

**SASKATCHEWAN HOSPITAL NORTH BATTLEFORD -  
INTEGRATED CORRECTIONAL FACILITY**

**RFQ # SB131-RFQ**

**REPORT OF THE FAIRNESS ADVISOR**

**REQUEST FOR QUALIFICATIONS**

**August 22, 2014**

**TO:**

**The Steering Committee  
Saskatchewan Hospital North Battleford  
- Integrated Correctional Facility**

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## **INTRODUCTION**

The Ministry of Central Services intends to enter into a contract to design, build, finance (partially) and maintain the Saskatchewan Hospital North Battleford - Integrated Correctional Facility (the “Project”) which will be located near North Battleford, Saskatchewan (the “City”). The Ministry of Central Services is working with the Ministry of Health, the Ministry of Justice (Corrections and Policing), the Prairie North Regional Health Authority (collectively, the “Authority”) and SaskBuilds Corporation (“SaskBuilds”) to deliver the Project. The Project will be delivered using a Design Build Finance and Maintain (DBFM) model; a model intended to make best use of tax dollars through leveraging the innovation and expertise of the private sector. The Authority expects that a single private partner will provide partial financing, design, construction and maintenance services and will assume certain defined project risks as it does so.

This Fairness Report is intended to offer an assessment of the manner in which the Request for Qualifications (“RFQ”) stage of the competitive selection process for the Project was implemented. This assessment is provided from the position of an independent third party observer who has monitored all aspects of the RFQ stage in terms of fairness to the Respondents. During the RFQ stage of the competitive selection process, a Fairness Advisor provides a level of confidence to the Respondents that the shortlisting of the Respondents entitled to proceed to the Request for Proposals (“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 to all participants. Because this report will be made public, it is also intended to offer comfort that the selection of the shortlisted Respondents for the Project has been made in a competitive, open and fair manner.

## **I. PROJECT BACKGROUND**

In 2011, the Province of Saskatchewan (the “Province”) announced the replacement of the existing Saskatchewan Hospital in North Battleford. Investigation by the Authority determined there are expected to be significant synergies in delivering mental health services through a combined mental health facility, combining the Hospital with a Correctional Centre. The combined facility would also provide opportunities for shared common and facility maintenance space.

On April 29, 2014, the Province announced the Project was moving forward as a combined facility and the Project was approved to proceed to procurement. The mandate of the Hospital is to serve residents of Saskatchewan with mental illness whose needs cannot be accommodated in local acute inpatient mental health facilities, long-term care homes or correctional centres. The Correctional Centre component will be designed specifically for inmates with mental health issues and will be operated as a modern, therapeutic environment in the future. The Project will include the design and construction of a combined mental health and correctional complex consisting of a 188 bed mental health hospital, a 96 cell correctional centre and supporting building infrastructure.

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

### **A. Appointment**

The Authority appointed Owen Pawson of Miller Thomson LLP as the Fairness Advisor for the Project on April 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. As Fairness Advisor, I am required to provide reports at the end of both the RFQ stage and the RFP stage of the competitive selection process.

### **B. Role of Fairness Advisor**

The purpose of my review as the Fairness Advisor is to provide 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 Project. As Fairness Advisor, I do not provide legal advice to the Project, but will provide 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 of the Project.

My role as Fairness Advisor is not to validate the Evaluation Committee's recommendation of the RFQ shortlist or the preferred proponent at the end of the RFP stage but rather to provide oversight and assurances regarding the processes applied in making the recommendations. In particular, as Fairness Advisor, I am to monitor the competitive selection process and provide a report regarding the fairness of the evaluation and the competitive selection process as set out in the RFQ and RFP and whether the process for selecting the shortlist, and subsequently the preferred proponent, was implemented in a competitive, open and fair manner. Specifically for the RFQ stage, the Fairness Advisor is to provide an opinion as to whether:

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

### **C. 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.

### **E. Fairness Review Activities**

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

1. prior to closing time;
2. post closing completeness, security and relationship review;
3. during evaluation;

4. clarification including in person meetings and interviews (if any); and
5. final recommendation.

