



**EAST OF THUNDER BAY TRANSPORTATION
CONSORTIUM**

**STUDENT TRANSPORTATION SERVICES:
REQUEST FOR SERVICES (RFS)**

RFS ETBTC 2010-01

Fairness Commissioner's Report

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EXECUTIVE SUMMARY

This report presents our findings and conclusions as Fairness Commissioner for the Student Transportation Services: Request for Services (“RFS”) for the East of Thunder Bay Transportation Consortium’s RFS 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 RFS 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 RFS available to vendors through appropriate advertising so that all interested parties may be made aware of the opportunity.
- Fairness refers to all Qualified Suppliers receiving the same information and being treated in an equitable and even-handed manner.
- Transparency refers to the ability of the Qualified Suppliers to observe and understand the basis upon which their Submissions will be evaluated.

In our opinion, the RFS was not written in an unduly restrictive manner and the evaluation process was transparent to Qualified Suppliers. All of the Quality

Criteria were clearly stated and objectively justified, and the process for applying the criteria was also clearly stated in the RFS.

The RFS was issued on December 3rd, 2010 (RFS ETBTC 2010-01). The closing date was set as February 2nd, 2011 at 2:00:00 p.m. (EST local Thunder Bay time). In our opinion, the amount of time Qualified Suppliers had to respond to this RFS 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 Qualified Suppliers' 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 4 (Submission Requirements) of the RFS. A record of the consensus scores reached and reasons for the scores for each of the evaluated requirements were maintained and kept by the Ministry's Procurement Advisor, PPI Consulting Limited, at the consensus session. We detected no bias or favoritism toward or against any particular Qualified Supplier. The Submissions were evaluated strictly against the Quality Criteria published in the RFS.

1.0 INTRODUCTION

This report presents our findings and conclusions as Fairness Commissioner for the Request for Services for Student Transportation Services (“RFS”) for the East of Thunder Bay Transportation Consortium’s RFS procurement process. This is a final report on the RFS 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 Consortium and the Ministry, and during the finalization of the RFS document and throughout the evaluation process.

Our report addresses the following aspects of the RFS process:

- Wording of the RFS document;
- Adequate communications to Qualified Suppliers;
- 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 RFS process. If not defined in this report, capitalized terms in this report have the same meaning as capitalized terms in the RFS.

This report is based on our own observations of the process and representations about the process made to Knowles Canada (Knowles) by the Consortium. This report was prepared for the specific purposes of the Ministry and the Consortium. 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 Consortium has 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 Consortium has encouraged competition among Qualified Suppliers by affording Qualified Suppliers with equal and open access to the Consortium's RFS 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 RFS process. As such, Knowles acted as a neutral, disinterested and independent monitor of the procurement process.

3.0 BACKGROUND

Section 1 of the RFS set out the Introduction of the RFS. It described the Consortium, through the RFS, as “initiating the second stage of its two-stage procurement process for the acquisition of safe, effective and efficient student transportation services ...” It further noted that there were four (4) different Requests for Services for student transportation in Northwestern Ontario being released within the same approximate time frame. All Qualified Suppliers from the Consortium’s first stage, Request for Student Transportation Services: Request for Supplier Qualifications (RFSQ 2011-001), and who expressed an interest in participating in the Consortium’s RFS process, were invited to participate in the RFS.

4.0 RFS DOCUMENT

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

1. Clearly identify and describe the full scope of work required by Qualified Suppliers;
2. Provide Qualified Suppliers with the information they needed to prepare a Submission; and
3. Clearly set out Quality Criteria and the process for applying them.

In achieving these objectives, the Quality Criteria had to be developed such that they were not biased for or against any particular Qualified Supplier(s) and that undue advantage was not given to firms/companies with previous experience with the Consortium. Further, these Quality Criteria 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 Consortium and its process to prepare.

We are satisfied that the RFS stated all the Quality 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 Qualified Supplier(s).

Section 1 - Introduction - introduced the RFS to Qualified Suppliers and provided contextual background information. As set out in this report's Section 3.0, the RFS in Section 1 described the RFS as the second stage of the Consortium's two-stage procurement process for the acquisition of safe, effective and efficient student transportation services. The RFS was being issued to all Qualified Suppliers from the Stage 1 RFSQ stage, and who expressed interest in participating in the Consortium's RFS.

In addition, Section 1 described:

- Contracting Approach (Section 1.1)
- No Collusion (Section 1.2)
- Structure of this RFS (Section 1.3)
- Background of the Consortium (Section 1.4)
- Background to Transportation Service Requirements (Section 1.5)
- Definitions (Section 1.6)

Section 2 set out the important elements of the Statement of Work (SOW). Further, it noted that Qualified Suppliers should note the following sections provided in Section 2 identified as “evaluated requirements”:

- Section 2.1.4 Vehicle Maintenance
- Section 2.1.18 Driver Availability
- Section 2.2.1 Safety Training
- Section 2.2.2 Compliance with Consortium Policies
- Section 2.3.1 Communications with Parents and Consortium

Section 3 set out the Submission Evaluation Process as follows: Section 3.1 Steps of Submission Evaluation, namely Step 1 – Mandatory Requirements (Section 3.1.1); Step II – Quality Criteria (Section 3.1.2); Step III – Pricing Evaluation Form (Section 3.1.3); Cumulative Score (Section 3.1.4); In the Event of a Tie Score (Section 3.1.5); and Notice of Consortium’s Desire to Verify Qualified Supplier’s Qualifications (Section 3.1.6).

Section 4 set out the Submission Requirements as follows:

- Section 4.1 Step 1 – Mandatory Requirements, as detailed in 4.1.1 (Form of Offer); 4.1.2 (Pricing Evaluation Form); and 4.1.3 (Reference Form)
- Section 4.2 – Quality Criteria –75 points
- Section 4.1 Step 1 – Mandatory Requirements, as detailed in 4.1.1 (Form of Offer); 4.1.2 (Pricing Evaluation Form); and 4.1.3 (Reference Form)

- Section 4.2 – Quality Criteria –75 points
 - 4.2.1 Vehicle Maintenance: Weight =15 points out of 75 points
 - 4.2.2 Driver Availability: Weight = 15 out of 75 points
 - 4.2.3 Safety Training: Weight = 15 out of 75 points
 - 4.2.4 Compliance with Consortium Policies: Weight = 15 out of 75 points
 - 4.2.5 Communication with Parents and Consortium: Weight = 15 out of 75 points
 - 4.2.6 Example Scoring Chart for Quality Criteria

- Section 4.3 – This section described Step III – Pricing Evaluation Form which included an Introduction (4.3.1); [description of] Fixed Rate; and [description of] Variable Rate; Other Information Regarding Pricing Evaluation Form (Section 4.4.2); Sample Calculation (Section 4.3.3); and Evaluation of Pricing (Section 4.3.6).

Section 5: Terms and Conditions of the RFS Process provided:

- Section 5.1 – General Information and Instructions in sections 5.1.1 through 5.1.10, including the following key provisions:
 - 5.1.1 Timetable
 - 5.1.2 RFS Consortium Contact (as Ed Smelt, East of Thunder Bay Transportation Consortium – Coordinator)
 - 5.1.3 Qualified Suppliers’ Clarification Questions

- 5.1.4 Qualified Suppliers' Optional Information Session
- Section 5.2 – Communications after issuance of RFS
- Section 5.3 – Submission of Responses to this RFS in sections 5.3.1 through 5.3.9, including the following key provisions:
 - 5.3.1 Submissions to be Submitted Only in Prescribed Manner
 - 5.3.2 Submissions Must be Submitted on Time at Prescribed Location
 - 5.3.6 RFS incorporated into the Submission
 - 5.3.9 Verification of Submissions – this section outlines the discretion of the Consortium “to verify any statement or claim contained in the Submission or made subsequently in any site visit or communication with the Consortium”, including:
 - Verifying that the Qualified Supplier can fulfil the requirements contained in the SOW (Section 2)
 - Verifying that the Qualified Supplier can fulfil the requirements of the Form of Agreement (Appendix A)
 - Verifying that the Qualified Supplier’s statements of claims in its Submission, during the information session, during the site visit, or during any other communications with the Qualified Supplier are truthful.
- Section 5.4 – Execution of Agreement, Notification and Debriefing
- Section 5.5 Prohibited Communications, Confidential Information and MFIPPA
- Section 5.6 Reserved Rights and Governing Law

Step 1 – Mandatory Requirements – In this first stage of the process, Proposals were screened to determine compliance with mandatory requirements set out in 4.1.1, 4.1.2 and 4.1.3.

In the case of Step I, the mandatory requirements were stated objectively, and as such, this permitted an objective determination of compliance with each mandatory requirement.

Step II – Quality Criteria – In this stage, each Submission was scored by applying the scoring scale set out in Section 3.1.2 of the RFS against the responses received for the Quality Criteria (Sections 4.2.1 through 4.2.5). In addition, in this stage, the results of the Quality Criteria responses were reviewed to ensure that the minimum threshold of 45 points of the possible 75 points, as set out in Section 3.1.2, was met.

In our opinion, the Step II evaluation was transparent to Qualified Suppliers. We note the scoring scale set out in Section 3.1.2 on page 19 of the RFS. This scale provided the score and description of how such score would be attained, as well as the minimum threshold that needed to be met for a Submission to be evaluated further. In addition, the section clearly provided that no “in-between points will be awarded (i.e. a score must be “4” or “5”, not “4.5”). In addition, Section 4.2.6 provided an Example Scoring Chart for Quality Criteria showing

examples of the Quality Criteria with section numbers identified, the weighting/total points, and examples using three Suppliers (A, B, and C).

