

June 21, 2024

City of London
300 Dufferin Avenue
London, ON N6A 4L9

Attention: Tara Pollitt, Deputy City Manager, Legal Services

Re: Unsolicited Proposal – Centralized City Hall on Market Square (the “Project”)

It is our understanding that a question has been raised as to whether the unsolicited proposal submitted by Farhi Holdings Corporation (“**FHC**”) for the above noted project was compromised when we submitted a summary/overview of the unsolicited proposal to the Strategic Priorities and Policy Committee (the “**SPPC**”), together with a request for deferral of the item, in response to a staff report to that committee.

The FHC unsolicited proposal for the Project was submitted through the proper process, meets the criteria established for an unsolicited proposal, and in accordance with the City’s policies should be subject to the appropriate review and consideration by the City.

TIMELINE

After many months of working on a proposal, undertaking background research, planning work, financial analysis, conversations with stakeholders and architectural and design drawings, FHC submitted their unsolicited proposal for the City Hall on the Market Square Project on 1:43am, Monday, June 10, 2024. At the time of submission there was no RFP process underway relating to the expansion of City Hall onto the adjacent lands. The unsolicited proposal was confirmed to have been received by City of London automated email at 7:12am on Monday, June 10, 2024.

At approximately 7:52am also on June 10, 2024 City Council and Senior Administration were made aware that the unsolicited proposal had been submitted. At approximately 8:01am on June 10, 2024 correspondence was received from the City that again acknowledged receipt and gave the unsolicited proposal submission number UP2024-12. At 8:53am on June 10, 2024, the Senior Manager, Procurement and Supply sent correspondence to FHC’s consultant confirming that the proposal had been forwarded to Senior Leadership, as per the established process.

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At the time of submission of the unsolicited proposal there was no active or anticipated competitive procurement process underway at the City.

FHC was surprised to learn on Wednesday, June 12, 2024, that a report was released to the City's SPPC recommending a procurement process be undertaken to expand City Hall onto the abutting lands (defined as the City Hall campus). Again, it is noteworthy that FHC's unsolicited proposal for locating City Hall in a different location was submitted before any competitive process being considered or recommended by City administration.

UNSOLICITED PROPOSALS

The Procurement and Supply Policy posted on the City's website clearly requires that an unsolicited proposal is to be a new or innovative idea. It is confirmed that the City **will** consider unsolicited proposals from any individual or organization. This would include FHC. It is clear, however, that the proposal cannot be in response to a current or anticipated request for proposal or any City-initiated solicitation such as a RFP process. FHC's unsolicited proposal clearly stated that it was NOT being submitted in response to any existing or anticipated competitive procurement process and no competitive procurement process was underway.

SUBMISSION

At the time of the submission of FHC's unsolicited proposal no information or documentation was provided or before City Council with respect to the City approving the issuance of an RFP to expand City Hall onto the abutting lands. As a result, the City's requirements for the submission of FHC's unsolicited proposal have been met as set out in more detail below.

CITY CONSIDERATION OF THE UNSOLICITED PROPOSAL

The FHC unsolicited proposal meets the requirements of the City's policy for the reasons set out below and is appropriately before the City for review and consideration.

The City of London in accordance with its unsolicited proposal policy, will consider proposals that: (i) satisfy a City of London need or problem; (ii) are innovative or unique opportunities to improve service; (iii) demonstrate significant value or savings, or mitigate risks; (iv) have significant revenue generation or economic development potential.

The FHC unsolicited proposal resolves a City need or problem with respect to the space needs of City Hall. The unsolicited proposal is innovative, will result in improved City service, results in a significant savings to the City and presents a significant economic development potential for the downtown core. The FHC unsolicited proposal meets all of the above criteria identified by the City for consideration of the proposal.

However, FHC was surprised to learn that less than one (1) week after the submission of its unsolicited proposal a report was being brought forward by City Staff to the June 18th SPPC meeting recommending that a competitive procurement process be initiated with respect to the redevelopment of the City Hall Campus site. If Council were to proceed with an approval of this recommendation, it would by definition defeat the opportunity brought forward through FHC's unsolicited proposal. Again, this competitive process was not underway nor any direction given to the City's senior administrative staff to engage in and initiate the competitive procurement process at the time of the submission of FHC's unsolicited proposal.

FHC submitted a letter, through its consultant, requesting that City Council defer the competitive procurement process relating to the expansion of the existing City Hall campus. The only purpose of the deferral request is to allow for the FHC unsolicited proposal to progress through and be given proper consideration under the formal unsolicited proposal process. FHC's consultant did not speak at the SPPC meeting and specifically did not make any presentation, representations or respond to any questions from Council and/or City staff at the SPPC meeting on June 18, 2024 with respect to FHC's unsolicited proposal.

It has recently been brought to our attention that our Client has been advised that as a result of FHC's letter seeking the deferral of the procurement process, including the summary of the proposal, FHC has tainted or precluded the review by Council of the unsolicited proposal. Respectfully, there is no basis upon which to preclude the City's review of the unsolicited proposal.

The information presented before the SPPC was merely an overview of the proposed Project and again no decision or direction being sought by Council on the unsolicited proposal. The only request being made in writing was that Council defer moving forward with a decision to expand on the City Hall lands and defer engaging in the procurement process for such expansion until such time as the unsolicited proposal could be reviewed and considered in accordance with the usual process for such unsolicited proposals.

Currently, to our knowledge there is no other proposal before City Council and no procurement process underway as it relates to the subject matter of the FHC unsolicited proposal.

No information was presented in its deferral request that would in any manner affect Council's objectivity from evaluating the FHC proposal on its merits and directing City staff to investigate the proposal.

