

**Fairness Advisor Final Opinion of Assurance**  
for  
**The Province of Newfoundland and Labrador**

in support of the procurement process for the  
**Corner Brook**  
**Long Term Care Project**

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**Submitted to:**

**Steven Forward**  
Manager of Facility Planning and  
Architecture  
Design and Construction Division  
Transportation and Works  
5th Floor, Confederation Building  
St John's, NL  
A1B 4J6  
Email: [stevenforward@gov.nl.ca](mailto:stevenforward@gov.nl.ca)

**Cory Grandy**  
ADM, Works  
Transportation and Works  
5th Floor, Confederation Building  
St John's, NL  
A1B 4J6  
Email: [corygrandy@gov.nl.ca](mailto:corygrandy@gov.nl.ca)

**Andrea McKenna**  
Director - Planning &  
Accommodations  
Transportation and Works  
5th Floor, Confederation Building  
St John's, NL  
A1B 4J6  
Email: [AndreaMcKenna@gov.nl.ca](mailto:AndreaMcKenna@gov.nl.ca)

**Prepared by:**

RFP Solutions Inc.  
(Fairness Advisor)

## **Purpose**

The purpose of this Final report is to provide observations of the Fairness Advisor and a Final Opinion of Assurance with respect to the process for the Government of Newfoundland and Labrador's Corner Brook Long Term Care (CBLTC) Project procurement process. The Project is being undertaken as a Public-Private Partnership (P3).

This Final report presents our findings from each of two (2) Interim Reports as well as provides our observations for the period following the conclusion of the evaluation and ranking of written Proposals received by the Province in response to the second-stage Request for Proposals for this Project, through the Notification of Proponents, achievement of Financial Close with the Highest Ranking Proponent and the conduct of Debriefings by the Province.

## **Introduction**

RFP Solutions Inc. was engaged as the Fairness Advisor to oversee the competitive procurement process for the design, construction, financing and maintenance of a long-term care facility located in Corner Brook, Newfoundland and Labrador, along with certain wider site works (the Corner Brook Long Term Care (CBLTC) Project) for the Province of Newfoundland and Labrador. RFP Solutions Inc. was engaged by the Province on February 22, 2017, pursuant to a competitive process, to oversee the Project procurement.

The CBLTC procurement was undertaken in partnership between the Province's Department of Transportation and Works (DTW), the Department of Health and Community Services (DHCS) and the Western Regional Health Authority (WRHA) (the "partner organizations", collectively "the Authority"). The process was overseen by a Steering Committee, comprised of the partner organizations.

The CBLTC procurement followed a two (2) stage procurement process, consisting of a first-stage Request for Qualifications (RFQ) (RFQ#10114), and a second-stage Request for Proposals (RFP) issued to those Respondents pre-qualified as a result of the RFQ stage ("Proponents").

During the two (2) stage procurement process the Fairness Advisor issued two (2) Interim Reports, one (1) associated with the conduct of the first-stage Request for Qualifications (RFQ) (RFQ#10114) (dated March 23, 2017), and the second associated with the conduct of the second-stage Request for Proposals (RFP) up to the evaluation and ranking of written Proposals received and conduct of due diligence clarifications by the Province up to the identification of the highest-ranking Proponent pending approval of the Steering Committee and Cabinet (dated October 30, 2017).

This Final Report presents the findings of these two (2) Interim Reports and outlines the activities within the procurement process undertaken by the Province subsequent to the evaluation and ranking of Proposals received in response to the RFP and concluding with the conduct of Debriefings by the Province and provides the observations of the Fairness Advisor associated with each.

## **Methodology and Activities of the Fairness Advisor**

In all respects, the Fairness Advisor serves as a neutral (non-voting) and objective third-party during the procurement process, with no interest, financial or otherwise, in the outcome of the evaluation exercise other than ensuring that an open, fair and transparent process was followed.

The following Principles of Fairness were used in the conduct of this mandate and in arriving at our Opinion on the fairness of this process:

1. **Transparency** – the process is open and accessible to all participants;
2. **Integrity** – the process is undertaken in accordance with what is ethically right and proper;
3. **Equality** – all Proponents are subject to the same rules and opportunities;
4. **Neutrality** – all Proponents are treated with an absence of bias or favouritism;
5. **Consistency and Compliance** – All Proponents are assessed in accordance with the solicitation and applicable legislation, policy and regulations; and
6. **Objectivity** – All observations and assessments are evidence-based.

## **Stage 1 – Request for Qualifications (RFQ)**

### **Solicitation Period**

RFQ #10114 was developed and issued by the Province on January 20, 2017, with a closing date and time of 2:00 pm Newfoundland Time, February 20, 2017.

During the solicitation period, the Province issued three (3) Addenda to the RFQ, to respond to questions raised by potential Respondents, as well as to clarify the Respondent submission requirements.

