

Heenan Blaikie

May 5, 2008

Of Counsel

The Right Honourable Pierre Elliott Trudeau, P.C., C.C., C.H., Q.C., FRSC (1984-2000)
The Right Honourable Jean Chrétien, P.C., Q.C.
The Honourable Donald J. Johnston, P.C., Q.C. (1974-1996)
Pierre Marc Johnson, FRSC
Peter M. Blaikie, Q.C.
André Bureau, O.C.
Pierre C. Lemoine

Our Reference: 035111-0002

Interior Health Authority
1860 Dayton Street
Kelowna, BC, V1Y 7W6

Attention: Sylvia Weir

Re: IHA re Fairness Report

Dear Sirs/Mesdames:

We enclose our original Fairness Report dated May 5, 2008.

We trust you find it to be entirely satisfactory. If you have any questions or comments, please do not hesitate to contact the undersigned.

Yours truly,

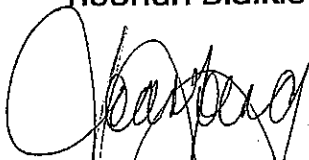
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**INTERIOR HEALTH AUTHORITY
KELOWNA AND VERNON HOSPITALS PROJECT**

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

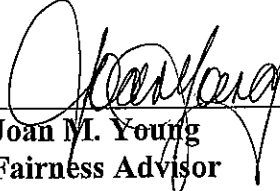
May 5, 2008

To: Project Executive Board, Kelowna and Vernon Hospitals Project

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

**KELOWNA AND VERNON HOSPITALS PROJECT
SECOND REPORT OF THE FAIRNESS ADVISOR ON THE
PROCUREMENT PROCESS**

May 5, 2008

Page 2

SCOPE OF REVIEW

I was retained in April 2007 to act as the Fairness Advisor for the Kelowna and Vernon Hospitals Project. My role is to monitor the overall procedural fairness of the procurement process associated with the Kelowna and Vernon Hospitals Project.

The Interior Health Authority (“IHA”), in conjunction with its advisors, Partnerships BC (“PBC”), issued a Request for Qualifications (“RFQ”) for the Kelowna and Vernon Hospitals Project on May 7, 2007. My engagement covers the evaluation of the responses to the procurement process from the issuance of the RFQ to the identification of the preferred proponent stage as contemplated in the Request for Proposals (“RFP”).

The RFQ stage set out information regarding the project to the private sector and invited those parties both interested and qualified to participate in the procurement process. IHA selected three qualified Proponents to be invited to participate in the next stage of the procurement. My first report on this phase of the project was issued on June 18, 2007. This Second and Final Report covers the RFP stage of the procurement.

The Fairness Advisor role is established in the RFP in Section 8.17. 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 Partnerships BC and the Interior Health Authority 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 that are ultimately made public, 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:

**KELOWNA AND VERNON HOSPITALS PROJECT
SECOND REPORT OF THE FAIRNESS ADVISOR ON THE
PROCUREMENT PROCESS**

May 5, 2008

Page 3

Scope

- The Fairness Advisor will report to the Chair of a Steering Committee composed of senior officials within Interior Health Authority and Partnerships BC, overseeing the Project.
- The Fairness Advisor will act as an independent observer with respect to the fairness of the implementation of the Project's procurement processes.
- The Fairness Advisor appointment will commence immediately and will continue until the completion of the Project Competitive Selection Process at the end of the Project Request for Proposals evaluation stage. At the discretion of the Chair of the Steering Committee, the Fairness Advisor appointment may be extended to the completion of the Financial Close stage.

Reports

- The Fairness Advisor will prepare and deliver two written reports to the Steering Committee, as follows:
 - (i) a first report at the completion of the selection of the short-listed Respondents under the Project Request for Qualifications, a copy of which will be provided to the Project Director; and
 - (ii) a second report at the completion of the selection of the final Proponent under the Project Request for Proposals process, a copy of which will be provided to the Project Director. If, at the discretion of the Chair of the Steering Committee, the Fairness Advisor appointment is extended to the completion of the Financial Close stage, the second report will be due at the completion of the Financial Close stage.
- The Fairness Advisor's reports will be available to the public after selection of the final Proponent under the Project Request for Proposals Process (first report), and final execution of the project agreement (second report), subject to the applicable legislative requirements (including the *Freedom of Information and Protection of Privacy Act* and regulations). The first report will be made available to Respondents prior to the issuance of the Project Request for Proposals.

