Winnipeg

Audit of "Winnipeg Arena" Request for Proposals April 2005

Audit Department

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Executive summary

A funding agreement with the City of Winnipeg and Province of Manitoba was reached in December 2001 whereby TN Arena Limited Partnership (True North) would construct, own and manage a new multi-purpose sports and entertainment complex on the former downtown Winnipeg Eaton's department store site. As part of the agreement, the City of Winnipeg assumed responsibility for the demolition of the existing Winnipeg Arena at 1430 Maroons Road. The demolition requirement was as a result of exclusive rights being granted to True North to host certain sports and entertainment events in the City and immediate trade area, as outlined in the funding agreement. Subsequent discussions resulted in True North agreeing to consider alternative uses of the building provided they did not compete with the new arena (MTS Centre). The City issued a request for proposals (RFP) for the purchase and/or redevelopment of the property commonly known as the "Winnipeg Arena" in December 2003. A "non-compete" definition of permissible alternative uses was included as well as details of uses that would be considered unacceptable. Five submissions were received by the submission deadline with Ontrea Inc.'s proposal being approved by the City's Standing Policy Committee on Property and Development in July 2004.

Questions regarding the Winnipeg Arena RFP process and sale were brought to the attention of the Manitoba Ombudsman and the City Auditor in the fall of 2004. Allegations of unfairness and favoritism were also heard. The Ombudsman and City Auditor agreed to review the process and allegations jointly. In accordance with their regular procedures, the Ombudsman's office will be responding directly to the complainants. Our report addresses whether the RFP process complied with City policies and procedures and whether due diligence was exercised concerning the Winnipeg Arena RFP. We considered issues raised by the complainants in the conduct of our audit. In addition, we identified areas for improvement.

Based on our audit work, we concluded that the RFP process was conducted in accordance with City Policies and Administrative Directives. We identified some omissions from the Arena RFP as well as some requirements and provisions that were unclear. We made recommendations in this regard; however, we do not believe these issues resulted in the unfair treatment of any of the submissions.

We concluded that Administration's process and the results of assessing the responsiveness of submissions in relation to the requirements stated in the RFP were fair and reasonable. Based on our review of documentation and interviews conducted, we also concluded that Administration's evaluation of responsive submissions was fair and reasonable. We found no evidence of unfair treatment of the submissions or of the Mayor influencing the Administration's evaluation of the submissions, as alleged. To ensure objectivity and transparency in the decision-making process, however, we believe documentation of the evaluation process should be enhanced.

In the last section of our report we considered the City's due diligence with respect to the Winnipeg Arena RFP. The areas reviewed included the timing of the RFP and sale, the opportunities for public input a, the legal requirements of the funding agreement with True North, the financial considerations and the adequacy of the communication of the results of the process. While we identified opportunities for improvement in handling deposits and in communicating the results, we concluded that Administration exercised due diligence in the offer and sale of the Winnipeg Arena.

Background

In the fall of 2004, allegations and questions regarding the Winnipeg Arena Request For Proposals (RFP) and sale were brought to the attention of the Manitoba Ombudsman and the City Auditor. The complainants alleged unfair treatment of one of the RFP submissions and questioned many aspects of the RFP process and subsequent sale.

The Manitoba Ombudsman provides an independent and impartial review of complaints regarding the administration of government departments and agencies including the City of Winnipeg. The Ombudsman reports directly to the complainant. The City Auditor is a statutory officer whose mandate is to provide independent assurance on the performance of the City's Administration and the efficiency and the effectiveness of processes. The City Auditor reports to Council through the Audit Committee (Executive Policy Committee). Audit reports become public when tabled at Council. The Ombudsman and City Auditor agreed to conduct a joint review of the Arena RFP.

On December 18, 2001, the Government of Manitoba, City of Winnipeg and TN Arena Limited Partnership (True North) signed a master funding agreement whereby True North agreed to develop, finance, own and manage a new multi-purpose sports and entertainment complex on the former downtown Winnipeg Eaton's department store site. The agreement called for the Winnipeg Arena "to be demolished contemporaneous with the opening of the True North Centre (now the MTS Centre)". The Province and City granted exclusive negotiation and development rights to True North for the construction of a partially or fully government-funded major sports and entertainment complex. These rights apply in the City of Winnipeg and surrounding 100 kilometers for a term of 25 years after the opening of the new arena.

