



Hamilton

PIER 8 SOLICITATION PROCESS PUBLIC REAL ESTATE DISPOSITION BEST PRACTICES

EXECUTIVE SUMMARY

As the City of Hamilton prepares to embark on the redevelopment of its Pier 8 lands (“Project”) through a process that will engage with the private development industry (“Solicitation Process”), City Staff have researched comparable public land sales within Canada and the United States. The purpose of these reviews was to identify both procedural best practices and bid evaluation tactics that could be applicable to our Project, and will be used to inform a Solicitation Process strategy recommended to Council.

Following a criteria to identify the most comparable peer projects, the following were identified and reviewed as part of this research:

- City of Victoria, Dockside Lands
- City of Vancouver, Southeast False Creek Olympic Athlete’s Village
- National Capital Commission (Ottawa), Lebreton Flats
- Waterfront Toronto, Bayside
- Toronto Community Housing, Lawrence Heights Phase 1

The most widely accepted procedural best practices identified from these peer reviews include:

- Conducting a **multi-stage solicitation process** beginning with a pre-qualification stage, resulting in a short list of bidders who are exclusively invited to participate in a more formal Request for Proposals stage. Once a Finalist(s) is identified, conduct negotiations to effect land transaction, development commitments, and governance model;
- Utilizing **commercially confidential meetings** as a way to stimulate higher quality proposal submissions and improve the odds that all proposals will adequately address the City’s priorities;

- Engaging a **fairness monitor** to oversee the entire solicitation process to ensure the process is conducted in a fair, open and transparent manner;
- Using an **evaluation scorecard** as the primary empirical tool to assess, compare, and rank order different proposals; and
- Establishing an **evaluation committee** who is given the absolute responsibility and authority to review and score submitted proposals.

Additionally, the peer project reviews have revealed a number of different tactics used to improve response quality, reduce procedural risks, or address specific submission requirements of each respective project. Many of these may be directly applied or modified to produce similarly positive results for Hamilton’s Pier 8 project.

While following these best practices can set us on a path to attract quality bidders and proposals, much of the potential success, or potential failure, of the actual project outcomes rests on the parameters of the relationship with the winning proponent. A retrospective review of some of these peer projects, supported by anecdotes from personnel directly involved, has produced additional advice that shall also be considered as we develop our solicitation strategy for Pier 8.

- Be wary of excessively high bid prices or over-optimistic feasibility projections. Of greater importance is the financial capacity and creditworthiness of the purchaser to fulfill its financial promises and cover its debts. This may be captured during the evaluations thorough financial screens, asking proponents to provide a marketing rationale for their proposed concept, and detailing their intended capital structure.
- Be vigilant about understanding how the City will be implicated in the developer’s financing plans (e.g., covenants, rights, subrogation, etc.).
- The act of engaging with a development partner should be seen less as an exercise regarding price and product, but rather the commensurate sharing of both risk and control;
- Establish a relationship governance model with the developer that ensures mutual vested interests, but also defines the terms and conditions of a termination or exit, if needed; and
- Maintain flexibility in the relationship governance model that allows for adaptations to changes in the macro environment including the economy, technology, and political will.

Armed with these best practices and advice, the City of Hamilton looks forward to implementing its own customized solicitation process for Pier 8, which undoubtedly will be watched closely by our peers with particular interest in how we will add innovative ideas and thinking to the growing body of knowledge in the practice area of revitalizing public lands through private sector engagement.

INTRODUCTION

As the City of Hamilton prepares to embark on the redevelopment of its Pier 8 lands (“Project”) through a process that will engage with the private development industry (“Solicitation Process”), City Staff have researched comparable public land sales within Canada and the United States. The purpose of

these reviews was to identify both procedural best practices and bid evaluation tactics that could be applicable to our Project and will be used to inform a Solicitation Process strategy recommended to Council.

The following criteria were used to identify the most comparable peer projects:

- Large scale land site and/or highly strategic location being used as a catalyst for, or contributor to, a broader precinct revitalization;
- Ideally sites with similar attributes as Pier 8: waterfront location, brownfield/environmentally sensitive land, urban location, mixed-use development scheme, etc.;
- Seeking proposals from the private development industry not only to purchase the lands, but also to make commitments to develop the lands to a particular vision and/or standard;
- Solicitation process led by a municipality (including agencies, boards, or commissions), other level of government (Federal, Provincial, Regional, State, County), or a corporation wholly controlled by a single or multiple governments; and
- Where possible, keep to Canadian examples.

In addition to the above criteria, where possible, the researched projects were ones that have been completed through to transaction, or have at least identified finalists, as of the writing of this report.

Based on the above criteria, the following peer projects were reviewed as part of this research:

City of Victoria, Dockside Lands: Transferred to the City of Victoria from the Province in the late 1980’s, Dockside Lands comprised a 14.6 acre site located in Victoria Harbour on the urban fringe of a transforming industrial district, yet still adjacent to operating industrial uses. The Dockside Lands project vision was initiated in 2001 and commenced a solicitation process in September 2004 to find a development proponent to convert these lands into a highly sustainable, mixed-use community comprising light industrial, live/work spaces, residential condos and commercial uses. By September 2005, the City entered into a Master Development Agreement with their winning proponent for a concept that envisioned approximately 1,000 residential units and 150,000 square feet of commercial space spread across 26 different buildings and committed to targeting the highest LEED point rating in the world.

