

# **BRITANNIA MINE WATER TREATMENT PLANT PROJECT**

## **REPORT OF THE FAIRNESS AUDITOR ON THE PROCUREMENT PROCESS**

**July 11, 2005**

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**To: Steering Committee, Britannia Mine Water Treatment Plant Project  
(Brian Murphy, Brian Clarke, & Steve Hollett )**

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 Auditor;
7. Recommendations to improve process for future procurements;
8. Any qualifications on the endorsement of the process; and
9. A statement that the Fairness Auditor has fulfilled the terms of her engagement in order to express an opinion;

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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:

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**Joan M. Young**  
**Fairness Auditor**

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## **SCOPE OF REVIEW**

I was retained in January 2004 to act as the Fairness Auditor for the Britannia Water Treatment Plant Project. My role is to satisfy myself on the overall fairness of the procurement process associated with the Britannia Water Treatment Plant Project.

Prior to my engagement, the Province issued a Request for Expressions of Interest ("REOI") and, following that stage, a Request for Proposals ("RFP"). These two stages were intended to set out information regarding the project to the private sector and to invite those parties both interested and qualified in a variety of project specific areas to participate in the procurement process.

My engagement covers the evaluation of the responses to the REOI and the RFP stages.

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

The Fairness Auditor will act as an independent observer and will provide arms length advice to the project team and independent assurance to the Steering Committee as to the fairness and appropriateness of project management activities related to the procurement process. At the end of that process (including if the process is terminated) she will provide an independent opinion as to whether the project team faithfully and fairly carried out this process, with respect to the terms set out in the RFEI. Specifically, the Fairness Auditor will do the following.

1. During the procurement process, provide the Steering Committee with advice. The Fairness Auditor may provide advice to the Committee as she feels appropriate, and the Committee may seek advice as needed. Where the Steering Committee 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

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amendment to the process and the consistency of the amendment with provisions set out in the RFEI under which amendments can be made.

2. In advance of key procurement process decisions being finalized, the Auditor shall meet with the Chair of the Steering Committee and other members of the project team to:
  - a. Receive updates and review project documents;
  - b. Ask any questions the auditor deems necessary to test the logic, fairness and merit behind decision-making activities and processes;
  - c. At the request of the Steering Committee Chair, provide confidential advice and perspective on the procurement process; and
  - d. At the request of the Steering Committee 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.

The key approvals are expected to be:

- a. The selection of a lead(s) proponent from the RFEI stage, or a decision to discontinue the process at this stage;
  - b. Selection of a lead proponent from a Request for Proposals (RFP) stage, or a decision to discontinue the process at this stage; or
  - c. Conclusion of negotiations, or a decision to negotiate with another proponent or to discontinue the process upon failure of negotiations.
3. At the conclusion of the procurement process, the Chair of the Steering Committee will ask the Fairness Auditor to provide a written opinion to the Steering Committee addressing the following matters:
    - a. the extent to which PBC, MSRM and their advisors followed the procedures and fairly applied the evaluation criteria specified in the RFEI and subsequent documents;

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- b. the extent to which, where judgement and interpretation is allowed or required, the project team exercised judgement and made interpretations in a fair and impartial manner; and
- c. to the extent that amendments to the process were permissible, that decisions with respect to amendments were made in a fair and impartial manner;

This document will be subject to disclosure at the discretion of MSRM or PBC executive.

The Fairness Auditor shall be:

1. provided full access to all information related to the procurement processes as the Fairness Auditor decides is required, including documentation, personnel, premises, meetings, reports and minutes; and
2. kept fully informed by the Chair of the Steering Committee, or his delegate, of all documents and activities associated with the procurement processes.

My role as the Fairness Auditor is not to validate the Evaluation Committee's recommendation of the selected proponent; 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 to the Britannia Mine Water Treatment Plant Transaction.