We understand that City Council may be concerned about the risk of there being an allegation that FHC's unsolicited proposal was compromised due to the overview of the Project being set

out in the request for deferral. There is no basis for such a concern. The letter submitted to SPPC was very clear that it was not asking for evaluation of the unsolicited proposal, but simply requested a deferral of the procurement process to allow the unsolicited bid submitted to proceed through the City's normal review process in the appropriate manner and be given fair review and consideration.

The City's Procurement By-law defines an "unsolicited proposal" as a written application for a new or innovative idea submitted to the City on the initiative of the offeror for the purpose of obtaining a contract. The Procurement By-law confirms that unsolicited proposals received by the City are to be referred to the Senior Manager, Procurement Supply, or delegate for review and requires that any procurement arising from the proposal be subject to the Procurement By-law. There is nothing set out in the Procurement By-law prohibiting FHC from seeking a deferral request of a matter regarding the City engaging in a procurement process to allow the opportunity for its unsolicited proposal to be subject to the appropriate review and scrutiny of the City in accordance with its normal process.

A comment has also arisen with respect to the City's concern about the Collingwood Judicial Inquiry restricting the review of FHC's unsolicited proposal. With respect such comment is unfounded and is a misinterpretation of that Inquiry. The Collingwood matter related to sale of the Town's interest in its local electricity distribution company (the "LDC"). The Town's elected representatives sat on the board of the LDC or its holding corporation. The purpose of the inquiry was to look into the sequence of events leading to the sale, request for proposal process, fees and benefits paid in relation to the sale.

The findings of the Collingwood judicial inquiry relating to unsolicited proposals recommended that the procurement by-law should specify the conditions for unsolicited proposals. It also recommended that prior to acceptance of an unsolicited proposal the marketplace be notified that it plans to proceed with the unsolicited proposal. The recommended notification is suggested to be in such a manner that it allows suppliers to compete and enable the municipality to determine if another supplier has a superior proposal. Prior to acceptance of an unsolicited proposal the marketplace should be notified in such a manner that allows for competition and for the municipality to determine if another supplier has a superior proposal.

FHC has no concerns with the approach and recommends that the City follow the recommendations arising from the Collingwood Judicial Inquiry¹ relating to the review of the FHC unsolicited proposal set out above. Such approach would result in fair consideration of the FHC unsolicited proposal and at the same time give the City an opportunity to confirm that there are no other superior proposals. All of these steps can be met by the City in the case of the FHC unsolicited proposal.

NO COMPROMISE OR PREJUDICE TO REVIEW THE UNSOLICITED PROPOSAL

Again, there is no prejudice to the review of FHC's unsolicited proposal arising from FHC's request for deferral of the procurement process associated with the redevelopment of the City Hall property. Furthermore, there is no prejudice arising from including the summary of that proposal in the letter requesting this deferral. In keeping with the principles set out in the Collingwood judicial inquiry it is appropriate for the City to proceed with the review of FHC's unsolicited proposal.

Also, there are no concerns with the *Municipal Conflict of Interest Act* as no councillors have a pecuniary interest in the FHC unsolicited proposal.

Lastly, there is no reasonable apprehension of bias arising from the deferral request presented by FHC to City Council, or the summary of the proposal included in the referral letter. The mere fact that a summary of the proposal was presented does not give rise to an apprehension of bias and such interpretation is supported by the case law. City Council has not been presented with the comprehensive proposal nor City staff review of FHC's unsolicited proposal and as a result would be impossible to take the position that City Council can no longer make an informed, impartial decision on the merits of FHC's unsolicited proposal.

The Supreme Court of Canada decisions in [*Old St. Boniface Residents Assn. Inc. v. Winnipeg \(City\)*](#), and [*Save Richmond Farmland Society v. Richmond \(Township\)*](#) have held that a reasonable apprehension of bias will not arise if Council members have not irrevocably made up their minds before considering a matter. These cases involve Council decisions on matters of policy.

In the case of [*McLaren v. Castlegar*](#), where Council was exercising an adjudicative function, the British Columbia Court of Appeal found that Council was required to comply with stricter standards of fairness. Council had a duty to be impartial. However, the Court qualified the

¹ [Transparency and the Public Trust Report of the Collingwood Judicial Inquiry: Complete Report \(collingwoodinquiry.ca\)](https://collingwoodinquiry.ca)

meaning of “impartiality” by recognizing that it would be unreasonable to expect Council members to have no knowledge of a particular situation prior to its consideration, especially since municipal councils determine their own agenda. The Court stated that a Council member can have an “inkling” as to the appropriate disposition before considering a matter, as long as they remain completely open to a fresh evaluation of the evidence and submissions presented to them.

In the *McLaren* case Council made a resolution requiring the building owner to remove buildings that were deemed hazardous, unsafe and a nuisance. This decision was made following the Mayor making a statement in the newspaper that “its’s a pretty dilapidated building that we’d really like to see removed.” The Court found that the Mayor’s comments in this situation did not violate the duty of impartiality because the comments did not indicate that he had already determined how they would vote on the resolution. Their remarks did not indicate that he was unwilling to reassess the matter.

SUMMARY

The FHC unsolicited proposal was appropriately submitted at a time when there was no competitive process underway. The FHC unsolicited proposal meets the requirements of the City’s procurement policy and requirements for submission of an unsolicited proposal. The request for deferral, and the summary of the proposal in the deferral letter, does not result in any conflicts or reasonable apprehension of bias for the reasons set out in more detail above.

We respectfully request that the City review the FHC unsolicited proposal in accordance with its applicable policies and procedures.

We are available to respond to any questions you may have with respect to this matter.

Yours very truly,

Siskinds LLP



e-signature

Per:

Paula Lombardi
Partner

