

**WORK PACKAGE 2 –  
SUNSET BEACH TO LIONS BAY-DESIGN BUILD**

**REPORT OF THE FAIRNESS REVIEWER  
THE HONOURABLE W.J. WALLACE, Q.C.  
TO THE EXECUTIVE PROJECT DIRECTOR  
DATED THE 29<sup>th</sup> DAY OF JULY, 2004**

**BACKGROUND:**

The Scope of the Fairness Reviewer Role (Schedule A – Terms of Reference DBFO Competitive Process) includes “acting as an independent observer with respect to Project Procurement RFQ and RFP processes”. Further I am, inter alia, obliged to report “at the completion of the selection of the Final Proponent under the RFP process...” [see 2.1(b)].

That event having occurred, I now tender this Report.

**(A) Request for Qualifications (RFQ)**

As Fairness Reviewer I first became actively involved with the Sunset Beach to Lions Bay – Design Build project when I met with the Due Diligence Committee on May 31<sup>st</sup>, 2004.

I am advised that prior to that meeting the following events had occurred with respect to the project:

- On December 16<sup>th</sup>, 2003 SOQ’s had been received from Emil-Anderson-Carlson Joint Venture and from Peter Kewit Sons for Work Package 2 Sunset Beach to Lions Bay – Design Build. They were the only two proponents expressing an interest in carrying out this project.
  
- A meeting was held on December 19, 2003 to enable the Process Monitor and Legal Advisor to review the conflict of interest declarations. Potential conflicts of T. Tasaka, P. Eng. (owners’ engineer and environmental monitor for the Sea to Sky project) and those of Rob Ahola were declared and appropriately resolved.

- I reviewed in detail the Technical Criteria Evaluation Committee's Report to the Executive Project Director and the appendices attached thereto. They describe a process, which when implemented, would reveal appropriate and pertinent information to be supplied by both proponents and thereby enable the evaluator to form a fair and unbiased appraisal of the qualifications of the two proponents to perform the Work Package 2 Project.
- On December 19<sup>th</sup> the Technical Criteria Evaluation Committee, agreed that based on a consensus point rating for each stated criteria, both proponents be awarded a "pass" and the committee recommended to Peter Milburn (Executive Project Director) a "short list" of Emil-Anderson-Carlson Joint Venture and Peter Kewit Sons.
- The Executive Project Director accepted this recommendation on January 19<sup>th</sup>, 2004.
- Appropriate measures were developed and implemented to protect the confidential and security aspects of the information relating to the Sea to Sky project during the RFP stage.

**(B) The Request for Proposals (RFP)**

On June 7<sup>th</sup> 2004 I attended a Due Diligence Committee meeting at which the Committee reviewed the criteria required for the RFP and the process for carrying out the evaluation. It was emphasized that the proponents' responses were to be evaluated solely against the required criteria contained in the RFP and it was further emphasized that strict confidentiality was to apply to the process. A process for dealing expeditiously with requests for further information (RFI) from the proponents was initiated. Both the Questions and the Answers were sent to both proponents to ensure they both had the same information base upon which to form their proposal.

The Technical Evaluation team assessed the technical aspects of both proposals and concluded that both proponents had met the requirements and the intent of the RFP and “passed” i.e. that both were technically qualified to design/build the project. The Due Diligence Committee concurred with this conclusion. It is to be noted that the RFP General Conditions 1.6.9.3 provide that the qualified proponent submitting the lowest contract price shall be deemed to be the Preferred Proponent.

Since I had not found it possible to attend all the meetings in this process, on July 14, 2004 I directed that a letter from myself as Fairness Reviewer be sent to both proponents inviting them to meet with me, in confidence, to discuss any concerns they may have about the fairness of the process. Neither questioned the fairness of the process and both declined the invitation.

Approval was obtained to open the sealed price envelopes. Peter Kewit Sons Co., having submitted the lowest price was declared to be the Preferred Proposal.

## SUMMARY

My review of the relevant documentation and my attendance at the meetings revealed a process leading to the selection of a preferred proponent that in my opinion has been impartial and fair, such that no party was given an advantage over the other. The process achieved a fair, open and unbiased evaluation and the selection of the preferred proponent was based on the criteria contained in the RFP.

Accordingly for the reasons set out above it is my opinion that the evaluation and selection process for Work Package 2 – Sunset Beach to Lions Bay – Design/Build Project resulting in the selection of Peter Kewit Sons as the Preferred Proponent was applied consistently, fairly and without bias according to the evaluation criteria and selection requirements contained in the RFQ and RFP documents.

  
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Hon. W. J. Wallace, QC  
Fairness Reviewer