In preparation for the closing of the RFQ, evaluation workbooks, an evaluation manual and orientation training were developed and delivered to the members of the Evaluation Teams.

Five (5) Submissions were received by the Province in hard copy by the closing date and time, and were retained, unopened, in a secure location at Provincial offices.

The services of the Fairness Advisor were engaged on February 22, 2017, following the closing of the solicitation period of the RFQ.

To familiarize itself with the Province's articulated requirements, the Fairness Advisor reviewed the published RFQ and the three (3) Addenda, as well as made inquiries of the Project team to confirm the specific process, structure and plans for the conduct of the RFQ evaluation. The Fairness Advisor reviewed the evaluation workbooks, evaluation manual and orientation training materials that had been prepared, to verify their concordance to the published RFQ documents. The evaluation materials reflected the requirements, criteria, and process as set out to

Respondents in the RFQ, and included a comprehensive confidentiality, non-conflict of interest and security protocol. The Fairness Advisor provided feedback to the Province on the need to include a standardized rating scale to support the consistent application of the published criteria. The Province was receptive to the Fairness Advisor's feedback and established a clear and standardized rating scale for use by the Evaluation Teams. No fairness issues were observed.

## **Submission Opening**

The Submission envelopes were opened by the Evaluation Process Management and Completeness Evaluation Team. The Fairness Advisor monitored the opening of the Submission envelopes for each Respondent and the conduct of the Completeness Review of Submissions. The Submission Opening and Completeness Review were conducted in accordance with the RFQ and Evaluation Manual, and no fairness issues were observed. One (1) Respondent did not submit the requested electronic copy of its Submission within its submitted Package. The Province consulted with the Fairness Advisor and legal services, and confirmed that the Submission could still be considered, and an electronic copy requested from the Respondent, as the hard copy Submission prevails, in accordance with the RFQ.

At the conclusion of the Completeness Review, all five (5) Submissions were determined to be eligible to proceed to further evaluation.

Financial information submitted by Respondents was provided to the Province's Procurement Advisor (EY) for analysis to support the conduct of the Financial Capacity Evaluation. As set out in the RFQ, Respondents had the option to submit financial information for analysis, pursuant to a Non-Disclosure Agreement (NDA). Two (2) Respondents opted to provide information in this manner for portions of their proposed Team. Financial Capacity information submitted pursuant to the NDA was kept in its sealed envelopes, and provided directly to the Procurement Advisor, together with the balance of the Financial Capacity information submitted by Respondents.

Following the opening of the Submissions, when the identities of the Respondent Teams and proposed Key individuals were known, the Province implemented the Relationship Review process, requiring each member of the evaluation process to identify any existing or previous relationships with any of the submitting Respondents, identified Team members, or Key individuals named in the Submissions. This information was reviewed by the Province's Relationship Review Committee and reviewed by the Fairness Advisor. The Province was very forthcoming with information, and no fairness issues were identified.

After the completion of the Relationship Review for the Evaluation Teams, copies of the Submissions were provided to the members of the Evaluation Teams, to begin their individual reviews and assessments on the basis of the Rated Criteria of the RFQ. The Province consulted with the Fairness Advisor on its process for handling, shipment and storage of the Submissions (electronic and physical copies). No fairness concerns were noted.

## Evaluation of Written Submissions

The rated evaluation of written Submissions was undertaken by three (3) Evaluation Teams:

- a) Design-Build – RFQ sections 2.1, 2.4, and sections 3.1-3.4;
- b) Services – RFQ sections 2.2, 2.4, and sections 4.1-4.2; and
- c) Financial – RFQ sections 2.3, 2.4, and section 5.1.

The Evaluation Teams were comprised of representatives from each of the partner organizations for the Project and facilitated by a representative of the Province's Procurement Advisor. The Financial Evaluation Team included representatives of the Procurement Advisor and a representative of the Province).

Each Evaluation Team was responsible for the review and scoring of their respective RFQ sections, with all Teams responsible for review and scoring of the proposed Team Lead (Key individual) on section 2.4.

The members of each Evaluation Team first completed an independent review of each Submission and convened an Evaluation Team meeting to identify any clarifications required on Submissions in order to complete their independent assessments. The Fairness Advisor attended each Evaluation Team meeting. At the conclusion of each Team meeting, it was determined that no clarifications were required at this time. No fairness concerns were observed.

The members of each Evaluation Team completed an independent assessment of each Submission, following which each Evaluation Team convened to complete a consensus evaluation on their RFQ sections.

The Fairness Advisor was present to observe all consensus discussions and decisions. All evaluators came to the consensus meetings well prepared, having completed thorough individual reviews and assessments. All evaluators participated actively and equally in the consensus meeting discussions and decisions. The consensus Evaluations were conducted in a fair and consistent manner and in accordance with the Evaluation Criteria published in the RFQ.