City of Vancouver, Southeast False Creek Olympic Athlete’s Village: In preparation for the 2010 Winter Olympics, the City required the assistance of the private development community to develop and construct short-term housing for up to 2,800 residents, dining facilities, an operations centre, and recreational facilities for athletes and team officials. As part of its Olympic host bid, the City had already identified a portion of the 80-acre Southeast False Creek (“SEFC”) secondary plan district as the intended location for the Athlete’s Village. False Creek is a marine inlet that separates Vancouver’s downtown peninsula from the rest of the City; its historically industrial character has been in transition over the past few decades as demand for more urban uses increases throughout the City. Overlooking Downtown Vancouver, the 30-acre Athlete’s Village lands were subdivided by the City into 13 parcels, of which 8 were offered for sale to the winning developer proponent; the remaining 5 parcels were held by the City for future public/institutional uses (e.g., school, community centre, social housing). The private industry opportunity was to purchase the lands and build all structures required by the Olympics administration in a manner that they could be converted to typical private uses following a temporary, exclusive use period for Olympics needs,

as well as any other remaining lands to be developed for private market uses. Given the rigidly prescribed Olympics requirements, proponents predominantly distinguished their proposals through a combination of price and value-add elements such as sustainability measures, agreement to construct community facilities, an affordability strategy, and a design strategy.

National Capital Commission (Ottawa), Lebreton Flats: Lebreton Flats is an 85 hectare site located along the banks of the Ottawa River, just 1.5 kms west of Parliament Hill, that has remained largely underdeveloped under the custodial care of the special-purpose government body, the National Capital Commission, since the 1960’s. It is currently home to the Canadian War Museum, festival grounds, passive recreational uses, and is adjacent to the soon-to-be-completed Ottawa light rail train system. With a recent commitment to locate the new National Holocaust Monument on a portion of these lands, in 2015 the NCC decided to make up to 20 hectares of these lands available for redevelopment. The intent was to leverage the additional public lands to secure a key, non-residential anchor use (private, public/private, national or international-scale attraction or institution), but with a secondary opportunity for other synergistic commercial and/or recreational elements along with multi-residential uses that would support the financial viability of the overall project. The NCC initiated its solicitation process in late-2014 and by Spring 2016 had identified its preferred finalist proponent whose proposal includes a new primary arena for the Ottawa Senators NHL team, public plazas, and up to 4,000 residential units with associated commercial opportunities. As of the writing of this report, the NCC continues to be engaged in transaction negotiations with its preferred finalist proponent.

Waterfront Toronto, Bayside: Waterfront Toronto is a corporation equally controlled by the Federal Government, Province of Ontario, and City of Toronto, and is the public advocate and steward of waterfront revitalization in the City of Toronto. Bayside is a 13-acre development parcel that forms part of the larger 55-acre East Bayfront revitalization precinct, located 1.5 kms east of Toronto’s central business district with over 300 metres of frontage on Lake Ontario. Waterfront Toronto’s mandate for East Bayfront is to deliver an urban waterfront destination based on a mixed-use neighbourhood plan supporting a full range of housing options, employment opportunities, cultural, hotel and retail uses, and dynamic public spaces. The solicitation process for Bayside was aimed at seeking an innovative and experienced private sector partner to design, build, manage and finance the development of up to 2 million square feet of gross floor area. Waterfront Toronto’s approach was to provide as much certainty as possible for developers by taking responsibility for securing municipal zoning approvals, building public transit, parks and community services, and providing developers with well-defined sustainability standards. The Bayside solicitation process commenced in March 2008 and concluded with the announcement of a development agreement with the preferred proponent in August 2010.

Toronto Community Housing Corporation, Lawrence Heights Phase 1: TCHC’s Lawrence Heights neighbourhood, located between Yorkdale and Lawrence West subway stations, comprises 105 acres of land and 1,208 social housing units in apartment and townhouse form. The neighbourhood has been identified in the Lawrence-Allen Secondary Plan for intensification to accommodate the replacement of the existing social housing units and the addition of up to 4,100 market units, and would represent TCHC’s largest revitalization project (almost double the size of Regent Park). Phase 1 comprises a 25.6 acre parcel of land adjacent to Yorkdale subway station, and the envisioned plan consists of the demolition and replacement of 233 existing TCHC RGI rental units, plus the addition of 665 market condo apartment units, 163 market freehold townhouse units, 45,750 square feet of commercial space, and a 2.7 acre neighbourhood park. TCHC gave precise specifications regarding the mix of units in each building block, as well as highly prescribed design and construction standards for the features and finishes of the replacement units. Given TCHC’s specific needs and the integrated nature in which the

replacement and market units are to be developed, the solicitation process was open-ended with respect to how the relationship between TCHC and the development partner would be structured, including ownership of the lands; proposed business terms comprised a significant portion of the final assessment score. A set of winning proponents was announced in Spring 2013, with demolition of existing buildings starting in Fall 2015.

Other projects that were also referenced in our research include Metrolinx’s Port Credit GO Public-Private Partnership, Waterfront Toronto’s Parkside and River City projects, and Toronto Community Housing’s Alexandra Park and 250 Davenport projects.

To complete the research, Staff collected and reviewed call documents, addenda, and transaction documents, where publicly available or provided in confidence. Also, where feasible, City Staff spoke with representatives who had direct involvement in their respective project; in some cases this was not possible due to key personnel having departed or declining to speak on the record.

Peer group documents reviewed include:

Soliciting Party	Description Overview	Solicitation Status	Documents Available for Review
Waterfront Toronto	East Bayfront – Bayside	Transaction complete	RFQ, RFP
Waterfront Toronto	East Bayfront – Parkside	Transaction complete	RFQ
Waterfront Toronto	West Don Lands – River City	Transaction complete	RFQ
City of Vancouver	Southeast False Creek – Olympic Village	Transaction complete	RFEOI, RFP, Evaluation Matrix
City of Victoria	Dockside Lands	Transaction complete, Development Agreement under restructuring	RFEOI, RFP, Development Agreement, Re-zoning Application
Toronto Community Housing	Lawrence Heights – Phase 1	Transaction complete	RFEOI, RFP
Toronto Community Housing	250 Davenport Rd.	Transaction complete	RFP
Toronto Community Housing	Alexandra Park – Phase 1	Transaction complete	RFP
National Capital Commission	Ottawa Lebreton Flats	RFP Finalist announced	RFQ, RFP
Metrolinx	Port Credit GO	RFQ complete, RFP outstanding	RFQ

Peer group conversations include:

Organization / Municipality	Project(s)	Personnel
Waterfront Toronto	East Bayfront & West Don Lands	Erik Cunningham – Development Manager Renee Gomes – Director, Development Kevin Newson – Director, Procurement John Campbell – Past President & CEO
City of Victoria	Dockside Lands	Mike Wilson – Senior Planner
City of Vancouver	SE False Creek – Olympic Village	Brian Sears – Associate Director, Real Estate Karis Hiebert – Senior Planner

PROCEDURAL BEST PRACTICES

The following is a brief discussion of some the most widely utilized procedural best practices identified among the peer group projects. While each was not necessarily employed by every single project, discussions with peer group contacts have determined a fair degree of agreement in the efficacy of each practice, especially in where time and resources allow for the fullest implementation. Some of the peers have revealed that one or more of the following are being considered for future projects of a similar nature, despite not necessarily having employed the practice in the most recent case.

MULTI-STAGE SOLICITATION PROCESS

The most commonly accepted practice amongst these projects was the use of a multi-stage process (minimum of two steps) to allow for the methodological filtering of interested parties. The most common execution format was to start with a pre-qualification stage to arrive at a shortlist of parties who were then invited to participate in a more formal proposal submission stage. Cases were then varied with respect to final transaction negotiations, but all involved some form of strategy to facilitate a timely conclusion of negotiations.

A multi-stage process as described above has a number of benefits. Firstly, it reinforces the principle that the long-term success of the project is fundamentally rooted in finding the right partner (or set of partners), which increases the public’s confidence that the process will strive for excellence. Secondly, the prequalification stage provides an opportunity to truly filter interested parties based on their proven capabilities, financial capacity, and alignment with the City’s vision. Thirdly, allowing only short-listed proponents respond to the RFP allows the evaluators to focus their time and attention on proposals coming from only the highest quality bidders. Lastly, Proponents want to know that the pool of competitors is limited to a small number before committing the extensive resources required to prepare a competitive RFP submission; prequalification increases the level of quality to be expected from RFP bids.

COMMERCIALLY CONFIDENTIAL MEETINGS

A common challenge with complex land development deals that also seek innovative solutions is ensuring that respondents are given adequately clear instructions to address the City’s priorities while leaving enough interpretive room for unique ideas to be generated. In that regard, overly simplified instructions create the risk that either the proposal will inadequately address the City’s priorities and/or proposals will be so vastly different from each other that it will be difficult to make an objective assessment. Conversely, overly prescriptive instructions create the risk that respondents will narrowly develop their concept, resulting in less innovative thinking and the risk that concepts will be very similar to each other.

In either case, it is impossible to guess how proponents may interpret instructions, and as such, opportunities to request clarifications are valuable. Notwithstanding the use of addenda to provide general clarification, commercially confidential meetings (“CCM”) between City Staff and a proponent are designed to openly discuss the proponent’s prospective proposal in a manner that allows the proponent to push its innovative ideas into an arena where they can be confidentially and candidly promoted and critiqued.

CCMs give proponents opportunities to ask for clarifications, and give City Staff opportunities to provide advice that will result in a higher quality submission than if no discussions had taken place; CCMs significantly decrease the odds of a proposal being off the mark from the City’s expectations. The in-camera nature of CCMs ensures that all proprietary ideas remain confidential.

FAIRNESS MONITOR

The engagement of a Fairness Monitor is a best practice that safeguards all stakeholders including the public, the City, and the bidders themselves. The Fairness Monitor is an independent third party that oversees the entire Solicitation Process and provides an independent evaluation of the City’s adherence to fairness and transparency requirements established in the call documents and other related policies, including the consistent treatment of all proponents and consistent application of evaluation criteria and procedures. The Fairness Monitor’s primary scope of work will be to attend various meetings to observe and immediately report any known or perceived contraventions of the requirements or protocols established in the RFQ and RFP call documents. This is especially critical in cases where CCMs are being utilized given the in-camera nature of these interactions between proponents and solicitation process executors.

EVALUATION SCORECARD

The use of an empirical scoring system is a universally accepted best practice for the evaluation of any type of proposal with discernible attributes.

While there are many variations to how an evaluation scorecard for this type of project could be structured, the ones employed in the peer projects had the following common characteristics:

- Scorecards were multi-dimensional, with sub-categories of scores representing different criteria – all had a minimum of 5 sub-categories;
- Varied sub-category score weightings were used to distinguish higher priority from lower priority response categories;
- The score for each sub-category was not limited to content, but also considered completeness and relevance of response;
- Price, if included in the scoring, was its own separate rated element;
- The full list of criteria and weightings were disclosed to all proponents; and

- The methodology for how scores would be considered was disclosed to all proponents.

The section of this report titled “Additional Solicitation Tactics” provides additional detail on how certain scoring methodology tactics were used by the peer group to elicit desired responses and/or eliminate non-qualifying proposals.

EVALUATION COMMITTEE

In conjunction with an evaluation scorecard, establishing an evaluation committee is a common practice identified among the peer projects reviewed. An evaluation committee could be comprised of select members of City Staff, outside consultants, or distinguished members of the broader community. In almost all cases it is expected that each selected committee member brings a unique perspective of area of expertise that would be beneficial in assessing the adequacy, viability, or desirability of each proposal. The integrity of the individuals chosen is of utmost priority as they would be entrusted to make their assessments with the public’s interest at the forefront, before their own. The Fairness Monitor may play a role in the selection and authorization of committee members to uphold the integrity of the process.

Since the mandate of the evaluation committee is to have sole responsibility and accountability for reviewing proposal submissions, the committee should generally not be comprised of anyone who is involved in the formulation, execution, or administration of the solicitation process. Likewise, in cases where commercially confidential meetings are employed, evaluation committee members should not be present for, or privy to the content of, such discussions so that they may not be prejudiced prior to reviewing submissions at receipt.

Notwithstanding the above recommended separation of Solicitation Process administrators and the evaluation committee, the administrators may act as a resource that evaluation committee members can rely on to gain background information and clarification on certain matters regarding the Solicitation Process in order to improve their own understanding of the Project and interpretation of how closely the Proponents’ submissions have met the City’s expectations. The flow of such requests for information or clarification shall be controlled by a fixed protocol and vetted by the Fairness Monitor.

The evaluation scores arising from the committee’s proposal reviews may be assessed as a summed tally, averaged, or used to guide consensus-seeking discussions.

ADDITIONAL SOLICITATION TACTICS

This section summarizes additional tactics used to improve response quality, reduce procedural risks, or address specific submission requirements of each respective project. Many of these may be directly applied or modified to produce similarly positive results for Hamilton’s Pier 8 project.

PREQUALIFICATION STAGE TACTICS:

Potential Performance Gap, Risk Exposure, or Desired Objective	Corresponding Best Practice	Comments	Examples of Peer Implementation
<p>Solicitation is too prescriptive, resulting in few or no responses</p> <p>Solicitation draws only low-quality or underqualified respondents</p>	<p>Two-stage solicitation process starting with an Expression of Interest or Pre-qualification stage, followed by a more detailed Request for Proposals stage</p>	<p>Pre-qualification does not guarantee that short-listed proponents will submit a proposal that meets our financial or business plan goals</p>	<p>Waterfront Toronto, Vancouver, Victoria, NCC, Metrolinx, TCHC</p>
<p>Solicitation outcomes are too vague and result in incomparable responses</p>	<p>Hold an open respondents’ meeting prior to the submission deadline giving participants to request clarifications. All questions will be responded to in writing and will be distributed to all takers of the original call document.</p>		<p>Metrolinx, NCC, Vancouver</p>
<p>Interested proponents reach out by phone or email for clarification and treat the response as an amendment or waiver of requirement to the call document</p>	<p>Provide an official Request for Information Form with a single recipient that serves as the only method by which requests can be made</p> <p>State that only official Addenda, identified as such, serve to modify the original call document</p>		<p>Metrolinx</p> <p>Metrolinx</p>
<p>Interested respondents do not have access to all or the same information</p>	<p>Establish an exclusive, single point of entry to register to receive the call</p>		<p>Metrolinx, TCHC</p>

<p>upon which to form a submission</p>	<p>documents and any addenda (e.g., project website, MERX, etc.)</p> <p>Appoint a Process Manager (internal or external) who acts as the single point of communication between respondents and the City</p> <p>Establish both a secure online repository and physical data room (for non-electronic materials) that contain all materials that are relevant to making a submission</p>		<p>Waterfront Toronto, Metrolinx</p> <p>Waterfront Toronto, NCC</p>
<p>Respondents try to gain an advantage by engaging the services of a consultant or former City employee who has advised us in the past on this file</p>	<p>Define and communicate a list of consultants who are ineligible to be a direct consultant to, or a consortium partner of, a respondent</p> <p>Require an Affiliates’ Conflict of Interest declaration that identifies any persons or parties that could be a “conflicted party” and requests an assessment to be made by a pre-set date prior to response submissions</p>		<p>Metrolinx, Vancouver, Waterfront Toronto</p> <p>Metrolinx, NCC, Waterfront Toronto</p>
<p>Respondents try to gain an advantage by contacting City staff or other identified members of an Evaluation Committee</p> <p>Respondents try to influence the outcome of the process through public commentary or advertisement</p>	<p>State “no lobbying” rules that, if breached, could result in disqualification</p> <p>State “no communication” rules that, if breached, could result in disqualification</p>		<p>Waterfront Toronto, Metrolinx, TCHC, NCC, Vancouver</p> <p>Vancouver, NCC, TCHC</p>
<p>Submission requirements are too vague and results in incomplete or incomparable responses</p>	<p>Provide a detailed description of the expected submission response on a section-by-section basis, including minimums and maximums on pages/examples, visual elements,</p>		<p>NCC, Metrolinx</p>

	<p>references, financial summaries, etc.</p> <p>Provide templated bid forms that all respondents must use</p>		Waterfront Toronto, Vancouver
<p>We want to ensure that the eventual agreed commercial arrangement between the City and the developer is feasible and beneficial to both parties</p>	<p>State the City’s preferred delivery model/deal structure, or state that City is open to any and all proposed deal structures and require respondents to describe deal structuring mechanisms that they would be willing to employ (e.g., options, rights, profit sharing, profit deferral, leasehold, etc.)</p> <p>Ask respondents to submit a commentary on specific commercial arrangements</p>		<p>TCHC, NCC</p> <p>Vancouver</p>
<p>Solicitation results in price-driven responses that fall short on other criteria</p>	<p>Present an evaluation matrix that clearly demonstrates the criteria, including relative scoring weights, by which all submissions will be reviewed</p> <p>Divide the evaluation matrix into multiple parts, with the most important criteria comprising the first filters on either a pass/fail, or minimum score basis</p> <p>Do not entertain any pricing-related submission content and/or disqualify any submissions that references indicative or actual prospective pricing of the sites.</p>		<p>Waterfront Toronto,</p> <p>NCC, Victoria</p> <p>Waterfront Toronto, NCC</p>
<p>We want to ensure that the eventual proposed concept will fulfill our vision and objectives</p>	<p>Require respondents to include a Vision Statement that demonstrates how their proposal aligns with our vision and objectives.</p>		Waterfront Toronto, TCHC

	<p>Provide a detailed, prescriptive, specification of land use, space allocations, programmatic elements, and community amenities that must comprise the subject development</p> <p>In pre-qualification stage, allow respondents to indicate how any factors of the City’s vision may impact, positively or negatively, their development concept</p> <p>Have an “Understanding of Project Objectives” score formally be included in the evaluation criteria</p> <p>Require respondents to provide conceptual plans, illustrations, massing plans, and land-use diagrams that demonstrates an understanding of the opportunities of the site and compatibility issues vis-à-vis the surrounding lands</p>	<p>This was partially motivated by a requirement to ensure VANOC would get the precise Olympic Village program buildings it required.</p>	<p>Vancouver</p> <p>Victoria, Metrolinx</p> <p>NCC</p> <p>NCC</p>
<p>Respondent attempts to “tie up” the opportunity without having the financial capacity or technical capability to execute</p>	<p>Require respondents to provide examples of completed projects similar in scope, scale, and complexity as subject project.</p> <p>Require respondents to provide sufficient proof of financial capacity and creditworthiness (current & historical financial statements, banking reference, credit rating, etc.)</p> <p>In pre-qualification stage, require respondents to identify and name financial partners (equity and/or debt) and/or a plan that details how funds for purchasing will be secured</p>	<p>Respondents may be reluctant to provide confidential financial information for fear of exposure to Freedom of Information requests</p> <p>This tends to be more common in P3 or JV type of projects and less so for more traditional real estate deals</p>	<p>Waterfront Toronto</p> <p>Metrolinx, NCC, Victoria</p> <p>Metrolinx</p>

<p>Respondents are reluctant to provide information related to financial capacity due to fear of exposure to Freedom of Information legislation</p>	<p>Set up arms-length agency or body not subject to Freedom of Information legislation</p> <p>Require respondents to explicitly identify commercially confidential content within their submitted response and to seek its own legal advice on such matters</p> <p>Hire an outside financial consultant who will be the sole recipient and reviewer of financial capacity information and will make the decision strictly on a pass/fail basis, which will be communicated to the City (i.e., details of reviewed information will not be shared with the City, and thus, not at risk of being exposed to FOI requests)</p> <p>State that the City has no predetermined or expected format by which respondents need to demonstrate their financial capacity, but reiterate the City’s priority on financial capacity and stability</p>	<p>Requires a separate corporate structure with full Council support (not an option for Hamilton)</p> <p>This tactic does not entirely placate Proponents as blocked or redacted FOI requests can still be appealed to provincial Information and Privacy Commissioner. However, it does place a certain amount of responsibility on the bidder to self-identify areas of sensitivity</p> <p>Statement alone is probably not robust enough. Combine with above tactics.</p>	<p>Waterfront Toronto</p> <p>Metrolinx</p> <p>Victoria</p> <p>Victoria</p>
<p>Interested parties are reluctant to participate due to a perception that decision-making power is too narrowly held and/or influenced by political factors</p>	<p>Establish an evaluation committee and roster of technical consultants. Disclose identities and roles at the beginning of the solicitation process.</p>	<p>Requires a clear set of rules as to when and for which issues Council or Board have authority to reject or influence the committee’s recommendations</p>	<p>Waterfront Toronto, NCC, Victoria, TCHC</p>
<p>We desire development proposals to embrace high-quality design</p>	<p>Ask respondents to describe their design philosophy and provide examples of industry awards, client testimonials, community or media recognition that</p>		<p>Waterfront Toronto, NCC</p>

	<p>demonstrate a commitment to design excellence</p> <p>Ask respondents to name an architectural design partner at the pre-qualification stage and provide examples of their work</p>		Metrolinx, NCC
<p>Respondents wish to contest the outcomes based on a perception of misconduct or less-than-transparent methodology (i.e., in-camera evaluations)</p>	<p>Give all respondents a right to request a de-briefing following the conclusion of the solicitation process</p> <p>Engage a Fairness Commissioner to oversee solicitation, selection, and transaction process</p>		<p>Metrolinx, NCC</p> <p>Waterfront Toronto, NCC, Victoria, TCHC, Metrolinx</p>
<p>Interested respondents are reluctant to participate because of a perception that the timeline and process are uncertain or subject to intentional delays</p>	<p>Outline an anticipated timeline of events including all stages of submission, evaluation, presentations, interviews, announcement of award, and commercial negotiations</p> <p>Also include an anticipated timeline of activities that may affect the readiness of the lands (e.g., zoning, servicing, other government approvals, etc.)</p>		<p>Waterfront Toronto, Metrolinx, TCHC, Vancouver, NCC</p> <p>Vancouver, NCC</p>
<p>Interested respondents are reluctant to participate because of a perception that odds of success are not commensurate with the time, resources, and cost commitments required to proceed through both stages of the solicitation</p>	<p>Declare a predefined limit on number of short-listed bidders following the pre-qualification stage</p>		TCHC, Metrolinx, NCC
<p>We are seeking a submission regarding the Subject Lands, but would like to present alternate options that could be of current or future interest to respondents</p>	<p>Give respondents the option of including Optional Lands in its concept or vision. As this is a priority, extra points are awarded for including these additional lands.</p> <p>Release concurrent solicitation calls for</p>		<p>NCC</p> <p>Waterfront Toronto</p>

	<p>separate sites allowing interested parties to respond to either or both, without prejudice</p> <p>Explicitly require respondents to indicate how many lots are required to implement their envisioned development concept</p>		Victoria
<p>We ideally want to have all of our specialist needs fulfilled through a single respondent (e.g., brownfield, mixed-use, mixed tenure, sustainable development, etc.)</p>	<p>Require respondents to name team members based on technical subject areas</p> <p>Encourage consortia or joint venture proposals. Do not mandate a legal partnership – allow a Team Lead to be identified.</p>	<p>Probably will want to forbid parties from participating as a member of more than one submitting team</p> <p>Respondents name particular team members at pre-qualification, and then attempt to switch members after getting short-listed</p>	Metrolinx

RFP STAGE TACTICS:

Potential Performance Gap, Risk Exposure, or Desired Objective	Corresponding Best Practice	Comments	Examples of Peer Implementation
<p>Short-listed proponents do not follow through with an RFP response (for various reasons)</p>	<p>Short-listed proponents submit an LOI and/or non-refundable deposit upon short-list notification</p> <p>In the pre-qualification stage, reserve the right to establish a Reserve Prequalified Party(ies) from those respondents, provided they meet a certain pre-defined minimum criteria.</p>		<p>NCC</p> <p>Metrolinx</p>
<p>Respondents wish to contest the outcomes based on a perception of misconduct or less-than-transparent methodology (i.e., in-camera evaluations)</p>	<p>Give all respondents a right to request a de-briefing following the conclusion of the solicitation process</p>		

	Engage a Fairness Commissioner to oversee solicitation, selection, and transaction process		Waterfront Toronto, NCC, Victoria
A decision regarding the winning proponent must, in part, be based on a firm understanding of transaction pricing	Require a financial proposal that includes a quoted purchase price bid Require a financial proposal that includes a proforma and implementation plan that demonstrates value to the public		Victoria, Vancouver, NCC TCHC, Waterfront Toronto
Proponents are unable to appropriately determine a financial structuring model due to a vague understanding of desired outcomes	Include a Business Terms Summary Sheet that acts as a bid form for all financial elements to be considered in the bid		TCHC
Proponents create physical damage to site during due diligence activities	Bidders submit a refundable deposit as part of a Stage 1 response submission		NCC
We are seeking proposals that fulfill or contribute towards certain community amenities	Establish a two-tiered list of desirable community amenities (with or without specific numerical targets), with one tier representing required, and the other representing optional/negotiable Outline a minimum set of community amenities that all submissions must meet, and then offer a set of additional amenities that are open to “developer’s choice”. The developer can choose, all, some, or none of the “choice” elements. Explicitly prescribe end results that are required and must be met as a minimum qualification	TCHC requires at a minimum, the one-for-one replacement of RGI units	Victoria Vancouver TCHC
Proponents feel the RFP is not specific enough to be able to formulate an	Provide a detailed specification of what the City will provide with respect to		Victoria

<p>accurate pricing proposal</p> <p>A vague RFP results in widely variable responses from the proponents</p>	<p>planning legislation, physical construction, servicing, landscaping, environmental condition, maintenance issues, etc.</p> <p>Conduct commercially confidential meetings with each shortlisted proponent following the release of the RFP document (supervised by Fairness Commissioner). Proponents can ask clarification questions and negotiate development elements on a conceptual basis prior to formulating a response</p>		<p>Waterfront Toronto, NCC</p>
<p>We desire development proposals to embrace high-quality design</p>	<p>Offer an honorarium (or expense reimbursement) at the RFP stage to cover a modest portion of conceptual design costs</p>		<p>NCC, Victoria</p>
<p>Proponent was shortlisted on the basis of an understanding of its capability, capacity, or supporting team members that has materially changed after being shortlisted</p>	<p>Require immediate reporting of a material change and/or subject proponents to a material change inquiry on a periodic basis and re-evaluation per the original criteria. If the proponent’s score changes as a result of the material change causing it to rank lower than previously un-shortlisted parties, reserve the right to re-cast the shortlist.</p> <p>Require proponents to receive written approval of any new or replacement team members. Such new participants will be subject to the same pre-qualification criteria.</p> <p>Forbid parties from participating as a member of more than one proponent team</p>		<p>Metrolinx</p> <p>NCC, Victoria, TCHC, Vancouver</p> <p>Metrolinx</p>
<p>Proponents are unable to fulfill or comply</p>	<p>Allow proponents to provide an</p>		<p>Vancouver</p>

with certain requirements within the evaluation criteria	alternative approach for all response categories where they may be non-compliant		
We are seeking submissions that espouse certain values, designs, and programmatic benefits to the community, but recognize that there may be a price implication to these expectations.	Provide proponents with an opportunity to indicate a “Developer’s Choice” package of attributes over and above those that are considered mandatory. Ask developers to indicate a pricing implication overlay for these elements	This results in a baseline pricing with clear indications of premia/discounts for fulfilling (or excluding) extra-value criteria	Vancouver
A proponent with a strong proposal risks disqualification for failing to meet an administrative submission requirement	<p>Include a submissions checklist for respondents to complete as verification of all submission requirements met</p> <p>Provide for a prescribed administrative cure period immediately following the submission deadline during which respondents can rectify administrative errors or omissions but not alter or add any content to the submission responses (at discretion of process manager)</p>		<p>Victoria</p> <p>NCC</p>

TRANSACTION AND DEVELOPMENT AGREEMENT STAGE TACTICS:

Potential Performance Gap, Risk Exposure, or Desired Objective	Corresponding Best Practice	Comments	Examples of Peer Implementation
Winning proponent attempts to leverage winning position to aggravate final transaction negotiations in order to extract more beneficial deal terms	Establish a formal negotiating period during which a final Sale Contract and Development Agreement must be concluded. Failure to meet these deadlines will give the City the option to commence negotiations with the second-place proponent		NCC

	In the RFP, establish the right to negotiate a final Sale Contract and Development Agreement concurrently with the <u>top two</u> finalist proponents and identify a preferred proponent following the conclusion of those negotiations	Significantly more expensive process if right needs to be exercised, but puts pressure on lead party to conclude a deal	TCHC, NCC
We would like to compel the developer to develop the site by a given future date	Include timing/execution strategy as a rated element in the Evaluation Criteria		Vancouver
Winning proponent attempts to withdraw from agreement during time between conclusion of negotiations and authorized approval to enter binding agreement (Council or Board)	Establish a time period of irrevocability, coinciding with this conditional period. Bolstered by a deposit due at time of RFP submission.		NCC
Vendor wishes to have an unconditional land transaction finalized within a reasonable period of time following announcement of award	Require transaction due diligence to be conducted during RFP phase Full disclosure of all investigative reports on-hand Explicitly define all additional approvals that are the responsibility of the winning proponent so they may pursue in a timely manner		NCC NCC, Vancouver, Victoria, Waterfront Toronto NCC

EPILOGUE – NEGOTIATING THE RELATIONSHIP

While following these best practices can set us on a path to attract quality bidders and proposals, much of the potential success, or potential failure, of the actual project outcomes rests on the parameters of the relationship with the winning proponent. The following retrospective reviews of a few of these peer projects highlight some of lessons to be learned and applied to our Pier 8 Project as we consider how, following the solicitation process, the relationship with the winning proponent will be negotiated and structured. Much of this insight has been provided anecdotally by individuals who were directly involved at the time of the solicitation process and/or had to contend with the resulting outcomes.

Conversations with our peers suggest that our Pier 8 Project will be carefully watched with particular interest in how the City of Hamilton will add innovative ideas and thinking to the growing body of knowledge in the practice area of revitalizing public lands through private sector engagement.

VICTORIA DOCKSIDE LANDS

The winning proponent was a development partnership comprised of a financial institution and builder with a reputation for sustainable communities, who had proposed a concept that would strive to be the “world’s greenest neighbourhood”, targeting the highest LEED scores in the world, far exceeding the City’s original goal of achieving LEED Silver. By 2009, the development partnership was able to complete two buildings totaling 226 units that did in fact attain the highest ever LEED scores at the time. The financial market downturn at the time caused the remaining phases of the project to stall; however, the development partnership was still obliged to continue building out sustainability features including a biomass heating plant, wastewater recycling facility, biodiesel facility as well as various neighbourhood amenities totaling a committed \$5 million. While only 22% of units have been built, over 75% of amenities have been completed to-date, which has created a financial burden on the overall viability of the project. During this time as well, the builder partner withdrew its participation in the project by selling its remaining interest to the financial partner; there is no official comment on why this partnership ended. The financial partner has since internalized its development capabilities and is now operating as a master land developer that intends to sell individual parcels to multiple developers. To this end, they are currently seeking a re-negotiation of the Master Development Agreement with the City and pursuing a re-zoning to accommodate a change to the built forms in a way that would be more appealing to single-project developers. As of the writing of this report, no new buildings have been built on the site since 2009, although a deal for a small affordable housing property has recently been struck with a private non-profit operator.