On December 13, 2002, The Chief Administrative Officer's Executive Advisory Committee approved the establishment of a Winnipeg Enterprises Corporation (WEC) Administrative Steering Committee to provide for the disposition of the Winnipeg Arena property at 1430 Maroons Road. Winnipeg Enterprises owns the Winnipeg Arena building, but leases the land from the City of Winnipeg. The City's Planning Property & Development Department (PP&D) prepared an RFP for the purchase and/or re-development of the property. The RFP was issued in December 2003. The possibility of re-developing the property without first demolishing the building was only contemplated in the RFP as a result of further discussions between the City of Winnipeg, Winnipeg Enterprises and True North. Proposals for alternative uses of the land and facility were therefore entertained provided they did not compete with the MTS Centre, as outlined in the RFP. Three addenda to the RFP were issued over the course of the response period. These were issued to correct RFP errors and omissions and to respond to questions raised by potential offerors at the open house tour held January 14, 2004.

By the March 26, 2004 RFP submission deadline, five submissions had been received by the Corporate Finance Department's Materials Management Division. Following consultation with Materials Management and Legal Services, PP&D determined that two of the five submissions were complete with respect to the submission requirements, and the proponents were qualified. These submissions were deemed responsive and were the only submissions eligible for evaluation in accordance with the remaining bid evaluation criteria.

A committee with representation from PP&D and Public Works evaluated the two proposals using the criteria outlined in Addendum No. 3 to the RFP. Ontrea Inc.'s submission received the highest score in the evaluation process and therefore PP&D

recommended acceptance of Ontrea's offer. WEC, the Standing Policy Committee on Property and Development (SPCPD) and True North agreed with Administration's recommendation. A chronology of the significant events pertaining to the RFP and sale is located on Page 6.

Audit objectives

The objectives of the Arena RFP audit were:

- To assess whether the RFP process was conducted in accordance with City Policies and Administrative Directives.
- To assess whether the Administration's determination of responsive submissions was fair and reasonable.
- To assess whether the Administration's evaluation of the responsive submissions was fair and reasonable.
- To assess whether Administration exercised due diligence in the offer and sale of the Arena.

Audit scope and approach

The audit has been conducted in accordance with generally accepted auditing standards. In preparing our report, we have relied upon interviews with PP&D, Corporate Services, Corporate Finance and Public Works management and staff, and information, data, and other documentary evidence provided to us. The conclusions reached in this report are based upon information available at the time. In the event that significant information is brought to our attention after completion of the audit, we reserve the right to amend the conclusions reached.

In conducting our audit, we employed a variety of methods:

- We reviewed the questions and allegations raised by the complainants and designed an audit plan.
- We reviewed relevant City of Winnipeg Policies and Administrative Directives.
- We reviewed an Arena RFP chronology of events and copies of related documents prepared by the Real Estate Division of the Planning, Property & Development Department.
- We interviewed Materials Management, Legal Services, Corporate Finance and Transportation Division personnel to gain an understanding of their involvement in the Arena RFP process and subsequent sale.
- We interviewed one of the unsuccessful proponents to discuss his experiences with the Arena RFP.
- We reviewed the Arena files held at the Planning, Property & Development Department.
- We interviewed management and staff from the Real Estate and Planning and Land Use Divisions of the Planning Property & Development Department to discuss the history of the Arena property, the RFP and the evaluation process.

Audit conclusions

Based on the audit work completed, we concluded that

- The RFP process was conducted in accordance with City Policies and Administrative Directives. We found that the Arena RFP had some omissions and some areas that were unclear.
- Administration's determination of responsive submissions was fair and reasonable.
- Administration's evaluation of the responsive submissions was fair and reasonable. The documentation of the evaluation of submissions should be enhanced.

- Administration exercised due diligence in the offer and sale of the Arena. There are opportunities to improve the handling of deposits and communication of the results of the process.

Acknowledgements

We appreciate the cooperation and assistance received from the Planning, Property and Development, Corporate Services, Corporate Finance and Public Works management and staff. We also acknowledge the work of members of the Manitoba Ombudsman's office in conducting our joint review.

