



**East of Thunder Bay Transportation Consortium
Northwestern Ontario Student Services Consortium
Rainy River Transportation Services
Student Transportation Services of Thunder Bay**

**STUDENT TRANSPORTATION SERVICES:
REQUEST FOR SUPPLIER QUALIFICATIONS (RFSQ)**

Fairness Commissioner's Report

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EXECUTIVE SUMMARY

This report presents our findings and conclusions as Fairness Commissioner for the Request for Supplier Qualifications for Student Transportation Services (“RFSQ”) for the East of Thunder Bay Transportation Consortium, the Northwestern Ontario Student Services Consortium, the Rainy River Transportation Services, and Student Transportation Services of Thunder Bay (individually referred to as a “Consortium”, and collectively the “Consortia”). This is a final report on the RFSQ procurement process.

Knowles was engaged in December 2009 by the Ministry of Education (the “Ministry”) and has been involved in an advisory capacity during the finalization of the RFSQ and throughout the evaluation process.

As the Fairness Commissioner, Knowles acted as a neutral, disinterested and independent monitor for the procurement process to ensure openness, fairness and transparency of the procurement process. Specifically:

- Openness refers to making the RFSQ available to vendors through appropriate advertising so that all interested parties may be made aware of the opportunity.
- Fairness refers to all Respondents receiving the same information and being treated in an equitable and even-handed manner.
- Transparency refers to the ability of the Respondents to observe and understand the basis upon which their Submissions will be evaluated.

In our opinion, the RFSQ was not written in an unduly restrictive manner and the evaluation process was transparent to Respondents. All of the evaluation criteria were clearly stated and objectively justified, and the process for applying the criteria was also clearly stated in the RFSQ.

The RFSQ was issued on October 7, 2010 (RFSQ/11G-01). The original closing date of November 4th, 2010 at 2:00:00 pm, Thunder Bay time, was extended to November 11th, 2010 at 2:00:00 pm, Thunder Bay time. In our opinion, the amount of time Respondents had to respond to this RFSQ was adequate given the size and complexity of the undertaking.

We are not aware of any discussions about any Submission or its evaluation among anyone except the evaluators, those supporting the evaluators, counsel, and us. All members of the evaluation team signed confidentiality agreements and declarations of no conflict of interest pertaining to the evaluation process and information contained in the Respondents' Submissions. To our knowledge, no information about the Submissions or evaluation was communicated in any form to persons not directly involved with the evaluation process.

We are satisfied that the Submission contents and all information generated in the evaluation process was kept secure and confidential at all times.

All the evaluators were qualified to undertake the evaluation of the Submissions and we have no concerns about their qualifications.

We are satisfied that the evaluation of the Submissions was conducted strictly in accordance with the process set out in section 5 (Submission Requirements) of the RFSQ. We detected no bias or favoritism toward or against any particular Respondent. The Submissions were evaluated strictly against the evaluation criteria published in the RFSQ. The Respondents were required to meet Mandatory Requirements set out in Section 5.1 through Section 5.4. A record of the consensus scores reached and reasons for the scores for each of the Mandatory Requirements were maintained and kept by the Ministry's Procurement Advisor, PPI Consulting Limited, at the consensus sessions.

1.0 INTRODUCTION

This report presents our findings and conclusions as Fairness Commissioner for the Request for Supplier Qualifications for Student Transportation Services (“RFSQ”) for the East of Thunder Bay Transportation Consortium, the Northwestern Ontario Student Services Consortium, the Rainy River Transportation Services, and Student Transportation Services of Thunder Bay (individually referred to as a “Consortium”, and collectively the “Consortia”). This is a final report on the RFSQ procurement process.

Knowles was engaged in December 2009 by the Ministry of Education (the “Ministry”) and has been involved in an advisory capacity for the Consortia and the Ministry, and during the finalization of the RFSQ document and throughout the evaluation process.

