

The Golden Ears Bridge Greater Vancouver Transportation Authority

Fairness Monitor's Final Report

1. Introduction

(a) *Designated Task of the Fairness Monitor.*

To provide the Greater Vancouver Transportation Authority (GVTA) with an independent and objective assessment of the procedures and processes employed by GVTA in the issuance, evaluation and award for the Golden Ears Bridge (GEB) Project with respect to the extent to which the principles of fairness, openness, transparency and integrity have been adhered to throughout the process from initiation to the successful execution of the legal agreements.

(b) *Reports:*

The Fairness Monitor is to make three reports, one after the completion of the Qualification process (already submitted), one after the completion of the RFP (Request For Proposal) Selection process, and a Final Report after the execution of the legal agreements. In addition, the Fairness Monitor Team has provided interim Reports and informal comments about specific matters.

(c) *The Fairness Audit Team:*

ADR Chambers Inc. was selected as the Fairness Monitor through a competitive selection process. The Hon. Roger Kerans and David Bristow, Q.C. were designated by ADR Chambers Inc. as the company's team for this task. Roger Kerans is a former Justice of the Alberta Court of Appeal and David Bristow is a specialist in construction law. Later, Barry Vogel, Q.C. was added to the team. Barry Vogel was a litigation

counsel with emphasis in construction contract litigation, and later Practice Advisor to the Law Society of Alberta (governing body of Alberta legal profession), involving, among other things - acting as a confidential consultant to lawyers, and frequently speaking and contributing articles on professional responsibility and ethics.

(d) *General Comments:*

We now report on the RFP stage of the procurement for the GEB Project, which was about the selection of a preferred candidate. In so doing, we adopt and repeat what we said in the RFQ Report, as follows:

First, let us emphasize what is **not** the task of the fairness auditor. The task is not to establish the selection procedures, not to make or suggest the selection, and not to offer legal opinions about the duties of anybody in the process. The task rather is to offer an assessment about the procedures established by GVTA and the carrying out of those procedures by GVTA. And the subject of the judgment is whether the “selection process has been carried out in a fair and appropriate manner” and whether “fairness, openness, transparency and integrity have been adhered to throughout the process from initiation to the successful award.” The review, then, is a review of procedure, as opposed to a review of substantial decisions. As such, there is guidance available in the law. Concepts such as “fairness in action, review for fairness”, the “principles of natural justice”, and judicial review standards, are a good guide for the kind of review that should satisfy reasonable people that the procedure selected is fair, and the carrying out of that procedure has been fair.

Our task was to assess whether the procedure, in its design and in its execution, was one that reasonable and well-informed people would consider to be fair. It is beyond our capacity and our task to investigate any possible criminal behavior, or breaches of confidentiality or non-disclosed conflicts of interest that in any way might affect or appear to a reasonable person to affect any decisions made.

2. Execution of Legal Documents

a) Scope

As mentioned in earlier Reports, this is a complicated and multi-layered transaction to be in operation for over 32 years. It was necessary to execute the Project agreement, the Design-Build

Agreement, the OMR Agreement, the Lenders' Direct Agreement, the Deposit Agreement, the Independent Certifier Agreement, the Collateral Agreement, and the Tolling Cooperation Agreement.

b) Final Process.

Unsurprisingly, and despite the many hours of discussion during the RFP stage, the winning consortia, and to a much smaller extent GVTA, wished to improve and clarify the agreements to avoid future strife. Over 60 changes to the documentation were proposed by the selected proponent, and were the subject of intense negotiation over several weeks.

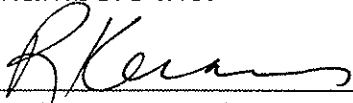
The concern of the fairness auditor, on the other hand, was that changes to the agreements did not betray any previously hidden understandings that would have been unfair to an unsuccessful proponent, and that the changes did not involve any significant new remuneration to the successful proponent, nor any significant transfer of risk to GVTA not expressed in the RFP either of which raise the risk that the RFP selection process was not fair. For that reason, the fairness audit Team monitored the final negotiations.

3. Conclusions

We are of the view that the Final Process met the criteria of fairness, openness, transparency and integrity. Throughout the process, we again were impressed by the careful and conscientious approach of all the GVTA team. Many of the proposals made by the selected proponent were rejected, and precisely because to accede to them would raise a question about fairness. We are satisfied that no new term betrayed any hidden and improper misunderstanding, nor offered new compensation to the successful bidder without fair compensation to GVTA, nor offered any significant transfer of risk.

We again congratulate all members of the Evaluation Team and the Golden Ears Project Managers for the high degree of professionalism displayed throughout.

DATED this 5th day of March, 2006.
ADR Chambers Inc.

Per:  _____
The Hon. Roger P. Kerans