

NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER
Review Recommendation 15-136
File: 14-173-4
July 9, 2015

BACKGROUND

The Applicant made a request from the Department of Public Works and Services for records relating to the evaluation of its submission to a Request for Qualification (RFQ) including written proof of scores given for all rating criteria, but in particular, the evaluator's scoring of a written portion of the proposal showing the errors identified by the evaluator. The Applicant's contention was that the evaluation was not transparent and that he required all of the evaluator's notes and markings in order to satisfy himself that the evaluation was fair and accurate.

The Department identified approximately 30 pages of responsive records and provided the Applicant with partial access. Parts of the records were redacted, with the public body relying on Section 23(2)(d) - unreasonable invasion of a third party's privacy and section 17 - reasonable expectation that the disclosure would harm the economic interests of the GNWT.

The Applicant did not take issue with the redactions made in the records provided to him. He does, however, take issue with the completeness of the response provided. He is adamant that there should be a copy of the written portion of the evaluation with the evaluator's notes endorsed directly on the sheet.

The records disclosed were documents entitled "Proposal Evaluation Workbook for Request for Proposals" as completed by each of three evaluators as well as several forms summarizing the information in the workbooks. The workbooks included comments of each of the evaluators. All of the evaluators notes were included in the records provided to the Applicant. The redactions were limited to the names of the individual evaluators and, in one form, the evaluations of the other competitors.

THE PARTIES' SUBMISSIONS

Part of the RFQ in this case was a requirement that the proponents complete a written test, to be included as part of the proposal. The Applicant wanted a copy of this written test portion of the RFQ containing the evaluator's comments and markings. He stated in his Request for Review:

Therefore, it is merely a question of producing the actual exam with the evaluators' comments clearly indicating to what areas of the exam these errors apply. Identifying the errors on a separate sheet, as the evaluators did, without any context for reference purposes falls short of established GNWT transparency objectives.

It appears from the information provided by the Department that they themselves did not do the evaluation of the written test portion of the RFQ. Rather, it appears that the evaluation was done by a third party company on contract to the GNWT for such purposes. The Department indicated that they consulted with the evaluators and specifically asked them to provide copies of the evaluator's copies, with any notes made intact. As noted in their letter to the Applicant in response to his Request for Information, they were advised that no notes are made directly on the test sheets:

Evaluators do not mark their comments directly on written tests or in track changes; their comments are captured in the workbooks partially provided.

In response to this, the Applicant wrote:

I would like to reiterate that my primary point of contention relates to the method used by the evaluators in assessing the written test...Simply identifying errors on a separate sheet, as the evaluators did, as opposed to correcting the test on the very sheet it was composed not only raises

transparency concerns, but also increases the probability of collusion, to which evaluators could easily resort if they had a particular bias against certain bidding companies. The evaluation process used plays into the hands of evaluators who could be tempted to systematically eliminate bona fide proposals as a means of facilitating the process of deciding which suppliers they want to deal with. By using this method, they are imposing the honour system, and not due diligence, on the bid evaluation process. They are expecting me and other bidders to take them at their word when they identify “errors” without providing the evidence in support of their claim.

DISCUSSION

While the Applicant may have a good point about how the evaluation process was conducted, this is not an issue that I can address in any way. My role is to determine, based on the submissions received, whether the public body in this case identified and produced all of the records responsive to the Request for Information. They cannot produce records that do not exist and in this case, it appears that the specific record that the Applicant wanted access to simply was never created and does not exist. I am quite satisfied, from the Department’s submissions to me, that they took every step they could, including making direct inquiries of the third party evaluators, to determine if the specific record requested by the Applicant existed. I am satisfied, notwithstanding the Applicant’s opinion that the evaluation should have been done directly on the test sheets, that this is not the way it was done in this particular case.

I therefore find that the public body in this case disclosed all existing responsive records and I make no recommendations.

Elaine Keenan Bengts
Information and Privacy Commissioner