



## INTRODUCTION

This Fairness Report for the Modular Classroom Project (as described below) is intended to offer an assessment of the manner in which the procurement process for the Project was implemented by Partnerships BC and the Ministry of Education. This assessment is provided from the position of an independent third party observer who has monitored all aspects of the procurement in terms of fairness to the proponents. Specifically, in this Project, the Fairness Adviser provides a level of confidence to the proponents that the competitive selection process has been implemented in the manner described in the procurement documents and that the process has been applied fairly and without bias to all participants. Because this report will be made public, it also offers comfort that the selection of a preferred proponent for the Project and the resultant expenditure of public funds has been made in a competitive, fair, open and responsible manner.

### I. PROJECT BACKGROUND

The Province of British Columbia has stated that it wishes to establish British Columbia as the best-educated, most literate jurisdiction in North America. It therefore intends to expand early learning programs for three to five-year old children across the province. To meet this goal, the Ministry of Education, together with school districts across the province, determined that modular classrooms would provide the best solution to meet the demand for increased classroom space. The target date for implementation of the modular classroom solution has been set for September, 2011.

The proposed solution involves the design, production, delivery, installation, commissioning and associated work for 133 modular classrooms that will be placed in 101 school sites in 24 school districts across the province (the “Modular Classroom Project” or the “Project”).

The procurement process for the Project required that a successful proponent would enter into both a Master Agreement with the Province of British Columbia as represented by the Minister of Education and Modular Classroom Contracts with the Boards of Education for each of the school districts receiving the modular classrooms.

The Ministry of Education (the “Ministry”) will fund the Project. The Ministry provides governance, legislation, policy and standards for education programs in the province including the early learning programs. The school districts, in turn, implement and provide space for the educational programs. Partnerships British Columbia (“Partnerships BC”) evaluates, structures and implements partnership solutions for public sector projects. The Province, through the Ministry engaged Partnerships BC to assist in managing the competitive selection process for the Project.

## II. PROCUREMENT PROCESS

### A. Overview

Partnerships BC issued a Request for Proposals (“RFP”) for the Project on June 14, 2010 through BC Bid. There was no initial request for qualifications or request for expressions of interest. The RFP set out information regarding the Project and invited interested and qualified parties to participate in the procurement process. The intent was to identify and select a preferred proponent through a RFP process who could satisfy the requirements set out in the RFP and who offered the lowest price to the Province. The RFP then required that the preferred proponent would participate in discussions to finalize both the “Master Agreement” with the Province as well as the standard form of contract (a “Modular Classroom Contract”) to be executed with each of the 24 school districts that would be receiving one or more of the modular classrooms. The anticipated timeframe for completion of delivery, installation and commissioning of the modular classrooms for all school districts was stated to be July, 2011.

### B. Closing Time, Mandatory Requirements

The RFP stipulated an original “closing time” for submission of proposals of July 22, 2010. That closing time was subsequently amended to August 3, 2010 by Addendum (Addendum No. 2 issued on July 2, 2010). Notwithstanding the extension of the closing time, the original time for the selection by the Province of a preferred proponent was maintained at September 9, 2010. The award of contract is still expected to occur by the end of September, 2010.

The RFP identified only two mandatory requirements for submission of proposals; namely: proposals must be received at the “Delivery Address” no later than the stated closing time; and, a “bonding undertaking” must be included with each proposal. Both requirements were clearly and unequivocally stated in Section 7.1 of the RFP to be the only “Mandatory Requirements” for proposal submission.

The RFP also indicated that each proposal was to be comprised of a technical submission and a financial submission.

### C. Data Room

Documentation describing the Project and background information was made available to all proponents who registered with the Contact person. The documentation was placed in an electronic Data Room website. Questions from proponents and answers by Partnerships BC’s project team as well as all addenda were also posted in the Data Room. The digital Data Room was accessible by all registered proponents via a secure sign-in process. All proponents therefore had the ability to review the same information regarding the Project as other proponents.

### D. Initial Proponent Meeting

At the beginning of the procurement process, the Province and Partnerships BC conducted an introductory project meeting for proponents who had registered with Partnerships BC and who had signed a confidentiality agreement. General information

regarding the Project was provided to the attendees. The RFP was clear that the proponent meeting was not mandatory.

