

## Event Centre Update

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Recommended by:	Chief Administrative Officer

## Report Summary

This report provides an update on the status of the Greater Sudbury Event Centre Project at the Kingsway Entertainment District.

## Relationship to the Strategic Plan, Health Impact Assessment and Community Energy & Emissions Plan (CEEP)

This report addresses the following strategic objectives outlined in the CGS Strategic Plan 2019-2027:

- Economic Capacity and Investment Readiness.
- Asset Management and Service Excellence.

From the perspective of CEEP, the project respects the objective to minimize the production of greenhouse gases in the operation of new assets.

## Financial Implications

Expenditures identified in the initiatives in this report will be funded from the Event Centre Project capital account, which contains sufficient funds to support the work.

## Background

The City of Greater Sudbury Event Centre at the Kingsway Entertainment District continues to follow a path that will realize Council's direction and vision for the facility. The overall project continues to represent one of the largest investments that Greater Sudbury has ever seen and will be a landmark development for the next several decades.

Staff continue to advance work on the Event Centre as directed by Council through Resolution CC21-227 on July 14, 2021.

## Shift to Progressive Design Build Procurement Process

The City issued an Addendum to the Event Centre Design-Build Request for Proposal (RFP) on April 8. The amendment changes the method of the procurement from the original Design-Build to a Progressive Design-Build (PDB) process.

The procurement process began in April 2017 with the issuance of a Request for Pre- Qualification of Design-Build Teams (RFSQ) which produced three short-listed teams for the RFP process. The next step, the issuance of the Design-Build RFP, was delayed until January 2022 due to the impacts of the COVID-19 pandemic and the legal challenges related to property rezoning. During that five-year period, market conditions in the construction industry appear to have shifted dramatically.

In the last quarter of 2021, staff contacted each of the shortlisted firms and confirmed their interest in continuing to participate in the RFP. Despite this, following the RFP release on January 28, 2022, through the routine process steps following the RFP's release to address Proponent questions and holding structured commercially confidential meetings with Proponents, several requests to revise the procurement process were received. In addition to typical requests about various aspects of the Bid Solicitation Documents, this process included requests from Proponents to consider changing the form of the Proposal submission to acknowledge current market risks, particularly with respect to inflation effects, supply chain reliability and labour availability.

The City consulted with legal and industry advisors, including the Fairness Monitor that has been engaged in this procurement process since it started. These advisors confirmed that the construction industry is currently resisting fixed-price contracts, such as Design-Build processes, as a result of current market risk levels. Several recent examples were identified where Proponents have been unwilling to assume the risks associated with a fixed-price contract early in the design process and, in some cases, have been declining to participate in the RFP altogether. The Project Team determined that there was a significant risk that this would reduce the potential for the City of Greater Sudbury to achieve its objective of constructing a new event centre to replace its current 70-year old community arena.

The Project Team, with the assistance of the legal and industry advisors, identified a shift to alternative procurement methods that use a different approach for managing these market risks. A relatively new procurement process, known as Progressive Design-Build ("PDB"), manages market risks by increasing the level of engagement between the Preferred Proponent and the client (in this case, the client is the City of Greater Sudbury). With PDB, a multi-step collaborative process is used to determine a final, approved design and associated cost. These steps provide additional checkpoints for City Council to evaluate the Proponent's approach for constructing the Event Centre and, if necessary, make adjustments that maintain an appropriate balance between the building's features and the project's anticipated construction cost. At predefined steps in the PDB process, the Preferred Proponent and the City review design features and cost estimates before proceeding to finalize the design and its cost. This approach recognizes current market conditions affecting materials and labour availability and increases the assurance the City will achieve best value from its competitive procurement process.

Therefore, the Project Team and Large Project Steering Committee determined that a shift from a fixed-price contract to a PDB will ensure a competitive procurement and achieve best price and value for the municipality. A detailed description of the Progressive Design Build process is attached as Appendix A.

