



**City of Greater Sudbury
Progressive Design-Build
Greater Sudbury Event Centre (RFP CAO22-73)**

Fairness Monitor Interim Report

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Submitted To:

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1. Introduction

RFP Solutions Inc. was engaged by the City of Greater Sudbury (the City) as a Fairness Monitor to observe the second-stage of a two (2) stage procurement process associated with the Design-Build of the Greater Sudbury Event Centre (GSEC).

RFP Solutions Inc. was engaged by the City on May 10, 2018, following the conclusion of a first-stage Request for Qualifications (RFSQ CAO17-167) process which resulted in the City short-listing three (3) Proponents eligible to participate in the planned second-stage Request for Proposals (RFP).

Following initial procurement planning, the RFP development process was placed on hold. RFP Solutions Inc. was re-engaged by the City in September, 2021 as the City re-commenced the planning and RFP development phase.

RFP Solutions Inc. hereby submits this Fairness Monitor Interim Report related to the second-stage Request for Proposals (RFP) process for the Design-Build of the GSEC. This report covers the activities of the Fairness Monitor, commencing with the RFP preparation by the City, through oversight of the solicitation period, including the conduct of commercially confidential meetings with Proponents and the City's subsequent revision of the RFP process to a Progressive Design-Build approach, RFP closing and oversight of the evaluation of RFP Proposals resulting in the identification of the highest-ranking Proponent ("Preferred Proponent") eligible to be selected to enter into negotiations of the Design-Development Agreement with the City.

This report includes a summary of the scope and objectives of our assignment, the methodologies applied and relevant observations from the activities undertaken during each of the observed stages of the process, and our opinion of assurance on the process to date.

RFP Solutions Inc. is an independent third party with respect to this process.

2. Project Requirements

The Greater Sudbury Event Centre (GSEC) is envisioned as one of the core elements in the development of the Kingsway Entertainment District (KED), a site that is intended to create a major sports and entertainment destination as part of the Jack Nicholas Business and Innovation Park. The GSEC will offer a diverse range of sporting and entertainment experiences for the Greater Sudbury region. The vision for the GSEC was developed through an initial Feasibility Study prepared by PWC in 2017 and included an overall definition of the building that would be appropriate to the marketplace.

Features of the proposed GSEC include:

- Overall seating of 5,800 seats comprised of general seating (5,020), club seating (500), loge box seating (40) and private suites dedicated seating (240),
- A total of 24 private suites in three different sizes ranging from 8-person suites to 12 person suites,
- Concessions distributed appropriately around the concourse and reflecting the current

- targets for the number of points of sale,
- Well-developed back-of-house infrastructure to allow for quick set-up and take-down of a diversity of sporting and non-sporting events.

Through RFP CAO22-73, as amended during the solicitation period to incorporate a Progressive Design-Build approach, the City was seeking Proposals from the Proponents short-listed pursuant to RFSQ RFSQ CAO17-167 to provide progressive design and construction services and work required for the GSEC.

Based on the previously completed RFSQ process, Short-Listed Proponents eligible to participate in RFP CAO22-73 were as follows (in alphabetical order):

- Ball/TESC Construction Inc. (in Joint Venture) / Architecture 49;
- EllisDon / BBB Architects Toronto Inc. in conjunction with J.L. Richards & Associates Limited; and
- PCL Constructors Canada Inc. / Parkin Architects Ltd.

The phases of the procurement process are as follows:

Phase 1 – Design Concept Phase: The Short-Listed Proponents were to prepare a concept design for the Project, a preliminary budget and schedule in accordance with Concept Design (CD) Agreement, and as part of their submission of a Proposal in response to the RFP (“Phase 1”) (with “CD Deliverables” as defined in the CD Agreement), in accordance with Section 6. Design-Build Process and Statement of Project Requirements of the Bid Solicitation. A Preferred Proponent will be selected by the City at the end of Phase 1 to enter into a Design Development (DD) Agreement with the City, to be negotiated by the City and the Preferred Proponent based on its Proposal (including the CD Deliverables) and the DD Agreement Term Sheet issued with the RFP.

