

MINISTRY OF EDUCATION AND SASKBUILDS SASKATCHEWAN JOINT-USE SCHOOLS PROJECT

PROJECT #1

FINAL REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS:

RFP STAGE

June 5, 2015

**TO: STEERING COMMITTEE,
SASKATCHEWAN JOINT-USE SCHOOLS PROJECT - PROJECT #1**

This report covers the following:

1. Scope of review;
2. Purpose of review;
3. Framework for review;
4. Statement - review has been conducted in accordance with framework;
5. Explanatory details regarding variables affecting review;
6. Project Background / Monitoring Activities by Fairness Advisor;
7. Recommendations to improve process in future;
8. Any qualifications on endorsement of process;
9. Statement that Fairness Advisor has fulfilled terms of engagement in order to express opinion; and
10. Findings / opinion - whether process appears to have been undertaken in accordance with fairness principles expressed or implied in procurement documents.

Respectfully submitted,

Owen D. Pawson
Fairness Advisor

BACKGROUND

The Ministry of Education (the “Authority”), intends to enter into agreements to design, build, finance (partially) and maintain a total of nine joint-use schools (the “Saskatchewan Joint-Use Schools Project”). Three of the nine schools will be located in Regina and will comprise Project #1. Six schools will be located in central Saskatchewan (four in Saskatoon, one in Martensville and one in Warman) and will comprise Project #2. The Authority is working collaboratively with participating public school divisions and Catholic school divisions including: Regina School Division No. 4; and, Regina Roman Catholic Separate School Division No. 81 for Project #1; and for Project #2: Saskatoon School Division No. 13; St Paul’s Roman Catholic Separate School Division No. 20 (Saskatoon, Martensville and Warman); and, Prairie Spirit School Division No. 206 (Martensville and Warman).

The Request for Qualifications (“RFQ”) stage of the competitive selection process selected shortlists with three qualified Respondents for each of Project #1 and Project #2. The shortlisted Respondents were entitled to participate in the Request for Proposals (“RFP”) stage of the competitive selection process for Project #1 and Project #2. Those shortlisted Proponents received an RFP for either or both Project #1 and Project #2 depending on their expressed interest. Three Proponents indicated an interest in pursuing both Projects.

SCOPE OF FAIRNESS REVIEW

I was retained on June 24, 2014 to act as the Fairness Advisor for the Saskatchewan Joint-Use Schools Project. My role is to satisfy myself on the overall procedural fairness of the competitive procurement process associated with the Saskatchewan Joint-Use Schools Project.

The Authority issued the RFQ for the Saskatchewan Joint-Use Schools Project on July 31, 2014. The opportunity was posted on the electronic bidding site MERX® and SaskTenders. Three Respondents responded to the RFQ. All three indicated an interest in both Project #1 and Project #2. After a full evaluation, the three Respondents were shortlisted to advance to the RFP stage of the selection process for both Project #1 and Project #2. Those three were;

- Tandem Education Partners;
- Joint Use Mutual Partnership; and,
- Plenary Education.

The RFP for Project #1 was issued to the three Proponents on October 31, 2014. Technical Submissions closed on April 2, 2015 and Financial Submissions were received May 21, 2015.

My engagement covers the competitive selection process from the issuance of the RFQ to conclusion of the procurement process with the selection of the Preferred Proponent for both Project #1 and Project #2. This Final Report covers the RFP stage of the procurement leading to the recommendation of the Preferred Proponent for Project #1.

The terms of engagement state that, as Fairness Advisor, I was asked to do the following:

- act as an independent observer with respect to the fairness of the implementation of the Project’s procurement processes;
- provide advice to the Project team on matters of fairness;
- be available to Proponents to answer queries relating to fairness; and

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- provide formal written reports at specific points during the procurement process as described below.

It is expected that the activities of the Fairness Advisor will be self-determined but are likely to include the following:

- review RFQ and RFP documentation and comment on whether, and the extent to which, the process described may potentially cause a fairness issue (recognizing that the Fairness Advisor is not acting as legal counsel to the Project);
- observe and monitor that consideration, communications and responses undertaken during RFQ and RFP process and are undertaken in accordance with the RFQ and RFP terms;
- observe and monitor bilateral discussions and meetings;
- observe and/or monitor the RFQ and RFP evaluation process; and
- observe and monitor relevant (as determined by the Fairness Advisor) meetings where Proponent comparisons are made and the criteria, weighting and rating systems are applied.

The Fairness Advisor will be:

- provided full access to all information related to the competitive selection processes as the Fairness Advisor decides is required, including documentation, personnel, premises, meetings, reports and minutes;
- permitted full access to any and all meetings, telephone conferences or other events as, in the discretion of the Fairness Advisor, are appropriate; and
- kept fully informed by the SaskBuilds Project Director of all documents and activities associated with the RFQ and RFP processes.