At the July 14, 2021, Council Meeting the major decision points of Council were outlined including the confirmation of final budget based on Design/Build RFP Proposals (CC2021-227). The shift to the PDB process maintains this decision point and provides a multi-step collaborative process prior to finalizing the design and cost. As part of the submittals for the PDB Proposal each of the Proponents is required to submit

a cost estimate. Using this cost estimate, and the estimates for the remaining work, Council will be presented a final budget for the project. If approved, the design of the Event Centre will commence. The design development will continue with regular updates on costs and conclude with design build proposal with a target price and schedule. If the target price is within the established budget the design build agreement will be signed. If the target price is above the budget, staff will report back to Council for further direction. This is consistent with how all other capital projects are delivered.

### **OPP Investigation Concluded**

In late May, the City was notified by the Greater Sudbury Police Service that the Ontario Provincial Police (OPP) Anti-Rackets Branch, Investigation and Support Bureau has concluded its investigation into potential municipal corruption regarding the Kingsway Entertainment District development.

The investigation was requested by motion of City Council on September 14, 2021, as a result of allegations made by a City Councillor.

Investigators concluded there is no evidence to support the belief that the Councillor was influenced to vote in favour of the project in 2017, as that Councillor abstained from the vote and did not report any attempted offer of benefit in exchange for his vote.

The police investigation into this incident is concluded, thereby resolving a project risk.

### **Minnow Lake Restoration Group Lawsuit**

On April 11 a three-member Divisional Court panel heard arguments on the Minnow Lake Restoration Group's judicial review application. The Court reserved its decision and a timeline for publishing a decision has not been provided. Consistent with its successful results in all previous court actions related to this project, the City is confident in a successful conclusion to this lawsuit.

### **Partnership Meetings and Project Completion Agreement Negotiations**

The KED partners, which include Gateway, Genesis Hospitality, the Developer, and the City, continue to meet on a weekly basis. As per the Cost Sharing Agreements, these discussions include scheduling, expenditures, and detailed design information as well as updates on individual project progression. Since January the major discussion item has been the terms of the Project Completion Agreement (PCA). As outlined in the January report to Council the Project Completion Agreement that will obligate each party to construct and operate their respective facility. The PCA requires Council approval and will be conditional on Council Approval of project budget.

Based on a Council request, the partners are also working with regional representatives of the Municipal Property Assessment Corporation (MPAC) to obtain a preliminary assessment estimate for the KED development. This information is expected to be available in the next several weeks.

### **Venue Operator Selection**

As indicated in previous updates, there are three stages to the venue operator selection: a Request for Prequalification (RFPQ), a Request for Proposals (RFP), and Contract Negotiations. The RFPQ closed on December 7, the RFP closed on March 16, and the following two firms submitted bids:

- ASM Global
- OVG Facilities, LLC

These are the two major North American venue operators and each has significant operational experience and a large network from which to draw both expertise and, once the facility is operational, booking opportunities to bring events that activate the facility and generate the expected economic activity within our community.

The proposals are currently being evaluated. Once selected, the Venue Operator will provide input on the design development to ensure the operational effectiveness and efficiency of the new facility. As indicated in the July 14 Council Resolution, the award of the Venue Operator contract is one of the decision points of Council.

### **Storm Water and Intersection Improvements**

The Storm Water Management Report and the Interim Storm Water Management Report have both been submitted to the City. The Interim Storm Water Management Report outlines how storm water management will be undertaken during construction, specifically during site grading. Council Resolution CC2022-116 requested a report on storm water management at the KED site and is part of the June 16, 2022, Council Meeting agenda.

The detailed design for the Kingsway intersection improvements is ongoing.

### **Costs to Date**

The following table is a summary of costs to date for the Event Centre.

