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9(2)(a)

RE Official information request CDHB 10332

We refer to your email dated 11 June 2020 requesting the following information under the Official Information Act from Canterbury DHB.

Set out below are a number of questions that Genea Oxford Fertility Limited (GOF) has in addition to getting CDHB's response to their concerns. For the sake of clarification, these questions are requests for information under the Official Information Act. We anticipate answers to them being provided on or before 18 June, in writing.

The market

- 1. Why did CDHB not take on board our comments in 2015 about the anti-competitiveness of having a single provider for the South Island?**

The Canterbury DHB is mindful of our obligations under the Commerce Act. Our staff have received training and education from both an external law firm and from Commerce Commission staff.

Evaluation criteria

- 2. Did CDHB consider the quality of the service to be funded was a material issue?**

The evaluation model used for the RFP was weighted criteria. Proposals were evaluated on their merits according to the criteria and weightings set out in the RFP document. Service quality is fundamental to the selection of a service provider. This was reflected specifically in the high weighting of 25% for the ability to meet clinical and service requirements of the national service specification and collectively 60% for the clinical criteria.

- 3. Why was a quality measure not included in the evaluation criteria for the proposals?**

The metric for service quality is the capability to meet the requirements of a service specification, expertise of staff, service outcomes, diversity and performance on quality systems, accreditation certification and audit history.

4. Has CDHB or any of the other South Island DHBs monitored the quality of the provision that Fertility Associates has provided over the last contract period?

Performance Monitoring Reports are submitted monthly by the provider.

5. If so, what has the view been on the quality of the service provided?

Canterbury DHB is satisfied with the quality of the contracted South Island Assisted Reproductive Technology (ART) service being provided.

6. If not, why is CDHB and the other South Island DHBs not interested in the quality of the service being provided?

Not applicable (refer response to Q5).

7. Why was there not a consumer representative on the evaluation panel?

An evaluation panel member was a consumer of fertility services in the late 1990s.

Consideration of tender proposals

8. What has Fertility Associates told CDHB about Genea Oxford Fertility or its joint venture partners?

Canterbury DHB did not receive any information from Fertility Associates about Genea Oxford Fertility or its joint venture partners and no information was requested by Canterbury DHB.

9. Who was the decision maker or decision makers for this contract award?

A recommendation on the preferred provider was made by the evaluation panel. This recommendation was presented to the Canterbury DHB Planning and Funding Leadership Team (20/01/20). The Canterbury DHB Planning and Funding Leadership Team presented its recommendation to the South Island Alliance Operational Group (AOG), a governance group of senior managers across the SI DHBs, which had delegation to make the final decision, at their 16/03/20 meeting.

Further financial work was requested by AOG regarding the portioning of funding between the five DHBs. The paper was re-presented to AOG (25/03/20) and the final decision was made on 4/05/20.

South Island DHB Chief Executives were also consulted as part of the process.

10. What were the actual scores that GOF received for each of the evaluation criteria?

See the attached evaluation (**Appendix 1**). These were given to you at our debrief meeting held on 18 June 2020.

11. What were the actual scores that Fertility Associates received for each of the evaluation criteria?

See the attached evaluation (**Appendix 1**). These were given to you at our debrief meeting held on 18 June 2020.

12. What were the reasons for the different scores between the two providers?

The proposals were evaluated on their merits against the evaluation criteria in the RFP document.

13. Did CDHB consider that its decision to proceed with a sole provider would have the effect of substantially lessening competition in both the private and public ARTS South Island markets?

As noted in our response to question 1, the Canterbury DHB is aware of our obligations under the Commerce Act.

14. Did Fertility Associates have any contact with anybody involved in the RFP from CDHB or the other South Island DHBs during the RFP process and, if so, what was the nature of that contact?

The Canterbury DHB South Island Assisted Reproductive Technology Service contract manager had correspondence with Fertility Associates regarding an update on the actual volume of IVF cycles delivered (email 14/10/19) and an update on the wait list (email 19/02/20). In addition, RFP related emails seeking a response on whether Fertility Associates would accept a shared contract (email 14/01/20), and a request for final confirmation of pricing (email 23/01/20) – also sent to Genea on the same dates.

Contract awarding

15. When did CDHB decide that it would not go with a multiple provider scenario in this contracting round?

The option of a shared contract was evaluated but judged to not be financially viable due to the relatively low volume of cases funded.