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

- (a) review of procedures for handling documents, security of documents, procedures for enquiries and clarifications;
- (b) review of documentation issued to the Respondents/Proponents;
- (c) determine whether each Respondent/Proponent was provided access to the same information as other Respondents/Proponents;
- (d) confirmation that the evaluation process and requirements were established in advance of evaluation of the submittals;
- (e) ensuring that there were 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;
- (f) review of submittals generally to ensure an adequate familiarity with the terms of the procurement documents and the submittals; and
- (g) attend and monitor evaluation sessions and any interviews or meetings with Respondents/Proponents to ensure the process and discussions were fair and followed the stated evaluation process.

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

#### **A. The Competitive Selection Process**

The competitive selection process for the Project was established with two-stages:

1. the Request for Qualifications (RFQ) stage; and
2. the Request for Proposals (RFP) stage.

SaskBuilds issued the RFQ for the Project on April 30, 2014 for the purpose of inviting interested and qualified parties to submit Responses to the RFQ indicating their interest in, and qualifications for, the Project. The RFQ set out information regarding the Project and details of the competitive selection process. The stated intent of the RFQ was to identify and select a shortlist of up to three qualified Respondents based on their Responses who would be entitled to participate in the RFP stage of the competitive selection process and receive the RFP. Then, based on the evaluation criteria set out in the RFP, the Authority would select a Preferred Proponent who was determined to best satisfy the requirements set out in the RFP and who would sign the Project Agreement upon financial close.

**B. RFQ Mandatory Requirement - Submission Time at Submission Location**

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

**C. RFQ Introductory Project Meeting**

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

**D. RFQ Enquiries and Responses**

During the RFQ stage of the competitive selection process, Respondents were able to submit written enquiries to the Contact Person (s. 4.7 of the RFQ). The Authority was to provide replies to enquiries to clarify the RFQ. Each enquiry and reply were to be provided to all Respondents. The RFQ also permitted Respondents to ask “in-confidence” questions where the Respondent considered its enquiry to be commercially sensitive. If the Authority considered that the matter should be kept confidential, then the “in-confidence” enquiry and its response were to be kept confidential.

**E. Contact Person**

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

**F. RFQ Addenda**

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

**G. 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: the Authority (or any current or past directors, officers or shareholders); any Restricted Party as identified in Section 6.12.2 of the RFQ (or any current shareholders, directors or officers); or, any other person who has been involved in the competitive selection process. Subsequently, all persons who were participating in the evaluation of Responses would be required to declare any relationships they had with any of the identified Respondent team members.

The Authority appointed (by Addendum # 01 on May 14, 2014) a Conflict of Interest Adjudicator to provide decisions on any conflict of interest or unfair advantage issues.

## IV. FAIRNESS REVIEW OF THE RFQ STAGE

### A. Issuance of RFQ and Introductory Meeting

Before SaskBuilds issued the RFQ for the Project on April 30, 2014, I had 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 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 Project was provided to the interested parties who attended the webinar of the Introductory Project Meeting. I attended that meeting.

I found that 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 responses and issued addenda in accordance with the terms of the RFQ. I was copied on that correspondence and the enquires and responses.

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 three addenda issued that amended the RFQ. They were issued to all Respondents. The three addenda: made changes to the Restricted Party list; changed the requirement to provide the minutes of the Introductory Project Meeting to the Respondents to the webinar presentation from the Introductory Project Meeting; advised Respondents of the appointment of a Conflict of Interest Adjudicator who would provide advice and decisions regarding issues of conflict of interest or unfair advantage; and, deleted reference to an "Industry to Industry Event" that could have been held during the RFQ stage.

There were no fairness issues that arose from the issuance of the addenda or the replies to the enquiries.

### C. Evaluation Manual

Prior to the Submission Time, an Evaluation Manual was prepared by SaskBuilds and was circulated internally for comment. 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.

I found that the final version of the Evaluation Manual was prepared in conformance with the RFQ and that there were no fairness issues with that document.

**D. Submission of Responses**

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) July 15, 2014.

At the time of the delegate's arrival at the SaskBuilds offices, all Responses had already been received. 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 Submissions was subjected to a completeness review after the Submission Time. 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 and the Fairness Advisor's delegated alternate was in attendance for the completeness review and signed off on the Response Receipt Log.