<b>Expense</b>	<b>Total</b>	<b>City Share</b>	<b>Cost Shared By Others</b>
<b>Feasibility and business case, site evaluation</b>	\$353,639	\$353,639	-
<b>Integrated site design</b>	\$595,988	\$258,680	\$337,308
<b>Detailed site design, engineering, professional fees, external legal fees</b>	\$3,077,178	\$2,397,007	\$680,170
<b>Salaries</b>	\$624,909	\$624,909	-
<b>Basketball floor, related equipment</b>	\$259,668	\$129,834	\$129,834
<b>Total</b>	<b>\$4,911,381</b>	<b>\$3,764,069</b>	<b>\$1,147,312</b>

Expense	Total	City Share	Cost Shared By Others
Percentage of total \$100 million budget	-	3.76%	-

The cost summary above includes invoices received to date and invoices issued to date. There is considerable work ongoing and additional invoices expected. There are also obligations to reimburse partners for their costs as per the cost sharing agreement where the invoices have not yet been received. At the end of November 2021, the Site Grading Contract was paused within days of the scheduled start date as outlined in the January 11 Council Report. In delaying the Contract, the Contractor, Bot Engineering & Construction Ltd. (Bot Construction), requested compensation for the costs incurred, standby for labour and equipment, and other ongoing costs until such time that other work could be secured, or the contract started. There was a negotiated settlement with Bot Construction to minimize these costs and the risk of potential litigation. The cost of this settlement to date is \$1,100,000, of which \$800,000 is credited to future site work. These costs are shared by the partners as per the cost sharing agreement, as have all other previous delay costs. The City's share of the settlement to date is \$666,600, with \$484,800 of this credited to future work. With this settlement Bot Construction maintains the unit prices from November 2021 with CPI adjustment and is available to start upon notification.

### Conclusion and Next Steps

Staff continue to follow the direction Council provided last July to deliver the project without further delay. In collaboration with the corporation's development partners steps have been, and are being, taken to mitigate risk wherever possible and coordinate work so that planned outcomes are achieved. The following is a summary of work completed since the January Council update:

- Issued the Design-Build RFP in January.
- Issued the Venue Operator RFP in January.
- Started negotiations with the Partners on terms for the PCA ongoing.

The following is a summary of the next steps:

- Council approval to start negotiations with the preferred Venue Operator RFP (June 2022)
- Council approval of the PCA (early Q3 2022, subject to the Event Centre Progressive Design-Build RFP results)
- Council approval of the final budget, subject to the Event Centre Progressive Design-Build RFP results (early Q3 2022)
- Site preparation (early Q3 2022, subject to PCA approval)
- Road and Intersection Construction, plus Storm Water Management Pond (Q2 2023)
- Event Centre Construction (Q2 2023)
- Event Centre opening will be in 2025.

Regular Council updates will continue as they have since the project started in 2017.

## Appendix A

### Event Centre Update Report – June 16, 2022

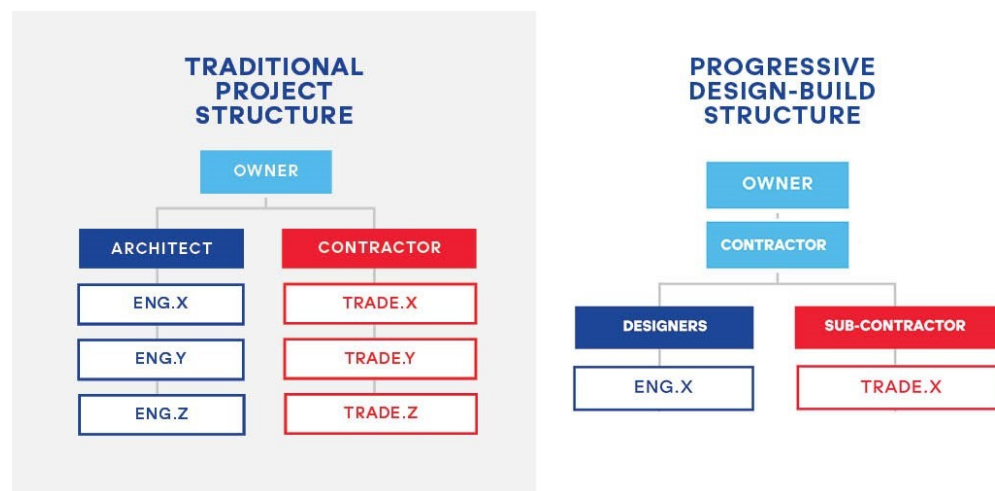
#### Progressive Design Build Process Overview

