

April 14, 2021

Department of Finance and Treasury Board  
Province of New Brunswick  
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**Attention:** Travis Bergin, P.Eng.  
Associate Deputy Minister  
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**Subject: Final Fairness Report – Exclusive Cannabis Retail Request for Proposal**

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**Fairness Commissioner:** Greg Dadd, Principal, Procurement and Fairness Advisory Services

## Introduction

### Project Background

The Province of New Brunswick (“Province”) issued an open Request for Proposals (“RFP”) Number 3100027-20 on November 14, 2019 to prospective Proponents to submit proposals for the sale of the rights to operate recreational cannabis retail, wholesale/distribution and e-commerce in the Province of New Brunswick on an exclusive basis over a period of 10 years with two (2) five-year renewal periods subject to meeting certain criteria and at the option of the Province.

### Fairness Services

The Province’s Department of Finance and Treasury Board (“Department”) engaged OPTIMUS SBR (“OSBR”), as Fairness Advisor to act as an independent and impartial third party to observe, monitor, provide oversight and report on the procurement process for the Privatization of Retail Cannabis Project (“Project”). Our mandate was to confirm that the procurement process undertaken by the Department demonstrated openness, fairness, consistency and transparency throughout.

The scope of our services and deliverables included the following:

- a. Conduct a review of all communications and documentation issued to proponents including all procurement documents and addenda identifying any issues related to fairness.
- b. Test the fairness and merit behind key decision-making activities by asking appropriate questions.
- c. Review standards for handling of documents, security of documents, procedures for clarifying or rectifying errors by the Province and/or proponents.

- d. Ascertain whether each proponent was provided with access to the same information as other proponents for the purposes of responding to the various procurement stages.
- e. Ascertain whether evaluation criteria were established in advance of evaluations being undertaken.
- f. Ensure that adequate measures for avoidance of conflict of interest, unfair advantage, "ethical walls" (if required) and confidentiality were established and adhered to in the procurement process, as well as procedures for resolving issues which may arise during the procurement process.
- g. Review the evaluation criteria proposed for the RFP and determine that they were reasonably and rationally connected to the stated project objectives.
- h. Review all responses submitted by proponents to ensure an adequate familiarity with the terms of the responses in order to undertake the fairness review.
- i. Attend and monitor all required briefing sessions, presentations, interviews and commercially confidential meetings ("CCMs").
- j. Provide oversight of the evaluation, to ensure that the process for selecting the top-ranked proponent was open, fair and equitable, all proponents were treated consistently in the evaluation process and that the evaluation criteria and procedures were applied in accordance with the RFP.
- k. Meet with Evaluation Committee members as required to discuss their participation in the procurement evaluation process.
- l. Monitor the activities of the Evaluation Committee to ensure that it follows and adheres to its stated approach in the procurement documents monitor.
- m. Report immediately to the Department's Associate Deputy Minister on any known or perceived contraventions of the requirements established in the applicable RFP and other related policies of the Province, that may have negatively impacted on the fairness or transparency of the procurement process.

Optimus SBR was engaged for the duration of the project, and therefore was able to observe and monitor the entire procurement process prior to the issuance of the RFP to the final evaluation and designation of the top-ranked Proponent to ensure that fairness was maintained throughout.

## **Overview of the Procurement Process**

Prior to the issuance of the RFP, the Province solicited information from potential proponents through a Request for Expressions of Interest (REOI). THE REOI helped to both generate and assess interest of existing and prospective recreational cannabis retail operators. It also helped shape the strategy and content of the RFP.

Following final development and approval of the procurement strategy, an RFP (No. Number 3100027-20) for Exclusive Cannabis Retail in New Brunswick was issued by the Department on November 14, 2019.

On or prior to the Submission Deadline of 1:30 PM (AST) January 10, 2020, a total of eight (8) submissions were received in the manner designated by the RFP.

The Proposals were evaluated based on a four-stage process:

#### Stage 1a: Compliance with Mandatory Submission Requirements

During this Stage, the Mandatory Submission Requirements of the RFP were reviewed by Service New Brunswick's Strategic Procurement Division to ensure that all were met subject to the verification and clarification process set out in Section 3.3.4. Where a form or submission requirement was indicated as mandatory, failure to include that completed form or submission requirement, following a designated Rectification Period, resulted in disqualification from the RFP process. If all the Mandatory Submission Requirements were met, the Proposal moved to the next stage.

#### Stage 1b - Rated Criteria Evaluation

The Province evaluated each compliant Proposal on the basis of the rated criteria as set out in Section C of the RFP Particulars (Appendix D). Proponents needed to achieve a minimum of 60% of the points available with respect to each of the following categories: Financial Offer, Proponent Experience and Qualifications, and Market Pricing. Proposals that failed to meet the stated threshold were disqualified and not evaluated further.

The evaluated scores for each Proponent were based on consensus agreement by an Evaluation Committee comprised of business and technical representatives from the Province. All members of the Committee were required to sign both a separate Confidentiality Agreement and a Conflict-of-Interest Declaration before receiving the Proposals for evaluation.