16. When did CDHB consider that GOF was not the preferred provider?

The RFP selection timeline:

- **20/01/20** - Memo with evaluation panel recommendation on preferred provider and recommendation for a negotiation round on final pricing with both providers considered by Canterbury DHB Planning & Funding Leadership Team. Memo recommendation approved.
- **21/01/20** - Planning & Funding Executive Director approved Memo recommendation for further negotiation on pricing. Final selection decision escalated to AOG.
- **16/03/20** - AOG meeting – decision paper discussed, and request made for further financial work on the portioning of funding between the DHBs.
- **25/03/20** - Paper with additional financial work emailed to AOG members.
- **30/04/20** - Follow up email to AOG members seeking a decision on preferred provider.
- **4/05/20** - AOG final decision on preferred provider confirmed.

17. Why did CDHB not tell GOF earlier that it was not the preferred provider?

AOG made the final decision on the preferred provider on 04/05/20 and Canterbury DHB entered into negotiations with the preferred provider. Canterbury DHB advised Genea (email 13/05/20) that it was entering into negotiations with the preferred provider with the intent of putting an Agreement in place.

18. Why did CDHB decide that it would not go with a multiple provider scenario?

The option of a shared contract was evaluated but judged not financially viable due to the low volume of cases (as per response to Q.15).

19. Why did CDHB not tell GOF at that point that it was no longer considering a multiple provider scenario?

Canterbury DHB advised Genea (email 20/04/20) that a six-month extension of the current contract with Fertility Associates had been approved which would extend the contract through to 31 December 2020 and that no decision had been made as to the ongoing service provision.

The contract extension was made during the Covid-19 lockdown at a time of uncertainty and when Canterbury DHB resources were re-prioritised to the pandemic response.

20. Why has CDHB entered into an exclusive contract with Fertility Associates when the contract associated with the RFP documentation said the contract would be non-exclusive?

Clause B5.2 in the generic contract provided in the RFP document reads as follows:

- ~~SERVICE PROVISION~~
- ~~B5 → Provision of Services~~
- ~~B5.1 → You must provide the Services and conduct your practice or business:~~
 - ~~a) → in a prompt, efficient, professional and ethical manner, and~~
 - ~~b) → in accordance with all relevant published Strategies issued under the Act; and~~
 - ~~c) → in accordance with Our obligations, and~~
 - ~~d) → in accordance with all relevant Law; and~~
 - ~~e) → from the Commencement Date and then without interruption until the Agreement ends or is ended in accordance with the Agreement.~~
- ~~B5.2 → Nothing in the Agreement gives you an **exclusive** right to provide the Services.~~

To clarify, while a single contract has been awarded for the South Island Assisted Reproductive Technology Service, Canterbury DHB does not have an exclusive contract in place for this service.

21. Did a member of the evaluation panel receive fertility services from Fertility Associates during the RFP process or shortly before it?

All members of the evaluation panel signed the Canterbury DHB conflict of interest form (template attached **Appendix 2**). No conflicts were declared.

22. If so, why did CDHB not disclose this to GOF?

Not applicable.

I trust that this satisfies your interest in this matter.

Please note that this response, or an edited version of this response, may be published on the Canterbury DHB website after your receipt of this response.

Yours sincerely



Carolyn Guffery
Executive Director

Planning, Funding & Decision Support

Assisted Reproductive Technology Services 2019 - Minutes
Genea Oxford Fertility

APPENDIX 1

One Score for Each Question

See Scoring Guidelines on Last Page

1. Clinical	Overall Weighting 60%	Comments	Score
1.1. Ability to meet clinical and service requirements of the national service specification.	25%	<ul style="list-style-type: none"> Concerned that the proposal does not address sufficiently how they will ramp up capacity to enable them to provide the service in a new location. They raise issues around the viability of the Dunedin service in their proposal. The patient feedback survey did not have a denominator. Don't have the involvement with MoH and CPAC at present. Less comprehensive, showed perhaps less understanding. State that they will be able to reduce wait times but don't explain how. Feel that they have the clinical ability to provide the service. 	6.5
1.2. Experience, expertise and qualifications of staff.	20%	<ul style="list-style-type: none"> They have similar qualifications to the other respondents. Need to clarify their levels of staff. Qualifications look good, but no mention of diversity of staff. Technically they have two sub specialists, but will need to recruit more expertise. Highly dependent on ReproMed. Qualifications look suitable, but no mention of training of new doctors. Will sub-specialists be housed in Dunedin? 	7
1.3. Outcomes focus on live births	5%	<ul style="list-style-type: none"> State their live birth rate is 28.6%. Easy to find the live birth data. No financial drivers stated. Have itemised the challenging areas in terms of fertility but no clear plan about how they would maximise the number of live births. 	7

