

# Probity Report

Cassellholme, East Nipissing Home for the Aged

CH-2020-010 – Request for Proposals for Cassellholme Redevelopment,  
East Nipissing Home for the Aged

**The Procurement Office**

Procurement Law Office | Procurement Training Office

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CHAPTER 1

# EXECUTIVE OVERVIEW

# 1.1. Executive Overview

The mandate for the Procurement Law Office, with the assistance of the Procurement Advisory Office (collectively, the Procurement Office), was to administer the Request for Proposals (RFP) for Cassellholme Redevelopment, East Nipissing Home for the Aged Project (Cassellholme Redevelopment project) (Appendix 1) procurement process from design planning to the management of the contract negotiation period on behalf of Cassellholme, East Nipissing Home for the Aged (Cassellholme). The Cassellholme Redevelopment project procurement process, under the guidance of the Procurement Office, was conducted in accordance with applicable due process and probity standards.

## **Process Rating**

The Cassellholme Redevelopment project received an overall procurement process rating of three and a quarter points out of four, based on metrics that measured whether the procurement met operational needs, the winning bid was within budget, the procurement process was completed on time, and whether the procurement followed the process rules.

## **Risk Mitigation**

The common major project risk factors were mitigated by the Procurement Office by ensuring competent execution of the major construction project, providing full administrative and operational support to achieve optimal process efficiencies, establishing a decision-making framework, instituting confidentiality protocols, and staffing the project with a full complement of qualified team members and subject matter experts.

## **Final Recommendation**

Given the successful completion of the procurement process in compliance with the applicable due process and probity standards for the Cassellholme Redevelopment project, it is the recommendation of the Procurement Office that the selected proponent, Percon Construction Inc., be awarded the contract for the Cassellholme Redevelopment project.

## 1.2. Common Global Standards

The common global standards that apply to government procurement competitive bidding processes can be summarized in the following five principles that apply in all rules-based jurisdictions to regulate the award of government contracts:

1. **Open Competition:** Unless a contract falls into a recognized exception, each contract award valued over prescribed thresholds must be awarded pursuant to an open and fair competitive bidding process.
2. **Transparent Requirements and Criteria:** Each solicitation must contain clear information regarding the requirements of the tendered contract, along with the evaluation criteria and process rules under which that contract will be awarded.
3. **Neutral Requirements:** Public institutions must avoid using biased or unnecessarily restrictive requirements, evaluation criteria, or process rules when running a competitive bidding process.
4. **Fair and Transparent Evaluations:** Bid evaluations must be conducted by neutral and independent evaluators in a manner consistent with the pre-established evaluation criteria and procedures. Those procedures must include a thorough record-keeping of the evaluation process.
5. **Fair and Transparent Awards:** Subject to narrow exceptions, contracts should be awarded: (i) to the supplier whose submission ranks the highest based on the prescribed evaluation criteria and procedures set out in the solicitation document; and (ii) with a scope consistent with the contract opportunity initially scoped in the bid solicitation.

# 1.3. Measures of Success and Failure

## 1.3.1 Four Measures of Success and Failure

Project failures typically manifest themselves in one or more of the following ways:

1. the failure to meet operational needs;
2. the failure to stay within budget;
3. the failure to deliver on time; and
4. the failure to follow the process rules.

Based on these recurring risk areas, the definition of project success can be distilled into one simple question:

*Did we buy what we needed, on budget, on time, and by the rules?*

Without proactive planning, it is almost impossible to properly balance the inherent tension between operational needs, budget constraints, time pressures, and process rules.

Project teams should therefore address all four of these major risk factors, using them as performance benchmarks for properly designing their project plans and for assessing project performance.

Generally speaking, within the public procurement industry, when assessing the success and failure of procurement projects, the following general conclusions can be drawn:

1. Project failures tend to recur in the same four areas and are typically caused by the inability to properly address inherently competing objectives.
2. Long-standing industry trends illustrate the endemic nature of cost overruns, project delays, and process irregularities, and how these risks adversely impact the operational needs of an organization and lead to project failures.
3. To address these issues, public institutions should adopt advanced project planning to balance the challenges of meeting operational needs, while keeping their projects on budget, on time, and in compliance with the rules.
4. The inherent project risk areas noted above should serve as navigation points for proper project planning, helping project teams balance competing priorities to better ensure project success.

Proper procurement execution calls for project teams to carefully consider the importance of all four project success factors. Proper procurement execution also calls for a careful balance that addresses all four factors. For example, a procedural irregularity cannot be discounted by the fact that the project was delivered ahead of schedule, any more than a cost overrun can be justified by the fact that the end result exceeded minimum functional expectations.

Project teams should therefore carefully manage initial project expectations with a view to the inherent risk factors.

## **Cassellholme Redevelopment Project Process Overview**

The mandate for the Procurement Office was to administer the Cassellholme Redevelopment project procurement process from design planning to the management of the contract negotiation process on behalf of Cassellholme.

The Cassellholme Redevelopment project was managed to achieve the following objectives:

1. Did the procurement meet operational needs?
2. Was the winning bid within budget?
3. Was the RFP process completed on time?
4. Did the procurement follow the process rules?

### **1. Operational Needs**

The selected proposal for the Cassellholme Redevelopment project exceeded Cassellholme's operational needs, with evaluators scoring "meets all" or "meets all and exceeds some" for all evaluated criteria.

### **2. Cost**

Although an initial budget estimate of \$68.4 million was generated for the Cassellholme Redevelopment project in 2017, the Cassellholme Redevelopment project team recognized that the cost of building materials inflated since the initial budget was developed and during the course of the RFP process due in part to pandemic-related factors beyond Cassellholme's control. A further refined estimate of \$100 million was provided by the Cassellholme Redevelopment team. The pricing proposal received from the selected proponent was considered by the project team to be within budget based on current market conditions.

### **3. Timing**

The time allocated by Cassellholme to design, draft, post, evaluate, and conclude the negotiation process with the selected proponent was compressed, with many pandemic-related challenges due to the nature of the facility, which remained actively operating as a long-term care home. However, notwithstanding these challenges, the Procurement Office was able to execute this large and complex procurement process up to and including the successful completion of the negotiation process, with the Cassellholme negotiation team and the selected proponent coming to an agreement on terms within expected timeframes.

### **4. Process Rules**

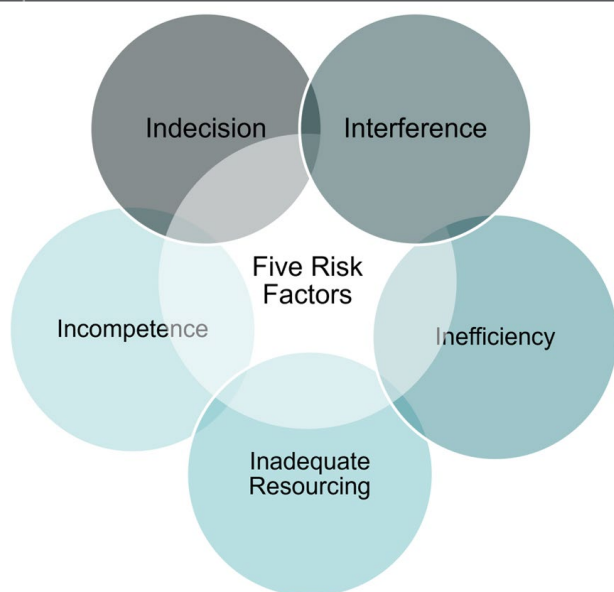
The Procurement Office provided consistent advice throughout the RFP process, which was followed by members of the project team and evaluators. Overall, the procurement process followed, and in some instances exceeded the applicable process rules.



## 1.3.2 The Five Inherent Risk Factors

The cause of public sector project failures is often attributed to two factors: incompetence at the project team level and entrenched inefficiencies in the institution's procurement procedures. However, to better manage the full scope of project risk, public institutions must also address three other systemic structural risk factors that play a leading role in undermining the successful execution of public sector procurement projects: institutional indecision, interference, and inadequate project resourcing.

### The Flawed Execution Fallacy and Systemic Structural Flaws



#### 1. Incompetence

Project-level incompetence is a significant risk factor in public sector procurement projects and is exacerbated by the inability of public institutions to properly mitigate project failures when they are first discovered.

#### 2. Inefficiency

Institutional procedural inefficiency is another major risk factor in public sector procurement. Yet, public institutions rarely apply useful performance metrics to their procurement processes that would help them identify process bottlenecks and enable them to address inefficiencies in a systematic manner at the institutional or project level.

#### 3. Indecision

Indecision is a serious risk factor for public sector procurement projects, specifically with regard to senior decision-makers failing to provide an appropriate planning mandate. This undermines the ability of project teams to make stable and predictable long-term procurement planning decisions. This ultimately increases the risk of after-the-fact scope changes and process changes that result in avoidable process irregularities, delays, and cost increases.

#### 4. Interference

Senior-level interference, both at the administrative and political levels, is a major risk factor in public sector procurement projects. This interference can undermine the successful and defensible execution of procurement projects.

#### 5. Inadequate Resourcing

Inadequate resourcing is a major risk factor in government procurement projects. Optimism bias (as discussed in greater detail in the next section) leads organizations to miscalculate the time and cost of contract performance and to underestimate the time, cost, and complexity of designing and executing a defensible competitive bidding process. Government institutions that fail to properly resource their projects run the risk of failure to meet operational objectives on time, on budget, and by the rules.

## **Cassellholme Redevelopment Project Inherent Areas of Risk**

The Procurement Office worked with Cassellholme to mitigate these five areas of inherent risk and potential failure as follows:

### **1. Competent Execution**

Major construction projects are one of the highest risk projects for bid disputes, cost overruns, and performance delays. By leveraging the Procurement Office's public procurement expertise and knowledge of current trends in case law and industry practices, Cassellholme mitigated the potential defects that could lead to project failure, ensuring the successful competitive execution of the bidding process and conclusion of negotiations.

### **2. Process Efficiency**

Due to the engagement of the Procurement Office, any areas of inefficiency in the Cassellholme's regular internal procurement cycle were mitigated, as all administrative operations were handled by the Procurement Office team. This area of possible risk was effectively mitigated as evidenced by the selection of, and negotiation with, the top-ranked proponent in accordance with established due process standards and within the set timeframe.

### **3. Decision-Making**

Senior-level indecision was not a risk factor for the Cassellholme Redevelopment project. With an established decision-making framework, support from the Procurement Office, and a clear mandate, Cassellholme Redevelopment project process protocols were established to effectively deal with areas where indecision could have otherwise arisen to comprise the effective execution of the competitive bidding process.

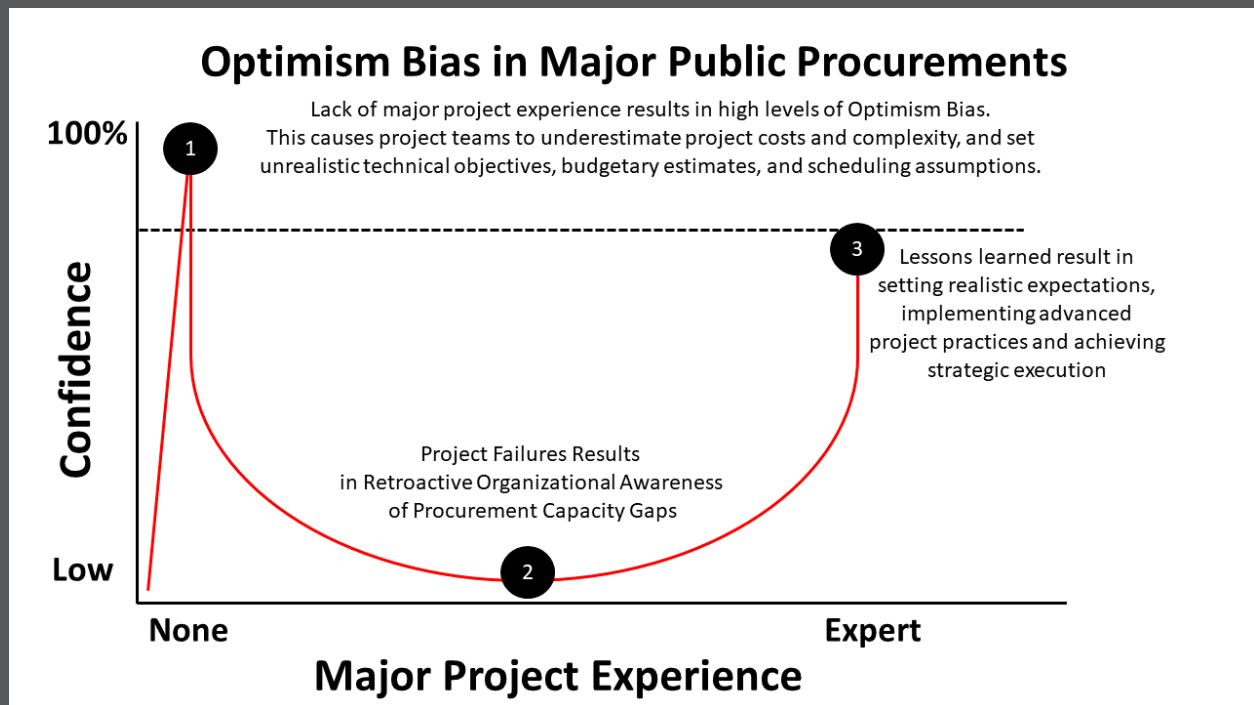
### **4. Non-Interference**

To mitigate the risk of interference, or the appearance of interference, the Procurement Office, with Cassellholme, established confidentiality protocols between the project team, and the evaluation team. Evaluators participated in an evaluator briefing and conflict of interest screening prior to the release of proposals. Evaluators were under strict protocols not to discuss the RFP process, or their role as an evaluator with anyone, either internal or external to the Cassellholme Redevelopment project. The confidentiality protocols were maintained through the formal end of the procurement process, and remain in place for evaluators at this time, unless disclosure is otherwise ordered by court or tribunal.

