

**SASKATCHEWAN JOINT-USE SCHOOLS PROJECT**

**RFQ #SB133-RFQ**

**REPORT OF THE FAIRNESS ADVISOR**

**REQUEST FOR QUALIFICATIONS**  
**(Issued July 31, 2014)**

**TO:**

**The Steering Committee**  
**Saskatchewan Joint-Use Schools Project**

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## INTRODUCTION

The Ministry of Education (the “Authority”), given significant growth in certain Saskatchewan communities, intends to enter into contracts to design, build, finance (partially) and maintain a total of nine joint-use schools (the “Saskatchewan Joint Use Schools Project”). Three schools will be located in Regina and six in central Saskatchewan (four in Saskatoon, one in Martensville and one in Warman). The Ministry of Education is working collaboratively with participating public school divisions and Catholic school divisions including: Regina School Division No. 4; Regina Roman Catholic Separate School Division No. 81; 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 Saskatchewan Joint Use Schools Project will be delivered using a Design Build Finance and Maintain (“DBFM”) model to make best use of tax dollars through leveraging the innovation and expertise of the private sector.

## I. PROJECT BACKGROUND

In October 2013, the Province announced the construction of nine new joint-use schools located in communities experiencing unprecedented growth including: Regina, Saskatoon, Warman and Martensville. The locations of the schools were determined through projected enrolments and population growth. Joint-use schools between Catholic and public school divisions allow for shared programming opportunities for students and have the potential to strengthen partnerships between school divisions.

The Saskatchewan Joint Use Schools Project will include the design, construction, partial financing and maintenance of nine joint-use schools and will be procured in two components:

- **Project #1** - to include three joint-use schools in Regina; and,
- **Project #2** - to include six joint-use schools spanning three municipalities in central Saskatchewan including four in Saskatoon and one each in Martensville and Warman

(collectively the “Projects”).

The sites for the Saskatchewan Joint Use Schools Project will be located on Authority owned, or leased property within the municipal limits of Regina, Saskatoon, Martensville and Warman as applicable. The Authority has selected all nine sites and further information, including site plans and utility locations, will be provided to shortlisted Respondents after the RFQ stage. All rezoning activities will be completed by the Authority prior to commencement of construction. The Authority will continue to own or be the primary lease holder of all sites, and will continue to own the facilities for the duration of the Project Agreement(s).

Each site will accommodate two schools - one public and one Catholic with a shared central space. The central “core” space will be shared jointly and with the public. The schools will integrate school facilities with community programming to maximize use.



The primary share areas allocated for public use include a 90 seat child care facility, community resource centre, and multipurpose room.

Each of the joint use schools will offer educational programming for students ranging from pre-kindergarten to Grade 8. The program and physical environment will include: flexible learning environments for varied instructional use and class size; interdisciplinary, project based and inquiry based teaching and learning; a technology-rich environment that anticipates changes in educational delivery; teacher collaboration and support spaces integrated into learning communities; and school commons space that allows students of all ages to gather and connect.

The planning process for the Saskatchewan Joint Use Schools Project has been customized to include direct input from front-line educators, curriculum experts, facility representatives and students. A “Production Preparation Process” or 3P Lean process was used to develop an indicative design. The potential for “Student First” collaborative and supportive uses which enhance opportunities for learners and the community has been a major consideration for the Saskatchewan Joint Use Schools Project.

## **II. ROLE OF FAIRNESS ADVISOR**

### **A. Role of Fairness Advisor**

The purpose of the review by the Fairness Advisor is to provide third party, independent, arm’s length advice to the Authority and independent assurance as to the fairness and appropriateness of activities related to the competitive selection process for the Saskatchewan Joint Use Schools Project. The Fairness Advisor provides a level of confidence to the Respondents that the shortlisting of Proponents entitled to proceed to the RFP stage of the competitive selection process has been implemented in the manner described in the RFQ documents and that the competitive selection process has been applied fairly and without bias. Because this report will be made public, it also offers comfort that the shortlisting of Proponents has been made in a competitive, fair, open and responsible manner.