Our report addresses the following aspects of the RFSQ process:

- Wording of the RFSQ document;
- Adequate communications to Respondents;
- Adequate notification of changes in requirements;
- Confidentiality and security of Submissions and evaluations;
- Qualifications of the evaluation team;
- Compliance with the process;
- Objectivity and diligence respecting the evaluations;
- Proper use of assessment tools; and,
- Conflict of Interest.

The following sections in this report elaborate on these aspects of the RFSQ process. If not defined in this report, capitalized terms in this report have the same meaning as capitalized terms in the RFSQ.

This report is based on our own observations of the process and representations about the process made to Knowles Canada (Knowles) by the Consortia. This report was prepared for the specific purposes of the Ministry and the Consortia. Neither Knowles nor the individual authors of this report bear any liability whatsoever for opinions unauthorized persons may conclude from this report.

2.0 ROLE OF FAIRNESS COMMISSIONER

The Consortia have conducted this procurement in a manner that will withstand the test of public scrutiny, encourage competition and reflect fairness in the spending of funds. The Consortia have encouraged competition among Respondents by affording Respondents with equal and open access to the subject Consortia's RFSQ procurement opportunity.

To provide the vendor community with the confidence that the contemplated procurement is conducted in a fair manner that is consistent with the above-mentioned principles, the Ministry retained the services of Knowles Canada, as a Fairness Commissioner to monitor the process and to advise it on matters that pertain to the fairness of the RFSQ process. As such, Knowles acted as a neutral, disinterested and independent monitor of the procurement process.

3.0 BACKGROUND

Section 1 of the RFSQ set out general information about the RFSQ as follows:

“The Consortia comprising of the East of Thunder Bay Transportation Consortium, Northwestern Ontario Student Services Consortium, Rainy River Transportation Services and Student Transportation Services of Thunder Bay are undertaking a procurement process referred to as a two-stage competitive process for the acquisition of safe, effective and efficient student transportation services.

Stage one of the two-stage process is initiated with the issuance of this Request for Supplier Qualifications (“RFSQ”). Through this RFSQ, the Consortium invites responses (“Submissions”) from firms and individuals (“Respondents”) qualified to provide student transportation services in compliance with all applicable laws, regulations, standards and licensing requirements (“Qualified Suppliers”).

It is the intention of the Consortium to list each Qualified Supplier in a Qualified Supplier List (the “Supplier List”) which will have an initial term of four (4) years with the option to extend for up to two additional one-year periods, at the discretion of the Consortium.

In stage two of the two-stage process, the Consortium intends to invite Qualified Suppliers on the Supplier List to respond to a Request for Proposal (“RFP”). The RFP will detail the specific requirements for student transportation and set out the process by which suppliers will be evaluated and selected for contract award.”

Section 2 set out the nature of services, providing:

- General Transportation Service Requirements for each of the consortia (Section 2.2.1)
- Service Areas (Section 2.2.2)
- Vehicle Standards, Regulation and Licensing Requirements (Section 2.2.3)
- Driver Licensing Requirements (Section 2.2.4)

4.0 RFSQ DOCUMENT

The main issue from Knowles' perspective was ensuring a fair and transparent evaluation process. The RFSQ document had to accomplish three tasks:

1. Clearly identify and describe the full scope of work required by Respondents;
2. Provide Respondents with the information they needed to prepare a Submission; and
3. Clearly set out evaluation criteria (in the case of this RFSQ, all Mandatory Requirements) and the process for applying them.

In achieving these objectives, the Mandatory Requirements had to be developed such that they were not biased for or against any particular Respondent(s) and that undue advantage was not given to firms/companies with previous experience with the Consortia. Further, these Mandatory requirements could not be so narrowly developed to unduly restrict participation in the competitive process, for example, restricting use of certain technologies, geographical location, professional designations, etc. Further, sufficient response time and information had to be provided to permit those unfamiliar with the Consortia and its process to prepare.

We are satisfied that the RFSQ stated all the evaluation criteria used in the evaluation process, provided an appropriate process for consistently and fairly evaluating the Submissions, was not written in an unduly restrictive manner, and was not biased towards any particular Respondent(s).