### **5. Adequate Resourcing**

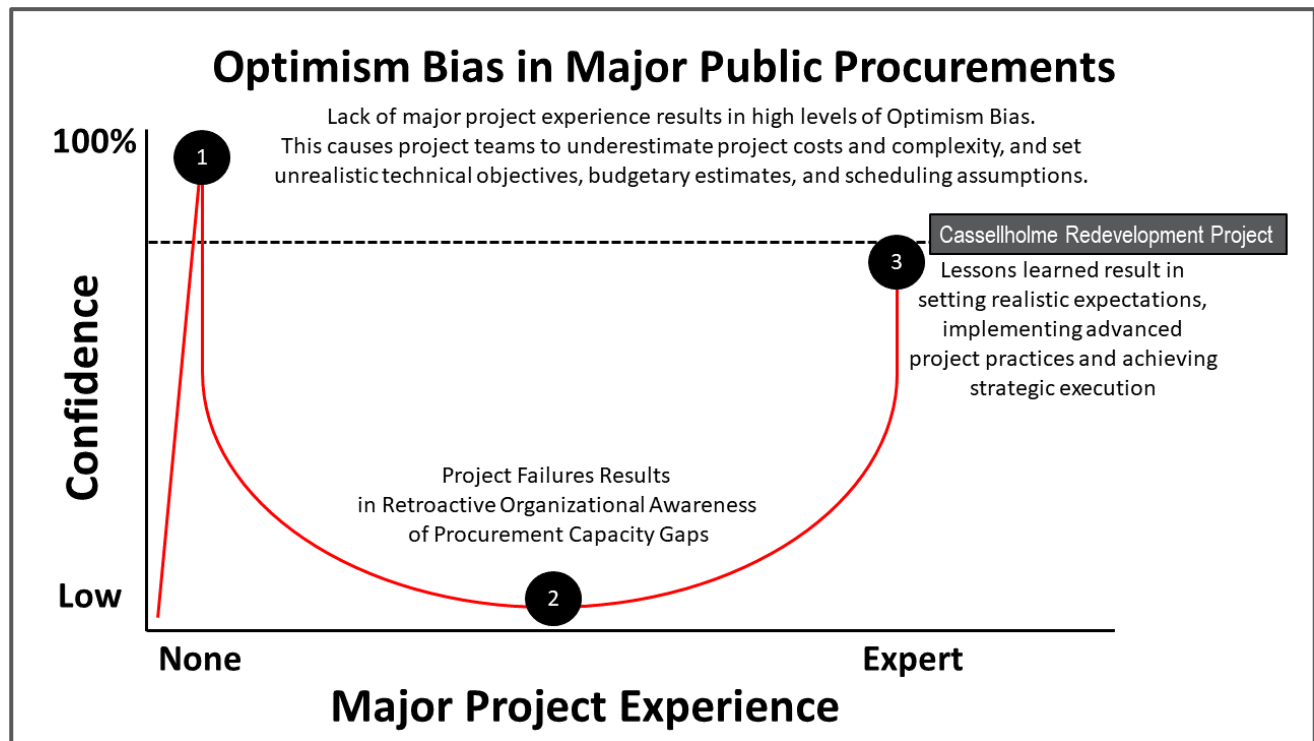
Inadequate resourcing, whereby a public organization fails to properly fund the procurement process for projects, was not a factor in this procurement process. Cassellholme had a full complement of project team members, technical subject-matter experts to support the RFP design and drafting process, and evaluators, and engaged the Procurement Office to provide oversight, advice, and administrative support to run the day-to-day operations of the procurement process, thus ensuring that resourcing was not a risk and did not lead to any actual or potential failure.

# Underestimating the complexity of a major project can result in unrealistic cost estimates.



### 1.3.3 The Optimism Bias

Underestimating the complexity of a major project can result in unrealistic time and cost estimates. As Danish scholar Bent Flyvbjerg observes, project teams can set themselves up for failure by setting unrealistic objectives.



#### Cassellholme Redevelopment Project Optimism Bias Rating

Under the advisement of the Procurement Office, the project team implemented rigorous design planning disciplines to issue the RFP, ran a defensible evaluation process, and ultimately selected and concluded negotiations with the top-ranked proponent within the set schedule and budget, leading the overall procurement process to ultimate success.



CHAPTER 2

# PROJECT GOVERNANCE



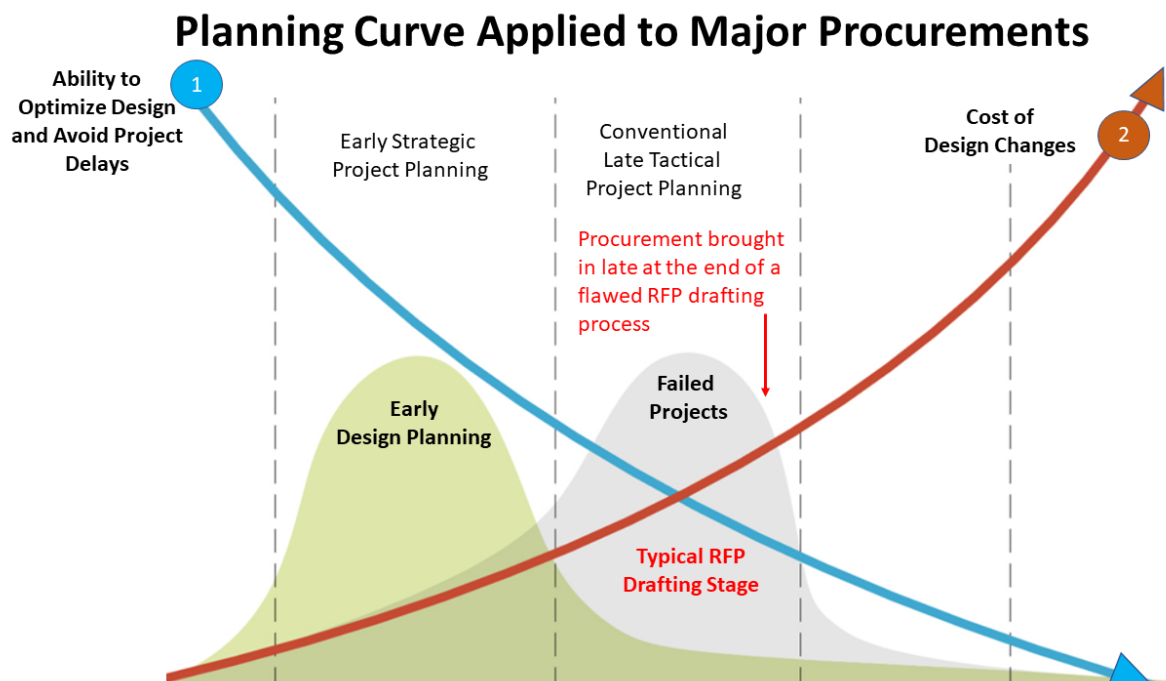
# 2.1. Strategic Procurement

Getting what you need, on budget, on time, and by the rules, is harder than it looks, especially when major public sector projects are involved.

As evidenced by multiple public audit reports and successful bid protest challenges, public institutions need to set aside the often-outdated procedures used in their standard purchasing processes and adopt advanced disciplines for dealing with major procurement projects.

These advanced protocols should include procurement process enhancements in the areas of strategic design planning, format selection, solicitation drafting, commercially confidential meetings (CCMs), group evaluations, and contract award negotiations.

Strategic procurement advice should inform the business planning decisions that drive project scoping, pricing structures, and contract development strategies. That advice should also inform the procedural transparency standards that define defensible evaluation criteria and award procedures. To meet these standards, public procurement advisors need to integrate themselves into the start of the project to advise on initial strategic design planning.

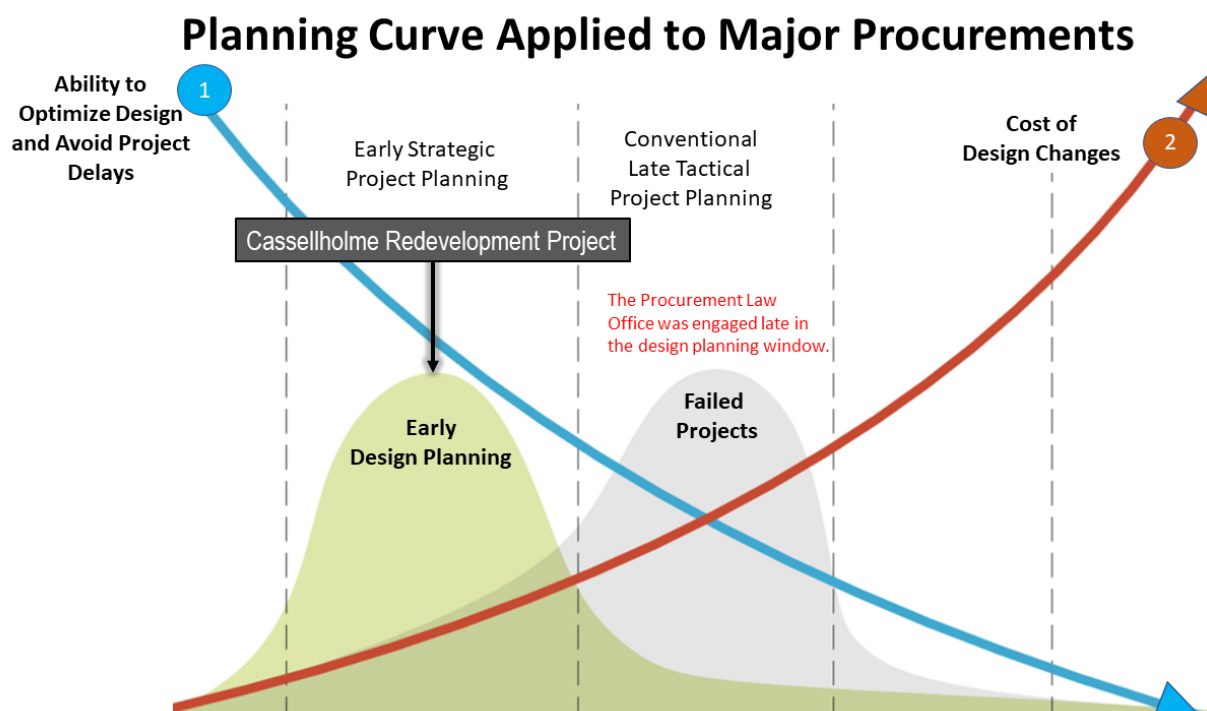


This means mandating strategic execution in (i) the designing and drafting of solicitation documents; (ii) the bid evaluation process; and (iii) the negotiation of contract awards. These front-end stages should be divided into separate sub-projects. Each sub-project should have a specific project manager that organizes each sub-stage and co-ordinates activities along the critical path, since someone needs to lead project teams through each stage and navigate any external factors blocking the road to contract award.

Procurement advisors should be engaged from the start of a project so they can provide the strategic advice needed to accelerate downstream execution. In project planning, project teams should also add sufficient float time to serve as a buffer to deal with unforeseen delays.

This strategic planning is critical to success, since starting a project with no strategic design plan and no float time sets a project up to fail before it even begins.

### Cassellholme Redevelopment Project Major Planning Curve Rating



At the time Cassellholme engaged the Procurement Office team, the Cassellholme Redevelopment project team had already begun the development of specifications and the construction design phase. Early design planning elements had already been established prior to the involvement of the Procurement Office, including the overall strategy for redevelopment at the existing Cassellholme location and the level of detailed design to take to market. Once engaged, the Procurement Office led the Cassellholme Redevelopment project team in design planning sessions in order to navigate the complex landscape of construction tendering, which has historically been fraught with risk and project failure. These sessions led to Cassellholme selecting a flexible tendering format, the Concurrent Negotiation/Best and Final Offer (BAFO) RFP, which allowed Cassellholme to dialogue with short-listed proponents and receive an improved BAFO, while avoiding the pitfalls of the traditional construction sector Invitation to Tender format, which leaves public sector institutions at risk for lost-profit claims by unsuccessful bidders. After the posting of the RFP, the Ontario General Contractors Association (OGCA) sent a letter to Cassellholme dated October 26, 2020, raising factually inaccurate and questionable statements of concern about the Cassellholme Redevelopment project. The Procurement Office drafted a response to the OGCA, addressing the OGCA claims and released the same via Addendum 3, which is attached as Appendix 8 of this report.

## 2.2. Project Governance Structure

Public institutions must ensure that their contract award decisions are shielded from inappropriate interference.

The administration of procurement processes should include protocols to ensure that no one can unfairly influence the outcome. The design and drafting of a solicitation process must be a group effort involving members of the business team and the procurement team, both of which should contribute content for the creation of the solicitation document and then contribute input into the pre-bid question-and-answer process.

Project teams must establish clearly defined roles, which are essential to implementing accountability mechanisms and avoiding the unnecessary confusion and inefficiency caused by role overlaps and accountability gaps.

The following governance principles, which are based on generally recognized public procurement industry practices, apply to senior decision-makers—whether they are part of an organization's general oversight structure or part of a project-specific steering committee framework—when dealing with a bidding process for major procurement projects.

### 1. General Role of Senior Decision-Makers

The overall role of senior decision-makers is to provide project oversight by facilitating a clear decision-making and delegation process in support of project execution by project teams, and to ultimately approve the contract award recommendations of the project team when those recommendations fall within delegated authority.

### 2. Distinguishing Oversight from Interference

Providing senior-level oversight should be distinguished from interfering with the work of project teams, since interfering with the bid evaluation process can undermine the integrity of the process and, among other things, nullify any resulting contract award decision.

### 3. Screening for Conflicts

Senior decision-makers—whether they are exercising a general oversight role or participating as members of a project-specific steering committee—should be screened for potential conflicts in relation to specific bidding processes for which they will be a decision-maker.

### 4. No Authority to Change Ground Rules

Senior decision-makers should avoid revisiting their prior decisions once those decisions have been delegated and implemented. The scope of opportunity to set the rules and requirements of a tendering process is limited to the design, drafting, and approval process that leads to the public release of a solicitation document and any resulting addenda issued prior to the receipt of supplier submissions. Once those rules are established and bids are received, senior decision-makers do not have the authority to change the ground rules of the bidding process.

## **5. No Involvement in Evaluation**

While senior decision-makers may be involved in initial project approvals and related funding decisions, and in determining the composition of project team members for delegating the authority to execute a project, they should not be involved in the administration of a project and, more specifically, should not be involved in the evaluation process.

## **6. Structural Barriers Against Interference**

Organizations should establish structural barriers to protect against interference—and the appearance of potential interference—by senior decision-makers in the administration of a bidding evaluation process by enforcing “no-contact” protocols between senior decision-makers and evaluation team members. These protocols should include prohibiting senior decision-makers from interacting with evaluation group members in relation to the specific project during the evaluation process, or at any point prior to the ultimate contract award.

## **7. Confidentiality of Evaluation Team Members**

These “no-contact” protocols should be bolstered by maintaining the confidentiality of evaluation team members from senior decision-makers to protect against actual interference or future allegations of interference.

## **8. Mandate of Evaluators**

Once bid evaluation teams are properly constituted, it is those evaluation teams—and not senior decision-makers—who are responsible for conducting the evaluation process. Evaluation team members are responsible for independently scoring each submission in accordance with pre-established evaluation criteria and procedures. Those evaluation procedures should be moderated by procurement advisors in accordance with proper group evaluation due diligence protocols.

## **9. Scope of Oversight in Relation to Evaluation**

It is not the role of senior decision-makers to override or replace the evaluations performed by evaluation team members. The oversight role of senior decision-makers should be limited to: (a) confirming that the pre-established and pre-authorized process was followed during the bidding and evaluation process; (b) providing direction in the event that steps in the evaluation process need to be rectified by evaluation team members due to procedural irregularities; (c) providing direction on matters falling beyond the mandate of the project team, particularly in relation to unforeseen events that may arise during the bidding and evaluation process; and (d) determining whether to proceed with the recommended contract award to the top-ranked respondent.

## **10. Governance of Steering Committees**

Senior decision-makers should avoid making decisions in relation to major procurement projects in an ad hoc or informal manner. Project decisions should be made in accordance with the organization’s general oversight practices or, where project-specific steering committee structures are established, in accordance with the formal procedures established for the steering committee. Unless otherwise established under project-specific steering committee protocols, all steering committee members should have equal decision-making status, with equal voting rights and equal access to the information provided by the project team to the steering committee. Steering committee decision-making should be formally documented and made in accordance with formally approved meeting agendas and formally approved recommendations.

**i) Cassellholme Redevelopment Project Governance Structure**

The Board of Management for Cassellholme (or more specifically the Board of Management for District of Nipissing East under the *Long-Term Care Homes Act, 2007*) (the Board of Management) is accountable for the governance of the Cassellholme Redevelopment project. It is also responsible for seeking the necessary approvals for alterations, additions or renovations to the home from the Ministry of Long-Term Care.