The Fairness Advisor does not provide legal advice, rather s/he provides advice to the Authority on any issue of fairness that may arise during the competitive selection process or that could impact on the overall fairness of the procurement. The role of the Fairness Advisor is not to validate the Evaluation Committee’s recommendation of the RFQ shortlists or the preferred proponents at the end of the RFP stage but rather to provide oversight and assurances regarding the processes applied in making the recommendations.



In particular, the Fairness Advisor is to monitor the competitive selection process and provide a report regarding the fairness of the evaluation and the competitive selection process (both RFQ and RFP) and whether the process for selecting the shortlist in the RFQ stage and, subsequently, the preferred proponents in the RFP stage was competitive, open and fair. Specifically for the RFQ stage, the Fairness Advisor is to provide an opinion as to whether:

- the evaluation process of Responses that led to the shortlisting of the Respondents was conducted in a fair manner; and,
- the evaluation process was conducted without bias toward any Respondent.

**B. Access to Information**

During the competitive selection process, the Fairness Advisor is to be provided full access to documents, meetings and information including access to all documentation, personnel, premises, meetings, reports and minutes. The Fairness Advisor is also to be kept fully informed of all documents and activities associated with the procurement process and be invited to all relevant meetings involving procurement and evaluation.

**C. Fairness Review Activities**

The review by the Fairness Advisor during the competitive selection process follows the procurement activities during both RFQ and RFP stages over the following general timeframes:

1. prior to closing time;
2. post closing including completeness, security and relationship review;
3. during evaluation;
4. clarification of submissions including interviews (if any); and
5. final recommendation.

During the competitive selection process, the Fairness Advisor is to undertake the following activities:

- review of procedures for handling of documents, security of documents, procedures for enquiries and clarifications;
- review of documentation issued to the Respondents/Proponents;
- determine whether each Respondent/Proponent was provided access to the same information as other Respondents/Proponents;
- confirmation that the evaluation process and requirements were established in advance of evaluation of the submittals;
- ensure that there are adequate measures for dealing with confidentiality, avoidance of conflict of interest and unfair advantage as well as procedures for resolving any conflict issues which may arise during the competitive selection process;

- review of submittals generally to ensure an adequate familiarity with the terms of the procurement documents and the submittals; and
- attend evaluation sessions, any interviews or meetings with Respondents to monitor the sessions and interviews to ensure the process and discussions were fair and followed the stated evaluation process.

### **III. THE REQUEST FOR QUALIFICATIONS**

#### **A. Appointment**

The Authority appointed Owen Pawson of Miller Thomson LLP as the Fairness Advisor for the Saskatchewan Joint Use Schools Project on June 24, 2014 to act as an independent observer to monitor the competitive selection process and to report to the Authority as to the fairness of that competitive selection process at the end of both the RFQ stage and the RFP stage.

#### **B. The Competitive Selection Process**

The Authority established the competitive selection process for the Saskatchewan Joint Use Schools Project with two-stages: the Request for Qualifications stage; and, the Request for Proposals stage.

Saskbuilds issued the RFQ on July 31, 2014 for the purpose of inviting interested and qualified parties to submit Responses to the RFQ indicating their interest in, and qualifications for either or both Project #1 and Project #2. The RFQ set out information regarding the Projects as well as details of the competitive selection process. The stated intent of the RFQ was to identify and select two shortlists of up to three qualified Respondents based on their Responses for each of Project #1 and Project #2 who would be entitled to participate in the Request for Proposals stage of the competitive selection process and receive the RFP for each of the Projects.

Then, based on the evaluation criteria set out in each of the RFPs, the Authority would select preferred proponents who were determined to best satisfy the requirements as set out in the RFPs and who would then sign a Project Agreement upon financial close for each of Project #1 and Project #2. Where the same Proponent was selected as preferred proponent for both Projects, it is anticipated that a single Project Agreement will be negotiated.

#### **C. RFQ Mandatory Requirement - Submission Time at Submission Location**

The sole mandatory requirement for the submission of Responses as described in the RFQ was for Respondents to submit their Responses by the Submission Time at the Submission Location as identified in the RFQ. This requirement was unequivocally stated in Section 4.1 of the RFQ.



**D. RFQ Introductory Project Meeting**

The RFQ identified an Introductory Project Meeting to be held by webinar to which all Interested Parties were invited - provided that they signed and returned a completed Receipt Confirmation Form. The meeting was not mandatory.