#### **E. Inquiries and Responses**

Proponents were able to submit written inquiries concerning the Project to the contact person identified in the RFP. The Province responded to the inquiries and the questions and answers were provided to all proponents. The RFP permitted the proponents to ask “commercial in-confidence” questions about the Project that were specific to their submissions. Such “commercial in-confidence” questions and responses were required to be kept confidential by the Province.

Seven inquiries about the Project were received prior to closing time and responses were provided by the Province’s project team. Those inquiries and responses were made available to all proponents. Only one “in-confidence” question was received and the Province provided a response just to that proponent in conformance to the stated RFP process.

#### **F. Form of Agreement and Contract**

The RFP invited proponents to review and provide comments on the draft Master Agreement and draft Modular Classroom Contract that were included as appendices to the RFP. The Province was permitted under the RFP to amend and finalize the Master Agreement and Modular Classroom Contract prior to closing time based on such comments.

One of the inquiries received by the Province concerned holdback provisions in the Modular Classroom Contract. That inquiry resulted in Addendum No . 4 which added Section 6.13 – Alternates to the RFP. That amendment to the RFP permitted proponents to submit alternate proposals in the same manner as submission of the proposals; namely, in a separated sealed envelope. Section 8.1 of the RFP was also amended so that the Province could consider an alternate proposal submitted by the preferred proponent and to negotiate and award the contract on the basis of that alternate proposal or to incorporate some or all of that alternate proposal in the final contract(s).

The Master Agreement and Modular Classroom Contract were to form the basis for the proposal submissions without further amendment except for any changes that the Province, in its discretion, wished to make. Upon request by the Province, the preferred proponent would be required to execute the Master Agreement with the Province and Modular Classroom Contract with the school districts as those documents had been finalized by the Province.

#### **G. Contact Person**

A contact person was appointed for the Project (Dawn Hart) who would be the sole point of contact between the Province and the proponents. The contact person issued and received all correspondence, inquiries and responses and issued addenda in accordance with the terms of the RFP. She was also to arrange any meetings with proponents and any reference checks required by the RFP during the procurement process.

## **H. Relationship Review**

A relationship review committee was established for the Project to assess all relationships disclosed during the RFP process and to identify any relationships that could be considered as a perceived or actual conflict of interest between the Province and the proponents. This relationship review process included a review of any proposed or actual substitution of team members for each of the proponents.

## **I. Addenda**

There were six addenda amending the RFP that were issued to the proponents during the procurement process. A “conformed RFP” incorporating all addenda amendments was provided to the proponents on July 21, 2010. That conformed RFP identified all amendments made to the RFP by addenda issued during the RFP period and prior to the closing time.

## **III. APPOINTMENT AND ROLE OF FAIRNESS ADVISER**

### **A. Appointment**

The Province appointed Owen Pawson of Miller Thomson LLP as the Fairness Adviser for the Project in June, 2010 to act as an independent third party to monitor the procurement process with respect to fairness and to report to the project board for the Project as to the fairness of that process.

### **B. Request for Proposals**

The RFP, in Section 10.12 – Fairness Adviser, states that the Fairness Adviser will monitor the competitive selection process for the Project and provide a report that the Province will make public. The Fairness Adviser was provided full access to the evaluation process and was kept informed by the Province of all documents and activities associated with the RFP.

Proponents were permitted under Section 10.12 of the RFP to contact the Fairness Adviser if they had any concerns regarding fairness of the competitive selection process. In fact, the Fairness Adviser did not receive any questions nor was he contacted by any proponent about fairness of the process or otherwise.

### **C. Role of Fairness Adviser**

The purpose of the review by the Fairness Adviser is to provide independent arm’s length advice to the Project Board and independent assurance as to the fairness and appropriateness of activities related to the procurement process for the Modular Classroom Project. The Fairness Adviser does not provide legal advice to the Project, but he will provide advice to the Province and the project team on any issue of fairness that may arise during the RFP process or that could impact on the overall fairness of the competitive selection process for the Project.

