

## **B.C. MINISTRY OF TRANSPORTATION AND INFRASTRUCTURE**

### **Kicking Horse Canyon Project – Phase 4 REQUEST FOR PROPOSALS**

#### **Final Report of the Fairness Reviewer**

#### **INTRODUCTION**

I was retained as Fairness Reviewer for the Kicking Horse Canyon – Phase 4 Project (the “Project”). My mandate is to act as an independent observer with respect to fairness of implementation of the Project’s competitive selection process, and report to the Project Board.

I reported previously on the Request For Qualifications phase of procurement. I filed a brief summary report upon completion of evaluation of Technical and Financial Submissions filed by Proponents in response to the Project’s Request For Proposals (the “RFP”); this is my final report.

#### **RFP / COLLABORATIVE PROCESS**

The RFP was issued in December, 2019 to the Proponents selected through the RFQ process. The RFP included detailed technical requirements, the forms of the agreements to be signed by the successful Proponent, the required format and content of Submittals, a summary of the process and criteria for evaluation of Submittals, and other terms of the competition.

**Data Room / RFI Process:** The Project team operated an electronic data room with various documents relevant to the Project, and answered written requests for information from Proponents. I monitored the data room periodically, and reviewed all written communications between the Project team and Proponents.

**Meetings:** After release of the RFP, Project staff held various meetings with Proponents for discussion and consultation about requirements of the RFP and agreements related to the Project, the expectations of the parties, and specific topics of concern.

I was invited to all meetings between the Project team and Proponents, and I attended or monitored most meetings as I considered necessary for purposes of this report. I was satisfied that:

- meetings were attended by Project staff with appropriate expertise and authority to address Proponents’ questions;
- all Proponents were provided with the same information about the Project;
- meetings were conducted in consistent fashion for all three Proponents; and
- meetings were conducted in accordance with the RFP, including requirements as to confidentiality, restrictions on communications with Proponents, and other matters.

**COVID Effect on Procurement:** During the last few months of the procurement period, and during all of the evaluation of Submittals, the Project team generally worked ‘remotely’ in accordance with public health officials’ recommendations related to the COVID pandemic. I

observed that appropriate processes were adopted to ensure effective ongoing communication with Proponents including online meetings, as well as appropriate mechanisms for collaboration by evaluation teams.

## **EVALUATION**

Three Proponents filed Technical Submittals and Financial Submittals prior to the deadlines specified in the RFP.

All Submittals were evaluated by several teams of evaluators, each with expertise in particular subject matter covered by the Submittals. Specifically, seven teams of technical experts evaluated various aspects of the Technical Submittals, and two additional teams of financial and legal experts evaluated the Financial Submittals. Each team reached consensus among its own members and reported its conclusions to the Evaluation Committee which oversaw the evaluation process.

**Evaluation Handbooks:** Before Technical Submittals were received, and again before Financial Submittals were received, the Evaluation Committee approved a detailed Evaluation Handbook for each set of Submittals, in each case setting out:

- procedures for receipt of Submittals, and security measures for custody of and access to Submittals (including secure access to copies, restrictions on copying and electronic transmission, etc.);
- procedures for review of evaluators' relationships to eliminate potential conflicts;
- responsibilities of all participants in the evaluation;
- methods for communicating with Proponents during the evaluation;
- method and procedures for evaluating Submittals;
- worksheets to enable evaluation teams to record their observations and conclusions in a consistent manner;

and other matters. I had the opportunity to review and comment on each Evaluation Handbook, and was satisfied that each Evaluation Handbook set out a reasonable basis for evaluation of the relevant Submittals, consistent with the RFP.

**Closing and Completeness Reviews:** I monitored the closing time for each set of Submittals, and confirmed that the Project team followed the processes set out in the relevant Evaluation Handbook for receipt and initial completeness review of Submittals, as well as secure storage and confidentiality of the documents.

**Relationship Reviews:** Before evaluators were permitted access to Submittals, a Relationship Review Committee conducted a process consistent with the Evaluation Handbooks to elicit and consider details of relationships among members of Proponent teams and the evaluation team, to ensure that all evaluators were free of bias.

**Orientation:** Before commencing work, all evaluators participated in an orientation at which the Evaluation Committee highlighted various aspects of the relevant Evaluation Handbook, including methods for evaluation, standards related to confidentiality and security, consistency, my role as Fairness Reviewer, and other matters.

**Evaluation Process:** During the evaluation period, I had access to the Submittals and the evaluation meetings at all times. I was informed of all meetings, and reviewed all correspondence between the Project team and Proponents. I observed that the Project team followed the processes for security and access to documents outlined in the Evaluation Handbooks. I talked with the evaluation teams, and participated in a selection of the meetings related to each evaluation including meetings of the evaluators and the Evaluation Committee, and meetings where evaluation conclusions were discussed.

Each evaluation team had the opportunity to obtain clarification from Proponents where necessary to the evaluation; all questions issued to Proponents were first approved by the Evaluation Committee, to ensure consistency and compliance with the RFP. I observed that the processes described in the Evaluation Handbooks were followed for all communications between the Project team and Proponents.

Evaluators met with a Due Diligence Committee and with the Evaluation Committee to review their work and recommendations. The Due Diligence Committee and Evaluation Committee tested the conclusions reached by the evaluation teams regarding internal consistency, and grounding in the considerations specified in the RFP and Evaluation Handbooks. The Evaluation Committee had final responsibility for the outcome of evaluations.

I observed that all evaluators were familiar with the details of each Submittal, and participated fully in discussions of their areas of responsibility; also that the conclusions reached by the evaluators in their areas, and by the Evaluation Committee, were unanimous and were based on thorough consideration of the Submittals.

## **CONCLUSIONS**

Throughout the RFP process, the Project team ensured that:

- I received copies of all correspondence between the Project team and Proponents (including requests by Proponents for information, and requests by the Project team for clarification of Submittals);
- I had full access to all Submittals and the evaluation premises, and the opportunity at any time to speak with Project staff including managers, evaluators and advisors;
- I was invited to attend all meetings (both in-person and electronic) held by the Project team with Proponents, as well as meetings of the evaluators and of the Evaluation Committee (including those at which proposals were discussed and evaluated). I attended and monitored such meetings as I considered necessary to carry out my role.

During the RFP process, I observed that the Project team discussed as necessary and instructed itself appropriately on matters related to fairness. Periodically, I was asked for, or offered, advice

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and comments on fairness issues. In each such case, the Project team considered my advice and I was satisfied with the resolution of the matter.

Based on my observations above, I am satisfied that the procurement process as described in the RFP was fair and reasonable, and that the Project team fairly and reasonably implemented and complied with that process.

Signed at Vancouver, September 14, 2020.

A handwritten signature in blue ink, appearing to read 'J. Shackell', with a stylized flourish at the end.

Jane Shackell, QC