## **FRAMEWORK FOR REVIEW**

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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 audit:

- (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 Partnerships BC and/or the Province of British Columbia 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;
- (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;

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- (g) Review the Evaluation criteria proposed for the various stages of the REOI and RFP stages 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 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 AUDITOR**

The Britannia Mine is located approximately 48 km north of Vancouver at Britannia Beach, on the east shore of Howe Sound. The Britannia Mine was one of the biggest copper producers in the British Empire, operated from 1904 to 1963 by the Britannia Mining and Smelting Company Ltd. and by Anaconda Mining Company from 1963 until permanent shutdown in 1974. The Crown Grants and freehold rights to the Britannia Mine lands were transferred to Copper Beach Estates Ltd. in 1979.

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During operation, approximately 80 km of underground workings and five open pits were excavated, with the ore processed in the milling facilities at Britannia Beach. Rocks in the Britannia area, once exposed to air by mining or other excavation activities, are susceptible to bacterial leaching. The resultant acid rock drainage (ARD) flows into Howe Sound. The ARD problems at Britannia, and possible solutions, have been studied extensively over the years, often funded through both federal and provincial initiatives.

In 2001, the Province entered into an agreement with the former mine operators whereby a sum of money was contributed towards remediation purposes in exchange for a provincial indemnity against future liability. Responsibility for managing the Remediation Project was assigned to the Ministry of Sustainable Resource Management (MSRM) early in 2003, with the Ministry of Water, Land and Air Protection (MWLAP) retaining responsibility for the regulatory function under the *Waste Management Act* (WMA).

The key objectives related to the Project are:

- The water treatment system will provide suitable treatment for mine water, and environmentally-acceptable disposal of sludge or treatment by-products, if applicable.
- The proposed water treatment solutions will conform to all applicable requirements of authorities having jurisdiction with respect to design, construction, operations and maintenance and oversight.
- The water treatment plant (WTP) will be designed, built and operated in a manner that provides the best overall value to the Province.
- The WTP should be sufficiently flexible to permit upgrading in an affordable manner.

A. *Appointment of Fairness Auditor*



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The role of Fairness Auditor 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 Auditor also provides advice on issues which may arise during the procurement process which could impact on the overall fairness of the process.

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 Auditor is not to validate the Evaluation Committee's recommendation of the selected proponent; rather, it is to provide oversight and assurances regarding the processes applied in making the recommendation.

## *B. Procurement Process for Britannia Mine Water Treatment Plant Project*

The procurement process involved two phases:

- Request for Expressions of Interest stage ("REOI")
- Request for Proposals stage ("RFP")

## *C. Request for Expressions of Interest*

The Request for Expressions of Interest ("REOI") was issued on January 21, 2004 with a closing date of March 5, 2004 requesting interested parties to submit their qualifications in any of the following areas: Financial Capability and Use of Demonstrated Technology. I was retained after the closing of the REOI and did not have any input into the preparation of this

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phase of the procurement documentation. I was involved in the evaluation of the responses post-closing.

As a result of that process, several teams with expertise in a wide variety of enterprises were qualified to move to the next stage of the procurement process. Seven Expressions of Interest were received by the Province, with one submission being rejected due to it being received by facsimile. I was advised of this event, and concurred that it was the appropriate step to take due to the wording of the REOI documentation. Ultimately, three companies were invited to proceed to the RFP stage.

One proponent requested that PBC grant an extension of time to file its response to the REOI due to the late addition of a partner to its proposed consortium. The Evaluation Committee advised me that they had the authority to extend time pursuant to the terms of the REOI, which interpretation I agreed with, and they sought my informal opinion as to the fairness of such an extension in these circumstances. After further consideration the Evaluation Committee eventually arrived at a decision to not extend the deadline for responses to the REOI. The rationale for the denial was based on the lateness of the request, the impact that such a request may have on the overall timetable of the project and that while an extension was clearly within the authority of PBC it may be perceived as providing the requestor with an unfair advantage over proponents who had been labouring under a more restrictive deadline. I am satisfied that the Evaluation Committee fairly applied appropriate and reasonable considerations in its decision to refuse the extension of time.

