

February 5, 2021

Infrastructure Ontario
1 Dundas Street West
Suite 2000, Toronto
Ontario M5G 2L5

Attention: David Ho
Executive Vice-President, Procurement and Program Management

Subject: Fairness Report – Request for Qualifications and Standing Offer for Rapid Delivery Construction RFQSO No. 20-037 for the Segregation Capital Program Project.

OPTIMUS|SBR (“**Optimus**”) was engaged as the Fairness Monitor to review, observe and confirm the processes of communication, interaction, assessment and decision-making associated with the selection of certain Qualified Respondents for Call-ups pursuant to executed Standing Offer Agreements to provide Negotiations Services to Infrastructure Ontario (“**IO**”). IO and Ministry of Solicitor General (“**SolGen**”) in connection with the Segregation Capital Program (“**SCP**”) to deliver capital expansion to existing correctional facilities across the Province of Ontario (the “**Project**”). Each Qualified Respondent was prequalified pursuant to a Request for Qualifications and Standing Offer (“**RFQSO**”) issued by Infrastructure Ontario on July 14th, 2020.

The RFQSO - Background

The purpose of the RFQSO, which is ongoing, is to establish a pool of Qualified Respondents eligible to be “called up” to provide Negotiation Services to Infrastructure Ontario and one or more Clients, as applicable, for rapid delivery construction projects (each, a “**Rapid Build Project**”) via an open, fair and transparent competitive prequalification process. The process evaluates Respondents with a demonstrated ability and capacity to build high quality facilities using modern rapid delivery methodology and/or innovative approaches to rapid construction, including the use of modular build methods. The RFQSO is not specifically for the SCP Project, but rather a generic prequalification for any rapid build project using rapid build methodologies.

Following the evaluation of an RFQSO submission, a Respondent must execute a Standing Offer Agreement (“**SOA**”) which sets out the terms and conditions pursuant to which such Respondent may be “called up” to provide Negotiations Services in connection with a Rapid Build Project on an “as and when” required basis for a period of 3 years. Once an SOA is executed, the Respondent becomes a Qualified Respondent and is eligible, but not entitled, to be “called up” to provide Negotiations Services under the terms and conditions of the SOA.

Decisions as to which Qualified Respondent may be called up to provide Negotiations Services are not procurement processes, but rather the exercise of discretion by IO and its partners in accordance with the terms and conditions of the SOAs.

The RFQSO and the Accelerated Build Pilot Projects

The RFQSO does not have a fixed submission deadline, but to be eligible to be called up for the Accelerated Build Projects, interested firms were required to:

- a) prequalify under the RFQSO, prior to a deadline communicated to PSM Participants by IO and SolGen, and
- b) participate in Project Specific Meetings (each a “**PSM**”, as that term is defined in the RFQSO) with IO and SolGen in respect of the SCP Project. Participation in a PSM was conditional upon the execution of a Confidentiality Agreement, and following PSMs IO and the SolGen received written submissions which included curriculum vitae of selected Key Individuals and disclosures of each participants’ experience, capacity and teaming structure in the context of the SCP Project.

IO and SolGen then used discretion, to a commercially reasonable standard, to select two Qualified Respondents to call up to provide Negotiations Services for the Solgen Project. The process by which IO and the SolGen exercised their discretion to call up certain Qualified Respondents was overseen by Optimus.

Following the Call-up of Qualified Respondents for Negotiations Services for the Solgen Project, commercial negotiations were conducted in distinct streams and culminating in the presumptive recommendation of a selected Qualified Respondent who would contract for the Solgen Project, following subsequent receipt of all required government approvals. The final selection process was not overseen by Optimus.

Fairness Role

Our role related to ensuring openness, fairness, consistency, and transparency during the following stages of the process:

- Project Specific Meetings with each interested market participant, hosted by IO and SolGen;
- PSM Interviews with each interested market participant, hosted by IO and SolGen;
- Consensus following assessment of the PSM written submissions and PSM Interviews,
- Determination by IO and SolGen as to the list of PSM Participants/Qualified Respondents eligible to be “called up” to provide Negotiations Services to IO and SolGen for the Project, and
- The exercise of IO and SolGen’s discretion as to the identity of the PSM Participants/Qualified Respondents to be called up to provide Negotiations Services to IO and SolGen in accordance with the terms and conditions of the SOAs.

We did not oversee the RFQSO nor any activity of IO and SolGen following the identification of the Qualified Respondents including providing Negotiations Services for the Project, such as the ensuing commercial negotiations.

Observations and Findings

The procurement process was established clearly by Infrastructure Ontario. PSM Participants were treated fairly, objectively and without bias throughout the PSM process, including:

- During PSMs;
- During PSM Interviews;
- During the consensus meeting among IO and SolGen following assessment of the PSM written submissions and PSM Interviews;
- The meeting among IO and SolGen in which the list of PSM Participants/Qualified Respondents eligible to be “called up” to provide Negotiations Services to IO and SolGen for the SCP Project was agreed; and
- The meeting among IO and SolGen in which the exercise of each party’s discretion to select the PSM Participants/Qualified Respondents to be called up to provide Negotiations Services to IO and SolGen in accordance with the terms and conditions of the SOAs.

The evaluation process and criteria described in the procurement documents were applied consistently and equitably. In the evaluation discussions, the evaluators demonstrated that they had been diligent in their responsibilities, that they were able to support their individual evaluation assessments and that they held no bias for or against any Respondent. There were no unresolved issues at any stage of the procurement process. Consensus was reached and confirmed by all evaluators. An official record was produced to document the evaluation and scoring consensus decisions, including the supporting rationale.

Conclusion

As a result of the consensus process on January 13-14th, 2021, identification of two Negotiations Respondents was identified. Optimus confirms that the identified Negotiations Respondent successfully satisfied the requirements of the PSM evaluation process, which we monitored.

As the Fairness Monitor for the Project, we certify that the principles of openness, fairness, consistency and transparency have been, in our opinion, properly established and maintained throughout those stages of the procurement process which we oversaw. Furthermore, we were not made aware of any issues that emerged during the process that would impair the fairness of this initiative.

As Fairness Monitor, we attest that:

- a) All Qualified Respondents were treated consistently in the PSM evaluation process and in accordance with the procurement documents and the established principles of fairness, openness and transparency.
- b) IO, SolGen and external advisors adhered to Infrastructure Ontario's conflict of interest and confidentiality requirements for the SCP Projects, and
- c) The Call-up methodology was fairly applied to all Qualified Respondents.

OPTIMUS|SBR



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