

## REPORT OF THE SPECIAL COMMITTEE TO THE BOARD OF DIRECTORS OF INFRASTRUCTURE ONTARIO

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### SUMMARY OF KEY FINDINGS

1. **IO's Alternative Financing and Procurement ("AFP") procurements use international and domestic best practices.** Based on an extensive review of IO's AFP procurement processes, documents, practices and tools, IO met or exceeded 81 of 83 applicable international and domestic best practices.
2. **The St. Michael's Hospital procurement was not compromised.** All procurement challenges faced by the St. Michael's Hospital procurement were dealt with in accordance with the applicable procurement process rules, were appropriately brought to the attention of the Fairness Monitor and external counsel in a transparent way and were dealt with in accordance with the instructions of the independent third party fairness monitor (the "Fairness Monitor") and external legal counsel.
3. **During the St. Michael's Hospital procurement, Vas Georgiou failed to disclose all of his potential conflicts of interest.** Vas Georgiou had financial and commercial relationships with John Aquino, then a shareholder, Vice-President and General Manager of Bondfield Construction Ltd. These relationships were significant potential conflicts of interest which Vas Georgiou failed to disclose as required during the St. Michael's Hospital procurement process. Had he made the proper required disclosures, the Conflict Review Team would likely have prohibited him from participating in the St. Michael's Hospital procurement evaluation (and any subsequent construction supervision of the project). It is unlikely that his disclosure would have resulted in the disqualification of St. Michael's Partnership/Bondfield from the procurement process.
4. **During the St. Michael's Hospital procurement Bondfield does not appear to have exercised the due diligence or disclosure that is expected by IO of its bidding community.** Bondfield does not appear to have exercised the conflict of interest due diligence or to have approached the disclosure of conflicts of interest in the manner that IO expects of proponents in its AFP procurement processes. An experienced bidder like Bondfield knew, or ought to have known, that the kind of financial and commercial relationships that existed between Vas Georgiou and John Aquino should have been disclosed by Bondfield as a potential conflict of interest. The Special Committee acknowledges that Bondfield could have interpreted the Request for Proposals to mean that the disclosure of John Aquino's actual or perceived conflicts of interest, in his personal capacity, was not technically required.
5. **No evidence was found of any attempt to inappropriately influence the procurement evaluation on the St. Michael's Hospital procurement.** No evidence was found that Vas Georgiou had attempted to inappropriately influence evaluation decisions during the St. Michael's Hospital procurement.
6. **Forensic audit did not disclose any improprieties on the IO projects that were reviewed.** The extensive forensic audit of the Vas Georgiou and Bondfield AFP projects

did not find anything to suggest that any financial improprieties occurred with respect to expenditures on the 21 projects reviewed.

7. **IO's decision to terminate Vas Georgiou was appropriate but the failure to inform the IO Board of the actual circumstances of his departure was not appropriate.** The decision to terminate Vas Georgiou was appropriate. However, the CEO at the time (i) failed to consult with or inform the IO Board of Directors and Audit Committee of the actual circumstances of Vas Georgiou's termination, and (ii) failed to note the circumstances of Vas Georgiou's termination in his employee file.
8. **Ongoing implementation of improvements.** The Blakes legal review of IO's AFP procurement practices identified a number of procurement changes (from "tweaks" to more detailed changes) that IO should consider implementing in its AFP program. Both the Special Committee and IO believed that there was no reason to delay the implementation of these suggested improvements. As a result, much of the Blakes advice has either already been implemented or is in the process of being implemented.

## SPECIAL COMMITTEE REPORT<sup>1</sup>

### A. BACKGROUND

On September 9, 2015, reporters from the Globe and Mail (“Globe”) met with Infrastructure Ontario (“IO”) senior executives and the then Vice Chair of the IO Board of Directors (“IO Board”). The Globe revealed detailed information that was previously unknown to the senior executives and Vice Chair regarding, (i) the involvement of Vas Georgiou in a false invoicing scheme at York University, and (ii) connections between Vas Georgiou and John Aquino. Vas Georgiou was a senior executive at St. Michael’s Hospital with responsibility for the St. Michael’s Hospital redevelopment project (“SMH Project”) and a former employee of IO. At the time of the St. Michael’s Hospital procurement (“SMH Procurement”), John Aquino was then a shareholder and the Vice-President and General Manager of Bondfield Construction Company Ltd. (“Bondfield”), a proponent team member of St. Michael’s Partnership, the successful proponent in the SMH Project. The Globe also asserted that Vas Georgiou and John Aquino had failed to disclose their respective conflicts of interest during the SMH Procurement, which was completed earlier in the year (in January, 2015).

Subsequent investigations by the senior executives at IO revealed that Vas Georgiou had been terminated from his position at IO because the organization became aware of Vas Georgiou’s participation in the York University false invoicing scheme.

Neither the senior executives at IO nor the Vice Chair were aware, at the time of the September 15 meeting with the Globe, that Vas Georgiou had been terminated by IO, nor of the role that the York University false invoicing scheme played in Vas Georgiou’s departure from IO. All were under the impression that Vas Georgiou had resigned from IO for personal reasons.

#### (i) Establishment of the Special Committee and Mandate

The IO Board and the Ministry of Economic Development, Employment and Infrastructure considered the Globe’s allegations to be sufficiently serious as to warrant review. The IO Board appointed a committee of three directors as a Special Committee with a mandate to direct the review of:

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<sup>1</sup> *This Special Committee Report, including the “Key Findings”, sets out the findings of the Special Committee of the Board of Directors of Infrastructure Ontario regarding the subjects noted in the report and has been prepared by the Special Committee for the sole use and benefit of the IO Board and, upon request, the Minister of Economic Development, Employment and Infrastructure and the Minister’s advisors. It is being provided to the IO Board at this time in fulfilment of the Terms of Reference for the Special Committee as set out in the Board’s resolution dated September 17, 2015, and for no other purpose. This Report is not intended to be relied upon, nor may it be relied upon by any other person or entity (a “Third Party”) without the express written consent of the IO Board. To the extent the content of this Special Committee Report and the findings and recommendations of the Special Committee are based upon the opinions, views, communications with, findings and information obtained, collected and received from outside legal counsel and experts retained by the Special Committee in furtherance of its mandate, including advice received from Blake, Cassels & Graydon LLP (“Blakes”) and Cohen, Hamilton Steger & Co (“CHS”), disclosure of this Special Committee Report to any Third Party who may gain access to this Special Committee Report, either on consent or otherwise, shall not constitute a waiver of any legal privilege existing in the advice of Blakes and CHS, and such privilege is expressly preserved.*

1. *the activities and conduct of Vasos Georgiou during his tenure at Infrastructure Ontario with a view to determining if he was engaged, directly or indirectly, in improper or unauthorized activity including any communication to unauthorized persons about confidential Infrastructure Ontario business information or any financial malfeasance; and*
2. *the St. Michael's Hospital procurement and other Infrastructure Ontario projects in which Vasos Georgiou has been involved; and*
3. *the circumstances relating to Vasos Georgiou's departure from Infrastructure Ontario; and*
4. *Such other related or ancillary matters as the Special Committee in its discretion considers necessary or desirable or is requested by the Minister of Economic Development, Employment and Infrastructure (the "Minister") or his representative to take into account.*

The IO Board established the three-member Special Committee from among the IO Board members (Linda Robinson, John Swinden and Vito Sgro). The three members of the Special Committee have an expertise in law, forensic accounting and accounting.

#### **(ii) Advisors to the Special Committee**

In order to ensure the objectivity and comprehensiveness of the review process and obtain advice with respect to any issues identified, the Special Committee retained Blake, Cassels and Graydon, LLP ("Blakes") as its legal counsel to oversee the review and to provide legal advice to the Special Committee and IO Board. Blakes subsequently retained Cohen Hamilton Steger & Co. ("CHS") to carry out all forensic audit responsibilities in the review. Blakes is regarded by many international legal rating services as the leading firm in the country in the field of procurement. The team was led by Judy Wilson, a senior leading Canadian practitioner in the field of procurement. CHS's principals have been retained on some of Canada's largest financial disputes and investigations and were led by Peter Steger, an experienced Canadian forensic auditor.

#### **(iii) Review Process**

To begin the review process, Blakes and CHS, under the supervision of the Special Committee, developed a work plan for the advisory team. Throughout the period of review the Special Committee met with Blakes regularly to give instructions with respect to the scope of the review, monitor the status of the review, and to receive preliminary advice and conclusions.