**E. RFQ Enquiries and Responses**

During the RFQ stage of the competitive selection process, Respondents could submit written enquiries to the Contact Person identified in the RFQ (s. 4.7 of the RFQ). The Authority was to provide replies to enquiries and each enquiry and reply were provided to all Respondents. However, the RFQ also permitted Respondents to ask “in-confidence” questions where the Respondent considered its enquiry to be commercially sensitive. Where the Authority determined that the response should be kept confidential, then such an “in-confidence” enquiry and its response were to be kept confidential by the Authority.

**F. Contact Person**

A designated Contact Person was identified under the RFQ as the sole point of contact between the Authority and the Respondents during the RFQ stage of the selection process and was to issue and receive any communications including enquiries and replies, addenda and all correspondence.

**G. RFQ Addenda**

The Authority was able to amend the RFQ through Addenda issued by the Contact Person (section 4.10 of the RFQ).

**H. Relationship Review**

Respondents were required to complete a Relationship Disclosure Form substantially in the form provided in Appendix E and to include the completed form with their Response. The Respondents were to declare any relationship they had with any Restricted Party as identified in Section 6.12.2 of the RFQ. After Responses were submitted, the Authority was to create a list of all Respondent team members and require all persons who were participating in the evaluation of Responses to declare any relationships they had with any of the identified Respondent team members.

The Authority established a Relationship Review Committee to assess all relationships disclosed during the RFQ process and to identify any relationship that could be considered as a perceived or actual conflict of interest between the Authority and the Respondents.



## IV. FAIRNESS REVIEW OF THE RFQ STAGE

### A. Issuance of RFQ and Introductory Meeting

Before SaskBuilds issued the RFQ for the Saskatchewan Joint Use Schools Project on July 31, 2014, I reviewed and commented on the RFQ. I determined that there were no fairness issues with the RFQ as issued.

The Authority conducted an Introductory Project Meeting by webinar on August 13, 2014 to which all interested parties were invited - provided that they had signed and returned a completed Receipt Confirmation Form (attached as Appendix B to the RFQ). The RFQ was clear in Section 3.5 that the Introductory Project Meeting was not a mandatory criterion for submission of a Response. General information concerning the Saskatchewan Joint Use Schools Project was provided to the interested parties who attended the webinar of the Introductory Project Meeting. As Fairness Advisor I participated in that meeting.

There were no fairness issues arising from the Introductory Project Meeting.

### B. Pre-Closing Information

The Contact Person for the RFQ stage of the Competitive Selection Process issued and received all correspondence, enquiries and replies and issued any addenda in accordance with the terms of the RFQ. I was copied on that correspondence including the enquiries and replies.

Pursuant to section 4.7 of the RFQ, Respondents were able to submit written enquiries to the Contact Person to which the Authority was to provide replies. The RFQ also permitted Respondents to ask any “in-confidence” questions if the Respondent considered the enquiry to be commercially sensitive. There were no “in-confidence” questions.

There were one addendum issued prior to the Submission Time and it was issued to all Respondents. The addendum amended the list of Restricted Parties and made changes to the response guidelines and evaluation criteria.

There were no fairness issues that arose from the issuance of the addendum, the enquiries or the replies.

### C. Evaluation Manual, Orientation

Prior to the Submission Time, an Evaluation Manual was prepared by SaskBuilds. I reviewed and provided comments on that Evaluation Manual. The Evaluation Manual was finalized and issued to persons involved in the procurement process including all individual evaluators and advisors to the procurement process. Prior to the evaluation, all members of the Evaluation Teams attended an evaluation orientation meeting which was held twice (August 27 and September 8, 2014) to ensure that all Evaluation Team members received an orientation of the evaluation process, schedule and logistics as set out in the Evaluation Manual.

I found that the final version of the Evaluation Manual was prepared in conformance with the RFQ and presented no fairness issues. I also found that the Evaluation Manual was fully explained to the Evaluation Team members during the orientation meeting(s).

**D. Response Submissions**

The Fairness Advisor's approved delegate attended the SaskBuilds office in Regina (the Submission Location designated under the RFQ) in person just prior to the mandatory Submission Time for receipt of Responses. The Submission Time was identified in the RFQ as 11:00 a.m. (local time) September 11, 2014. At the time of the delegate's arrival at the SaskBuilds offices, all Responses had already been received. In fact, all Responses had been received on September 10, 2014. He reviewed and signed off on the Response Receipt Log which had been fully completed (i.e. date and time received and number of packages received). No Responses were received late.