During the Services Evaluation Consensus meetings, two (2) clarifications (one (1) each for two (2) Submissions) were identified as required to enable the Evaluation Team to complete their consensus. The Fairness Advisor had the opportunity to review the Clarification questions documented by the Evaluation Team, and to review the responses received by the Province. No fairness issues were identified.

Following the conclusion of the Evaluation Team consensus meetings, the Fairness Advisor was provided the opportunity to review the consolidated Evaluation outcomes and comments from each Evaluation Team. The recorded outcomes were an accurate record of the consensus decisions and comments of each Evaluation Team.

After the conduct of the Evaluation Team consensus meetings, the results of each Evaluation Team's consensus were presented to the members of the Evaluation Committee; comprised of

representatives from each of the partner organizations for the Project. Each Evaluation Committee member had completed an independent review of each Submission prior to the Evaluation Committee meeting. Each Evaluation Team's outcomes and associated comments were presented in sequence (one Evaluation Team at a time), and each Respondent Submission was reviewed in sequence (one Submission at a time). During the review of each Respondent's Submission, the members of the Evaluation Committee raised questions relative to the evaluation criteria and its application to the content of the Submissions and confirmed the scoring and outcomes for each Submission. In addition, the Evaluation Committee, reached consensus on the score and comments for section 2.4 Team Lead, based on the input provided from the three (3) Evaluation Teams. The Fairness Advisor monitored the conduct of the Evaluation Committee meeting discussions and determinations. The deliberations and determinations of the Evaluation Committee was consistent with the criteria as published in the RFQ and undertaken in a fair and consistent manner.

At the conclusion of the Evaluation Committee's consensus meeting, it was determined that the four (4) highest ranked Submissions would be eligible for further consideration, with the fifth Submission being set aside from further consideration. No fairness concerns were observed.

Following the conclusion of the Evaluation Committee's meeting, the Fairness Advisor was provided the opportunity to review the consolidated Evaluation outcomes. The recorded outcomes were an accurate record of the consensus decisions of the Evaluation Committee.

Following the completion of the Evaluation Committee's review and determinations, the Province conducted due diligence reference checks with one (1) Project reference for each of the four (4) remaining Respondents; focused on the experience of the Team Lead organization and Key individual of the Respondent's Team. The Fairness Advisor was consulted on the process to be used for the conduct of the reference checks and reviewed the reference questions to be asked of each reference. The Fairness Advisor provided feedback to the Project team on the reference questions and process to support the consistency of each reference check conducted, which was duly considered and incorporated by the Province into the process. Each reference check was conducted by phone, facilitated by the Province's Procurement Advisor, and attended by the Province's Evaluation Process Management representative. Notes were kept of each reference's response to the questions. The Fairness Advisor attended each reference call. Each reference was asked a consistent series of questions. At the conclusion of the reference checks, the Province identified that the references had confirmed the Submission contents, and no concerns were identified. The record of each reference was provided to the Fairness Advisor for review, prior to its dissemination to the members of the respective Evaluation Teams for review.

At the conclusion of the RFQ evaluation process, the process and outcomes were presented to the Steering Committee for review and decision to the short-list of Proponents eligible to be invited to the second stage RFP. In accordance with the RFQ, it was determined to issue the RFP to the three (3) highest-ranking Respondents ("pre-qualified Proponents").

## **RFQ Notifications and Debriefings**

At the conclusion of the first stage RFQ process, the following three (3) Respondents were determined to be the three (3) pre-qualified Proponents eligible to participate in any second stage RFP:

Corner Brook Long Term Care Partnership;  
Infraworks; and  
Lark Group

Following the conclusion of the RFQ process the Province's Cabinet determined to proceed with the second stage RFP process to the three (3) pre-qualified Proponents identified at the conclusion of the RFQ stage.

The Province prepared notifications to the three (3) pre-qualified Proponents and the two (2) unsuccessful Respondents. The Fairness Advisor reviewed each of the notifications to ensure the equity of information provided to each pre-qualified Proponent and each unsuccessful Respondent prior to their issuance by the Province. No fairness issues were identified.

Each of the unsuccessful Respondents were provided the opportunity to request a debriefing on the results of their RFQ Submission evaluation. The Fairness Advisor made inquiries of the Province on its debriefing protocols and monitored the conduct of the Debriefing requested. No fairness concerns were observed.

## **Stage 2 – Request for Proposals (RFP)**

### **RFP Planning and Development Period**

The second stage RFP was developed by the Province and its partner (Western Regional Health Authority – WHRA), supported by the Province's Procurement/Financial and Legal Advisors. In the development of the solicitation documents, the necessity to ensure fair access to this opportunity was affirmed by all participants.

