

EVERGREEN LINE PROJECT
RFQ Process

Report of the Fairness Reviewer

I was retained by the Ministry of Transportation and Infrastructure as Fairness Reviewer for the Evergreen Line Project (the “Project”).

My mandate is to provide arms length advice to senior Project staff and independent assurance to the Project Executive Board as to the fairness and appropriateness of the procurement process for the Project. I am to report to the Project Executive Board on whether I am satisfied that there has been material compliance with established procurement and decision processes, and that implementation of the procurement and decision processes has met reasonable standards of fairness as established by the terms of the competitive selection process.

This is my report on the process to November 22, 2010, at which time the Project team had completed evaluation of responses to the Project’s Request For Qualifications (“RFQ”). This report is to be presented to the Project Executive Board at its meeting scheduled (at the time of writing) for November 29, 2010.

RFQ Issuance

The RFQ was issued July 5, 2010, and on July 8 the Project team held an information meeting (which I attended) for prospective bidders. At the meeting, prospective bidders were introduced to the Project team, the background information prepared for bidders, and the terms of the RFQ, including the process for obtaining information on any questions they might wish to ask before submitting a response to the RFQ.

The RFQ contained full details of the information and documents to be provided by respondents. In addition, the RFQ summarized the process and criteria for evaluation of responses, and provided processes for assessing conflicts of interest, amending the RFQ, and communications between the Project team and respondents.

During July and August, the Project team handled numerous requests by respondents for further particulars, and made available to respondents tours of Project-related sites. I reviewed all of the questions received by the team and all responses given. I observed that these matters were handled in accordance with the procedures outlined in the RFQ.

ATC Supply Contract - Thales

At the outset of the Project, the team identified Thales as the supplier of the Automatic Train Control (“ATC”) system for the Project. Whichever proponent is ultimately selected to provide the Project will have to work closely with Thales; accordingly the RFQ provides that the Province will negotiate the basic terms of the ATC supply contract directly with Thales. This is to avoid separate negotiations between Thales and each potential proponent, in which the relative results achieved by any proponent could unduly influence selection of the preferred proponent.

The Project team entered into an agreement with Thales that made discussions with Thales expressly subject to the fairness requirements of the Project procurement process, and provided that I would have access to all negotiations.

Since issuance of the RFQ, the Project team has held discussions with Thales as to the terms of the ATC supply contract, including both commercial terms and technical requirements. I have been copied on all written communications, and have attended both telephone and in-person meetings of the Project team with Thales staff. Throughout this aspect of the Project I have observed that the Project team is focused on ensuring that their dealings with Thales are fair to the proponents, and has conducted the process in accordance with the RFQ. The Project team's work with Thales is ongoing.

Evaluation Manual

The Project team prepared an Evaluation Manual that described how RFQ responses would be evaluated, with procedures for receipt of responses, security measures for custody of and access to responses during the evaluation period (including secure premises, and restrictions on use of electronic devices in the premises), procedures to follow in communications with respondents, guidelines for scoring and ranking the responses, and other matters.

The Project team worked with the Due Diligence Committee to ensure that all contents of the Evaluation Manual would correctly reflect the requirements of the RFQ and appropriate evaluation considerations. I reviewed the draft Evaluation Manual before it was finalized, and was satisfied that it was consistent with the RFQ, and set out fair and reasonable processes for the evaluation.

Responses and Evaluation

I attended the closing of responses to the RFQ on September 7, and observed that 7 responses were received before the closing time. I attended part of the completeness review and observed that it was carried out in accordance with the requirements of the RFQ and the Evaluation Manual.

Before commencing the evaluation, the Project held an orientation meeting for all evaluators, at which the requirements of the Evaluation Manual were reviewed. I observed that the requirements of the Manual related to confidentiality agreements, relationship review, and all other preliminary matters, were followed.

The Project team has been required to spend considerably more time than anticipated on the evaluation. I have observed that throughout the process, the evaluators and Project managers have maintained objectivity and exercised consistent patience and thoroughness in their work notwithstanding unexpected demands on their time.

The evaluation was conducted by four separate teams of evaluators, each consisting of persons with expertise in specific aspects of the RFQ requirements, assisted by appropriate expert advisors and provided with appropriate resources for their tasks. During the evaluation process, I visited the evaluation site many times and met with each evaluation team more than once. I observed that:

- All evaluators had a thorough knowledge of the RFQ and the responses, and participated fully in the deliberations of their assigned teams.
- Team discussions were characterized by open and respectful consideration of each person's comments. All aspects of the responses were carefully considered and thoroughly discussed in relation to the evaluation criteria.
- Teams appropriately used the process described in the Evaluation Manual for obtaining clarification from respondents of the information in their responses.
- Teams consulted with each other as appropriate, applied the evaluation criteria consistently to all responses, reached unanimous conclusions, and in all ways conducted their work in accordance with the requirements of the RFQ and the Evaluation Manual.
- Teams were careful to ensure that scores assigned to the responses were rational, consistent and based in the requirements of the RFQ and the Evaluation Manual;
- The evaluation managers ensured that all teams followed consistent approaches to seeking clarification of responses where needed, and to scoring the various aspects of the responses.
- Throughout the process the Project team has followed the processes required by the RFQ and the Evaluation Manual with regard to security of the premises and the proposals, confidentiality of proposals, and other administrative matters.

Evaluation teams met several times with the Due Diligence Committee, which rigorously tested the thoroughness of evaluators' review of responses, consistency of approaches to scoring, and completeness of evaluators' reports with regard to their conclusions and reasons for the conclusions.

Conclusion

Throughout the evaluation process, I have had access at all times to the evaluation premises, the evaluators, and all Proposals. I have been informed of all meetings. I have reviewed all correspondence between the Project team and the respondents, and have attended many of the meetings.

I observed that all team members have been alive to issues of consistency and fairness in their work; they have discussed these issues among themselves and consulted me as needed. Periodically I asked questions of the team about the process, or offered comments related to fairness issues; in each case I was satisfied with the response, and observed that my advice was handled appropriately.

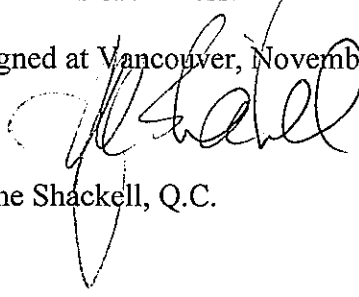
I am satisfied that:

- The RFQ properly described the requirements for responses and the basis for their evaluation;

- The Evaluation Manual provided reasonable procedures to ensure confidentiality of responses and other appropriate administrative procedures, as well as a thorough and unbiased review;
- Evaluation of the responses was conducted diligently and carefully, and in accordance with the pre-determined procedures.

Accordingly in my opinion, to date there has been material compliance with the procurement and decision processes for the Project, which have been fair and appropriate and met reasonable standards of fairness.

Signed at Vancouver, November 26, 2010.



Jane Shackell, Q.C.