There are nine supporting municipalities that are represented by five of the seven members of the Board of Management, as set out in Schedule 4 of O. Reg 79/10 under the *Long-Term Care Homes Act, 2007*, which is reproduced here:

**SCHEDULE 4**

**THE BOARD OF MANAGEMENT FOR THE DISTRICT OF NIPISSING EAST**

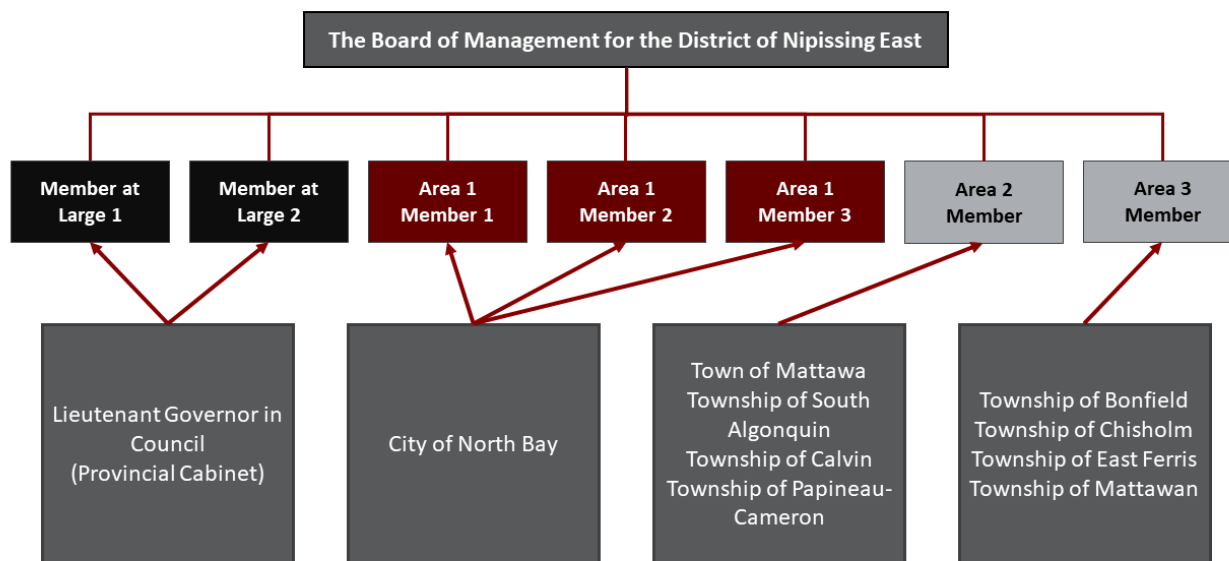
*The board of management for the District of Nipissing East shall consist of seven members and the areas they represent and the manner of their appointment shall be as follows:*

1. *Two members at large to be appointed by the Lieutenant Governor in Council.*
2. *Area 1, represented by three members to be appointed by the municipal council of the City of North Bay.*
3. *Area 2, represented by one member to be appointed jointly by the municipal councils of,*
  - i. *the Town of Mattawa,*
  - ii. *the Township of South Algonquin,*
  - iii. *the Township of Calvin, and*
  - iv. *the Township of Papineau-Cameron.*
4. *Area 3, represented by one member to be appointed jointly by the municipal councils of,*
  - i. *the Township of Bonfield,*
  - ii. *the Township of Chisholm,*
  - iii. *the Township of East Ferris, and*
  - iv. *the Township of Mattawan.*



The Board of Management has been constituted as an autonomous corporation created by the *Long Term Care Homes Act, 2007* and regulations and has separate and distinct objects in relation to the delivery of long term care from the supporting municipalities in the District of Nipissing East (See: O. Reg. 79/10, Sections 287-291 as well as *City of Guelph v. Board of Health*, 2011 ONSC 5981 (CanLII), <https://canlii.ca/t/frk04>). A majority of members constitutes a quorum (See: O. Reg. 79/10, Section 292).

The Board of Management has the power to determine estimates and apportion capital costs for renovations among its supporting municipalities, subject to the approval of those renovations by the province of Ontario (See: Section 127 and 128 of the *Long-Term Care Homes Act, 2007* and Section 295 of O. Reg. 79/10)).



## ii) Cassellholme Redevelopment Project Communication Management

Communications between Cassellholme and The Board of Management were managed by Cassellholme. Communications between the Procurement Office and Cassellholme were managed by Induspec, an engineering firm retainer by Cassellholme to manage the Cassellholme Redevelopment project. Communications between The Board of Management for the District of Nipissing East, and its municipal members, and evaluators were strictly prohibited. Any direction from Cassellholme and communications of the same to the evaluation team was managed by the Procurement Office.

## ii) Cassellholme Redevelopment Project Approvals Process

During the design planning process to draft the Cassellholme Redevelopment project RFP, drafts were sent to the the Ministry of Health and Long-Term Care (MOHLTC) and the The Board of Management for review, feedback, and approval. The Board of Management approved the selected procurement process (a negotiated RFP process with a dialogue stage) and evaluation committee at a special meeting on September 8, 2020. A letter communicating the procurement process was sent to the MOHLTC September 9, 2020 (Appendix 6 – Agreement to Develop Long-Term Care Homes Beds for Cassellholme (Proj 479)). The MOHLTC approved proceeding with the procurement October 13, 2020 (Appendix 7 – Agreement to Redevelop a 364-Bed Long-Term Care Home for Cassellholme (PROJ 479)).



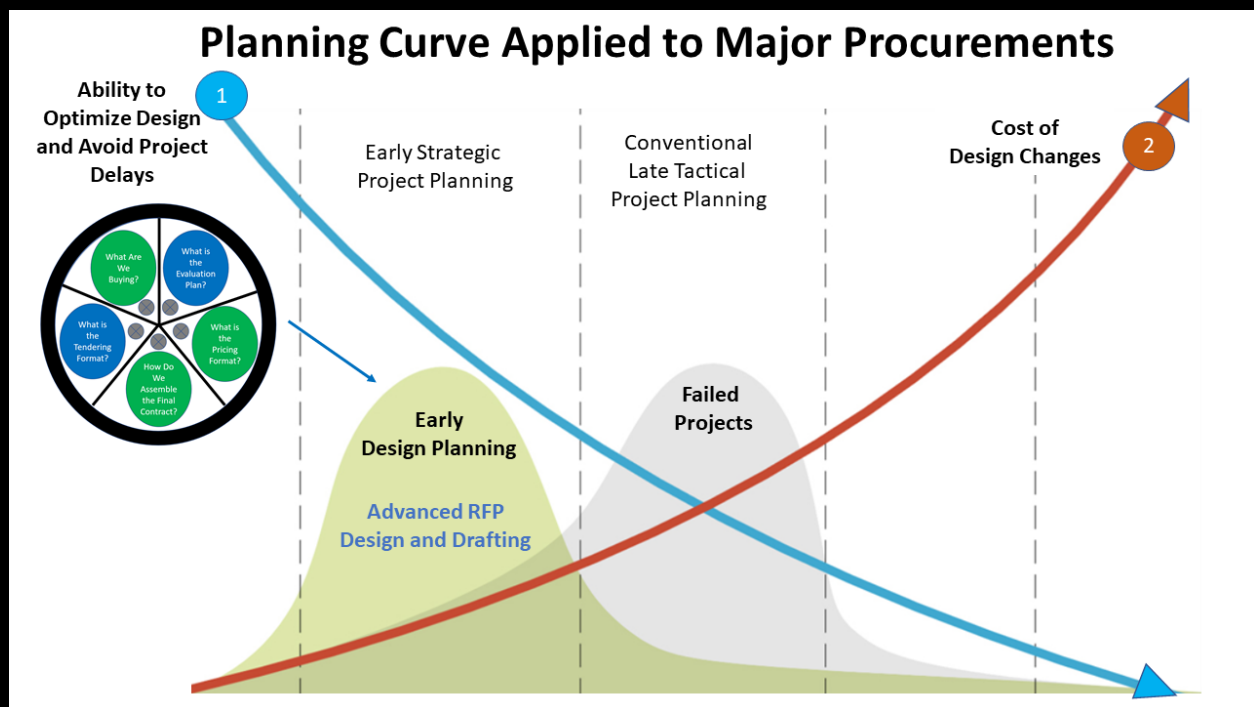
CHAPTER 3

# PROJECT DESIGN PLANNING

# 3.1. The 95/5 Rule

To increase project success rates, procurement teams need to develop solid project plans using the “95/5 rule” of procurement planning.

The “95/5” rule recognizes that almost all procurement failures can be traced back to the original failure to address the five core design elements of project planning in early strategic planning (see the five-element planning wheel below):



Failing to properly manage the gating process between design planning and solicitation drafting guarantees a suboptimal drafting process and greatly increases the likelihood of project failure. Project teams should therefore be required to correct any deficiencies in their design plans before proceeding to solicitation drafting.

To execute on a design plan, procurement advisors should manage the solicitation drafting business process as its own project, with the proper application of project management disciplines.

## 3.2. Project Budget

Public sector procurement operations face a high degree of scrutiny over whether they meet their contracting objectives on time, on budget, and by the rules.

Effective project execution requires proactive strategic planning at both the institutional and project level. While cost overruns and delays on major projects are standard operating procedure for some organizations, it is imperative that project teams avoid being overly optimistic about the time and cost that a project will require to complete to meet operational needs. This includes anchoring project design planning on a reasonable and realistic scope for the budget allotted for the project.

### **Cassellholme Redevelopment Project Budget**

The Cassellholme Redevelopment project RFP was a complex, high-risk procurement process, due to the value of the contract and the high profile of the services to be procured.

In 2017, an initial budget of \$68.4 million for the construction cost was developed. Taking into account the passage of time and the increased cost of materials due to pandemic-related supply chain issues, a more refined and updated budget of \$100 million was established by the Cassellholme Redevelopment team in 2020.



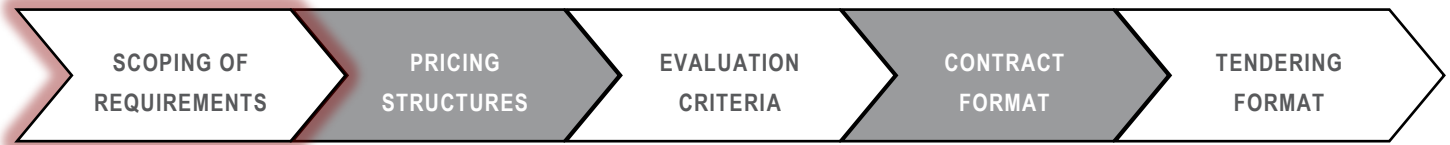
# \$100M

Cassellholme allotted \$100 million for the Cassellholme Redevelopment project.



## 3.3. Project Scoping

The first principle of negotiated RFPs is to avoid overly prescriptive approaches.



Since the ultimate contract award should fall within the scope and baseline requirements contained in the original RFP, purchasing institutions should avoid boxing themselves in with overly prescriptive specifications or contract legal terms and conditions.

Taking too narrow an approach in RFP scoping can impede the ability to negotiate a contract award with the proponent that submitted the best solution.

Even if a proposal could save significant time and money, the process rules would not permit the selection of that proposal if the scoping of the initial solicitation was overly prescriptive and precluded that proposed approach.

The initial scoping decision, and the level of prescriptiveness of the specifications within the solicitation, will inform the latitude of any subsequent evaluation and award decision.

### Cassellholme Redevelopment Project Scoping

The Cassellholme Redevelopment project procurement was scoped to achieve the Ministry of Health and Long-Term Care's (MOHLTC) *Enhanced Long-Term Care Home Renewal Strategy*.

Cassellholme is a 240-bed not-for-profit home for the aged located in North Bay, Ontario. As the district home for the aged for East Nipissing, Cassellholme serves citizens not only from North Bay but also the surrounding communities, including East Ferris, Bonfield, Chisholm, and more.



As part of the MOHLTC *Enhanced Long-Term Care Home Renewal Strategy*, Cassellholme opted to redevelop the facility's existing 240 beds, of which 184 have been designated by the MOHLTC as C-level beds, while the 56 were designated B-level beds. Cassellholme was approved for an additional 24 new long-term care (LTC) beds, bringing the facility total to 264, which is helping to address demand for services in the area and provincially. These additional beds have also provided opportunities to optimize the efficiency of the new facility's design. The design was based upon 264 beds, to which 106 were designed as basic beds, 104 were designed as semi-private beds, and 54 were designed as private beds.



The Board of Management for Cassellholme elected to pursue a rebuild option on the site of the existing home, in a manner which will result in a completely new facility. The strategy involves a phased construction approach. Phase One would be completed with minimal impact to the existing home.

Near the end of Phase One, a temporary link will be constructed between the existing facility and the Phase One construction, granting the new west wing full access to services offered from the existing facility. With Phase One ready for occupancy, residents occupying the two single-storey portions of the existing home (namely, the Apple and Maple Resident Home Areas (RHAs)) will be transferred into the new west wing to permit the demolition of this portion of the facility allowing construction of the balance of the new home (Phase Two) to proceed. The North Tower elevator addition will occur at the start of Phase Two. After the completion of Phase Two, the remainder of the existing home, with the exception of the North Wing, will be demolished and the remaining site work will be completed. This strategy, as described in more detail below, will require no bed closures or off-site accommodation.

The scoping of the RFP contemplated an award to one entity as a result of the RFP process.

# 3.4. Pricing Structure

Proper pricing structures are the cornerstone of competitive bidding and contract administration.



Project teams should lay a solid foundation for tendering and contracting cycles by avoiding the following common pricing pitfalls:

- ▶ Pricing Structures
- ▶ Payment Terms
- ▶ Volume Commitments
- ▶ Price Evaluations

## 1. Pricing Structures

Aligning project scope with clear pricing structures should be one of the first steps in any solicitation design planning process. The failure to select proper pricing structures at the outset of the drafting process will inevitably lead to drafting delays, as well as potential evaluation issues and post-award performance problems. Rather than integrating pricing at the end of the drafting process, it is much more efficient to develop detailed specifications and evaluation plans on the foundation of properly designed pricing structures.

## 2. Payment Terms

In a competitive bidding process, pricing structures serve the dual role of providing the format for bid evaluation and providing the framework for payment under the awarded contract. However, there is a tendency to focus on pricing structures as an evaluation tool while overlooking the need to ensure that the pricing structures also serve as a useful leverage point to properly manage contract performance and related contract payments. Project teams should ensure that their pricing structures are properly aligned to contract performance sub-phases or sub-categories to help inform payment structures for contract administration.

## 3. Volume Commitments

As a basic commercial rule, lower quantities attract higher unit costs and high quantities lead to lower unit costs. However, project teams often overlook the economies of scale when establishing their pricing strategies and enter the marketplace expecting competitive pricing without making any clear volume commitments. The failure to clearly define project scope and corresponding work volumes can lead to distortions in the evaluation process and disputes in contract performance. While it may not be possible to predict future requirements with complete accuracy, a purchasing institution remains under a duty to be as accurate as possible in disclosing its anticipated volumes.

#### 4. Price Evaluations

Fair evaluations are the foundation of the competitive bidding process, and clear pricing structures are the foundation of fair evaluations. The failure to disclose how the evaluation team will collect, assess, and score pricing information exposes a project team to significant bid challenge risks. Project teams should therefore ensure that they have a clear and transparent price evaluation plan and should avoid using any hidden formulas, criteria, or processes in those evaluations.

