

TORONTO TRANSIT COMMISSION REPORT NO.

MEETING DATE: JANUARY 28, 2014

SUBJECT: PROCUREMENT AUTHORIZATION - ACCESSIBLE TAXI
SERVICE
CONTRACT P34PN13755

ACTION ITEM

RECOMMENDATION

It is recommended that the Board:

authorize the award of contracts for the Accessible Taxi Service to the following companies in the upset limit amounts indicated below, with a duration of five years from Notification of Award, on the basis of the highest total weighted scores:

Associated Toronto Taxi Cab Co-Operative Limited	\$ 30,000,000
1145659 Ontario Limited o/a Checker Taxi	\$ 30,000,000
Royal Taxi Inc.	\$ 30,000,000
1210670 Ontario Inc. o/a Scarborough City Cab	<u>\$ 30,000,000</u>
 Total Overall Upset Limit Amount	 \$ 120,000,000

There is an option to extend for two (2) additional one (1) year periods, subject to reasonable negotiated rates, which can be exercised at the TTC's sole discretion, prior to the expiry of the base 5-year term by issuance of a Contract Amendment with the appropriate approval in accordance with the Authorization for Expenditure Policy.

FUNDING

Sufficient funds for Accessible Taxi Service have been included in the 2014 Wheel-Trans Operating Budget as approved by the Board at the November 25, 2013 Board meeting and will be included in future operating budgets as appropriate.

BACKGROUND

The Toronto Transit Commission currently has three contractors providing accessible taxi service in order to supplement the existing Wheel-Trans bus service. To provide service to Wheel-Trans customers in the most cost-effective manner, a combination of buses, accessible taxis, and sedan taxis are utilized. The intent of TTC-operated buses is to provide service to customers using larger mobility devices that will not fit onto accessible taxis (augmented by others to use available capacity). Accessible taxis provide service to customers using smaller mobility devices and to ambulatory customers. Sedan taxis primarily provide service to ambulatory customers using devices such as canes, walkers, and small folding wheelchairs. Currently buses accommodate approximately 40% of all customer trips with the remaining

approximate 60% accommodated by the contracted service providers (combination of accessible taxis and sedan taxis).

As a result of the growing demand in ridership and to meet the legislated requirement of the *Accessibility for Ontarians with Disabilities Act (AODA)* to provide 24-hour service effective January 2013, these contracts supplement the existing bus service in meeting peak period demand, as well as providing substantial service during the off-peak periods and ensure uninterrupted service levels with less expensive contracted services. Further, in order to maintain optimal reliable and continuous service to our customers over the next five years, the TTC is seeking services from up to four contractors to provide accessible taxi service and supplement the existing Wheel-Trans bus service. Contractors are required to provide a minimum of 40 accessible taxi vehicles and operators to provide service to registered Wheel-Trans customers. Contractors are required to provide service trips throughout the city of Toronto.

The City of Toronto Auditor General's Report dated November 9, 2012 made the following recommendations regarding Wheel-Trans contracted taxi service:

1. **Recommendation:** Retain a Fairness Commissioner to oversee the entire procurement process.
Response: The TTC retained the firm of JD Campbell and Associates for a Fairness Commissioner to oversee the process and work closely with staff throughout the entire procurement process. Mr. Campbell has been involved with over 110 procurement projects with government agencies such as Canada Post, Infrastructure Ontario, Cancer Care Ontario, Ministry of Finance and Government of Alberta.
2. **Recommendation:** TTC to seek competitive bidding on price components as well as non-financial factors.
Response: The Request for Bid (RFB) includes a competitive bid with a pricing component of the evaluation and a qualitative component part of the evaluation.
3. **Recommendation:** Structure monthly management fee to obtain the best overall value for the Commission.
Response: The RFB has made this a more fiscally responsible contract by replacing the fixed monthly management fee with a payment schedule based on the actual service kilometres performed and setting the rates for the five year term of the contract.
4. **Recommendation:** Replace bonus entitlement with financial penalty clause to deter poor performance and non-compliance.
Response: The RFB increased the liquidated damages for failure to meet service levels and the monthly performance standards. No bonus entitlement or penalty clauses are included.
5. **Recommendation:** Require contractors to advise operators of rights, responsibilities, and reporting process.
Response: The RFB includes specific appendices outlining operator duties, responsibilities, and acknowledgement of rights as well as contractor obligation to advise the operator of same.

A public consultation was held on August 29, 2013 with the purpose of receiving input from the taxi service industry for the development of the Request for Bid. The comments and recommendations were reviewed and considered.

