

CD28.02 - Attachment 2

Attachment_2

JD CAMPBELL & ASSOCIATES

**TORONTO POLICE SERVICE
RADIO REPLACEMENT LIFECYCLE PROJECT
RFP- 1202732-17**

Fairness Commissioner's Report

September, 2017

JD Campbell & Associates

16 Burnhamthorpe Park Blvd.
Toronto, ON, M9A 1H9
Tel No: (416) 231-2292
Email: jr1campbell@sympatico.ca

Table of Contents

1.0	EXECUTIVE SUMMARY	1
1.1	INTRODUCTION	1
1.2	FINDINGS	2
1.3	OUTCOME	3
1.4	REPORT ORGANIZATION	3
2.0	WORDING OF THE RFP DOCUMENT	4
2.1	APPROPRIATE PRACTICE	4
2.2	FINDINGS	4
2.3	DESCRIPTION OF PROCESS	4
3.0	COMMUNICATION AND INFORMATION TO RESPONDENTS	8
3.1	APPROPRIATE PRACTICE	8
3.2	FINDINGS	8
3.3	DESCRIPTION OF PROCESS	8
4.0	CONFIDENTIALITY/SECURITY	9
4.1	APPROPRIATE PRACTICE	9
4.2	FINDINGS	10
4.3	DESCRIPTION OF PROCESS AND FINDINGS	10
5.0	QUALIFICATIONS OF THE EVALUATION TEAM.....	10
5.1	APPROPRIATE PRACTICE	10
5.2	FINDINGS	10
5.3	DESCRIPTION OF PROCESS	10
6.0	CONFLICT OF INTEREST/UNDUE ADVANTAGE	11
6.1	APPROPRIATE PRACTICE	11
6.2	FINDINGS	11
6.3	DESCRIPTION OF PROCESS	11
7.0	THE EVALUATION PROCESS.....	12
7.1	APPROPRIATE PRACTICE	12
7.2	FINDINGS	13
7.3	DESCRIPTION OF PROCESS	13
7.4	OUTCOME	15
8.0	DEBRIEFING AND DOCUMENTATION	16
8.1	APPROPRIATE PRACTICE	16
8.2	DESCRIPTION OF PROCESS AND FINDINGS	16

1.0 EXECUTIVE SUMMARY

1.1 Introduction

This report presents our findings for the Toronto Service Radio Replacement Lifecycle Project. In our capacity as Fairness Commissioner we reviewed and monitored the communications, evaluations, and decision-making associated with the RFP with a view to ensuring consistency of practice with the stipulations of the RFP and to ensure an open, fair and transparent process.

The purpose of the RFP was to acquire goods and services related to the replacement and support of APCO P25 (Phase 2) compliant radios including accessories over the next ten (10) years beginning at the end 2017.

For the purposes of this review:

- Openness refers to making the RFP available to all interested Proponents;
- Fairness refers to all Proponents receiving the same information and being treated in an equitable and even-handed manner;
- Transparency refers to the ability of Proponents to observe and understand how the evaluation of proposals is undertaken.

Our report is based on our first - hand observations of the procurement process, its documentation and on information provided by the procurement project team.

The report addresses the following aspects:

- Wording of the RFP document;
- Communications and information to Proponents;
- Adequate notification of changes in requirements;
- Confidentiality and security of proposals and evaluations;
- Qualifications of the evaluation team;
- Conflict of Interest;
- Compliance with the process;
- Documentation.

1.2 Findings

This report was prepared for the specific purposes of Toronto Police Service. JD Campbell & Associates, or the individual author of this report, bear no liability whatsoever for opinions that unauthorized persons may infer. Note this report, in no manner, purports to provide legal advice.