Access to Information

The Fairness Advisor will be:

**KELOWNA AND VERNON HOSPITALS PROJECT
SECOND REPORT OF THE FAIRNESS ADVISOR ON THE
PROCUREMENT PROCESS**

May 5, 2008

Page 4

- (a) provided full access to all of the health authority's information related to the Project Competitive Selection Processes as the Fairness Advisor decides is required, including documentation, personnel, premises, meetings, reports and minutes;
- (b) permitted full access to any and all meetings, telephone conferences or other events as, in the discretion of the Fairness Advisor, are appropriate; and
- (c) kept fully informed by the Project Director of all documents and activities associated with the Project request for qualification and request for qualification process.

The contact person with the Project team, when and as needed, will be the Partnerships BC Project Director.

Enquiries

- The Project Team, through the Project Director, may invite the Fairness Advisor to provide comment from time to time on issues related to the evaluation processes during the Project Competitive Selection Processes. The Fairness Advisor will not provide any comment or advice on any matter other than fairness.
- During the Project Competitive Selection Processes, the Steering Committee may request comment on proposed action or circumstance related to the administration of the Project Request for Qualifications and the Project Request for Proposals.

None of the above duties of the Fairness Advisor shall be delegated to any other person without the written approval of the Project Director.

My role as the Fairness Advisor is not to validate the Evaluation Committee's recommendation of the Preferred Proponent; but rather is to provide oversight and assurances regarding the processes designed and applied in making the recommendation. It is beyond the role of the Fairness Advisor to provide assurances or investigate any possible security breaches, criminal activity or other clandestine activities. The Fairness Advisor does not provide commentary on the legality of the selection, or on the "value for money" considerations of the project.

**KELOWNA AND VERNON HOSPITALS PROJECT
SECOND REPORT OF THE FAIRNESS ADVISOR ON THE
PROCUREMENT PROCESS**

May 5, 2008

Page 5

PURPOSE OF REVIEW

The purpose of my review is to provide arm's length advice to the Project Executive Board and independent assurance for the Project as to the fairness and appropriateness of project management activities related to the procurement process to the Kelowna and Vernon Hospitals Project 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 procurement related documentation (excluding technical project specific data) issued by Partnerships BC and/or the Interior Health Authority to proponents;
- (c) Review whether each proponent was generally 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;
- (e) Ensure that adequate measures for avoidance of conflict of interest, unfair advantage 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;
- (f) Obtain information regarding rulings made by the Conflict of Interest Adjudicator 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;

**KELOWNA AND VERNON HOSPITALS PROJECT
SECOND REPORT OF THE FAIRNESS ADVISOR ON THE
PROCUREMENT PROCESS**

May 5, 2008

Page 6

- (h) Review all responses submitted by proponents to ensure an adequate familiarity with the terms of the responses in order to undertake the Fairness Audit;
- (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 purpose of the IHA's Request for Proposals was to invite submissions from the three Proponents identified through the RFQ process to participate in a DBFO (design, build, finance, operate and maintain) procurement model for the Kelowna and Vernon Hospitals in the Interior Health region.

The key objective of the IHA is to select a successful proponent to design, build, finance and maintain a new Ambulatory Care Centre (KGH-ACC); and design, build, finance and maintain a redevelopment of the Emergency Department (KGH-ED). The Kelowna Hospital project also includes academic space for the University of British Columbia Medical School. At the Vernon Jubilee Hospital the goal is to have the proponent design, build, finance and maintain a new Diagnostic Treatment Building (VJH-DTB). The successful proponent will also be responsible for the provision of non-clinical services at the KGH-ACC and VJH-DTB which will encompass plant maintenance and may include these services to the full sites, subject to market demonstration of value for money.

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.

**KELOWNA AND VERNON HOSPITALS PROJECT
SECOND REPORT OF THE FAIRNESS ADVISOR ON THE
PROCUREMENT PROCESS**

May 5, 2008

Page 7

A Fairness Audit 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.

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

B. Procurement Process for Kelowna and Vernon Hospitals Project

This phase of the procurement process involved a Request for Proposals.

