

**CITY OF CALGARY
WEST LRT PROJECT**

**FIRST REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT
PROCESS: RFQ STAGE**

February 12, 2009

To: Steering Committee, WEST LRT PROJECT

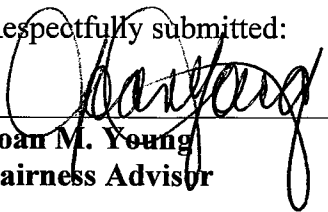
Chair: John Hubbell

Members: David Watson, Brad Stevens, Malcolm Logan

This report covers the following issues:

1. The scope of the review;
2. The purpose of the review;
3. The framework for the review;
4. A statement that the review has been conducted in accordance with this framework;
5. Explanatory details regarding the variables which affect the review;
6. Project Background and Monitoring Activities by Fairness Advisor;
7. Recommendations to improve process for future procurements;
8. Any qualifications on the endorsement of the process; and
9. A statement that the Fairness Advisor has fulfilled the terms of her engagement in order to express an opinion;
10. Findings in the form of an opinion whether the process appears to have been undertaken in accordance with fairness principles expressed or implied in the procurement documents.

Respectfully submitted:



Joan M. Young
Fairness Advisor

WEST LRT PROJECT REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS

February 12, 2009

Page 2

SCOPE OF REVIEW

I was retained in September 2008 to act as the Fairness Advisor for the West LRT Project. My role is to satisfy myself on the overall procedural fairness of the procurement process associated with the West LRT Project.

The City of Calgary, through its West LRT Project office, issued a Request for Qualifications ("RFQ") for the West LRT Project on November 3, 2008. This stage was intended to set out information regarding the project to the private sector and to invite those parties both interested and qualified to participate in the procurement process. The intention of the City of Calgary was to select up to three qualified Respondents to be invited to participate in the next stage of the procurement.

My engagement covers the evaluation of the responses to the procurement process from the issuance of the RFQ to conclusion of the procurement. This Interim Report covers the RFQ stage of the procurement.

The terms of engagement state that as Fairness Advisor I was asked to do the following:

1 Role of Fairness Advisor

The Fairness Advisor provides assurance to the City of Calgary through all stages of the Project Competitive Selection Process that the procurement processes described in the Project Request for Qualifications and Project Request for Proposals are applied fairly according to the terms described therein. And further, by way of reports the Fairness Advisor provides an independent opinion and assurance to the public of this fair application.

2 Scope of Services of Fairness Advisor

The role of the Fairness Advisor will include:

The Fairness Advisor acts as an independent observer and provide arms length advice to the City of Calgary and independent assurance to the City of Calgary as to the fairness and appropriateness of project management activities related to the procurement process and matters related to the West LRT Project. At the end of that process (including if the process is terminated) the Fairness Advisor will provide an independent opinion regarding the

**WEST LRT PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT
PROCESS**

February 12, 2009

Page 3

process followed to select the preferred proponent. Specifically, the Fairness Advisor will do the following:

1. During the process, provide the City of Calgary with advice. The Fairness Advisor may provide advice to the City of Calgary as she feels appropriate, and the City of Calgary may seek advice as needed. Where the City of Calgary seeks advice, it is expected to have a bearing on the following issues: interpretation regarding a procedural step or application of an evaluation criterion; or the appropriateness of an amendment to the process and the consistency of the amendment with provisions set out in the procurement or other documents under which amendments can be made.

2. In advance of key process decisions being finalized, the Fairness Advisor shall meet with the Chair of the Project Team and other members of the project team to:

- a. Receive updates and review project documents;
- b. Ask any questions the fairness advisor deems necessary to test the logic, fairness and merit behind decision-making activities and processes;
- c. At the request of the Project Team Chair, provide confidential advice and perspective on the process; and
- d. At the request of the Project Team Chair report verbally and in confidence as to whether she is satisfied the project team has fairly implemented and materially complied with the relevant procedures or evaluation criteria.

At the conclusion of the process, the Project Team Chair will ask the Fairness Advisor to provide a written opinion to the City of Calgary. This document will be subject to disclosure at the discretion of the City of Calgary.