The development of the solicitation was undertaken in a fair, open and transparent manner. The Fairness Advisor had the opportunity to fully review and comment on all documentation, including the RFP, evaluation criteria and process, draft Project Agreement and associated Attachments, prior to their release to the pre-qualified Proponents.

During this period, the Fairness Advisor provided comments related to the overall fairness of the procurement documents and process design, which were addressed by the Province throughout this stage. The Fairness Advisor observed no fairness issues.

## **Solicitation Period**

### ***RFP Issuance***

The RFP for the CBLTC Project was issued by the Province to the three (3) pre-qualified Proponents on June 5, 2017, with the following closing dates and times for the components of the Proponents' Submissions:

Initial Interest Rate Setting Submission: (added via Addendum to the RFP if determined to be submitted by Proponents) August 29, 2017;

Technical Submission: September 22, 2017 (amended from September 13, 2017) at 2:00 pm Newfoundland Daylight Time;

Final Interest Rate Setting Submission: September 28, 2017 (amended from September 19, 2017); and

Financial Submissions: October 6, 2017 (amended from September 27, 2017) at 2:00 pm Newfoundland Daylight Time.

The Province used a secure electronic data room (Firmex) to provide Proponents with equal access to the RFP and associated attachments and forms.

The Province was very forthcoming with information and the Fairness Advisor was provided with full access to the Firmex Data Room and process documentation.

### ***Proponent Inquiries Process***

During the solicitation period, Proponents were provided the opportunity to submit inquiries (Requests for Information – RFIs) to the Province, using the RFI form contained within the published RFP document.

In accordance with the RFP, Proponents were able to classify their inquiries as 'general' with the understanding that questions and responses provided by the Province would be issued equally to all Proponents, or as 'confidential'. For inquiries marked 'confidential' by Proponents, as set out in the RFP, the Province reviewed each inquiry to determine whether it contained proprietary information or confidential information particular to a Proponent's approach or design and would be responded to in writing directly to the asking Proponent, or whether the question was of a more general nature and the response to which would be equally provided to all Proponents. For all such 'confidential' questions that the Province identified as being 'general' in nature, the asking Proponent was provided the opportunity to re-classify its question as 'general' or to withdraw the question prior to the Proponent making any response.

During the Solicitation period, the Province received 212 RFIs. Of these RFIs, ten (10) were of a Technical nature and submitted following the date for Inquiries on the Technical Submissions and were not responded to by the Province, in accordance with the provisions of the RFP. Three (3) RFIs of a Financial nature were received just prior to the date for Inquiries on the Financial Submissions and a response was not deemed necessary by the Province, in accordance with the

rights within the RFP. Notwithstanding, the Province issued revised documents to all Proponents which addressed one (1) of these Inquiries.

The Fairness Advisor reviewed all RFIs submitted by Proponents and was consulted by the Province in its review and determination on ‘confidential’ inquiries as well as all determinations surrounding late RFIs. The Fairness Advisor also reviewed all responses drafted by the Province prior to their release to Proponents via the secure RFP data room. The Fairness Advisor provided comments that were duly considered and incorporated by the Province, and no fairness concerns were identified.

### ***Changes to Proponent Team Members requested following RFP issuance***

During the Solicitation period, as set out in the first stage RFQ and second stage RFP, Proponents wishing to make changes to Proponent Team Members or Key Individuals were required to submit a request for the Province’s consideration, detailing the reason for the proposed change and providing the Province with information on the qualifications of the proposed replacement commensurate with the information originally provided by Proponents in their Submission in response to the first stage RFQ requirements. During the Solicitation period, the Province received three (3) such requests from one (1) Proponent; two (2) requesting a change to Key Individuals (one change and one replacement), and one (1) requesting a change to one (1) of the Proponent’s Equity Providers.

The Fairness Advisor was consulted by the Province and reviewed each proposed change/replacement, together with the supporting documentation provided by the Proponent. The Fairness Advisor also monitored the Province’s review and determinations of each requested change. In each instance, the Province first reviewed whether the reason for the requested change was reasonable, and where it was determined to be reasonable, conducted an assessment of the proposed replacement or change against the requirements as established in the first stage RFQ; to determine whether the proposed change would be acceptable to the Province. Where a change was determined to be acceptable, the Province then reviewed to identify whether there would be any impact to the status of the Proponent as a pre-qualified Proponent.

For each of the two (2) proposed changes to Key Individuals, in each case the Province determined the proposed replacement Key Individuals met the qualification requirements as set out in the RFQ and did not impact the status of the Proponent as a pre-qualified Proponent. The Fairness Advisor monitored each evaluation team’s consideration of these requests and had no fairness concerns.