C. Request for Proposals

The Request for Proposals ("RFP") was issued on September 25, 2007 with a closing date of March 6, 2008 (Design & Construction and Facilities Management) and, by a later amendment, March 13, 2008 for one aspect of the proposals (Financial and Commercial).

During the course of the procurement, an electronic data room was established for the purposes of providing information to all three Proponents. Amendments to the RFP were posted in the data room, as were responses to general Requests for Information. Commercial "In Confidence" responses were also provided privately to each of the Proponent teams in response to specific questions. All of these documents were also provided to the Fairness Advisor for review.

The RFP was revised after it was issued, including a change to the closing date for the delivery of the Commercial and Financial submissions. These amendments were permitted by the terms of the RFP and to the extent there were amendments they did not materially benefit any one Respondent over another and were not otherwise substantively or procedurally unfair.

As a result of the RFP process, all three Proponents submitted responses addressing (1) design and construction, (2) financial and commercial, and (3) facilities management. All of the submissions were received in order at the submission location on or before the deadline. No submissions were rejected. Each of the three

**KELOWNA AND VERNON HOSPITALS PROJECT
SECOND REPORT OF THE FAIRNESS ADVISOR ON THE
PROCUREMENT PROCESS**

May 5, 2008

Page 8

submissions was subjected to a "high level" completeness review, and no substantive deficiencies were noted. As permitted by the terms of the RFP alternate proposals were also received.

A number of internal staff and private sector advisors were assembled for the purpose of evaluating the submissions. Four sub-committees were formed: a Completeness Review Team (dealing with the "high level" review as described above), a Design and Construction Team, a Commercial and Financial Team and a Facilities Management Team. Each of the three teams reported to an Evaluation Committee through a Team Lead. The Evaluation Committee had the ultimate responsibility to evaluate and score the various proposals based on the comments and preliminary assessments of the three sub-committee teams. The Evaluation Committee ultimately provided a recommendation to the Project Executive Board. 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 RFP. My review of the documentation indicates that this appears to have been followed.

Evaluators were also advised of the appointment of the Fairness Advisor and of the Conflict of Interest Adjudicator 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. A Relationship Review Committee was formed to review each of the Evaluators' declarations. This committee also reviewed any issues raised by Proponent teams. On several occasions the advice of the Conflict of Interest Adjudicator was sought either as a result of a Proponent seeking an advance ruling or due to issues being identified in the disclosure statements, and the Fairness Advisor was provided with copies of the rulings. In some instances the use of "ethical screens" were required to deal with any perception of unfair advantage or conflict of interest.

Security measures were established to ensure that no information from the various proposals was available to anyone who had not been cleared for access. The proposals were secured in a locked area at the Interior Health Authority's premises. Three other remote locations were established for the review of proposals: the offices of the IHA's counsel, the offices of the IHA's financial advisors and the location of the Design and Construction Team's assessment. Reasonable security measures appear to have been established for all sites. Team leaders for each of the Evaluation Teams were responsible for ensuring that when documents were removed from their secure location for the purposes of evaluation meetings that they were safeguarded. No security breaches were reported.

**KELOWNA AND VERNON HOSPITALS PROJECT
SECOND REPORT OF THE FAIRNESS ADVISOR ON THE
PROCUREMENT PROCESS**

May 5, 2008

Page 9

An Evaluation Manual 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. A minor revision was made post-submission to account for a change in the identity of administrative staff, and made no difference to the evaluation process. The evaluation was based on criteria set out in the RFP. There was no "Pass/Fail" benchmark. I was provided with a draft of the Evaluation Manual in advance of the evaluation meetings. Each of the teams was also provided with an opportunity to review the draft manual, to provide comments and to make changes. Eventually all evaluators were provided with a final form of manual and evaluation training before the evaluation began and this manual formed the basis of the scoring done by the Evaluation Committee. During the course of evaluations, I also had the opportunity to specifically question how the scoring criteria was applied.