In summary, project teams should address the following pricing issues when planning solicitations:

- ▶ Align pricing structures with the contract scope.
- ▶ Integrate pricing structures with the performance phases or categories to inform the payment terms.
- ▶ Make volume commitments and scope as accurate as possible.
- ▶ Have a clear and transparent price evaluation plan.

#### **Cassellholme Redevelopment Project Pricing Structure**

With a procurement process as complex as the Cassellholme Redevelopment project, the project team wanted to balance both a final total price that could be objectively evaluated, with information regarding the calculation of the sums that made up the total price. The following overview explains how the above-noted pricing risks were mitigated in the design of the pricing structure for the Cassellholme Redevelopment project.

##### **Pricing Structures**

To ensure a balanced pricing evaluation, the Cassellholme Redevelopment team, with the assistance of the Procurement Office, designed the pricing criteria to capture not only a Base Price, but also potential cost-savings.

The pricing was structured as follows:

1. Appendix G – Pricing Form – This form was designed to capture the Base Price for the work, as stipulated in the RFP, which would be used for evaluation.
2. Appendix H – Supplementary Pricing Form – This form was designed to collect information regarding unit prices, take-out prices, separate prices, prescribed alternate prices, and proposed subcontractors, in order to supplement the Pricing Form (Appendix G of the RFP).
3. Appendix K – Supplementary Audiovisual Pricing Form – This form was designed to collect information regarding the audiovisual elements of the Cassellholme Redevelopment project and supplement the Pricing Form (Appendix G of the RFP).

##### **Payment Terms**

The CCDC 2 – Stipulated Price Contract – 2008, together with the CCDC 2 Supplementary Provisions set out in the RFP, served as the starting point for negotiations between Cassellholme and the selected proponent. The flexibility in the RFP process allowed for the negotiation of the detailed terms of payment for the Cassellholme Redevelopment project.

##### **Scope Commitments**

In order to provide proponents with an accurate scope for the Cassellholme Redevelopment project, Volumes 1, 2, and 3 of the Project Manual (Appendix I – Specifications of the RFP), developed by Cassellholme and the architect, Mitchell Jensen Architects, were provided to proponents with the RFP.

## Pricing Evaluations

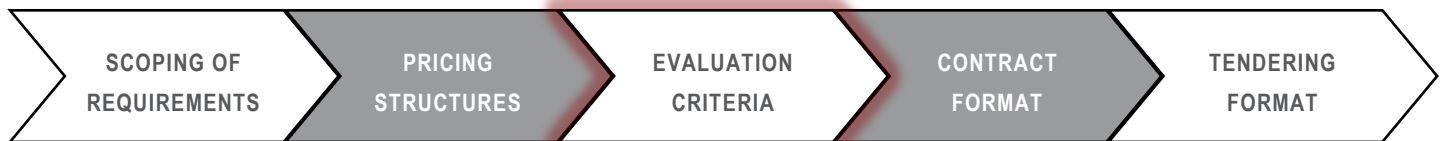
The pricing forms, namely the Appendix G – Pricing Form, Appendix H – Supplementary Pricing Form, and Appendix K – Supplementary Audiovisual Pricing Form, were designed to both capture the Base Price from proponents for the Cassellholme Redevelopment project, and the information and calculations that went into the proposed Base Prices.

To evaluate price for the Cassellholme Redevelopment project, each qualified proponent's Base Price provided in Appendix G – Pricing Form was inputted into the following relative pricing formula used to calculate the number of points allotted for the proponent:

$$\text{lowest price} \div \text{proponent's price} \times \text{weighting} = \text{proponent's pricing points}$$

## 3.5. Evaluation Criteria

For low-bid projects, price is weighted at 100% of the total score. For high-score projects, submissions are evaluated on two factors: pricing and rated criteria.



The Cassellholme Redevelopment project team determined that for a project of this size and complexity, a blend of non-price rated criteria and price would be used to evaluate proposals and determine who the selected general contractor would be based on the top-scoring proposal.

### 3.5.1. Pricing

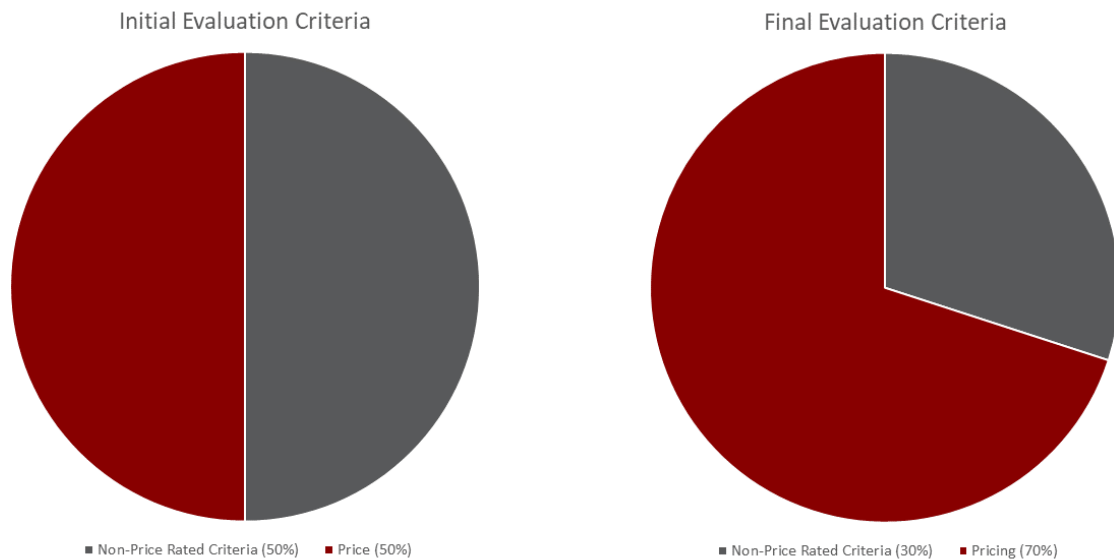
To avoid an anchoring effect caused by arbitrarily setting the initial weighting assumption for pricing too high or too low relative to other non-price criteria, project teams should start their design planning process based on the assumption of a 50/50 split between pricing and other rated criteria. The relative weighting of pricing can then be adjusted based on an assessment of its relative importance in comparison to other non-price factors.

#### **Cassellholme Redevelopment Project Pricing**

In the two-staged Cassellholme Redevelopment project RFP process, the first stage included equal weighting between price and non-price rated criteria.

When evaluating pricing as part of the Final Evaluation Criteria, the Cassellholme Redevelopment project team took the Procurement Office's advice and set pricing at 70 percent of the total number of points allotted for the Final Evaluation Criteria, as defined in the RFP. In order to allow for greater weighting for pricing, the initial evaluation category of Experience and Qualifications was removed from the Final Evaluation Criteria and the points allocated to that category for the short-listing process were allocated to the Pricing category for the final evaluation stage. This allowed the final evaluation of proponents' best and final offers to be based solely on the proponent's proposed approach and implementation plan, and on pricing, which, after an initial screening of proponents for experience and qualifications, were deemed by the project team to be the most important factors for the success of the project.





As noted above, the non-price rated criteria and pricing were both weighted at 50 percent of the total points for the Initial Evaluation Criteria, whereas for the Final Evaluation Criteria, non-price rated criteria was weighted at 30 percent of the total points and pricing was weighted at 70 percent of the total points.

### 3.5.2. Rated Criteria

To meet the required standards of transparency and enhance the defensibility of an evaluation and award decision, the purchasing institution should disclose the weightings, formulas, and sub-criteria it intends to rely on to arrive at the final score and ranking for each proponent. Specifically, the weighting of each category of rated criteria and of each individual criteria relative to the total number of points available must be unambiguous and clearly detailed.

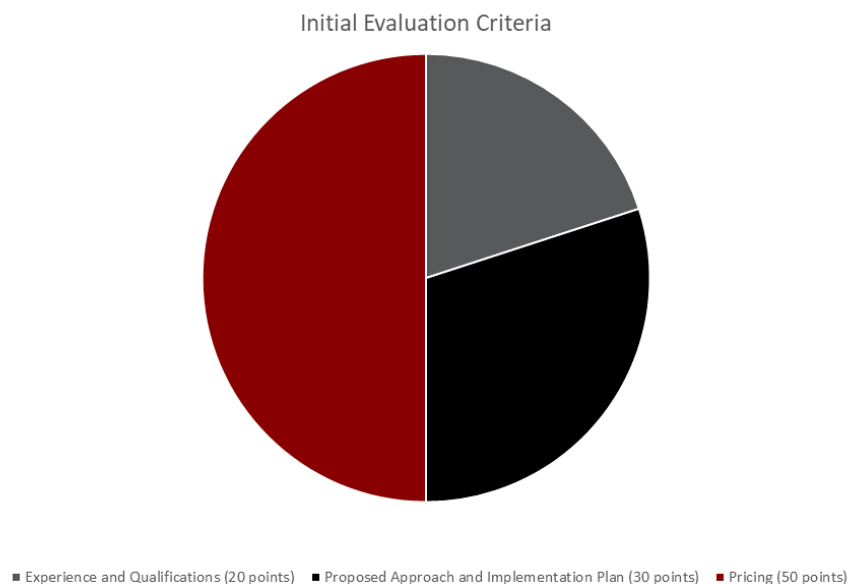
For scoring rated criteria, project teams should generally avoid scoring on a binary basis (where either all points or no points are awarded) and should instead be scored based on a scale that allows for no points, partial points, or all points for each category or subcategory. The typical scoring matrix recommended by the Procurement Office is the following five-point scale:

- ▶ 0 – Does not meet requirements
- ▶ 1 – Addresses some but not most requirements
- ▶ 2 – Meets most requirements
- ▶ 3 – Meets all requirements
- ▶ 4 – Meets all and exceeds some requirements

This scoring matrix provides a clear set of consistent scoring standards that can be applied by evaluators to each criterion, regardless of that criterion's overall weighting. The allocation of total available points (0, 25%, 50%, 75%, 100%) can then be multiplied by the total available points for that category to arrive at each proponent's score for that category.

## Cassellholme Redevelopment Project Rated Criteria

The Cassellholme Redevelopment project team, with the support and advice of the Procurement Office, determined the following categories and total points for each category for the non-price rated criteria and pricing for the Initial Evaluation Criteria:



The Initial Evaluation Criteria were established to reflect the importance of proponents' past experience, proposed approach and implementation schedule of the provision of the Deliverables, and overall cost for the project. The Initial Evaluation Criteria categories, which were scored out of a total of 100 points, were weighted as follows:

- ▶ Experience and Qualifications (20 points)
- ▶ Proposed Approach and Implementation Plan (30 points)
- ▶ Pricing (50 points)

Each of the category point weightings were disclosed in the RFP document.

Further, to ensure maximum transparency, the sub-weightings of the criteria within each of the categories were broken down into subcategories ranging from two points to seven and a half points for each criterion. These sub-weightings were disclosed in the RFP document. This level of transparency was in line with the advice from the Procurement Office team, which recommended that all weightings, including individual criterion sub-weightings, be disclosed to potential bidders in the solicitation document. This allowed evaluators to distribute the points for each sub-category based on the sub-criteria defined in each sub-category and based on the five-point scoring matrix described above.

During the design planning process, the Cassellholme Redevelopment project team decided that the Initial Evaluation Criteria would be evaluated using the five-point scoring matrix, recommended by the Procurement Office and described above (Appendix 3 – Scoring Matrix), to translate the total available points to the actual points scored by each proponent in each category.

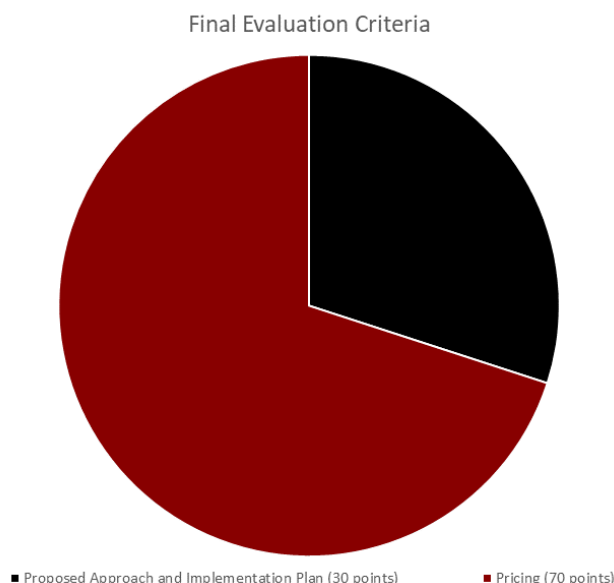
In addition to the five-point scoring matrix, there were also criteria that were designed to elicit a response that would be evaluated based on a finite scoring scale. The range of potential responses, as well as the points attributable to the response, were disclosed in the RFP.

Minimum scoring thresholds were also applied to each of the two non-price rated criteria categories as follows:

- ▶ Experience and Qualifications – Minimum Scoring Threshold of 12.0 points out of 20 points
- ▶ Proposed Approach and Implementation Plan – Minimum Scoring Threshold of 18.0 points out of 30 points

Prior to moving to the next stage of the evaluation process, proponent scores were compared against the minimum scoring thresholds to determine whether the proponent would proceed to the next stage of evaluation.

The Final Evaluation Criteria were similarly established, with the following categories and weightings defined:



The Final Evaluation Criteria were established to reflect the importance of proponents' proposed approaches and pricing for the same. The Final Evaluation Criteria categories, which were scored out of a total of 100 points, were weighted as follows:

- ▶ Proposed Approach and Implementation Plan (30 points)
- ▶ Pricing (70 points)

As with the Initial Evaluation Criteria, the Final Evaluation Criteria category point weightings were disclosed in the RFP document, along with the sub-weightings of the criteria within the Proposed Approach and Implementation Plan and the evaluation process for Pricing (the relative pricing formula).

Further, to ensure maximum transparency, the sub-weightings of the criteria within each of the categories were broken down into subcategories ranging from two points to seven and a half points for each criterion. These sub-weightings were disclosed in the RFP document. This level of transparency was in line with the advice from the Procurement Office team, which recommended that all weightings, including individual criterion sub-weightings, be disclosed to potential bidders in the solicitation document. This allowed evaluators to distribute the points for each sub-category based on the sub-criteria defined in each sub-category and based on the five-point scoring matrix described above.

Short-listed proponents participated in a series of dialogue activities, which culminated in the submission of BAFOs to Cassellholme. The process allowed those proponents who met the short-listing requirements to participate in a series of

dialogue sessions and then submit their BAFOs. The same evaluation team members that evaluated the proposals during the initial evaluation stage then evaluated the BAFOs using the Final Evaluation Criteria and weightings.

The minimum scoring threshold for the Proposed Approach and Implementation Plan category that was established for the Initial Evaluation Criteria was carried through to the Final Evaluation Criteria.

As with the Initial Evaluation Criteria, the project team adopted the five-point scoring matrix for the Final Evaluation Criteria, in addition to the finite scoring scales that were applied to criteria designed to elicit a specific response. This range of potential responses, as well as the points attributable to the response, were also disclosed in the RFP.

## 3.6. Contract Format

While standard contract terms and conditions can help facilitate efficient and consistent contracting across an organization, purchasing institutions should be mindful that the zone of standardization is finite.