My role as the Fairness Advisor is not to validate the Evaluation Committee's recommendation of the selected Preferred Proponent; but, rather to provide oversight and assurances regarding the procurement processes applied in making the recommendation. As Fairness Advisor, I may meet these responsibilities by undertaking the steps I determine are most appropriate to comply with the stated mandate.

PURPOSE OF REVIEW

The purpose of my review is to provide arm's length advice and independent assurance for the Saskatchewan Joint-Use Schools Project as to the fairness and appropriateness of project management activities for the competitive procurement process.

FRAMEWORK FOR REVIEW

At each stage of the procurement process covered by my engagement, I undertook selected activities in order to meet the terms of my review. These included:

- (a) reviewing standards for handling of documents, security of documents, procedures for clarifying or rectifying errors by the Authority and Proponents;

- (b) reviewing documentation issued by SaskBuilds to Proponents including all procurement documents and addenda;
- (c) ascertaining whether each Proponent was provided with access to the same information as other Proponents for the purposes of responding to the various procurement stages;
- (d) ascertaining whether Evaluation Criteria were established in advance of evaluations being undertaken;
- (e) ensuring that adequate measures for avoidance of conflict of interest, unfair advantage and confidentiality were established in the procurement process as well as procedures for resolving issues which may arise during the process;
- (f) obtaining information regarding rulings made by the Relationship Review Committee (and Conflict of Interest Adjudicator if applicable);
- (g) reviewing the Evaluation criteria proposed for the various stages of the procurement to determine that they were reasonably and rationally connected to the stated Project objectives;
- (h) reviewing submissions to ensure an adequate familiarity with their terms in order to undertake the Fairness Review;
- (i) reviewing procedures to ensure that appropriate records regarding verbal and written contact with Proponents were prepared and retained; and
- (j) attending selected meetings of the Evaluation Committee and Evaluation Teams.

REVIEW CONDUCTED IN ACCORDANCE WITH THIS FRAMEWORK

My review was conducted within the framework for review as set out above.

PROJECT BACKGROUND AND MONITORING ACTIVITIES OF FAIRNESS ADVISOR

As noted above, the Saskatchewan Joint-Use Schools Project is for the design, construction, financing and maintenance of nine joint-use schools in the Province. Project #1 is comprised of the three schools in Regina.

A. Appointment of Fairness Advisor

The role of Fairness Advisor is to provide oversight on the procurement process to ensure that the process for selecting a Preferred Proponent is open, fair and equitable. A Fairness Advisor also provides advice on issues which may arise during the procurement process which could impact on the overall fairness of the selection process. Fairness Advisors are typically used in public-private partnerships and, with increasing frequency, in other public sector procurements such as design-build procurements where a standard tendering process is not being utilized.

A Fairness Review typically follows four phases of the procurement process:

1. before closing of the procurement process;
2. after closing of the procurement process;
3. the procurement evaluation stage; and
4. post procurement evaluation.

As stated above, the role of the Fairness Advisor is not to validate the Evaluation Committee's recommendation of the selected Preferred Proponent; rather, it is to provide oversight and assurances regarding the procurement processes applied in making the recommendation.

B. Procurement Process for the Saskatchewan Joint-Use Schools Project

This stage of the procurement process for Project #1 involved a Request for Proposals (RFP).

C. Request for Proposals

The RFP for Project #1 was issued on October 31, 2014 and closed April 2, 2015 for Technical Submissions. May 21, 2015 was the stipulated date for receipt of Financial Submissions.

All Proponents were required to agree to certain confidentiality provisions in order to participate in the RFP process. In my opinion, this was a reasonable and fair requirement.

The Authority held a series of Collaborative Meetings with each of the Proponent teams for Project #1 to provide greater clarity and feed-back information regarding the proposed design and input to the Proponents within the context of the stated requirements in the RFP. These were separate meetings with each of the Proponents to discuss their design solutions for the three schools located in Regina for Project #1. The Fairness Advisor or his delegate attended the Collaborative Meetings for the Project which ran from November 2014 through March 2015. Proponents were also able to review their designs with the City of Regina in separate and confidential meetings (that included SaskBuilds representatives) to discuss the applicability of the City's permitting and access requirements.

An Evaluation Committee was established as well as certain Evaluation Teams (which were subcommittees for topic specific reviews) in advance of the closing date for the Technical Submissions for Project #1. Although the Evaluation Teams were appointed to assist the Evaluation Committee, the ultimate responsibility for evaluating and scoring the Proposals rested with the Evaluation Committee based on a comprehensive review of the Proposals. The Evaluation Committee was then to recommend to the Authority a Preferred Proponent. As noted, if appropriate based on the RFP, the Evaluation Committee could recommend a single Preferred Proponent for both Project #1 and Project #2.

