

Letter sent to members of the Capital Regional District Core Area Liquid Waste Management Committee on February 25, 2011.

Dear Councillor,

Re: “Market Sounding Report” – Core Area wastewater treatment project

I was scheduled to speak to the Core Area Liquid Waste Management Committee (CALWMC) on February 23rd, but was unable to attend the meeting due to snow related flight cancellations. I regret not being able to make it to the meeting.

In lieu of making a presentation in person, I am writing on behalf of CUPE to briefly outline concerns about the Market Sounding Report<sup>1</sup> which was on the Feb. 23<sup>rd</sup> CALWMC agenda (item EWW 11-18).

1) Proposal for Private Operating Contract Conflicts with CRD Board Decision:

The report from Ernst and Young Orenda reveals that the CRD is planning for the award of an initial 3 to 5 year contract for private operation of the main McLoughlin wastewater treatment plant. This idea is contrary to the March 31<sup>st</sup> procurement decision of the CRD Board (which was based on a March 24<sup>th</sup> recommendation from the CALWMC). It is very surprising to learn that a private operating contract is now under active consideration.

The decision of the CRD Board with regard to procurement was that “...*McLoughlin Point, Clover Point, Saanich East plant, the energy centre, conveyance, pumps and outfall be procured using a traditional approach (design-bid-build, design-build, or construction management at risk)*...”<sup>2</sup> Private operation is not a feature of any of the three traditional approaches listed in the motion.

The “design-build” procurement method does not include private operation. If the design-build contractor is awarded an operating contract as well, then the procurement

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<sup>1</sup> CRD Core Area Wastewater Treatment Program: Market Sounding Report, January 2011

<sup>2</sup> Minutes of the Special Meeting of the Capital Regional District Board, March 31, 2010

method is referred to as “design-build-operate” (DBO). DBO was explicitly considered and rejected by the CALWMC and CRD Board at the time of the procurement decision.<sup>3</sup>

The traditional approach to wastewater treatment (ie. the approach that has been used by the vast majority of municipalities in Canada) is to contract for design and construction and then to manage and operate the facilities publicly using public sector managers and crews. This is the normal and usual approach to operation of wastewater treatment.

The CRD’s decision to use traditional procurement methods was made after detailed review of financial, technical and social factors – including extensive public input. The value for money analysis specifically determined that public operation combined with a design-build or design-bid-build construction model would be the most cost effective delivery method.<sup>4</sup>

The CRD’s decision to operate the main wastewater treatment plant publicly and to use traditional procurement of construction and design was widely applauded by citizens of Greater Victoria. Throughout the public engagement process on procurement, citizens expressed a strong preference for public operation of the wastewater treatment facilities. As the minutes of the March 31<sup>st</sup> special Board meeting put it: “*During consideration of the public participation process on wastewater treatment it was pointed out that the vast majority spoke in favour of the publicly owned and operated model*”.<sup>5</sup>

## 2) Extent of Private Operation Unclear:

The staff note which accompanies the Ernst and Young Orenda Market Sounding report refers to “...a short term operating agreement to manage the operation of the facilities using CRD staff...” and suggests that this could be restricted to training and initial maintenance. This sounds quite a bit more reasonable than the consultant’s report. Certainly, there may be some merit in involving the design-build contractor in the initial testing and commissioning phase, for an initial warranty period and/or in front-end training of CRD managers and water operators.

However, in contrast to the staff cover note, the Ernst and Young Orenda report states that “...it is proposed that a short-term operating agreement (term of three to five years) would be included with the DB...the DB proponent would be responsible for: day-to-day operations for the term of the operating agreement, the development of all operating

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<sup>3</sup> Yet the new proposal for a private operating contract is even described as a “DBO” at one point in the Market Sounding report – see page 10

<sup>4</sup> CRD Core Area and West Shore Wastewater Treatment Programs [Business Case in Support of Funding from the Province of British Columbia](#), March 16, 2010. See in particular [Appendix 6 Detailed Value for Money Estimate](#) and [Appendix 11 Service Delivery Options Considered](#)

<sup>5</sup> [Minutes of the Special Meeting of the Capital Regional District Board](#), March 31<sup>st</sup>, 2010

*procedures, staff training and supervision and overall plant performance.”* In other words, the private contractor would be responsible for all important operating requirements, including day-to-day operations. This is a proposal for privatized operation of wastewater treatment.

The Ernst and Young Orenda report is misleading in that it conveys the impression in the description of the approved procurement approach that this proposal for private operation of the facility is part of the CRD Board approval. The CRD Board has not approved such a proposal.

In addition – and alarmingly – the market sounding exercise by the consultants did an extensive canvas with private sector participants of the option of a 20 year operating contract. This is clearly way beyond the scope of the CRD Board decision. Given all the evidence the CRD has already been provided that DBO and DBFO would not be financially beneficial for this project, it is unclear why this option is even being discussed.