Access to Information

The Fairness Advisor shall be:

1. Provided full access to all information related to the processes adopted as the Fairness Advisor decides is required including documentation, personnel, premises, meetings, reports and minutes; and

**WEST LRT PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT
PROCESS**

February 12, 2009

Page 4

2. Kept fully informed by the Project Team Chair or his/her delegate, of all documents and activities associated with the process.

The Fairness Advisor may meet these responsibilities by undertaking the steps she feels are most appropriate to meet her mandate.

My role as the Fairness Advisor is not to validate the Evaluation Committee's recommendation of the selected proponents; but rather is to provide oversight and assurances regarding the processes applied in making the recommendation.

PURPOSE OF REVIEW

The purpose of my review is to provide arm's length advice to the Steering Committee and independent assurance for the Project as to the fairness and appropriateness of project management activities related to the procurement process for the West LRT transaction.

FRAMEWORK FOR REVIEW

At each stage of the procurement process covered by my engagement, I undertook the following review activities in order to meet the terms of my review:

- (a) Review standards for handling of documents, security of documents, procedures for clarifying or rectifying errors by the owner and/or proponents,
- (b) Conduct a review of all documentation issued by City of Calgary West LRT Project Office to proponents including all procurement documents and addenda;
- (c) 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;
- (d) Ascertain whether Evaluation Criteria was established in advance of evaluations being undertaken;

**WEST LRT PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT
PROCESS**

February 12, 2009

Page 5

- (e) Ensure that adequate measures for avoidance of conflict of interest, unfair advantage and confidentiality were established in the procurement process as well as procedures for resolving issues which may arise during the procurement process;
- (f) Obtain information regarding rulings made by the Conflict of Interest Committee to ascertain whether the recommended course(s) of action have been fully implemented;
- (g) Review the Evaluation criteria proposed for the various stages of the procurement to 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) Ensure that appropriate records regarding verbal and written contact with proponents were prepared and retained;

REVIEW CONDUCTED IN ACCORDANCE WITH THIS FRAMEWORK

My review was conducted within the framework for review set out above.

EXPLANATORY DETAILS

None.

PROJECT BACKGROUND AND MONITORING ACTIVITIES OF FAIRNESS ADVISOR

The West LRT Project is for the design and construction of approximately 8.2 kilometres of LRT guideway, six LRT stations, traction power, signals and communications, testing and commissioning of the LRT system, two park and ride facilities, two transit bus terminal facilities, a pedestrian bridge, and other related work such as utility relocations, associated roadwork, detours, and traffic management.

WEST LRT PROJECT

REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS

February 12, 2009

Page 6

The West Light Rail Transit line (“West LRT Line”) is intended to enhance Calgary’s transportation system by expanding the C Train to link Downtown to Southwest Calgary. The new alignment extends 8.2 kilometers between 11 Street SW in the downtown to 73 Street SW and includes six (6) LRT stations. The new track will begin by connecting to the existing LRT lines downtown on 7 Avenue. The route crosses 11 Street SW and follows Bow Trail to 33 Street where it traverses the Westbrook Mall area to 17 Avenue. The line proceeds west along 17 Avenue crossing Sarcee Trail and terminates approximately at 73 Street SW. Upon completion of construction and commissioning, the City of Calgary will own, operate, and maintain the West LRT Project.

The Design Build Team will be responsible for the design and construction of all major elements of the work, including utility work, roadworks, trackwork, traction power, signals and communications systems, LRT stations, bus terminals, park ‘n ride facilities along with testing and commissioning of the LRT system.

The key Project objectives are:

- attracting competitive solutions that meet or exceed the Project requirements as defined by The City;
- delivering the Project efficiently and effectively to meet the targeted substantial Completion Date of August 31, 2012 or sooner;
- minimizing disruption to the surrounding neighborhoods, local industry, existing road and utility networks and public transportation system;
- constructing the Project to state-of-practice quality and safety standards.