Each member of the Evaluation Committee and each member of the Evaluation Teams were required to execute a Relationship Disclosure declaration and a Confidentiality Agreement in advance of having access to any information or submissions received in response to the RFP. An Evaluation Manual was developed for use by both the Evaluation Teams for the Projects and for the Evaluation Committee in advance of the closing date for the Technical Submissions. Orientation and training in the use of the Evaluation Manual, including scoring, was provided in advance of the actual evaluation. Evaluators were apprised of the appointment of the Fairness Advisor. A Due Diligence advisor was also appointed for the process and an internal review process was established for identifying any potential conflict or similar issues upon submission of the required documents. There were no conflicts identified which prevented any person from participating in the evaluation or review of the RFP submissions.

Prior to the closing dates for both Technical and Financial submissions for the Project, there were a few minor matters for which I (or my delegate) was consulted or advice sought by the Project Director or Evaluation Teams during and after the Collaborative Meetings. All issues raised were addressed to my satisfaction. No Proponent contacted me with any fairness issues.

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Three Technical Submissions were received at the submission location on or before the deadline stated in the RFP. No late submissions were received. Each of the submissions was subjected to a high level completeness review. No deficiencies were noted.

The Evaluation Teams for Project #1 met over the course of several weeks. A number of clarification questions were issued to each of the Proponents by the Evaluation Teams for Project #1. These questions were permitted by the terms of the RFP. The Evaluation Committee met during May, 2015 to evaluate the Technical Submissions of each of the Proponents for Project #1. The scored elements aspect of the evaluation was done independently of the Evaluation Committee being aware of the Financial Submissions.

The Fairness Advisor was apprised of all meetings and attended selected Evaluation Committee meetings and scoring sessions (in person or by delegate) and the consensus meetings for Technical and Financial Evaluation Teams. In summary, the Evaluation Teams reached consensus on their evaluations based on the evaluation criteria in the RFP and reported their findings to the Evaluation Committee. I observed and monitored lengthy discussions of the Evaluation Committee on each Proposal which were based on: the Technical and Financial Submissions; responses of the Proponents to clarification questions; and, the comments and analysis done by the Evaluation Teams. The members of the Evaluation Committee clearly understood that the ultimate responsibility for evaluation rested with them, although they duly received and fully considered the advice from the Evaluation Teams. Each of the Proponent's Submissions for Project #1 were fully discussed and considered, and the Evaluation Committee applied the pre-determined RFP evaluation criteria and methodology during evaluation of the Technical and Financial Submissions. The Due Diligence advisor was involved in an oversight role and was satisfied with the overall RFP evaluation.

During the RFP stage of the procurement, the Authority determined that, in order to meet the aggressive delivery schedule for the Saskatchewan Joint-Use Schools Project and to enable the selected Proponent to meet the date identified in the RFP for service commencement of the schools, it would be prudent to have the selected Preferred Proponent commence work prior to execution of the Project Agreement. Accordingly, a draft "early works agreement" was provided to the Proponents for comment and they were given an opportunity to adjust their proposed schedule as they determined appropriate. The Proponents were advised of this opportunity by way of Addendum and were advised to note in their Financial Submission any amendments to the schedule they had submitted in their Technical Submission.

During the course of the evaluation for Project #1, my advice was occasionally sought by the Evaluation Committee. I was satisfied that the manner in which matters were addressed by the Evaluation Committee was fair to all Proponents and conformed to requirements of the RFP.

RECOMMENDATIONS TO IMPROVE THE PROCESS FOR FUTURE PROCUREMENTS

No recommendations are suggested.

ANY QUALIFICATIONS ON THE ENDORSEMENT OF THE PROCESS

My fairness review has been based on: a review of selected documentation and records; discussions with the Evaluation Committee; attendance and observations (or that of my delegate) during the activities of the Evaluation Committee and Evaluation Teams; answers to questions posed by or to me and my observations of the meetings I attended. I have reviewed a sampling of Project related documentation, but not every document created by each and every staff member or advisor.

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FINDINGS

In summary, the Evaluation Committee selected and recommended a Preferred Proponent in accordance with the criteria set out in the RFP. The Evaluation Committee's report to the Authority reflected the decisions and scoring that I observed in the evaluation process. By my observation, the procurement process followed was in accordance with the terms of the RFP and appeared to be fair, transparent and unbiased.

According, it is my opinion that the RFP procurement process for Project #1 has been conducted in a fair manner in accordance with the procedures established for the RFP stage. In particular, I am satisfied that:

1. members of Evaluation Teams and Committee (and their advisors) for Project #1 of the Saskatchewan Joint-Use Schools Project, followed the procedures and fairly applied the evaluation criteria specified in the procurement documents;
2. where judgment and interpretation were allowed or required, the members exercised reasonable judgment and made interpretations in a fair and impartial manner.

I am satisfied that I have been provided with the appropriate access and information to render this fairness opinion.

FULFILLMENT OF REVIEW TERMS

I confirm that I have fulfilled the terms of my engagement based on the activities described to you above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Owen Pawson". The signature is fluid and cursive, with the first name "Owen" and last name "Pawson" clearly distinguishable.

Owen D. Pawson,
Fairness Advisor

Dated at Vancouver, B.C. this 5th day of June, 2015