

July 17, 2015

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**VIA E-MAIL**

File 16705.00001

David Musyj and David Cooke, Co-Chairs  
Program and Services Planning Project Steering Committee  
Windsor Regional Hospital  
1995 Lens Avenue  
Windsor, ON N8W 1L9

Dear Mr. Musyj and Mr. Cooke:

**Re: Request for Proposals (“RFP”) for the Purchase of a Site for the New Acute Care Hospital Facility for Windsor Regional Hospital (the “Hospital”); and**

**Re: Report to Program and Services Planning Project Steering Committee (the “Steering Committee”) re Identification of Preferred Proponent**

I am writing to you in my capacity as the Fairness Advisor with respect to the above-noted RFP process. The RFP process has been undertaken by the Hospital to select the location of a new regional hospital.

My responsibilities as Fairness Advisor have included ensuring that the RFP process as set out in the RFP documents has been followed, and that all proponent vendors were treated fairly and equally by the Hospital.

I understand that the Chair of the Site Selection Subcommittee has reported to the Steering Committee that the Site Selection Subcommittee has identified the preferred site as being the site owned by Michael O’Keefe Farms Inc., located at the corner of County Road 42 and 9<sup>th</sup> Concession (the “Preferred Site”).

The selection of the Preferred Site is based on that site achieving the highest overall score through the site selection process described in the RFP.

As the Fairness Advisor, I have participated and observed each step of the RFP process, from reviewing the initial RFP documents, through the evaluation stage of the Phase 1 submissions, to the evaluation of the short-listed proponents’ submissions in Phase 2. My involvement in each stage of the process is described more specifically below.

***RFP Documents***

Following my retainer as Fairness Advisor, I had an opportunity to review the draft RFP documents prior to their finalization, and to provide any comments I may have had about the proposed process.

Recognizing that my role was not to second-guess decisions regarding the substantive aspects of the RFP, such as the choice of the assessment criteria or their weightings, but rather to focus upon procedural issues, I was satisfied that the mechanisms prescribed in the RFP for the submission and evaluation of proposals would lead to a fair and balanced selection process. To the extent I had any suggestions, those were incorporated into the RFP.

***Information Meeting***

Once the RFP was issued, the process included an information session, which interested vendors could attend and hear about the process and have their questions answered. The session was conducted by the Hospital's legal counsel on September 5<sup>th</sup>, 2014.

I attended the information session and observed the meeting. I am satisfied that the meeting was conducted appropriately. Any questions arising from the meeting that required formal responses to be shared were considered and subsequently addressed by means of an addendum.

***Addenda***

As a result of the either the question and answer process with proponents, or through recognition of the need of further refinement or adjustment of the RFP process itself by the Hospital and its counsel, a number of changes were made to the initial RFP document as the process progressed. These changes included such things as the addition of a submissions form for multiple owners of a single site, changes to certain technical information requirements to be submitted with the responses, and other similar changes. In other cases, the addenda clarified what was required from proponents. These clarifications and changes were formalized in the form of addenda which were issued to all interested proponents prior to making their submissions.

The exercise of making necessary changes to the RFP process during the procurement and then issuing addenda accordingly was contemplated by the RFP. I had the opportunity to

review the addenda as they were developed and issued to proponents and confirm that I have no concerns with either the process followed by the Hospital or the addenda themselves. All proponents received the same information and were treated equally.

### ***Site Selection Subcommittee Training***

To prepare the Subcommittee for their task of evaluating proposals, a session was held with the members prior to receiving Phase 1 submissions to conduct a mock exercise using two hypothetical submissions.

Through the exercise, the members worked through the approach of both scoring proposals on an individual basis, and then consensus scoring as a group that would be used in the actual evaluation process, while applying some of the real criteria to the hypothetical sites created by the Hospital's planning consultants.

I attended the exercise to ensure that the evaluation process was being properly followed and that the members were carrying out their tasks appropriately. I was satisfied that the committee members understood what was required of them, and that they were going to treat the task of evaluating the real proposals seriously and with integrity.

### ***Compliance of Submissions***

Twenty-two submissions were received in relation to Phase 1. It was determined that two of the submissions had formal technical flaws in relation to their respective submission forms which meant that, in the opinion of the Hospital and its advisors, the submissions did not meet the strict requirements contained in the RFP document. I agreed.

As a result, the question of whether the two submissions should be disqualified was taken to arbitration. This dispute resolution process was provided for in the RFP, and therefore, in taking the matters to arbitration, the Hospital was following the process initially contemplated to deal with such circumstances.

The arbitrator appointed to hear the matters was the Honourable Colin L. Campbell, Q.C., a retired judge of the Superior Court of Justice. He ruled in the case of the first submission that the flaw in question was not material and the submission could be considered by the Hospital. In the light of that decision, the Hospital elected to allow both submissions to continue through the process, since the flaw with the second submission was very similar and the result would have very likely been the same.



