

Response to Request For Proposals

BC Children's and BC Women's Redevelopment Project Phase 2

Request for Proposals - Fairness Advisory Services

To: Ms. Dawn Hart, Contact Person

By email only to: dawn.hart@partnershipsbc.ca

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For:



INTRODUCTION

I am very pleased to have been invited to submit a response to Partnerships BC's Request for Proposals for a Fairness Advisor for the BC Children's and BC Women's Redevelopment Project, Phase 2. I have been privileged to serve as Fairness Advisor to a number of large public works projects; I enjoy the work, and have developed a good understanding of the needs and expectations of owners, managers and proponents in the public sector procurement process.

1. ROLES AND QUALIFICATIONS

1.1 Short biography

I have practiced commercial law in Vancouver for about 27 years. I have been associate counsel with the Vancouver office of Miller Thomson LLP since 2004; previously, I was a partner (and managing partner) in other firms. I was appointed Queen's Counsel in 1999.

My clients range from small and medium-sized enterprises in manufacturing and service industries, to large institutions including banks and government. I advise boards of directors and executives on governance, mergers and acquisitions, business organizations and financing, joint ventures, partnerships, and daily management issues. My clients carry on business in Canada and internationally.

I have acted as private arbitrator in numerous commercial disputes, and in 1999 earned the designation 'Chartered Arbitrator'.

I have served as a Bencher of the Law Society of BC, as governor of two of BC's post-secondary institutions, and as trustee of a community-service trust; these roles among others have enhanced my understanding of the particular concerns of organizations with broad public responsibilities.

From 1999 to 2002 I was a part-time member of the BC Human Rights Tribunal, and from 1995 to 1998 was an *ad hoc* member of the federal Human Rights Tribunal.

I have been a lecturer in professional ethics, various business law topics, and the role of a fairness advisor in public-sector procurement, for various law-related organizations.

1.2 Fairness Advisor Experience

Following are brief descriptions of some projects for which I am or have been Fairness Advisor:

- a. **Interior Heart and Surgical Centre:** In spring 2012, I completed a 2-year assignment as Fairness Advisor to the Interior Heart and Surgical Centre project: two new hospital buildings, and renovations to existing buildings. Partnerships BC managed the procurement for Interior Health, which provides health-care services to a large area of British Columbia. The project's first phase involved a design-build contract awarded in 2010, for a clinical support building (now completed) with a capital cost of around \$47 Million. The second building was procured as a public-private partnership, with the successful proponent also responsible for long-term maintenance of this complex facility. The project team selected a short list of 3 proponents through an RFQ process in 2011, and completed an RFP process (including collaborative interaction with proponents and a detailed evaluation) early in 2012. The contract was awarded earlier in 2012, and this project is underway.
- b. **HSSBC, Transcription Services project:** I recently completed advice to a group of health organizations led by Providence, one of BC's several health authorities, on outsourcing of technology and services for remote transcription of medical records for various hospitals, clinics and other medical service organizations. The procurement was managed by the Business Initiatives unit of Health Shared Services BC (a division of PHSA). The team selected a short-list of proponents from among several responses to its initial RFP, and engaged with them in structured discussions, prior to a final selection and negotiation process that culminated in a contract signed in fall 2012.
- c. **HSSBC, Security Services project:** I am currently providing advice on selected fairness issues to a procurement group managed by HSSBC, for a project to procure security services for a number of sites managed by several health authorities. The response period for the initial solicitation document has recently ended, and the project team is evaluating responses.

- d. HSSBC, Vendor complaint:** In October, 2012 I completed a project advising HSSBC with regard to fairness in the resolution of a complaint filed by a vendor under the Vendor Complaint Process published by HSSBC.
- e. Metro Vancouver Waste-to-Energy Facility:** I am currently the Fairness Advisor to this project, in which the project team intends to identify preferred technologies and sites for a new facility to convert municipal waste to energy, and then select a proponent that will build the project, and likely also operate and finance it. This project is in the initial stages.
- f. Iqaluit Airport Improvement Project:** I am currently the Fairness Advisor for this project of the Government of Nunavut, managed by Partnerships BC. The project involves construction of a new terminal building (and other structures), improvements to runway, taxiway and apron areas, renovation of an existing building, and improvements to other airport systems. Most of these elements will be procured as a design-build-finance-operate-maintain project. Unique aspects of the procurement include the owner's requirement to encourage participation of Inuit firms on bid teams. The project team selected a short-list of Proponents based on responses to an RFQ in summer 2012, has published the RFP and is now engaged in a collaborative process; responses to the RFP are expected to be submitted and evaluated in spring / summer, 2013.
- g. Wood Innovation & Design Centre:** This project is managed by Partnerships BC for a number of BC ministries. The project involves construction of a wood structure in Prince George, BC, that will include space for the University of Northern BC, government offices, and other functions, with an estimated capital cost of around \$25 million. The project involves site-specific regulations for building code matters, and other unique features. The project team selected a short-list of three proponents through an RFQ process, and is currently engaged in the collaborative phases of the RFP.
- h. Evergreen Rapid Transit Line:** I completed most of my mandate on this project in September, 2012. The Evergreen Line will connect Vancouver with several suburbs, integrating with existing transit networks. Project elements include design, construction and financing of guideways, a tunnel, stations, power substations, train