There were no fairness issues with respect to the closing procedures or the receipt and handling of the Responses.

**E. Completeness Review**

Each of the Responses was subjected to a completeness review on September 15, 2014. The Completeness Review Team signed off on the completeness review. All Responses were found to have been fully completed with the correct details including a properly completed Relationship Disclosure Form in the form provided in Appendix E to the RFQ. The completeness review for all Responses was completed at the Submission Location by the Completeness Review Team. The Completeness Review Team verified that the Responses were substantially complete.

I am satisfied that there were no issues of fairness arising out of the completeness review of the Responses.

**F. Security / Receipt and Control of Submissions**

I confirmed, through my delegate, that all submitted Responses, prior to the Submission Time, had been properly placed in a secure room with restricted security access protocols in place in accordance with the RFQ Evaluation Manual. Subsequent to the Submission Time and the completeness review, copies of the Responses were transferred to three locations. I am advised that all locations had secure, designated rooms accessible to only designated evaluation team members.

The security protocols for the secure rooms included the following: only individuals cleared through the relationship review process were permitted access to the secure room (including the Fairness Advisor and Due Diligence Advisor); an up-to-date list of cleared members of the Evaluation Teams; a record of those people accessing the secure rooms was kept and monitored by an evaluation management team; and, no copies of any Response left the secure room except in the custody of cleared evaluation personnel.

The members of the Evaluation Committee and of the Evaluation Teams were to access Responses on a read-only basis through a secure web-based data room (SharePoint). One evaluation manager was responsible to set up and maintain secure access to that data room. As Fairness Advisor, I also had access to the data room.



I am satisfied that proper procedures were put in place to secure the Responses and ensure their confidentiality.

**G. Relationship Disclosure (Conflict of Interest)**

Pursuant to the RFQ, each Respondent was required to disclose all relationships that its individual members may have with the Authority, Partnerships BC, any restricted party or any other person who provided advice or services to the Authority in respect of the Saskatchewan Joint Use Schools Project. Each Respondent submitted a completed “Relationship Disclosure” form with its Response.

All members of the Evaluation Committee and each of the Evaluation Teams were required to review the list of team members of the Respondents and complete and then complete and sign a Relationship Disclosure declaration. As Fairness Advisor, I was also required to complete and sign a Relationship Disclosure declaration. This was in addition to the requirement to sign a Confidentiality Agreement prior to being granted access to the Responses or any information received from the Respondents.

A Relationship Review Committee was appointed to consider the declarations and determine whether there were any relationships identified that should be referred to the Conflict of Interest Adjudicator to assess and provide decisions on any perceived or actual bias, conflicts of interest or unfair advantage.

There were no issues of bias, conflict of interest or unfair advantage identified by the Relationship Review Committee that were deemed necessary to be referred to the Conflict of Interest Adjudicator. Nor were there any advance decisions requested by either SaskBuilds or any of the Respondents with respect to bias, conflict of interest or unfair advantage.

**H. Evaluation Committee**

An Evaluation Committee was established and was responsible for the evaluation of the Responses and identifying a shortlist of no more than three Respondents for each of Project #1 and Project #2 through the application of the evaluation criteria and the evaluation procedure set out in the RFQ and, specifically, in Appendix A.

The evaluation process, including Response guidelines and evaluation criteria described in Appendix A of the RFQ, required the Evaluation Committee to identify a shortlist of three Respondents for of Project #1 and Project #2. Any shortlisted Respondent was to be qualified and capable of undertaking the applicable Project #1 or Project #2.

**I. Review of Responses by Evaluation Teams**

The Evaluation Committee was assisted in its evaluation by four Evaluation Teams established under the RFQ Evaluation Manual, namely: Respondent Team Lead, Design-Builder, Service Provider and Financial Capacity and Experience. Each was comprised of representatives who were knowledgeable about the specific area of review of each Evaluation Team. Each Evaluation Team was supported by advisors if detailed analysis was required.



