

gotiations and either enter into negotiations with one or more other Prequalified Proponents or terminate the process;

- (f) the City shall incur no liability to any other Prequalified Proponent as a result of such negotiations or alternative arrangements.

## **4 SCOPE OF WORK**

### **4.1 Summary of Roles and Responsibilities of Fairness Consultants**

The City seeks the services of fairness consultants that can be categorized into three types of fairness consultant functions. The three categories are Fairness Commissioner, Procurement Monitor, and Process Auditor. There are differences in scope and roles among these functions, as summarized below.

(1) Fairness Commissioner:

The title of Fairness Commissioner reflects the intended broad scope of advice and oversight throughout most stages of a competitive call. In this model, involvement usually begins at the early stages of a procurement to provide overall guidance and advice throughout the call. A Fairness Commissioner may be retained after the business case and call document completion stages, but prior to the call document issuance stage.

Sometimes, a Fairness Commissioner is retained even earlier in the process to oversee pre-call development activities where staff undertake vendor and other party consultations to gather intelligence on potential solutions. In these cases, it is also expected that the consultant will have a role to advise on the development of the call itself.

Typically, for very complex procurements, Fairness Commissioners who are also expert in the product or service field to be contracted for, will have roles across all the following stages:

(i) Early-stage involvement such as:

- Pointing out call development methods, their respective requirements and merits (e.g., Requests for Information/Expressions of Interest, or Requests for Qualification that may precede issuance of call document for formal competition);
- Overseeing the call document design and development by raising for consideration:
  - up-front involvement of necessary legal/other parties;
  - objectives intended when selecting specifications, or mandatory and other criteria;
  - a range of available and preferred evaluation tools and techniques; and
  - the impact on fair and reasonable evaluation of various weightings for financial, service, quality, legislative compliance and interview components, relative to other acceptable weighting scenarios;
- Advising on the purpose, steps, degree of information provision and other processes for any call pre-release consultations held with potential tender bidders/RFP proponents;
- Pointing out avoidance of methods/approaches that can cause potential biases in design (due to embedded public policy issues) to enable appropriate vendor choice, beyond fairness of the process that ensues;
- Identifying potential inconsistencies, or lack of clarity in call document requirements, in order to meet approved and stated business objectives, statutory regulations, policy directives, administrative requirements and best practices for procurement;

(ii) Mid-Stage involvement such as:

- Verification of the roles, responsibilities, decision authorities, and reporting requirements of the designated internal procurement management team;
- Attending and monitoring any information, briefing, or other sessions held with bidders / proponents by the procurement management team to note anomalies and follow-up with procurement management team;
- Ensuring that evaluation team members are provided with briefings on best practices including:
  - the principles and duties of fairness, care and proprietary information protection;
  - having a single-point of contact in place prior to and following evaluation;
  - avoidance and disclosure of conflict of interest, bias, and undue influence;
  - exclusion of any technical consultants used to design/establish call requirements;
  - inclusion of more than two persons as an evaluation team;
  - arms-length from political involvement/participation;
  - scoring procedures and sign-off on individual scoring sheets;
  - formal evaluation/scoring of any interview component of the evaluation process;
  - the preparation, treatment and retention of evaluation documents;
- Attending and monitoring evaluation team meetings to:
  - keep processes consistent with best practices (see above);
  - ensure all bids/proposals are evaluated in strict accordance with call specifications/criteria;
  - verification of bids/proposals evaluated as being non-qualified, non-compliant;
- Ensuring that principles and measures of success for how the procurement process is carried out, are established and provided to the government client as public information;
- Monitoring and documenting, at pre-identified points in the procurement process, the issues raised, solutions arrived at, and actions required and taken to ensure consistency with the original approved objectives;

(iii) Late-stage involvement such as:

- Monitoring and immediate reporting to pre-identified senior management on any known or perceived conflicts of interest, occurrences of undue influence, or other factors (among management/evaluation team members, as well as key stakeholder representatives), that may negatively impact the integrity of the evaluation/scoring or assessment process;
- Ensuring that the procurement management team, evaluation team members and other stakeholders understand ongoing confidentiality responsibilities post-contract award;
- Advising on proper vendor/proponent de-briefing processes and complaint procedures;
- If engaged for the contract negotiation/service-level agreement stage, ensure that the process is conducted in an ethical, structured manner by appropriate, skilled specialists adhering to the mandatory criteria/irrevocable terms and conditions of the RFP/tender; and
- Providing a full report at the conclusion of the procurement process to accompany the recommendation of contract award, as to whether and how the process has complied with fairness, openness, and transparency requirements.

(2) Procurement (Fairness) Monitor:

The Procurement Monitor role normally commences after completion of the call document, but sometimes prior to call release, to offer advice on critical aspects such as criteria clarity and pertinence, or evaluation techniques. In such cases, any advice from a Procurement Monitor on the call document itself, would tend to cover the steps or procedures that can be taken to remove problems later found (such as unintended barriers to appropriate responses given unduly prescriptive requirements), and to oversee that satisfactory and timely communication takes place with bidders/proponents on any necessary call changes.

A Procurement Monitor will have many of the same typical mid and late-stage procurement roles and responsibilities as those outlined above for a Fairness Commissioner.

(3) Process Monitor/Auditor:

Occurring only after the evaluation, or later-stage award process, the intent of this role is to provide after-the-fact fairness/audit assessment. A Process Monitor/Auditor is a party who was totally independent of the procurement process. To provide immediate response, but not limited to:

- Complaints or controversy about the process that get high-profile;
- Public demands for review in the context of value-for-money, or best-use;
- Demand for accountability and transparency about project impacts;
- Challenges respecting private sector participation in public responsibilities; and
- Questions around new types of competitive processes.

Accordingly, the focus of a Process Monitor/Auditor will be upon the evaluation stage, adequacy of the steps taken to mitigate risk (e.g., financial, credibility, or liability), and assessment of the integrity of documentation. Activities often include reviews of scoring and other related processes, how vendor de-briefing/complaint processes were undertaken, and ensuring that correct documentation is in place. The Process Monitor/Auditor role has less time involvement than either the Fairness Commissioner or Procurement Monitor models.

## 4.2 Deliverables

The responsibilities of the Fairness Consultant will be:

- The requirements as stated in Section 4;
- Providing a second opinion at key, pre-identified decision stages;
- Providing support to the purchasing manager in encouraging divisional best practices;
- Additional insight on correct competitive processes;
- Assisting the consideration of all aspects of evaluation processes for better understanding;
- Assisting with Council Approval Reporting for competitive Calls that required the Proponent's services;
- Addressing concerns for accountability/fairness given costs to respond to complex calls;
- Independent assurance of integrity of process with a signed attest statement;
- Assistance in the debriefing of unsuccessful proponents/vendors; and
- Final Report to Council.

### 4.2.1 Final Report

The reports from a fairness consultant will be submitted at pre-determined key points in the procurement process to the responsible Division Head, the City Manager and the Deputy City Manager and Chief Financial Officer.

Where the final report of a fairness consultant affirms adherence to objective and appropriate processes, it will be conveyed to Council accompanied by the staff report recommending contract award and commenting on costs, benefits, and lessons learned from using a fairness consultant.