operating systems, parking facilities, and a vehicle storage and maintenance facility. The project will involve around \$1.4-billion. The RFQ was issued in July 2010, and three teams were selected to respond to an RFP (published in 2011). The project team has selected a preferred proponent.

- i. **Surrey Pretrial Services Centre Expansion Project:** I completed this two-year engagement in 2011. The procurement was managed by Partnerships BC for the Province of BC. The project is a public-private partnership to design, construct, finance and maintain (for a 30-year term) 216 cells and other program space, to be added onto and operated as part of an existing high-security detention facility, at a capital cost of around \$90 Million. The competitive process for the procurement included an RFQ that drew several responses. After evaluation, three respondents were invited to participate in a collaborative process with the project team, to maximize innovation within the budgetary and other requirements of a detailed RFP. Responses to the RFP were evaluated to select the preferred proponent with which the Province concluded a final agreement. Construction of the project began in 2011, and continues in progress.

- j. **Port Mann Tolling Operations:** In 2010 I completed an engagement as Fairness Advisor to Transportation Investment Corporation, a BC public body, for its process to engage a Tolling Operator for the new Port Mann Bridge (which is one of BC's major highway bridges). This is a public-private partnership in which the Tolling Operator will operate the Port Mann Bridge using equipment and systems procured by the Province from third parties. The project's RFQ drew 7 responses, of which 3 were selected to respond to the RFP. RFP submittals were evaluated in two phases, the first for compliance with a broad range of technical requirements, and the second (for proponents who were successful in the first phase) for a separate financial / price submittal.

- k. **Smart Card and Faregates Project:** During 2010, I was Fairness Reviewer for Translink's SmartCard and Faregates Project, which was a competition to design, supply, install, operate and maintain (under a concession agreement) a new electronic fare collection system for TransLink's various transportation modes (bus, rapid transit, train lines, seabus, HandyDart, etc.) in the metro Vancouver area. The capital cost is about \$100M for faregates and station modifications.

- I. South Fraser Perimeter Road:** From 2008 to 2010, I was Fairness Reviewer for the South Fraser Perimeter Road project, which was procured as a public-private partnership, through Partnerships BC for the Province. The capital cost is about \$658 Million; the project consists of design, construction, financing and operation (for 20 years) of a new four-lane highway of around 40 kilometres with various interchanges and connections, through Delta and Surrey, British Columbia.
- m. Port Mann / Highway One:** From 2007 to 2009, I was Fairness Reviewer for the Port Mann / Highway One Project, which was intended as a public-private partnership; procurement was managed by Partnerships BC on behalf of the Province of BC. This was among the biggest of all North American public-sector projects in procurement at the time, with a capital cost of around \$2.4 Billion; the project includes doubling the capacity of about 40 kilometres of the Province's busiest highway (near Vancouver), with over twenty associated interchanges and overpasses, as well as a new Port Mann bridge (across the Fraser River). Six responses to the RFQ were evaluated to produce a shortlist of three proponents. After issuance of the RFP, the Project team responded to over 600 requests for information, and held 27 rounds of Topic Meetings, and 4 rounds of workshops.
- n. Kicking Horse Canyon:** From 2003 to 2005, I was Fairness Auditor for the Kicking Horse Canyon highway project. This public-private partnership was managed by Partnerships BC for the Province of BC. The capital cost of the project was \$130 million; the successful proponent designed, built, financed and now operates a new section of road and new bridge, for a 25-year term.

On each of the above projects I have worked directly with lawyers, bankers, executives and other participants in public procurement from around the world. I understand the priorities of the various parties, as well as the international standards and 'best practices' that are expected.