City of Winnipeg Audit Department

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March 11, 2005
Date

Chronology of Significant Events

December 18, 2001	The Government of Manitoba, City of Winnipeg and TN Arena Limited Partnership (True North) signed a master funding agreement whereby True North agreed to develop, finance, own and manage a new multi-purpose sports and entertainment complex (MTS Centre) on the downtown Winnipeg Eaton's site.
May 29, 2003	WEC authorized the preparation of an RFP for the purchase and/or redevelopment and use of the Winnipeg Arena property at 1430 Maroons Road.
December 18, 2003	The Corporate Finance Department's Materials Management Division issued RFP No. 507-2003, an invitation for the purchase and/or re-development and use of the property commonly known as the "Winnipeg Arena".
March 26, 2004	Submissions related to RFP No. 507-2003 were accepted until 4:00 pm. Five submissions were received before the deadline.
May 19, 2004	Comments were requested from PP&D's Planning and Land Use Division and Public Works' Transportation Division regarding the evaluation of the two submissions deemed responsive.
May 27, 2004	The two responsive submissions were evaluated in accordance with the bid evaluation criteria outlined in Addendum No. 3 to the RFP. Ontrea Inc.'s submission received the highest score.
June 8, 2004	The SPCPD recommended a) that the Arena lease be cancelled and that WEC deliver vacant possession of the facility no later than June 1, 2005 and b) that 1430 Maroons Road be declared surplus to the City's needs, upon termination of the Arena lease.
June 16, 2004	Executive Policy Committee (EPC) concurred with and recommended the above SPCPD recommendations.
June 22, 2004	Sam Katz elected Mayor of Winnipeg
June 23, 2004	Council approved the above EPC recommendations.
June 24, 2004	Sam Katz sworn in as Mayor of Winnipeg
July 9, 2004	WEC's Board was briefed regarding the results of the RFP process and Administration's recommendation for acceptance of Ontrea Inc.'s offer. The Board agreed with Administration's recommendation. SPCPD also agreed with Administration's recommendation to accept Ontrea Inc.'s offer subject to additional terms and conditions considered necessary by Administration to protect the interests of the City.
July 13, 2004	PP&D advised True North of the proposed sale and redevelopment of the site with either single or multi-storey retail buildings. True North confirmed that the proposed sale was not contrary to the Master Funding Agreement.
July 15, 2004	Following further negotiation of terms to protect the City's interests, Ontrea Inc. signed the amended offer to purchase.
July 19, 2004	Letters of notice were sent to each unsuccessful proponent and deposits were returned where applicable.
July 28, 2004	A letter was sent to Ontrea Inc. advising that their offer was accepted by SPCPD and to undertake due diligence matters.

Observations and Recommendations

Based upon discussions with PP&D, Materials Management and Legal Services management and staff as well as a representative of the proponent alleged to have been treated unfairly, we determined whether compliance with City policies and administrative directives had been achieved. We also attempted to address the various concerns raised by the complainants.

Compliance with City Policies and Administrative Directives

The property was declared surplus in accordance with City policy.

The City's organizational by-law specifies that only City Council has the authority to declare property as surplus to the City's requirements. Council made this declaration for the Arena property on June 23, 2004; however, it is only effective upon cancellation of the lease to Winnipeg Enterprises Corporation, to be no later than June 1, 2005. The timing of the cancellation of the lease was dependent upon the completion and opening of the MTS Centre.

SPCPD has the delegated authority to sell surplus property.

The SPCPD has jurisdiction over the sale of property declared surplus to the City's requirements. Approval and acceptance of Ontrea Inc.'s offer by the SPCPD was carried out in accordance with the Committee's delegated authority.

The Winnipeg Arena property was marketed by RFP.

From the outset at the WEC Board's May 29, 2003 meeting, a request for proposal was identified as the means through which the City and WEC would provide for the disposition of the Winnipeg Arena property, as required in the master funding agreement. While City of Winnipeg policies and directives do not explain the difference between requests for proposal and tenders, the Government of Ontario's Procurement Policy & IT Procurement Branch website does. An RFP is described as including "consideration of the idea, concept, or solution called for as a major component of the evaluation of proposals received. A request for tenders includes only the consideration of price in the evaluation of submissions that can meet the stated delivery requirements and quality standards." The Arena RFP submission requirements called for not only an offer to purchase, deposit and support for financing, but also a business plan, the proposed ownership structure, description and schematics of the proposed development. Information pertaining to environmental impacts of the proposed developments was also requested including parking facility and traffic generation considerations as well as economic and social benefit impacts. The bid evaluation criteria identified in Addendum No. 3 to the RFP and used by Administration were as follows:

"Award of the Contract shall be based on the following bid evaluation criteria:

(a)	*compliance by the Bidder with the requirements of the Bid Opportunity*	*pass/fail;*
(b)	*qualifications of the Bidder and the Subcontractors, if any, pursuant to Clause 9*	*pass/fail;*
(c)	*desirability of the proposed development*	*35%;*
(d)	*socio-economic benefits*	*35%;*
(e)	*financial terms*	*30%."*

Both the Arena RFP submission requirements and evaluation criteria are evidence of this process being substantially more than a competition based on price.

Some standard RFP contents were not addressed in the Arena RFP.

Historically, the PP&D department has created its own bid opportunity documents for the sale of City property. The Materials Management Division of the City's Corporate Finance Department has acted as a clearing house for PP&D by posting their RFPs and addenda on the Materials Management website and controlling the collection of the submissions. The Materials Management Division manages the City's procurement processes as well as the disposal of surplus supplies in accordance with the City's Materials Management Policy and Administrative Directive. The Division maintains templates for various types and sizes of bid opportunities including Requests for Proposal. PP&D used a Materials Management RFP template as the basis for the Arena RFP. Modifications were made to customize the request to the Arena's situation including terminology and documents specific to the sale of real property. While it is clear that a great deal of effort was made to ensure interested proponents were provided with as much information as possible about the property, some information from the standard RFP template was not included in the Arena RFP.

(a) The requirement to complete and submit a Request for Proposal cover page was missed in the submission requirements portion of the RFP. The cover page identifies the offeror, contact information and signature of the offeror's authorized representative. The cover page certifies that the offeror has received and agreed with all addenda and confirms the length of time that the offer will be open for acceptance. Suitable alternative documentation of this information is accepted. No Arena submissions were deemed non-responsive as a result of not submitting a cover page.
(b) There was no sample letter of credit attached to the Arena RFP as is commonly included with bid opportunities issued through the Materials Management Division. Letters of credit accompanying proposals met the submission deposit requirements provided that they were in the proper amount, were properly endorsed and were substantially in the same format as the City's standard format.
(c) The Arena RFP is silent on how the successful offeror will be advised of the results of the RFP process. The standard RFP template issued by Materials Management states that notice will be given to the successful offeror by letter of intent and that the name of the successful offeror and contract amount will be made public after the award. This issue is discussed further in the last section of our report.
(d) The standard RFP template clause advising proponents that their proposals will be treated as confidential was not included in the Arena RFP. This issue is discussed further in the next section of our report.

These omissions did not result in the unfair treatment of any proposal; however, we would expect this basic information to be a part of any RFP.

Recommendation 1

We recommend that the Real Estate and Materials Management Divisions establish means of ensuring that all standard RFP contents are addressed in RFPs.

Management response

The Planning, Property and Development Department concurs with this recommendation. It is intended that all RFP documents developed and issued by the Real Estate Division, in consultation with the Materials Management Division, should have standard contents that are addressed within the body of the RFP.

Some areas of the Arena RFP were not clear.

When preparing RFPs, emphasis should be on completeness and clarity of content so that proposals will be submitted and can be evaluated on the same basis. This principle is vital to ensure a fair and open competitive process and for the City to get the best value for money.

(a) The Submission Requirements portion of the Arena RFP called for a business plan to be submitted, but no description of what it was to consist of was provided. Business plans can vary greatly in terms of their breadth and depth. Without clear direction on what was being requested, respondents were left to their own interpretations. Based on our review of each of the proposals, all five contained elements of business plans. We therefore concur with Administration's assessment that none of the proposals be deemed non-responsive solely on the basis of a lack of or incomplete business plan. The quality of responsive submission business plans was assessed in relation to the evaluation criteria.

(b) When preparing the Arena RFP, Administration envisioned that Council would make the decision on the sale of the Winnipeg Arena. Therefore, the RFP was drafted on the basis of the evaluation and award being made in a public forum. The introductory section of the RFP stated:

> *"All Offerors are advised that their submissions will be included in any reports to be submitted to the City's Standing Policy Committee(s) and to Council, and as such there will ultimately be public disclosure."*

This clause was a source of confusion for proponents, as evidenced by a question raised at the open house and responded to in Addendum No. 2 to the Arena RFP. Proponents were reluctant to provide business plan information given the above statement that submissions would ultimately be disclosed publicly. Upon further review, Administration realized that the Winnipeg Arena property would have to be declared surplus to the City's requirements by Council and SPCPD would then have jurisdiction over the sale. The City's normal practice is for SPCPD to hold meetings regarding the sale of property in-camera, thereby keeping details of offers confidential. Maintaining confidentiality of real estate proposals is of utmost importance to the proponents as they often pertain to unique business opportunities, the disclosure of which may adversely impact a proponent's competitive advantage. Administration advised proponents through the issuance of an addendum that business plan information provided to the City would not be made public. Administration, however, did not retract the above caution regarding public disclosure and did not add the following wording which appears in the City's current standard RFP:

> *"To the extent permitted, the City shall treat all Proposal Submissions as confidential; however, the Bidder is advised that any information contained in any Proposal Submission may be released if required by City policy or procedures, or by other authorities having jurisdiction."*

This wording more clearly advises proponents that disclosure of submissions is not intended but may occur due to reasons beyond the control of the issuer of the RFP.

Prior to the SPCPD meeting to make the Arena RFP award, submission information and Administration's recommendation were leaked to the media. We believe that it is important that confidential information remain confidential; otherwise, the City's

reputation suffers and the private sector's desire to do business with the City of Winnipeg may diminish.

Recommendation 2

We recommend that the Real Estate and Materials Management Divisions ensure that submission requirements are explicit and that bid opportunities more clearly state the submission information that can or will be made public.

Management Response

The Department concurs with this recommendation and will continue to make every effort to ensure that submission requirements are explicit.

The Department has taken steps to include revised wording for future RFPs that clearly state within an RFP that submissions received will be treated confidential. The RFP will specifically note that information pertaining to offers/proposals requiring the approval of the Standing Policy Committee on Property and Development or the Standing Policy Committee on Downtown Development will be confidential, while offers/proposals requiring Council approval will be made public.

In all cases, the Department will first refer the matter to Council to have the property declared surplus to the City's needs prior issuing any RFP on the disposition of City property.

Responsiveness of Submissions

The first step in evaluating submissions is to determine if they are "responsive". A submission is responsive if it contains the complete submission requirements. According to the Arena RFP:

> *"The City of Winnipeg/Winnipeg Enterprises Corporation reserves the right to reject any Proposal not containing the complete submission requirements. It is the responsibility of the Offeror to ensure that all requirements identified in this section are contained in the Proposal submissions."*

A submission can be deemed non-responsive if it is "incomplete, obscure, or conditional, or contains additions, deletions, alterations or other irregularities. The Award Authority may reject all or any part of any Bid, or waive technical requirements if the interests of the City so require." Compliance with submission requirements is assessed on a pass/fail basis.

Administration's determination of responsive submissions was fair and reasonable.

Administration consulted with Materials Management and Legal Services personnel in assessing responsiveness of the submissions. The Arena RFP clearly states that the offer "must be fully endorsed, signed, sealed (if appropriate) and dated" and "failure to submit a properly endorsed deposit will negate the Offer to Purchase". Amongst other deficiencies, three of the proponents submitted neither an offer to purchase as prescribed in Schedule "N" to the RFP nor a properly endorsed deposit as required. These deficiencies alone were sufficient to deem the three submissions non-responsive. From our review of the five submissions and discussion with management and staff, we concur with Administration that only two of the five submissions were responsive.

Qualifications of the proponents were assessed next. This assessment was made in relation to the proponents' proposed development, anticipated financing arrangements and track record on

similar ventures. Qualifications were also assessed on a pass/fail basis, with only proponents that demonstrated they were responsible (experienced) and qualified remaining in the competition. The proponents of both responsive submissions were deemed experienced and qualified. Based on the submission information provided, we concur with Administration's assessment.