Each of the proposals had issues which required additional information for clarification as permitted by Section 8.8 of the RFP. Those clarifications were issued in writing and responses were received in writing. Meetings were held with each of the Proponent Teams in Kelowna to review the Design & Construction submissions. These meetings were contemplated by Section 8.9 of the RFP. The Design and Construction Team met with each of the three proponent teams individually to review clarification questions with the team members. Each proponent team was provided with an agenda in advance of the meeting. Each proponent team was advised that no new information was to be submitted except as it related to the clarification questions. The Fairness Advisor was present for all of the meetings as an observer. Further written clarification questions were issued to all teams after these meetings, and answers were provided in writing. Other clarification questions relating to Finance and Commercial issues as well as Facilities Management were issued in writing to all three Proponents, but no additional meetings were held specifically to address these issues.

A request was made of one Proponent to attend a follow up meeting (due to time constraints) to answer additional clarification questions related primarily but not solely to Design & Construction issues, and the Fairness Advisor attended this meeting by telephone. The Fairness Advisor provided advice to the Evaluation Committee that the meeting must relate to clarification questions necessary to provide the Evaluation Committee with the information it reasonably required to fairly evaluate the proposal, and for no other purpose. This guidance appears to have been followed. It was also noted that if other Proponents' proposals required additional clarification in order for a fair evaluation to occur then they should be provided with the same opportunity. The Evaluation Committee did not feel that further clarifications were necessary with the other two Proponents.

**KELOWNA AND VERNON HOSPITALS PROJECT
SECOND REPORT OF THE FAIRNESS ADVISOR ON THE
PROCUREMENT PROCESS**

May 5, 2008

Page 10

The review of the Design and Construction aspect of the project was significant, and this team spent a considerable amount of time reviewing each proposal by location. Several days were spent on each proposal. A consensus model of decision making was adopted. The Facilities Management team and Commercial and Financial team evaluations also followed a consensus model of assessment.

I attended the two preliminary Evaluation Committee meetings on April 8, 2008 (in person) and April 18 (by telephone) as an observer. Each of the Evaluation Team members discussed the relative "high level" strengths and weakness of each individual proposals to date. Preliminary scoring was reviewed. The Evaluation Committee was careful not to reach any final conclusions or adopt final scores until all the information and clarifications were complete. Both vertical and horizontal assessments of the proposals were undertaken. I attended the penultimate Evaluation Committee meeting on April 29, 2008 in person in Kelowna. As with the Evaluation Teams, a consensus model of decision making was adopted by the Evaluation Committee. Each of the Team Leads presented their team's comments regarding the particular aspect of the Proposals each was responsible for, and provided answers to questions from the Evaluation Committee. The methodology of the assessments was fully discussed, and the Fairness Advisor had the opportunity to test the underlying assumptions and rationale for the scoring criteria. The Evaluation Committee members reviewed and questioned the merits of each Proponent's proposal. My observation is that all of the Evaluation Committee members made a conscious effort to fairly apply the evaluation criteria as set out in the Evaluation Manual and in the RFP in what was undoubtedly a complex evaluation process given the magnitude of the project. After each presentation the full Evaluation Committee discussed the preliminary view of the proposal and whether to make any changes to the preliminary scoring based on the information provided.

The final Evaluation Committee meeting was held on May 2, 2008 to review the revised pricing and to ascertain whether the scoring required any adjustments as a result of the updated financial information received from the three Proponent teams in late April 2008. One issue arose with respect to the financial information provided by one Proponent and whether it fell clearly within the scope of the requested re-pricing. As the overall outcome was not affected by the issue, the Evaluation Committee did not find it necessary to undertake further due diligence before completing its final Evaluation Report. Based on the information provided to the Fairness Advisor as to the materiality of the information in the overall scheme of the evaluation results, this was a reasonable position to adopt.

At the end of the process, after the completion of all presentations, the Evaluation Committee completed its final assessment and prepared its report to the Project

**KELOWNA AND VERNON HOSPITALS PROJECT
SECOND REPORT OF THE FAIRNESS ADVISOR ON THE
PROCUREMENT PROCESS**

May 5, 2008

Page 11

Executive Board. The Fairness Advisor also attended the Project Board meeting on May 2, 2008 by telephone. I was provided with a copy of the final Evaluation Committee's Report to the Project Board and it reflected the consensus decision made by the Evaluation Committee. I provided a verbal report to the Project Board summarizing the findings of this report.