The Blakes/CHS review included: (i) preliminary interviews conducted with key individuals, (ii) interviews with a broader group of individuals (including existing and former employees of IO, existing employees of St. Michael's Hospital, and third parties), (iii) extensive review of documentation by Blakes and CHS, (iv) review of e-mails based on a pre-established protocol identifying key custodians and key search terms, and (v) public searches conducted to identify and investigate various corporations (for example, Vas Georgiou's family companies – Arsenal Facilities Consultants Inc. and Toronto Engineering Company). The Special Committee also conducted interviews with firms that often participate in AFP processes to obtain an "industry perspective".

A few key statistics:

- Blakes and CHS conducted approximately 144 hours of interviews;
- Blakes and CHS reviewed approximately 3,785 documents; and
- Blakes reviewed approximately 10,000 e-mails from 24 custodians.

With respect to terminology used in this report, when the term “Sponsors” is used it means IO and the entity for which the project is being constructed. In the SMH Procurement the Sponsors were IO and St. Michael’s Hospital. The term “proponent” is the term that the AFP procurement processes use to refer to “bidders”. Finally, the term “Evaluation Team” is the team of individuals that evaluates the proponents’ submissions in the first instance and the “Evaluation Committee” is the overall supervising authority in the evaluation process. Vas Georgiou was an Evaluation Committee member and not on the Evaluation Team.

## **B. IO’S PROCUREMENT APPROACH AND PROCUREMENT BEST PRACTICES**

### **(i) Background and Methodology**

In establishing the Blakes/CHS work plan, the Special Committee determined that the detailed procurement review of the SMH Procurement should be extended to include a comprehensive review of IO’s AFP processes on an enterprise-wide basis. Accordingly, the Special Committee instructed Blakes to carry out a review of the procurement procedures, practices, template documents, procurement policies, and procurement tools used by IO in its AFP program and to assess this body of information against international and domestic best practices, including legal obligations.

Using both domestic and international sources, Blakes developed a consolidated set of 90 assessment criteria or benchmarks against which IO’s AFP procurement practices were measured. The Blakes benchmark chart, including the assessment of IO’s AFP procurement practices, is attached to this report as Appendix A.

### **(ii) Findings**

Blakes found that IO’s processes, procedures and template documentation were consistent with, or exceeded, the standard of best practices on 81 of 83 applicable benchmarks and “mostly compliant” on the remaining two. Seven additional benchmarks were considered not applicable to IO either because Canadian law superseded the benchmark or because of the lack of relevance to the IO AFP program. The two benchmarks on which IO received a “mostly compliant” assessment were not relevant to and had no impact on the SMH Procurement.

IO meets (and in some cases exceeds) international best practices standards of integrity (multiple safeguard in its procurements), transparency (using online tools to keep the bidding community informed of projects and of project information), accountability (the tiered approval process for evaluation of bids), and fairness (the monitoring of procurements by a third party fairness monitor) in its procurement processes.

The Special Committee also instructed Blakes to provide advice on improvements that IO could make to its AFP procurements in order to follow IO’s “continuous improvement” management practice. As a result, Blakes has made recommendations for ongoing improvements to a few of IO’s procurement practices and has suggested amendments to some of the provisions of the

template procurement documents. These are included in the list of recommendations contained in Appendix B.

As the Blakes review of best practices progressed, both IO staff and Blakes identified a number of procurement changes (from “tweaks” to more detailed changes) that IO should consider implementing in its AFP program. Both the Special Committee and IO believed that there was no reason to delay the implementation of these suggested improvements. As a result, the IO initiated changes and much of Blakes’ advice has either already been implemented or is in the process of being implemented.

## **C. VAS GEORGIU AND BONDFIELD PROJECTS FORENSIC AUDIT**

### **(i) Identification of the Projects for Review**

Given Vas Georgiou’s participation in the York University false invoicing scheme and the Globe allegations of conflict of interest with respect to Vas Georgiou and John Aquino/Bondfield, the Special Committee instructed Blakes and CHS to conduct a forensic audit into whether there were any financial improprieties in certain projects carried out at IO during the period of Vas Georgiou’s employment with IO. Specifically, the forensic audit examined whether there were any financial improprieties evident in three types of projects carried out during that period:

- projects in which Vas Georgiou had a significant procurement evaluation role (but the Bondfield proponent team was not the successful proponent) (10 projects);
- projects in which (i) Vas Georgiou had a significant procurement evaluation role, and (ii) the Bondfield proponent team was the successful proponent (3 projects); and
- projects in which the Bondfield proponent team was the successful proponent (but Vas Georgiou did not have a significant role) (8 projects).

It is important to note that there were only three projects during Vas Georgiou’s tenure at IO in which Vas Georgiou played a significant procurement evaluation role and the Bondfield proponent team was the successful proponent. In total, CHS reviewed 21 IO AFP projects.

### **(ii) CHS Methodology (Overview)**

CHS conducted an extensive forensic audit of the 21 projects in accordance with the following methodology:

- **Analytical Review of Overall Project Costs:** The objective of the analytical review was to examine, in an overall manner, certain components of the total cost of implementing the projects in order to identify any anomalous trends suggesting that financial improprieties may have occurred, thereby warranting further investigation.

As part of the analytical review, CHS obtained data from IO for each of the projects analyzed and compared budget versus actual amounts for the following components, noting any excess over budget and the reasons for the same:

- base contract amount;
- post-contract contingencies;

- variations;
  - soft costs;
  - cash allowances; and
  - total project costs.
- **Substantive Testing of Post-contract Contingencies, Variations and Cash Allowances:** The objective of the substantial testing was to select individual cost items chosen from the total amounts for post-contract contingencies, variations and cash allowances and then to verify that the selected cost items agreed to supporting documentation and were properly authorized.
  - **Analytical and Substantive Review of Soft Costs:** The objective of the analytical review of soft costs was to understand the composition, nature and context of individual components of soft costs (where such details were available or known to IO) and to verify, from discussions with IO personnel, that such soft costs were reasonable in amount and incurred in the normal course of business.
  - **Internal Controls Review:** The objective of the internal controls review was to understand IO's internal controls relevant to the input of vendor names into IO's accounting system, the approval of vendor invoices for payment and IO's internal testing of such controls in order to assess the likelihood of financial improprieties occurring.
  - **Supplementary Reports Review:** The objective of the supplementary reports review was to analyze the findings and conclusions reached in various oversight reports prepared by external third parties and the findings in respect of IO contained in the 2014 Annual Report of the Office of the Auditor General of Ontario.
  - **Check of Vendor Names:** The objective of the check of vendor names was to verify that none of the parties or entities that IO was aware Vas Georgiou was connected to were set up in IO's vendor master file, and to verify that vendors or subcontractors used in the 21 projects provided services in the normal course of business.

### (iii) CHS Findings

Based on the CHS analysis and substantial testing as described above, CHS did not find any information that suggested any financial improprieties occurred with respect to expenditures on the 21 projects reviewed. CHS did have three project tracking recommendations which are included in Appendix B.

## D. ST. MICHAEL'S HOSPITAL REDEVELOPMENT PROJECT PROCUREMENT

### (i) Background

The SMH Project is currently in construction. It involves the redevelopment of St. Michael's Hospital through a design-build-finance method pursuant to IO's AFP model. The SMH Project was co-sponsored by IO and St. Michael's Hospital and includes the construction of a 17-storey patient care tower (approximately 250,000 gross square feet) at the corner of Queen Street and Victoria Street in Toronto that connects the existing wings, creating a unified and more efficient hospital campus. The SMH Project also includes work related to the current Shuter Wing on the

St. Michael's campus. Once the new tower is completed, the Shuter Wing is to be demolished and re-built into a two-story building.

The procurement process to select a consortium to carry out the SMH Project was carried out in accordance with IO's standard AFP Request for Qualifications (RFQ) and Request for Proposals (RFP) documents and procedures and in accordance with IO's usual practices. The SMH Procurement commenced in December 2012 with the issuance of the RFQ which resulted in the selection of prequalified proponents in May 2013. It then proceeded through the standard RFP process which began in August 2013 and, in November 2014, resulted in the selection of St. Michael's Partnership/Bondfield as the preferred proponent. The SMH Procurement was overseen by an experienced Fairness Monitor.

## **(ii) Basic Principles of the Review of the St. Michael's Hospital Procurement**

Blakes undertook an intense legal review of all steps and all aspects of the SMH Procurement process. A significant percentage of all interviews, document review and email review efforts during the Blakes/CHS review process focused on the SMH Procurement and whether the integrity of the SMH Procurement had been compromised in any way.