Phase 2 – Design Development Phase: The phase in which the Preferred Proponent prepares, among other things, a more detailed design for the Project (the level of detail of which to be agreed), and a firm Target Price and Firm Schedule for the construction of the Project (a Design-Build Proposal) in accordance with the terms of the DD Agreement. Phase 2 is completed when the Preferred Proponent’s DB Proposal is accepted by the City or the DD Agreement is terminated.

Phase 3 – Design-Build Phase: The phase in which the Preferred Proponent and the City agree to terms for the completion of the design and the construction of the Project in accordance with the terms of the DB Agreement to be negotiated by the City and the Preferred Proponent based on the Detailed Design, firm Target Price and Firm Schedule developed by the Preferred Proponent during the Design Development Phase (Phase 2) as part of the DB Proposal, and agreed to by the City pursuant to the DD Agreement. When the City accepts the DB Proposal, and the City and the Preferred Proponent enter into the DB Agreement, the Preferred Proponent becomes the Successful Proponent. If terms are not agreed to by the Preferred Proponent and the City, the City may terminate the RFP, negotiate with another Proponent, or proceed with another design-builder to become the Successful Proponent and complete the Project in accordance with the terms to be set out in the DB Agreement.

3. Methodology

The Role of the Fairness Monitor

In all respects, the Fairness Monitor serves as a neutral and objective third-party during the procurement process, with no interest, financial or otherwise, in the outcome of the process, other than ensuring that an open, fair and transparent process was followed.

The following Principles of Fairness were used in the conduct of this mandate and in arriving at our Opinion on the fairness of this process to date:

- **EQUALITY** – all participants given the same opportunity, the same information, and all subject to the same set of rules;
- **NEUTRALITY** – an absence of bias or favouritism to any participant(s) – a dispassionate and impartial perspective which avoids the subjective indulgence of one’s personal likes or dislikes;
- **INTEGRITY** – a process with no pre-determined outcome, that is free from self-interest or competing interests, and that is undertaken in accordance with what is ethically right and proper;
- **CONSISTENCY** – all proposals assessed using the same criteria and processes;
- **OBJECTIVITY** – observation, evaluation and judgment based solely on the evidence presented, and not on personal beliefs, preferences or preconceived opinions;
- **TRANSPARENCY** – a process that is open, accessible and easily understood by all participants; and
- **DEFENSIBILITY** – a process resulting in an honest and truthful outcome that is able to withstand any degree of scrutiny.

In accordance with the terms of our engagement, we familiarized ourselves with the relevant documents and observed solicitation activities (e.g. review of the solicitation documents, Addenda and Questions and Answers, oversight of the solicitation period, including engagement with industry and solicitation closing, oversight of the evaluations for each stage of the process and due diligence, leading to the identification of the Preferred Proponent by the City), identifying any fairness-related matters to the Project Lead and ensuring that responses and actions of the City were reasonable and appropriate. Section 4 of this report summarizes the specific activities and observations of the Fairness Monitor in respect of those activities.

4. Fairness Monitor’s Activities and Observations

4.1 RFP Preparation and Issue Period

The RFP was prepared by the City with support from the City’s Compliance Team.

Prior to releasing the RFP package, in consideration of the time elapsed since the completion of the pre-qualification process, the City invited the three (3) Short-Listed Proponent teams to attend a Pre-Meeting with City representatives to affirm the Proponents’ interest in continuing in the procurement process. Each Pre-Meeting was attended by representatives of the City Project Team and Procurement Representative and overseen by the Fairness Monitor.

The RFP was distributed to the three (3) Short-Listed Proponents via the City's tendering website (bids&tenders) on January 28, 2022 with an initial closing date of June 9, 2022 at 1:30 PM Local Time.

On February 3, 2022, the City held a Project Initiation Meeting with all three (3) Proponents to provide a background and overview of the RFP package and to respond to Proponent questions. The Meeting was held virtually via MSTeams and was facilitated by the City's Project Lead and attended by representatives of the City Project Team and Procurement Representative, members of the Compliance Team and overseen by the Fairness Monitor.

During the RFP Issue period the City's tendering website remained open for Proponents to submit questions and receive responses to questions, Addenda, and any additional notices and background documents pertaining to the RFP.

