

TORONTO TRANSIT COMMISSION REPORT NO.

MEETING DATE: May 28, 2014

SUBJECT: Procurement Authorization – Sedan Meter-Based Taxi Service for Wheel-Trans

ACTION ITEM

REASON FOR CONFIDENTIAL INFORMATION:

This report contains advice or communications that are subject to solicitor-client privilege.

RECOMMENDATION

It is recommended that the Board:

- 1) Receive the information provided in the Confidential Attachment.
- 2) That the information provided in the confidential attachment remain confidential in its entirety, as it contains information that is subject to solicitor-client privilege.
- 3) Approve recommendation in the deferred report Attachment 'A'.

BACKGROUND

At its meeting of April 30, 2014, Attachment 'A' was deferred. Since that time staff has reviewed communication received by third parties and has also conducted a review of the program requirements. As set out in Attachment 'A' only two compliant and acceptable bids were received and staff is recommending that contracts be awarded to those two bidders.

40-40

Attachments

- Letter from City Taxi
- Letter from Arya & Sher (Able Atlantic)
- Appendix A – April 30, 2014 Deferred Report



April 29th, 2014

To: Chairs and Members of the Board of the Toronto Transit Commission

We would like to appear before the board to review the rules set out in your document that were not clear with regard to what was requested in relation to the surety of the TTC documents. We do understand that we have missed the deadline for the formal request to speak at the meeting which was required by 12:00 noon of the day before the meeting. Unfortunately, by the time we found out that we were disqualified, the time for our request had passed.

I am writing this letter in response to a potential contract award at the Toronto Transit Commission board meeting on April 30th, 2014 posted as "Sedan Meter-Based Taxi Service for Wheel-Trans." City Taxi strongly feels that they have been treated unfairly with respect to the award process. We honourably ask that this award be postponed until the next meeting to have the process issue resolved regarding this contract. Due to the fact that this is an 80 million dollar purchase order involving tax payer money, we feel that further consideration needs to be given to this contract in regards to your policies and procedures pertaining to this contract.

City Taxi has followed all the rules related to government procurement including attending a debriefing on the last TTC contract on Friday February 7th, 2014 in which the following information was presented to our company.

City Taxi attended a meeting with representatives of the Toronto Transit Commission for the purpose of debriefing in regards to bid no. P34PN13755, "Response to request for bids for Accessible Taxi Service."

City Taxi was represented by Mr. Avtar S. Sekhon, President of City Taxi and Mr. Doug Taylor, operations and training consultant for City Taxi.

Ms. Joanna Raimondo, Contract Administrator for TTC and Mr. David LoPresti, Transit Planner Contracted Taxi Services, represented TTC.

The debriefing was held at 5160 Yonge Street, Conference Room 6-030 at 13:30 on Friday February 7th, 2014. During the debriefing, Ms. Raimondo expressed several times the closeness of all submissions that qualified for evaluation and by her admittance; City Taxi had met all the qualifying criteria.

Ms. Raimondo proceeded to discuss areas where City Taxi had not explained certain items in complete detail, which unfortunately led us to not being awarded this contract. Some of the areas included:

- Corporate Qualifications
- Org Chart Presentation

- Key Responsibilities of the day to day operations
- Volume of vehicles throughout the day
- Call centre duties and dispatch link
- Mobile supervision

At the conclusion of the debriefing, Mr. Taylor asked a final question to the TTC representative inquiring if there were any outstanding areas where City Taxi may have responded incorrectly or and other issues relating to City Taxi's response to the bid. Ms. Raimondo assured the City Taxi group that there were no additional requirements necessary for qualification of the contract and by correcting the issues discussed that day, City Taxi was very likely to be successful and move forward with the next bidding process.

Mr. Taylor appreciated both Ms. Raimondo and Mr. LoPresti for their time and generosity. City Taxi ended the meeting assured that they had met all the requirements and had made all the necessary corrections needed for the next bidding opportunity.