In review of the Proponent’s request to make a change to one (1) of its Equity Partners, the structure of the change and the Financial Capacity of the proposed Equity Provider was first reviewed by the Province’s Procurement/Financial Advisor, in accordance with the process and requirements established in the first stage RFQ. This information was shared with the Fairness Advisor. The Province then reviewed and determined that the change was acceptable and did not

impact the status of the Proponent as a pre-qualified Proponent. The Fairness Advisor monitored these deliberations and had no fairness concerns.

### ***Commercially Confidential Meetings (CCMs)***

As set out in the RFP, a series of three (3) CCMs per Proponent were held, including two (2) Technical CCMs and one (1) Legal CCM. CCMs were held as follows:

Technical CCM #1	Held at the Province's facilities in St. John's, Newfoundland – July 5 – 7, 2017
Legal CCM	Held at the facilities of the Province's external Legal Advisor in Toronto, Ontario – July 25 – 27, 2017
Technical CCM #2	Held at the Province's facilities in St. John's, Newfoundland – August 9-11, 2017

Prior to the conduct of the CCMs the Fairness Advisor was invited by the Province to provide guidance on the CCM protocols and also participated in an orientation session with the Province's participants to affirm the purpose and conduct for the CCMs. The Province affirmed and agreed that no Province information was to be shared unevenly across Proponent teams; that no Proposals would be “pre-evaluated” or direction given to any one Proponent; to refrain from providing definitive responses during the sessions by requesting Proponents to make use of the RFI process set out in the RFP in order to obtain responses on which the Proponents could rely, and to maintain the confidentiality of all aspects of each Proponents' meetings and questions raised from all other Proponents.

Prior to each CCM, the Fairness Advisor had the opportunity to review the CCM Agenda submitted by each Proponent to confirm that each Proponent received the same amount of time for each session, that topics were within the scope of the defined meeting and the RFP, and that all Proponents were provided with a consistent process.

The Fairness Advisor attended and oversaw all aspects of each of the CCMs and provided fairness comments to the Province and Proponents as appropriate during the sessions. All Proponents received the same amount of time and were subject to the same rules of procedure. No fairness concerns were observed.

### ***Addenda Process***

During the solicitation period, the Province issued four (4) Addenda to the RFP, to clarify the Project Agreement, RFP requirements and Proponents Submission requirements, both in response to inquiries received from Proponents using the RFI process, and to provide additional information and consistent instructions to all Proponents. This included issuing revised versions of the RFP Main Document, Appendix A, Appendix B, and revisions to the Project Agreement and its Attachments; notably the Schedule of Accommodations and Equipment List; as well as

providing Proponents with instructions on the preparation of the Energy Model for incorporation into their final Submissions.

In each instance the Fairness Advisor reviewed the proposed changes prior to their issuance to the pre-qualified Proponents and provided comments which were considered and incorporated by the Province. The Province issued the revised documents (Addenda) equally to all three (3) pre-qualified Proponents via the secure Data Room, including a ‘black line’ version of each updated document to identify the changes made to the Proponents. Proponents were provided with a reasonable time period to consider the changes in the formulation of their Submissions.

In the case of the Energy Model, in order to provide the Proponents with time to consider the instructions within the final Submissions, the Province revised the RFP Submission instructions and timetable, to require Proponents to submit the Energy Model within their Financial Submissions which were due on October 6, 2017; rather than within their Technical Submissions (due September 22, 2017).

### ***Evaluation Preparation and RFP Closing***

In preparation for the closing of the RFP, evaluation workbooks, an evaluation manual and orientation training were developed and delivered to the members of the Evaluation Teams. The Fairness Advisor was consulted on the structure of the evaluation process, and provided comments that were duly considered and incorporated by the Province. The evaluation workbooks, manual and training were in conformance to the RFP and no fairness issues were identified.

The Province also confirmed the participants in the evaluation process, which was structured as follows:

- Three (3) Evaluation Teams, each comprised of representatives of the Province and WRHA with expertise in their respective evaluation areas. One team was responsible for each of the following areas:
  - Design-Build Technical Evaluation;
  - Facilities Maintenance Services Technical Evaluation;
  - Financial Capacity and Price Financial Evaluation.

Each of the three (3) Evaluation Teams were mandated with conducting independent evaluations, followed by team consensus evaluations for their assigned sections of the RFP evaluation criteria.

- An Evaluation Committee, comprised of representatives of the Province and WRHA; who were mandated to conduct a consensus review and determination, taking into consideration the input of the three (3) Evaluation Teams.

The Evaluation Teams and Evaluation Committee were assisted by the Province’s Procurement/Financial Advisor mandated to support the receipt and distribution of Submissions and coordination of the evaluation process, together with the provision of subject matter

expertise to the Financial Evaluation Team to provide review and analysis of the Financial Submissions for capacity and calculation of net present cost.