As set out in the originally published RFP, the procurement process was initially structured to include a series of four (4) Confidential Meetings with each Proponent throughout the RFP solicitation period. The first series of Confidential Meetings were held on February 24, 2022 with each Proponent, with each meeting facilitated by the City's Project Lead and attended by representatives of the City Project Team and Procurement Representative and overseen by the Fairness Monitor. The purpose of the first Confidential Meeting was for the City to receive questions and feedback from the Proponents on the Bid Solicitation.

As a result of feedback received from Proponents and in consideration of evolving market conditions, the City undertook a review of its procurement approach for the RFP and prepared a revised procurement approach, proposing to alter the process from a traditional Design-Build to a Progressive Design-Build. The City prepared and issued a communication to three Short-Listed Proponents on proposed Progressive Design-Build approach, and invited each of the three (3) Short-Listed Proponents to attend a second Confidential Meeting to ask questions and provide their feedback on the proposed approach.

The second round of Confidential Meetings were held over the period of March 15-16, 2022, based on Proponent availability. Each meeting was facilitated by the City's Project Lead and attended by representatives of the City Project Team and Procurement Representative and overseen by the Fairness Monitor. Proponents were also invited to submit their written feedback to the City following the meetings. Following the Confidential Meetings, the City provided an update to Council on the Progressive Design-Build approach (March 22, 2022). The City finalized the revised RFP package, reflecting the Progressive Design-Build approach and incorporating feedback received from all Proponents, and issued the revised RFP package to the three (3) Short-Listed Proponents on April 8, 2022.

Following the issuance of the revised RFP package, the City received written notice of withdrawal from the process by one (1) of the Short-Listed Proponents (EllisDon / BBB Architects Toronto Inc. in conjunction with J.L. Richards & Associates Limited) on April 14, 2022. The City met with the organization on May 2, 2022, following their withdrawal from the process to seek understanding of the reasons for the withdrawal. The meeting was facilitated by the City's Project Lead and attended by City Project Team members, the Procurement Representative and the Fairness Monitor.

Section 6.0, PDB Process and Statement of Project Requirements of the revised RFP contained a series of two (2) Confidential Design Meetings (CDMs) to be held with each Short-Listed

Proponent, providing the opportunity for Proponents to present the progress of their submissions based on the topics disclosed in Section 6.0 of the revised RFP. CDM #1 was held with each of the remaining two (2) Short-Listed Proponents on April 28 and May 11, 2022 respectively, based on Proponent availability and readiness. CDM #2 was held on June 1 and 2, 2022 respectively.

In advance of CDM #2, in consideration of questions received from the Proponents in relation to the content and evaluation process for Financial Proposals as described in the revised RFP, the City reviewed these components of the RFP and developed a series of options to inform potential revision to the Financial Proposal content and evaluation process. The City presented these options to each of the remaining two (2) Short-Listed Proponents during CDM #2 and provided each Proponent the opportunity to comment in the meeting as well as to submit follow-on feedback in writing. Following receipt and consideration of feedback from the Proponents, the City issued revisions to the Financial Proposal content requirements and associated evaluation process.

Overall, during the RFP Issue Period, the City issued a total of nine (9) Notices, providing responses to Proponent questions, and issued nine (9) Addenda, making changes to the RFP documents and providing additional background information to Proponents. Of note, Addendum #4 contained the revised and restated RFP package, which modified the RFP from a traditional Design-Build to the Progressive Design-Build approach; Addendum 6 extended the RFP Closing date to June 16, 2022 at 1:30pm Local Time; Addendum 8 provided Proponents with the initial draft DD Agreement Term Sheet to enable Proponents to provide commentary on the same within their submitted Proposals; and Addendum 9 provided Proponents with an updated DD Agreement Term Sheet for comment and the revised Financial Proposal submission format and requirements.

Activities and Observations

The Fairness Monitor reviewed drafts of the RFP and Section 6 Statement of Requirements and provided comments which were duly considered by the City in the finalization of the RFP package prior to posting.

The Fairness Monitor was consulted by the City on the logistics, procedures and protocols for conducting the Pre-Meetings with Proponents prior to the RFP issuance and the logistics, procedures and protocols for conducting the Confidential Meetings with Proponents, and reviewed the City's agenda and preparations for each Confidential Meeting. The Fairness Monitor attended all Confidential Meetings between the City and Proponents to observe that each Proponent was treated in a fair and consistent manner. Each Proponent was provided with consistent agenda, session duration and opportunity to ask questions and consistent opportunity to provide their feedback on the proposed Progressive Design-Build approach.