Based on its procurement law experience, Blakes identified the three most likely ways in which the SMH Procurement could have been compromised and, as a result, paid particular attention to the following: (i) breach of confidentiality (resulting in an advantage given to one proponent over its competitors), (ii) the presence of conflicts of interest during the SMH Procurement process with a particular focus on the evaluation processes (resulting in bias or favoritism during the evaluation processes), and (iii) significant concessions during the negotiations process with the winning proponent (for example, evidence that a proponent might have submitted a low price because it had been promised future concessions).

Blakes did not discover (i) any indication that confidential information was intentionally provided to one proponent and not to the remaining proponents during the SMH Procurement, or (ii) any unusual concessions during the negotiations process with St. Michael's Partnership/Bondfield. Blakes did determine, however, that there were undisclosed conflicts of interest in the SMH Procurement and much of the Blakes review focused thereafter on whether the undisclosed conflicts of interest compromised the integrity of the SMH Procurement. As discussed in the Conflict of Interest section below, Blakes concluded that notwithstanding the undisclosed conflicts of interest, the SMH Procurement had not been compromised.

While much of the Blakes review focused on the integrity of the SMH Procurement from the perspective of the three most likely ways the SMH Procurement could have been compromised, the Special Committee also instructed Blakes to review any events during the SMH Procurement that presented a challenge to the SMH Procurement process. Since high-value procurements involving sophisticated financing and complex construction projects are inherently complicated, neither Blakes nor the Special Committee was surprised to find that the SMH Procurement had faced other types of challenges. For example, (i) there was an administrative error in the online data room that resulted in the confidential information of one proponent being provided to another proponent (the information was removed quickly, the incident was reported to affected proponents, and the issue resolved under the supervision of the Fairness Monitor), (ii) there was a significant re-scoping of the project during the SMH Procurement process (regarding the Shuter wing), leading to a concern about the sufficiency of the budget available to the SMH Project (resulting in a decision by IO to disclose the budget to all of the proponents), and (iii) there was a difference of opinion during the evaluation process over the scoring of the



Bondfield technical/design submission (resulting in the Sponsors' retention of an independent third party who subsequently reached a conclusion consistent with the original technical/design evaluation).

(iii) **Findings**

Blakes followed up on each of the SMH Procurement challenges that became apparent during the review and ultimately concluded that all of these challenges were: (i) dealt with in accordance with the SMH Procurement process rules set out in the Request for Qualifications, the Request for Proposals, and the applicable Evaluation Frameworks, (ii) appropriately brought to the attention of the Fairness Monitor and external counsel in a transparent way, and (iii) dealt with in accordance with the instructions of the Fairness Monitor and external legal counsel. Further, Blakes concluded that none of these matters compromised the SMH Procurement.

(iii) **Conflict of Interest – Disclosure Obligations**

Required Disclosures by “Sponsors” Employees and Participants in Evaluation

The employees of IO and St. Michael's Hospital who were involved in the SMH Procurement had two types of obligations to disclose their conflicts of interest. First, each individual was obliged to comply with the conflict of interest obligations imposed by either IO or St. Michael's Hospital as his or her employer. This would include, for example, compliance with the employer's codes of conduct as they relate to conflicts of interest.

Second, additional and more specific conflict of interest disclosures were required of all individuals who were participants in the evaluation processes conducted during the SMH Procurement (irrespective of his or her employer). This is consistent with the Sponsors' obligations to ensure that the evaluation process is conducted free of bias.

As is the case with AFP procurements generally, the SMH Procurement evaluation process began with training for all participants in the evaluation process, including training on the disclosure of conflicts of interest. It is a general theme of that training that when in doubt, all participants should err on the side of disclosure.

At the outset of the evaluation process, all participants in RFQ and RFP evaluation processes are obliged to execute individual Conflict of Interest Agreements and Undertakings (each, a “COI Agreement”) that state:

- *I understand that the Applicants/Proponents listed in the attached Schedule A have responded to the RFQ/RFP.*
- *I represent and warrant that I do not have any interests, activities or relationships, financial or otherwise with any of those entities, nor am I providing any services to those entities listed in Schedule A, that create an actual or potential conflict of interest with completing the tasks that I may be asked to perform as a Participant. For greater certainty, I understand and agree that a financial interest may include employment, stock ownership, a creditor or debtor relationship or a prospective employee / employer relationship with any of the entities in Schedule A.*
- *I have listed on Schedule B all of the relationships that either I have or my spouse, partner or children have with the entities listed in Schedule A, each of which may be*

- a conflict of interest or appears as a potential conflict of interest with completing the tasks that I may be asked to perform as a Participant.*
- *I understand that Schedule B will be reviewed by the Sponsor and that the Sponsor may prescribe certain requirements to resolve any situations that the Sponsor determine, in their sole and absolute discretion, create an actual or potential conflict of interest and/or exclude me from the Evaluation Process.*
  - *I understand that it shall also be a conflict of interest for me to use information where the Sponsors have not specifically authorized such use and agree and undertake that I shall not use any information acquired through participation in the Evaluation Process for my personal gain, the personal gain of any member of my immediate family, or in a manner that would result in a benefit to any third party.*
  - *I understand that I may be provided with an updated Schedule A from time to time by the Sponsors.*
  - *I agree to immediately disclose in writing to the Sponsors any actual or potential situation that may be reasonably construed as constituting an actual or potential conflict of interest in connection with the Evaluation Process, including a situation arising from the updated Schedule A, and to comply with any requirements prescribed by the Sponsors to resolve such conflict of interest. I understand that the Sponsors may, in their respective sole and absolute discretion, exclude me from the Evaluation Process.” [Emphasis added.]*

The “Schedule A” that is referenced in the COI Agreement is a list of individuals and entities that is compiled by the IO procurement team (right after the proponents’ submissions are opened) setting out the individuals and entities that are named in the proponents’ submissions. The list is compiled before the evaluation process starts. In the SMH Procurement, John Aquino was a listed individual in Schedule A to the COI Agreements. The Evaluation Framework provides that all conflicts of interest that are declared in the COI Agreements are referred to a pre-established Conflict Review Team.

#### Required Disclosures by Proponents

IO also imposes an obligation on proponents and proponent team members to disclose their conflicts of interest. The AFP template procurement documents (which were used in the SMH Procurement) establish the conflict of interest rules that apply to proponents.

The definition of “Conflict of Interest” is basically the same in the RFQ as in the RFP and is as follows:

*“(7) For the purposes of this RFP Process **“Conflict of Interest”** includes any situation or circumstance where, in relation to the Project, a Proponent or any Proponent Team Member or any Proponent Advisor: [emphasis added]*

- (a) *has commitments, relationships or financial interests or involvement in ongoing litigation that:
 
  - (i) *could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment by any personnel of the Sponsors or their Advisors; or*
  - (ii) *could or could be seen to compromise, impair or be incompatible with the effective performance of a Proponent’s obligations under the**

*Project Agreement if that Proponent was determined to be the Preferred Proponent under the RFP Process;*

- (b) has contractual or other obligations to any of the Sponsors that could or could be seen to have been compromised or impaired as a result of its participation in the RFP Process or the Project; or*
- (c) has knowledge of confidential information (other than Confidential Information disclosed by the Sponsors in the normal course of the RFP Process) of strategic and/or material relevance to the RFP Process or to the Project that is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage.*

*The final determination of whether a perceived, potential or actual Conflict of Interest exists shall be made by the Sponsors in their sole discretion.”*

The proponent (RFP stage) makes its conflict of interest declaration in a document called the “Proposal Submission Form,” where the proponent makes the following statement: “[e]xcept as listed in Section 5.0 of this Proposal Submission Form, we...do not have an actual or perceived Conflict of Interest in respect of this Project”.

Individual members of the proponent team make their conflict of interest declarations in a “Proponent Team Member Declaration” by making the following declaration: “[e]xcept as listed in Section 4.0 of this Proponent Team Member Declaration, we...do not have an actual or perceived Conflict of Interest in respect of this Project.”

#### **(iv) Conflict of Interest – Vas Georgiou**

As an employee of St. Michael’s Hospital during the SMH Procurement and as a participant in the RFQ and RFP evaluation processes, Vas Georgiou was subject to (i) his employment obligations, including compliance with any applicable conflict of interest codes of conduct of St. Michael’s Hospital, and (ii) all conflict of interest rules that applied to participants in the RFQ and RFP evaluation processes as set out above.