Default standard terms and conditions covering major and recurring procurement contract issues can be prepared for the acquisition of general goods and services; however, these default terms will always be subject to the potential need for transaction-specific customization.

Purchasing institutions should avoid the unnecessarily restrictive inclusion of legal terms and conditions for contract performance, since standard term contracts are typically based on narrow assumptions that may not align with the range of possible solutions proposed by competing proponents.

This can have the effect of artificially reducing the scope of competition in the proposed solution. Occupying the field with standard terms can also create friction during contract negotiation, raising issues regarding whether the “changes” required to align the contract terms with the selected proposal are within scope of the original solicitation.

The more complex a project and the more the performance details are left to competing bidders to propose in their submissions, the more difficult it is in practice to include a set of standard contract terms within negotiated RFPs. A middle ground is to include terms that can serve as a starting point for contract award negotiations, but even this approach is only effective where the base assumptions of those terms align, more or less, to the selected proposal and call for relatively incidental tailoring to the contract terms.

The term sheet approach, in combination with a negotiated RFP format, should therefore be used for most major projects. Project teams should take their end objectives into consideration when developing their negotiated RFPs so that, instead of prescribing detailed standard form contract terms with contractual language that may not align with the selected proposal, a term sheet of core contractual requirements can be included in the RFP to serve as a checklist of items to be negotiated into the final contract.

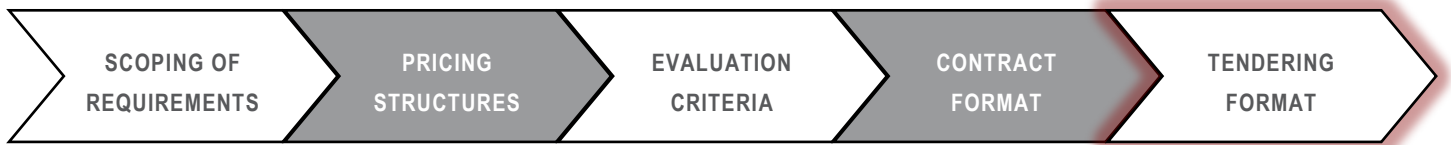
### Cassellholme Redevelopment Project Contract Format

Due to the nature of the solicitation, the project team, under advisement from its legal counsel, third-party consultants, and from the Procurement Office, selected the CCDC 2 – Stipulated Price Contract -2008 (CCDC 2) contract document, together with CCDC 2 Supplementary Provisions as the base for contract negotiations and award. In order to balance the contractor friendly CCDC 2 terms, Mitchell Jensen Architects, the design consultant architectural firm retained by Cassellholme, provided a list of supplementary provisions, which were included along with the supplementary provisions provided by the Procurement Office, which sought to further protect the interests of Cassellholme and address the owner-specific and public sector contractual provisions that are not addressed by the CCDC 2 standard form terms.



## 3.7. Process Selection

Purchasing institutions should leverage a comprehensive procurement playbook that includes a professionally designed set of tendering templates that meet the broad challenges of an increasingly complex, diverse, and dynamic marketplace.



Selecting the appropriate tendering process format is a critical strategic procurement decision in major projects. When developing their procurement strategies, project teams should consider their full range of options, as summarized in the following list:

- ▶ Invitation to Tender (ITT)
- ▶ No-Negotiation RFP
- ▶ Consecutive Negotiation/Rank-and-Run RFP
- ▶ Concurrent Negotiation/BAFO RFP
- ▶ Invitational Request for Quotation (RFQ)
- ▶ Open RFQ
- ▶ Request for Information (RFI)
- ▶ Request for Supplier Qualifications (RFSQ) – Prequalification Version
- ▶ RFSQ – Master Framework Version

### Cassellholme Redevelopment Project Selected Process

The scope and complexity of the Cassellholme Redevelopment project called for a flexible tendering format with multiple stages, including a dialogue stage between short-listed proponents and evaluators. Under the advisement of the Procurement Office, the project team selected a Concurrent Negotiation RFP process (otherwise known as a “Dialogue” or BAFO RFP) for the Cassellholme Redevelopment project. The BAFO format enabled the use of rectifications for non-compliant submissions, an initial evaluation stage resulting in the short-listing of proponents, a dialogue phase with commercially confidential meetings (CCMs), the ability for short-listed proponents to improve proposals and submit a BAFO proposal for the final evaluations, and negotiations with the top-ranked proponent.

## 3.7 Determining Mandatories

Bolstering the defensibility of a bidding process begins with the proper management of mandatory tender compliance requirements.

A submission that does not meet a threshold eligibility requirement must be disqualified as non-compliant. Institutions that award contracts to non-compliant proponents face potential challenges by competing proponents. To enhance the defensibility and transparency of the evaluation process, threshold requirements should be objective, clear, and defensible. They should be structured in adherence to the following general principles:



### CLEAR IDENTIFICATION

Threshold eligibility requirements should be clearly identified as mandatory evaluation requirements and, to avoid confusion, should be consolidated in one part of the solicitation document.



### ESSENTIALS ONLY

Threshold eligibility requirements should be used sparingly for compulsory requirements that are significant enough to actually disqualify a proponent, rather than for desirable but non-essential requirements.



### CLEAR LITMUS TEST

Those factors that are not genuinely capable of a pass-or-fail assessment (for example, grey areas requiring judgment calls or scores based on a range of outcomes) cannot properly operate as threshold eligibility requirements and should be removed from the evaluation criteria or recategorized as non-mandatory scored requirements.



### TIMING OF ADHERENCE

Those requirements that relate to the post-award contract performance phase that cannot be assessed during the evaluation process should not be included in the evaluation section. Rather, they should be organized in a separate section of the solicitation and ultimately incorporated by reference into the awarded contract.



### SELF-DECLARATIONS

Proponent self-assessment and compliance declarations (that is, where bidders “swear an oath” of compliance) are inadvisable. The purchasing entity is under a duty to disqualify non-compliant bidders and should therefore take positive steps to screen proponents for each threshold eligibility requirement. Those requirements that cannot be screened and independently verified should be removed from the evaluation and set as post-award performance standards that can be enforced during contract performance.

### 3.7.1 Mandatory Submission Requirements

A non-compliant tender is legally incapable of acceptance. To avoid bid compliance disputes, purchasing institutions should integrate transparent rectification cure periods into their flexible negotiated RFP formats that allow all proponents an opportunity to cure any non-compliance in their initial submissions. This risk mitigation measure serves to significantly reduce the risk of avoidable disqualifications and tender compliance disputes.

#### Cassellholme Redevelopment Project Mandatory Submission Requirements

Following the Procurement Office's advice, the Cassellholme Redevelopment project team mitigated the risk of tender compliance disputes by limiting its Mandatory Submission Requirements to two requirements: a completed and signed Submission Form (Appendix B of the RFP (Appendix 1)), and a completed Pricing Form (Appendix G of the RFP). To further mitigate the risk of disqualifications and compliance disputes, the Cassellholme Redevelopment project team included a rectification process, thus ensuring that all proponents had the opportunity to cure any deficiencies in either of the Mandatory Submission Requirement documents during the prescribed rectification period to avoid disqualification. The Mandatory Submission Requirements, along with the rectification protocols, were disclosed in the RFP.

### 3.7.2 Pre-Conditions of Award

Pre-Conditions of Award are those requirements that must be met by the presumptive awardee prior to the award of a contract.

#### Cassellholme Redevelopment Project Pre-Conditions of Award

The Cassellholme Redevelopment project required the following Pre-Conditions of Award of the selected proponent:

- ▶ **Confirmation of Commercial General Liability Coverage:** The selected proponent must provide confirmation of commercial liability insurance in the amount of no less than five million dollars per occurrence prior to the award of the contract. The policy must include a cross-liability and severability of interest clause.
- ▶ **Confirmation of Builder's Risk Property Insurance:** The selected proponent must provide confirmation of Builder's Risk Property insurance for the full replacement value of the complete project, including earthquake and flood and testing and commissioning, with a reasonable deductible per loss, for which the selected proponent shall be solely responsible, and including the following endorsements: Replacement Cost Value, stated amount co-insurance, and waiver of subrogation.
- ▶ **Environmental/Pollution Liability Insurance:** The selected proponent must provide confirmation of Environmental/Pollution Liability insurance, providing coverage for Third Party bodily injury and property damage resulting from an environmental incident, in the amount of not less than five million dollars per occurrence (per accident or incident or claim) and including at least the following policy endorsements: the Indemnified Parties as Additional Insureds.
- ▶ **Confirmation of Workplace Safety and Insurance Board Coverage:** The selected proponent must provide confirmation of Workplace Safety and Insurance Board coverage prior to the award of the contract.
- ▶ **Performance Bond and Labour and Materials Payment Bond:** The selected proponent must provide both a Performance Bond, and a Labour and Materials Payment Bond in the amount of 50 percent of the Base Bid Price prior to the award of the contract.

To meet transparency standards, all Pre-Conditions of Award were disclosed in the RFP.



CHAPTER 4

# PROJECT OPEN PERIOD



# 4.1 Solicitation Posting

Open tendering standards call for a reasonable posting period and accessible and transparent posting and bid submission procedures based on electronic posting and submission protocols.

Organizations should refer to all applicable trade treaty and jurisdictional requirements for solicitation posting requirements, ensuring adherence to minimum information standards and posting periods.

## Cassellholme Redevelopment Project Open Period

Project  
Open  
Period  
Timetable

- **Issue Date of RFP:** October 16, 2020
- **Mandatory Site Visits:** Appointments Starting Week of November 2, 2020
- **Deadline for Questions:** December 11, 2020 11:59:59 PM Eastern Time
- **Deadline for Issuing Addenda:** December 28, 2020 11:59:59 PM Eastern Time
- **Submission Deadline:** February 3, 2021 12:00:00 PM Eastern Time
- **Supplementary Submission Deadline (Appendix H and Appendix K only):** February 4, 2021 12:00:00 PM Eastern Time

The Cassellholme Redevelopment project RFP was publicly posted on the Biddingo.com and MERX public posting websites on October 16, 2020, by the Procurement Office. To further enhance the transparency of the opportunity, the RFP was cross-posted to the Procurement Office's Bonfire portal (<https://procurementoffice.bonfirehub.ca/portal/>) on the same day.

The project team considered Cassellholme's trade treaty obligations, including those to the *Canadian Free Trade Agreement (CFTA)*, the *Canada-European Union Comprehensive Economic and Trade Agreement (CETA)*, and the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*. Due to the complex nature of the project, which included a mandatory site visit and consideration for alternative specifications, the RFP posting period was a total of 96 days, which exceeded the minimum requirements of those trade treaties by 71 days to allow proponents sufficient time to prepare proposals. While the Biddingo.com and Merx posting sites required payment on behalf of vendors to access and download the RFP documents, the Procurement Office Bonfire portal did not. Further, the electronic submission requirement reduced barriers to competition from a potentially global pool of bidders.



## 4.2 Vendor Communications Management

Communication between the purchasing institution and potential bidders during the posting period must be strictly managed and must ensure a clear separation between the evaluators and the vendors.

Communication management throughout the procurement posting period is of tantamount importance, as purchasing institutions need to protect the process from being tainted by actual or potential bias, unfair advantage, and interference. Purchasing institutions should mandate an administrative team separate from the evaluation and project teams that can independently receive, review, and compile any correspondence and questions from potential bidders throughout the process through an office that serves as the RFP Contact to ensure the continuity of communications throughout the RFP process.

### **Cassellholme Redevelopment Project Vendor Communications Management**

The RFP Contact for the Cassellholme Redevelopment project was supported by an email inbox set up and managed by the Procurement Office team ([CassellholmeRFP@procurementadvisor.ca](mailto:CassellholmeRFP@procurementadvisor.ca)). All potential bidder communication was received and managed through this inbox by members of the Procurement Office team to ensure the proper co-ordination and continuity of communications between the project team and competing proponents.

Questions from potential bidders during the period up until the Deadline for Questions, as defined in the RFP and subsequently amended by addendum, were received through the RFP Contact and were collated into spreadsheets that allowed both the Procurement Office and the Cassellholme Redevelopment project team members to track and respond to each question. Further, to mitigate any risk of potential bias, the Procurement Office anonymized all questions before providing them to the Cassellholme Redevelopment project team.

All questions received were responded to by the Cassellholme Redevelopment project team and then organized by the Procurement Office into addenda, which were then reviewed and approved by the project team prior to posting. All approved addenda were posted on the Biddingo.com and MERX posting websites and on the Procurement Office's Bonfire portal.

## 4.3 New Information by Addenda

To better ensure a level playing field, any new information provided after the release of a solicitation should be made available to all potential bidders through formal addenda.

To meet applicable transparency standards, a solicitation process should include formal pre-bid question-and-answer protocols that allow purchasing institutions to release new, updated, or clarifying information through addenda. Those protocols should set a clear deadline for questions and for addenda that ensures an adequate time for bidders to respond to new information. They should also include a protocol that requires an extension to the bid deadline if new information must be released after the addenda deadline. All information released through addenda should be incorporated to form part of the solicitation document, since information posted in addenda typically takes precedence over information contained in the original solicitation posting.

### Cassellholme Redevelopment Project Addenda

Proponent questions were received throughout the posting period up to the Deadline for Questions, as defined in the RFP, and subsequently amended by addenda. Responses to the questions, as well as additional supporting information, were provided to proponents by way of 23 addenda, all posted to the Biddingo.com and MERX posting websites and the Procurement Office's Bonfire portal. Addenda were posted as responses were made available by the project team in order to ensure that proponents had the information as soon as possible, rather than releasing information in one batch prior to the Deadline for Addenda. In addition to responding to specific proponent queries, the addenda also included the following supporting information:

- ▶ Architectural Addenda
- ▶ Civil Addenda
- ▶ Food Services Addenda
- ▶ Mechanical-Electrical Addenda
- ▶ Structural Addenda

# 23

During the posting period, 23 addenda were posted prior to the Deadline for Addenda, as defined in the RFP.



# 2

Two proponents submitted proposals prior to the Submission Deadline. No submissions were received after the Submission Deadline.



CHAPTER 5

# EVALUATIONS

# 5.1 Evaluations

The evaluation process must be sufficiently resourced, both in the number and quality of evaluators assigned to each criterion, and in the time provided to the evaluators to complete their evaluations.

## Initial Evaluation Timetable

- **Rectification Period:** Three business days
- **Initial Evaluator Briefing:** February 1, 2021
- **Initial Evaluation Period:** February 5, 2021 to February 11, 2021 at 12:00 PM Eastern Time
- **Initial Enhanced Consensus Scoring Sessions:** February 12, 2021
- **Deadline for Scoring Adjustments:** February 16, 2021 at 12:00 PM Eastern Time

For complex projects, evaluation teams are typically divided into sub-groups of subject-matter experts that are assigned to different evaluation categories based on their knowledge and experience. As a minimum standard, each evaluation group should include no fewer than three evaluators. To maintain this minimum number and mitigate against the risk of some evaluators being unable to complete their assignments, it is generally recommended that at least four evaluators be assigned to each group at the outset of the evaluation process.

All evaluators assigned to a particular criterion must be qualified and confident in their ability to evaluate said criterion. If there are multiple areas of expertise required, sub-groups of evaluators, based on their subject-matter expertise, should be created instead of having all evaluators scoring all criteria irrespective of their level of subject-matter expertise.