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, the Responses were transferred to two locations for evaluation. I am advised that, in both locations, secure, designated rooms were made accessible to only designated evaluation team members.

The security protocols for the secure rooms included the following: only those 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 evaluation team members; 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 a cleared member of evaluation personnel.

The Evaluation Committee and members 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.

After the relationship disclosure process was complete it was discovered that a member of the Financial Experience and Financial Capacity Evaluation Team was unable to access the established data room to view the Responses. After the Evaluation Committee was advised of the issue, it was resolved as follows: the Evaluation Manager had one hard copy of the Responses couriered from one evaluation location to another secure evaluation location and appointed one member of the Financial Experience and Financial Capacity Evaluation Team to be the delegated person responsible for managing the security of the Responses for the duration of the evaluation process. The Evaluation Manual was updated accordingly.

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 Project. Each Respondent submitted a completed "Relationship Disclosure" form with its Response.

All members of the Evaluation Committee and each evaluation team established for the Project were required to review the list of team members of the Respondents and 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 (appointed pursuant to Section 6.12.4 of the RFQ) to assess and provide decisions on any perceived or actual conflicts of interest or unfair advantage issues.

There were no issues of 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 conflict of interest or unfair advantage.

#### **H. Evaluation Committee**

An Evaluation Committee had been established by SaskBuilds to be responsible for the evaluation of the Responses and making a recommendation to the Steering Committee of a shortlist of three Respondents. The evaluation was to proceed by way of an application of the evaluation criteria and the evaluation procedure set out in Appendix A of the RFQ

and the RFQ Evaluation Manual. The three shortlisted Respondents, once approved by the Steering Committee would be eligible to receive the RFP.

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

The Evaluation Committee was assisted in its evaluation by Evaluation Teams established under the RFQ Evaluation Manual. The Evaluation Teams were comprised of representatives who were knowledgeable about their respective team's specific area of review. Each team was supported by advisors if required for more detailed analysis.

The individual Evaluation Teams were permitted under the RFQ to conduct reference checks and to ask clarification questions of the Respondents if they considered them necessary and to consider any further information obtained from those checks and questions in their deliberations. Respondents replied to the requests for clarifications and that information was taken into consideration by the respective Team that requested the clarification or information. 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 individual members had reviewed each of the Responses. Each Evaluation Team 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.

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

Each Evaluation Team operated in a manner independent of each other. After completion of their deliberations and achieving consensus on their evaluation of each Response, each Evaluation Team, through their Chair and Secretary, presented their conclusions and recommendations to the full Evaluation Committee.

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

After the comprehensive briefing from each Evaluation Team, the Evaluation Committee determined that all Respondents had satisfied the requirements of the RFQ in their Responses. Accordingly, the Evaluation Committee then decided, by consensus, the Respondents that should be recommended to the Steering Committee to be shortlisted and be entitled to receive the RFP.

I was fully informed of all Evaluation Team and Evaluation Committee meetings and activities and I attended the Evaluation Committee consensus meeting. I am satisfied that the process leading to the recommendation of the Evaluation Committee was competitive, open and fair.

## **V. ASSUMPTIONS / QUALIFICATIONS**

My conclusions are based on: my review of procurement documentation and records to date; attendance at the completeness review at the Submission Location; telephone conference calls; in-person meetings with the Evaluation Teams and the Evaluation Committee; questions to and answers from respondents; and, personal observations of the meetings of the Evaluation Teams and the Evaluation Committee.

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, I believe that:

1. the Evaluation Teams and the Evaluation Committee followed the procedures outlined in the RFQ and the RFQ 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. The evaluation criteria appear to have been applied consistently and in accordance with the terms of the RFQ and the RFQ Evaluation Manual.

In my opinion, the RFQ stage of the Competitive Selection Process for the 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 shortlisted Respondents was done in a manner that was consistent with the RFQ; and,
- the evaluation process was conducted without bias toward any Respondent.

**Fairness Advisor Report  
Request for Qualifications**

**Saskatchewan Hospital North Battleford  
- Integrated Correctional Facility**

In coming to the conclusion that the RFQ stage of the Competitive Selection Process 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,



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Owen Pawson

Dated at Vancouver, B.C. the 22nd day of August, 2014.