In addition, the participants in the evaluation process were supported by an independent Relationship Review Committee, charged with reviewing the conflict of interest and confidentiality undertakings of all evaluation participants.

The evaluation participants had access to the Province's Legal Advisor and the Fairness Advisor as required during the conduct of the evaluation.

Prior to the Closing date and time for Technical Submissions, the Province issued a communication to each of the three (3) Proponents to ascertain whether there were any further changes to Proponent Teams and proposed Key individuals from those submitted in response to the first stage RFQ and subsequent requests for replacement (as previously submitted by Proponents and reviewed by the Province during the solicitation period, as described above); in order to enable the Province to re-affirm its Relationship Review and absence of conflict of interest on the part of any participants in the upcoming evaluation process with any Proponent, Proponent Team Members and Key Individuals. The Fairness Advisor was consulted on this process and provided comments which were duly considered and incorporated by the Province prior to the distribution of the notices to Proponents. The Fairness Advisor also reviewed the responses from the Proponents. In each response, each Proponent confirmed there were no further changes to any Proponent, Proponent Team Members and Key Individuals.

Upon receipt of the Proponents' confirmation of the identities of the Proponent Teams and proposed Key individuals, the Province implemented the Relationship Review process, requiring each member of the evaluation process to again review and identify any existing or previous relationships with any of the submitting Proponents, identified Team members, or Key individuals that would be named in the Submissions. This information was reviewed by the Province's Relationship Review Committee, and reviewed by the Fairness Advisor. Following the receipt of Proponents' Submissions (see below), the participants in the evaluation process and Relationship Review Committee re-affirmed the identity of Proponent Teams and proposed Key Individuals to verify there were no changes from the Proponents' statements and no conflict of interest concerns, and provided this information to the Fairness Advisor for review. The Province was very forthcoming with information, and no fairness issues were identified.

At each of the Closing Dates for the Submission components, the Fairness Advisor verified with the Province that Submissions were received on time from Proponents. Submissions were received as follows:

Three (3) Technical Submissions were received by the Province by the closing date and time for Technical Submissions;

Two (2) Benchmarking Pricing submissions were received by the required date and time for these Submissions. The third Proponent declined to provide a Benchmarking Pricing submission, however as this was not a mandatory requirement of the RFP, the Proponent

remained eligible to participate in the RFP process. The Fairness Advisor was consulted by the Province on this matter, and no fairness concerns were identified.

Three (3) Financial Submissions including Energy Models were received by the Province by the closing date and time for Financial Submissions. Financial Submissions remained sealed and were distributed unopened to the Province's Procurement/Financial Advisor to conduct Financial Capacity analysis at a secure location off-site and segregated from the Province's facilities.

## **Technical Submission Receipt and Distribution**

The Technical Submission envelopes were opened by the Province following the Closing date and time for Technical Submissions. The Submission Opening was conducted in accordance with the RFP and Evaluation Manual, and no fairness issues were observed.

All three (3) Technical Submissions were determined to be eligible to proceed to further evaluation.

Copies of the Technical Submissions were provided to the members of the Evaluation Teams, to begin their individual reviews and assessments on the basis of the Rated Criteria of the RFP. The Province consulted with the Fairness Advisor on its process for handling, shipment and storage of the Submissions and associated records. No fairness concerns were noted.

## **Evaluation Process**

### ***Written Technical Submissions***

The rated evaluation of Written Technical Submissions was undertaken by two (2) Technical Evaluation Teams:

- a) Design-Build (DB) – RFP criteria 3.1-3.3; and
- b) Facilities Maintenance (FM) Services – RFP criteria 3.4.

The Technical Evaluation Teams were comprised of representatives from each of the partner organizations for the Project and facilitated by a representative of the Province's Procurement/Financial Advisor.

Each Technical Evaluation Team was responsible for the review and scoring of their respective RFP sections.

The members of each Technical Evaluation Team first completed an independent review of each Submission and convened an Evaluation Team meeting to identify any clarifications required on

Submissions in order to complete their independent assessments. The Fairness Advisor attended each Technical Evaluation Team meeting.

At the conclusion of the DB Team meeting, it was determined that four (4) clarifications (two (2) each for two (2) Proponents and one (1) for one (1) Proponent) were required. The Fairness Advisor reviewed the clarifications and provided comments prior to their issuance to Proponents, and reviewed the responses received by the Province. No fairness concerns were identified. Following receipt of the clarification responses from Proponents, the DB Team reconvened to review whether any follow-on clarifications were required. The Fairness Advisor monitored this review and discussion. The DB Evaluation Team determined that one (1) additional clarification was required. The Fairness Advisor again reviewed the clarification and provided comments prior to its issuance to Proponents, and reviewed the responses received by the Province. No fairness concerns were identified. The responses were provided to the DB Evaluation Team to incorporate in their independent assessments.