DISCUSSION

An RFB was publicly advertised on the MERX website as well as the TTC's website as of October 8, 2013. Twenty-three companies requested or downloaded copies of the bid documents, out of which nine submitted bids by the closing date of November 19, 2013.

Evaluation of the Bid Submissions

Submissions from the following companies were received for accessible taxi service:

1. Able Atlantic Taxi (1992) Ltd.
2. Associated Toronto Taxi Cab Co-operative Limited
3. Beck Taxi Ltd.
4. 1145659 Ontario Limited o/a Checker Taxi
5. 2028488 Ontario Limited o/a City Taxi
6. Pro-ride Logistics Inc.
7. Royal Taxi Inc.
8. 1210670 Ontario Inc. o/a Scarborough City Cab
9. Sky Limo Limited (Masood Malik)

An evaluation team consisting of three members, two from the Wheel-Trans Department and one (1) from Materials and Procurement Department (M&P) evaluated the qualitative portion of the bids in accordance with the criteria set out in the RFB and attached Appendix A.

The Fairness Commissioner, John Campbell of JD Campbell and Associates, was retained by the TTC to provide an independent third party observation and assessment to ensure that the procurement process took place in accordance with the requirements established as set out in the RFB documents and to ensure openness, fairness, and transparency during this process. It should be noted that a preliminary report (Appendix B) prepared by the Fairness Commissioner for the procurement of Accessible Taxi Service confirmed the fairness of the process based on his observations.

It was pre-determined that any bidder who passed the mandatory pass/fail requirements and who scored a total qualitative rating of at least 70% would be considered qualified and move on to the last part of the bid evaluation, the pricing component evaluation.

The recommendation for award is based on the highest total weighted score. The evaluation of bids was based on a two-envelope process and consisted of qualitative submission information in the first envelope and pricing components in the sealed second envelope which is held by the Corporate Services Department office until requested by M&P staff upon completion of the qualitative evaluation and identification of the qualified bidders.

The evaluation consisted of 70 points allocated to the qualitative merit and 30 points allocated to the pricing. Bids that passed the mandatory pass/fail requirements were scored based on qualitative criteria at the associated weightings as set out in the bid documents. It was pre-determined that bids achieving a total minimum of 49 points out of the maximum 70 points available for the qualitative evaluation would be considered qualified.

The pricing component of all qualified bidders was then evaluated, utilizing the estimated kilometres stipulated in the price schedules. The contractors were required to provide a per kilometre rate for each of the 5 years as set out in the bid documents for evaluation purposes only, to determine a total 5-year price.

Final scores for the qualitative evaluation of bid submissions were arrived at by consensus, whereby the following companies were considered qualified to perform the work:

1. Associated Toronto Taxi Cab Co-operative Limited (Co-op)
2. 1145659 Ontario Limited o/a Checker Taxi (Checker)
3. 2028488 Ontario Limited o/a City Taxi (City Taxi),
4. Royal Taxi Inc. (Royal),
5. 1210670 Ontario Inc. o/a Scarborough City Cab (Scarborough)

The overall grand total weighted score was calculated as a sum of the total weighted qualitative score and the weighted pricing score.

Upon completion of the evaluation process, the bids submitted by Co-Op, Royal, Scarborough, and Checker had the highest total weighted scores.

Non-Compliant Submissions

Pro-ride Logistics Inc. failed to submit the Agreement to Bond (Section 00 43 14) or the Agreement to Provide an Irrevocable Letter of Credit (Section 00 43 16), mandatory submission requirements. In accordance with the published TTC bid irregularities list, staff confirmed its submission is non-compliant and automatically rejected.

Sky Limo Limited (Masood Malik) failed to submit page 2 and 3 of the Bid Form which contained various items of acknowledgement such as their offer, liquidated damages, statement of compliance, insurance requirements, terms of payment, validity, etc. They also submitted an Agreement to Bond (Section 00 43 14) not executed by a Surety, both mandatory requirements. In accordance with the published TTC bid irregularities list, staff confirmed its submission is non-compliant and automatically rejected.

Able Atlantic Taxi (1992) Ltd. failed to submit the Agreement to Bond (Section 00 43 14) or the Agreement to Provide an Irrevocable Letter of Credit (Section 00 43 16), which are mandatory requirements. In accordance with the published TTC bid irregularities list, staff confirmed its submission is non-compliant and automatically rejected.

JUSTIFICATION

A new accessible taxi service contract is required in order to continue to provide service to Wheel-Trans Operations. The bids submitted by Co-op, Royal, Scarborough and Checker have been recommended for award as they have the highest overall weighted scores.