1.3 References

Ms. Farrell, Mr. Houle, Ms. Clark and others at Partnerships BC are familiar with my work as fairness advisor on various; Mr. Good of Partnerships BC managed the procurement process for the Interior Heart and Surgical Centre which is likely particularly relevant. I

would be happy for you to talk to any of them. In addition, the following persons have agreed to provide references for me should you prefer other sources:

Martin MacLachlan
Counsel and Corporate Secretary
Canaccord Capital
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Ian Tait
Senior Director, BISS (HSSBC)
604 875 4111
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1.4 Resume

A brief, recent resume is attached at the end of this Response.

2. APPROACH

2.1 Availability

I have noted the anticipated schedule, which indicates the Fairness Advisor's work will likely be completed generally by the spring of 2014. I can commence work immediately, and will be available throughout that period subject only to occasional vacations. During any such absence, I will be able to arrange for a delegate with suitable experience (and approved by the Project team) to stand in for me.

2.2 Approach

My primary concern as Fairness Advisor is to provide value to the Project, being conscious of budget while maintaining the integrity of my role. My approach is based on these main premises:

- (a) **Support Project Transparency:** My formal reports should be suitable for publication. Additionally, they should include 'no surprises'; the project team should be aware of any concerns that I have regarding the process, as they arise. This means that I must keep myself aware of emerging issues, and there must be open communication between me and the project team. I foster that communication by being available on short notice, and attending in person at a selection of meetings, so that project team members know me, are comfortable speaking with me directly, have confidence that I will respond in a timely way to communications, and remember to keep me advised of plans and issues.

- (b) **Objectivity:** The procurement process is designed and delivered by the project team; I am an arm's-length advisor on fairness issues only. To maintain objectivity, I comment on fairness aspects of solutions proposed by the team, rather than attempting to impose solutions. This does not preclude inquiring whether any particular solution has been considered.
- (c) **Client-Tailored:** Section 2.3 below (in addition to the Terms of Reference contained in the RFP) sets out my general expectations as to activities of the Fairness Advisor. While the precise extent of my work is also informed by requests from the project team, I am always responsible to ensure I attend meetings, review documents and investigate issues as are necessary to form the basis of my opinions and reports to the project team and Board.

2.3 Work Plan

Based on the Terms of Reference in the RFP and my experience, I expect my involvement in this project to include generally the following:

- (a) **Project documents:** The Project team will prepare its RFQ, RFP, evaluation manuals and related documents. I will assist by commenting on fairness aspects of the processes outlined in the documents. Often, my comments relate to clarity and consistency; I will also offer substantive advice on any potential problems that could result from the proposed collaborative process, evaluation process, and other terms.
- (b) **Bidders meeting:** If the Project team holds an information meeting for prospective proponents, I attend to introduce myself to attendees, and explain my role. Proponents generally find this helpful; as well, having met me they may be more comfortable contacting me with any fairness concerns during the procurement.
- (c) **Orientation meetings:** If the Project team holds a kick-off meeting for the Project or for evaluations, I attend to introduce myself, and ensure the team understands how I can help with their work. This assists in establishing good communication, which is essential to producing a final fairness opinion.
- (d) **Review correspondence / attend meetings** between project team and proponents: I review all documents, letters, emails etc. that pass between the

project team and proponents during the process, and I periodically peruse any electronic data room maintained by the project team. I attend most collaborative sessions and topic meetings between the project team and proponents. I will raise with the project team any concerns I may have regarding consistency of information provided to all proponents, consistent access for proponents to the project team, compliance with project documents as to communications, etc. This work forms the basis of my final opinion that all communications conformed with the project documents.

- (e) **Closing:** I attend the closing of the RFQ and RFP to confirm that responses are received as required. I also observe part of the initial review of responses for completeness, as a check on compliance with the terms of the project documents.
- (f) **Evaluation activities:** During the evaluation, I attend the evaluation site to peruse submittals, talk with evaluators about issues they encounter and fairness aspects of their review, confirm that security and other arrangements required by the project documents are observed, and make myself available for questions from the project team. I observe a selection of any reference checks and any proponent presentations, to ensure consistency and compliance with the project documents.
- (g) **Consensus and scoring meetings** of evaluation teams and sub-teams, due diligence: I attend most of these meetings, to verify that there is a thorough and vigorous evaluation process, compliant with project documents. I will discuss with evaluators how to ensure their evaluation considerations and scoring are consistent with their pre-determined plans, and avoid extraneous criteria. I observe the team's internal discussions about fairness issues, and participate as needed to ensure the team avoids problems. I review any written reports of the evaluation teams.
- (h) **Periodic advice** and discussions: The project team will periodically have questions about how to deal with questions raised by proponents, or respond to unanticipated issues, in a way that avoids fairness problems. I will make myself available to advise on those decisions. I will also offer comments from time to time if I observe potential fairness issues, so that the project team can immediately respond.
- (i) **Report:** I report to the project's board on conclusion of evaluations of the RFQ and RFP, and at other times if requested. I would also report to the Board if during the

process I had concerns that were not satisfactorily addressed by the project team. It is always my objective to report to the Board that the project team managed the procurement fairly, and in compliance with the project documents. My written reports will be suitable for publication.