During the entire meeting, at no time was there any mention about the bonding process that would disqualify the bid. Regarding City Taxi's previous submission with respect to the Agreement to Bond, or Letter of Irrevocable Credit, it was not an issue that would make the bid non-compliant.

As we have mentioned, it has just been brought to our attention that our submission was non-compliant late in the day on April 29th, 2014. The board award date of April 30th, 2014 is tomorrow for the procurement authorization for the Sedan Meter-Based Taxi Services for Wheel-Trans. We would ask that you please delay the award of this contract until we have had the opportunity to talk to your procurement staff with respect to this bid being non-compliant.

We have retained the services of Mr. Stephen Bauld, President of Purchasing Consultants International Inc., to help us through this procurement process. We feel that we have not been treated in a fair, open and transparent manner with respect to this award. We would have had the Letter of Credit from the Bank of Nova Scotia for the sum of \$250,000 ready to send out as we thought it was fine to send the information exactly as we did in the previous bid proposal. The document states that we have 20 days to produce this information after the award process. The document also states that the award can include up to three bidders.

It is my understanding that the contract will not start until July, 2014, thus postponing the award should not have an effect on the service requirements. We would therefore ask that we have the chance to be able to address the committee before the award, or set up a separate meeting to address our concerns with respect to this issue. Please advise as soon as possible as to the best direction we should take to be able to review our procurement concerns before the contract is awarded.

Thank You,



Avtar S. Sekhon
President
City Taxi

ARYA & SHER

BARRISTERS & SOLICITORS

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April 30, 2014

Mr. Andy Byford, CEO
Toronto Transit Commission

Dear Mr. Byford:

**Re: Request for Bid ("RFB") for Sedan Meter-Based Taxi Service for Wheel-Trans
Able Atlantic Taxi (2013) Inc. Consortium**

I am legal counsel for the Able Atlantic Taxi (2013) Inc. Consortium ("Able Atlantic") which recently submitted a bid to be a provider pursuant to the above-noted RFB.

By way of background, the Able Atlantic Consortium consists of Able Atlantic Taxi, Maple Leaf Taxi, Beeline Taxi, and Smart Taxi. Combined, they have approximately 500 Taxis under their respective banners making them the third largest taxi provider in the City of Toronto. Based on discussions, they also have access to approximately a further 200 Taxis should they be selected as a provider pursuant to the Bid.

The purpose of this letter is to highlight a few key issues for the purposes of your review of TTC staff's recommendation on the Bid. The Able Atlantic Taxi Consortium Bid was not reviewed by staff as they have advised in their report that the bidder did not provide a technical item with their Bid – the form for an Irrevocable Agreement to Provide a Letter of Credit and Agreement to Bond. Our clients were unclear about the requirements surrounding these items and essentially because of the wording of the RFB documents, they understood the requirement to be that the Letter of Credit and Bond would only be required once they were successful in the Bid. To seek clarity on the matter, they emailed staff to indicate that they were unclear with this requirement and asked specifically whether the Bid only required these items after they were successful in the Bid. Staff's response to this specific email inquiry was to copy and paste sections of the Bid documents. As a result of this miscommunication, the Able Atlantic Taxi Consortium did not submit these documents and provided a copy of the email with its Bid submission together with other supporting materials to note that they could obtain the Letter of Credit and Bond when the Bid was successful. Essentially, they understood that these two documents which were in the Bid and were to be signed, were only to be signed once the actual Bond and Letter of Credit were obtained.

REASONS WHY THE TTC SHOULD RECONSIDER STAFF'S REPORT

We respectfully submit that the TTC and Board should reconsider staff's recommendation not to even assess the Able Atlantic Taxi Consortium's submission for the following reasons:

1. **Fairness:** The Able Atlantic Taxi Consortium is not an incumbent and genuinely misunderstood the communication from TTC staff. Their submission should not simply be discarded on a technical ground. The only other Bid which was not reviewed was also discarded specifically in relation to failure to comply with this area of the RFB;
2. **Benefits to TTC:** The TTC would greatly benefit from a third provider of services pursuant to this RFB which would increase the overall capacity of services by adding more available taxis to the pool as well as increasing competition among service providers to provide exemplary services to the TTC;
3. **Strength of Bid:** The Able Atlantic Taxi Consortium has previously provided services to the TTC between approximately 1982 and 2002; has a decent size fleet of taxis available; provides similar services to other private and public organizations; and in our view had a relatively strong Bid otherwise.