As Fairness Commissioner, we observed the RFP process, from development of the RFP document until the selection of the Successful Proponent. Given this involvement, we can attest to the fact that appropriate procurement practices were used throughout. As the report details, care was taken in managing risks involved in providing the necessary structure for an open, fair and competitive process. Particular note was made of the following:

- **Response Time** - The RFP document was posted electronically. The date of posting was June 29, 2017 and the closing date was August 31, 2017.
- **Incumbent Advantage** - While there was an incumbent vendor that was providing similar services for the TPS, staff provided assurance that the RFP had been structured such that more than one Proponent would be in a position to effectively respond. See Section 6.3 for further discussion concerning a Proponent expressed concern in this regard.
- **Full Disclosure** - The RFP contained reasonable description of specifications, terms and conditions, evaluation criteria and background information for the creation of adequate RFP submissions.
- **Communication** –One point of contact was used. Answers to Proponent questions were shared with all.
- **Consistency of Format** – Wording in the RFP encouraged Proponents to submit their responses in a like manner such that they could be consistently evaluated. The use of forms also helped in this regard.
- **Conflict of Interest/Confidentiality** – Evaluators were required to sign a conflict of interest and confidentiality declaration prior to any involvement or access to related information. Proponents were required to identify any conflict of interest as part of the RFP response process.
- **Security** - Care was taken to ensure that procurement materials and proposals were secure when not in use.
- **Rated Evaluation Criteria** – All evaluation criteria were weighted and of sufficient clarity to provide the Proponents with a thorough understanding of how they would be evaluated.
- **Undue Influence** – Throughout the procurement process, decisions were made by more than one person.
- **Debriefings** – The RFP made provision for the debriefing of Proponents after contract award.

1.3 Outcome

As a result of this procurement process:

- Only one proposal was received;
- This proposal was evaluated for all stages of the evaluation; mandatory submission requirements; the written rated evaluation; a demonstration stage and pricing;
- Based on this evaluation and having submitted a compliant bid, this Proponent was identified as being the Successful Proponent.

1.4 Report Organization

Each section of this report is organized under the following headings:

- Appropriate Practice – A description of elements of good practice that would apply in any RFP process. These elements serve as a benchmark;
- Findings – Fairness Commissioner's summary on whether or not this aspect of the procurement process met the standard of procedural fairness;
- Description of Process – A description and comment on the procurement process as observed by the Fairness Commissioner.

2.0 WORDING OF THE RFP DOCUMENT

2.1 Appropriate Practice

The wording of the RFP needs to be such that the full scope of services to be performed is clearly and specifically detailed. The likelihood and magnitude of any follow-on work (contract extension) should be noted. The Proponent's necessary qualifications and the conditions under which the services are to be provided should also be made explicit. Submission mandatory requirements are required to be stated in terms of pass/fail. Sufficient response time and information should be provided to permit those unfamiliar with the TPS to prepare. The terms and conditions of the engagement need to be clear. Evaluation criteria must be stated in explicit terms and the weighting for each criterion must be given. To aid in evaluation, instruction should be such that Proponents will provide information which can be directly compared one with the other. This is particularly important for pricing information.

It is also important that the rules of the RFP and negotiations process be clear to ensure fairness, avoid misunderstanding and to give all involved a clear documentation of both their rights and obligations. Examples of additional topics to be covered include:

- Submission amendment or withdrawal;
- The rights of Region;
- The evaluation process;
- Governing law

2.2 Findings

In our role as Fairness Commissioner, we found that the wording of the RFP provided the basis for a fair and competitive procurement process.

2.3 Description of Process

Framework

The RFP provided the framework within which the evaluation process was to be conducted. A number of its attributes are described to provide context.

The document contained; submission requirements, schedule, instructions, terms and conditions, scope, background, mandatory specifications, performance specifications, description of equipment and services, installation requirements, training, maintenance and support, definitions, Form of Offer, Pricing Form, etc.

Most Favoured Customer

The RFP contained a clause indicating that the Successful Proponent would be required to ensure that all prices for goods during the term would be no less favorable to the TPS than those offered to any of its similarly situated customers.

