Premier's Memorandum No. 2000 - 11
Disclosure of Information on Government Contracts with the Private Sector
Legal Services

Details of Contract

On 6 May 2005, The Department of Education and Training (DET) advertised in the Australian Financial Review and on 9 May in the Sydney Morning Herald seeking proposals for the role of legal advisor to DET in the procurement of nine schools as a public private partnership (PPP).

The legal advisor role was to assist the PPP Project Control Group (PCG) in defining, scoping, assessing and detailing proposals, bids and contract documents and providing other specialist advice as required. A concession deed and associated transaction documents were prepared for the first schools PPP project, which was procured in 2002 and of which all nine schools are now operational. The applicants for legal advisor were advised that the deed and transaction documents would be available to the successful applicant for reviewing, revising and updating.

The successful advisor was required to undertake a range of tasks, some of which related specifically to individual phases of the procurement process and others which spanned the length of the process. The tasks were as follows:

Task 1: General Procurement Process Activities

- Supporting document preparation, review and refinement including:
  - assisting the project team with the preparation of tender documents, including the RDP and any other procurement stages;
  - assisting the project team with the preparation of evaluation documents through the provision of advice on legal, financial / commercial and risk criteria and their assessment at the EOI, RDP and any other procurement stages;
  - reviewing the financial / commercial, risk and other legal components of the private sector bids and identifying areas of variance from the Government’s preferred position;
  - evaluating and reporting on the financial /commercial, risk and other legal components of the private sector bids;
  - being responsible for informing all relevant parties of developments on the contractual documentation in a timely manner;
  - updating the contract deeds throughout the procurement process as necessary; and
  - identifying aspects of the emerging contractual arrangements that may represent legal risk.

Task 2 – RDP Activities

- Prior to the release of the RDP, the successful advisor will:
  - prepare draft contract deeds;
- attend and advise on risk workshops;
- provide advice and assist the project team on the establishment of the commercial principles including working with the technical and financial advisors to finalise the commercial structure and risk allocation matrix;
- assist with finalisation of the RDP documents by preparing commercial/legal schedule; and
- be responsible for drafting the RDP evaluation criteria for the commercial/legal criteria.

- Provision of advice to the project team and participation in proponent engagement following the release of the RDP. It is a requirement that the Legal Advisor be available to prepare for and attend proponent workshops and provide post-workshop follow-up (e.g. provide replies to proponent queries taken on notice).

- Evaluation of RDP submissions including:
  - reviewing and advising on each proponents’ financial/commercial arrangements and proposed contract and sub-contract agreements;
  - participating in formal negotiations with the preferred proponent and advising on any contract amendments;
  - reviewing proponent’s commercial and contractual assumptions;
  - liaising with the other evaluation teams and technical and financial advisors on the position each proponent has taken on financial/commercial issues and key risks;
  - providing an evaluation report on the results of the legal analysis on each bid; and
  - leading the legal evaluation committee.

**Task 3 – Post RDP**

- Participate in and advise on meetings with the preferred proponent to clarify the government’s and bidder’s proposals and advise on any contract amendments.

- Arrange and facilitate the formal processes of contract endorsement by the parties to the contract.

- Prepare the final contractual agreement.

**General**

- Prepare submissions and undertake any background research, as required, addressing legal and commercial issues affecting the project.

- Undertake other relevant legal tasks associated with the procurement including ad hoc advice during the contract management phase.
**Evaluation**

Six proposals were received and assessed against the following criteria:

1. Understanding of the nature of the work, especially the tight time frames for delivery of the RDP documentation;
2. Experience and expertise of the firm and key personnel in acting for government authorities in connection with the procurement of major infrastructure and particularly in relation to the PPP contractual model for social infrastructure projects;
3. Proven ability to communicate effectively with individuals from a range of non-legal disciplines and to draft complex documentation;
4. Commitment of time and resources to meet the tasks outlined within the time constraints set;
5. Price and fee structure. DET sought capped prices based on a clear and comprehensive delineation of tasks; and
6. Reference to referees willing to speak to a firm’s experience and ability particularly in relation to PPP.

The applicants’ proposals were scored against criteria 1 – 5 and given a score between 1 and 5 for each criterion. An overall score was then calculated on a non-weighted basis.

**Contract Award**

An agreement was entered into with Blake Dawson Waldron on 27 May 2005. The services are charged at hourly rates and hence the price payable will depend on the time and seniority of the resources required to deliver the services. The average hourly rate quoted by Blake Dawson Waldron is $456.33 (ex GST).