January 17, 2014
18-41

Attachments: Appendix A
Appendix B

**APPENDIX A
PROCUREMENT AUTHORIZATION
ACCESSIBLE TAXI SERVICE**

LIST OF BIDDERS

(Alphabetically)

Able Atlantic Taxi (1992) Ltd.
Associated Toronto Taxi Cab Co-operative Limited*
Beck Taxi Ltd.
1145659 Ontario Limited o/a Checker Taxi*
2028488 Ontario Limited o/a City Taxi
Pro-ride Logistics Inc.
Royal Taxi Inc.*
1210670 Ontario Inc. o/a Scarborough City Cab*
Sky Limo Limited (Masood Malik)

***Indicates Recommended Bidder**

PASS/FAIL SUBMISSION REQUIREMENTS

- Have a valid City of Toronto taxi brokerage license?
- Able to service trips anywhere in the City of Toronto?
- Operate twenty-four (24) hours, seven (7) days a week?

QUALITATIVE EVALUATION CRITERIA

A. Corporate Qualifications/Experience

- Background and capabilities providing services to persons with disabilities
- Number of years in business providing services to persons with disabilities
- Organizational chart with key staff and responsibilities
- Relevant transportation experience providing services to persons with disabilities,
- Experience in operating a dispatch centre
- Volume of service provided to persons with disabilities on an annual basis
- Relevant corporate experience by project

B. Project Team Qualifications/Experience

- Contractor's Representative
 - Number of years of related working experience
 - Number of years of direct experience providing service to persons with disabilities
 - Individual Curriculum description
 - Description of relevant experience by project

C. Proposed Project Methodology

- Description of how the Contractors ensure that policies and procedures are complied with.
- Manage the on-time delivery of service.
- Data collection, retention and storage.
- Minimize delays and GPS usage.
- On-time distribution of work to drivers and service changes.

- Manage and monitor performance of the day to day of service.
- Staff and driver recruitment, training plan, sensitivity and awareness training.
- Description of duties and responsibilities for on-street and staff supervisor.
- Implementation and compliance with AODA.
- Performance measurement (goals and objectives).
- Details of Operating Service Procedures (areas: dispatch, operators, emergency and equipment failure)
- Description of quality assurance plan.
- Description of quality assurance measures to ensure high quality service.
- Reporting capabilities including management reports and custom reports.

PRICING COMPONENT

- Bidders were to submit a Fee/KM Rate (total fee payable by the TTC to the Contractor based on a per kilometre rate) for each of the 5 years.
- Bidders were advised that the estimated monthly kilometres provided on the Price Schedule are for comparative evaluation of the Bids and the volumes are not guaranteed.
- The Fee/KM Rate includes the Operator rate (rate payable by the Contractor to the Operator per service kilometre) plus all other fees, including any Management fee/rate, all applicable costs, disbursements and allowances.
- The price schedule included maximum Fee/KM rates per year and also included the minimum Operator Rate the Contractor is required to pay the Operators from the Fee/KM rate.

APPENDIX B

JD Campbell & Associates

TTC

ACCESSIBLE TAXI SERVICES RFP

Fairness Commissioner's Report

JD Campbell & Associates

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1.0 EXECUTIVE SUMMARY

1.1 Introduction

This report presents our findings and conclusions for the Toronto Transit Commission's Accessible Taxi Services RFP. In our capacity as Fairness Commissioner we reviewed and monitored the communications, evaluations, and decision-making associated with the RFP process with a view to ensuring fairness, objectivity, transparency, and adequate documentation.

For the purposes of this review:

- Openness refers to making the RFP widely available to the vendor community so that any interested vendor can respond to the opportunity;
- 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 of 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;
- Objectivity and diligence respecting the evaluations;
- Proper use of assessment tools;
- Compliance with the process;
- Debriefing and documentation.

1.2 Findings

This report was prepared for the specific purposes of the TTC. Any other person or organization that wishes to review this report must first obtain the written permission of the TTC and JD Campbell & Associates. JD Campbell & Associates, or the individual author of this report, bear no liability whatsoever for opinions that unauthorized persons may infer from this report.

As Fairness Commissioner, we observed this RFP process, from final drafting of the RFP document until 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 an open, fair and competitive process. Particular note was made of the following:

Response Time -The posting period for the RFP was from October 8,2013 to November 7,2013. This closing date was later extended to November 19, 2013 and was considered adequate posting time given the nature of the procurement.