For the majority of the City's construction procurements, the traditional project structure is used. The owner retains the designer (Architects and Engineers) to complete a design. The design is then tendered and awarded to a contractor for construction. This traditional method results in two separate phases of the project, design and construction, and there is no opportunity for the contractor to provide input on the design phase. The benefit of the contractor's input could lead to opportunities to accelerate the schedule, reduce costs and others.

A design-build (DB) procurement varies from the City's traditional project method in which the design and construction services are contracted by a single entity (designer and builder). There are several types of DB procurement methods and the Event Centre was originally procured as a typical DB, in which a design and a fixed price are submitted by DB firms as part of a request for proposal (RFP) process.

As a result of current market risk levels and in consultation with legal and industry advisors, the procurement for the Event Centre shifted from a traditional Design-Build (DB) procurement process to a Progressive Design Build (PDB). In this procurement model the owner retains a team, often lead by the contractor, that comprises of the contractor and the designer (Architects and Engineers). This team is referred to as the design-builder and they work collaboratively with the owner (in this case the City of Greater Sudbury) from the early stages of the design to the completion of construction. This allows input from the owner, contractor and design professionals to be considered throughout the project.

A typical structure of the traditional project and the PDB is shown below:



A PDB procurement strategy fosters collaboration between the owner, the designer, and its contracting partner during the early work of projects such as project requirements, design work, pricing and risk. The team works in an iterative process with the design development and cost

estimating progressing to a firm contract price. The PDB method works to achieve the best price and value for the owner.

In the traditional PDB approach, the design-builder delivers the project in two phases: Phase 1 includes pre-construction services including progressive project cost estimating, design (either partial or complete), and the negotiation of a firm contract price; Phase 2 includes the final design (if not completed under Phase 1), construction, and commissioning.

During Phase 1 of the PDB, the project team develops much, or all, of the design collaboratively with the design-builder providing on-going transparent cost estimates and schedules thereby ensuring that the owner's requirements are met. At the conclusion of Phase 1, if the owner and design-builder cannot agree on a price or contract, the owner can use an "off-ramp" and end the contract. The owner then has several alternatives to complete the project.

The PDB model is well-suited to large and complex infrastructure and institutional projects where knowledgeable clients have an understanding of their required project outcomes.

While the PDB model is recent to Canada, with one of the first contracts being a Water Treatment Plant in Saskatchewan awarded in June 2020, it has been used throughout the United States. Infrastructure Ontario and Metrolinx are using the PDB model on select transit projects.