#### Stage 2 – Due Diligence, Dialogue and Best and Final Offer (“BAFO”)

During this Stage, the Proponents that met the minimum thresholds after completion of Stage 1b were given the opportunity to meet with the Evaluation Committee and other representatives from the Province in a commercially confidential environment. The objectives were to increase the understanding of Proponents of the Province's requirements and validate or reject assumptions made by Proponents in their initial submission. These CCMs, conducted from February 24-27, 2021, were attended and monitored by the Fairness Advisor to ensure each Proponent was provided equal access to information and an equivalent time allocation to ensure fairness of treatment.

Following the meetings and a final round of written clarification questions and responses, each Proponent was given an equal amount of time (July 8-29, 2020) to adjust and resubmit their Proposals on a BAFO basis. The Evaluation Committee completed a consensus evaluation of the resubmitted Proposals and determined the top-ranked (highest-scoring) Proponent who received an invitation to enter into negotiations with the Province.

#### Stage 3 – Final Negotiations and Agreement Execution

Subject to the process rules contained in the Terms and Conditions of the RFP Process (Part 3), the terms and conditions found in the Form of Agreement (Appendix A) formed the basis for commencing negotiations between the Province and the top-ranked Proponent.

## Results of the Procurement Process

Of the eight (8) submissions received by the Submission Deadline, four (4) Proponents passed Stage 1a, the Mandatory Submission Requirements, and following the Stage 1b consensus evaluation, all met the overall minimum 60% threshold required to advance to Stage 2 and deemed eligible to participate in the BAFO process.

After completion of the consensus evaluation of the BAFO submissions, the top-ranked Proponent was invited to enter into negotiations with the Province.

On March 19, 2021, all Proponents who had advanced to Stage 2 were notified that the Provincial Cabinet had decided to discontinue the process. As a result, the RFP was cancelled.

## Observations and Findings Relevant to Fairness Principles

Procurement Principle	Measures Taken in this Procurement Initiative
<b>Openness</b>	<ul style="list-style-type: none"> <li>• RFP documents contained no barriers to prospective proponents.</li> <li>• RFP was posted on the New Brunswick Opportunities Network (NBON) Web Portal site.</li> <li>• Response period allowed sufficient preparation time for proponents, including Questions &amp; Answers.</li> </ul>
<b>Fairness</b>	<ul style="list-style-type: none"> <li>• RFP submission and technical requirements contained no bias to any prospective proponents.</li> <li>• All proponents were treated equitably with regard to access to information, communication and response to questions.</li> <li>• Evaluation criteria and process were matched to RFP requirements.</li> <li>• RFP submissions deemed non-compliant (i.e. not meeting the Mandatory Submission Requirements) followed appropriate process in accordance with the RFP.</li> <li>• Evaluation Committee efforts were diligent and consistent.</li> <li>• Sufficient time was provided for Individual scoring by Evaluation Committee members and scoresheets were received by Strategic Procurement prior to consensus evaluation sessions.</li> <li>• Consensus evaluation and scoring was based on the written submissions in accordance with the evaluation criteria outlined in the RFP and BAFO documents.</li> <li>• Final selection of the top-ranked Proponent followed predetermined and objective selection criteria.</li> <li>• Fairness Advisor attended all meetings with proponents and the Evaluation Committee consensus sessions.</li> </ul>

Procurement Principle	Measures Taken in this Procurement Initiative
<b>Consistency</b>	<ul style="list-style-type: none"> <li>• Processes stated in RFP documents were followed throughout.</li> <li>• Evaluators were trained on the process, the criteria and their responsibilities.</li> <li>• Similar information in proposals was scored in a similar manner.</li> <li>• Proposals were scored consistently against pre-determined criteria and the evaluation teams reached a consensus score through vigorous group discussion for each criterion and for each submission.</li> </ul>
<b>Transparency</b>	<ul style="list-style-type: none"> <li>• Evaluation criteria and process were documented clearly in the RFP.</li> <li>• Draft Terms and Conditions document was included in the RFP.</li> <li>• Proponents had direct access by e-mail to the designated Contact Person to submit questions related to the RFP – both administrative and technical.</li> <li>• Each evaluator involved in the evaluation process attended an orientation session and signed an agreement to preserve confidentiality and to identify any actual or potential conflict of interest.</li> <li>• Consensus evaluations and scoring were documented in official records and signed-off by all evaluators.</li> <li>• Fairness Advisor attended all briefings, Commercially Confidential/BAFO Meetings, and evaluation sessions to observe the procurement process, help facilitate robust discussion and verify results.</li> </ul>

## Fairness Attestation

As the Fairness Advisor for the procurement process for the Privatization of Retail Cannabis Project, Optimus SBR confirms that from our review of the procurement documents and observance of the related activities, this procurement was conducted in accordance with the process set out by the Province of New Brunswick in the Project RFP. In our opinion, the principles of openness, fairness, consistency and transparency were properly established and maintained throughout the procurement process and all Proponents treated consistently in the evaluation process. Furthermore, we are not aware of any procurement issues that emerged during the process that would have impaired the fairness of this initiative.

Optimus SBR appreciated this opportunity to contribute to the work of the Province of New Brunswick. We particularly wish to note our appreciation for the cooperation, diligence and professionalism of all of the project and procurement staff representing the Province during the course of this engagement.

Optimus SBR




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Fairness Advisor  
 Greg Dadd  
 Principal, Procurement and Fairness Advisory Services