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1.4. Ability to meet the needs of Service Users from diverse cultural, disability.	5%	<ul style="list-style-type: none"> Some general statements, but no specific mention of any groups other than Maori. They are working towards the rainbow tick. No mention of people with disability. Provided the bare minimum of detail. Ticked the basic boxes but no more. 	5
1.5. Quality systems, accreditation, certification and audit history.	5%	<ul style="list-style-type: none"> Show the correct accreditation. No denominator on patient feedback survey. Looks as though they are ticking all the necessary accreditation boxes. No detail about how they will meet quality requirements in an expanded service. 	6.5
2. Administration	Overall Weighting 10%	Comments	Score
2.1 Administrative and reporting systems and ability to interface with DHB processes and systems	5%	<ul style="list-style-type: none"> Good description about their electronic system. No mention of contacts within the hospital, the DHB and no teaching of medical students. Liked the description of their system. Feel that the wait list reduction/removal is not realistic or achievable. Felt their understanding of the interaction with DHBs was lacking. 	6.5
2.2 Ability to continue to deliver services and consultations in existing locations.	5%	<ul style="list-style-type: none"> State they will continue to deliver in existing locations. They have a number of stated locations and facilities. Have concerns about the numbers in Dunedin and whether it is viable. Not convinced they have the capacity to deliver. We have to be confident in their ability to provide the service from Day 1. Not enough clarity given as to how they would set up the service in Dunedin. Concerns about readiness to be operational. 	7
3. Pricing	Overall Weighting 30%	Comments	Score

<p>3.1 Pricing is set to achieve the right combination of fit for purpose, quality, on time delivery, quantity and price.</p>	<p>15%</p>	<ul style="list-style-type: none"> • Unit prices – some are slightly higher, some slightly lower than the other proposal. Their proposal is based on unit prices only. No mention of set-up costs for a new facility in Dunedin. • The unit prices are competitive. • Felt the round numbers showed lack of clarity. • They state they will fix their prices for 5 years. Is this realistic? 	<p>7</p>
<p>3.2 Proposal demonstrates value for money.</p>	<p>15%</p>	<ul style="list-style-type: none"> • Not enough information provided to judge value for money. • 	<p>6.5</p>

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Rating	Definition	Score
EXCELLENT significantly exceeds the criterion	Exceeds the criterion. Exceptional demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Proposal identifies factors that will offer potential added value, with supporting evidence.	9-10
GOOD exceeds the criterion in some aspects	Satisfies the criterion with minor additional benefits. Above average demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Proposal identifies factors that will offer potential added value, with supporting evidence.	7-8
ACCEPTABLE meets the criterion in full, but at a minimal level	Satisfies the criterion. Demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource, and quality measures required to meet the criterion, with supporting evidence.	5-6
MINOR RESERVATIONS marginally deficient	Satisfies the criterion with minor reservations. Some minor reservations of the Respondent's relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	3-4
SERIOUS RESERVATIONS significant issues that need to be addressed	Satisfies the criterion with major reservations. Considerable reservations of the respondent's relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	1-2
UNACCEPTABLE significant issues not capable of being resolved	Does not meet the criterion. Does not comply and/or insufficient information provided to demonstrate that the Respondent has the ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	0

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Conflict of Interest Undertaking

I undertake to immediately notify the Planning and Funding contact person Canterbury DHB of any actual, potential or perceived conflicts of interest which may arise during my involvement in the RFP.

Restrictions during the RFP

During the period of that the RFP is open (including evaluation and negotiation phases and up until the formal announcement of a successful provider/s) I undertake not to do any of the following without prior written approval of the contact person of Planning and Funding:

- Pass information or make comments to any potential provider about the RFP;
- Receive any gift, gratuity, hospitality, benefit or inducement from any potential provider; or
- Meet with any potential provider to discuss any Canterbury DHB RFP or tender.

I will immediately advise the Planning and Funding contact person of any requests for information or meetings in relation to the RFP that I receive from any potential provider.

Declaration & Agreement

Declaration I declare that the above details are correct to the best of my knowledge and I make this declaration in good faith. I agree to be bound by the above undertakings.		
Signature:	Full Name:	Date:

