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## Fairness Monitors – Part 1

### Qualifications of a Fairness Monitor



The *best practice* is to emphasize independence: you want a person from outside of government, without personal, financial or business relationships with the project team or potential proponents. Independence also means someone who is supported by a stable business entity, and who has adequate resources. A fairness monitor cannot be dependent on the government team for administrative, logistical, or technical support. Finally, look for extensive experience with major procurements, and a solid understanding of the role and duties of a fairness monitor.

The *worst practice* is to engage a government staff member whose main strength is familiarity with the RFP subject area.

### Method of Selection

The *best practice* is to keep the engaging government agency at arm's length, and to avoid the appearance of "capture." One solution is selecting the fairness monitor from a list of prequalified candidates, as prepared by a government-wide panel. Lacking that, the government agency should run a competitive RFP process, with clear criteria and a structured evaluation process. Finally, some of the evaluation committee members should come from outside of government, or at least from other branches of government.

The *worst practice* is to engage, without competition, a retired civil servant who previously worked for the government agency, and who regularly gets consulting contracts from the agency.

### Type of Engagement

A *best practice* is a contract for the full term of the procurement process, with reports and deliverables matched to each stage of the procurement. A long-term agreement provides some security of tenure for the fairness monitor – a key factor noted in the *Democracy Watch* judgment. Avoid any right of unilateral dismissal. Make any actual dismissal of the fairness monitor subject to the approval of an independent government agency, such as the Auditor General or Attorney General. Grounds for dismissal should be limited to

substantial failure(s) of performance, or for reasons external to the engagement contract.

The **worst practice** is failing to provide an independent base for the fairness monitor. In the *Democracy Watch* case, the Ethics Counsellor was a longtime public servant who continued to be a public servant while carrying out his fairness role. The Federal Court found “structural bias,” in that the office was held at the “... pleasure of the Prime Minister.” So stay away from a candidate who works as a public servant, and whom the project director can dismiss without recourse.

#### **Payment**

Fairness monitors are generally paid by the government agency, which creates the appearance of divided loyalties, real or otherwise. The **best practice** has fees and expenses for the fairness monitor set in the long-term contract.

The **worst practice** is salary payment as an ongoing civil servant, with the project director assuming the role of direct supervisor, and no independent compensation.

#### **Access to Meetings, Documents, and Evaluation Processes**

The **best practice** is for the fairness monitor to have unrestricted access to all staff, meetings, minutes, notes, records, communications with proponents, and evaluation sessions related to the RFP competition. Any attempt to restrict access will be contentious, and can turn quickly into a **worst practice**.

#### **Timeliness and Distribution of Reports**

In the *Democracy Watch* case, the Judge found “specific bias,” largely based on the lengthy time taken to respond to issues and complaints. The **best practice**, therefore, is for the fairness monitor to deal with issues and release reports on a timely basis. Generally, all reports of the fairness monitor should be freely available to proponents, members of the public, and the media.

Next week we will continue this subject with a discussion on **The Functions of a Fairness Monitor**

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