- **Incumbent Advantage** - Due diligence was done to ensure that incumbent Proponents had not received access to confidential information that might have represented an undue advantage. Relevant information was shared with all Proponents
- **Full Disclosure** - The RFP and the contained full description of deliverables, terms and conditions, evaluation criteria and background information such that adequate proposals could be created;
- **Communication** – Prior to posting an opportunity was provided for the general public to provide comment on the services provided through Accessible Taxis. Once the RFP was posted, one point of contact was used and answers to Proponent questions were shared with all. The MERX electronic service was used for posting the notice of the RFP opportunity. A voluntary vendor's pre-bid meeting was also held with all information being shared with all Proponents.
- **Consistency of Format** – Wording in the RFP encouraged Proponents to submit their responses in a like manner such that they could be evaluated consistently. The use of forms also helped in this regard;
- **Agreement Language** – Agreement language was provided such that the Proponents would be aware of all terms and conditions of the opportunity;
- **Conflict of Interest** – Staff were reminded of their responsibilities regarding both the confidentiality of information/documents associated with the RFP process and the need to declare any conflict of interest. Proponents were required to identify any conflict of interest as part of the RFP response

process. They were also warned against lobbying and communicating with restricted persons - staff ,agents, members of the Commission or Council;

- **Security** - Care was taken to ensure that procurement materials and proposals were kept under lock and key when not in use;
- **Rated Evaluation Criteria** – All evaluation criteria were weighted and of sufficient clarity to provide the Proponents with an understanding of how they would be evaluated;
- **Pricing** - Costing information was to be submitted in a standard format so that Proponents could be compared one with the other. See comment on the structuring of the pricing and the use of a floor amount to be paid to drivers in Appendix A;
- **Undue Influence** – Throughout the evaluation process, all decisions were made by more than one person. The evaluators all signed both individual evaluation sheets and a summary consensus meeting form;
- **Debriefings** – The RFP made provision for the debriefing of Proponents after contract award;

1.3 Outcome

As a result of this procurement process:

- Nine proposals were received;
- Three of the proposals did not pass the compliance and mandatory criteria review ;
- The remaining six proposals were then evaluated using the rated criteria;
- Five proposals passed the threshold score of the rated evaluation process and were allowed to continue on to the pricing portion of the evaluation;
- The RFP sought up to four Proponents to supply the services. The top four Proponents were selected based on total ranked scoring. Recommendations for the negotiations stage are presently being formulated.

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. 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 TTC to prepare. Also 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.

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

In our review of draft material and in discussion with the Project Team, the following features of the RFP received particular attention.

Scope and Nature of Service

The intent of the RFP was to award a contract to up to four suppliers.

The RFP provided sufficient description and background for Proponents to fully understand the nature of the opportunity and develop appropriate proposals. The RFP contained: background information; definitions; description of scope and deliverables, specifications, estimated volumes, constraints, terms and conditions as well as submission requirements. Proponents were also required to provide an Agreement to bond or an Irrevocable Letter of Credit.

Conflict of Interest

The RFP required Proponents to declare any conflict of interest and indicated that this could be the basis for disqualification.

Reserve Right

The Reserved Rights described in the RFP contained items that provided a legal basis for the TTC to deal with unexpected circumstances. In my role as Fairness Commissioner, I paid particular attention to the potential exercise of these rights. While the RFP reserved right provided latitude for arbitrary decision making, my actual observation of the process did not show any evidence that this latitude was exercised.

Evaluation

Stage 1 - Mandatory Criteria

The Mandatory Criteria were defined in objective terms such that a comply/ not-comply decision could be readily determined. They consisted of the following:

- Have a valid City of Toronto taxi brokerage licence;
- Be able to service trips anywhere in the City;
- Operate on a 24 hour/seven day a week basis.

Stage II - Rated Criteria

The RFP evaluation categories and their weights were as follows:

- Corporate Qualifications (25%);
- Team Qualifications (10%);
- Methodology(35%).

Each of these categories contained sub-categories which were also weighted. this helped to make the evaluation process transparent.

Proponents needed to meet a Threshold score of 49 out of 70 points to continue on to the pricing portion of the evaluation.

Stage III- Pricing

A potential 30 points were available for pricing. Pricing was determined through application of a formula.

The Proponents were required to submit the pricing information in a separate envelope to ensure that this information would not influence the evaluators during the *Stage II* evaluation.

Proponents were required to provide pricing that could not exceed a set price cap as defined in the RFP. They were also required to pay the operators a minimum amount. See Appendix A for a discussion of this issue.

Debriefs

The unsuccessful Proponents were offered opportunity for a debriefing.

3.0 COMMUNICATION AND INFORMATION TO PROPONENTS

3.1 Appropriate Practice

Provision should be made in the RFP document 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 TTC staff protect against bid repair.