The role of the Fairness Adviser is not to validate the Evaluation Committee’s identification of the preferred proponent but rather to provide oversight and assurances

regarding the processes applied in making the recommendation as to the selection of the preferred proponent. In particular, the Fairness Adviser should monitor the competitive selection process and provide a report to the project board for the Province regarding the fairness of the evaluation and the procurement process as set out in the RFP and whether the process for selecting a preferred proponent was implemented in a competitive, open and fair manner. Specifically, the Fairness Adviser is to provide an opinion as to whether:

- the evaluation process was conducted in a fair manner;
- the evaluation and selection of a preferred proponent was consistent with the RFP process and is thereby transparent to proponents; and,
- the evaluation process was conducted without bias toward any proponent.

#### **D. Access to Information**

During the procurement and evaluation process, the Fairness Adviser was provided full access to documents, meetings and information including access to all documentation, personnel, premises, meetings, reports and minutes. The Fairness Adviser was kept fully informed of all documents and activities associated with the process and was invited to all relevant meetings involving procurement and evaluation.

#### **E. Fairness Review Activities**

The fairness review by the Fairness Adviser followed all four phases of the RFP procurement process:

1. prior to closing time for the RFP;
2. post closing consideration of Proposal submissions;
3. evaluation of Proposals; and
4. identification and recommendation of a preferred proponent.

During the procurement process, the Fairness Adviser undertook the following specific activities:

- (a) review of procedures for handling of documents, security of documents, procedures for inquiries and clarifications;
- (b) review of documentation issued by the Province to proponents;
- (c) determine whether each proponent was provided access to the same information as other proponents;
- (d) confirmation that the evaluation process and requirements were established in advance of evaluations being undertaken;
- (e) ensuring that there were adequate measures for dealing with confidentiality, avoidance of conflict of interest and unfair advantage as well as procedures for resolving any conflict issues which may arise during the procurement process;

- (f) review of proposals generally to ensure an adequate familiarity with the terms of the responses;
- (g) attend evaluation sessions to monitor the process generally to ensure the procurement followed the evaluation criteria and the stated evaluation process.

#### **IV. DETAILS OF FAIRNESS REVIEW**

##### **A. Proposal Closing Time**

The Fairness Adviser attended the Partnerships BC offices in Vancouver as the closing location for the reception of proposal submissions. The offices of Partnerships BC were designated, under the RFP, as the “Delivery Address” for the closing time which was identified as August 3, 2010. Three proposals were received at the Delivery Address on or before the closing time. No proposals were received late. Each of the proposals was then subjected to a completeness review.

##### **B. Completeness Review**

A completeness review team was appointed for the Project to receive the proposals at the Delivery Address, review them for completeness, confirm compliance with mandatory RFP requirements and compile a list of team members for each proponent in order to ensure a proper relationship review for conflict of interest purposes. The review team included Patricia Wilkinson as the Evaluation Manager and Mark Pucsek. The Fairness Adviser attended the completeness review of the proposals. That process was conducted properly and in accordance with the terms of the RFP.

Upon review of the three proposals, the completeness review team concluded that one of the proponents had failed to provide a “Bonding Undertaking” (consent of surety) with its proposal. The requirement for an executed Bonding Undertaking from the surety of each proponent was a submission requirement that was clearly described in Section 7.1 of the RFP. It was stated to be a “Mandatory Requirement”. In fact, that requirement was one of only two submission requirements clearly and expressly described in the RFP as being mandatory.

Upon discovering that the one proponent had not included a Bonding Undertaking, the completeness review team determined that proposal to be non-compliant with mandatory submission requirements as set out in the RFP. That proposal was then set aside by the Evaluation Manager and was not further considered or evaluated. The other two proposals were then reviewed for completeness with non-mandatory submission requirements identified in the RFP. They were found to be compliant with the completeness review checklist provided by the project team as a guideline for ensuring that submissions responded to the information requested in the RFP. That checklist was included as Schedule D of an “Evaluation Manual” which was provided to the project team as a means of ensuring that the evaluation process was conducted in accordance with the requirements of the RFP.

Upon concluding the completeness review, all copies of the non-compliant proposal were transferred to Victoria for secure storage. All copies of that proposal were subsequently

returned to the proponent. Copies of the two compliant proposals were separated and placed in secure rooms pending evaluation as noted below.