At the conclusion of the FM Team meeting, it was determined that no clarifications were required at this time. No fairness concerns were observed.

Following each Technical Evaluation Team's completion of independent assessment of each Submission, each Technical Evaluation Team convened to complete a consensus evaluation on their RFP sections.

The Fairness Advisor attended all consensus discussions and decisions. All evaluators came to the consensus meetings well prepared, having completed thorough individual reviews and assessments. All evaluators participated actively and equally in the consensus meeting discussions and decisions. The consensus Technical Evaluations were conducted in a fair and consistent manner and in accordance with the Evaluation Criteria published in the RFP.

During the FM Services Evaluation Team Consensus meetings, one (1) clarification was identified as required to enable the FM Services Evaluation Team to complete their consensus. The Fairness Advisor had the opportunity to review the clarification questions documented by the FM Services Evaluation Team, and to review the responses received by the Province. No fairness issues were identified.

Following the conclusion of the Technical Evaluation Team consensus meetings, the Fairness Advisor was provided the opportunity to review the consolidated Technical Evaluation outcomes and comments from each Technical Evaluation Team. The recorded outcomes were an accurate record of the consensus decisions and comments of each Technical Evaluation Team.

At the conclusion of the Technical Evaluation Team consensus meetings, all three (3) Proponents were determined to be eligible to proceed for further consideration and evaluation.

### ***Financial Submissions***

Financial Submissions were initially reviewed by the Province's Procurement/Financial Advisor, to support the analysis and calculation of the satisfaction of the financial requirements of each

Proponent and proposed Financial Model. This review was undertaken in a secure location of the Procurement/Financial Advisor and segregated from the Province's personnel and the Technical evaluation process. During this review, the Province's Procurement/Financial Advisor identified two (2) clarifications required to complete its analysis. The Fairness Advisor was consulted on the process for issuing and receiving responses to these clarifications in order to maintain the separation of financial information from the Province, and reviewed and provided comments on the clarifications prior to their issue by the Province's Procurement/Financial Advisor to the Proponents. The Fairness Advisor reviewed the responses received and their distribution to the Province's Procurement/Financial Advisor. No fairness concerns were identified.

Following the conclusion of the Technical Evaluation Teams' consensus determinations, the Financial Evaluation Team met to review the analysis prepared by the Procurement/Financial Advisor. Prior to convening, the Financial Evaluation Team members re-affirmed their continued commitment to the maintenance of the confidentiality of the Proponents' Financial Information and the contents of the Financial Submissions through completion of a second written Confidentiality Undertaking to mitigate any influence on the Technical Evaluation.

The Financial Evaluation Team included representatives of the Province's Procurement/Financial Advisor and one (1) representative of the Province and one (1) representative of the Health Authority, both located independently from the Province and the partner's organizations.

Each of the Financial Evaluation Team members had conducted an individual review of the Financial Submissions including financial requirements information and the analysis prepared.

As set out in the RFP, the Financial Evaluation Team first reviewed the Proponents' submitted financial requirements to confirm the satisfaction of the financial requirements by each Proponent to deliver upon the Project and each Proponent's respective Proposal. As a result of this review, one (1) clarification was determined to be required. The Fairness Advisor was consulted on the clarifications and provided the opportunity to review and provide feedback which was duly considered and incorporated by the Province, as well as provided the opportunity to review the Proponents' responses.

As a result of the review, all three (3) Proponents were determined to be eligible to proceed for further consideration and evaluation.

Following the conclusion of the Financial Evaluation Team consensus meetings, the Fairness Advisor was again provided the opportunity to review the consolidated Evaluation outcomes and comments from each Evaluation Team. The recorded outcomes were an accurate record of the consensus decisions and comments of each Evaluation Team.

Upon completion of the financial requirements review, the Financial Evaluation Team then conducted the financial evaluation of the Net Present Cost of each compliant Proposal and the Adjusted Net Present Cost calculated as a result of the Energy Model's impact on the

Proponents' Proposals. The Fairness Advisor monitored the review of the Financial calculations with the Financial Evaluation Team and made inquiries to assure itself that the process had been conducted in accordance with the RFP.

### ***Evaluation Committee***

After the conduct of the Evaluation Team consensus meetings, the results of each Evaluation Team's consensus were presented to the members of the Evaluation Committee; comprised of representatives from each of the partner organizations for the Project. Each Evaluation Committee member had completed an independent review of each Submission prior to the Evaluation Committee meeting.

Each Evaluation Team's outcomes and associated comments were presented in sequence (one Evaluation Team at a time), and each Proponent's Submission was reviewed in sequence (one Submission at a time). During the review of each Proponent's Submission, the members of the Evaluation Committee raised questions relative to the evaluation criteria and its application to the content of the Submissions, and determined the scoring and outcomes for each Submission.

