

GATEWAY PROJECT – PORT MANN / HIGHWAY 1

Final Report of the Fairness Reviewer

January 26, 2009

I was retained by the Ministry of Transportation and Infrastructure as the Fairness Reviewer for the Port Mann / Highway 1 Project (the “Project”). As such, I am to report on whether the procurement process for the Project is conducted in a manner that is fair to proponents, including whether there is material compliance with and fair implementation of established procurement and decision processes.

I have previously provided written reports on evaluation of responses to the RFQ, and evaluation of Proponents’ Technical Submittals. This is my final report. In Part One of this report I address the procurement process for this project other than the evaluation of submittals, and in Part Two I address evaluation of Proponents’ Financial Submittals. Part Three is my conclusion.

PART ONE: Process other than Evaluations

Communications with Proponents

The procurement process for this Project included a number of structured opportunities for the Project Team to interact with Proponents for the purpose of ensuring that Proponents had a comprehensive understanding of the requirements of the RFP, and that the final version of the Concession Agreement would provide the best value for the Province. These opportunities were described in the RFP, and included written correspondence through a Contact Person appointed by the Project, Topic Meetings on various issues, and a number of Workshops. I received copies of all communications between the Project Team and Proponents. I attended a number of the Topic Meetings, and each of the Workshops.

I observed that the processes described in the RFP with regard to each of these communications structures were followed consistently. I also observed that the Project Team carefully considered all its communications with Proponents to ensure that the individuals best-placed to answer queries were consulted in each case before a response was issued, that responses were drafted to provide the greatest possible clarity, and that all Proponents received the same information. At Topic Meetings and Workshops, the Project Team ensured attendance by well-qualified persons; I observed that Project Team members who attended these meetings provided consistent responses on all issues to all three Proponents. Requests by Proponents for alterations to the Concession Agreement were considered thoughtfully and in good faith.

I am satisfied that, throughout the process, the Project Team’s communications and interactions with all Proponents were conducted fairly and in compliance with the RFP.

Fairness Issues

Throughout my participation in this Project, the Team has kept me apprised of key developments, included me in the circulation of correspondence (both internal and with Proponents) and documents, and invited me to meetings held by the Project team (including internal meetings and meetings with Proponents). I was given full access to the Project data room. I have not to my knowledge been excluded from any meeting or denied access to any document.

The Project Team has consulted me periodically with regard to issues they felt may raise fairness considerations. I have also offered comments directly to team members when I thought it would be helpful to do so. In all cases, the project staff were responsive to my comments.

During the process it became apparent that there was a substantial issue related to the participation of a particular sub-contractor on one of the Proponent teams. The Project Team was quick to recognize the issue, and developed a detailed and thorough process for handling it. I participated in that process and observed that, while time-consuming for the individuals involved, it was an appropriate response to the underlying issues and effectively prevented any unfairness that might have resulted had the issue gone unaddressed.

During the process, one of the Proponents requested a meeting with me to discuss an issue that it felt raised a substantial concern as to fairness. I have acted throughout this process solely as an advisor to the Project Team; however it was agreed I would meet with the Proponent to hear and consider its submissions. The Project Team chose not to attend that meeting. I reported the Proponent's concerns, and my recommendations, to the Project Team, and a copy of my report was made available to the affected Proponent. No further steps were necessary.

PART TWO: Evaluation of Financial Submittals

Evaluation Manual and Criteria

Prior to receipt of the financial submittals, a team of Project staff and consultants developed an Evaluation Manual, setting out details of how submittals would be received, compared against RFP requirements, and evaluated for substantial compliance with the RFP. The team included persons who participated in development of the RFP and the concession agreement, with expertise in appropriate areas.

The Evaluation Manual included criteria for evaluating each aspect of the submittals, developed by sub-teams of persons with expertise in relevant disciplines. The team specifically directed itself to ensure that each evaluation criterion related to a particular requirement of the RFP, that all information required by the RFP would be evaluated, that all sections of the submittals would be subjected to similar levels of scrutiny, and that sub-teams would consult with each other to ensure consideration of the internal consistency of each submittal.

