

THE CITY OF EDMONTON

DESIGN, BUILD, FINANCE OF THE VALLEY LINE WEST LIGHT RAIL TRANSIT PROJECT

Sourcing Event

No. 2132081646

FAIRNESS MONITOR

REPORT

March 11, 2020

**DESIGN, BUILD, FINANCE OF THE VALLEY LINE WEST LIGHT RAIL TRANSIT PROJECT
SOURCING EVENT – SHORTLISTING OF PARTICIPANTS
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TO: Chair, Project Procurement Due Diligence Committee

This Fairness Report is specific to the procurement process for the shortlisting of Participants for the Design, Build, Finance of the Valley Line West (“VLW”) Light Rail Transit Project (“Project”) in accordance with the Sourcing Event (No. 2132081646) issued on January 7, 2020 by the City of Edmonton (“City”).

B. Larkin & Associates Ltd. and Owen D. Pawson Law Corporation (a joint venture) were appointed by the City of Edmonton on May 28, 2018 to provide Fairness Monitor services to the City for selected projects and were subsequently appointed as Fairness Monitor for the Project on December 17th, 2018. Our role as Fairness Monitor is to provide monitoring and oversight of the procurement process as an independent observer to ensure that the competitive selection process is transparent, fair and equitable. We do not validate the shortlisting of successful Participants but provide assurance regarding fairness generally during the Sourcing Event phase of the procurement process and the manner in which the evaluation weighting and scoring was applied in arriving at the selection.

Background

The City previously issued a Request for Qualifications (“RFQ”) for the Project in the spring of 2019. After shortlisting three Proponents, and prior to commencing the RFP phase, two Proponents withdrew their Submissions, leaving only one Proponent. The City then undertook significant marketplace discussions over the latter half of 2019 and considered the feedback received from the design and construction industry. Based on that feedback from industry during the market soundings, the City decided to make substantive changes to the procurement process in order to encourage more competition during the procurement process, and subsequently, the City exercised its right under the RFQ to cancel that procurement.

One of those significant changes was the decision by the City to procure the LRVs for the Project separately. Although procured by the City and as required by the previous procurement, the LRVs still must operate on both VLSE and VLW using compatible on-board systems and communications systems. The successful Proponent will not carry the risk of procurement and delivery of the LRVs; however, it will be required to participate in the commissioning of the system and infrastructure using the LRVs procured by the City for VLW and for those provided by the VLSE project agreement. The type of LRV must be operationally equivalent to the Bombardier “Flexity” LRVs currently under development for VLSE. The LRV supplier will commission the LRVs.

Over the fall of 2019, the City’s Project team prepared a new procurement document to shortlist qualified and capable design-builders with financial capacity to proceed to the Request for Proposals phase of the procurement. That new procurement document that is intended to shortlist qualified and capable Participants is the “Sourcing Event”. This new procurement opportunity was well-marketed to industry in advance of its issue.

The Sourcing Event

This Sourcing Event was issued January 7, 2020 and had a Closing Date of February 24, 2020. The stated intent of the Sourcing Event was to obtain submissions from parties with proven experience in large infrastructure projects who were interested in delivering the Project as a Design Build Finance (“DBF”) and to shortlist up to three Participants for participation in the Request for Proposal (“RFP”). Each shortlisted Participant was expected to have: the capacity

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to design, build and partially finance the Project; demonstrated experience in raising the required private financing; and, sufficient financial stability and capacity to undertake the Project and provide the required financing. As noted, a significant change to the procurement was the assumption by the City of the risk for procuring and providing the LRVs.

The City determined that it would use SAP Ariba, a web-based tool for administration of the Sourcing Event (“Ariba”) for communications with Interested Parties and Participants during the Sourcing Event phase of the procurement as well as for submission of Responses.

Procurement Process to Closing Date

The Sourcing Event was issued on January 7, 2020 on the Ariba website. All Interested Parties were provided with detailed information concerning how to access the Ariba site. Notices concerning the Sourcing Event during the procurement period prior to the Closing Date were posted by the City on both the Ariba message board and on the Alberta Purchasing Connection Website.

The Ariba website had limitations for use on this Project. For example, it could not post an Opportunity Amount exceeding \$500M, which was the amount posted for this Sourcing Event. Interested parties scanning the Ariba website for opportunities above that amount would have missed the VLW opportunity. The City mitigated this problem by firstly, carrying out a marketing strategy in advance of the project, and by identifying in the Ariba Posting Summary that the estimated Capital Construction Value was \$1.7B.