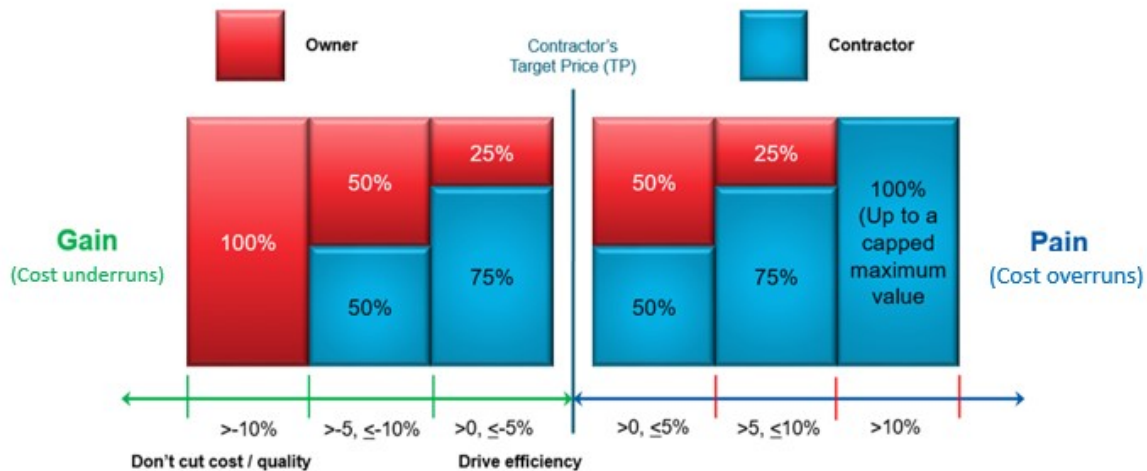
The following are several advantages to the PDB process:

- Price is agreed upon later in the process, closer to construction start when the design is further developed and so the price is more certain as risks and contingencies are reduced.
- Risk of disputes during construction is reduced.
- The owner has more opportunity to provide input on the design.
- Provides the owner transparency into the design-builder's cost.
- Provides the owner with "off-ramps" during the process.
- Seeks "best value" and project success over "lowest price".
- More collaborative process with incentives and risk sharing leading to fewer disputes.

There are also risks to the PDB process:

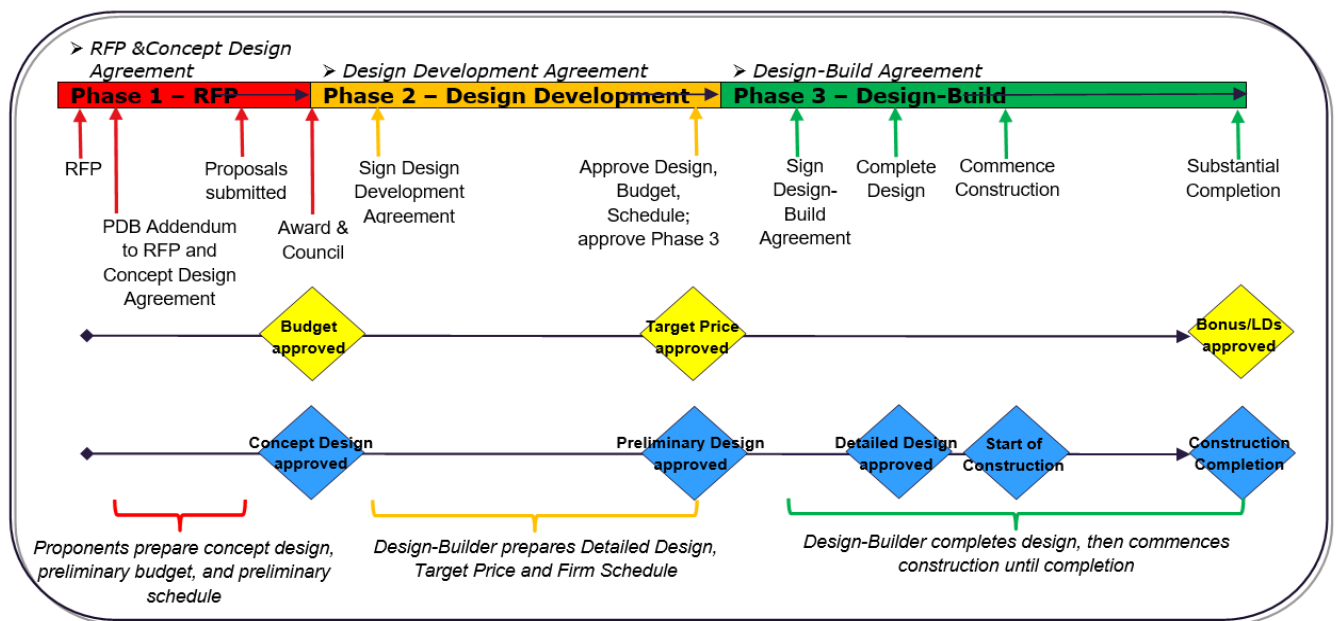
- Construction cost is not agreed to at the time of initial contract signing.
- Cost is determined through negotiated and competitive processes.
- The owner's team requires a Quantity Surveyor or cost consultant to ensure the reasonableness of the design-builder's cost modeling and price proposal.
- The PDB is not widely known and requires additional explanation for decision-makers and the general public.