3.2 Findings

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

3.3 Description of Process

Pre-Posting Consultations

There was a public consultation session held in August before release of the RFP. Its intent was to provide the general public with an opportunity for comment on Accessible taxi services before the RFP document was finalized. This opportunity was advertised on the TTC website and the results were sent to all participants. Answers were provided later in writing to all questions asked and comments made were taken under advisement.

Posting Period

The posting period for the RFP was from October 8, 2013 to November 7, 2013. The closing date was later extended to November 19, 2013. This was considered adequate posting time given the nature of the procurement.

One Point of Contact

Provision was made in the RFP for one source of information. Proponents were warned that it was not acceptable to contact other staff concerning the RFP during the course of the procurement process. Bidders that wanted additional information were instructed to submit their questions in writing to the RFP Co-ordinator.

The RFP contained language that also warned against lobbying and from communicating with TTC staff, advisors and members of both the Commission and Council. There was also a prohibition provided against the offering of gratuities.

Distribution

The RFP was advertised on MERX which is the electronic bulletin board that many public sector organizations use to advertise RFP processes. This process provides for broad and open access to the procurement opportunity.

Vendor Meeting

A Vendor Meeting was held to fully describe and discuss the mandatory requirements and details of the RFP. Opportunity was also provided for Proponents to ask any questions. Detailed minutes of the meeting were taken and both the minutes and questions and answers were later shared with all Proponents in documented form.

Proponent Questions Concerning the RFP and Addendum

There were eight Addendum issued. We received assurance from the Project staff that these changes and responses to Proponent questions were based on business need and not made simply to accommodate a particular Proponent's participation.

4.0 CONFIDENTIALITY/SECURITY OF RFP, PROPOSALS AND EVALUATIONS

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. To our knowledge, no information about the RFP (during development), the proposals and/or evaluation was communicated in any form to persons not directly involved with the process. We know of no instance in which a proponent's proposal, or any information generated in the evaluation process, was not kept secure and confidential.

4.3 Description of Process and Findings

Security of Documents

Appropriate practice as described under Section 4.1 above was followed. The evaluators were instructed to keep these materials secure at all times.

Both Wheel Trans and the Procurement offices are locked and secured during non business hours therefore files are secure.

Confidentiality

The RFP was developed by a small Project Team. The circulation of project documents was restricted to the members of this team with the exception of management briefings on progress. Evaluators were reminded of their obligations regarding both confidentiality and conflict of interest.

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 in the services under consideration. The evaluation teams for the mandatory requirements; the rated evaluation and the pricing were comprised of multiple members to guard against undue influence by one individual. All evaluations were conducted by TTC staff members.

The number of evaluators for the rated evaluation was three. This is considered the minimum number to help control for bias and human error.

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.

A review needs to be conducted to ensure that any consultant who is 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 a 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 for the project.

Proponent Form

The RFP contained the standard Conflict of Interest clause.

Composition of the Evaluation Committee

The evaluators were all TTC employees. All decisions were made and signed off by more than two people thus no one was in a position of undue influence.

Incumbent Vendors

There were incumbent vendors which had been supplying the same, or similar, services to the TTC for a number of years. Staff provided assurance that these providers had not had access to any confidential information, relevant to this RFP, which has not been provided in the RFP document.

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:

- 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 mandatory requirements, qualitative evaluation and costing evaluations 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 an 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

The Materials and Procurement Lead was responsible for:

- Managing the evaluation process;
- Ensuring that proper process was followed;
- Tabulating the results;
- Documenting the process;

The Evaluation Committee members were responsible for:

- Reviewing proposals and allocating individual preliminary scores;
- Attending Consensus meetings to discuss each rating;
- Amending preliminary scores in light of group discussion if appropriate;
- Signing off on the documentation concerning group scores and their rationale.

Management of Undue Influence

At no point in the process were decisions affecting the outcome of the evaluation process made by one individual. All final decisions were signed off by all evaluation committee members.

Common Scoring Sheets

Common evaluation forms were developed for each stage of the evaluation. The use of these forms helped ensure that the proposals were judged on the same basis making comparisons much easier.

Mandatory Requirements

There were 9 proposals received.

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

On reviewing one of the proposals the TTC staff had difficulty in locating the Bid Form, which was a mandatory component. Procurement staff opened the pricing envelop of this proposal and were able to locate the required document. The envelope was then re-sealed and those responsible for the rated evaluation were not given access to the pricing information but were informed that the required form had been located. As Fairness Commissioner I concurred with this action.