All evaluators must be given sufficient time to complete their evaluations, as a failure to properly complete the evaluations in the time allotted can undermine project schedules and the defensibility of the evaluation result. When establishing evaluation teams, project team members should consider the workload and schedules of all potential evaluators. Evaluators who do not have the time to properly perform their evaluations should not participate in the evaluation process. The progress of evaluators should be carefully monitored during the evaluation process. If an evaluator is unable to complete the evaluation within the prescribed timeframe due to other commitments, that evaluator should be removed from the evaluation



team. If it becomes apparent that the evaluation process is proving to be too complex to complete within the allocated timeframe, then more time should be provided to evaluators to allow the evaluators to complete their evaluations.

### 5.1.1 Evaluator Governing Principles and Protocols

Further, all evaluators must agree to and be held to the following ten governing principles and protocols, which are codified to address recent legal rulings regarding the government evaluation processes and represent global standards that should be applied to all evaluators during government procurement processes:

#### 1. No Conflicts and Ongoing Disclosures

As a pre-condition to participating in an evaluation process, each evaluator should be required to sign an attestation confirming that they are free from any conflicts of interest (including any personal financial interest, whether direct or familial, in the outcome of the procurement process, or bias for or against any party competing for the contract award) that could adversely impact the fairness of the evaluation process. This attestation should also confirm that the evaluator is under an ongoing responsibility to disclose any actual or potential conflicts and clarify that an evaluator may need to recuse themselves from further participation in the evaluation process if a newly discovered conflict prejudices their ability to continue in the role of an evaluator.

#### 2. Subject-Matter Knowledge for Independent Evaluation

Each evaluator should also confirm that they have sufficient knowledge of the established evaluation criteria to independently perform the role of an evaluator without relying on other evaluators or third parties to assist in the application of those criteria to the supplier submissions. The evaluator should also acknowledge that if at any stage of the evaluation process they are unable to independently apply the evaluation criteria to those submissions, it is their responsibility to notify the evaluation moderator to determine whether the evaluator needs to be recused from scoring a specific evaluation category or removed from further participation in the evaluation process.

#### 3. No Deviation from Evaluation Criteria or Process

Each evaluator should also acknowledge and agree that the role of the evaluator is to apply the pre-established evaluation criteria and procedures to the supplier submissions and that evaluators cannot change the pre-established evaluation criteria, apply additional evaluation criteria that are not included in the pre-established criteria, or deviate from the evaluation procedures established in the solicitation document that they are directed to follow by the evaluation moderator.

#### 4. Maintaining Evaluation Records

Evaluators should also acknowledge that they are responsible for maintaining their own individual evaluation scores—and notes supporting their evaluation scoring—in the manner prescribed by the evaluation moderator, since all evaluation records are potentially subject to public release under access to information legislation or bid protests, and must therefore be clear, fair, and defensible.

#### 5. Participation in the Evaluation

Evaluators should also agree to prioritize their roles as evaluators to meet the evaluation schedule and should acknowledge that this commitment to the evaluation process includes finishing their independent individual evaluation scoring, including supporting notes, in the format prescribed by the evaluation moderator, prior to each formal group evaluation meeting. Evaluators should also understand that while they will not be required to change their individual scores as a result of any group scoring discussions, if in exercising independent judgment, an evaluator determines that his or her individual scores require adjustment, that any such changes must be supported with updated scoring notes explaining the reason for that change.

## **6. Confidentiality of Evaluation Process**

Evaluators should acknowledge that they are not permitted to discuss the evaluation process with other evaluators or third parties, except during formal moderated group evaluation meetings. More specifically, they should be instructed that, apart from formal moderated group evaluation meetings, they are not permitted to contact or communicate with any supplier competing for the contract award. If an evaluator believes that clarification is needed in respect of information contained in a supplier's submission, he or she should notify the evaluation moderator. Each evaluator should also acknowledge that their confidentiality duties in relation to the evaluation process do not lapse at the end of the evaluation process but continue beyond the conclusion of that evaluation process.

## **7. Confidentiality of Role as Evaluator**

To protect the evaluation process from interference or allegations of interference, evaluators should also agree to keep their role as an evaluator confidential (except for informing supervisors for work scheduling purposes) to prevent others from influencing or attempting to influence their scoring or otherwise influence the outcome of the evaluation process.

## **8. Duty to Report Interference**

Evaluators should also be under a duty to immediately notify the evaluation moderator if anyone attempts to influence their scoring or otherwise attempts to interfere with their role as an evaluator.

## **9. Seeking Clarification from Moderator**

Each evaluator should also acknowledge and agree that if they have any questions or concerns about the evaluation process, that those concerns should be raised directly with the evaluation moderator and should not be discussed with other evaluation group members, project team members, or any other third parties.

## **10. Standing as Evaluator**

Each evaluator should expressly acknowledge and agree that the failure to adhere to the due process standards set out in their evaluator attestation could, among other things, result in their immediate removal from the evaluation process.

## **Cassellholme Redevelopment Project Evaluation Group Overview**

Cassellholme assembled an evaluation team of four members. All four members evaluated all of the non-price rated criteria used in the evaluation of proposals. One member from the full evaluation team was nominated to also review the pricing submissions. Once reviewed, the evaluation of pricing was conducted as an administrative exercise based on the formula defined in the RFP and carried out by a member of the Procurement Office team.

For the initial evaluation, evaluators were given from February 5, 2021 to February 11, 2021 at 12:00 PM Eastern Time to complete their evaluations.

## 5.2 Submission Preparation

Administratively, a procurement administrator should screen submissions prior to providing them to evaluators to vet those documents for the following information:

1

### Pricing

Pricing information within the main submission documents should be redacted or removed.

2

### Links

Links to external sources of information should be redacted or removed.

3

### Contact Information

Contact information for members of the proposed team or references should be redacted or removed.

### Cassellholme Redevelopment Project Submissions Preparation

The Procurement Office team reviewed all proposals received at the two submission deadlines (the initial Submission Deadline and the BAFO Submission Deadline) prior to their release to evaluators. Each proposal document was reviewed for pricing information, links to external information sources, and any contact information in the main proposal documents. Redacted proposal documents were then uploaded by the Procurement Office team in place of the original proposals into the Procurement Office Bonfire portal for access and evaluation by the evaluators.

## 5.3 Conflict of Interest

A public tendering process must be free from conflict of interest, unfair advantage, and bias.

To protect the integrity of the procurement process, no bidder should have an unfair advantage over its competitors. Furthermore, for the purchasing institution, the individuals involved in the decision-making process leading to a contract award must be free from conflict of interest or bias.

### 5.3.1 Conflict of Interest Management

While conflicts of interest can apply on an individual basis, they can also apply at the organizational level. It is vital that purchasing institutions identify any actual, potential, or apparent conflicts of interest that may undermine the integrity of the evaluation and award process or impair a contractor's ability to objectively perform new work due to prior or ongoing work under other contracts.

#### **Cassellholme Redevelopment Project Conflict of Interest Management**

Each proposed evaluator was required to complete a self-assessed conflict of interest screening prior to the release of the proposals for evaluation. No conflicts of interest were identified by the members of the evaluation team.



## 5.4 Mandatory Submission Requirements

The Mandatory Submission Requirements review should be performed by a member of the procurement support team to screen submissions for compliance with those requirements prior to releasing compliant proposals to the evaluation team for scoring.

To shield the evaluators from information contained in or arising out of the review of Mandatory Submission Requirements, or any related rectification procedures, the group conducting the Mandatory Submission Requirement check should be made up of separate individuals from the evaluation group members.

When pricing is included in the Mandatory Submission Requirements, the pricing review must:

1

Ensure the required pricing form has not been materially altered from the prescribed format.

2

Ensure the pricing form has been completed according to the instructions provided in the solicitation documents.

3

Consider whether the proposed price aligns with the Deliverables, as defined in the solicitation document.

4

Identify any abnormally high or low pricing submissions, as these may represent unbalanced bids.

5

Review for any ambiguity in the pricing, including, but not limited to, any calculation errors or missing information.

6

Review for any conditional offers.

#### **Cassellholme Redevelopment Project Mandatory Submission Requirements Management**

Upon receipt of the proposals at each submission deadline (the initial Submission Deadline, and the BAFO Submission Deadline), the Procurement Office team completed the Mandatory Submission Requirements evaluation. In each stage, the review took less than one business day to complete.



# 5.5 Rectification and Clarification Protocols

Integrating rectification and clarification protocols into RFP processes enables cure periods, reduces compliance disputes, and maximizes competition.

Rectification Notices and Clarification Notices should be sent to proponents during business hours. A minimum of three business days should typically be provided for proponents to respond to the notice and provide the required or requested information. Reminders should also be sent 24 hours prior to the deadline to proponents who have not yet responded to the original Rectification Notice or Clarification Notice.

## 5.5.1 Rectification and Clarification Notices

Rectification Notices may only be used in processes that expressly allow for rectifications. Rectifications are a one-use instrument to correct any defects in a proponent's Mandatory Submission Requirements. Rectifications can be high risk, as proponents have only one opportunity to rectify their Mandatory Submission Requirements. Those proponents that fail to rectify the noted defect(s) or those that submit a response with new defects should be disqualified from the procurement process for a non-compliant submission.

When possible, it is advised that project teams first consider the use of a clarification process to address ambiguities relating to submission compliance prior to relying on a rectification cure period protocol. Clarification Notices may be used only in processes that expressly grant verify, clarify, and supplement rights to the purchasing entity. Clarification Notices may be sent multiple times throughout the procurement process, not just during the Mandatory Submission Requirement and Mandatory Technical Requirement reviews.

### **Cassellholme Redevelopment Project Rectification and Clarification Notices**

Both proponents submitted compliant documentation in response to the Mandatory Submission Requirements in the RFP, and as such, no rectifications or clarifications were required. Accordingly, both proponents proceeded to the next stage of the evaluation process.

## 5.6 Rated Criteria

Project teams often find themselves under a spotlight of scrutiny over their evaluation and award decisions.

Given the inherent risks associated with the bid evaluation process, project teams should adopt clear standards and procedures for evaluators and should ensure that evaluators are properly briefed on their roles so that they understand the responsibilities of evaluators and how they should conduct their evaluations. Specifically, in addition to the standards set out in Section 5.1 above, the evaluator briefings provided to evaluation team members should cover the following items:

1. *No discussion with other people, within or outside the organization, regarding the submissions or the project.* Once an evaluation process begins, all evaluators enter into a confidentiality period whereby they are not allowed to discuss the project or the submissions with anyone else, including other evaluators (except during moderated session for the latter).
2. *Evaluators must review all procurement documentation, including all originally posted documentation and all addenda that were posted thereafter.* This ensures that all evaluators have a clear understanding of what the proponents were responding to when they prepared their submissions.
3. *Evaluators must follow the set scoring matrix for the criteria.* All evaluations must be conducted using the stated scoring matrix for each criterion. Generally, a zero to four scale is used for rated criteria. Evaluators must not improvise their own scoring matrices for their evaluations.
4. *Evaluators may evaluate only the information provided in the submission.* Evaluators may not follow hyperlinks or otherwise collect any external information not expressly included in the proponents' submissions. Evaluators may not consider past performance of proponents in their evaluation unless there is a formally documented record of the past performance for the proponent in question provided to the evaluators. Anecdotal information about past performance may not be considered in the evaluation of proponents.
5. *A comment must be included for every score assigned to every criterion.* Evaluation comments are key to ensure the defensibility of the evaluation process and, as such, comments must be clear, concise, and comprehensive. Comments should include specific reference to the related criterion, the corresponding requirement, the page number or section where the information was found in the submission, and a specific reason for the score provided. Comments should not include comparison information between submissions or proponents, and must not include offensive editorialization or information gathered by the evaluator beyond the information provided in the submission.

### Cassellholme Redevelopment Project Evaluations

#### Evaluator Preparation

The pre-scheduled evaluator briefing was held by the Procurement Office for all evaluators of the rated criteria at 9:00 AM Eastern Time on February 1, 2021. All evaluators for the Cassellholme Redevelopment project received the evaluator briefing and were provided with the slide deck from the same, which can be found in Appendix 2 – Evaluator Briefing Deck. Attendance was tracked for the briefing session.

## **Reference Validation**

In order to validate the past project experience information provided by proponents, Cassellholme, upon the advice of the Procurement Office, included a reference validation process, which was run concurrently to the evaluation of the non-price rated criteria. Each proponent was asked to submit three project examples along with contact information for each. The Procurement Office contacted all of the project example contacts for both proponents via email from the RFP Contact. Reference validations were collected using Appendix L – Reference Check Form, which was posted with the RFP. References were given three business days to respond to the request for reference validation. All completed Reference Check Forms were provided to evaluators to consider in the scoring of the project examples, as detailed in Appendix D, Section F of the RFP.

# 5.7 Enhanced Consensus Scoring

Enhanced Consensus Scoring allows for the better co-ordination of group evaluations and enables the creation of thorough evaluation records.

In recent years, group evaluations and consensus scoring have been the subject of numerous successful bid protests that have exposed serious flaws in the evaluation practices of many purchasing institutions. The Procurement Office has developed the following Enhanced Consensus Scoring (ECS) protocols, that have been adopted by public institutions across Canada in numerous procurements, which allow evaluation teams to operate efficiently, while staying within the bounds of their due diligence duties to better ensuring defensible evaluation and award decisions.

## 5.7.1 Enhanced Consensus Scoring Protocols

### 1. Scoping: Balancing Efficiency and Defensibility

ECS seeks to strike a balance between the mechanical averaging of individual evaluator scores, which forgoes the benefit of any peer review, and the collective group scoring of every evaluation score, which leads to unnecessarily lengthy evaluation sessions and well-documented risks relating to undue influence over individual evaluator scores.

ECS sessions occur after each evaluator is provided enough time to conduct an individual evaluation and to record his or her initial evaluation results. To streamline and focus the group discussion, only those scores that fall outside the pre-set variation tolerance are addressed during the consensus scoring sessions. Scores that fall within the pre-established range of variation tolerance are not discussed during consensus scoring and are instead simply averaged through an administrative process conducted by the evaluation monitors.

One of the main advantages of ECS is that it focuses the team's efforts on the areas with the largest divergence in initial scoring, since those areas are most likely to contain errors that would affect the ultimate rankings and undermine the fairness of the process.

## **2: Setting the Variation Tolerance**

The variation tolerance should be set before the ECS session. There is no single formula for variation tolerance since evaluation teams use different scoring ranges between, and even within, specific RFPs.

When using a five-point zero-to-four scale, the variation tolerance can be set at any scores that are more than two points apart.

## **3. Co-Ordinating the ECS Sessions**

The outlier scores (those falling outside of the variation tolerance) should be identified by the group evaluation moderators (typically procurement advisors who are not members of the evaluation team) prior to the ECS sessions.

While manual spreadsheets can be used for this exercise, for more complex procurements, automated bid evaluation tools can help streamline this process, particularly for identifying the largest outliers for the prioritization of group discussions.

Where possible, those items with the greatest range of divergence should be addressed first during the ECS sessions. This is particularly important in situations where the evaluation group has a finite amount of time allocated to group scoring as this will better ensure that the items of greatest potential impact on the ultimate rankings are addressed by the group within the allocated time.

This is less critical in situations where the project timeframes allow for additional sessions if all outliers are not addressed in the initial session. Either way, this issue should be addressed prior to the first group session to confirm whether the sessions will be conducted based on: (i) prioritization within a finite amount of time (where the remaining outliers would default to averaging); or (ii) non-prioritized discussion of outliers with the contingency of additional sessions if time runs out before all outliers are discussed.