Section 1 – Introduction – the provisions introduced the RFSQ to Respondents and provided contextual background information. Specifically, this section set out that:

- the introduction set out that the RFSQ was the first of a two-stage competitive process for the acquisition of safe, effective and efficient transportation services
- resulting from this process, the Consortium would be identifying a list of Qualified Suppliers (referred to as the “Supplier List”) and this list will have an initial term of four (4) years with the option to extend for up to two additional one-year periods, at the discretion of the Consortium
- in Stage two of the two-stage process, the Consortium would be inviting all Qualified Suppliers on the Supplier List to respond to a Request for Proposal (“RFS”) for student transportation services

Section 2 set out the nature of services, providing:

- General Transportation Service Requirements for each of the consortia (Section 2.2.1) – this outlined the Service areas and Quantity of Routes for each Consortium

- Service Areas (Section 2.2.2) – this section identified the areas where the Consortia required student transportation services, and directed the Respondents to identify the service areas they are interested in offering student transportation services
- Vehicle Standards, Regulation and Licensing Requirements (Section 2.2.3) – this section identified the vehicle regulations, standards and licensing requirements applicable in Ontario and with which the suppliers must comply were identified
- Driver Licensing Requirements (Section 2.2.4) – this section identified the driver licensing requirements that all school bus drivers must have and maintain in good standing, as well as any additional licenses required by the Public Vehicles Act, the Highway Traffic Act (Ontario) and the municipal by-laws

Section 3 – Instructions to Respondents described the Schedule of Events (Section 3.1), process for Respondent Clarification Questions (Section 3.2), details of the Respondent Information Session (Section 3.3), Submission Requirements (Section 3.4), Late Submissions (Section 3.4.2) and Clarification of Information provided in a Submission (Section 3.4.3), and Confidentiality (Section 3.5).

Section 4 – Submission Review Process described the Review and Selection Process (Section 4.1) which included the Submission Review Process (Section 4.1.1), the Right to Waive (Section 4.1.2), and the Notification of Qualification (Section 4.1.3).

Section 5 set out the RFSQ's Submission Requirements (i.e. "the mandatory requirements to which Respondents must provide a written response to be eligible for inclusion on the Supplier List." In addition, the section specifically set out that "[f]ailure to provide a response to a mandatory requirement will result in disqualification."

The Mandatory Requirements required to be met to determine compliance with the RFSQ were set out as follows:

- **MANDATORY REQUIREMENT: Respondent Profile (Section 5.1):**
The Respondent was required to provide 1. The name and address of its organization; 2. The name and contact details (as specified) of an individual to whom the Consortia may direct questions about its response; and 3. A description of the ownership structure of its organization (as specified).
- **MANDATORY REQUIREMENT: Respondent Qualifications (Section 5.2):**
The Respondent was required to: 1. Include a copy of its most recent Commercial Vehicle Operator's Record (CVOR) Level 2 with a rating of "satisfactory – audited or unaudited" or better (or equivalent records, as specified); 2. Disclose any conflict of interest it may have in responding to the RFSQ or subsequent procurement process in the overall two-stage process; and 3. To submit the Ontario Tax Compliance Declaration Form (as contained in the RFSQ).

- **MANDATORY REQUIREMENT: Customer Contact Information (Section 5.3):** The Respondent was required to provide the customer contact information “to whom the Respondent has provided student transportation services within the last **three (3)** years as well as the contract start and end dates...”. This section further provided that by submitting the name of a customer contact, the Respondent was deemed to have obtained the consent of the customer to act as a contact.
- **MANDATORY REQUIREMENT: Respondent Service Areas of Interest for Rainy River Transportation Services (Section 5.4):** The Respondent “was **strongly encouraged** to provide ... an indication of the service areas [for Rainy River Transportation Services only, and not for the East of Thunder Bay Transportation Consortium, the Northwestern Ontario Student Services Consortium, or the Student Transportation Services of Thunder Bay] to which the Respondent would be interested in providing student transportation services.”