A. Appointment of Fairness Advisor

The role of Fairness Advisor is to provide oversight on the procurement process to ensure that the process for selecting a preferred proponent is open, fair and equitable. A Fairness Advisor also provides advice on issues which may arise during the procurement process which could impact on the overall fairness of the process.

A Fairness Review follows four phases of the procurement process:

1. Before closing of the procurement process;
2. After closing of the procurement process;
3. Procurement Evaluation Stage; and
4. Post Procurement Evaluation.

**WEST LRT PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT
PROCESS**

February 12, 2009

Page 7

As stated above, the role of the Fairness Advisor is not to validate the Evaluation Committee's recommendation to the Steering Committee of the selected proponent; rather, it is to provide oversight and assurances regarding the processes applied in making the recommendation.

B. Procurement Process for the West LRT Project

This phase of the procurement process involved a Request for Qualifications. The intention of the West LRT Project Office was to short-list up to three qualified proponents who would be invited to prepare proposals in response to a Request for Proposals.

C. Request for Qualifications

The Request for Qualifications ("RFQ") was issued on November 3, 2008 with a closing date of January 5, 2009 (later amended to January 12, 2009) requesting interested parties to submit their qualifications for the project.

The RFQ was, as noted above, revised in a minor way after it was issued on November 3, 2008 to change the closing date by one week. This amendment was permitted by the terms of the RFQ. The amendment did not raise any fairness issues.

The Fairness Advisor was provided with the submission confirmation record at the closing location for the submission of the RFQ. Four submissions were received in order at the submission location on or before the deadline. No submissions were rejected. Each of the four submissions was subjected to a completeness review, and no deficiencies were noted. One of the proposals required additional information for clarification.

An Evaluation Committee was established which had the responsibility to evaluate and score the various proposals based on their review of the proposals and provide recommendations to the Steering Committee for the selection. Each team member was required to execute a Relationship Disclosure declaration and Confidentiality Agreement in advance of access to any information or proposals received in response to the RFQ.

WEST LRT PROJECT REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS

February 12, 2009

Page 8

Security measures were established to ensure that no information from the various proposals was available to anyone who had not been cleared for access. All of the responses were kept in a locked room with a “sign-in/sign-out” sheet.

Evaluators were also advised of the appointment of the Fairness Advisor and of the Conflict of Interest Committee for the project. An internal review process was established for identifying potential conflict or similar issues upon submission of the required documents from the various team members. There were no conflicts identified which prevented any team member from participating in the evaluation or review of the RFQ proposals.

One issue of note is the City of Calgary’s ownership of Enmax, a regulated power company. During the pre-issuance stage it became apparent to the City of Calgary that all proponents were expected to have to deal with Enmax in relation to Enmax’s electrical power transmission and distribution network related to the West LRT Project. Enmax’s wholly owned subsidiary, Enmax Power Services Corporation, offers services to the public and I was advised by the West LRT Project Office Director that Enmax Power Services Corporation had expressed interest in being a proponent in connection with the West LRT Project.

Pursuant to certain rules established by the Alberta Utilities Commission, Enmax is required to have rules governing the sharing of information between affiliates, such as Enmax Power Services Corporation. The City sought clarification and assurance from Enmax regarding the relationship between Enmax and its affiliates in connection with project specific information before the issuance of the RFQ. Enmax is governed by an Inter-Affiliate Code of Conduct which prevents sharing of information between the regulated and non-regulated entities of Enmax. I sought information from the City as to whether Enmax Power Services Corporation had access to any confidential information regarding the West LRT Project or was involved in the work leading to the issuance of the procurement process, and was satisfied by the City Solicitor that this was not the case. The City of Calgary accordingly elected not to place Enmax Power Services Corporation on the “restricted party” list. In the circumstances this decision was not unreasonable.

An Evaluation Manual for the RFQ Stage was developed based on the evaluation criteria set out in the RFQ and was finalized before the closing date for submissions. It was determined by the Project Team in advance of closing, in conjunction with the City’s Solicitors, that if Enmax Power Services Corporation was a member of any proponent team then as a mitigation measure, no City of Calgary employee would be

**WEST LRT PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT
PROCESS**

February 12, 2009

Page 9

involved with the evaluations of the portions the proposals covering the kind of work proposed to be done by Enmax Power Services Corporation. Again, this measure was a reasonable mitigation effort to minimize any suggestion of unfairness.