### **C. Security / Receipt and Control of Submissions**

The two proposals found to be compliant with the mandatory requirements were separated into technical and financial submissions and the original copy and two copies of each of the proposals were taken to Victoria. The remaining copies of the two proposals were kept in Vancouver and were separated by the Evaluation Manager into their technical and financial submissions. The technical submissions for each of the two compliant proposals were placed in a separate and secure boardroom in Partnerships BC offices. The financial submissions were placed in another separate and secure boardroom. Subsequently, one of the Victoria copies was forwarded to Vancouver to accommodate the number of members on the advisory teams.

Both boardrooms were kept locked and only the members of the relevant Evaluation Committee, the technical and financial advisory teams, legal advisors and the Fairness Adviser were permitted access to those boardrooms. In addition, each of the financial and technical advisory teams was kept separate from the other and its members did not discuss its review with members of the other team. The teams maintained that separation during the RFP evaluation process.

### **D. Conflict of Interest**

Pursuant to the RFP, each proponent disclosed any and all relationships that its individual members may have had, or currently have, with the Province, any restricted party or any other person who provided advice or services to the Province in respect of the Project. A list of restricted parties was identified in Section 9.4 of the RFP. Each proponent was required to submit a completed "Relationship Disclosure" form with its Proposal. They were also requested to supply a preliminary disclosure prior to closing time in order to facilitate the relationship reviews by the Province. The information and documentation provided was intended to disclose any relationships as well as any mitigative measures that a proponent has implemented, or intended to implement, to minimize or eliminate any actual, perceived or potential conflict of interest or unfair advantage.

In addition, all members of the Evaluation Committee established by the Province for the Project and each of the advisory review teams were required to review the list of team members of the proponents and then complete and sign a Relationship Disclosure declaration. This was in addition to a Confidentiality Agreement they were required to sign before they were permitted access to the proposals or any information received from the proponents.

A relationship review committee was appointed to determine if any relationships should be referred to the conflict of interest adjudicator. A conflict of interest adjudicator was appointed by the Province (Section 9.5 of the RFP) to assess and provide decisions on any perceived or actual conflicts of interest or unfair advantage issues received during the procurement process including queries as to whether any specific person would be considered a "Restricted Party". The Conflict of Interest Adjudicator appointed by the Province for the Project was Douglas Hopkins of Boughton Law Corporation. All



members of the two advisory teams and the Evaluation Committee had their relationship disclosure statements reviewed by the relationship review committee. There were no issues of conflict of interest or unfair advantage identified during those reviews. Further, there were no relationships referred to the Conflict of Interest Adjudicator by the Province nor were there any advance decisions requested by either the Province or the Proponents with respect to conflict of interest or unfair advantage.

#### **E. Evaluation Committee**

An Evaluation Committee was established by the Province pursuant to Section 7.2 of the RFP. The Evaluation Committee was responsible for evaluating the proposals and identifying the preferred proponent through the application of the evaluation criteria and the evaluation procedure set out in the RFP including Appendix A – Proposal Guidelines and Evaluation. The members of the Evaluation Committee were Phillip Chambers (Chair), Mark Pucsek (Secretary) and Rick Steele.

The evaluation process described in Appendix A of the RFP required the Evaluation Committee to identify, as the preferred proponent, a proponent who submitted a proposal that substantially satisfied the RFP requirements and that offered the Province the lowest price for the Project. As noted above, pursuant to the RFP and, specifically Appendix B – Proposal Requirements, proposals were to include both a technical submission and a financial submission that were reviewed by the technical and financial advisory teams. The Evaluation Committee, in identifying the preferred proponent, considered the recommendations of both teams following their review of the submissions.

The Evaluation Committee then made a recommendation regarding the preferred proponent to the Province as represented by the Project Board for the Project. Pursuant to Section 8.1 of the RFP, the Province was able to either accept or reject the Evaluation Committee's recommendation.

#### **F. Advisory Teams**

The technical and financial submissions of the two compliant proposals were reviewed by the technical and financial advisory teams for the Project. Those advisory teams provided separate and independent advice to the Evaluation Committee as to whether the submissions they reviewed had substantially satisfied the RFP requirements. Those requirements included the Master Agreement and the Modular Classroom Contract.