Evaluation of Responsive Submissions

Only qualified proponents with responsive submissions were eligible to continue through the final stages of the evaluation process. A committee from the PP&D Department including a land use representative and a transportation division representative from the City's Public Works Department evaluated the two responsive submissions in accordance with the bid evaluation criteria documented in Addendum No. 3 to the RFP. The three categories of 1) desirability of the proposed development, 2) socio-economic benefits and 3) financial terms were broken down into sub-categories consistent with those specified in clauses 11.6.4 – 11.6.6.

Administration's evaluation of the responsive submissions was fair and reasonable, but documentation of this process needs to be enhanced.

A bid comparison spreadsheet was used to document the scores for the two responsive submissions in each sub-category, following discussion and consensus amongst the evaluation committee members. While this spreadsheet was maintained and available for our review, no other documentation was prepared or maintained as to how scores were arrived at or why one submission scored higher than the other for a given sub-category. We asked two of the evaluation committee members to jointly review the bid comparison spreadsheet with us, recalling the rationale and support for the scores awarded. The explanations we received appeared reasonable; however, we decided to ask another evaluation team member to go through the same process with us. The individual's explanations were consistent with the first two committee members that we met with. Based on our review of documentation and interviews conducted, we found the evaluation process to be fair and reasonable. To ensure objectivity and transparency in the decision-making process, however, we believe complete documentation of the evaluation process and results is needed.

Recommendation 3

We recommend that the Real Estate Division's evaluation of submissions be fully documented including the rationale and support for the scores awarded.

Management response

The Department agrees with this recommendation and has implemented a more formal approach to documenting the evaluation of submissions.

The responsive submission that offered the highest price for the property was recommended by Administration and approved by the SPCPD.

The proposal that received the highest evaluation on the bid comparison spreadsheet was the proposal recommended by Administration. Of the two responsive submissions, this proposal also offered the highest price for the Arena property. The SPCPD, WEC and True North agreed with Administration's recommendation, resulting in the acceptance of Ontrea Inc.'s offer after final negotiations took place.

We found no evidence of the Mayor influencing the decision to sell to Ontrea Inc.

In response to conflict of interest allegations raised, we note that our audit did not find any evidence that the current Mayor had any influence over the City's decision to sell to Ontrea Inc. Administration's evaluation process was completed by May 27, 2004. The By-Election for Mayor was held on June 22, 2004 and Mr. Katz was sworn into office on June 24, 2004.

Due Diligence in the RFP Process and Sale

There were a number of opportunities for public input into future uses of the Winnipeg Arena.

Opportunities for public input into potential future uses of the Winnipeg Arena property began when a new arena was first contemplated for the former downtown Winnipeg Eaton's department store site. The possibility of re-developing the existing Winnipeg Arena building was eliminated upon signing of the master funding agreement between the Government of Manitoba, City of Winnipeg and TN Arena Limited Partnership in December 2001. This agreement made the City of Winnipeg legally responsible for the demolition of the Winnipeg Arena contemporaneous with the opening of the True North Centre. Opportunities for public input arose again when the Arena RFP was issued. As a result of the City and True North re-opening discussions regarding the demolition requirement, True North agreed to consider proposals for the re-development of the existing building subject to "non-compete" specifications outlined in the RFP. The RFP was made available to the public on the City's website and was announced in local and national newspapers. Prior to the decision to sell to Ontrea Inc. on July 9, 2004, there was a final opportunity for providing public input into the future use of the Winnipeg Arena land and building. This arose at the June 23, 2004 Council meeting when the property was declared surplus to the City of Winnipeg.

The timing of the RFP and sale of the Winnipeg Arena was reasonable.

The RFP for the purchase and/or re-development and use of the Winnipeg Arena property was issued on December 18, 2003 with a submission deadline of February 27, 2004. This timeframe was designed to allow for the RFP evaluation process, consultations with WEC and True North and presentation to the SPCPD. The submission deadline was subsequently extended to March 26, 2004 as announced in Addendum No. 2. The last event was held in the Winnipeg Arena on November 7, 2004 and the first public event was held in the MTS Centre on November 17, 2004. Plans for assessment and removal of hazardous materials at the Winnipeg Arena site are now underway with demolition, removal and site restoration processes to follow. This project is anticipated to take 18 months, which will coincide with the closing date of Ontrea Inc.'s offer to purchase and possession date, which is to be 18 months after the opening date of the MTS Centre. From the signing of the agreement that called for the demolition of the Winnipeg Arena to the time the site is cleared and ready for redevelopment in the summer of 2006, approximately five years will have passed. The timing of the Winnipeg Arena RFP process and sale was reasonable to ensure adequate time was available for the submission evaluation process and for the demolition process if required without having the building sit vacant for any extended period of time.