#### 4. Rules of Order for ECS

ECS sessions should be conducted in accordance with formal rules of order. They should be presided over by a moderator (not a member of the evaluation team and typically a procurement advisor) who chairs the meeting. The moderator should prepare the agenda ahead of time based on a pre-identified summary of outliers.

The moderator should brief evaluators before initiating the group evaluation sessions to clarify the following ECS protocols:

1. Only outliers will be raised for discussion during the session. If those items raise issues in related areas, the group is free to discuss those other areas as well.
2. The evaluator with the lowest score for an item will be asked to speak first, followed by the evaluator with the highest score for that item.
3. The process will continue with the next lowest evaluator, then next highest, until each evaluator is given the opportunity to address the item.
4. While all evaluators will be given an opportunity to speak, evaluators will not be required to speak to the items under discussion.
5. After each evaluator is given the opportunity to speak, the moderator will open the floor for any additional evaluator comments.
6. Once there are no more speakers, the moderator will declare the item closed.
7. Evaluators will then be given the opportunity to revisit their individual scores and to make any adjustments that, based on the benefit of the group discussion, they determine to be appropriate. Individual evaluator re-scoring can be done either during the course of the meeting or after the meeting, as pre-established by the moderator. Evaluators will not be required to disclose whether they intend to change any of their scores to other members of the evaluation team.
8. Evaluators should be instructed to record the reasons for any changes to their initial scores.
9. Once the evaluators have been given the opportunity to record any adjustments to their scores resulting from consensus scoring, the final individual scores will be averaged to arrive at the final overall scores.

#### **Cassellholme Redevelopment Enhanced Consensus Scoring**

The Cassellholme Redevelopment Project team adopted the ECS method recommended by the Procurement Office. In implementing that approach, the Procurement Office team analysed the initial scoring and prepared scoring summary charts for the ECS sessions. Through that summary chart analysis, the variation tolerance was set ahead of the ECS session such that any score with a difference of two points or more would be identified for discussion, with scores falling within one point or less simply averaged in the final scoring. For further due diligence, any criterion that received a score of zero from any evaluator while receiving a score of one or more points from any other evaluator was also identified for discussion, as well as scoring for any criterion that had prescriptive benchmarked scoring where there was any variation between the evaluator scores. In the initial scoring ECS sessions, 22 criteria between the two proposals were identified as requiring group discussion.



### **Evaluator Briefing**

Prior to the start of the ECS session, all evaluators received a briefing, the content of which can be found in Appendix 4 – Enhanced Consensus Scoring Briefing Deck.

### **Enhanced Consensus Scoring Session Moderation**

One ECS session was held to review identified outlier scores in the initial scoring. This ECS session was held on February 12, 2021. Members of the Procurement Office team attended and moderated by the ECS session. Only Cassellholme Redevelopment project evaluators and Procurement Office team members were in attendance. No Cassellholme senior decision-makers or project team members attended the group evaluation session. Evaluators followed the rules of order and participated in group discussion, and there was no indication of undue influence by any evaluator over any other evaluator, or any indication of bias for or against any of the proponents.

### **Evaluator Scoring Adjustments**

After the ECS sessions, evaluators were given one business day to complete any scoring adjustments. All evaluators completed their scoring adjustments prior to the deadline set by the Procurement Office.

### **Finalized Scoring Threshold Check**

After the finalization of scores, the Procurement Office team conducted an analysis of the scoring to identify the proponents that passed the thresholds set in the RFP for the Initial Evaluation Criteria. One proponent, namely Torbear Contracting Inc., scored lower than the minimum required score in both rated-criteria categories, and was therefore disqualified from the procurement process. One proponent, namely Percon Construction Inc. (Percon), scored above both required thresholds and proceeded to the next stage of the evaluation process.

### **Pricing Evaluation**

The Procurement Office team conducted the administrative evaluation of the Base Price, as described in Section 3.4. This was an administrative task, whereby the Base Price proposed by the qualified proponent, namely Percon, was inserted into the relative pricing formula in the Procurement Office Bonfire portal.

## 5.8 Concurrent Negotiations and BAFO

Concurrent negotiations allow the purchasing institution to enter into parallel discussions with multiple proponents after a preliminary screening process identifies the short-listed finalists.

The dialogue stage of the negotiated RFP process allows for the refinement of potential solutions through direct discussions between the purchaser and each short-listed proponent. At the close of the dialogue phase, the public institution invites each short-listed finalist to submit its BAFO. The final ranking is based on the evaluation of those final offers.

### Concurrent Negotiations Timetable

- **Notice of Short-Listing Sent to Short-Listed Proponent:** February 18, 2021
- **Written Evaluator Briefing:** March 1, 2021
- **Commercially Confidential Meeting:** March 2, 2021
- **Supplementary Disclosures Sent to Short-Listed Proponent:** March 9, 2021
- **Best and Final Offer Instructions Sent to Short-Listed Proponent:** March 10, 2021
- **Best and Final Offer Submission Deadline:** March 16, 2021 at 4:00:00 PM Eastern Time

### 5.8.1. Short-Listing of Proponents

Short-listed proponents are established in accordance with the rules and criteria set out in the solicitation document. Those finalists are invited to engage in private and confidential concurrent dialogues with evaluation committee members before submitting a final offer, allowing both parties to establish a more thorough understanding of the contract requirements and to explore a range of alternative proposed methods of project performance.

#### Cassellholme Redevelopment Project Short-Listing of Proponents

As described in Part 2 – Evaluation, Negotiation, and Award of the RFP (Appendix 1), the RFP process allowed for the short-listing of the three top-ranked proponents to enter into subsequent concurrent dialogue sessions. Only one proponent met the minimum scoring thresholds under the RFP and was eligible for initial ranking. As such, only one proponent was short-listed for the subsequent stages of the RFP process leading to the BAFO.

1

One short-listed proponent was invited to participate in the dialogue stages of the RFP process.

#### Notice of Short-Listing

One short-listed proponent was identified and invited to participate in the dialogue stage of the RFP process. No other proponent passed the thresholds for the Initial Evaluation Criteria set out in Appendix D – RFP Particulars of the RFP and, therefore, no other short-listed proponents were identified. The RFP Contact sent one Notice of Short-listing to the short-listed proponent on February 18, 2021.

#### Supplementary Disclosures

A detailed agenda for the commercially confidential meeting (CCM) was prepared and provided to the short-listed proponent. In order to allow proper preparation for the CCM, the short-listed proponent was provided a list of areas of discussion, and specific questions from Cassellholme in advance of the CCM. This included the nominated evaluators, as noted in Section 3.4, conducting a thorough review of not only the Base Price proposed by the short-listed proponent, but also Appendix H – Supplementary Pricing Form and Appendix K – Supplementary Audiovisual Pricing Form. The agenda and the areas for discussion were split between non-price criteria and price. The evaluators for the non-price criteria were excused after the morning portion of the CCM and only the evaluators that were privy to the pricing information remained for the discussion related to pricing.

## 5.8.2. Commercially Confidential Meetings

CCMs are typically held between individual short-listed proponents and evaluators during the dialogue phase of a two-stage or multi-stage RFP process. The objective of the CCMs is to engage in dialogue to allow proponents to prepare a responsive BAFO submission.

Public institutions should establish CCM protocols to properly manage and mitigate the risks associated with bringing evaluators and short-listed proponents together in live interactive sessions. These risks can include the uneven disclosure of information to proponents, and the potential inappropriate disclosure of one proponent's confidential information to competing proponents.

Project leads should ensure that evaluators identify and prepare areas of discussion, clarifications, and questions for the short-listed proponents. These questions and clarifications should be screened by the CCM moderators to ensure, in consultation with the evaluators prior to the CCMs, that they are rationally connected to the RFP evaluation criteria. CCMs typically require one non-evaluator to act as a moderator and another to capture contemporaneous notes.

An agenda should be prepared and followed for each CCM. The list of areas of discussion, clarifications, and questions for the short-listed proponents should be sent to proponents ahead of their sessions, giving proponents sufficient time to review and prepare for their CCMs. A CCM briefing should also be provided by the evaluation monitors to evaluators prior to the first CCM meeting to confirm the ground rules of the process.

It is critical that a record of the CCM process be kept. Specifically, a record of the following steps in the CCM process must be maintained:

1. The identification and preparation of areas of discussion, clarifications, and questions for the short-listed proponents by evaluators.
2. The screening of the areas of discussion, clarifications, and questions to ensure they are rationally connected to the RFP evaluation criteria.
3. The preparation and adherence to an agenda for each CCM.
4. The distribution of the areas of discussion, clarifications, and questions to short-listed proponents.
5. The CCM protocols evaluator briefing.
6. The CCM protocols short-listed proponent briefings.
7. The CCMs.
8. The preparation of the supplementary disclosures by compiling and reviewing the non-confidential responses to the questions raised by short-listed proponents during the CCMs.
9. The distribution of the supplementary disclosures to all short-listed proponents.

Further to the record-keeping above, evaluation team members must maintain records of any individual notes made during the process. In addition to contemporaneous notes, any notes from the review process used to generate the consolidated list of supplementary disclosures provided to short-listed proponent prior the submission of their BAFOs must be maintained.

## Cassellholme Redevelopment Project Commercially Confidential Meetings

The short-listed proponent was invited to participate in one day of CCMs.

The CCM agenda was split into two segments, the first for non-price related criteria discussion, and the second specific to pricing. The agenda and list of topics for the CCM were as follows:

Commercially Confidential Meeting Agenda	
9:00 AM	Proponent Briefing / Protocol Review
9:10 AM	Cassellholme: Proposal Questions and Areas of Discussion
10:30 AM	Morning Break
10:45 AM	Cassellholme: Proposal Questions and Areas of Discussion
12:00 PM	Lunch Break
1:00 PM	Cassellholme: Pricing Discussion
2:30 PM	Afternoon Break
2:45 PM	Proponent: Opportunity for Questions
4:00 PM	End of Day

Commercially Confidential Meeting Discussion Topics
Proposed Approach and Implementation Plan
Infection Control Plan
Schedule
Risk Mitigation
Site Plans and Site Office
Pricing

The CCM with Percon was scheduled and held March 2, 2021.

Each evaluation team member was requested to provide areas of discussion, along with specific questions that fell within the areas of discussion. The Procurement Office team then reviewed and compiled spreadsheets that were organized according to the topics to be covered. These areas of discussion, along with the specific questions, were provided to the short-listed proponent prior to the CCM. The Procurement Office shared all information regarding the CCM with the short-listed proponent through the RFP Contact.

### Protocols and Evaluator Briefing

Protocols were provided to each evaluator on March 1, 2021. All evaluators were required to review and confirm their review and understanding of the protocols for the CCM in writing. The protocols provided to evaluators can be found in Appendix 5 – Commercially Confidential Meetings Briefing Deck.

A set of proponent-facing protocols were reviewed at the start of the session with the short-listed proponents.

Only evaluators and members of the Procurement Office team attended the CCMs. No Cassellholme senior officials, or stakeholders attended the CCMs.

### CCM Record-Keeping

Contemporaneous notes were taken by a member of the Procurement Office team during the CCMs. From these, supplementary disclosures were drafted and released to the short-listed proponent. These disclosures provided information that was discussed with Percon during the CCM that was determined to be of general relevance to the proponent.

### **CCM Supplementary Disclosures**

The Procurement Office team collected responses from Cassellholme to the CCM questions and compiled them into supplementary disclosures. All supplementary disclosures were reviewed and approved by Cassellholme prior to sending them to the short-listed proponent. Supplementary disclosures were sent via the RFP Contact on March 8 and 10, 2021.

## **5.8.3. Submission of Best and Final Offers**

At the culmination of the Concurrent Negotiations and BAFO stage of the RFP, public institutions invite each short-listed finalist to submit its best and final offer, or BAFO. The final evaluation and ranking are based on those final offers.

### **Cassellholme Redevelopment Project BAFO Submissions**

The BAFO Submission Deadline was March 16, 2021, at 4:00:00 PM Eastern Time. Submission instructions were provided by email to the short-listed proponent through the RFP Contact as part of the CCM supplementary disclosures noted above.

Percon submitted its BAFO submission on time.

### **Cassellholme Redevelopment Project BAFO Submission Preparation**

The same redaction and review process that was completed for the initial submissions (as described in Section 5.2), was conducted by the Procurement Office team for Percon Construction Inc's BAFO Submission. Links to external information, pricing information, and contact information were redacted from the main proposal documents. Redacted versions of the proposal documents were then uploaded into the Procurement Office's Bonfire portal for evaluation by the evaluators.

## **5.8.4. Evaluation of BAFO Submissions**

### **Cassellholme Redevelopment Project Mandatory Submission Requirements Management**

Pricing was the only Mandatory Submission Requirement for the BAFO Submissions. The review took one business day to complete.

### **Cassellholme Redevelopment Project BAFO Submission Rectification and Clarification Notices**

The short-listed proponent submitted compliant documentation in response to the BAFO Mandatory Submission Requirement identified in the BAFO Instructions and as such, no rectifications or clarifications were required. Accordingly, the short-listed proponent proceeded to the next stage of the evaluation process.

### **Cassellholme Redevelopment Project BAFO Evaluations**

For the BAFO proposal evaluations, all evaluators were given from March 16, 2021 to March 18, 2021 at 4:00 PM Eastern Time to complete their evaluations.

### **BAFO Enhanced Consensus Scoring**

As described above for prior rounds of ECS, the Procurement Office team reviewed the individual evaluator scoring in preparation for the BAFO submission ECS sessions. The analysis of those evaluator scores used the same variation tolerance as the prior ECS sessions. Specifically, any score with a difference of two points or more would be identified for discussion, with scores falling within one point or less simply averaged in the final scoring. To ensure further due diligence, any criterion that received a zero from any evaluator and one or more points from any other evaluators would also be flagged for discussion, as well as scoring for any criterion that had prescriptive benchmarked scoring where there was any variation between the evaluator scores. After conducting this analysis, the Procurement Office team determined that there was one criterion identified for discussion.



**BAFO Finalized Scoring Threshold Check**

After the BAFO evaluation scores were finalized, the Procurement Office confirmed that Percon passed the thresholds set out in the RFP for the Final Evaluation Criteria.

**BAFO Pricing Evaluation**

The Procurement Office team administered the evaluation of pricing by inserting the proposed Base Price from the BAFO Pricing submission by Percon to finalize the evaluation process.

Percon was determined to be the top-ranked proponent. The Procurement Office team recommended that Percon be selected for contract award negotiations.



CHAPTER 6

# CONTRACT NEGOTIATIONS AND AWARD

# 6.1 Top-Ranked Proponent

Percon Construction Inc. (Percon) was the top-ranked proponent, and as such, was selected to engage in contract award negotiations.

## 97.41 pts

Percon scored 27.41 points out of a possible 30 points for rated, non-price criteria.

Percon scored 70 points out of a possible 70 points for pricing.



## 6.2 Contract Negotiations

### Contract Negotiations Timetable

- **Notice of Selection Sent to Top-Ranked Proponent:** April 8, 2021
- **30-Day Negotiation Period:** April 18 to May 19, 2021
- **Date Negotiation Period Extended:** May 18, 2021
- **Extended Negotiation Period End Date:** May 31, 2021
- **Date of Selected Proponent Contract Execution:** N/A
- **Date of Cassellholme Contract Execution:** N/A

### 6.2.1 Record-Keeping

Public organizations should clearly document negotiations and avoid making premature commitments that could be construed as constituting a contract award. In a negotiated RFP, contract awards should be made subject to a final agreement between the parties, as evidenced by a formal signed agreement. Failing to maintain these due diligence standards can result in significant legal exposures to the purchasing institution.