REQUEST

Prior to awarding this contract (or any dollar figures associated with the contract), the Able Atlantic Taxi Consortium is requesting that the TTC reissue a short RFB to allow Able Atlantic Taxi and any other taxi providers to submit a Bid to be the third provider of services to the TTC.

Yours very truly,



Kashif Sher

cc. Vince Rodo, CFO and CAO
Maria Augimeri, TTC Chair
Maureen Adamson, Vice-Chair
Raymond Cho
Josh Colle
Glenn De Baeremaeker
Nick Di Donato
Alan Heisey
Peter Milczyn
John Parker
Karen Stintz
Anju Virmani

TORONTO TRANSIT COMMISSION REPORT NO.

MEETING DATE: April 30, 2014 Resubmitted: May 28, 2014 – Attachment 'A'

SUBJECT: PROCUREMENT AUTHORIZATION –
SEDAN METER-BASED TAXI SERVICE FOR WHEEL-TRANS

ACTION ITEM

RECOMMENDATION

It is recommended that the Board authorize the award of contracts for the Sedan Meter-Based Taxi Service for Wheel-Trans 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:

Beck Taxi Limited (Beck)	\$ 40,000,000
Associated Toronto Taxi Cab Co-Operative Limited (Co-Op)	<u>\$ 40,000,000</u>
 Total Overall Upset Limit Amount	 \$ 80,000,000

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 the sedan meter-based 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 (TTC) currently has two (2) contractors providing sedan meter-based 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. Sedan taxis primarily provide service to ambulatory customers using devices such as canes and small folding wheelchairs and walkers.

Currently buses accommodate 38% of all customer trips with the remaining 62% accommodated by the contracted service providers. The 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.

In order to maintain optimal reliable and continuous service to our customers over the next five (5) years, the TTC is seeking services from up to three (3) contractors to provide sedan meter-based taxi service and supplement the existing Wheel-Trans bus services. Contractors are required to provide a minimum of 200 sedan taxicabs and drivers to provide service to registered Wheel-Trans customers for the start of service. 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 this Wheel-Trans contract:

1. **Recommendation:** Retain a Fairness Commissioner to oversee the entire procurement process.

Response: The TTC retained the firm JD Campbell and Associates as 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:** 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 clause are included.

4. **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 RFB for both the Accessible Taxi Service and Sedan Meter-Based Taxi Service for Wheel-Trans contracts. 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 February 14, 2014. Fourteen (14) companies requested or downloaded copies of the bid

documents, out of which four submitted bids by the closing date of March 18, 2014. A pre-bid meeting was held with the organizations that downloaded copies of the RFB on February 26, 2014.

Evaluation of the Bid Submissions

Submissions from the following companies were received for the Sedan Meter-Based Taxi Service for Wheel-Trans:

1. Able Atlantic Taxi (2013) Inc.
2. Associated Toronto Taxi Cab Co-Operative Limited
3. Beck Taxi Ltd.
4. 2028488 Ontario Limited o/a City Taxi

An Evaluation Team consisting of three (3) members, two (2) from the Wheel-Trans Department and one (1) from Materials and Procurement (M&P) Department 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 in the final report (Appendix B) prepared by the Fairness Commissioner for the procurement of the Sedan Meter-Based Taxi Service for Wheel-Trans 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. Bidders were required to submit an administration fee as a percentage (%) and the total monthly fee payable will be calculated using the administration fee bid (%) of the total monthly meter receipts. In addition, the TTC will pay the successful bidder(s) the approved taxi tariff as set out in the City of Toronto Municipal Code, Chapter 545, Schedule C, Tariff A, as amended, including all taxes (the "Meter Rate") for all trips and they are responsible to pay the driver the full Meter Rate based on the work performed.