The evaluation was based on published criteria set out in the RFQ. I was provided with a draft of the Evaluation Manual in advance of the evaluation meetings. Each of the evaluators was also provided with an opportunity to review the draft manual. Eventually all evaluators were provided with a final form of manual before the evaluation began and this manual formed the basis of the scoring done by the Evaluation Committee.

I attended the first lengthy Evaluation Committee meeting in person on January 27, 2009 as an observer. Each of the Evaluation Team members discussed the relative strengths and weaknesses of each individual proposal. The Evaluation Committee did not require meetings with the four proponent teams. A second Evaluation Meeting was held by teleconference on February 9, 2009 which I also attended. A third Evaluation Committee meeting was held on February 11, 2009 by teleconference. Consensus scoring was then finalized and a report was prepared for the Steering Committee with the recommendations for the three proponents to be advanced to the next stage of the procurement. The report prepared for the Steering Committee reflects the decisions of the Evaluation Committee.

I am satisfied that each of the four Respondent teams was provided with a fair opportunity to have their proposal considered by the Evaluation Committee in accordance with the terms of the RFQ. The evaluation criteria appear to have been applied consistently and in accordance with the pre-determined evaluation criteria in the Evaluation Manual.

The Project Director and Evaluation Committee did require some advice of the Fairness Advisor during this phase of the procurement. This project was the first one in which a Fairness Advisor was utilized and so I had a number of discussions during this phase of the procurement to ensure that all the team members understood my role. General advice was provided on the procurement process, how to ensure fair evaluation of all respondents, and ensuring that the information used for evaluation was from the parties' responses and not from unverified sources. I am satisfied that overall the process leading to the selection of the three proponents was fair.

**WEST LRT PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT
PROCESS**

February 12, 2009

Page 10

**RECOMMENDATIONS TO IMPROVE THE PROCESS FOR FUTURE
PROCUREMENTS**

There are no issues of note requiring any commentary by the Fairness Advisor.

ANY QUALIFICATIONS ON THE ENDORSEMENT OF THE PROCESS

My fairness review has been based on my own review of selected documentation and records; my discussions with the Evaluation Committee; my observations of the activities of the Evaluation Committee; answers to questions posed by me and my observations of meetings. I have reviewed a sampling of project related documentation, but not all documents created by each and every staff member or advisor.

My review findings are based on the assumption that I have been provided access to all relevant information in connection with the project and that I have been advised of all key project management meetings and decisions.

FINDINGS

The RFQ procurement process associated with this stage of the West LRT Project has been conducted in a fair manner in accordance with the procedures established in the Request for Qualifications stage.

I am satisfied that:

1. The West LRT Project Office, and their advisors, followed the procedures and fairly applied the evaluation criteria specified in the procurement documents and subsequent documents;
2. Where judgment and interpretation was allowed or required, the project team exercised reasonable judgment and made interpretations in a fair and impartial manner; and
3. To the extent that amendments to the process were permissible, that decisions with respect to amendments were made in a fair and impartial manner;

**WEST LRT PROJECT
REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT
PROCESS**

February 12, 2009

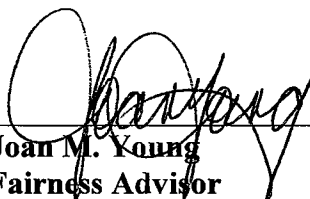
Page 11

I am satisfied that I have been provided with the appropriate access and information to render this fairness opinion to the Steering Committee.

FULFILLMENT OF REVIEW TERMS

I confirm that I have fulfilled the terms of my engagement based on the activities described to you above.

Respectfully submitted,



Joan M. Young
Fairness Advisor

Dated at Victoria, BC this 12th day of February, 2009

Heenan Blaikie LLP
#514- 737 Yates Street
Victoria, BC, V8W 1L6

HBdocs - 5784360v2