Piggy Backing

The RFP also required that other City of Toronto Divisions could purchase against the future contract for radios of equal, similar, or lesser functionality, based on the terms and conditions of the agreement at the discount percentage applicable to the combined quantities defined at contract award, per Appendix K, applied to the list price.

In addition, any or all of the City Divisions may purchase any product the successful Proponent sells at list price less the same adjusted volume discount percentage in effect at time of procurement.

Term

The term of the proposed contract was to be for 10 years. Technical staff at TPS indicated that this time period coincides with the expected life cycle of the equipment.

Reserve Rights

Reserve right wording was included that gave broad discretion to TPS staff and could potentially have been used in an arbitrary and unfair manner. As Fairness Commissioner, I paid particular attention to the exercise of these rights and found no evidence of them being used in an unfair manner.

Evaluation

The evaluation consisted of several stages: Submission Mandatory Requirements; Rated Written; Field Test and Pricing

Stage 1	Evaluation of Submission Mandatory Criteria	Points	Weight
J1	Mandatory Forms & and other information 1. Provide Industry Canada type acceptance number 2. Declaration of Conformity 3. Summary Test Report 4. Certification or References	N/A	Pass/Fail

Stage 2	Technical Response Evaluation	Points	Weighting
J2	<u>Radio Equipment and Accessories Functional Features</u> <u>Table B1-6</u> The items identified in this table were evaluated on a weighted basis in the following order: 1. Highly Desirable (8 points), 2. Desired (3 points), 3. Somewhat Desired (1 points) Battery Management System	360 10	21 2
	Alias and Asset Management Capability	10	2
	<u>Performance Specifications</u> Tables	3	3
	Question	2	2
J4	<u>Installation</u> 1. Implementation Plan	30	5
	2. Mobile Installation	20	
	3. Installation Materials	10	
	4. Antenna Installation	10	
	5. Cable Installation	10	
	6. Hardware Installation	20	
J5	<u>Training</u> 1. Training Plan	25	5
	2. Training Courses	15	
	3. Training: Trainers	15	
	4. End-Users Migration Training	15	
	5. Training: Radio Technician	15	
	6. Training: Network Administrator	15	
J6	<u>Maintenance and Support Requirements</u> 1. Maintenance and Support Plan	10	5
	2. Proponent Information	10	
J7	<u>Documentation</u> Documentation Plan	5	5

J8	<u>Acceptance Test Plan</u>	10	10
J9	<u>Sample Radios</u>		15
	Activation Steps and Visual/Audible feedback confirming action – 13 items x 5 points max each	65	
	Controls size, audible and tactile feedback(using Gloves), and resultant display – 6 items x 5 points max each	30	
	Display – 4 items x 5 points max each	20	
	Physical – 4 items x 5 points max each	20	
	Sounds and Alerts – 9 items x 5 points max each	45	
Stage 3	Commercial (Pricing) Response Evaluation		Weight 25
	Pricing was to evaluated based on a formula basis. Prorating scores on a comparative basis.		
	<ul style="list-style-type: none"> • Equipment 15 • Options 3 • The Mobile Radio Discount Plan 3 • The Portable Radios Discount Plan 3 • The Battery Discount Plan 1 		15 3 3 3 1

Acceptance Testing

Once the Successful Proponent is chosen, their proposed equipment is to be subject to acceptance testing within 90 days of contract signing after first order placed.

Debriefing

The RFP provided the opportunity for the debriefing of unsuccessful Proponents.

3.0 COMMUNICATION AND INFORMATION TO RESPONDENTS

3.1 Appropriate Practice

The document needs to provide opportunity for Proponents to ask questions of clarification concerning the RFP. There needs to be one point of contact for such communication. This ensures that all Proponents receive the same information and that any attempts to sway the outcome are effectively controlled. Indeed, Proponents should be warned that it is not acceptable to contact other personnel associated with the procurement during the course of the process.