Overall, I am satisfied that each of the three Proponent teams was provided with a fair opportunity to have their prime and alternate Proposals considered by the Evaluation Committee in accordance with the terms of the RFP. The Evaluation Committee made decisions regarding the evaluation of the alternate proposals, and I am satisfied that they did so in accordance with the discretion they were accorded pursuant to Section 7.4. The evaluation criteria appear to have been applied consistently and in accordance with the pre-determined evaluation criteria in the Evaluation Manual.

The Evaluation Committee also had the benefit of legal advice in this stage of the procurement, and the Fairness Advisor has had the opportunity to discuss the project with IHA's legal counsel. I am satisfied that there are no known legal impediments to proceeding with selecting the Preferred Proponent.

The Proponents were advised of my engagement as Fairness Advisor to the Project as was the public generally through media releases relating to the Project. The Fairness Advisor was not contacted by any of the Proponents during the course of the procurement, nor did any third parties make contact regarding any issues relating to fairness. I am not aware of any unresolved issues of unfairness being raised during the entirety of the RFP stage of the procurement.

The advice of the Fairness Advisor was sought by the IHA and PBC on a few occasions throughout the RFP process and post-closing during the Evaluation phase. For example, the Fairness Advisor was consulted on the decision to issue a Pre-Load Tender and whether there should be a restricted party list prohibiting any Kelowna and Vernon Hospital Project Proponent from bidding on that related project. I was satisfied there was no reason to include such a prohibition. Another tender for the provision of Pumping Services did contain such a prohibition in order to ensure that there was no unfair advantage to a party bidding on the Project. Again, I was satisfied that this was a procedurally fair manner in which to proceed. Post-submission my advice was sought informally on several occasions, and I am satisfied that to the extent that guidance was requested that it was followed by the Evaluation Committee.

**KELOWNA AND VERNON HOSPITALS PROJECT
SECOND REPORT OF THE FAIRNESS ADVISOR ON THE
PROCUREMENT PROCESS**

May 5, 2008

Page 12

**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 observations and discussions with the Evaluation Committee; answers to questions posed by me and my observations of meetings with the Proponents. I have reviewed a sampling of project related documentation, but not all documents created by each and every staff member or advisor. The Fairness Advisor attended a sampling of meetings with the Proponents, but did not attend all of the bilateral meetings which occurred in the pre-submission phase. The minutes and documentation relating to the bilateral meetings were reviewed. The Fairness Advisor did attend all meetings with the Proponents during the Evaluation phase of the procurement as well as all Evaluation Committee meetings.

My review findings are based on the assumption that I have been provided access to all relevant information in connection with the project, that the project team has been forthright in their answers to questions from the Fairness Advisor, and that I have been advised of all key project management meetings and decisions. There were some instances where I was not advised of meetings in a timely fashion, or advised after the fact, but I am satisfied overall that given the nature and complexity of the project that these instances were both rare and inadvertent. I generally found the IHA to be helpful in facilitating the requests for information in connection with my engagement, and that the team overall was extremely concerned to ensure that the process was fair for all proponents. My impression was that the overall procurement process was open and transparent, in that the Proponents received both a fair opportunity to bid on the project and that their proposals were fairly assessed.

FINDINGS

The RFP procurement process associated with this stage of the Kelowna and Vernon Hospitals Project has been conducted in a fair manner and in accordance with the procedures established in the Request for Proposal documentation.

I am satisfied that:

1. IHA, PBC and their advisors followed the procedures and fairly applied the evaluation criteria specified in the procurement documents and subsequent documents;

**KELOWNA AND VERNON HOSPITALS PROJECT
SECOND REPORT OF THE FAIRNESS ADVISOR ON THE
PROCUREMENT PROCESS**

May 5, 2008

Page 13

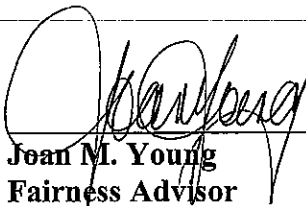
2. Where judgment and interpretation was allowed or required, the project team exercised judgment and made interpretations in a fair and impartial manner; and
3. To the extent that amendments to the process were permissible, that decisions with respect to amendments were made in a fair and impartial manner;

I am satisfied that I have been provided with the appropriate access and information to render this fairness opinion to the Project Executive Board.

FULFILLMENT OF AUDIT 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 5th day of May 2008

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