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CITY OF CALGARY: WEST LRT PROJECT

SECOND REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS: RFP STAGE

October 27, 2009

To: Steering Committee, WEST LRT PROJECT

Chair: John Hubbell
Members: David Watson and Brad Stevens

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 Law Corporation, Fairness Advisor

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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 City of Calgary selected three qualified Respondents to be invited to participate in the next stage of the procurement. On February 16, 2009 the City of Calgary issued the Request for Proposals to three Proponent groups. The intention of the City of Calgary in this stage was to select one preferred proponent with whom it would negotiate a final design-build agreement for the construction of the West LRT Project.

My engagement covers the evaluation of the responses to the entire procurement process from the issuance of the RFQ to conclusion of the procurement. My previous report covered the RFQ stage of the procurement. This report covers the second stage of the procurement, namely, the Request for Proposals stage.

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:

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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 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

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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
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

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responding to the various procurement stages;

- (d) Ascertain whether Evaluation Criteria was established in advance of evaluations being undertaken;
- (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

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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.

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:

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

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 Proposals. The intention of the West LRT Project Office is to select one preferred proponent to negotiate a final form of Design-Build contract with for the design and construction of the West LRT Project.

C. Request for Proposals

The Request for Proposals ("RFP") was issued on February 16, 2009 with a closing date of July 17, 2009 for technical submissions and September 10, 2009 for financial submissions.

The Fairness Advisor reviewed the submission confirmation record at the closing location for the submission of the RFP- Technical. Three Technical Proposals were received in order at the submission location on or before the deadline. No submissions were rejected. Each of the three Proposals was subjected to a completeness review by the Evaluation Team, and no deficiencies were noted. All of the Proponents were required to submit appropriate WCB clearance letters and these were also received in order. The financial submissions were due on September 10, 2009 and all were received on time and in order at the closing location.

After being qualified in the in the RFQ stage, one Proponent Team made a number of significant changes to its prime team members and sought the permission from the City of Calgary pursuant to the terms of RFP to make these amendments and continue in the RFP process. The Evaluation Committee considered the request and ultimately went through a process of re-qualification for each of the new proposed team members. After review the Proponent was advised that the City of Calgary would

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accept the revised team. The assessment and qualification process was conducted in a fair manner and consistent with the terms of the RFP.

The project documentation was available to all Proponents through the use of secure Project Extranet. Questions and answers from Proponents to the City of Calgary's Project Team were also posted through this site. Overall, this was an appropriate and reasonable method by which to ensure that all three teams had access to the same information. Contact was only permitted through this site.

The RFP Technical Submissions closed on July 17, 2009.

As with the RFQ phase, 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. There were sub-team members who provided technical advice to the Evaluation Committee on the various technical aspects of the Technical Proposals. Each Evaluation Committee member and sub-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 RFP.

The RFP phase had two stages: a technical evaluation and a financial evaluation. The technical evaluation was based on the criteria that each proposal must meet the requirement that the technical submission consistently demonstrated an overall approach to the Project considered by the City to meet the purpose, intent and terms of the RFP in order to be invited to submit a financial proposal. Each of the Proposals had technical issues which required further clarification, amendment or additional information in order to be fully reviewed and assessed by the Evaluation Committee and their advisors. This is not unusual given the complexity of the technical solution required for the West LRT Project and was permitted pursuant to various sections of the RFP including section 7.2.3. The Fairness Advisor reviewed all of the questions submitted to the three Proponents and I am satisfied that they were permitted and reasonable in the context of the RFP.

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 at the West LRT office with a "sign-in/sign-out" sheet.

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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 RFP proposals.

An Evaluation matrix for the RFP Stage was developed based on the evaluation criteria set out in the RFP and was finalized before the closing date for submissions. As the technical phase of the procurement was to ensure that the Proponents met the project requirements and was not an assessment of the relative merits of one proposal over another or an assessment against weighted criteria, the technical evaluation was completed by reference simply to the project requirements and whether the proposal met the requirements or not. While it was complex due to the sheer size and scope of the project, the overall evaluation was relatively straightforward.

The Fairness Advisor was fully informed of all Evaluation Committee activities. I attended the several lengthy Evaluation Committee meetings in person including key meetings held on August 5, 6, 24 and 25, 2009 and by telephone on August 18 and 28, 2009 as an observer. The Evaluation Committee received initial technical briefings from advisors on each of the areas of the Proposals and recommended areas for further clarification, amendment or information were identified. Questions were then issued to all three Proponents. A second round of Evaluation Committee meetings was then scheduled to review the answers and determine whether any further information was required. In all cases, each Proponent team was asked to provide additional information in order to satisfy the Evaluation Committee that the technical proposal was in accordance with the project requirements. A final meeting on the technical submissions was held and 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 first report prepared for the Steering Committee on the Technical Evaluation reflects the decisions of the Evaluation Committee. The Evaluation Committee did not require in-person meetings with any of the three proponent teams.

The evaluation was based on published criteria set out in the RFP. As the evaluation of the Technical Proposals was performed, in essence, on a pass/fail criteria, in terms of meeting the technical requirements of the projects as set out in the RFP and related documents there was no scoring *per se*. Each submission was reviewed in terms of its

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adherence to the project requirements. All three Technical Proposals were ultimately found to meet the City of Calgary's requirements.

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

The Project Director and Evaluation Committee did require some advice of the Fairness Advisor during this phase of the procurement. I am satisfied that overall the process regarding the technical evaluation of the three Proposals was fair.

The RFP was structured so that only compliant proposals were invited to submit Financial submissions. All three Proponents were invited to submit a financial proposal.

The final stage of the process was the submission and evaluation of the Financial Submissions. A completeness review was performed. All submissions were received in order. The RFP contemplates that the Proponent with the lowest Financial Submission will be declared to be the Preferred Proponent (section 7.2.5). While there is discretion in the RFP for the City of Calgary to select a proponent other than the lowest bidder, the Project team has recommended the lowest proponent as the preferred proponent.

I was advised on October 27, 2009 by the Project Director that the Preferred Proponent and the City of Calgary had reached agreement on the terms of the design-build contract. In the time between the selection of Preferred Proponent in September and the conclusion of the commercial arrangements, no issue was raised with me by any party or by the City of Calgary West LRT team requiring my involvement.

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

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