Vas Georgiou executed a COI Agreement for each of the RFQ and RFP processes for the SMH Procurement (dated February 19, 2013 and June 10, 2014 respectively) in which no conflicts of interest or potential conflicts of interest were disclosed. Vas Georgiou did make an apparently selective disclosure of a potential conflict of interest (verbally and by e-mail) to IO (as discussed below). However, Vas Georgiou failed to make full, complete and accurate disclosure, either in his COI Agreement or his verbal/e-mail disclosure of all of his conflicts of interest or potential conflicts of interest.

The Vas Georgiou conflict of interest issues that were examined during Blakes’ review revolved around his relationship with John Aquino. John Aquino is a major shareholder of Bondfield (a proponent team member of St. Michael’s Partnership, the successful proponent in the SMH Procurement). Importantly, John Aquino was a listed individual in the list that was presented to each participant in the RFQ and RFP evaluation processes (including Vas Georgiou) for the purpose of checking conflicts (referred to as “Schedule A” to the COI Agreement).

Notwithstanding the appearance of John Aquino’s name on Schedule A to the COI Agreement, Blakes found no record of Vas Georgiou having disclosed the following, each of which

represent, in the view of the Special Committee, a significant potential conflict of interest which required disclosure in the COI Agreements:

- Vas Georgiou had done work for property management companies in which John Aquino had an ownership interest, and was President (Gervais Property Management Corp. and 1870475 Ontario Inc.). There is some ambiguity as to whether such work was completed prior to Vas Georgiou joining St. Michael's Hospital. Vas Georgiou continues to assert that no work was done after the commencement of his employment at St. Michael's Hospital, although this is inconsistent with what we understand from St. Michael's Hospital and other sources. While Vas Georgiou did disclose (as noted below) work for "developers" and a small commercial property company, Blakes found no written record of any explicit disclosure of his relationship with Gervais Property Management Corp., 1870475 Ontario Inc., and/or John Aquino.
- Vas Georgiou had a minority interest and investment in OTEC Research Limited ("OTEC"), a company in which John Aquino also has a minority interest. Vas Georgiou has stated that in late 2011 (after Vas Georgiou's initial investment in OTEC), he learned that John Aquino had also become a shareholder in OTEC. Further, in 2012, Vas Georgiou loaned money to OTEC through Arsenal Facilities Consultants Inc. (a family company) in the amount of \$102,639. In June of 2013 this loan was registered as a promissory note financing. Blakes found no indication that the Vas Georgiou/John Aquino relationship in OTEC, or the Arsenal Facilities Consultants Inc. loan to OTEC was declared verbally or in writing by either Vas Georgiou (or John Aquino) during the SMH Procurement.
- Vas Georgiou has also stated that he provided unremunerated services to OTEC related to OTEC's move to the Gervais properties, as a favour to OTEC.

Vas Georgiou did disclose verbally and by e-mail (but after the date of execution of his COI Agreements) that he did work for "...*three different developers (a Casino Developer, a retail/Entertainment/Residential Developer and a small Commercial Property Company)*..." that involved interacting with general contractors who routinely bid in IO procurements. Vas Georgiou also reported to IO that, "*as discussed, these were projects that I was an Advisor on after I left IO and before I joined St. Michael's Hospital*", and that "*none of the projects became live*". Based on Vas Georgiou's description of this relationship with the general contractors, IO staff concluded that the particular relationships that were described by Vas Georgiou did not constitute a potential conflict of interest.

The Special Committee notes that the verbal and e-mail process that was followed by Vas Georgiou and IO staff to consider the potential conflicts of interest was informal and done without referral to the Conflict Review Team. In the future, the formal process for dealing with conflicts of interest as set out in the Evaluation Framework should always be followed.

The Special Committee has concluded that there was a failure by Vas Georgiou during the SMH Procurement process to disclose all of his potential conflicts of interest. As a former IO employee and senior experienced bureaucrat, Vas Georgiou knew as well as anyone what the IO conflict of interest procedures required. The generic conflict of interest that Vas Georgiou disclosed verbally and by e-mail failed to identify the full suite of relationships which ought to have been disclosed, each of which constituted a potential conflict of interest requiring disclosure in the proper form in order to allow the Conflict Review Team to evaluate them.

**(v) Conflict of Interest – Bondfield Construction Company Ltd. and John Aquino**

In its response to the RFP, neither St. Michael's Partnership (the proponent) nor Bondfield (a proponent team member) disclosed a potential conflict of interest in respect of Vas Georgiou.

The Special Committee is of the view that an experienced bidder like Bondfield, knew, or ought to have known, that the kind of financial and commercial relationships that existed between Vas Georgiou and John Aquino should have been disclosed by Bondfield as potential conflicts of interest.

IO's expectation is that experienced bidders will err on the side of full disclosure concerning potential conflicts of interest and the Special Committee supports this expectation. Further, IO believes that each proponent and proponent team member ought to conduct appropriate due diligence to investigate, and then disclose, any potential conflicts of interest, particularly as they relate to key individuals on the Sponsors' project team. The Special Committee supports this perspective. In the Special Committee's view, the procurement documents clearly require proponents and proponent team members to disclose all real and perceived conflicts of interest.

However, the Special Committee is aware that the determination of whether a proponent or proponent team member is in breach of its legal obligation to disclose conflicts of interest must be based on an interpretation of the language of the RFQ and RFP documents. This legal determination is a complex process of contractual interpretation. The Special Committee acknowledges that a proponent team member could have interpreted the RFP to mean that Bondfield was obliged to disclose only the conflicts of interest of Bondfield itself (as a legal entity and as a proponent team member) and not of John Aquino, in his personal capacity. The AFP RFP documents are being revised by IO staff to clarify this.

**(vi) Findings – Failure to Disclose the Conflicts of Interest Did Not Compromise the SMH Procurement**

The principal risk of an undeclared conflict of interest is that the failure to disclose was deliberate and done in order to conceal a bias or an intention to engage in favoritism, particularly in the evaluation process. As a result, it was a priority for the Blakes team to examine whether the SMH Procurement exhibited any pattern of bias in favour of St. Michael's Partnership/Bondfield.

The Special Committee has concluded that no such pattern of bias in favour of St. Michael's Partnership/Bondfield was evident in the SMH Procurement process. Fundamentally, the numerous safeguards built into the standard IO procurement process, the template procurement documents, and the Evaluation Framework are designed to protect an AFP procurement (including the SMH Procurement) from the risks associated with an undisclosed conflict of interest and other inappropriate behaviour. More specifically:

- **No single person can unilaterally determine the outcome of a procurement.** There are a sufficient number of participants in each procurement process such that no single individual or sub-group of individuals is in a position to unilaterally determine the outcome.
- **No single evaluator can determine the score of a proponent's submission.** The Evaluation Teams are comprised of multiple evaluators from different organizations. In the SMH Procurement, the number of Evaluation Team members meant that as a practical

matter, Vas Georgiou would have had to have significant and controlling influence over at least twelve individuals.

- **Evaluation Teams have representatives of more than one organization which makes it difficult for an executive of one organization to influence or pressure the entire Evaluation Team.** Even if Vas Georgiou had attempted to influence the Evaluation Team members who were employees of St. Michael's Hospital, those Evaluation Team members did not have the authority to determine the final results of scoring. The Evaluation Teams were well-populated with employees of both Sponsors and were advised by third party subject matter experts.
- **Blakes discovered no evidence that Vas Georgiou had actually attempted to influence the scores of the proponents by pressuring the evaluators.** Evaluation Team members were asked during the review process whether Vas Georgiou had attempted to influence the Evaluation Team members as they were marking the proposals and no instances of such attempts were reported.
- **Evaluators score individually first then go through a consensus-building exercise monitored by the Fairness Monitor.** Evaluation Team members score proposals independently and then engage in a consensus-building exercise. In the SMH Procurement, Evaluation Teams reached consensus on their scoring of proponents under the scrutiny of the Fairness Monitor and before meeting with the Evaluation Committee (of which Vas Georgiou was a member).
- **Evaluation Teams gave Bondfield a passing grade on its Technical Submission (before Vas Georgiou's evaluation involvement).** While Vas Georgiou was a member of the Evaluation Committee, the original recommendations by the Evaluation Team members (who report to the Evaluation Committee), before Vas Georgiou's involvement in the process and before the evaluation of the Financial Submissions, determined that St. Michael's Partnership/Bondfield should receive a passing score on both the technical and design portions of its Technical Submission.
- **An independent third party confirmed the evaluation results of the Evaluation Team.** When a difference of opinion arose at the Evaluation Committee as to the scoring and design compliance of St. Michael's Partnership/Bondfield's Technical Submission, the Sponsors obtained an independent third party review of the findings. The third party review was consistent with the Evaluation Team's original evaluation.
- **St. Michael's Partnership/Bondfield bid the best price.** As in most AFP procurements, in the SMH Procurement price was a significant factor in the evaluation of submissions. St. Michael's Partnership/Bondfield consortium submitted a significantly lower price than its competitors.