In Knowles’ view, the mandatory criteria were stated objectively, and as such, this permitted an objective determination of compliance with each Mandatory Requirement.

5.0 ADEQUATE TIME TO PREPARE A SUBMISSION

Respondents required sufficient time to prepare Submissions in response to the RFSQ. The larger the scope of an RFSQ and more complex it is, the longer the time that should be provided for Respondents so that they can understand the RFSQ requirements, assimilate the information in the RFSQ, conduct whatever research they deem necessary, receive training for responding to the RFSQ, consult legal counsel, etc.

The RFSQ was issued on MERX on October 7, 2010. The Submission Deadline was set as November 4, 2010, 2:00:00 Thunder Bay time, and was extended to November 11th, 2010 at 2:00:00 pm, Thunder Bay time. In our opinion, the amount of time Respondents had to respond to this RFSQ was adequate given the size and complexity of the undertaking.

6.0 ADEQUATE COMMUNICATION TO RESPONDENTS

It was important that all Respondents had timely access to the same and adequate information about the RFSQ and the associated process at the same time.

All communication with Respondents was done through MERX via the Consortia Representative, Gerrie Tennant, Supervisor of Purchasing, as set out in Section 3.2 of the RFSQ.

A Respondent Information Session was held on October 14, 2010 at 11:30 am, Thunder Bay time. This session was also available via video conference at four other Ontario locations (Dryden, Fort Frances, Marathon, and Geraldton). Knowles oversaw this session.

Following the issuance of the RFSQ, the questions and answers communication process was handled by the Consortia Representative. We monitored all questions and answers during this process, and these were shared with all potential Respondents, as postings to MERX.

7.0 ADEQUATE NOTIFICATION OF CHANGES IN REQUIREMENTS

All Respondents received the same and adequate notification about changes to the RFSQ. The use of the postings on MERX facilitated such communication.

There were two (2) addenda issued relating to the RFSQ. Both of these addenda were posted on MERX for downloading by the Respondents. The RFSQ Respondent Representative (working with the Ministry's Procurement Advisor, PPI Consulting Limited) facilitated the finalization of these addenda. Knowles oversaw this process and reviewed each of the addenda prior to posting.

8.0 CONFIDENTIALITY AND SECURITY OF DOCUMENTS

All Submissions and evaluation documents were kept strictly confidential and in secure locations. Documents relating to the RFSQ process were also kept secure. During development of the RFSQ, the draft documents were circulated only to those who were working on the document or who were reviewing and commenting on the document.

The Submissions were kept at the RFSQ Consortia Representative's office in Thunder Bay, Ontario, in a locked facility until the mandatory submission requirements review was completed by the evaluators (November 12, 2010). The Evaluation documents were kept by the Ministry's Procurement Advisor, PPI Consulting Limited, and hard copies of the finalized Evaluation documents were stored in a locked, secure cabinet kept at the RFSQ Consortia Representative's office. The contents of the Submissions were only known to the evaluation team members, those supporting the evaluation team, the Ministry, and the Fairness Commissioner.

Knowles oversaw the following training sessions conducted by the Ministry's Procurement Advisor, PPI Consulting Limited:

- In preparation for the individual evaluations of the Submissions, training for the Evaluators was held on November 4th, 2010. In preparation for this session, Knowles prepared "Fairness Guidelines for Student Transportation Services" outlining the guiding principles of fairness, the

Evaluators' roles, responsibility and undertaking, Code of Conduct Forms and communications protocol.

Given the nature of the RFSQ with all mandatory requirements, the RFSQ submissions were reviewed at the same time by the evaluation team. Each submission was reviewed individually, and then discussed in a consensus format to confirm compliance with the submission requirements. This session was facilitated by the Ministry's Procurement Advisor, PPI Consulting Limited, and overseen by Knowles. All deliberations of the evaluation team were conducted behind closed doors. Prior to these sessions, each of the evaluators was required to sign a Code of Conduct form including confidentiality obligations. These undertakings survive past the end of the evaluation process.