I had no concern about extending the arbitrator's ruling regarding the first submission in relation to the second flawed submission. In this way the two submissions were treated equally, neither gained an advantage over any of the other proposals, and both were evaluated as part of the process. In any event, neither of the sites which were the subject of the compliance issues were chosen as the preferred site.

### ***Conflicts of Interest***

Possible conflicts of interest are a significant concern in any important public procurement. The integrity of the process depends on impartial treatment of proponents and their submissions, and the judgment of evaluators should not be clouded by inappropriate influences over their assessments and decision-making. The possibility of such influences can affect perceptions of both the fairness of the procurement process and of the outcome of an evaluation.

At the outset of this RFP process, it was recognized that, in the case of the Site Selection Subcommittee, members needed to identify and report any connections they may have to any of the proponents, and that any issues arising from such connections be properly handled. Members were required to sign a "Conflict of Interest and Confidentiality Agreement" and follow a very comprehensive Conflict of Interest Guide which set out the process of how conflicts were to be handled. Each member understood the importance of identifying any possible conflicts.

In the course of the RFP process, after receipt of the submissions, only a couple of declarations of possible conflicts of interest were made by members. In my role as Fairness Advisor, I received these declarations directly from the members in question. I then passed the declarations to the Co-Chairs of the Steering Committee for them to consider whether the conflict issues should be put to the Steering Committee to decide upon an appropriate remedy.

In both cases the declarations were determined by the Co-Chairs to involve a connection of such an inconsequential nature that the matters did not warrant proceeding past the initial consideration stage. I participated in the review and concurred with the decision of the Co-Chairs that the issues need not proceed further.

At no time was any conflict of interest declared that resulted in the need for taking any further steps beyond consideration by the Co-Chairs. As a result, I can confirm that, in my opinion, I was not aware of any conflicts of interest involving any members of the Site Selection Subcommittee that affected the process, the evaluation of the submissions, or the outcome. Further, the preferred site was not a property which the conflict of interest declarations related to.

***Evaluation Process – Phase 1***

The members received the proposals and evaluated each one individually against the criteria set out in the RFP. The Subcommittee then met and reviewed all of the individual scoring, to arrive at a consensus score for each criterion applied to each proposal.

I attended each of the evaluation meetings, which took place over several days, and observed the deliberations. I can confirm that the evaluation process was conducted very thoroughly by the Chair and the members. All members actively participated and discussed each of the proposals in a very detailed and comprehensive manner. If questions or clarifications were needed from the Hospital's consultants regarding technical issues, those answers were sought and then the information was incorporated into the analysis.

As a result, I have no issues or concerns about the manner in which the evaluation process was conducted. It was carried out in accordance with the process contemplated by the RFP, and all proposals were duly considered and fairly evaluated in accordance with the criteria.

***Phase 2***

Once the proposals were shortlisted, I attended the individual meetings with each of the shortlisted proponents. I was there to ensure that each shortlisted proponent was treated appropriately and that no information was exchanged that might have given any one proponent an unfair advantage over another. I can attest to the fact that the information provided and the communications during these proponent meetings were handled evenly and carefully, so as to ensure that the shortlisted proponents were treated equally.

Finally, I attended the evaluation of the Phase 2 submissions by the Subcommittee. As before, the members reached their conclusions in accordance with the RFP document, and I have no concerns about how the Subcommittee reached the final result and recommendation to the Steering Committee.

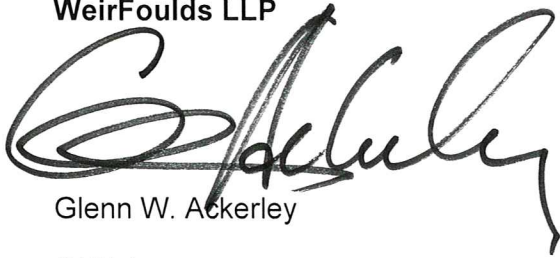
***Conclusion***

As indicated by the comments above, I am satisfied overall that, in my opinion, the site selection process was conducted fairly and in accordance with the terms of the RFP process. In arriving at the final result, the Site Selection Subcommittee properly conducted its task of evaluating all of the proposals received, by applying the pre-determined evaluation criteria in a diligent manner, all in accordance with the RFP process.

I have no reservations or concerns about the outcome of the process from a fairness perspective, and commend the Hospital and its advisors for the manner in which the process was undertaken.

Yours truly,

**WeirFoulds LLP**

A handwritten signature in black ink, appearing to read 'G. Ackerley', written over a horizontal line.

Glenn W. Ackerley

GWA/pd

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