

CIPMM National Workshop



Lessons from a Fairness Monitor

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June 7, 2016

Overview

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- The logo of the National Library of Medicine is a stylized graphic. It features a blue open book with white pages. A red magnifying glass is positioned over the center of the book, focusing on a white globe with blue continents. The book's spine and edges are outlined in red.

Background

- Use of “Fairness Monitors” started in the mid-late 1990’s
- Primarily for high dollar value, complex procurements
- Use of Fairness Monitoring for public procurement has increased significantly since the mid-2000’s
- Primarily in response to increasing concerns with respect to complex public procurements (e.g. P3’s, National Ship Building Program, etc.) – greater public scrutiny and interest in accountability for public expenditures
- Used both federally and at Provincial and Municipal levels
 - Some jurisdictions may use different titles for fairness professionals
- Canada has established a formal Fairness Monitoring Policy and Program



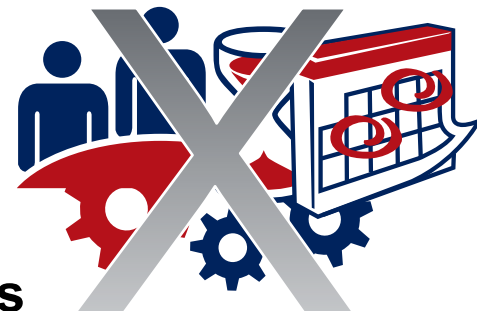
What is a Fairness Monitor?

- Independent 3rd party engaged to oversee the procurement process, knowledgeable in the area of public procurement
- Typically engaged from planning through to award / debriefing (and beyond...)
- Mandate is to provide impartial and objective oversight and report on the extent to which the process was conducted in a fair, open and transparent manner
- Informs the process from a fairness perspective
- Provides additional assurance to suppliers and buyers that the process was carried out appropriately and with integrity



What a Fairness Monitor is not...

- **Not a “business owner”**
 - Does not have an “interest” in or influence the process or outcome, other than to ensure a fair process has been conducted
- **Not a subject matter advisor on the requirements**
 - Does not develop the requirements or strategy
- **Not an evaluator**
 - The Fairness Monitor reviews the receipt and compliance of the proposals and is familiar with their contents in order to be able to ensure consistency in the evaluation and render an opinion that the evaluation was conducted on the basis of the proposals’ contents
- **Does not assume role or responsibility of purchaser**
 - Does not provide direct procurement advice, but provides review and feedback on proposed approaches from a fairness perspective



What a Fairness Monitor is not...

- **Not Legal Counsel**

- A Fairness Monitor does not provide legal advice
- Legal and fairness can have different perspectives

e.g. Just because you can, does not necessarily mean you should...

- **Not an Auditor**

- A Fairness Monitor is proactively engaged in the process to support ensuring its fairness from both the perspective of the owner and potential Bidders
- Dynamic exchange during the process
 - in “real time”

- **Not the Police**

- **Not a Referee**



Fairness Principles

- **EQUALITY** – all Bidders given the same opportunity, the same information, and all subject to the same set of rules
- **NEUTRALITY** – an absence of bias or favouritism to any Bidder(s) – a dispassionate and impartial perspective which avoids the subjective indulgence of one's personal likes or dislikes
- **INTEGRITY** – a process with no pre-determined outcome, that is free from self-interest or competing interests, and that is undertaken in accordance with what is ethically right and proper
- **CONSISTENCY** – all Proposals assessed using the same criteria and processes

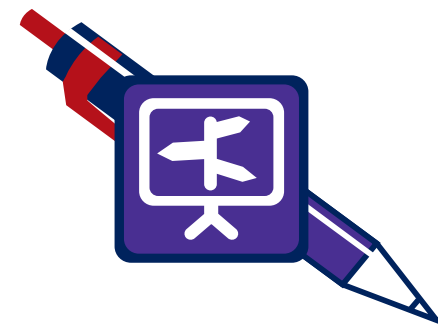


Fairness Principles

- **OBJECTIVITY** – observation, evaluation and judgment based solely on the evidence presented, and not on personal beliefs, preferences or preconceived opinions;
- **TRANSPARENCY** – a process that is open, accessible and easily understood by all participants; and
- **DEFENSIBILITY** – a process resulting in an honest and truthful outcome that is able to withstand any degree of scrutiny.

Basically...

*Say what you mean...mean what you say...and
write it all down!*



Key Considerations for “Buyers” from a Fairness Perspective

- **Be open and proactive:**

- Work with the Fairness Monitor in real time.
- Disclose to the Fairness Monitor any “history” on the file
 - this can help to identify and mitigate any potential issues or underlying concerns that may arise in the process.
- Identify any “restricted parties” early in the planning stages and ensure their status is communicated to potential Bidders
 - E.g. subject matter experts contracted to develop the requirements cannot form part of a Bidder’s team as this would likely create an unfair advantage.
- Any communications or documentation to industry must be reviewed by the Fairness Monitor before it is released.
- The Fairness Monitor must be present for any “live” interaction with industry / Bidders.