The financial problems of a 20 year contract are highlighted by the admission by private sector participants that having a 5 year exit option would induce the private operator to attempt to recover all costs and make the most profit within the first 5 years: *“They would need to receive their required profit upfront rather than over the longer term contract”*. The consultant’s report finds: *“DB with the 5 year operating contract only is not as attractive to the concessionaire as a 20 year term. The 5 year operating contract will end up being more expensive for the CRD.”*<sup>6</sup> If this is the case, then the CRD should not be looking at either a 20 year operating contract (which it rejected in March in large part because of the higher cost) or a 5 year exit option agreement which would apparently be more expensive than even the rejected multi-decade model.

### 3) A Renewable Operating Contract?

The project brief and questionnaire provided to potential private sector bidders<sup>7</sup>, as well as the Ernst and Young Orenda report make clear that the CRD is actively considering the option of making the 3 to 5 year operating contract “...renewable...”. The question asked of potential private operators was: *“Would you bid the McLoughlin Plant as a DB contract with a 3-5 year operating contract which may be renewed by the CRD?”* (emphasis added). Despite the clear decision of the CRD Board on March 31<sup>st</sup>, none of the questions asked potential private proponents about their views on a straight design-build, design-bid-build or construction management at risk contract. With regard to design-build, the private sector was only asked about the option of a design-build

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<sup>6</sup> Market Sounding Report, page 8

<sup>7</sup> CRD Core Area Wastewater Treatment Program Procurement Options Market Sounding Project Update Brief and Questionnaire, January 2011

contract accompanied by a potentially renewable 3 to 5 year operating contract. This is very concerning.

The Ernst and Young Orenda report offers a disturbing rationale as to why the operating contract may initially only be 3 to 5 years in length, though “renewable”. They say that potential concessionaires felt: *“Having a long term operating contract has the potential to slow the project down, given the politics that go along with ‘privatization’, not often received favorably by the public. A shorter term project is an easier sell as part of the DB project.”*<sup>8</sup>

The possibility of a renewable operating contract is an obvious foot in the door for long term private operation of the plant. As precedent, one need only look at the current situation in Sooke, where Epcor was initially given a 5 year contract that is now being rolled into an additional 21 year package.

#### 4) Staffing:

The cover note from CRD staff as well as the Project Update Brief suggests that wastewater treatment operating staff will be directly employed by the CRD. CUPE obviously supports that.

But the idea was not universally accepted by the private sector proponents. Some rejected the suggestion outright; while others felt that not having disciplinary control of the workforce would increase performance risks for the private operators and, thus, the cost of the project.

Most of those consulted were not averse to their employees being represented by CUPE, but preferred that they be directly employed by the private operator, not by the CRD. They suggested that such employees be transferred back to the CRD at the end of the operating agreement. CUPE does not support those ideas.

Opposition and resistance from potential private sector operators may well weaken the CRD’s commitment to having its own staff operate the facility. Alternatively, we may end up in a situation where CUPE members are being disciplined and directed by managers that are not party to the collective agreement, thus complicating labour relations and negotiations.

It would be far simpler, clearer and more consistent with the March decision of the CRD Board to abandon this idea of a private sector operating contract and to organize public sector management instead.

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<sup>8</sup> Market Sounding Report, page 8

#### 5) Energy Centre P3?

Participants were asked if they would bid the entire Energy Centre as a DBFO contract (ie. as a P3). This is again inconsistent with the March decision of the CRD Board, which said that the Energy Centre itself should be procured in a traditional manner (though the option was left open for a P3 for the resource recovery aspects of the Energy Centre only). Therefore, if there is to be any market sounding about the Energy Centre, only resource recovery aspects should be included. I

#### 6) One Giant Bid?

Potential proponents were then asked about their willingness to bid on the McLoughlin Plant and the Energy Centre as a single large project, with an element of private financing. This would make the project a large DBFO (in other words, a P3).

Why were proponents asked about this?

Creating a single large DBFO P3 would directly contradict the March decision to split the project as well as the CRD Board's direction about traditional procurement. This option has already been rejected by the CRD Board and the community.

Potential proponents also raised many important concerns about this idea, such as the added cost of combining the projects, the reduction in competition, the exclusion of local contractors and the delays in negotiations that this would cause.

No more time, energy or money should be expended on reviewing this option.

#### 7) Time to Plan for Public Management

The CRD should begin now to develop its plan for public management and operation of the McLoughlin wastewater treatment plant and the other project components mentioned in the March 31<sup>st</sup> Board decision. As confirmed by the Value for Money report and consistently urged on you by citizens, traditional procurement with public operation is the lowest cost and least risky option.

Contracting for private operation will be a significant and major change. It should not be considered.

The design-build contractor may obviously have an important potential role in helping train employees and managers, providing early operational guidance, helping with the warranty and with ensuring successful testing and commissioning. But none of that argues for a multi-year potentially renewable contract for private operation of the plant.

For all the reasons set out above, and more, CUPE urges that the detailed planning for public operation and management commence as soon as possible. We stand ready to assist with that in any way possible.

Thank you for reviewing this letter and for your attention to this matter.

Yours sincerely,

Blair Redlin  
Research Representative

cc Barry O'Neil, President, CUPE B.C.;  
Mauricio Navarette, President, CUPE Local 1978;  
Robin Jones, B.C. Regional Director;  
Susan Jansen, National Servicing Representative;  
Greater Victoria Water Watch Coalition