The City of Winnipeg is responsible for the demolition of the Winnipeg Arena under the master funding agreement with the Province and True North.

As previously noted, the master funding agreement called for the City of Winnipeg to cause the Winnipeg Arena to be demolished. The RFP therefore included the provision that the City would assume responsibility for this process and the associated costs if the successful proponent did not require the building.

Two factors that were considered in assessing the financial aspects of the responsive submissions include the estimated demolition costs (if the successful proponent did not require the building) and the appraised value of the land.

The estimated demolition costs were documented and supported.

PP&D's Civic Accommodations Division estimated the costs involved in demolishing the Winnipeg Arena building. The estimated demolition and removal of hazardous materials costs were each supported by a quotation from an independent contractor. The engineering fees were calculated on a percentage basis but were largely supported by an independent cost estimate. The remaining costs included estimated City landfill charges as well as other fees calculated on a percentage basis. These included finance and administration and contingencies.

The estimated market value stated in the RFP was supported by an appraisal and the accepted offer exceeded both this value and the value estimated by the complainants.

The arena property is zoned "C2" Commercial District, which is intended to regulate more intensive commercial sites that do not have a local or neighbourhood orientation. An estimated market value of the Winnipeg Arena property, as if vacant, was disclosed in the RFP. The value of $3,230,000 was supported by an independent appraisal of the property as of October 2002, assuming no change in zoning. The property was appraised assuming the existing arena had been demolished and the property cleared. The successful proponent's offer of $3,600,000 exceeded this estimate. Per square foot, Ontrea's offer exceeded all comparative historical and active listings for the area identified in the appraisal, with the exception of one. This sale was of a considerably smaller parcel than the arena property. The complainants alleged that the arena property was worth $4,000,000 assuming there were 8 acres at $500,000/acre. There are actually 4.946 acres in this parcel. Ontrea Inc.'s offer was for $727,860/acre. The accepted offer exceeded the estimates of both the appraiser and complainants on a per acre basis.

The type of security received as a deposit when selling property should have no bearing on when the deposit is realized.

The submission requirements called for offers to be "accompanied by a certified cheque or an equivalent security in the form of a Letter of Credit, Bank Draft, Money Order or other Note satisfactory to the City". Although there is an unusually long period between the Arena RFP award date and the offer's closing and possession date due to the demolition requirements, it became apparent from our discussions with PP&D personnel that the successful proponent's deposit would be realized upon at different times, depending on the type of security. To ensure all proponents are treated fairly, deposits should be realized upon acceptance of the offer regardless of the type of security.

Recommendation 4

Deposits should be realized upon acceptance of the offer regardless of the type of security, unless otherwise stipulated in the RFP.

Management response

The Real Estate Division concurs with this recommendation and will no longer accept Letters of Credit in order to ensure that all proponents are treated fairly. Deposits will be cashed as security upon approval of the Offer by the SPCPD.

There are opportunities to improve the communication of RFP results.
Until the submission deadline, a Contracts Officer specified in the RFP is available to receive questions regarding the RFP including the submission requirements. To ensure all potential proponents have the same information, responses are provided through the issuance of an addendum to the RFP.

Consistent with practices in other cities and non-real estate bid opportunities managed by the City of Winnipeg's Materials Management Division, proponents of real estate proposals are not advised if their submissions were non-responsive during the evaluation phase. To do so would be disruptive to the process. A representative of an unsuccessful Arena RFP proponent felt that they should be advised of any deficiencies so that they could be corrected. The RFP clearly states:

> *"Adjustments/alterations to the Offers will not be permitted during the evaluation period in which the proposals are being considered by the City of Winnipeg and the Winnipeg Enterprises Corporation".*

The "open for acceptance" date, which proponents are required to acknowledge, give them certainty as to when results of the evaluation process can be expected.