Finally, had the facts relating to the relationship between John Aquino and Vas Georgiou been disclosed, in all likelihood, the Conflict Review Team would have concluded that the circumstances were not sufficient to disqualify Bondfield from bidding but Vas Georgiou would have been prohibited from participating in the SMH Procurement Evaluation Committee and prohibited from acting as St. Michael's Hospital's representative in approving any change orders or variations as the construction progressed (since the St. Michael's Partnership/Bondfield team was the successful proponent). If Vas Georgiou had ceased to be involved in the SMH

Procurement or the SMH Project, any potential conflict of Bondfield or John Aquino would have disappeared.

## **E. VAS GEORGIU'S DEPARTURE FROM INFRASTRUCTURE ONTARIO**

### **(i) Background**

Vas Georgiou was an employee of IO for six years. He was hired by IO as a Vice President of Project Delivery in 2006, was promoted to Senior Vice President, Project Delivery in November, 2007, and promoted again to Chief Administrative Officer in May 2011. His employment at IO ended in February of 2012.

To assess the circumstances of Vas Georgiou's departure from IO, Blakes reviewed available documentation (including the Vas Georgiou employee file and relevant e-mails). It is important to note that Vas Georgiou's employment file included a letter of termination and a full and final release but did not include any further details of his termination or any reference to the role the York University false invoicing scheme played in Vas Georgiou's termination.

Blakes also conducted interviews regarding the circumstances surrounding Vas Georgiou's departure from IO and the subsequent provision of references to St. Michael's Hospital by IO personnel. The interviewees included relevant current and former employees (including David Livingston, the President and CEO at the relevant time, and Bill Ralph, the Chief Risk Officer at the relevant time), the Chair and directors of the IO Board at the relevant time, IO's external employment counsel and the General Counsel of York University. Vas Georgiou declined an interview but provided responses to written questions through his legal counsel.

### **(ii) Termination**

Vas Georgiou's departure from IO was precipitated by a telephone call in early 2012 from the General Counsel of York University to Bill Ralph requesting a meeting. At the meeting, which took place late January 2012, the General Counsel provided Bill Ralph with a draft Statement of Claim of York University against Vas Georgiou, among others, which the General Counsel advised York University was planning to issue in the near future. The Statement of Claim alleged that in late 2007 and early 2008, Vas Georgiou had participated in a scheme to defraud York University in connection with York University's procurement services department under which Vas Georgiou invoiced and received payment from York for work allegedly performed by his family companies which was not done either by his family companies or anyone else. The York University accusations were unrelated to Vas Georgiou's employment at IO.

Bill Ralph reports that he advised David Livingston, the President and CEO at that time, of the substance of the meeting with the General Counsel of York University. Immediately thereafter, David Livingston contacted Vas Georgiou (who was on leave for personal reasons) and told him not to return to the office until further notice. David Livingston then consulted with IO's external legal counsel on employment matters. Following this consultation, a meeting was scheduled with Vas Georgiou. On February 1, 2012, David Livingston and Bill Ralph met with Vas Georgiou who, according to David Livingston and Bill Ralph, acknowledged the existence of the York University false invoicing scheme and that he and his family companies had played a role in that scheme. At that meeting, Vas Georgiou characterized his participation as an "error in judgment" which was done "as a favour to a friend".

After receiving further legal advice from external counsel, David Livingston concluded that the reputational risk of having a senior IO employee implicated in the York University false invoicing scheme made Vas Georgiou's departure from IO necessary, even though there was no evidence that Vas Georgiou had engaged in any inappropriate conduct related to his IO responsibilities. Vas Georgiou was formally terminated on February 8, 2012 on terms consistent with the contractual termination requirements under his employment agreement in the event of a termination without cause.

David Livingston then described to IO staff and to the IO Board Vas Georgiou's departure from IO as a resignation for personal reasons.

The IO Board was not advised that Vas Georgiou had been terminated nor of the underlying reasons for his departure. No record of the reasons for Vas Georgiou's termination was placed in his employee file, contrary to the requirements of normal IO procedures.

The IO Board and the IO staff were advised only that Vas Georgiou's resignation was for personal reasons to deal with family matters. This explanation appears to have been readily accepted by those who worked closely with Vas Georgiou, knowing that he had been away from the office for periods of time dealing with two separate family emergencies.

### **(iii) Provision of References for Vas Georgiou**

Nine months after the termination of Vas Georgiou, two IO employees and the then Chair of the IO Board provided references in respect of Vas Georgiou's application for employment with St. Michael's Hospital. There has been some discussion as to the knowledge of the then Chair of the IO Board of the underlying reasons for the departure of Vas Georgiou from IO and there are factual inconsistencies and differences in the recollections of the relevant parties on the matter. The then Chair of the IO Board recalls only that he understood Vas Georgiou had resigned for personal reasons. However, the failure on the part of the then President and CEO of IO to make known generally the true reasons for Vas Georgiou's departure allowed two IO employees to unwittingly provide positive references (i.e. without reference to the false invoicing scheme at York University) in response to inquiries made by a search firm acting for St. Michael's Hospital in connection with Vas Georgiou's potential employment with St. Michael's Hospital.

There appears to have been a lack of awareness, on the part of the IO employees who provided references, that IO had a policy with respect to providing employment references (Infrastructure Ontario Providing Employment References Policy 2.10 dated June 6, 2011). The policy set out that IO did not provide references for departing employees without advance approval by Human Resources, and states the following:

*"From time to time, Employees may receive a reference request for a past or current Employee of IO. This individual may be someone that the IO Employee may have managed or worked with in the past or present.*

*Due to the high sensitivity and possible legal ramifications associated with reference checks, all work-related reference checks for past Employees, must be given in consultation with the Human Resources Department.*

*Employees and managers must consult with Human Resources prior to providing references for current or past IO Employees."*



**(iv) Findings**

The Special Committee is of the view that the IO Board should have been formally briefed and fully informed of Vas Georgiou's termination, and the specific circumstances of the termination, by the former President and CEO. Further, either the former President and CEO or the former Chief Risk Officer ought to have consulted with or fully informed the Audit Committee of the IO Board (as the committee charged with overseeing risk to the organization) of the actual circumstances relating to the termination of the second most senior employee in the organization.

The Special Committee is also of the view that IO's policy regarding references for former employees was and continues to be appropriate. The Special Committee believes that awareness of the policy was lacking. IO has amended its policies and practices to ensure employees are made aware of the need to consult with the head of Human Resources and receive approval for any reference for a former employee.

**F. SPECIAL COMMITTEE CONCLUSIONS AND RECOMMENDATIONS**

In addition to the conclusions expressed with respect to the individual issues throughout the report, the Special Committee notes that it,

- (i) agrees with the recommendations of Blakes and CHS and recommends the adoption of such recommendations; and
- (ii) recommends that the President and CEO report back to the IO Board in six months on the progress IO has achieved in implementing the recommendations.

Respectfully submitted by the Special Committee of the IO Board of Directors

Appendix A – AFP Procurement Practices Best Practices Review Chart

Appendix B – Blakes' and CHS Recommendations

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**APPENDIX A TO THE SPECIAL COMMITTEE REPORT**

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**AFP PROCUREMENT BEST PRACTICES REVIEW CHART**

Note that we have been asked by Infrastructure Ontario (“IO”) to make “continuous improvement” comments where there are improvements that could be made in the AFP Procurement Practices. These suggestions for continuous improvement appear as commentary in the right hand column.