#### Cassellholme Redevelopment Negotiations Record-Keeping

During the negotiations, members of both the Cassellholme Redevelopment project team and the Procurement Office team took contemporaneous notes.

### 6.2.2 Negotiations Scope

The purpose of contract award negotiations is to finalize the contract details by integrating the selected elements of the proposal that ranked highest based on the pre-established evaluation criteria.

During contract negotiations, the deal should only get better for the purchasing institution. While the contract award negotiations should enable the incorporation of the performance terms proposed by the top-ranked proponent, they should not allow the selected proponent to bid-and-switch by negatively changing the terms in its proposal from those contained in its final evaluated offer since the top-ranked proponent's ranking is based on its final offer.

Negotiating teams should control the terms of engagement by:

1. defining the logistical details of the negotiation (such as meeting times, locations, and deadlines);

2. requiring the selected proponent to provide a complete list of discussion points well before any direct negotiations are initiated so that your team has adequate time to prepare;
3. knowing your “plan B” (referred to in standard negotiating theory as the BATNA, or Best Alternative to a Negotiated Agreement), which should include the option of proceeding to the next-ranked proponent or terminating the process; and
4. knowing your bottom-line walk-away points from a monetary, performance requirement, and timing perspective.

### **Cassellholme Redevelopment Project Negotiations Scope**

The Cassellholme Redevelopment project team identified pricing as the main area of improvement sought by Cassellholme, specifically with regard to the rising costs of materials due to the COVID-19 pandemic and overall market volatility. In order to ensure the initial goals of the project, namely to address the demand for services in the East Nipissing area and provincially, and to optimize efficiency in the new design, Cassellholme requested cost savings that would not reduce the overall reliability or durability of the facility, would not negatively impact the operations, the operating cost, or the infection prevention and control functionality of the facility, and that would not have a negative impact on the overall architectural character of the project.

### **6.2.3 Timeline**

Project teams should incorporate a pre-established timeframe for negotiations within the RFP negotiation protocols. This helps keep competitive pressure on the top-ranked proponent, who must either close the deal or risk losing the deal. It also enhances the transparency of the process since everyone knows the timeframes for negotiations when they submit their proposals.

The negotiation team should control time by applying deadline pressures to the negotiation to block any attempts to raise new issues or use delay tactics. Leveraging encirclement principles will keep the negotiations moving forward by narrowing and resolving the issues. If necessary, at the midway point of the pre-defined negotiation period, the purchasing institution should remind the proponent that time is running out on their negotiating window. This will put the purchasing institution in a strong position to leverage final execution with speed and precision, allowing the receipt of further contract concessions while requiring the proponent to close the deal within the time limit.

The negotiation team should have a clear mandate of what it can and cannot agree to during direct negotiations. The team should leverage the time constraints and its ability to terminate negotiations at the end of the negotiation period to counter any unreasonable proponent demands, to limit concessions, and to obtain improved results during the final negotiation process.

### **Cassellholme Redevelopment Negotiations Timeline**

A 30-day negotiation period was contemplated in the RFP. The Cassellholme Redevelopment project team, along with the Procurement Office, decided to begin the negotiation period from the date of the first negotiations meeting, which was scheduled for April 18, 2021. At the final scheduled negotiations meeting, held on Day 29 of the negotiation period, the parties mutually agreed to extend the negotiation period to allow for further refinement of both the legal terms and the operational details. The negotiation period was extended to May 31, 2021. No further extensions for negotiation were required.

## 6.2.4 Negotiations Team Composition

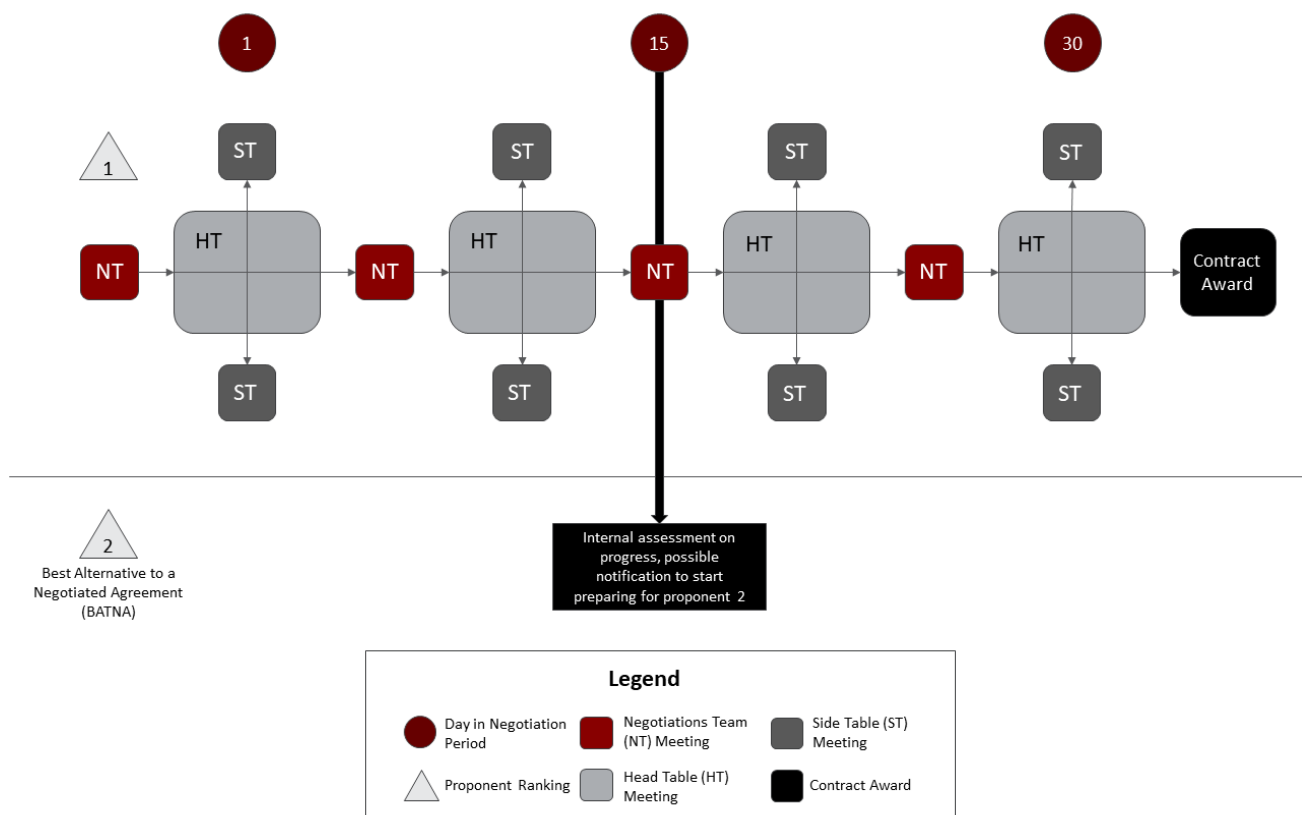
Contract negotiations require careful co-ordination and leadership..

The lead negotiator should draw on business process design practices and project management disciplines and apply them to the negotiation process to leverage the principles of containment, encirclement, and strategic implementation in order to execute the negotiations with speed and precision.

As part of the negotiation planning, the lead negotiator should determine the size and composition of the team that “takes the field” to directly engage the selected proponent. The lead negotiator should also organize the members of the support team, including the necessary subject matter experts, who should remain “behind the curtain” to assist the bargaining team and be ready to make tactical appearances at the bargaining table, or at specially controlled side tables, when called on.

The purchasing institution should identify the individuals, drawn from the negotiated RFP project team and from other relevant parts of the organization, that need to be part of the negotiated RFP negotiations support team. These individuals, including the ultimate decision-makers, should play a “behind the curtain” role in supporting the individuals that are selected to serve as representatives on the negotiation team.

Purchasing institutions should organize the negotiations into three streams: head table, business (or operational) side table, and legal side table. The head table meetings serve as checkpoints for the negotiation teams, ensuring that both parties are aware of how many days are left in the negotiation period, what remains outstanding in terms of the Pre-Conditions of Award, and what the next steps are, with regard to agreeing to operational specifications and legal terms. The business and legal side tables focus on both the business specifications and legal terms. This allows for productive conversations with the appropriate individuals from both parties in order to manage the contract negotiation time period effectively.





## Cassellholme Redevelopment Project Negotiation Team Composition

The Cassellholme Redevelopment project negotiation team was led by the Procurement Office managing director. The Procurement Office organized the negotiation meetings into three above-noted streams: head table, business (or operational) side table, and legal side table. The main negotiation team was made up of representatives from Cassellholme, Cassellholme's third-party engineering consultants from Induspec, and architectural consultants from Mitchell Jensen Architects, as well as senior legal counsel and senior procurement advisors from the Procurement Office. Business side tables were run by Cassellholme's third-party consultants, Induspec and Mitchell Jensen Architects. Legal side tables were run by the Procurement Office's senior legal counsel.



### 6.2.5 Notice of Selection

Once the negotiation team is properly prepared with its mandate and strategy, the lead negotiator should define the terms of engagement by issuing a selection letter to the top-ranked proponent. That selection letter should:

1. reiterate the protocols of the negotiated RFP, including the timeframe for negotiations, and confirm that any award is subject to the satisfactory conclusion and ratification of a negotiated agreement; and
2. confirm the scheduling and logistics for direct communications during the negotiating process to protect against end-runs around the negotiation team by the proponent.

## Cassellholme Redevelopment Project Notice of Selection

The Procurement Office drafted the Notice of Selection, which was sent to Percon via the RFP Contact on April 8, 2021. The Notice of Selection stated clearly that the notice did not constitute a legally binding offer to enter into a contract on the part of Cassellholme, nor would it lead to a legally binding relationship between Cassellholme and Percon prior to the execution of a written agreement. It further stated that any contract award would remain subject to the successful negotiation of final contract terms; to meeting all Pre-Conditions of Award as stated in the RFP, which were reiterated in the Notice of Selection; and to the formal approvals and contract execution by Cassellholme. The Notice of Selection also included the times and dates of the head table meetings and the first two legal side table meetings, all of which were set by the Procurement Office and Cassellholme. The Notice of Selection further directed Percon to refer to the CCDC 2, along with the Supplementary Provisions for CCDC 2 – Stipulated Price Contract – 2008 (Appendix A of the RFP), both of which would form the basis of the negotiations.

### 6.2.6 Managing the Agenda

Prior to the commencement of direct negotiations, the project team should assemble to finalize the tactical planning for outstanding issues. This includes reviewing any outstanding internal issues that the project team wants addressed in the negotiations prior to the deal closing. Internal issues should be consolidated and assigned to the appropriate individuals on the project team. Those final issues should be prioritized and sequenced to serve as the negotiation agendas.

## Cassellholme Redevelopment Project Negotiations Agenda Management

The agenda for the head table meetings was set and moderated by the Procurement Office. Agendas for the head table meetings were communicated to Percon by the Procurement Office via the RFP Contact. Each head table meeting included an update from the lead team members from the legal and operational side tables, as well as a checkpoint in regard to the Pre-Conditions of Award. At the start of each head table meeting, the parties were reminded of what day in the negotiation period the meeting was being held, and at the end of each meeting the parties were reminded of what meetings were set for the upcoming week. By doing so, the Cassellholme Redevelopment project negotiation team was able to keep tension

on the timing of the meetings in order to avoid excessive slippage in the negotiation process. Business and legal side table agendas were set by applicable members of the Cassellholme Redevelopment project negotiation team, namely Induspec and Mitchell Jensen Architects, and senior legal counsel from the Procurement Office, respectively.

### 6.2.7 Final Contract Assembly

The formalization of final contract terms should align performance requirements, pricing, and legal terms into the final contract based on what was set out in the initial RFP and in the selected proposal.

#### **Cassellholme Redevelopment Project Contract Construction**

The Procurement Office maintained version control over the contract throughout the negotiations process, and therefore managed the final contract construction.

### 6.2.8 Pre-Conditions of Award

The Pre-Conditions of Award disclosed in the RFP must be met by the selected proponent prior to the conclusion of the negotiation period. The Notice of Selection, when sent to the selected proponent, should include a reiteration of the Pre-Conditions of Award for ease of reference, along with a clear due date for the receipt of those Pre-Conditions of Award.

#### **Cassellholme Redevelopment Project Pre-Conditions of Award**

The Notice of Selection stated that Pre-Conditions of Award were due as soon as possible, but no later than Day 30 of the negotiation period, specifically May 19, 2021. The Notice of Selection reiterated the Pre-Conditions of Award, as detailed in Section 3.7.2. The Confirmation of Commercial General Liability Coverage, Environmental/Pollution Liability Insurance, and Workplace Safety and Insurance Board Coverage was received from Percon and accepted by Cassellholme April 29, 2021. During negotiations, the Supplementary General Conditions were updated to indicate that the Confirmation of Builder's Risk Property Insurance and Performance Bond and Labour and Materials Payment Bond prior to work commencing.

### 6.2.9 Concluding Negotiations

The negotiations concluded on May 31, 2021. A final contract package was sent to Cassellholme for review and approval June 15, 2021.

## 6.3 Contract Execution

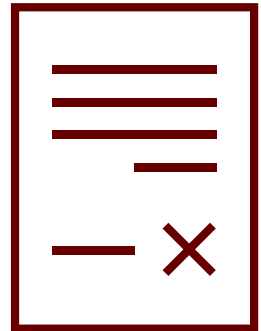
The contract that is ultimately awarded should fall within the scope of the contract that was originally tendered in the RFP.

Once a deal has been reached and a final contract has been constructed, purchasing institutions should ensure that the selected proponent signs first to allow for internal approvals.

Purchasing institutions should not start work under the contract before they have a signed deal.

### **Cassellholme Redevelopment Project Contract Execution**

Final approvals from the Cassellholme stakeholders have not been received as of the publication of this probity report, and thus, the contract has not yet been executed.





CHAPTER 7

# CONCLUSION

# 7.1 Final Recommendation

The Cassellholme Redevelopment project, under the guidance of the Procurement Office, conducted the procurement process in accordance with applicable due process and probity standards. Accordingly, it is the recommendation of the Procurement Office that the selected proponent, Percon Construction Inc., be awarded the contract for the Cassellholme Redevelopment project.





# About Us

## Procurement Law Office

The Procurement Law Office specializes in public procurement law, working with clients across all sectors of government and all regions of Canada. With over a century of combined experience, our lawyers and procurement advisors are uniquely positioned to understand and meet the needs of public purchasing clients. We provide advisory services throughout all stages of the procurement process, offering project drafting support, negotiation services, legal advice and opinions, institutional reviews, and template, policy, and protocol development.

Through our affiliate, the Procurement Training Office, we also provide comprehensive training for procurement professionals through our own programs and in association with leading law schools and industry associations.

We have a strong track record of success with prominent, high-stakes projects and have updated the procurement practices of major institutions across all sectors of government and industry. Our clients include municipalities and municipal entities, colleges and universities, school boards, health sector entities, shared services organizations, and federal and provincial departments, ministries, and agencies.

## Probity Report Preparation

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