Key Considerations for “Buyers” from a Fairness Perspective

- **The requirements are the requirements:**

- Operational requirements should have pre-eminence, but it is important to avoid proprietary or biased-type criteria (e.g. NOT “the incumbent does it this way...so that’s what we need...”).
- The process can allow for alternative means to meet the requirements, provided these are clearly articulated in the RFP document for all potential Bidders.
- Fairness challenges can arise in finding the balance between the Contracting Authority’s responsibilities and the Technical Authority’s operational objectives.
- Ensure you are creating a valid competition.
 - For example, for renewal procurements or repetitive/similar contracts, be sure to review the criteria to ensure they can be met by more than one company.



Key Considerations for “Buyers” from a Fairness Perspective

- **Don't be afraid of industry engagement:**

- Helps to validate or refine requirements, to enhance interest, competition and ensure the process will respond to the need.
- Industry consultation adds to the openness and transparency of the process.
- The industry engagement process needs structure, consistency in messaging, exchange of communications and treatment of all participants.
- Don't “pre-judge” the market – listen to all participants equally.
- In receiving feedback, neutrality is important – avoid endorsing or rejecting proposed approaches, and do not initiate negotiations.
- Remind industry the government's requirements will be within the published RFP.



Key Considerations for “Buyers” from a Fairness Perspective

- **Ensure the integrity of your process:**

- It is essential to verify up front and monitor throughout the process that the procurement is free from conflict of interest (real or perceived).
- All participants in the procurement process (technical authority, contracting authority, evaluators, decision-makers, etc.) should be asked to proactively reflect and declare any potential interest or relationship with potential Bidders at the start of their engagement.
- Ensure documentation is kept on file that potential COI has been reviewed and assessed.
- Verify again during the process (e.g. after proposals are received and the names of Bidders and participants are known) and take action as necessary.




Key Considerations for “Buyers” from a Fairness Perspective

- **Manage communications appropriately:**

- All communications to industry / Bidders flow through (from / to) the Contracting Authority (single point of contact).
- Information needs to be provided in an equal and consistent manner to all potential Bidders.
- Communications must be reviewed by the Fairness Monitor before release.
- Accessibility and consistency in communications apply equally to Bidders' Conferences and any face to face meetings with Bidders during the process (e.g. site visits, etc.).



- **Making a fair assessment:**

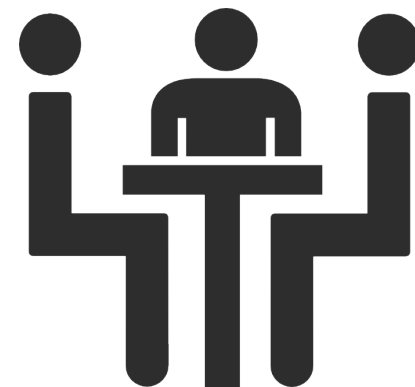
- Best practice is to provide an orientation session to the Evaluation Committee beforehand, to ensure an understanding of the evaluation tools and process.
 - The evaluation process should be thoroughly documented to ensure it provides support to the outcome of the process.
 - Individual notes and consensus outcomes.
 - Consider each Proposal in its entirety, and only the Proposal.
 - No “prior knowledge” of Bidders (positive or negative) may be used.
 - Follow the process laid out in the RFP, but avoid being arbitrary.
 - Requirements do not change, but timing may (example – field testing).
 - The evaluation (proposals, notes, discussions and outcomes) must remain confidential throughout the process and following.
 - In general, financial evaluations are kept separate and not completed until the Technical evaluation has been signed-off (exception Construction Tenders).
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Key Considerations for “Buyers” from a Fairness Perspective

- **Do debriefings:**

- The best debriefs are ones that the organization are prepared to do
 - Prepare for debriefings in advance.
 - Be clear on what the purpose and the extent of the discussion will be (e.g. the purpose is to help the Bidder understand their outcomes - strengths and areas of improvement; not to contest the results).
 - Provide an overview of the RFP and evaluation process to set the stage.
- Ensure consistent level of detail and information provided to all Bidders.
 - Use a standard agenda and format.
- Provide balanced feedback.
 - Reflect both on what was good, and where the Proposal did not fully demonstrate what was expected in the RFP.
- Successful Bidders may request debriefings too!



Lessons Learned

- To support the fairness and integrity of a procurement process, it is important to **avoid**:

Inconsistency	Failure to ensure that all information in a proposal is found and evaluated
Errors and Omissions	Ignoring information in a proposal
Lack of Objectivity/ Impartiality	Proposal 'clarification' that results in "bid repair" or "destruction"
"Benefit of the Doubt"	Absence of Written Rationale
Deviating from published evaluation methodology and criteria	Incomplete Documentation
Use of un-published criteria	Destruction of documents (e.g. evaluation grids)
Use of personal knowledge of a Bidder or personal knowledge of information included in a proposal	Unauthorized Disclosure (before, during or after)