The Fairness Monitor was informed by the City of the withdrawal notice received from one (1) of the Short-Listed Proponents and was consulted by the City on the offering of a meeting to seek clarification on the reasons for withdrawal. The Fairness Monitor attended and oversaw the meeting.

The Fairness Monitor made inquiries of the City on the structure and conduct of CDM #1 and #2 to verify their alignment to the structure and format set out in the RFP. The Fairness Monitor attended each of the CDMs conducted during the solicitation period to observe that each

Proponent was treated in a fair and consistent manner. Each Proponent was provided with consistent agenda, session duration and opportunity to ask questions.

The Fairness Monitor was consulted by the City on and reviewed drafts of each Notice and Addendum prior to the publication of final Notices and Addenda by the City.

Overall, no fairness concerns were identified during the RFP preparation and issue period, and there were no fairness concerns with respect to the conduct of the Confidential Meetings, Clarification Meeting regarding Proponent's withdrawal, CDMs, nor any Notices or Addenda issued. The City was forthcoming with information throughout the process.

4.2 RFP Evaluation Structure and Preparations

In preparation for the evaluation process, during the RFP development and issue period, the City confirmed the Evaluation Team membership and overall evaluation structure, as follows:

- The Evaluation Team responsible for scoring of Technical Proposals was comprised of three (3) City personnel and two (2) third-party Architectural consultants engaged by the City. Evaluation Team members were responsible for evaluation of Proposals received against their assigned evaluation criteria. Two (2) of the evaluation criteria were scored by all five (5) members of the Evaluation Team, and two (2) of the evaluation criteria were scored by four (4) consistent members of the Evaluation Team.
- The Evaluation Team was supported by a Compliance Team, comprised of third-party subject matter experts in fields of engineering and architecture, responsible for reviewing Technical Proposals and reporting their observations on the compliance of submissions with the PDB Statement of Requirements to the Evaluation Team members. Compliance Team members were not responsible to provide a numeric score.
- An independent third party Quantity Surveyor, responsible for providing subject matter expert review and recommended score on the qualitative content of Financial Proposals (as set out in Financial Evaluation Criterion #1), and responsible for review and providing presentation of subject matter observation on the content of Financial Proposals against Evaluation Criteria #2 and #3, with four (4) consistent members of the Evaluation Team responsible for review and confirmation. Note that this subject matter review did not provide a score or rating of the results of Financial Evaluation Criteria #2 and #3, as evaluation of these two (2) criteria were to be conducted on the basis of the formulae set out in the RFP.

During the RFP preparation and issue period, the City prepared a Conflict of Interest and Confidentiality Declaration which all Evaluation Team and Compliance Team members were required to review and sign. In addition, the City undertook a comprehensive relationship review process, requesting all participants to identify any previous or current relationship with any Proponent organizations or team members. These Declarations and identifications were reviewed by the City's Procurement Representative and the Fairness Monitor to support ensuring process participants were impartial and eligible to participate within the overall evaluation process based on the information provided in the Declarations.

As of the RFP Closing Date, the City received Proposals from the two (2) remaining Short-Listed Proponents, as follows:

- Ball/TESC Construction Inc. (in Joint Venture) / Architecture 49; and
- PCL Constructors Canada Inc. / Parkin Architects Ltd.

The City's Procurement Representative conducted a completeness review of the Proposals to confirm all Proposals were complete and contained the required submittals. In this review, the Procurement Representative issued one (1) clarification to one (1) Proponent to confirm an item included in the Proposal, to which a response was provided within the requested timeframe. As a result of this review, both (2) Proposals were determined to be complete and eligible to move forward to evaluation.

The City's third party Architectural consultant prepared a review sheet for use by the members of the Compliance Team to support documentation of their observations in a consistent manner.