Step III – Pricing Evaluation Form – This was the stage where the pricing for each Submission would be evaluated. In accordance with 3.1.3 and detailed in Section 4.3.4, the evaluation of the pricing (weighted at 25 points of the total evaluated score) was undertaken after Steps I and II had been completed.

In our opinion, the Stage III evaluation was transparent to Qualified Suppliers. Section 4.3.1 provided further details of the Fixed Rate component and described the Variable Rate component, and Section 4.3.3 provided a sample calculation of the 5-year total cost to the Consortium, and Section 4.3.4 detailed the Evaluation of Pricing with an Example Scoring Chart for Evaluation of Pricing (Section 4.3.5).

The RFS set out the process in Section 3.1.4 that “[a]t the conclusion of Step III, all scores awarded for Step II and Step III will be added and subject to satisfactory reference checks and any other verification the Consortium wishes to undertake (see Section 5.3.9), and the express and implied rights of the Consortium, the highest scoring Qualified Supplier will be selected to enter into the Form of Agreement attached as Appendix A to this RFS. Scores for the Pricing Evaluation Form will be allocated in the manner set out in subsection 4.3 below.” In our opinion, the Cumulative Score section was transparent to the Qualified Suppliers.

Section 5 – Terms and Conditions of the RFS contained general information and instructions, including the following key provisions: Section 5.1.1 (Timetable); Section 5.1.3 (Qualified Suppliers' Clarification Questions); Section 5.1.4 (Qualified Suppliers' Optional Information Session); 5.2 (Communication after Issuance of RFS); Section 5.3.9 (Verification of Submission); Section 5.4 (Execution of Agreement, Notification and Debriefing) and Section 5.6 (Reserved Rights and Governing Law).

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

5.0 ADEQUATE TIME TO PREPARE A SUBMISSION

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

The RFS was issued on MERX on December 3rd, 2010. The Submission Deadline was set as February 2nd, 2011. In our opinion, the amount of time Qualified Suppliers had to respond to this RFS was adequate given the size and complexity of the undertaking.

6.0 ADEQUATE COMMUNICATION TO QUALIFIED SUPPLIERS

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

All communication with Qualified Suppliers was done through MERX via the Consortium Contact, Ed Smelt, East of Thunder bay Transportation Coordinator, as set out in Section 5.1.2 of the RFS.

A Qualified Suppliers' Optional Information Session was held on December 15th, 2010 in Thunder Bay, Ontario. Knowles oversaw this session.

Following the issuance of the RFS, the questions and answers communication process was handled by the Consortium Contact. We monitored all questions and answers during this process, and these were shared with all potential Qualified Suppliers, as postings to MERX.

7.0 ADEQUATE NOTIFICATION OF CHANGES IN REQUIREMENTS

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

There were three (3) addenda issued relating to the RFS. All of these addenda were posted on MERX for downloading by the Qualified Suppliers. The RFS Consortium Contact (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 RFS process were also kept secure. During development of the RFS, 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 RFS Consortium Contact's office in Marathon, Ontario, in a locked facility until release of the documents to the evaluators for their individual reviews, followed by the evaluation session on February 11th, 2011. 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 RFS Consortium Contact'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 January 20th, 2011. 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.

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

Each RFS Submission was reviewed individually in an assigned order (different for each of the evaluators), and then these Submissions and the individual evaluations were discussed in a consensus format on February 11th, 2011 to determine the evaluation results. This consensus 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 representatives from the consortium and relevant school boards (transportation/former or current superintendents). 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 RFS 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 RFS were followed and applied equally to all Qualified Suppliers.

Six (6) 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 RFS. 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 Qualified Suppliers to do so. We were present at the evaluation session. We are satisfied that all Submissions were objectively evaluated against the Quality Criteria published in the RFS. We are satisfied that there was no external pressure placed on the evaluation team with regard to the evaluation of any Submission or Qualified Supplier.

We detected no bias or favoritism by the evaluators during their participation in the consensus evaluation session, 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 Quality Criteria as set out in the RFS.

In summary, we detected no bias or favoritism toward or against any particular Qualified Supplier. The Submissions were evaluated strictly against the Quality Criteria published in the RFS. 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 submission requirements were based on the published Quality Criteria in the RFS. We reviewed all the evaluation tools and we are satisfied that they accurately reflected the published Quality 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 Qualified Suppliers and between the Qualified Suppliers and anyone involved in planning or conducting the procurement. Qualified Suppliers must also not have had access to confidential information of the Consortium, as it pertains to the procurement.

Qualified Suppliers 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 RFS process was conducted in a procedurally fair, open, and transparent manner. All Submissions received were evaluated against the Quality Criteria published in the RFS. We detected no bias either for or against any particular Qualified Supplier in the application of the Quality Criteria. The Quality Criteria were applied objectively based on the criteria published in the RFS.