiencies, but rather to clarify information set out in their Responses, highlight the key portions of their qualifications, and to describe their team's strengths for the purposes of undertaking the project successfully. I also attended a series of referee interviews also conducted on the same day by the Evaluation Committee. My observation is that these activities were all appropriate and conducted in a fair manner.

I attended the lengthy Evaluation Committee meeting on December 3, 2009 in person to observe the proceedings. Legal counsel for the Project was also in attendance, although did not participate in the scoring of the Responses. Each of the Evaluation Committee members was required to provide a final declaration of relationships post-dating their original conflict declaration forms. There were no new or additional disclosures made. The Evaluation Committee discussed the relative strengths and weaknesses of each individual proposal. Each committee member discussed the Responses and had an opportunity to make comments. The leaders of the sub-committees were invited to the evaluation meeting and provided an overall briefing on each of the three areas in issue (Design and Construction, Facilities Management, and Financial and Commercial). 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

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the six Responses was completed. I have reviewed the Report to the Executive Steering Committee and I am satisfied that it reflects the decisions made by the Evaluation Committee.

The Evaluation Team had occasion to seek the advice of the Fairness Advisor during the evaluation process on minor points. General advice was provided on the procurement process, how to ensure fair evaluation of all proposals, and ensuring that the information used for evaluation was from the parties' responses, the interviews and the reference checks and not from unverified sources. I am satisfied that overall the process leading to the selection of the three Respondents to move forward to the Request for Proposals stage was in accordance with the process set out in the RFQ documents and was conducted in a fair manner.

I am satisfied that each of the Respondent teams was provided with a fair opportunity to have its Response considered by the Evaluation Committee in accordance with the terms of the RFQ. The evaluation criteria appear to have been applied consistently and in accordance with the pre-determined evaluation criteria in the Evaluation Manual. My observations of the process are that it was fair and transparent to all Respondents.

RECOMMENDATIONS TO IMPROVE THE PROCESS FOR FUTURE PROCUREMENTS

No recommendations. The procurement process has been well run to date.

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; my observations of the activities of the Evaluation Committee; 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 RFQ 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 Qualifications stage.

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I am satisfied that:

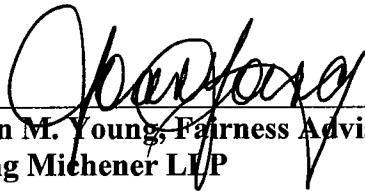
1. The FHA Project team members, and their advisors, followed the procedures and fairly applied the evaluation criteria specified in the procurement documents and subsequent documents; and
2. Where judgment and interpretation were allowed or required, the project team exercised reasonable judgment and 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 12th day of January 2010