There were three other Proponents, however, that did not pass the Mandatory Criteria stage.

The first Proponent failed to submit the Agreement to Bond or the Agreement to Provide An Irrevocable letter of Credit.

The second Proponent submitted the required Bid Form but staff found that the second and third pages of this form was missing. Also the submitted Agreement to Bond Form submitted was not executed by a Surety as required.

The third Proponent failed to submit the Agreement to Bond or the Agreement to Provide An Irrevocable letter of Credit

TTC staff sought the concurrence of both Legal and Fairness before finalizing these decisions to disqualify.

Rated Evaluation Process

It was agreed that no substitutions would be allowed for committee members and that the group evaluations would not take place unless all committee members were present and had completed their individual evaluations. This helped to promote fairness, completeness and consistency. All evaluators completed individual evaluation forms. These forms contained space for comments but not for scoring. In the future the TTC should consider having evaluators score as well as comment on each submission at this stage.

The Procurement Lead provided a personal orientation for each evaluator covering roles, responsibilities, COI, confidentiality, forms, schedules, etc. In the future, the TTC should consider developing an Evaluators Guide to document such advice and instruction.

It was determined that scoring the proposals for the rated criteria would be accomplished by means of a consensus score. An attempt was made to encourage committee members to move to scores that were within a narrow range. In the committee meetings, if there was a significant variance between individual evaluator scores further discussion was held before averaging the scores.

The Fairness Commissioner attended the meeting of the rated evaluation committee. Based on observations of the process we 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 the total number of evaluators involved. While instances of divergent scores were identified and discussed, there was no undue pressure to conform to the group opinion. The evaluators considered the proposals in their entirety and did not discuss knowledge of the Proponents outside of what was contained in the proposals.

Review of Financials

Financial evaluation was done by an application of formula. This was done by two individuals independently and the results reconciled.

During the evaluation of pricing it was noted that one Proponent had used the Addendum 3 Price Schedule. This Price Schedule had subsequently been revised in Addendum 8. The change made in Addendum 8 was adding the following "The Fee/KM rates, the Extended Price/ Year and the Total stated in the table above shall be rounded to two decimal places". No other changes were made.

A decision was made and supported by Legal and the Fairness Commissioner to accept this proposal as the Proponent had bid to two decimal places as specified in Addendum 8.

7.4 Outcome

As a result of this procurement process:

- Nine proposals were received;
- Three of the proposals did not pass the compliance review and the mandatory criteria ;
- The remaining six proposals were then evaluated using the rated criteria;
- Five proposals passed the threshold score of the rated evaluation process and were allowed to continue on to the pricing portion of the evaluation;
- The RFP sought up to four Proponents to supply the services. The top four Proponents were selected based on total ranked scoring. Recommendations for the negotiations stage are presently being formulated.

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 Successful Proponent's right to privacy regarding proprietary information of a commercial nature is protected.

At the request of an unsuccessful bidder TTC can provide the following information regarding a tender/RFP;

- a) The name and address of the successful bidder;
- b) The successful total bid price;
- c) The name and address of every bidder (including qualified and disqualified suppliers);
- d) The scoring of all criteria for the bidder making the inquiry.

While the unsuccessful bidders have a right to full disclosure, it is often best to focus on the performance of the specific bidder rather than to contrast their performance with others.

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 comments to be shared during the debriefing sessions and document the process for audit purposes. These notes should be shared with all evaluation committee members and an opportunity provided to comment and sign off.

TTC should retain all documentation for possible reference or audit. This material includes such documents as:

- Project file;
- Management approvals and reports;
- RFP;
- Communications;
- Responses/proposals;
- Evaluation of responses/ proposals;
- Agreements/contracts;
- Proof of receipt of goods or services/agreement deliverables.

8.2 Description of Process and Findings

The RFP indicated that debriefings would be provided to unsuccessful Proponents upon request. At the time of the submission of this report, debriefings have not been held.

It is our understanding that copies of all pertinent documentation were retained.

APPENDIX A

Introduction

As Fairness Commissioner, I was asked to provide comment regarding the implications of the Auditor General Report on the former TTC Wheel-Trans Accessible Taxi Service RFP.

Background

The last Auditor General Report contained two recommendations related to competitive pricing:

Recommendation 16:

The Commission request the Chief Executive Officer to ensure that all future Requests For Proposal for Wheel-Trans contracted taxi services are designed to seek competitive bidding on price components as well as non-financial factors.