The City's Procurement Representative provided evaluation process participants with process instructions prior to the commencement of the evaluation process. In addition, the City's Procurement Representative, supported by the Fairness Monitor, conducted a pre-meeting with evaluation process participants to ensure clarity of participant roles, responsibilities and record-keeping requirements for the process. The City's Procurement Representative also prepared and provided the Evaluation Team members with workbooks to record their individual evaluation outcomes including clear documentation of assessments both prior to and as updated as a result of subsequent Evaluation Team discussions.

Activities and Observations

The Fairness Monitor reviewed the evaluation process structure and documentation, including evaluator roles and responsibilities, security, confidentiality and impartiality requirements, and evaluation methodology, and verified the alignment of the evaluation workbooks to the published RFP and Addenda. The Fairness Monitor also reviewed the review sheet prepared for use by the Compliance Team members and provided commentary on alignment to the RFP requirements that was considered by the Team in their reviews.

The Fairness Monitor reviewed all Conflict of Interest and Confidentiality Declarations and relationship review outcomes.

The Fairness Monitor had the opportunity to review the evaluation instructions and tools provided to evaluators to verify that instructions to evaluators aligned to the RFP, Addenda, and public sector procurement requirements. The Fairness Monitor attended the pre-meeting with evaluation process participants.

No fairness concerns were observed.

4.3 RFP Evaluation

Each member of the Evaluation Team conducted an independent review of the Technical Proposals prior to convening as an Evaluation Team. Each member of the Compliance Team reviewed the Technical Proposals to document their observations prior to attending the Evaluation Team meetings.

Evaluation Team meetings were conducted over the period of June 23-27, 2022, as follows:

- June 23, 2022 – Review of content submitted in response to Technical Evaluation Criterion #1
- June 24, 2022 – Review of content submitted in response to Technical Evaluation Criteria #2-#4
- June 27, 2022 – Review of content submitted in response to Financial Evaluation Criteria #1-#3

Each Technical Evaluation Team meeting (June 23-24, 2022) commenced with a presentation of the review observations by the assigned Compliance Team subject matter experts to the Evaluation Team members against the identified content sections for the respective meeting. Presentations were attended by the Evaluation Team, the assigned Compliance Team subject matter experts, the City's Procurement Representative and the Fairness Monitor.

Following the presentation by the subject matter experts, the Evaluation Team members had the opportunity to ask clarifying questions. Each Evaluation Team member then documented their independent evaluation. The Procurement Representative met with each evaluator independently to confirm their independent scores prior to the Evaluation Team members re-convening for consensus evaluation.

During the consensus portion of the Evaluation Team members, each Proposal was reviewed in sequence. Evaluation Team members affirmed their individual evaluation scores and had the opportunity to present their rationales therefore against the published evaluation criteria and Proposal contents. Following the discussion, each Evaluation Team member had the opportunity to identify any adjustments to their individual scores based on the discussion. The final scores for each evaluation criterion were then averaged across the scoring Evaluation Team members to arrive at a final score for each Proposal for the respective criteria. The consensus meetings were facilitated by the City's Procurement Representative and overseen by the Fairness Monitor.

During the Technical Evaluation consensus meetings, the Evaluation Team discussed their findings on a Proposal-by-Proposal basis, arriving at consensus for each criterion for a Proposal prior to proceeding to the next Proposal.

During the course of the Technical Evaluation Team consensus meetings, the need to seek two (2) clarifications on one (1) of the Proposals was identified. The Evaluation Team completed their scoring based on the content originally received within the submitted Proposal. Clarification questions were then drafted and issued to the Proponent and responses received by the City within the requested submission time. The responses were reviewed by the Procurement Representative and Fairness Monitor and by a member of the Compliance Team to verify that only clarifying information was provided to the Evaluation Team members and no new information was introduced to the Evaluation Team. The Evaluation Team members reviewed the clarifying information provided and affirmed no change to their scoring as a result of the submitted clarification responses.

Following completion of the Technical evaluation process, the members of the Evaluation Team were requested to submit their individual evaluation worksheets, containing their individual scores and comments pre-consensus (as reported to the Procurement Representative prior to the start of the consensus meeting) and any updates and associated rationales post consensus

(as discussed during the consensus meeting). These records were received by the Procurement Representative and reviewed against the consensus record to verify the recorded consensus outcomes.