This outcome of Dockside Lands provides some considerations when establishing the relationship parameters with a development partner:

1. **Vested Interests:** What had started as a showcase development for the City soon became a disappointment due to the fact that the overall benefits were disproportionately in favour of the City. Rather than pursuing a relationship wherein both parties would have a vested interest in each other’s success, the City became enticed by a proponent who offered benefits far in excess of what it had expected, despite it perhaps being overzealous.

This example demonstrates the importance of viewing the relationship as a partnership, regardless of any actual formal partnership venture, rather than a transaction wherein parties try to maximize their own positions.

2. **Relationship Governance:** It would appear that the builder partner who had a reputation for sustainable communities was in fact capable of fulfilling the high ambitions of the project as proven by their first two buildings. However, when circumstances created a desire for the builder to leave the project, they departed with their extensive expertise; presumably, the financial partner does not have the same degree of expertise in sustainable development, and despite all efforts and claims to maintain the sustainability vision, going forward, the City of Victoria will likely get an end product that is not to the standard as was originally anticipated. This scenario highlights the need to establish clear rules about the relationship with the developer, exit conditions, and changing of consortium members.
3. **Maintain Flexibility:** When macro-economic conditions changed to materially affect the feasibility of continuing with the proposed development, rather than re-addressing the parties’ mutual goals and obligations in light of the new conditions, the standing agreement continued to be enforced, which resulted in the current state of inactivity, and likely contributed to the departure of the builder partner. The feasibility of development could have been rescued if enough flexibility had been built into the relationship to adapt to changing circumstances beyond the control of either party. This could also apply to other macro changes such as changes in technology or political will.

VANCOUVER SEFC – OLYMPIC VILLAGE

The winning proponent, a Vancouver-based developer with 60 years of experience both within B.C. and internationally, brought forward a comprehensive proposal that met the City’s requirements and also offered the highest purchase price for the lands, without conditions. In order to fulfill both the Olympic Village properties and the private market buildings, the developer obtained private market financing. This financing required a guarantee from the City because the Olympic uses required the buildings by a fixed date but without any financial consideration for use, and because the City would retain ownership of the lands until after the conclusion of the Olympics. Shortly after a year of construction commencement, the developer was non-performing on its loan and the City, by way of its guarantee, assumed the loan from the lender as creditor, and terms were renegotiated with the developer. Subsequently, the developer defaulted on the renegotiated loan with the City. The holding company for the development was placed in receivership and the developer also transferred a number of other properties in its portfolio which were part of the loan guarantees to the City. In the end, through the receivership process, the City was able to recoup all of its original at-risk capital, anticipated sale profits, as well as an unplanned excess amount; however, City Hall’s credibility was damaged in the process.

An independent audit revealed two shortcomings in the solicitation and bid evaluation process that contributed to the situation. Firstly, the solicitation process did not include a robust process to review proponents’ financial capacity and creditworthiness; the rationale for not requiring the provision of detailed financial information for review was that the developers were concerned that financial information provided to the City may be accessible to the public under freedom of information legislation. Secondly, the evaluation matrix and methodology did not clearly explain how the proposed purchase price and associated conditions would be taken into consideration in the final assessment and selection of winner. Given that the winning proponent had offered the highest price

with no conditions raised the possibility that the evaluators could manipulate the outcome of the evaluations to favour the highest bid price. Coupled together, these two process failures left the City unnecessarily exposed to the risks of a bidder who may have overextended itself financially in order to win the deal.

One could argue that this project was a situation wherein the City was effectively in a joint venture partnership with the developer and also carried a unique set of requirements for the Olympic Games, which would not be the same case for the Hamilton Pier 8 Project. Regardless, this project highlights the care that a City should take when becoming involved with a private sector partner in any capacity. In the case of Pier 8, although no formal partnership or joint venture arrangement is anticipated, the City and winning proponent will likely be closely associated through a structured deal. We will bear in mind the lessons learned from the City of Vancouver’s SEFC Olympic Village experience as we lay out our solicitation process, namely:

- Be sure to include a robust process to assess proponents’ financial capacity and creditworthiness;
- Include a clear weighting for price in the evaluation matrix so there is full transparency on the influence of pricing on the final decision; and
- Ensure the bid evaluation includes a thorough understanding of the proponents’ capital structure and intended financings, including where the City may be implicated in the performance obligations.

CONCLUSION

In conclusion, reviewing the processes and experiences of public sector peers that have been through similar land disposition and revitalization projects reveals two important realities:

1. There is a widely accepted body of knowledge and best practices that can be applied to similar solicitation processes to dramatically increase the odds of receiving proposals from high quality bidders;
2. Notwithstanding these best practices to elicit high quality bidders and proposals, the overall success of the resultant project is largely a function of the relationship parameters established between the City and development partner.

Informed by this research, the Hamilton City Staff intend to make a formal recommendation to City Council outlining a solicitation process strategy that it believes will best accomplish the goals of the Pier 8 Project.