The price components in the current taxi contracts were not determined by a competitive bidding process. Price components such as the rate for accessible taxi drivers and the monthly management/administrative fee for contractors were pre-determined by staff and prescribed in the RFP documents

While we appreciate the need for fair and equitable compensation to taxi drivers and contractors, the lack of competitive bidding on prices did not ensure that the services were procured at the best overall value for the Commission. Competitive bidding on price components should be a fundamental requirement in procurement of goods and services for the City.

Recommendation 17:

The Commission request the Chief Executive Officer, in developing future Request For Proposal for Wheel-Trans contracted accessible taxi services, to ensure that the monthly management fee is adequately structured to obtain the best overall value for the Commission.

Draft RFP

The current RFP for accessible taxi services responded to Recommendation 17, introducing a competitive price component for the management fee. It did not fully responded to Recommendation 16, in that, it maintained a minimum base price for the

cost of taxi drivers. My understanding is that the price for this latter component represents an estimate of approximately 90% of the cost of providing the proposed service.

Comment

One of the hallmarks of fairness in public sector procurement is that goods and services be acquired competitively. For public procurement to be defensible, goods and services need to be acquired from the vendor (s) that can provide the highest level of service at the lowest cost. In order to justify not following the Auditor General's recommendations a business case needed to explain how, in this instance, moving to full price competition would not be in the best interests of the TTC and the taxpayers it serves.

In discussions, staff pointed to concerns regarding the vendor's ability to retain drivers thus defaulting on their contractual agreement unless the TTC dictated a minimum rate to be paid to drivers.

Options discussed to encourage market forces to manage this risk included:

- Requirement of performance bond thus encouraging Proponents to provide proposals that would pay drivers a rate which would motivate the drivers to stay with the contract;
- Stipulation that contract failure would preclude the Successful Proponent from bidding on TTC for future contracts. This would also motivate Proponents to provide proposals that would pay drivers a rate which would motivate the drivers to stay with the contract;
- Stipulation that the Successful Proponent enter into binding agreements with drivers for the life of the contract;
- A Reserve Right in the contract that the TTC be allowed to accept the original proposal of the second highest ranked Proponent if the first ranked Proponent faulted on its contract;
- Using highly weighted ranked criteria that required Proponents to demonstrate capacity to provide continuity of service for the lifecycle of the contract including both a driver retention and broader contingency plans;
- Using a COLA or industry benchmark adjustment to reduce the risk of major fluctuations in the price of petroleum products thus reducing the risk of contract default for this other significant component of cost .

It was my view, as Fairness Commissioner, that a business case for non-competitive procurement of approximately 90% of the cost of the provision of taxi service would need to explain why these strategies were inadequate in managing the risk of contractor default.

TTC Staff produced such a business case which follows. It is my view as Fairness Commissioner that staff intent was to act in the best interests of the public in making the judgments involved and were the ones best placed to make these judgments based on their technical knowledge of this particular marketplace.

TTC Business Case

Summary:

To ensure fairness and to meet the Auditor General's recommendations, the Fairness Commissioner recommended that the TTC allow proponents responding to the Request for Proposal (RFP) for Accessible Taxi (AT) service determine the amount to be paid to AT operators for service under the future contract(s).

After considering the Wheel-Trans customer service requirements for non-ambulatory customers, the operating and business structures in the taxi industry and historical experience allowing taxi companies to determine the payment to taxi operators, the TTC has determined that to ensure continuous, reliable, and quality AT service to Wheel-Trans customers while being fiscally responsible to the taxpayer, the price schedule in the upcoming RFP for the AT service should require contractors to directly pay AT operators a minimum amount per kilometre.

Reasons:

In coming to the decision to require taxi companies to ensure a minimum amount per kilometre, the TTC considered the following:

- Supply and demand;
- Historical experience;
- Taxi industry;
- Reliance on breach of contract provisions; and
- Fiscal responsibility and value to the taxpayer.

Supply and Demand:

Wheel-Trans provides an essential service to members of the public with mobility restrictions which prevent them from using regular TTC service for some or all of their trips. For many customers, Wheel-Trans is the only means of transport to work, school, medical appointments, shopping, and family and social engagements. Continuous, reliable service is essential for many Wheel-Trans customers to be able to participate fully in society. It is a priority for the TTC to provide continuous, reliable Wheel-Trans service to its customers.

ATs provide a significant portion of Wheel-Trans service. Specifically, 40% of all Wheel-Trans service is provided by ATs. Wheel-Trans has approximately 36,000 active registrants and provides approximately 10,000 trips per day using Wheel-Trans buses, ATs, and sedan taxis. ATs provide approximately 4,000 trips per day.