A number of staff and advisors were assembled for the purpose of evaluating the submissions. Each advisor was required to execute a Conflict of Interest declaration in advance of access to any information or proposals received in response to the REOI. Each of the private sector advisors also had confidentiality provisions included in their terms of contract with PBC and government. One individual signed a confidentiality agreement as he was

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not retained on a formal contract for remuneration with PBC. Evaluators were also advised of the appointment of the Fairness Auditor 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. As a result of several disclosures made in the Conflict of Interest declarations, rulings were sought from the Conflict of Interest Adjudicator. In one case, a private advisor was required to limit his participation in the project to an advisory, as opposed to participatory, role in terms of the actual evaluations.

An Evaluation Manual was developed based on the evaluation criteria set out in the REOI. The evaluation was based on a combination of criteria scored on a "Pass/Fail" basis as well as rated criteria. I was provided with a draft of the Evaluation Manual in advance of the evaluation meetings and eventually all evaluators were provided with a final form of manual before the evaluation began.

Seven proponent teams submitted responses on or before the March 5, 2004 deadline. As noted previously, one submission was rejected as it did not meet the mandatory criteria for acceptance. Six remaining submissions were evaluated.

I attended a lengthy Evaluation Committee meeting on March 26, 2004 as an observer. I was advised that all Evaluators and advisors had been cleared by the Conflict of Interest Adjudicator. During the course of these meetings it was determined that additional information regarding the form of proposed technology from one of the teams was necessary. A letter seeking further clarification to the team was sent and ultimately an information meeting was held to answer the technical sub-committee's questions. I attended a meeting with representatives of the Team and the Technical Sub-committee in Vancouver on April 13, 2004.

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At approximately the same time, this same team contacted the Fairness Advisor to express concerns that they felt that the composition of the technical sub-committee was biased against them allegedly due to previously expressed opinions about this particular team's preferred form of technology for the project as well as a general concern that the evaluators were not in favour of public-private partnerships. I held a lengthy telephone meeting the team members to ensure that I fully understood their concerns. I also had an exchange of communications with them in writing regarding this issue. This team wished to still proceed with the meeting with the Technical Sub-Committee notwithstanding the allegations of bias raised.

In coming to the eventual determination that there was no basis for the allegation of bias, I was provided access to the historical ministry documents and minutes of various meetings involving the individual in question. I spoke to the person who allegedly held the biased view at length, and considered his involvement, his employer's involvement and the previous position identified. I came to the conclusion that there was no basis in fact for the allegation of bias, and that the individual in question had not formed an opinion as to the merits of any one technology which would taint his review of the submissions from the various parties including the complainant team. I also note that this individual and his company were given clearance by the Conflict of Interest Adjudicator for participation in the Evaluation process. I advised PBC of my opinion that there was unfairness in having this individual participate in the evaluation.

Regarding the concern that some or all of the team members were opposed to public-private partnerships, I note that the government had provided the direction that the project was to proceed in this fashion, subject to value for money concerns, and that even if some members had a view on this subject that it was not germane to the evaluation process. Moreover, the technical team members were not asked nor did they provide any evaluation on a comparison of traditional procurement methods or government delivery versus public-private partnerships (P3), and this issue was not part of their

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deliberations. Accordingly, I did not consider this concern to be a valid fairness issue.

I was consulted on a regular basis by members of the Evaluation Team on various issues of a minor nature to ensure fair process was followed throughout, and I appreciated the team's proactive approach to ensuring that issues were identified and dealt with in a timely manner. Overall, I was satisfied that the project activities associated with this phase of the procurement were carried out fairly, and verbally advised the Evaluation Committee and the Steering Committee of this conclusion.

