

In all fairness...

Extracting optimum value from the “fairness” role



by Howard Grant

IS THERE NOW SO little trust in our public sector that we choose to have repetitive and straightforward procurement scrutinized by third parties? Surely, internal governance and segregation of duties within the public sector could accomplish much the same objective. Do we need the assurance of an external consultant to ‘rubber stamp’ the decisions of accountable public officials?

In the face of these questions, all levels of the public sector have increased their reliance on the fairness role for large, complex or contentious procurements, primarily to provide objective evidence that the process has been run in a fair, open and transparent manner. This is not meant as a reflection on internal procurement teams who provided the role directly or indirectly in the past, but rather to add a degree of impartiality, by engaging experienced, independent, neutral and objective observers or advisors. Often the bidder community expresses greater confidence in the procurement process when a qualified fairness resource is involved.

The fairness role is still in its infancy. As a result, many organizations struggle to identify when a fairness resource is good value for money. Furthermore, there are no set standards or entrenched associations, making it difficult to know what qualifications align best to the type of procurement the public institution is undertaking.

Three fundamental types of fairness roles exist, the most comprehensive role being that of a fairness advisor. They participate at the earliest stage before the solicitation is released and provide added value by testing the procurement process that has been laid out against its ability to achieve the desired outcome. They do not design the procurement, however, they provide proactive advice on unbiased measures that will help lead to the desired results. They ensure that the key principles are clearly articulated so that all participants – client team and bidders – understand their roles and responsibilities.

The fairness monitor only confirms that the process adopted has been followed. They are often engaged after the procurement documents are finalized and they sign off only on the internal team’s compliance to the process described in the documents – a role reflective of a tick in the box approach.

The fairness auditor reviews the procurement process upon completion, certifying that it was conducted in a fair, open and transparent manner. They review the records and interview participants to gain an understanding of the steps that were followed in order to confirm that the process and outcome were not influenced by any biases.

Generally, fairness auditors are most useful in cases where the outcome has been contested or the public body realizes, during the process, that there may be concerns related to the award. Fairness Monitors are most effective when the individual procurement is one in a series of similar procurements and does not introduce deviations from an established and tested process. For example, where the procurement authority is involved in a large program of work, it may use a fairness monitor for the latter projects. Projects where innovations are sought, that are complex in nature, or could be – by

their design – perceived to be directed to a specific bidder, are best served by involving fairness advisors.

It is important that the fairness resource have both the responsibility and the opportunity to identify potential flaws and risks in the procurement process early enough to be corrected before becoming problematic. Both the procurement authority and the fairness resource would prefer to conclude the procurement successfully with a clean fairness report. However, the fairness resource must remain impartial and must report conditions or events detrimental to the overall fairness of the procurement initiative.

Currently, there is little consistency in the definition of the role, the perspectives or the tools and techniques used by the fairness advisor to perform their role and bring value to the client, the supplier community and, of course, the tax payer. In the absence of an industry standard definition and established qualifications or certifications, public bodies struggle with the best means to select their fairness resources. Some government organizations have started to describe the fairness role by using a consistent scope of work in vendor of record agreements.

In our opinion, the value add of fairness monitors may be questionable. However, the benefits of the fairness advisor and auditor roles can be clearly demonstrated. In both, it is important that the fairness resource is in a position to understand the public entity’s perspective, the procurement process that will be followed and the reasoning behind it, as well as the bidders’ perspectives. Without necessarily being subject matter experts, they should understand the market sector in which the procurement is being conducted and know the dynamics that may exist within the bidding community.

To achieve best value in the fairness role, it is important to match the initiative to the most appropriate role (scope of work description) and seek the most appropriate resources. Criteria such as PWGSC’s mandatory requirement in past procurements for fairness monitors to have a minimum of 75 employees seems arbitrary and certainly does not consider where the bulk of expertise for this function currently resides. Until there is an established association or industry, public entities must rely on the ability of the consultants offering fairness services to demonstrate their prior involvement in similar procurements; their qualifications for the work; and, that they will not impede the procurement process by meddling in areas with no bearing on the fairness in the process or outcome. *MM*

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