The ATs are used to carry Wheel-Trans customers who are not ambulatory. These are customers who use large mobility devices such as wheelchairs. Approximately 24% of Wheel-Trans customers are not ambulatory. Wheel-Trans buses and ATs are used to provide service to these customers. These customers cannot be accommodated on sedan taxis.

There is a limited supply of ATs in the City of Toronto. Currently, there are approximately 190 ATs licensed to operate in the City of Toronto. To meet the demand of approximately 4,000 trips per day, Wheel-Trans requires 165 ATs to each operate for Wheel-Trans 6 days per week, 12 hours per day (to provide 24/7 service). The demand or need by the TTC for ATs is high and supply is limited.

Historical Experience:

For the contract period 1999 to 2008, the contract allowed taxi companies to determine the amount to be paid to the operators. The level of compensation varied by taxi company and was considered to be inadequate by the operators. There was significant instability in the provision of the service. Operators did not give priority to Wheel-Trans service. The quality and reliability of the service dropped. Complaints were at a level of 1.7 per 1000. In comparison, the current complaint level is 0.95 per 1000 for AT (noting that the current contract guarantees a minimum amount to be paid to the operators).

Taxi Industry:

The business model in the taxi industry is an individual, partnership or corporation owns one or more licensed "plates". The owner of a plate or vehicle will usually hire or contract with other individuals to operate the vehicle. The owner will contract with a taxi company (such as Royal Taxi or Co-op Taxi) for dispatch services. The operators are not usually employees of the taxi company. Rather, there are business arrangements between owner, operators, and/or the taxi company.

There is a high likelihood that operators who are not provided adequate compensation for the work will either move between owners or owners of the plates will move between taxi companies. Or, of more significant risk, the operators or owners will simply decide not to provide service to Wheel-Trans as it is more profitable to provide service to the general public "off the street".

The TTC will be contracting with taxi companies with an interest in maximizing return on the contract. Given our historical experience and the business model used in the taxi

industry, we anticipate that the taxi companies will pay the operators an amount which may not be considered to be adequate by the operators. The result being the operators will move companies causing inconsistent and unreliable service or simply stop providing service to Wheel-Trans. Therefore, the failure to adequately pay the operators is a significant risk to the continuity and reliability of Wheel-Trans service for customers who are not ambulatory.

Relying on Breach of Contract provisions:

The TTC will use various enforcement provisions in the contract to oblige the taxi companies to ensure continuous and reliable service such as liquidated damages and contract security (e.g. performance bond or irrevocable letter of credit).

However, enforcing the contract will not ensure continuity of service if operators refuse to provide the service. Given the limited number of ATs available in the City of Toronto, there is no available or reasonable replacement for the lost service.

AT service cannot be replaced by either Wheel-Trans buses or sedan taxis. Specifically, Wheel-Trans buses are fully utilized. While 1 to 2% of AT service could be absorbed using Wheel-Trans buses for a short period of time, it is not sustainable. Customers who are not ambulatory cannot be accommodated on sedan taxis. Sedan taxis are not accessible and cannot carry customers in large mobility devices. Therefore, a significant portion of Wheel-Trans service could not be provided if ATs were not available to the TTC. In addition, it would greatly impact one segment of Wheel-Trans customers, those who use large mobility devices and who have limited alternatives for accessible transport.

Despite any enforcement provision in the contract, ultimately the TTC would not be able to provide service to its customers who have limited access to means of transportation.

Fiscal Responsibility and Value to the Taxpayer

A fully competitive bid is a means to ensure that the taxpayer is getting value for tax dollars. It is a priority of the TTC to ensure good fiscal management. Providing continuous and reliable Wheel-Trans service is a priority which must be balanced with the need to ensure value for the taxpayer through the AT RFP.

The TTC has undertaken a financial analysis to determine a reasonable amount to be paid to AT operators. Taking into account the approximate costs to operate an AT vehicle for the service required by the TTC, the TTC has determined that a minimum \$2.50 per kilometre is reasonable and also provides cost savings to the taxpayer. Specifically, the AT operator rate under the current contract is \$2.80 per kilometre. A reduction of \$0.30 will be savings of approximately \$2.1 million in the first year of the contract. Based on the understanding of the taxi industry, the TTC believes that, while lower than the current contract, the minimum amount of \$2.50 provides adequate

compensation for operators such that they will provide continuous and reliable Wheel-Trans service.

Conclusion:

Given the TTC's priority to ensure continuous and reliable Wheel-Trans service to non-ambulatory customers and the inability to replace this service in the event of a breach of contract, the TTC has determined that a minimum amount of \$2.50 provides fair compensation and will reduce the risk of loss of service and is fiscally responsible.