- (j) **Financial Close:** I am available if needed to continue advising the project team during the process leading up to financial close for the project.

3. COSTS

3.1 Fixed Fee

I propose a fixed fee for the Project of \$50,000 plus applicable taxes and disbursements, paid by instalments as agreed. In calculating this fixed fee, I have allowed for four days of collaborative sessions with each of three short-listed proponents (that is, a total of twelve days), and three days for topic meetings, as set out in the RFP.

3.2 Expenses including travel expenses

I understand that Project activities will be in Vancouver (however I am available to travel to meetings elsewhere as needed, and would bill related expenses as incurred). I do not anticipate incurring any significant disbursements.

3.3 Conditions under which a variation of fee may be sought

I propose that if the services required exceed ordinary expectations, either party would be entitled to request a fair variation in the fee, and both parties would give the matter due consideration. In this connection, I note that my hourly rate for this work would be \$255, if the work were paid on an hourly-rate basis. (The rate for my delegate of comparable seniority, should I be on vacation during any Project activities, would be the same.)

4. INSURANCE COVERAGE

I am covered by both the mandatory professional liability insurance required of all practicing lawyers in BC, and additional excess liability coverage maintained by my firm. Should you wish additional details of insurance policies, I would be pleased to provide them.

JANE S. SHACKELL, Q.C., C. ARB. - RÉSUMÉ

Profession:

I practice law as associate counsel with Miller Thomson LLP. Before joining this firm, I was associate counsel with Macaulay McColl, and a partner in Feller Drysdale for ten years including three as managing partner. I was appointed Queen's Counsel in 1999. I have been in practice in Vancouver for about 27 years.

I advise boards of directors and senior executives on business law matters, including acquisitions and divestitures, finance, leasing, partnerships, joint ventures, employment issues, and franchising. My clients are in a variety of businesses, including manufacturing, services, and professions, and carry on business in various Canadian provinces, the United States and internationally.

I am experienced as a private arbitrator and mediator, and have had conduct of around 60 proceedings as neutral. In 1999, I was awarded the designation "Chartered Arbitrator" by the Arbitration and Mediation Institute of Canada, (given by the Arbitration and Mediation Institute of Canada to persons with sufficient experience as paid arbitrators, after completing in addition certain courses of study, written examinations, and oral examination before a Board of Examiners). I was an *ad hoc* member of the Canadian Human Rights Tribunal from 1995 to 1998, and a part-time member of the B.C. Human Rights Tribunal from 1999 to 2003.

Board, Governance and other Experience:

I am Vice-Chair the Board of Governors of Capilano University; I chair its Finance and Physical Planning Committee, and serve on its Labour Relations Committee. From 2002 to 2008, I was a Governor of the Justice Institute of British Columbia, one of BC's biggest post-secondary training institutions; I served as Vice-Chair of the Board, Chair of the governance committee, and on the audit committee.

I have served since 2003 as a member of the Board of Trustees for the Granville Island Trust (a publicly-appointed body serving the Granville Island community through CMHC).

I am a Life Bencher of the Law Society of British Columbia, having been elected four times and served 8 years as a Bencher. The Benchers elected me three times to the executive committee; I also chaired the audit committee, served as vice-chair of the discipline and credentials committees, and conducted numerous discipline and credentials hearings.

I have been a guest lecturer in professional ethics at UBC's Faculty of Law and for the Professional Legal Training Course, and have also led courses in corporate finance, directors' and officers' liabilities, business law, and the role of a fairness advisor in public-sector procurement projects.

I was a founding member of West Coast LEAF, an organization that pursues test-case litigation pertaining to women's equality issues. I served on LEAF's provincial and national boards for 10 years. I served three years on the National Council of the Canadian Bar Association, and for two years as a Director of the CBA (BC Branch) Lawyers Benevolent Fund. Currently, I serve as a Director of the BC Arbitration and Mediation Institute.

Education:

I received a bachelor of laws degree from the University of British Columbia in 1984. I articulated with Ladner Downs, and was called to the British Columbia bar in 1985. Prior to law school, I studied political science.