Ariba also limited access to the Ariba posting to a maximum of 100, which was exceeded approximately one week before the Closing Date. Limiting access to the published documents is a fairness issue. The City immediately mitigated this problem by identifying a small number of Interested Parties who were not actively pursuing a Response, and temporarily “revoking” their access privileges, after which the City advised those affected parties that they could log back on to the system to see the published documents.

In addition, one Interested Party indicated problems with accessing the Ariba website, an issue for which Ariba was found to be responsible. The City mitigated this issues by immediately emailing the public documents to the affected party until such time as they could access the documents through Ariba.

We see no fairness issues with access to information by any Interested Party or Participant because of the appropriate and timely response by the City to mitigate those website problems.

The Participants were required by the Sourcing Event to upload their Responses electronically to Ariba. The Sourcing Event described detailed requirements for submission of Responses and required the Responses to be split into separate Response sections for specific enumerated requirements. As set out in the Sourcing Event, there were in excess of 14 discrete files to be uploaded. Ariba required that a file had to be uploaded to each of the sections identified in the Sourcing Event before it would allow a Participant to submit its Response. The City also anticipated that if a Participant encountered any problem with the availability of the Ariba website, its submissions could also be made electronically via email, and issued an addendum to allow email submissions.

The Sourcing Event had only two mandatory requirements - Responses must be received by the Closing Date and they must be written in English. Three Responses were received prior to the identified Sourcing Event Closing Date (23:59 on February 24, 2020). There were no late submissions.

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The City's Project Team then reviewed each Response for completeness to determine whether it contained the information and documentation requested in the Sourcing Event. The City determined that all Responses had provided the information and documentation required by the Sourcing Event.

The "original" copies of the electronic Responses were maintained in the Ariba website to maintain security over those documents. Access to those Responses was carefully monitored and managed by the City. Access to copies of the Responses were restricted to subject matter experts, evaluators and key Project Team members (and the Fairness Monitor).

Evaluation and Shortlist

In order to manage any conflict of interest or unfair advantage matters as they arose in relation to the implementation and administration of the procurement process, the City established a Relationship Review Committee to review relationships disclosed by every member of the Evaluation Teams, subject matter experts and all other individuals involved in the competitive selection process. Those relationships were disclosed in an "Evaluation Committee Member Obligation Acknowledgment Form" signed and dated by each individual. In addition, each Participant and its team members were obliged, in their Response, to disclose any relationships that may be considered an actual or perceived conflict of interest. The Relationship Review Committee reviewed all relationship disclosure documents and involved the Fairness Monitor as necessary during those reviews.

The City prepared an Evaluation Handbook to serve as a guiding document for the Sourcing Event phase of the procurement process and the evaluation of Responses. The Evaluation Handbook provided a detailed approach concerning how the Evaluation Teams were to evaluate Participant submissions received in response to the Sourcing Event. It also documents the procedures and principles to be employed from Sourcing Event issuance until shortlisting of Participants. The Evaluation Handbook describes: how the evaluation process will be administered including the location of the evaluation office; the evaluation team structure and roles and responsibilities of the evaluation individuals; and, provides procedures, protocols, and guidance associated with the evaluation of the Responses. However, it was clear from the Evaluation Handbook that it was intended only as a high-level overview and reference guide and that it was not definitive or comprehensive of all issues that may arise during the course of the evaluation. Further, the Evaluation Handbook was clear that it was subject to the terms of the Sourcing Event.

All individuals named as a member of an Evaluation Team were required to attend an orientation briefing on February 24, 2020 prior to gaining access to any Response and prior to commencing work on the evaluation. That briefing provided an overview of the procurement process including a description of the Sourcing Event and use of the Evaluation Handbook. The orientation briefing was attended by personnel participating in the evaluation process to familiarize them with their roles and responsibilities in the evaluation of the Responses.