Proponents need a reasonable amount of time to submit questions. If the RFP is complex, a Proponents' meeting can be held to provide further background information and to answer questions related to the RFP. A Reading Room can also be provided to ensure that all Proponents have the background necessary to submit appropriate proposals.

It is common in the scoring of the proposals for staff to ask questions of clarification of Proponents. Such questions are not intended to allow the Proponents to introduce new information but to clarify material already provided. In allowing for such clarifications, it is important that TPS staff protect against bid repair.

3.2 Findings

In our role as Fairness Commission, we found that care was taken in ensuring consistency in communicating with Proponents.

3.3 Description of Process

One Point of Contact

Provision was made for one source of information for the procurement process. Proponents that wanted additional information were instructed to submit their questions in writing.

Distribution

The RFP Document was posted electronically. The date of posting was June 29, 2017 and the closing date was adjusted by Addenda to August 31, 2017.

Addenda

Six addenda were issued. Staff assurance was obtained that these changes were made in the interests of improving the RFP rather than to advantage a particular Proponent.

Envelope System

A Three Envelope System was used for RFP submissions. Proponents were required to provide their pricing material in one envelope and the remainder of their proposal in a second envelope. This separation was required to ensure that evaluators for the rated portion of the evaluation were not unduly influenced by price. Proponents were also offered the option of submitting a third envelope containing separate pricing for a “radios as a service” option. This optional package would only be opened for the Successful Proponent. This meant that the determination of the Successful Proponent would be made on a consistent basis, treating all Proponents in the same manner.

4.0 CONFIDENTIALITY/SECURITY

4.1 Appropriate Practice

During the writing of the RFP, information should be shared with non-team members only on a need-to-know basis. All information requests should be channelled through the Project Manager in writing and all responses need to be documented.

Proper attention needs to be paid to the confidentiality and security of proposals. The use of documents needs to be carefully managed, including access to copies of the Proponents’ proposals and evaluation materials. All proposals when they arrive need to be time stamped and placed under lock and key. All original copies of the proposals need to be stored separately in a locked file to prevent tampering and their copying prohibited.

All members of the evaluation team need to be reminded of the need for confidentiality pertaining to the evaluation process and information contained in the proposals. Instructions, should be given to the evaluators to keep all documents under lock and key unless in use. This includes both proposals and evaluation sheets.

A decision needs to be taken regarding whether to allow evaluators to take this material home to work on after regular working hours. Doing so facilitates the evaluators being able to complete their work in a timely manner but has an

inherent risk of loss of materials. This is particularly true if public transportation is used.

4.2 Findings

In our role as Fairness Commissioner, we found that the management of these considerations was appropriately dealt with.

4.3 Description of Process and Findings

Proposals were time stamped and stored in secure quarters when they first arrived. All evaluators were instructed on the importance of confidentiality. The orientation session of evaluators stressed the importance of confidentiality and indicated that no communication with anyone outside of the project team concerning the content of the proposals was permitted. This prohibition pertains not only to the evaluation period but on an ongoing basis as well.

5.0 QUALIFICATIONS OF THE EVALUATION TEAM

5.1 Appropriate Practice

All members of the evaluation committees must have the appropriate expertise to be in a position to effectively evaluate the proposals.

5.2 Findings

In our role as Fairness Commissioner, we found that the qualifications of the evaluators were consistent with fair treatment of the Proponents.

5.3 Description of Process

Evaluators were chosen for their expertise (both technical and program) in the services under consideration. Because specialty expertise was needed, a Subject Matter Expert (SME) was made available to assist evaluators with the understanding of technical issues. The SME was available for the consensus session to respond to technical questions related to all proposals. The instruction to the SME was to refrain from evaluative judgements and to focus on technical explanation.