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
Fundamental Best Practices Principles		
<p>1. Has the procuring authority established the fundamental procurement principles that will govern the organization?<sup>1</sup></p>	<p>IO has established a procurement policy that sets out the fundamental principles that will govern the organization.</p> <p>The IO Procurement Policy is updated regularly and is currently in the process of being revised and updated and applies to the procurement of all goods and services, except advertising, public relations, media relations, creative services, the acquisition and disposition of real property and the retention of outside legal services.</p> <p>The IO Procurement Policy conforms to the following principles: (i) vendor access, transparency and fairness, (ii) value for money, (iii) responsible management and (iv) geographic neutrality and reciprocal non-discrimination.<sup>2</sup> These principles are consistent with the Ontario Public Sector Procurement Directive, issued by the Management Board of Cabinet, December 2014 which is applicable to IO as an “Other Included Entity”.</p> <p>As set out in both the IO Procurement Policy and the Ontario Public Sector Procurement Directive, procurement processes must allow access for qualified vendors to compete for IO’s business in a fair, transparent and efficient process that provides equal treatment to Vendors. Goods and services must be procured only after consideration of IO’s business requirements, alternatives, timing, supply strategy, and procurement method. The procurement of goods and services must be responsibly and effectively managed through appropriate organizational structures, systems, policies, processes and procedures.<sup>3</sup></p> <p>IO is also required by the IO Procurement Policy to apply the principles contained in the framework for alternative finance and procurement projects released by the Government of Ontario in July 2004 entitled “Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector” to all infrastructure projects in which the province of Ontario makes a material investment. IO is required by this framework and the IO Procurement Policy to pursue a balanced, pragmatic approach to infrastructure renewal guided by five fundamental principles: (i) protection of the public interest, (ii) value for money, (iii) appropriate public control/ownership, (iv) accountability, and (v) fair, transparent and efficient processes.<sup>4</sup></p>	<p><input checked="" type="checkbox"/> Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>2. Have the fundamental procurement principles been disclosed to the procuring authority's "bidding market"?</p>	<p>The IO Procurement Policy is not published and is not available on its website, however it does indicate on its website that "IO is committed to an open, fair and competitive procurement process".</p> <p>IO is subject to the <i>Ontario Public Sector Procurement Directive</i>, issued by Management Board of Cabinet, December, 2014, as an "Other Included Entity" and the <i>Ontario Public Sector Procurement Directive</i> is available as a public document.</p>	<p><b>Recommendation</b></p> <p>The IO Procurement Policy should be posted on the website or at least made available to IO's "bidding market".</p>
<p>3. Does the organization's procurement policy include a commitment to</p> <ul style="list-style-type: none"> <li>• integrity;</li> <li>• transparency;</li> <li>• accountability;</li> <li>• fairness and efficiency; and</li> <li>• professionalism?<sup>5</sup></li> </ul>	<p>The IO Procurement Policy is based on a number of key principles including (i) vendor access, transparency, and fairness, (ii) value for money, (iii) responsible management, (iv) geographical neutrality, and (v) reciprocal non-discrimination.<sup>6</sup></p> <p>The principles of vendor access, transparency and fairness are aimed at ensuring that IO's procurement is open to qualified vendors and conducted in a fair, transparent and efficient manner that provides equal treatment to all participants in the procurement process and ensures integrity of its procurement processes</p> <p>The IO Procurement Policy defines vendor access, transparency, and fairness as follows:  <i>"Access for qualified Vendors to compete for OILC's business must be open and the procurement process must be conducted in a fair, transparent and efficient process that provides equal treatment to Vendors. OILC will be responsive to its Vendors and potential Vendors, including by ensuring that Vendors have reasonable notice and opportunity to compete in the procurement process and through consultations with the Vendors and potential Vendors regarding our procurement processes. Conflicts of interest, both real and perceived, must be avoided during the procurement process and the ensuing Agreement; and relationships must not be created which result in continuous reliance on a particular Vendor for a particular kind of work."</i><sup>7</sup></p> <p>Responsible Management is defined in the IO Procurement Policy as the "procurement of goods and services must be responsibly and effectively managed through appropriate organizational structures, systems, policies, processes, and procedures."<sup>8</sup> A related principle is "value for money" which means the procurement of goods and services "only after consideration of OILC business requirements, alternatives, timing, supply, strategy, and procurement method".<sup>9</sup></p> <p>IO's policy is also guided by the principles in <i>Building a Better Tomorrow: Protection of the Public Interest, Value for Money, Appropriate Public Control/Ownership, Accountability, and Fair, Transparent and Efficient Processes</i>.<sup>10</sup> The IO Procurement Policy incorporates the principles of this framework.</p>	<p><input checked="" type="checkbox"/> Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>4. Are the fundamental procurement principles and the IO Procurement Policy reflected in the organization's standard procurement documentation used in AFP projects?</p>	<p>IO's key procurement documents are clearly guided by the principles of integrity, transparency, accountability, fairness and efficiency.</p> <p>The template RFQ and RFP documents used for AFP projects are designed to ensure that the principles of the IO procurement are reflected in the procurement processes governed by those documents. For example, to ensure fairness and equal access to information, the template documents require that all communications from applicants in the case of the RFQ and proponents in the case of the RFP must be to specified points of contact at IO, and there are strict rules against communicating with or lobbying IO, its advisors, co-sponsors, government and others involved in the procurement process.<sup>11</sup></p> <p>Applicants and proponents are given the opportunity to seek clarification or request information regarding the procurement process, and other than inquiries that are deemed commercially confidential, the responses to all such requests for information or clarification are distributed "to all prospective applicants through the MERX system" in the case of the template RFQ, and to all proponents in the case of the template RFP.<sup>12</sup></p> <p>The template RFQ and RFP documents, as well as all addenda and responses to questions, are typically distributed either using an e-bidding platform such as MERX (in the case of the RFQ) or using an electronic data site (in the case of the RFP) to ensure that all participants have access to the same information at the same time, ensuring fairness and transparency.</p> <p>To ensure the integrity of the procurement processes, the template documents require applicants or proponents to disclose any actual, potential or perceived conflicts of interest to IO immediately upon becoming aware of such conflict so that appropriate mitigation measures can be put in place, which may include the exclusion of a participant from the process if the conflict of interest cannot be mitigated.<sup>13</sup></p> <p>The template RFQ and RFP documents are structured such that evaluation criteria must be set out in advance, including the relative weighting of criteria, ensuring the transparency of the evaluation process. For example, the template RFQ documents contain evaluation criteria in Section 6.<sup>14</sup> Applicants are ranked based on these evaluation criteria.<sup>15</sup> Similarly, the template RFP documents set out the evaluation criteria, evaluation categories to which such criteria are applied and the scoring process, including applicable minimum score requirements.<sup>16</sup></p> <p>Additionally, during the RFQ and RFP processes, IO reserves itself the right in its template RFQ and RFP documents to impose additional conditions, measures, or requirements on all applicants at any time in the interest of ensuring the integrity, openness and transparency of the process.<sup>17</sup></p> <p>Finally, in both the template RFQ and RFP documents, proponents are informed of the existence and role of the fairness monitor.</p>	<p>☑ Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>5. Are the fundamental procurement principles and the IO Procurement Policy reflected in the organization's approach to the evaluation of prequalification submissions and proposals?</p>	<p>The template RFQ and RFP Evaluation Frameworks (each an "Evaluation Framework") are designed to ensure that the evaluation process is conducted in a manner that is fair, open, transparent, free from conflicts of interest, and respectful of commercially confidential information submitted by the proponents.<sup>18</sup> The Evaluation Frameworks contain numerous provisions designed to ensure the integrity of the evaluation and procurement process.