PDB employs a target price rather than the fixed price contemplated under the traditional design build model. The target price will be developed iteratively based on review and comment by the owner during the design development. A tiered painshare and gainshare approach is used for deviations in the target price, with both the owner and the design-builder sharing in the risk of cost overruns and the benefits of cost underruns. The following graph illustrates an example of how cost overruns and underruns can be shared between the owner and design-builder/contractor.



## Greater Sudbury Event Centre Progressive Design-Build Overview

Further to the general overview above, the following graph and description is an overview of the Progressive Design Build procurement process for the Greater Sudbury Event Centre:



The Event Centre procurement process follows the general PDB procurement process, however it has been modified to meet the scope and timeline of the project.

Each Phase will be conducted in accordance with the following steps:



**Phase 1 – New PDB Procurement RFP/Design Concept Phase:** Proponents are required to submit the following as part of their proposals:

- Conceptual design.
- Upset limit for design costs for Phase 2.
- Hourly rates for all team members.
- Profit Margins and Overhead Rates.
- Estimate of design costs for Phase 3 (remaining design).
- Preliminary cost estimate, including value added components and their benefits.
- Project schedule.

The Proponents are paid the honorarium for this work.

As part of the Request for Proposal (RFP), a Term Sheet was provided to the Proponents serving as the basis for the City's preparation of the Design Development Agreement to be negotiated with the Preferred Proponent in Phase 2. Proponents may provide written comments and suggested revisions to this Term Sheet with their submission. A Preferred Proponent will be selected at the end of Phase 1 pursuant to the Proposal Evaluation.

The PDB will move to Phase 2 upon approval of the project budget by Council.

**Phase 2 – Design Development Phase:** The City and the Preferred Proponent will negotiate and enter into the Design Development Agreement based on the Term Sheet, Term Sheet comments and the Proposal. The Preferred Proponent will develop a Design-Build Proposal consisting of:

- A Detailed Design.
- A Target Price.
- A Firm Design Build Works Schedule

The Design-Builder is paid on an hourly basis to the upset limit submitted in Phase 1 for this work.

If the Target Price exceeds the approved budget for the Event Centre, staff will return to Council for further direction. Council approval is required for any changes to the approved budget.

The Parties will also negotiate and finalize the terms of the Design-Build Agreement. The City can:

- a) Accept the terms and execute the Design-Build Agreement, and move to Phase 3.
- b) Reject the terms and continue negotiating.
- c) Terminate the Design-Builder (the City maintains the intellectual property rights, without liability to the Design-Builder).

**Phase 3 – Design-Build Phase:** The City and the Preferred Proponent will execute the Design-Build Agreement. This phase includes the final development of detailed design, construction and commissioning.

## Resources Cited

[https://www.infrastructureontario.ca/uploadedFiles/CONTENT/What\\_We\\_Do/Major Projects/Procurement-and-Delivery-Model-Selection-Process-Sept-2021.pdf](https://www.infrastructureontario.ca/uploadedFiles/CONTENT/What_We_Do/Major_Projects/Procurement-and-Delivery-Model-Selection-Process-Sept-2021.pdf)

<https://dbia.org/wp-content/uploads/2018/05/Primer-Progressive-Design-Build.pdf>