## *E. Request for Proposals*

From the six conforming responses in the Request for Expressions of Interest stage, three proponents were invited to proceed to the Request for Proposals stage ("RFP"). In alphabetical order they were:

1. AMEC Americas Ltd. and Ledcor Projects Inc.
2. EPCOR Water Services Inc. and Team
3. Terasen Utility Services Inc. and Team

The RFP was issued in late April 2004. All Proponents were required to provide written guarantees of confidentiality before the Proponents were provided with confidential information about the project, including access project specific information in the electronic "Data Room". A number of Addenda were issued over the course of the RFP stage, and each proponent was provided with the Addenda.

Technical meetings were held with each of the proponent groups with representatives of Partnerships BC and the Province of British Columbia and their technical advisors to discuss technical issues regarding the project. I was invited and welcome to attend all meetings to observe the proceedings and work of the sub-committees.

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During the course of the summer of 2004, the procurement evaluation teams were re-assembled. As described above, the Province and Partnerships BC also provided access to a confidential "Data Room" which allowed all proponents to gain identical information for the purposes of both understanding the nature and scope of the project, and to ensure that appropriate due diligence was carried out by proponents before submitting their proposals to the Province.

On May 3, 2004 one of the proponents wrote to the Fairness Auditor regarding the involvement of AMEC in the procurement as they had previously done work for the Province on the project. The concern was expressed that AMEC would have an unfair advantage due to it having access to certain information from its previous association providing services regarding the Britannia Mine Water Treatment Plant project. The Conflict of Interest Adjudicator had been consulted earlier by Partnerships BC about this issue and he provided advice regarding access to information and the establishment of confidentiality screens, commonly referred to as "Chinese Walls," to ensure that there was no unfair advantage to AMEC in the proposal process. On May 10, 2004 AMEC provided certain undertakings regarding the availability of and access to information of its team members preparing its proposal. These measures were communicated to the proponent. I am satisfied with the measures taken.

Deadlines were originally established for the submission of proposals. During the course of the RFP phase, changes were made to the deadlines. I am satisfied that these decisions were done fairly and not to the advantage of any particular proponent. One proponent requested a three day extension of the deadline for submission of its proposal due to a death in the family of one of its key team members. The Province and Partnership BC considered and granted this extension. All proponents were extended the same three day period.

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As with the REOI stage, each of the Province's and Partnership BC's advisors and staff were required to execute a Conflict of Interest Declarations in advance of gaining access to information associated with the Project or with confidential proponent information. I was invited to review the draft form of Conflict Declaration and provided advice clarifying interests to include "financial" interest as a specific aspect of conflict of interest that was required to be disclosed. Evaluators were required to disclose share ownership greater than 2% of a proponent company. One evaluator made a disclosure of share ownership, and it was judged to be well below the established 2% limit (0.0003%) and no limitations or disqualifications of this evaluator were necessary. A number of disclosures were reviewed by the Conflict of Interest Adjudicator and, in some cases, restrictions were placed on the use of a particular advisor or in some instances "Chinese Walls" were required to be instituted. In cases where restrictions were required, each evaluator provided assurances and undertakings setting out the solution instituted in writing to PBC including measures for physical separation of file materials, limitation on access to information, and electronic security and password protection for documents. The protocol developed required the Conflict of Interest Adjudicator to give approval to the confidentiality screens instituted, which was followed in all cases.

Pursuant to the terms of the RFP, proposals were required to be submitted to Partnerships BC by September 3, 2004. The RFP stage proceeded with three proponents, AMEC, Epcor and Terasen. The proposals were received by two PBC staff members and the time/date recorded.

The completeness review was undertaken by two Partnerships BC staff to ensure that each proponent had complied with the mandatory submission requirements of the RFP Instructions. A written record of the review was completed and signed off. After this review was completed, the various advisors were provided with access to the proposals (either technical or commercial, as appropriate) for the purposes of the sub-committees' evaluation. Each person having access to the proposal documents was

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required to be cleared by the Conflict of Interest Adjudicator before gaining access to the documentation. As well, each evaluator was required to institute confidentiality provisions to ensure that no confidential or proprietary information from the proponents was disclosed outside of the evaluations.