The technical advisory team was appointed so as to have specific technical expertise in order to properly assess the technical submissions. A financial advisory team was also created with specific expertise to assess the financial submissions. The advisory teams were comprised of representatives from various school districts, the Ministry of Education, the Risk Management Branch (Ministry of Finance) and Partnerships BC. Each team was supported by specialty advisers as required.

The technical advisory team was comprised of Judy Shoemaker (Chair, School District), Kerry Magnus (School District), Ivan Lewis (School District) and John Cavelti (Ministry of Education) with Len Rodriguez (Stantec) as an expert advisor. The financial advisory team was comprised of David Hubner (Chair, Partnerships BC), Nathan Solomon (Partnerships BC) and Milaine Moen (Risk Management Branch).

The advisory teams provided information to the Evaluation Committee regarding: the strengths and weaknesses of the technical and financial submissions; recommendations for clarification of the submissions; and, confirmation that the respective submissions substantially satisfied the requirements of the RFP including those described in the Master Agreement and the Modular Classroom Contract. As part of the review, the advisory teams considered whether the proponents had demonstrated through their submissions that they fully understood the Project and were capable of properly performing the contractual obligations if they were awarded the contract.

#### **G. Review by Advisory Teams**

The review of submissions by the advisory teams was conducted in Vancouver at Partnership BC offices. As noted, the conference rooms used during the review meetings by the advisory teams were secure and access to the rooms was monitored and controlled. All individuals involved in the review for both teams signed confidentiality agreements and were required to review the identified team members for each of the proponents and to provide relationship disclosure statements confirming that they had no actual or perceived conflicts of interest with the proponent team members before being given access to the submission materials.

No submission materials were removed by team members from the offices. However, materials were made available in a secure electronic Data Room that was available only to the technical and financial review teams by computer access. The advisory teams also conducted additional telephone conference calls to address specific aspects of both proposals and finalize their respective advice subsequent to their primary meetings.

Each advisory team operated in a manner independent of each other and separately submitted their conclusions and recommendations to the Evaluation Committee. Based on those conclusions and recommendations, it was the role of the Evaluation Committee to identify the preferred proponent and make a recommendation to the Project Board for final approval.

The Fairness Adviser was fully informed of all advisory team and Evaluation Committee meetings and activities. The Fairness Adviser was involved in subsequent telephone conference calls with the technical advisory committee as it met to discuss specific concerns regarding the technical submissions and to develop consensus as to whether both of the submissions satisfied RFP requirements. As issues arose, the Chair or Secretary of the Evaluation Committee consulted with legal, technical and financial advisors in order to provide clarity or review of those issues as requested of those advisors. The Fairness Adviser attended key team meetings for both technical and financial advisory teams held on August 11, 2010. The Fairness Adviser also attended the Evaluation Committee meeting on August 16, 2010 as an observer.

Members of the technical and financial advisory teams considered only the criteria described in the RFP during their review of the submissions. At the conclusion of those meetings, although both the technical advisory team and the financial advisory team recommended some clarification questions to the Evaluation Committee, they both separately confirmed that the technical and financial submissions as submitted would substantially satisfy the requirements of the RFP. Those conclusions and

recommendations from both teams represented a consensus of all team members. Both teams also made recommendations that certain clarifications for both of the proponents' technical and financial submissions should be obtained and specific issues should be resolved prior to finalizing an agreement with a preferred proponent. The meetings of the advisory teams and the subsequent telephone conference meeting were conducted in a manner that was fair to the proponents and without any bias to either proponent.

I am satisfied that all of the proponents were provided with a fair opportunity to have their respective proposal properly and fairly considered by the advisory teams in accordance with the terms of the RFP. The criteria appear to have been applied consistently and in accordance with the terms of the RFP and the Evaluation Manual.

The reviews by the advisory teams were intended to ensure that the proposal submissions met the requirements contained in the RFP; they were not an assessment of the relative merits of one proposal over another or an assessment against weighted criteria. The reviews were completed by reference to the Project requirements to determine whether the proposals substantially satisfied the RFP requirements. There were no in person meetings with either of the two proponents.

