

Attachment 2
Report of the Fairness Commissioner

Coulter A. Osborne

April 12, 2007

Andrew Koropeski, P.Eng.
Director, Transportation Services
Toronto and East York District
City of Toronto,
City Hall, 100 Queen Street West,
24th Floor, East Tower,
Toronto, Ontario, M5H 2N2

Dear Mr. Koropeski:

Re: City of Toronto Coordinated Street Furniture Project

I am writing in my capacity as Fairness Commissioner for the Toronto Street Furniture Project. My retainer commenced as of March 2006. In the early stages, my role as Fairness Commissioner included identifying potential inconsistencies, or even lack of clarity in the call for proponents. I recognized from the outset that the City's purchasing policies and requirements had to be adhered to. I was also involved in the verification of the responsibilities of various members of the Project's management team. As part of my responsibilities I attended meetings with those involved in the Project. I also met with the Design Jury and Technical Advisory Team.

I reviewed both the consultative process leading to the preparation of the Request for Proposals (RFP) and the subsequently issued RFP. I was, and am, satisfied that both the consultative process and the RFP provided no advantage to any potential proponent.

The evaluation process undertaken pursuant to the RFP was of particular importance. Consistent with the RFP the evaluation was undertaken by a Design Jury, a Financial Review Team, a Technical Review Team and a

Quality Review Team. These review teams undertook their work independent of each other. That is to say the Design Jury had no knowledge of the conclusions of the Financial Review Team or any of the other review teams. The review teams undertook their work seriously and conscientiously.

I am satisfied, without reservation, that the review and evaluation process was undertaken fairly. It did not present any of the three proponents with an advantage derived from the process itself.

Before the evaluation of the three proposals submitted in response to the RFP began there was one problem which arose with respect to an element of one of the three proposals. The issue was whether this matter made the particular proposal non-compliant. This matter was resolved once an assessment was made that the problem in question presented a legal issue. This in my view was the correct analysis. As it turned out the firm of Weir Foulds was retained to provide an opinion. It seems to me that the correct steps were taken once the Project was faced with this potential compliance issue. I think it made sense to seek an outside legal opinion. The Weir Foulds opinion, which I have read, seems to me to have responded correctly to the problem that had to be addressed.

More recently it has come to my attention that the Street Furniture Project has been subject to criticism by an unincorporated entity having a website "IllegalSigns.ca". As the website designation implies, the focus of the criticism seems to be on alleged violations of City sign by-laws by those responding to the RFP and the City's failure to enforce the relevant sign by-laws. Peripheral to that enforcement complaint the Street Furniture's Project Director Robert Millward has come under specific attack. It is alleged that he had acted for a company, Kramer Design, which is a consultant to one of the firms responding to the RFP. I have spoken at considerable length to Mr. Millward about this and he has advised me that he has never acted for Kramer Design. I am advised that Kramer Design has a huge client base. As a result, to those who know

something about this industry, it is not surprising that Kramer Design would be involved in a large project such as this, in one way or another.

I accepted Mr. Millward's word as to his relationship at all relevant times with Kramer Design. He has agreed that, if requested, he will provide an affidavit confirming these assertions.

In any case, even if Mr. Millward had some previous direct business relationship with Kramer Design (which he denies) I am entirely satisfied that the evaluation process further to the RFP was not compromised in any respect. Mr. Millward and other members of the Project team had no involvement in the evaluation process. Thus, neither Mr. Millward nor any member of the Project team was in a position to influence work and conclusions of any of the evaluation teams established through the RFP.

Lastly, I have no way of knowing whether there are problems with the City's enforcement of its sign by-laws. I recognize that enforcement may to some degree be affected by available resources. Be that as it may, I think it would be a mistake to conflate the issue of enforcement of by-laws with the evaluation of proposals submitted in response the Street Furniture RFP. The proposals should be evaluated and were evaluated as prescribed in the RFP. The rules of the game should not be changed on an after-the-event basis. Those responding to the RFP might have reason to complain if it were otherwise.

To conclude, I am satisfied that all aspects of this Project, including the determination of the successful proponent, were conducted fairly. No proponent or potential proponent (including those who chose not to respond to the RFP) was put in a position of advantage or disadvantage by the consultative process, the RFP, the evaluation of the RFP or otherwise. I am therefore able to certify that the process followed throughout, including the evaluation of proposals, was fair, consistent with the RFP and in the public interest.

I have no objection to this letter being provided to City Council or to any appropriate Committee of Council. If there are any questions that arise from this letter please let me know.

Yours very truly,

A handwritten signature in black ink, appearing to read "LA Boone". The signature is written in a cursive, flowing style with a long horizontal tail.