

Fairness Monitor Report on phase two of the competitive procurement
process for the Johnson Street Bridge Replacement Project

Jamie Cassels, QC

November 19,
2012

Summary Introduction

This is the report of the Fairness Monitor regarding the selection of a preferred proponent for the construction of the Johnson Street Bridge. A proponent has now been recommended to the City and that recommendation has been approved. This report reviews the process leading to that recommendation and selection. It concludes that the process was fair, conducted in accordance with the RFP, and untainted by bias or any other related concerns. With the selection of a preferred proponent, the role of the Fairness Monitor under the RFP comes to an end. The City will now enter into discussions with that proponent to negotiate and award a final contract, and this report does not comment on those matters.

Background

In March 2012, the City of Victoria commenced a competitive procurement process to identify a preferred proponent for the Johnson Street Bridge Replacement Project. This project involves the construction of a new, moveable bridge and related street and utility works, and the demolition and removal of the existing bridge.

The procurement process was conducted in two phases. The first phase (the Request for Qualifications “RFQ”) was a search for and selection of three interested and qualified candidates to bid on the project. This phase was completed in May 2012, at which point a Request for Proposals (“RFP”) was issued inviting those three candidates to submit a full project proposal. The RFP set out the details of the process that would be followed, and provided that upon receipt of the final proposals, the City would conduct an evaluation and select a single preferred proponent, and proceed to negotiate a final contract with that entity.

As part of this process, the city appointed a Fairness Monitor to observe and report on the integrity of the procurement and evaluation process. The RFP provides:

7.14 Appointment of Fairness Monitor

The City has appointed Mr. Jamie Cassels QC as fairness monitor for the Project (the “Fairness Monitor”) who will be independent from the City and its advisors, for the purpose of monitoring the procurement process for the award of the Contract. The Fairness Monitor will, after the selection of the Preferred Proponent, provide a written report to the City on whether the Fairness Monitor observed any unfairness or bias during the procurement process, and the City will make any such report available to the Proponents and to interested parties.

The City will:

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- (a) provide the Fairness Monitor full access to all documents, meetings and information related to this RFP process which the Fairness Monitor decides is required; and
- (b) keep the Fairness Monitor fully informed of all documents and activities associated with the issued procurement documents, including this RFP

A Fairness Monitor is independent of any of the parties and observes the process to ensure that it is carried out in a manner that is unbiased and fair to all participants. Proponents are to be treated equitably and judged against the same standards as set out in the relevant documents. There must be no bias or conflict of interest, and the final selection must be untainted by any improper considerations or practices. If any of the above defects are observed, the Fairness Monitor reports them. This is the Fairness Monitor report for phase two of the project (the RFP phase).

The RFP Phase

Following the identification of qualified participants, an RFP was issued (May 28, 2012) with a closing date of November 1, 2012 (this was the final date after several extensions). Three submissions were received by the closing date. During the period between issuance of the RFP and receipt and evaluation of the submissions, I was afforded full access to all the relevant documents and communications between the City and the proponents.

An important element of the process during this phase involved collaborative meetings between the City and the proponents. The purpose of these meetings was to provide the proponents with an opportunity to discuss with the City various issues arising as they developed their submissions – most significantly, regarding matters relating to the optimization and completion of the bridge design. I had the opportunity to monitor these meetings, to review the related written correspondence, and was consulted on various process issues arising during this time. I am satisfied that this stage of the process was conducted in a way that conformed with the RFP and met the requirements of fairness. Proponents were given an equal opportunity to participate and were provided with consistent and similar information. Information relating to the RFP that was provided in individual meetings was disclosed equally to all the proponents, subject to the maintenance of commercial confidences. I observed no bias or unfairness during this phase.

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Evaluation of Submissions

Upon receipt of the three submissions I monitored their final evaluation and observed that it was carried out as indicated in the RFP. It was fair and professional throughout, and I observed no fairness defects.

The City received three proposals by the (revised) closing date of November 1, 2012. These submissions were reviewed by a four person Evaluation Committee which had access, as required, to advisors with technical expertise in various areas (as indicated in the RFP). Prior to the evaluation, a further relationship check was conducted to ensure there were no conflicts of interest, and the Evaluation Committee received and reviewed an "evaluation handbook" setting out the process of evaluation.

The written submissions were then assessed by the Evaluation Committee individually and then jointly evaluated in final decision-meetings which I attended. The selection process set out in the RFP was followed closely. The submissions were evaluated against the criteria set out in the RFP. There was no evidence of bias, or of any inappropriate considerations being brought to bear on the decision. The members of the Evaluation Committee exercised their judgment impartially, objectively and in good faith.

Conclusion

The Evaluation Committee has now recommended a preferred proponent and that recommendation was formally approved by the City at a meeting that I attended, thus completing the selection process. It now remains for the City to move forward to enter into final discussions to settle and award the final contract. Based on all my observations I can therefore report that I am satisfied that the process leading to the selection of the preferred proponent was consistent with the RFP and fair in all respects.

Respectfully submitted,



Jamie Cassels, QC