After an award is made, the City of Winnipeg Materials Management Division normally discloses the name of the successful proponent and the value of the bid on their website. This practice is consistent with other Canadian cities for non-real estate transactions. We note that since the Winnipeg Arena was marketed using Materials Management's RFP process, the name and bid of the successful proponent was posted on Materials Management's website contrary to the Real Estate Division's practices regarding the public disclosure of the successful bidders. In the normal course of business, Winnipeg's Real Estate Division does not publicly disclose the name of the successful proponent or consideration received from the sale of real estate. This practice is as a result of the SPCPD discussing the proposals and making decisions in-camera. Other Canadian cities do make such information public for real estate sales. For transparency and consistency, the Real Estate Division should disclose the names and bids of successful proponents for real estate transactions once the agreements have been executed. Proponents should be advised of this practice within the offering document.

For non-real estate opportunities, Winnipeg's Materials Management Division advises proponents after the award as to why their submissions were non-responsive or unsuccessful. This information is provided upon request by the proponent as well as when it appears the proponent is likely to engage in another City bid opportunity and encounter similar difficulties. The decision-making authority for most real estate transactions (SPCPD) reviews Administration's recommendations and makes awards in-camera. Therefore, the Real Estate Division's practice has been to not communicate any information to the unsuccessful proponents about their submissions. While we understand the need for the review and discussion to take place in-camera due to the confidential nature of the submissions, we believe that the Division should debrief unsuccessful proponents. The intention of the debriefing is to advise the proponent why their submission was not selected. Debriefing helps proponents learn from their mistakes, recognizes the effort they put into their submissions and encourages them to submit better proposals in the future. Debriefing helps the government gain the confidence and trust of the proponents and enhances the integrity of the process. In our research we found that the Management Board Secretariat of the Government of Ontario recommends the practice of debriefing unsuccessful proponents upon their request. We also found that many Canadian cities provide such debriefings.

We believe when real estate is sold through a competitive process where price is not the only evaluation criteria, a process should exist for unsuccessful proponents to be able to obtain information in confidence as to why their submission was not selected. This information should be restricted to the evaluation of the proponent's own submission. No information regarding other proponents or their submissions should be disclosed. The Real Estate Division should develop a debriefing process for consideration and approval by SPCPD. Had this type of communication taken place with unsuccessful proponents of the Arena RFP process, considerable time and effort in conducting this review could have been saved.

Recommendation 5

The Real Estate Division should develop a process to disclose to the public the name(s) of the purchaser and price paid for real estate transactions. In consultation with Legal Services, the Real Estate Division should also develop a process to debrief unsuccessful proponents, upon their request, as to why their submission was not selected. These proposed changes with respect to the disclosure of information should be reported to the SPCPD and Council for their consideration and approval.

Management response

Public Disclosure:

The Department agrees that a process should be examined for disclosing to the public the name(s) of the purchaser and the price paid for real estate transactions. The process for disclosing to the public the name(s) of the purchaser and the price paid for real estate transactions must reflect the fact that this should only occur once the transaction has been completed, i.e. title has transferred in the name of the purchaser, otherwise the completion of the transaction could be put at risk.

The Department will, in conjunction with Legal Services, examine and prepare recommendations for consideration by the SPCPD in this regard. It should be noted, however, that real estate transactions are typically different than procurement practices under the Materials Management Policy, and therefore must be treated differently. Real estate matters are commonly subject to a number of conditions that must be subsequently satisfied prior to closing of the transaction. As a result, the transaction has not actually been concluded or finalized until these conditions are ultimately satisfied. In some instances closure of the transaction can exceed a year. Releasing the names and value of the transaction upon approval by the SPCPD is therefore premature.

Debriefing Unsuccessful Proponents:

As noted in Recommendation 2, the Department will make every effort to ensure that submission requirements are clear and explicit. All RFP's, real estate tenders and bid opportunities will therefore contain specific information on the requirements that are necessary for the determination of a responsive and valid bid. The objective is to produce clear, fair and equitable conditions for all proponents and should eliminate the requirement for debriefing unsuccessful proponents. The Department will however work with Legal Services to develop a process for providing feedback to unsuccessful proponents that specifically request this information.