The bidder with the lowest administration fee receives the maximum 30 points available and the balance of the bids will receive pricing points prorated accordingly (using a formula as detailed in the RFB). The overall grand total weighted score was calculated as a sum of the total weighted qualitative score and the weighted pricing score.

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
2. Beck Taxi Ltd.

Upon completion of the evaluation process, the bids submitted by Co-Op and Beck had the highest total weighted scores and are recommended for award.

Non-Compliant Submissions

Able Atlantic Taxi (2013) Inc. (Able) submitted a bid as a joint venture formed by the following companies: Able Atlantic Taxi (2103) Inc., Maple Leaf Taxi-cab Limited, Imperial Taxi, BeeLine Taxi, and Smart Taxi. Able 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) for contract security in the amount of \$250,000.00, which is a mandatory requirement. In accordance with the published TTC bid irregularities list, staff confirmed its submission is non-compliant and automatically rejected.

2028488 Ontario Limited o/a City Taxi (City Taxi) submitted an Agreement to Bond (Section 00 43 14) and the form requires that the surety named be a surety licensed in the Province of Ontario. However, according to the Financial Services Commission of Ontario website, which contains the current list of all approved insurers, the surety named in the form submitted by City Taxi is not a surety licensed in the Province of Ontario. In addition, the named surety on the form did not execute the form as required. In accordance with the published TTC bid irregularities list, staff confirmed its submission is non-compliant and automatically rejected.

JUSTIFICATION

A new sedan meter-based taxi service for Wheel-Trans contract is required in order to continue to provide service to Wheel-Trans operations. The bids submitted by Co-Op and Beck have been recommended for award as they have the highest overall weighted scores.

April 16, 2014
18-41

Attachment: Appendix A
Appendix B

**APPENDIX A
PROCUREMENT AUTHORIZATION
SEDAN METER-BASED TAXI SERVICE FOR WHEEL-TRANS**

LIST OF BIDDERS

(Alphabetically)

Able Atlantic Taxi (1992) Ltd.
Associated Toronto Taxi Cab Co-Operative Limited*
Beck Taxi Ltd.*
2028488 Ontario Limited o/a City Taxi

***Indicates Recommended Bidder**

PASS/FAIL SUBMISSION REQUIREMENTS

- Have a valid City of Toronto taxi brokerage license for a minimum of two years?
- Do you provide sedan taxi service in the City of Toronto?
- Operate twenty-four (24) hours, seven (7) days a week in the City of Toronto (boundaries: Lake Ontario to the south, Pickering Town Line to the east, Steeles Avenue to the north and Etobicoke Creek to the west?)
- Do you currently have one hundred (100) sedan licensed taxicabs and Drivers operating under your Brokerage?

QUALITATIVE EVALUATION CRITERIA

A. Corporate Qualifications/Experience

- Background and capabilities providing services to persons with disabilities
- Number of years in business providing taxi service
- Relevant transportation experience in providing taxi service including the number and type of vehicles operated on a daily, weekly basis and the daily service kilometres traveled
- Volume of trips broken down as follows: i) volume of trips provided on an annual basis; ii) volume and distribution of trips provided on a weekday and weekend; iii) number of vehicles used to provide all the aforementioned trips
- Relevant corporate experience by project

B. Project Team Qualifications/Experience

- Contractor's Representative
 - Number of years working in the taxi industry
 - Number of years of direct experience providing service to persons with disabilities
 - Capsule Curriculum Vitae description of individual and qualifications
 - List relevant experience specifically highlighting by project