6.0 CONFLICT OF INTEREST/UNDUE ADVANTAGE

6.1 Appropriate Practice

Evaluation team members need to be reminded of their responsibilities regarding the declaration of any conflicts of interest. Assurance needs to be obtained that any consultant involved in the development of the RFP, or the evaluation of proposals, has not had links, either as an employee or subcontractor, with any of the Proponents who have responded.

It is necessary for the Project Manager to conduct a review of past projects and procurements to determine if the current RFP has been based on any previous contract which would place a participating Proponent in a situation where they would have had access to confidential information, the nature of which could place the Proponent in a position of undue advantage.

The RFP document also needs to have standard Conflict of Interest declaration wording that requires each Proponent to identify any reason why they would be in a position of conflict of interest.

6.2 Findings

In our role as Fairness Commissioner we found no issue of conflict of interest that materially impacted on the fairness of the procurement process.

6.3 Description of Process

Project Members

All members of the RFP development team were advised of the confidentiality and conflict of interest requirements during orientation. All Project Team members as employees of TPS had taken an Oath to the Queen and were required to identify any COI potential issues.

Proponent COI

The RFP contained the standard Conflict of Interest clause. The RFP also prohibited communication with any employees, officers, agents, elected or appointed officials or other representatives who could influence the outcome.

Incumbent Vendor

While there was a vendor that is currently providing radio services to the TPS, staff provided assurance that this provider had not had access to any confidential

information, relevant to this RFP, which has not been provided in the RFP document.

During the posting period another Proponent expressed concern that only the incumbent Proponent could effectively respond to the RFP specifications as they had been written. In response, the project team did an extensive review and made certain modifications to the specifications. The posting time was also extended to provide all Proponents additional time to prepare their bid.

In addition, as Fairness Commissioner I asked the technical Team for their assurance that, based on their knowledge of the market place, more than one Proponent would be able to effectively respond, that there were no artificial barriers to participation and that all specifications were based solely on business need. I received written confirmation that, in their professional opinion, all mandatory specifications of the RFP were such that multiple manufacturers would be able to develop fully compliant and appropriate proposals. They further confirmed that any requested options were structured to avoid giving competitive preference to any manufacturer. As the specific market availability of all possible options was not known by the technical team members, only items of significant operational value were requested and were based on strict business need requirement.

7.0 THE EVALUATION PROCESS

7.1 Appropriate Practice

All Proposals received must be evaluated objectively and diligently. Such evaluation must be based on the requirements specified in the RFP only. Appropriate practice includes ensuring that:

- Submission mandatory requirements of a pass/fail nature are used;
- No one individual has undue influence;
- Evaluation criteria and their weighting are communicated to the Proponents;
- Common scoring sheets are used;
- The submission mandatory requirements and qualitative evaluation are done separately to ensure that the one does not influence the other;
- Roles of all involved are clear and evaluators properly trained;
- The process is properly documented;
- Questions of clarification are not used to allow Proponents to introduce new information;
- Reasons for disqualification are provided.

7.2 Findings

In our role as Fairness Commissioner, we found that the structure and management of the evaluation process supported open, fair and competitive practice.

7.3 Description of Process

See Section 2.3 for a description of the structure of the evaluation process as defined in the RFP.

Clarity of Roles and Evaluator Training

The Procurement Lead was responsible for:

- Managing the evaluation process;
- Ensuring that proper process was followed;
- Tabulating the results;
- Removing all pricing related information from the proposal package such that the evaluators for the rated portion would not be unduly influenced by this information;
- Documenting the process.

The Evaluation Committee members were responsible for:

- Reviewing proposal(s) and allocating individual preliminary scores;
- Attending a Consensus meeting to discuss ratings;
- Amending preliminary scores in light of group discussion if appropriate.