I attended various meetings of the team during development of the Evaluation Manual. The meetings were well-attended, and all members had fully informed themselves with regard to the

RFP, the concession agreement, the topic meetings held with Proponents, and the various directions and information given to Proponents.

The EDDC and an external examiner critiqued the form and substance of the proposed criteria before they were finalized. This assisted the teams to focus on the requirements of the RFP.

The Evaluation Manual also addressed issues such as confidentiality, relationship review and conflict of interest; security measures for custody of and access to submittals during the evaluation (including secure premises, restrictions on use of electronic devices and internet access in the secure premises, arrangements for recording access to the premises and the submittals, and the like); and statements as to standards and methodology, a timeline, procedures to be followed in checking references, and forms and procedures for obtaining from Proponents any necessary clarification of information in the submittals.

The final Evaluation Manual, including evaluation criteria, was approved by the EDDC, and reflected the consensus of the evaluation team with regard to the objectives, criteria and methodology of evaluation.

Evaluation

I observed that processes outlined in the Evaluation Manual with regard to relationship reviews were carried out before the evaluation. I attended the receipt of submittals and confirmed the timely receipt of three submittals, which were checked for completeness as described in the Evaluation Manual. I attended the orientation meeting held prior to commencement of the evaluation and observed that all persons with access to the submittals were familiar with the agreed processes. I attended the evaluation premises several times during the evaluation, and observed that the provisions of the Evaluation Manual relating to security and confidentiality, communicating with respondents, communication among members of the team, and other matters, were also followed.

Each submittal included information as to the respondent team's financial capacity and plan, and was evaluated by three sub-teams. Each sub-team had primary responsibility for one aspect of the RFP – commercial/legal, financial, or traffic; and included persons with expertise in the subject-matter, assisted by professional advisors as needed. Appropriate resources were provided for the evaluation, including offices and meeting rooms, electronic and communications equipment.

I had access to the submittals and to the evaluation premises at all times. I was informed of meetings, and was copied on all correspondence with respondents. I attended various meetings as I considered necessary, including informal discussions of various sub-teams, meetings of the team leads, and meetings of the leads with the EDDC and with the external examiner. I observed that:

- Each team member was familiar with all the submittals, the RFP and the concession agreement.
- The sub-teams used the criteria set out in the Evaluation Manual to evaluate each submittal, including pre-determined cross-checking among the sub-teams to ensure an integrated review, while focusing on specific content in the submittals that supported their conclusions.

- Sub-teams obtained clarifications as necessary from Proponents using the process set out in the Evaluation Manual. The team instructed itself to ask questions only where necessary to obtain the level of detail required by the RFP.
- Team members discussed and instructed themselves from time to time on issues as to consistency and fairness in the evaluation and in communications with Proponents.
- There was full participation in group discussions and meetings; team members expressed their opinions freely, but were open to persuasion with regard to issues that arose. The EDDC asked questions to confirm that the Evaluation Manual had been followed as to both the pre-determined procedures and standards, and the evaluation criteria. Evaluators presented cogent explanations to the EDDC and the external examiner for positions they adopted, but were open to questions and ideas about their conclusions.
- The EDDC applied consistent analysis, in accordance with the requirements of the RFP and after appropriately seeking input from expert advisors, to requests by the various Proponents for approval of changes to the Proponent Teams.

All the evaluators on each sub-team subscribed in writing to the conclusions of that sub-team.

I am satisfied that the Evaluation Manual represented a comprehensive plan for receipt and evaluation of the financial submittals, that the plan was reasonable and fair, that the evaluation was carried out in accordance with the plan, and that the results of the evaluation reflect the conclusions of an unbiased team of evaluators with appropriate expertise, after careful consideration of the submittals.

I am also satisfied that the requirements of the RFP as they relate to evaluation of submittals were consistently followed.

PART THREE: Conclusion

Based on the foregoing, and on my earlier reports, I conclude that the procurement process for the Project has been designed and conducted in a manner that is fair to Proponents, and that there has been material compliance with and fair implementation of established procurement and decision processes.

Signed and dated at Vancouver, January 26, 2009.



Jane Shackell, QC
Fairness Reviewer