The reviews of the submissions by the advisory teams were based on the criteria set out in the RFP and were performed in conformance with the process established in the RFP. The submissions were reviewed by the teams in terms of adherence to the project criteria as described in the RFP and the ability of the proponents to meet the requirements of the Master Agreement and the Modular Classroom Contract. At the end of the reviews, both teams found that the submissions substantially satisfied the RFP requirements.

#### **H. Review by Evaluation Committee**

Pursuant with Section 7.3 of the RFP, the Evaluation Committee was permitted to conduct reference checks, verify information provided in each proposal and conduct background investigations if it considered them necessary and to consider such further information in its deliberations. After deliberations, the Evaluation Committee determined that such reference checks, investigations or verifications were not required.

The Evaluation Committee was also permitted to obtain clarification, rectification or further information from either or both of the proponents. Although certain recommendations for clarifications were received from both technical and financial advisory teams, the Evaluation Committee determined that the recommended clarifications were not necessary for identifying the preferred proponent. Further, the Evaluation Committee considered that the recommended clarifications could be dealt with during discussions with the preferred proponent.

The Evaluation Committee was permitted to request interviews or presentations with the proponents to clarify any questions or considerations in their proposals. The Evaluation Committee decided that such interviews or presentations were not required.

Pursuant to the evaluation process outlined in the RFP Appendix A – Proposal Guidelines and Evaluation, the Evaluation Committee determined, after review of the technical and financial submissions and the advice from the technical and financial advisory teams, that both proponents had substantially satisfied the requirements of the RFP through their

proposals. In accordance with the RFP, the Evaluation Committee then identified the preferred proponent as the proponent offering the lowest proposal price.

The Evaluation Committee submitted an evaluation report to the Project Board with a recommendation regarding the preferred proponent.

The Fairness Adviser attended a telephone conference on August 18, 2010 with the Evaluation Committee in which the Evaluation Committee considered the recommendations from the technical and financial advisory teams. Those discussions and deliberations concerning the recommendations of the advisory teams were conducted in accordance with the terms of the RFP in a fair manner without any bias shown to either proponent.

## **V. COMPLIANCE OF REVIEW WITH RFP CRITERIA**

My review was conducted within the framework for review identified above.

## **VI. RECOMMENDATIONS REGARDING PROCESS**

There are no recommendations by the Fairness Adviser regarding the procurement process.

## **VII. QUALIFICATIONS**

My findings are based on my review of selected documentation and records; attendance at the completeness review; meetings and telephone discussions with the technical and financial advisory teams and the Evaluation Committee; answers to questions from proponents; and personal observations of advisory and evaluation meetings. In this regard, I reviewed some but not all Project related documents.

My findings are based on the assumption that I was provided all relevant information in connection with the Project and that I was advised of all key meetings and decisions.

## **VIII. CONCLUSION**

In my opinion, the RFP procurement process associated with the Modular Classroom Project was conducted without bias toward any one proponent and in accordance with the procedures established by the Request for Proposals.

In particular, based on my review and observations of the procurement documents and activities for of the Modular Classroom Project, I believe that:

1. the Modular Classroom Project Office and its advisory teams, Evaluation Committee and its technical advisors followed the procedures outlined in the RFP and fairly applied only those evaluation criteria specified in the RFP and its related documents;
2. where judgment and interpretation was allowed or required, the advisory teams and the Evaluation Committee exercised reasonable judgment and made interpretations in a fair and impartial manner; and

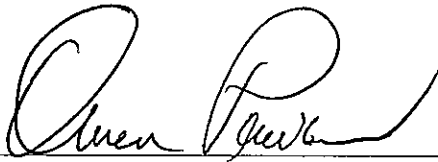
3. to the extent that amendments to the process or RFP documents were permissible, decisions regarding those amendments were made in fairly and impartially.

In summary, I am of the opinion that:

- the evaluation process was conducted in a fair manner;
- the evaluation, identification and selection of the preferred proponent was done in a manner that was consistent with the RFP; and,
- the evaluation process was conducted without bias toward any proponent.

In coming to the conclusion that the RFP process was implemented in a fair and impartial manner, I am satisfied that I was provided with the necessary access to information and the process to render this opinion to the Project Board.

Respectfully submitted,



Owen Pawson

Dated at Vancouver, B.C. the 1<sup>st</sup> day of September, 2010