The individual Evaluation Teams were permitted, by the RFQ, to conduct reference checks and to ask clarification questions of the Respondents if they considered such information necessary for their evaluation. Five clarification questions were asked of the Respondents. Replies to the requests for clarifications were taken into consideration by the Evaluation Team that requested the clarification. Reference checks were not deemed to be of sufficient importance to significantly change any of the evaluations.

The Evaluation Teams were permitted under the RFQ to request interviews with one or more of the Respondents. The Evaluation Teams determined that no interviews were required.

Each of the Evaluation Teams met several times after their members had individually reviewed each of the Responses in respect of both Project #1 and Project #2. Each Evaluation Team then reviewed the Responses for their specific evaluation criteria and met separately with a Due Diligence Advisor to ensure that their evaluation was proceeding in a manner consistent with requirements of the RFQ and that commentary on the worksheets properly reflected the stated evaluation criteria. Each Evaluation Team operated independently from each other and completed their deliberations and achieved consensus with respect to their specific topic of evaluation. Each Evaluation Team then, through their Chair and Secretary, presented their conclusions and recommendations to the Evaluation Committee regarding both Project #1 and Project #2.

I did not identify any issues with fairness in any of those meetings. I concluded that the reviews of the Responses by the Evaluation Teams were based on the criteria set out in the RFQ and that they were properly and fairly performed in conformance with the evaluation process established in the RFQ and the Evaluation Manual.

#### **K. Recommendation of the Evaluation Committee**

After the comprehensive briefing from each Evaluation Team, the Evaluation Committee determined by consensus a recommended shortlist of Respondents for each of Project #1 and Project #2 that would be entitled to receive an RFP. All Respondents were considered to have satisfied the requirements of the RFQ in their Responses and to be qualified and capable of undertaking each Project.

I was fully informed of, and attended all or part of, meetings of all Evaluation Teams and the Evaluation Committee. I attended the Evaluation Committee consensus meeting. I am satisfied that the process leading to the recommendations by the Evaluation Committee of the shortlists for both Project #1 and Project #2 was competitive, open and fair.

## **V. ASSUMPTIONS**

My conclusions are based on: review of procurement documentation and records to date; attendance by my delegate at the Submission Location and observations regarding the completeness review; telephone meetings with the Evaluation Teams and the Evaluation Committee; attendance at the consensus meeting of the Evaluation Committee; and, questions to and answers from Respondents.

My findings are based on the assumption that I was provided all relevant information in connection with the RFQ stage of the Project and that I was advised of all key meetings and decisions.

## **VI. CONCLUSIONS**

Based on my review and observations of the procurement documents and activities during the RFQ stage, I have determined that:

1. the Evaluation Teams and the Evaluation Committee followed the procedures outlined in the RFQ and the Evaluation Manual and fairly applied only those evaluation criteria specified in the RFQ and its related documents;
2. where judgment and interpretation was allowed or required, the Evaluation Teams and the Evaluation Committee exercised reasonable judgment and made interpretations in a fair and impartial manner; and
3. to the extent that amendments to the process or RFQ documents were permissible, decisions regarding those amendments were made fairly and impartially.

In summary, I am satisfied that all of the Respondents were provided with a fair opportunity to have their respective Responses properly and fairly considered by the Evaluation Teams and the Evaluation Committee in accordance with the terms of the RFQ. I am also satisfied that the evaluation criteria were applied consistently and in accordance with the terms of the RFQ and the Evaluation Manual.

In my opinion, the RFQ stage of the Competitive Selection Process for the Saskatchewan Joint Use Schools Project was conducted fairly and without bias toward any one Respondent and in accordance with the procedures established by the RFQ and, in particular, I am of the opinion that:

- the RFQ evaluation process was conducted in a fair manner;
- the evaluation, identification and recommendation of the two shortlists of Respondents for each of Project #1 and Project #2 was done in a manner that was consistent with the RFQ; and,
- the evaluation process was conducted without bias toward any Respondent.

In coming to the conclusion that the RFQ stage of the Competitive Selection Process for the Saskatchewan Joint Use Schools Project was implemented in a fair and impartial manner, I am satisfied that I was provided with the necessary access to information and the process to render this opinion to the Steering Committee.

Respectfully submitted,



**Owen Pawson**

**Dated at Vancouver, B.C. the 21st day of October, 2014.**