The Sourcing Event included pass/fail requirements for certain criteria including: process requirements; Participant information and approach to Proposal development; the approach to financing; financial capacity; and safety record. Those assessments were based on objective criteria. Responses were required to receive a "pass" in each of those criteria in order to be considered valid for further evaluation and be entitled to have their total score be considered as part of the evaluation process and eligible to be shortlisted. In addition, the Sourcing Event required scored evaluation by Evaluation Teams of each Response on detailed criteria intended

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to ensure each of the Participants, their team members and key personnel had the experience, capability and capacity to undertake the Project. These evaluations involved an in-depth assessment of each of the three broad aspects of the Project that were considered necessary in order to ensure a successful Project: Leadership and Integration; Design; and, Construction. The City created three Evaluation Teams each with members having specific expertise in those three aspects of the evaluation.

After clearance by the Relationship Review Committee, each member of each of the Evaluation Teams individually evaluated each of the Responses against their stated Sourcing Event evaluation criteria prior to a full meeting of their specific Evaluation Team. The members were fully aware, in accordance with the orientation briefing, that their individual assessments of the Responses were to be based solely on the process and criteria specified in the Sourcing Event. There were seven requests for clarification issued by the Evaluation Teams prior to the start of the consensus meetings. The City did conduct news scans related to each of the Participants and their teams to glean further information for consideration by the Evaluation Teams. Obtaining such further information was permitted by the Sourcing Event.

The Evaluation Teams met on March 9 and on March 10, 2020 in order to reach consensus on the overall scoring of their specific evaluation section of each of the Responses. The information from the review and assessment by the subject matter experts of the technical aspects of the Responses were provided to each of the Evaluation Teams for guidance prior to those consensus meetings. We attended each of those consensus meetings of the Evaluation Teams. We observed that all members of each of the Evaluation Teams came to their meetings well prepared to discuss, evaluate and reach consensus on scoring for the Responses based on the specific evaluation criteria as described in the Sourcing Event for each of the Evaluation Teams. We also attended the subsequent Roll-up Committee meeting on March 10, 2020 at which: the consensus scoring from each of the Evaluation Teams was discussed; the final scoring of all Responses determined; and, a recommendation made of the shortlist of Participants to be taken forward to the RFP. We observed no hidden criteria or unfair advantage during those consensus and Roll-up meetings. One instance of bias was noted during the Construction Evaluation Team evaluation meeting, which was mitigated appropriately such that it did not affect scoring.

Activities of the Fairness Monitor

During the Sourcing Event stage of the procurement process we: reviewed and commented on fairness issues in a draft copy of the Sourcing Event document; reviewed and commented on the Evaluation Handbook; attended the web-based Information Session with interested parties on January 10, 2020; reviewed all correspondence between the City and the Interested Parties, including 21 Requests for Information, nine Clarification Circulars and four Addenda; monitored conflict of interest issues; participated in the Evaluator Training Session on February 24, 2020; attended all three evaluation consensus meetings of the Evaluation Teams held on March 9 and 10, 2020 and attended the Rollup Committee meeting on March 10, 2020 that considered and assessed information from the Evaluation Teams and recommended the shortlist of Participants. The Fairness Monitor will attend debrief meetings with Participants following notification to the Participants of the evaluation and shortlisting results.

Findings

It is our opinion based on our Fairness Monitor activities, including observations at each of the consensus meetings of the Evaluation Teams and the subsequent meeting of the Roll-up

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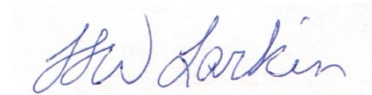
Committee, that the competitive selection process for the Sourcing Event stage of the Design, Build, Finance of the Valley Line West Light Rail Transit Project through to the selection of the shortlisted Participants was conducted in a fair, open, transparent, consistent and unbiased manner in full accordance with the procurement process and evaluation criteria established in the Sourcing Event.

We are satisfied that:

- the members of the Evaluation Teams and the Roll-up Committee followed the procurement process described in the Sourcing Event and fairly applied the evaluation criteria and scoring specified in the Sourcing Event; and
- where judgment and interpretation were allowed or required, the Evaluation Teams and Roll-up Committee exercised reasonable judgment and made interpretations in a fair, unbiased and impartial manner.

We are also satisfied that we have been provided with the appropriate access and information to render this fairness review opinion concerning the Sourcing Event stage of the procurement process for the Project.

Respectfully submitted by B. Larkin & Associates Ltd. and Owen D. Pawson Law Corporation (a joint venture),



Bill Larkin
Fairness Monitor



Owen D. Pawson
Fairness Monitor

Dated this 11th day of March, 2020