In the case of two proponents, financial and technical errors were noted in their proposals. Pursuant to the terms of the RFP, rectification was sought from each of these proponents. These rectifications were done in accordance with the terms of the RFP.

On October 5, 2004, I was invited to and did attend a number of the sub-committee meetings and briefings with the Evaluation Committee. I was advised at this meeting that all Conflict of Interest declarations had been submitted and vetted, and that all members were cleared to proceed. The Evaluation Committee, in reviewing all of the technical, commercial / legal, and financial information, made assessments based on both quantitative considerations as well as qualitative considerations. The evaluation was one primarily based on financial considerations such as the net present value of the proposal, although qualitative factors were also measured and scored in a comparative fashion. I had the opportunity to question the basis upon which the assessments of the submissions were made including the areas with the most discretionary scoring. I was permitted to ask any questions that I deemed necessary to test the logic, fairness and merit behind the evaluation criteria. I am satisfied that the evaluation criteria appeared to be based on relevant considerations appropriate to the technical risks, legal risks and financial risks in the various proposals received. Similarly the assessment of the qualitative differences between the proposals also appears to have been reasonably connected to the relevant technical, legal and financial criteria for evaluation. A recommendation was made for Epcor to be selected as the preferred proponent.



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On October 7, 2004 I attended as an observer to the meeting of the Steering Committee and was asked for my verbal opinion regarding my observations and opinion of the process to date. I reported that the evaluators appeared to conduct all of their evaluations in accordance with the criteria set out in the evaluation manual and applying relevant considerations in their areas of expertise to the issues facing the various evaluation committees. I advised the Steering Committee that I was not aware of any unfairness which would require the procurement to be aborted or revisited.

The selection of the preferred proponent was then made and followed the recommendation of the Evaluation Committee.

During the Fall 2004 and the Winter 2004/05 the parties negotiated the Project Agreement. The final arrangements were made and the successful conclusion of negotiations was announced in March 2005. The Selected Proponent began work on the Project shortly after the conclusion of negotiations. I was asked to prepare my written audit report in April 2005. I met with the Steering Committee and discussed my formal findings in June 2005. I required some additional information, which was promptly provided. I have now concluded all my enquiries.

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

My recommendations are in two main areas: standardization of procedures and forms and record keeping.

I would recommend that future procurement processes include a provision in the Relationship Disclosure and Conflict of Interest forms which specifically asks evaluators and advisors about share ownership in the various companies or parties involved in the procurement opportunity. This will provide greater comfort and assurances for the Province and Partnerships BC in ensuring a fair and unbiased process.

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A uniform standard for all PBC projects regarding the acceptable level of share ownership by those involved in the procurement evaluation process would be helpful.

I would also recommend that a standard form of Confidentiality and Conflict of Interest/Relationship Disclosure be adopted for all projects involving the Province of British Columbia and Partnerships BC. In the interest of having consistent standards for public servants and others advising the Province and Partnerships BC, uniform standards for documentation would be helpful.

Finally, I recommend that the receipt of all documents such as the confidentiality and conflict forms be dated stamped by PBC upon receipt. Currently some documents, like the receipt of proposals, are time and date stamped, whereas other documents are not. Any document which relates to the integrity of the process should be date stamped.

## **ANY QUALIFICATIONS ON THE ENDORSEMENT OF THE PROCESS**

My audit review has been based on my own review of selected documentation and records; my discussions with the Evaluation Committee and the various sub-committees; my observations of the activities of the Evaluation Committee, their sub-committees and professional advisors in their internal meetings; 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 audit 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**

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The overall procurement process associated with the Britannia Mine Water Treatment Plant Project has been conducted in a fair manner and in accordance with the procedures established in the Request for Expressions of Interest and Request for Proposals stages. 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 AUDIT TERMS**

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

**Respectfully submitted,**

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**Joan M. Young, B.A., LL.B.**  
**Fairness Auditor**

Dated at Victoria, BC this 11<sup>th</sup> day of July, 2005

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