There was an orientation to explain the process and to provide an understanding of why it was important that the appropriate steps be followed. Topics covered included:

- Project background and overview of the RFP structure;
- Guiding principles;
- Team composition and member's role;
- Attendance requirement;
- Evaluation steps;
- Review and scoring procedures;

- Scoring document;
- Consensus meetings and procedures;
- Security of documentation throughout the process and the need to protect the confidentiality of proposals and proponents

Common Scoring Sheets

Common evaluation forms were developed for each stage of the evaluation. The use of such forms helped ensure that the proposal(s) were judged on the same basis making comparisons much easier.

Management of Undue Influence

At no point in the process were decisions affecting the outcome of the evaluation process made by one individual.

Submission Mandatory Requirements

It was a requirement that only those proposals, which were successful in the submission mandatory requirement phase, would be allowed to continue on in the evaluation process.

Note that only one proposal was received.

Use of Subject Matter Expert

During the Consensus session a Subject Matter Expert (SME) was available to answer technical questions to aid the understanding of evaluators. The instruction to the SME was to refrain from subjective and evaluative comment and to focus on technical explanation.

Rated Evaluation

During the individual evaluations, evaluators were asked to do their work independently. It was agreed that no substitutions would be allowed for committee members and that the group evaluations would not take place unless there were a sufficient number of committee members present and had completed their individual evaluations. This helped to promote fairness, completeness and consistency.

An attempt was made to encourage committee members to move to scores that were within a narrow range. In the consensus meeting, if there was a significant variance between individual evaluator scores further discussion was held before a final decision was made.

The Fairness Commissioner attended the consensus meeting. Based on observations of the process I found no instance in which evaluation criteria were used other than those that had been identified in the RFP. The participants came prepared to engage in meaningful discussion. Participants recognized the value of the group discussion and did not rush to a final decision. The evaluators were ready to adjust their individual scores given reasoned argument. No one individual was in a position to unduly influence the entire process given that there were five evaluators involved.

Demonstrations

A script was developed for this section of the evaluation and was shared with the Proponent. Time was given for the Proponent to orientate the evaluators on the operation of the equipment such that TPS evaluators could perform the required functions. Each evaluator went through the scripted functions and used individual evaluation sheets to score both the radio's ability to perform the function and the ease of operational use. Individual evaluator error was controlled for by having a sufficient number of evaluators and by holding a consensus session where evaluators shared both their scores and comments to arrive at a common score.

Pricing

Pricing was conducted using a formula method.

7.4 Outcome

As a result of this procurement process:

- Only one proposal was received;
- This proposal was evaluated for all stages of the evaluation; mandatory submission requirements; the written rated evaluation; a demonstration stage and pricing;
- Based on this evaluation and having submitted a compliant bid this Proponent was identified as being the successful Proponent.

8.0 DEBRIEFING AND DOCUMENTATION

8.1 Appropriate Practice

The unsuccessful Proponents should be offered a debriefing session. Care needs to be taken to ensure that the Preferred Proponent's right to privacy regarding proprietary information of a commercial nature is protected as is stipulated under relevant legislation. It should be explained that this opportunity is for learning purposes and is not intended as a forum for dispute of outcome. The Project Manager is responsible for developing summary notes on the evaluation committees' scores and the rationale for the awarding of those points. These notes form the basis for the debriefing session.

The TPS should also retain all relevant documentation for possible reference or audit. The TPS records retention policy/procedures should be followed. Relevant material may include:

- File Index
- Project overview
- RFP documents
- Vendor communication
- Schedule
- Posting
- Addenda
- Proponent communications
- Training/Evaluation guides
- Submissions
- Clarifications
- COI Declarations/issues
- Evaluation sheets
- Major issues and how they were handled
- Outcome and Recommendations

8.2 Description of Process and Findings

The RFP indicated that debriefings would be provided to unsuccessful Proponents upon request and will be conducted after contract award. The Fairness Advisor's report was submitted before debriefings were completed.

It is our understanding that copies of all pertinent documentation were retained including those documents identified in Section 8.1.