- On-Street Supervisor
 - Number of years of related working experience
 - Number of years of direct experience providing service to persons with disabilities
 - Capsule Curriculum Vitae description of individual and qualifications
 - List relevant experience specifically highlighting by project
- Dispatch Centre Supervisor
 - Number of years of related working experience
 - Number of years of direct experience providing service to persons with disabilities
 - Capsule Curriculum Vitae description of individual and qualifications
 - List relevant experience specifically highlighting by project

C. Proposed Project Methodology

- Implementation Plan
- Recruitment Strategy
- Training Plan
- Detailed methodology for implementing and completing the Work
- How will you ensure that data is recorded, protected, retained, and made available to the TTC upon request
- Provide details for the implementation and compliance with the Accessibility for Ontarians with Disabilities Act (AODA) for your staff and drivers
- Provide a summary of how performance is measured
- Dispatch Centre resources and capabilities
- Details of the Operating Service Procedures (Drivers, Emergency situations, and Equipment failure)
- Describe the quality assurance measures in place to ensure the delivery of a high level of service and how service is managed and monitored to ensure quality
- Provide a list of business summary reports that you propose to use for the management of the Contract

PRICING COMPONENT

- The approved taxi tariff as set out in the City of Toronto Municipal Code, Chapter 545, Schedule C, Tariff A, as amended, including all taxes (the "Meter Rate") will be paid to the successful Bidder(s) for all trips and they are responsible to pay the driver the full Meter Rate based on the Work performed.
- Bidders were to submit an administrative fee as a percentage (%) and the total monthly fee payable by the TTC to the successful Bidder(s) will be calculated using the administration fee bid (%) of the total monthly meter receipts.

APPENDIX B

JD Campbell & Associates

TTC
SEDAN METER-BASED TAXI SERVICE
FOR WHEEL-TRANS REQUEST FOR BIDS (RFB)
No. P34PZ13766

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 Sedan Meter-Based Taxi Service Request for Bids (RFB). In our capacity as Fairness Commissioner we reviewed and monitored the communications, evaluations, and decision-making associated with the RFB process with a view to ensuring fairness, objectivity, transparency, and adequate documentation.

The Toronto Transit Commission (TTC) provides specialized accessible service to Wheel-Trans Service Customers. Currently, Wheel-Trans provides approximately three million trips annually and has experienced an annual growth of approximately 6%.

The TTC was seeking the services from up to three Contractors to supplement the existing Wheel-Trans bus service by providing sedan meter-based taxi service. Contractors are required to provide a minimum of two hundred (200) licensed Municipal Licensing and Standards (ML&S) Sedan Taxi Vehicles and Drivers to provide on time door to door service to Wheel-trans customers including escorting passengers, ensuring that mobility aids are adequately secured without damage and ensuring passengers are adequately secured. Contractors are to service trips anywhere in the City of Toronto.

For the purposes of this review:

- Openness refers to making the RFB 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 RFB 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. Note that this report in no way purports to offer legal opinion or advice.

As Fairness Commissioner, we observed this RFB process, from final drafting of the RFB 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 RFB was from February 14, 2014 to March 18, 2013. The closing date was an extension based on Proponent request. The posting time was considered adequate given the nature of the procurement and the fact that it had been preceded by a public consultation process.
- **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 RFB 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 Wheel-Trans for both Accessible and Sedan Taxis service. Once the RFB was posted, one point of contact was used and answers to Proponent questions were shared with all. The MERX electronic service and the TTC Website were used for posting the notice of the RFB 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 RFB 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 RFB process and the need to declare any conflict of interest. Proponents were required to identify any conflict of interest as part of the RFB 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. Note that pricing submitted dealt with administrative requirements. Per trip costs are to be reimbursed on a metered basis.
- **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 RFB made provision for the debriefing of Proponents after contract award;

1.3 Outcome

As a result of this procurement process:

- Four proposals were received;
- Two of the proposals did not pass the compliance review and the submission mandatory criteria;
- The remaining two proposals were then evaluated using the rated criteria;
- Both proposals passed the threshold score of the rated evaluation process and were allowed to continue on to the pricing portion of the evaluation;
- The RFB sought up to three Proponents to supply the services. The two qualified Proponents were selected based on total ranked scoring and having submitted a compliant bid.