In addition, we are not aware of any discussions about any Submission or its evaluation among anyone except the evaluators, those supporting the evaluators, Ministry, counsel, and us. To our knowledge, no information about the Submissions or evaluation was communicated in any form to persons not directly involved with the evaluation process.

We are satisfied that the Submission contents and all information generated in the evaluation process was kept secure and confidential at all times.

9.0 QUALIFICATIONS OF THE EVALUATION TEAM

The evaluation team members had the appropriate knowledge and expertise to review and evaluate the Submissions. All evaluations were conducted by transportation/procurement representatives from each of the Consortia. All the evaluators were qualified to undertake the evaluation of the Submissions and we have no concerns about their qualifications.

All evaluators had reviewed the RFSQ and familiarized themselves with the evaluation tools prior to commencing their evaluation of the Submissions. As noted previously, prior to the individual evaluations, the Ministry's Procurement Advisor, PPI Consulting Limited, conducted a training session which covered the structure of the evaluation committees, and their roles, the evaluation process overview and the stages of the evaluation process. This training was overseen by Knowles. In addition, Knowles discussed and answered questions relating to best practices for evaluators to ensure a fair process.

10.0 COMPLIANCE WITH THE PROCESS

In order to ensure a fair process, the rules established for conducting the procurement and published in the RFSQ were followed and applied equally to all Respondents.

Thirty two (32) Submissions were received by the Submission Deadline. The evaluation session, as facilitated by the Ministry's Procurement Advisor, with Knowles present and overseeing, conducted the evaluation of the submission requirements, as set out in the RFSQ. All Submissions received were complete and complied with these requirements.

11.0 Objectivity Respecting the Evaluations

In our view, the Submissions were evaluated objectively and diligently, as evaluators owed a duty of care to Respondents to do so. We were present at the evaluation session. We are satisfied that all Submissions were objectively evaluated against the evaluation criteria published in the RFSQ. We are satisfied that there was no external pressure placed on the evaluation team with regard to the evaluation of any Submission or Respondent.

We detected no bias or favoritism by the evaluators during their participation in the consensus evaluation sessions, and no external pressure was brought to bear on the evaluation team. We observed that each Submission was subjected to same evaluation process, which consisted of applying the evaluation criteria as set out in the RFSQ.

In summary, we detected no bias or favoritism toward or against any particular Respondent. The Submissions were evaluated strictly against the evaluation criteria published in the RFSQ. A record of the results reached was maintained and kept by the Ministry's Procurement Advisor, PPI Consulting Limited, at the sessions.

12.0 PROPER USE OF ASSESSMENT TOOLS

The assessment tools used by the Evaluators to evaluate the mandatory submission requirements were based on the published evaluation criteria in the RFSQ. We reviewed all the evaluation tools and we are satisfied that they accurately reflected the published evaluation criteria.

13.0 CONFLICT OF INTEREST

For the procurement to be fair there had to be no conflict of interest between the evaluators and the Respondents and between the Respondents and anyone involved in planning or conducting the procurement. Respondents must also not have had access to confidential information of the Consortia, as it pertains to the procurement.

Respondents were required to disclose and declare any actual or potential conflict of interest, which included by definition any knowledge of confidential information of the Ministry.

Prior to the start of the evaluation process, evaluation team members, as well as those who were supporting and advising them, were informed of the requirement to disclose any actual or potential conflicts of interest. Each such individual was asked to sign a declaration that they were not in a potential or actual conflict of interest in undertaking their role in the process. We confirm that all such declarations were signed, and any potential declarations of Conflicts of Interest were reviewed by Knowles, and in any such case, Knowles was satisfied that there was no Conflict of Interest that would cause a recommendation for the evaluator to withdraw from the process.

14.0 CONCLUSIONS

In summary, based on our review, we are satisfied that the RFSQ process was conducted in a procedurally fair, open, and transparent manner. All Submissions received were evaluated against the evaluation criteria published in the RFSQ. We detected no bias either for or against any particular Respondent in the application of the evaluation criteria. The evaluation criteria were applied objectively based on the criteria published in the RFSQ.