Proposals were required to achieve a minimum score of 60% (39 points) on the Technical evaluation criteria in order to proceed to the Financial Evaluation. At the conclusion of the Technical evaluation process, both Proposals were determined to have achieved the required minimum score in order to proceed.

The Financial Evaluation Team meeting (June 27, 2022) commenced with a presentation of the review observations by the Quantity Surveyor to the Evaluation Team members against Financial Evaluation Criterion #1. The presentation was attended by the Evaluation Team, the Quantity Surveyor, the City's Procurement Representative and the Fairness Monitor. Following the presentation, the Evaluation Team had the opportunity to ask clarifying questions. At the conclusion of the presentation, the Quantity Surveyor was asked to present their recommend scores. Scores were reviewed and confirmed by the Evaluation Team members.

Following the review of Financial Evaluation Criterion #1, the Quantity Surveyor presented their findings and observations on the contents submitted in response to Financial Evaluation Criteria #2 and #3 to confirm that Proposals were submitted in accordance with the requested cost elements and could be evaluated on an equitable basis. Following this review, the formulae for Financial Evaluation Criteria #2 and #3 set out in the RFP were applied to the values proposed by the Proponents.

Following the completion of the evaluation process, the total scores for each Proponent were tallied in accordance with the RFP to identify the Proponent with the highest overall score as the Preferred Proponent.

As a result of this process, Ball/TESC Construction Inc. (in Joint Venture) / Architecture 49 were identified as the Preferred Proponent, eligible to be invited to enter into negotiations to establish a DD Agreement.

Activities and Observations

The Fairness Monitor was consulted by the City on the process to conduct individual evaluations prior to arriving at an Evaluation Team consensus decision and ensuring thorough documentation of both individual scores pre-consensus and any updates made as a result of consensus discussions. The Fairness Monitor recommended individual evaluation records bear an anonymized identifier ("evaluator 1", "evaluator 2", etc.) to support impartiality of record review.

The Fairness Monitor was available to answer questions of the Evaluation Team members during the individual review stage.

The Fairness Monitor attended and observed Evaluation Team meetings and observed all presentations by the Compliance Team members. Presentations were based on the contents of submitted Proposals and provided feedback as to the compliance of submissions with the RFP requirements.

Following individual evaluations, the Fairness Monitor attended and observed the Evaluation Team consensus discussions, making inquiries of evaluators. Each evaluator was prepared with their individual evaluations including rationales completed, and each evaluator participated actively in the evaluation discussions.

The Fairness Monitor confirmed that the evaluation was undertaken in a consistent manner in accordance with the evaluation procedures and criteria disclosed in the RFP and that the results were arrived at with equal participation of all Evaluation Team members.

The Fairness Monitor reviewed the results of the evaluation following the conclusion of the Evaluation Team meetings and reviewed the record of scoring to confirm it reflected the consensus discussions and outcomes. The Fairness Monitor verified the calculation of the average scores and verified the weighting of criteria was applied as published in the RFP to Proponents.

The Fairness Monitor reviewed the clarification questions issued to Proponents and reviewed the responses received and the City's disposition thereof. No new information was introduced to evaluators as a result of the clarifications process.

No fairness concerns were observed.

4.4 Current Status

At this time, the City is preparing to notify the Proponents of their respective outcomes in the evaluation process. The evaluation outcomes will then be presented to City Council.

City Council will be asked to vote on the estimated project budget based on the Preferred Proponent's response to Financial Evaluation Criterion #1. Pending the results of this vote, the City will either proceed to enter into negotiations with the identified Preferred Proponent, or the RFP process will be cancelled.

The Fairness Monitor remains engaged to oversee final stages of the RFP process, including any Proponent debriefings.

5. Opinion of Assurance

The Fairness Monitor hereby provides the following unqualified assurance statement concerning the conduct of the Progressive Design-Build RFP process (CAO22-73) for the Greater Sudbury Event Centre to date, as described herein:

Based on the observations of the Fairness Monitor through the activities observed and described in this Report it is our professional opinion that the process to date was carried out with integrity, in a fair, open and transparent manner.



Steve Johnston
Managing Director
for RFP Solutions Inc.

July 7, 2022

Date



Cathryn Kallwitz
Director, Operations
for RFP Solutions Inc.

July 7, 2022

Date