The Fairness Advisor oversaw the conduct of the Evaluation Committee meeting discussions and determinations. The deliberations and determinations of the Evaluation Committee was consistent with the criteria as published in the RFP, and undertaken in a fair and consistent manner.

Following the completion of the Technical Evaluation consensus of the Evaluation Committee, the Financial Evaluation Team presented the results of their financial requirements review and consensus determinations to the Evaluation Committee, and the Financial Evaluation was then presented.

The Fairness Advisor oversaw the conduct of the Financial Evaluation, together with the calculation of the weighted Technical and Financial scores to affirm their conformance to the weightings and formulae published in the RFP. No fairness concerns were identified.

Following the conclusion of the Evaluation Committee's meeting, the Fairness Advisor was provided the opportunity to review the consolidated Evaluation outcomes. The recorded outcomes were an accurate record of the consensus decisions of the Evaluation Committee.

Based on the Evaluation Committee's review and identification of the highest-ranked Proponent, the Province identified the requirement to issue a due diligence clarification, to confirm three (3) elements of the Proponent's submitted Design. The Fairness Advisor was consulted on the clarifications, and reviewed the questions to be asked prior to their distribution to the highest-ranked Proponent. The Fairness Advisor provided feedback to the Project team on the clarifications questions, which was duly considered and incorporated by the Province into the process. The Fairness Advisor also reviewed the Proponent's response to the clarification and determination by the Province to proceed. No fairness concerns were observed.

Finally, the Province identified the requirement to issue an additional due diligence clarification on an Appendix of the highest ranked Proponent's Financial Submission to confirm that no conditions or qualifying statements were provided in the Proponent's overall Submission which would impact its ability to achieve Financial Close. The Province's Legal Advisor and Fairness Advisor were consulted on the clarification, and reviewed the question to be asked prior to its distribution to the Proponent. The Fairness Advisor also reviewed the Proponent's response to the clarification and final determination by the Province to proceed. No fairness concerns were observed.

The process and outcomes of the RFP evaluation were presented to the Steering Committee for review and determination to recommend to Cabinet the issuance of the invitation to proceed with negotiations to arrive at Financial Close with the highest-ranked Proponent.

## **Financial Close, Notifications and Debriefings**

Following receipt of approval from Cabinet to proceed with negotiations, the Province commenced the process to notify Proponents and achieve Financial Close and execution of the Project Agreement.

The unsuccessful Proponents were notified by the Province of the outcomes of the process on November 3, 2017 and provided the opportunity to request a Debriefing following the execution of the Agreement with the Successful Proponent.

The remaining unsuccessful Respondent from the RFQ stage who had been previously notified on May 29, 2017 of their process outcome following the conclusion of the RFQ process, but who had not yet requested a Debriefing, was again notified by the Province on November 3, 2017 to provide a further opportunity to request a Debriefing. This Debriefing was requested and conducted on November 24, 2017. The Fairness Advisor attended the Debriefing and no fairness concerns were observed.

Financial Close was achieved in December, 2017. The Fairness Advisor was not involved in the process to finalize Financial Close but was kept apprised of the Province's progress in this process. The Fairness Advisor made inquiries of the Province to confirm that each of the two (2) unsuccessful Proponents had received the Honoraria for participation in the RFP process. This was confirmed by the Province and no fairness issues were observed.

Debriefings with the two (2) unsuccessful Proponents from the RFP stage were held by the Province by teleconference on February 14, 2018.

In each Debriefing, the Province provided each Proponent with a review of the evaluation feedback and outcomes for their respective Submissions. The Province provided each Proponent with information on the relative strengths and areas of improvement of their Submissions, while maintaining the confidentiality of other Proponent Submissions appropriately. The Province also

provided each Proponent the opportunity to ask questions and receive feedback from the Province.

The Fairness Advisor attended each Debriefing. No fairness concerns were observed.

## **Final Opinion of Assurance**

The Fairness Advisor hereby provides the following unqualified assurance statement concerning each and all of the activities for the Province of Newfoundland and Labrador's procurement process for the Corner Brook Long Term Care (CBLTC) Project from the engagement of the Fairness Advisor through to the completion of the Debriefings by the Province, as described in this Report:

It is our professional opinion that:

- a. the Closing, Evaluation, Notification and Debriefing processes associated with RFQ #10114; and
- b. the Planning and Development, Issuance, Solicitation, Submission Receipt and Distribution, Evaluation, Notification and Debriefing processes associated with the second-stage RFP;

for the CBLTC Project have been carried out in a fair, open and transparent manner, in compliance with the Province's procurement policies, the RFP, and Canadian precedence for P3 projects.



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For RFP Solutions Inc.  
Steve Johnston  
Managing Director  
Fairness Advisor

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May 3, 2018

Date