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 RFB 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 RFB DOCUMENT

2.1 Appropriate Practice

The wording of the RFB 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 RFB 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 RFB 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 RFB received particular attention.

Scope and Nature of Service

The intent of the RFB was to award a contract to up to three suppliers.

The RFB provided sufficient description and background for Proponents to fully understand the nature of the opportunity and develop appropriate proposals. The RFB 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 Agreement to Provide an Irrevocable Letter of Credit.

Conflict of Interest

The RFB 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 RFB 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 RFB 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 license for a minimum of two years;
- Provide sedan taxi service in the City of Toronto;
- Operate 24/7 in the City of Toronto;
- Currently have 100 sedan licensed taxi cabs and drivers operating under your Brokerage

Stage II - Rated Criteria

The RFB evaluation categories and their weights were as follows:

- Corporate Qualifications 150%
- Team qualifications 10%
- Work Methodology 45%

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. Pricing was for the administrative fee specified as a %. This figure needed to be under a cap of no more than 4%. The remainder of monies to be paid for service were to be based on meter rates determined by the City.

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.

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 RFB document for Proponents to ask questions. 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 RFB is complex, a Proponents' meeting can be held to provide further background information and to answer questions related to the RFB. 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 RFB. Its intent was to provide the general public with an opportunity for comment on both Accessible and Sedan taxi services before the RFB 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 RFB was from February 14, 2014 to March 18, 2013. The posting time was considered adequate given the nature of the procurement and the fact that it had been proceeded by a public consultation process.

One Point of Contact

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

The RFB 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 RFB was advertised on MERX which is the electronic bulletin board that many public sector organizations use to advertise RFB 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 RFB. 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 RFB and Addendum

There were four 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 RFB, PROPOSALS AND EVALUATIONS

4.1 Appropriate Practice

During the writing of the RFB, 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 RFB (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 RFB 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 RFB 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 RFB 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 RFB 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 RFB development team were advised of the confidentiality and conflict of interest requirements for the project.

Proponent Form

The RFB 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 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 RFB, which has not been provided in the RFB document.

During the Vendor Meeting, concern was raised regarding the structure of the evaluation criteria, namely that too much weight had been given to providing services to handicapped clients within the City of Toronto. It was felt that this focus gave incumbent vendors a significant advantage. Project staff reviewed these concerns and adjusted, through Addendum, the evaluation criteria to create a better balance between the need for Proponents to adequately demonstrate capability to provide service to this client group while recognizing the need to create an evaluation structure that would allow new entrants to effectively compete.

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 RFB 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 RFB.

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 4 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.

Four Submissions were received.

One Proponent failed to submit the Agreement to Bond or the Agreement to Provide an Irrevocable Letter of Credit which were mandatory requirements. After consulting with the Legal Department, it was determined that its submission was non-compliant and was thus rejected.

Another Proponent submitted a flawed Agreement to Bond form. The form requires that the surety named be a surety licensed in the Province of Ontario. However, according to the Financial Services Commission of Ontario website, which contains the current list of all approved insurers, the surety named in the form submitted by City Taxi was not a surety licensed in the Province of Ontario. In addition, the named surety on the form did not execute the form as required. After consulting with the Legal Department, its submission was also deemed non-compliant and was thus rejected.

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 RFB. 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.

7.4 Outcome

As a result of this procurement process:

- Four bids were received;
- Two of the proposals did not pass the compliance review and the mandatory criteria ;
- The remaining two bids were then evaluated using the rated criteria;
- Both bids passed the threshold score of the rated evaluation process and were allowed to continue on to the pricing portion of the evaluation;
- The RFB sought up to three Proponents to supply the services. The two qualified Proponents were selected based on total ranked scoring and having submitted a compliant bid.

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/RFB;

- 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;
- RFB;
- 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 RFB 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.