</p> <p>Each Evaluation Framework outlines the roles and responsibilities for various participants in the procurement process and defines the decision making process and reporting structure associated with the evaluation process which promotes accountability.<sup>19</sup> The Evaluation Frameworks also include requirements regarding the training of participants and the use of subject matter experts, strict confidentiality and document security provisions, and a mechanism for the identification of conflicts of interest of participants in the evaluation which involves presenting each participant with a list of individuals involved in preparing each proponent's proposal.<sup>20</sup> The RFP Evaluation Framework also provides for sequential evaluation.<sup>21</sup> The purpose of the sequential evaluation is to ensure that decisions pertaining to the evaluation of the technical merit of a proposal are made without knowledge of the price.</p> <p>Before participating in the evaluation process, including receipt of proposals, each participant must execute a "Participant Agreement and Undertaking" to ensure that each participant has attended or received or undertaken to attend or receive evaluator training, covenants to be bound by the confidentiality obligations and conflict of interest requirements set out in such agreement and undertaking, and covenants to be bound by specific document security requirements in respect of electronic or offsite evaluation of proposals.<sup>22</sup></p> <p>Both Evaluation Frameworks include safeguards to ensure that only the criteria that were disclosed in the RFQ and RFP documents respectively are applied during evaluation. For example, the template RFQ Evaluation Framework specifies that if the evaluation committee believes that an "undisclosed evaluation criterion has been applied" or that "an evaluation team has failed to apply (or has incorrectly or inconsistently applied) evaluation criteria in accordance with the RFQ and/or Evaluation Framework", the evaluation committee may "refer the evaluation back to the evaluation team for reconsideration in accordance with the correct or proper principle".<sup>23</sup> The template RFP Evaluation Framework contains nearly identical provisions regarding undisclosed or incorrectly applied evaluation criteria.</p> <p>Evaluation at both the RFQ and RFP stage is monitored by a fairness monitor whose role is to observe the process, report to the evaluation committee as required, ensure the provisions of the Evaluation Frameworks "allow for the fair, open and transparent conduct of the evaluation process", and confirm that the evaluation process has been conducted in accordance with the RFQ or RFP, as applicable, the applicable Evaluation Framework and in a fair, open and transparent manner.<sup>24</sup></p>	<p>☑ Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
Fairness and Integrity		
Choice of Procurement Methodology – Competition versus Sole or Single Sourcing		
<p>6. Does the organization have rules that require competitive procurement (subject only to articulated exceptions)? Does the structure of the bidding process maximize competition and transparency?<sup>25</sup></p>	<p>IO's Procurement Policy requires it to select the appropriate procurement approval authority and procurement method taking into account the value of the procurement.<sup>26</sup> Alternative, non-competitive procurement methods can only be used if: (i) the circumstances of the case fall within one of the allowable listed exceptions, (ii) a business case supports the non-competitive procurement, and (iii) proper advance approvals have been obtained.<sup>27</sup></p> <p>Open competitive processes are required for all procurements with a value of \$100,000 or more.<sup>28</sup> While requests for proposals in these processes may only be released to pre-qualified parties, any preceding RFQ process is an open process.<sup>29</sup></p> <p>The IO Procurement Policy restricts IO from taking any actions that reduce the value of procurements to avoid any requirements regarding competition, approvals or reporting.<sup>30</sup> The award of multiple consecutive contracts to the same vendor can only be made where each assignment is unique or where prior approval of a consulting service follow-on has been received which safeguards against the possibility of subdividing a large project into several smaller projects in order to circumvent internal thresholds for initiating an open procurement process.<sup>31</sup> A competitive process must be used for all consulting services, irrespective of the value of the contract.<sup>32</sup></p> <p>We note that as of the date of the Review and Investigation, IO has begun every traditional AFP project that it has carried out with an open RFQ process.</p>	<p>☑ Consistent with best practice.</p>
<p>7. Is the use of processes that are alternatives to competitive procurement restricted or limited? Does such a use have to be justified to a more senior authority?<sup>33</sup></p>	<p>Alternative, non-competitive procurement methods can only be used if: (i) the circumstances of the case fall within one of the allowable listed exceptions, (ii) a business case supports the non-competitive procurement, and (iii) proper advance approvals have been obtained.<sup>34</sup> The IO Procurement Policy also requires that procurement approvals follow IO's Delegations of Authority which sets out the approval framework for all activities and transactions by applicable legislation and government policies, ensuring senior management oversight of these decisions.<sup>35</sup></p>	<p>☑ Consistent with best practice.</p>
<p>8. Are alternatives to competitive procurement to be used in limited circumstances and under strictly regulated conditions, with increased transparency?<sup>36</sup></p>	<p>The non-competitive procurement of goods and services is only permitted under limited, enumerated circumstances and requires appropriate approvals pursuant to the Delegations of Authority.<sup>37</sup></p> <p>With respect to the AFP projects, this issue is not applicable because AFP projects are not procured in non-competitive processes.</p>	<p>☑ Consistent with best practice.</p> <p>In general, this assessment criterion is not applicable to AFP projects because they are always procured on a competitive basis.</p>
<p>9. Are sham "urgent purchases" regulated and avoided?<sup>38</sup></p>	<p>One listed exception where non-competitive procurement methods are permitted is in an unforeseen situation of urgency, however, the IO Procurement Policy specifies that such a situation does not occur where IO has failed to allow sufficient time to conduct a competitive procurement process.<sup>39</sup></p>	<p>☑ Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
Fair and Open Prequalification Processes		
<p>10. Is prequalification carried out against an exhaustive list of evaluation criteria that are relevant to an applicant's ability and capacity to perform?<sup>40</sup></p>	<p>IO must evaluate the bid responses received consistently and in accordance with the evaluation criteria, rating and methodology set out in the procurement documents.<sup>41</sup></p> <p>The template RFQ documents set out the evaluation criteria used to assess prequalification applications.<sup>42</sup> The evaluation criteria, including financial strength, experience and composition of the applicant teams, relate to ability and capacity of the applicant to perform the work for the specified project. Applicants are required to demonstrate their ability to meet the needs of the specified project with reference to their experience and expertise.</p> <p>The template RFQ documents indicate that "generally, scores will be informed by a consideration of the Applicant's demonstrated prior experience, demonstrated capability for best practices, demonstrated understanding of the project's needs and demonstrated ability to meet those needs".<sup>43</sup></p> <p>The RFQ Data Sheet in the template RFQ documents sets out each evaluation criteria category and its relative weighting for scoring purposes. Appendix B – Prequalification Submission Requirements of the template RFQ documents sets out the Technical Information Package and Financial Information Package requirements in "Table 1".</p> <p>In addition to setting out details of the submission requirements, the table also indicates the "criteria score" for each element and further details regarding evaluation criteria where appropriate. For example, under the heading "Applicant Lead's Experience", applicants are required to provide resumes for all "key individuals" who are nominated as the project executives and the content requirements for each resume, such as title, company of employment and project examples, are also set out. In addition, the template RFQ documents include an indication that "scoring preference will be given if it is demonstrated that the Key Individuals participated in one or more of the project examples submitted in response to this Section 2.3.1 of this Table 1 to Appendix B."</p>	<p>☑ Consistent with best practice.</p> <p><b>Commentary:</b> <i>While IO AFP Procurement Practices are consistent with best practice generally, there are an increasing number of procuring authorities in Canada providing (i) more detail about how the of evaluation criteria will be applied to the applicants/bidders' submissions, and (ii) a more detailed breakdown of high level evaluation criteria when compared with the evaluation information routinely provided by IO in its AFP procurements. IO should consider whether there is merit in pursuing a higher level of disclosure of evaluation criteria and their application.</i></p>



Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>11. Are the evaluation criteria and the rules governing the RFQ evaluation process published, explicit and clear?<sup>44</sup></p>	<p>The template RFQ documents set out both the general criteria used to assess each prequalification application, as well as the relative weighting of each evaluation category. This provides transparency to applicants of the relative importance of each evaluation category to their overall score. The template RFQ documents indicate that “generally, scores will be informed by a consideration of the Applicant’s demonstrated prior experience, demonstrated capability for best practices, demonstrated understanding of the Project’s needs and demonstrated ability to meet those needs”.<sup>45</sup> The RFQ Data Sheet in the template RFQ documents sets out each evaluation criteria category and its relative weighting for scoring purposes.</p> <p>The RFQ Evaluation Framework includes a Technical Evaluation Worksheet and a Financial Evaluation Worksheet, attached as part of Appendices 5 and 6 respectively. Each of these charts sets out “desirable characteristics/considerations” for each evaluation criterion. For example, where a responsibility matrix is required to be submitted (such as in criterion 4.1.3 as set out in Appendix B to the RFQ), the key considerations in the evaluation of that matrix are “comprehensiveness of the matrix, clarity of responsibility allocation and relevance and responsibilities identified”. Within this “desirable characteristics/considerations” column, these considerations are generally further broken down to indicate what would constitute a “satisfactory”, “good” and “very good” response for such criterion. The worksheets each include a “grade-to-score” matrix indicating the low/mid/high score that should be awarded based on an assessment of “satisfactory”, “good”, “very good”, etc. The Technical Evaluation Worksheet notes that “except to the extent set out in the RFQ, the desirable characteristics/considerations set out below do not constitute minimum or mandatory requirements and have been inserted to provide guidance as appropriate to Participants in analyzing and applying the relevant criteria.”<sup>46</sup> It is noted that while each individual evaluation criterion and the general approach to awarding scores is disclosed by IO, this detailed breakdown of considerations and grade-to-score conversion used in the evaluation and scoring of each criterion is not.</p> <p>With respect to undisclosed criteria, IO’s template RFQ Evaluation Framework specifies that if the evaluation committee believes that an undisclosed criterion has been applied or the criteria have not been applied in accordance with the Evaluation Framework, they can refer the evaluation back to the evaluation team for reconsideration.<sup>47</sup> This is a safeguard to ensure that only the criteria that were disclosed in the RFQ documents can be applied during evaluation. Furthermore, IO is required by Canadian procurement law to disclose the criteria on which prequalification submissions or proposals, as applicable, will be evaluated and is precluded from applying undisclosed criteria during its evaluation process.</p> <p>Finally, the fairness monitor reviews the Evaluation Framework developed for each project.</p>	<p>☑ Consistent with best practice.</p> <p><b>Commentary:</b> <i>While IO AFP Procurement Practices are consistent with best practice generally, there are an increasing number of procuring authorities in Canada providing (i) more detail about how the of evaluation criteria will be applied to the applicants/bidders’ submissions, and (ii) a more detailed breakdown of high level evaluation criteria when compared with the evaluation information routinely provided by IO in its AFP procurements. IO should consider this issue in the future.</i></p>
<p>12. Do applicants provide sufficient information to make their ownership structures apparent to the procuring authority?<sup>48</sup></p>	<p>The submission requirements of the template RFQ documents include submission of the applicant lead’s organizational structure at the bid stage as well as the organization chart of the ownership and control structure planned for Project Co for each stage of the project.<sup>49</sup></p> <p>Given that AFP projects are carried out by special purpose vehicles created solely for the purposes of the project by a winning consortium, ownership information at the RFQ stage relates to the key team members and not the special purpose vehicle.</p>	<p>☑ Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
Use of Standardized Procurement Documents		
<p>13. Does the procuring authority use standard procurement documents?<sup>50</sup></p>	<p>Yes. IO uses template RFQ and RFP documents and standard project agreements. The project agreements are customized for large, complex projects,<sup>51</sup> but standard provisions in the RFQ and RFP documents are normally the same for all projects. These templates have been developed over the course of a number of years and many projects and are subject to continual refinement. IO has also developed building systems design guides to standardize the design, construction objectives and technical requirements for IO's portfolio of buildings.<sup>52</sup></p> <p>IO also provides information and links to commonly used standards on its website and will incorporate many of them into its procurement documents, as applicable. For example, where applicable, well-established technical standards, such as the Canadian Handbook of Practice for Architects<sup>53</sup> and LEED best practices<sup>54</sup> are used.</p>	<p>☑ Consistent with best practice.</p>
<p>14. Do the RFQ template procurement documents include all requirements that a bidder must meet in order to be evaluated?<sup>55</sup></p>	<p>The template RFP documents set out the technical and financial submission requirement for proposals as well as all required forms and documents that a proponent must submit in RFP Schedule 3 – Submission Requirements and Evaluation Criteria.</p> <p>In order to be evaluated, a proposal must conform to the requirements of the RFP without material deviation. The template RFP documents define a material deviation as a failure to comply with an RFP document requirement that: (i) impedes, in any material way, the ability of IO to evaluate a proposal, (ii) affects IO's ability to enforce a proponent's obligations pursuant to the RFP document, or (iii) constitutes an attempt by a proponent to revise IO's or a proponent's rights or obligations under the RFP documents in a way not permitted by the RFP.<sup>56</sup></p> <p>The template RFP Evaluation Framework provides that senior representatives of legal and procurement from IO must approve any waiver of a failure to comply with the RFP requirements.</p>	<p>☑ Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>15. Do the procurement documents include:</p> <p>(a) timeframes for the procurement, the stages in the process and the means of communicating between the procuring authority and the bidders?</p>	<p>The template RFQ documents contain the terms and conditions of the RFQ process, the communications process, the name of the contact person, information on where to obtain the documents, the submission deadline and other important information with respect to the prequalification process. A timetable is included in the template RFQ Data Sheet and the template RFQ document notes that “all dates and times listed in the Timetable may be subject to change in the discretion of the Sponsors. Any change to a date or time set out in the Timetable with respect to the RFQ Process will be issued by addendum through MERX. Any change to any other dates shall be provided only to Prequalified Parties and only through the RFP Process.”<sup>57</sup></p> <p>Similarly, the template RFP documents contain the terms and conditions of the RFP process, including the timeframes for the procurement, stages of the process and means of communicating between the procuring authority and the bidders. In addition, the template RFP documents provide an overview of the procurement process, set out important dates in a timetable in the RFP Data Sheet, identify the sole point(s) of contact with IO and the restrictions on communications with IO and any related owner parties, and provide information on the required form of the proposal. The template RFP documents also set out the legal terms and conditions that will govern the RFP process, including IO’s rights with respect to the clarification and verification of proposals, anti-lobbying provisions, disqualification rights and limitations of liability.<sup>58</sup></p> <p>With respect to communication between IO and applicants during the RFQ process and proponents during the RFP process, both processes follow strict protocols with respect to communication, restricting applicants or proponents, as applicable, to single points of contact at IO to ensure that information is communicated in a fair and transparent manner and as an anti-lobbying strategy. The template RFQ advises applicants to obtain the RFQ documents directly from MERX to ensure the applicant receives all issued communications from IO. During the RFP process, information is provided to prequalified parties using an electronic data site which ensures the consistent dissemination of information to all prequalified parties at the same time and allows for tracking and organization of information which is critical during a complex procurement process.</p> <p>With respect to communications between IO and the potential applicants, the RFQ is clear that “Applicants may make inquiries only by submitting questions or requests for clarification to the Contact Person by e-mail” and that “questions submitted to anyone other than the Contact Person or by any means other than e-mail will not be answered.”<sup>59</sup> The template RFP documents contain similar provisions.<sup>60</sup></p>	<p>☑ Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>(b) criteria regarding eligibility of companies, technical specifications and selection and award criteria?<sup>61</sup></p>	<p>The template RFQ documents set out the evaluation criteria that will be used in prequalifying applicants (for example, the applicant’s organization and experience, the applicant lead’s project management approach, etc.), the evaluation process and information regarding how scoring will be determined. The template RFQ documents state that “generally, scores will be informed by a consideration of the Applicant’s demonstrated prior experience, demonstrated capability for best practices, demonstrated understanding of the Project’s needs and demonstrated ability to meet those needs.”<sup>62</sup> With respect to eligibility, the template RFQ documents set out rules regarding the participation of a company on multiple teams (a prime team member of one applicant or any person related thereto may not be a team member, except as a lender in a non-financial advisory role, or otherwise participate in the prequalification submission of any other applicant, however a team member of one applicant can also be a team member of another applicant if it is not a prime team member/related to a prime team member or otherwise ineligible).<sup>63</sup> The template RFQ documents also set out the maximum number of prequalified parties IO intends to prequalify, though it reserves the right for IO to increase the number of prequalified parties prior to the issuance of the RFP documents.<sup>64</sup></p> <p>The template RFP documents identify all pre-qualified parties and set out the submission requirements and the evaluation criteria that will be used in determining the successful proponent, including the relative weighting of each evaluation category and the relative proportion of quality and price. The technical specifications for the project are attached as a schedule to the project agreement which is provided to all proponents.</p> <p>The template RFP documents also include restrictions regarding changes to prequalified teams: “Proponents shall not change their shareholders (unless the Proponent is a company whose equity securities are listed on a recognized stock exchange), Proponent Team Members, proposed subcontractors, Key Individuals, or other parties identified in the Proponent’s Prequalification Submissions without the prior written consent of the Sponsors.”<sup>65</sup> The provision goes on to specify a process for requesting such changes and obtaining IO’s consent, which it may withhold in its sole discretion.</p> <p>There are also “change in control” provisions in the template RFP documents for where there is a change in control of a proponent or proponent team member as a result of an acquisition by one of the other proponents or one of the other proponent’s proponent team members.<sup>66</sup></p> <p>With respect to the award, IO reserves its right to either identify the highest ranked proponent as the “preferred proponent” and either negotiate with such proponent or accept such proponent’s proposal as submitted, or identify the two highest ranking proponents as “negotiations proponents” and enter into negotiations either contemporaneously, or sequentially if negotiations with the first ranked proponent are unsuccessful.<sup>67</sup></p>	<p>☑ Consistent with best practice.</p> <p><b>Commentary:</b> <i>While IO AFP Procurement Practices are consistent with best practice generally, there are an increasing number of procuring authorities in Canada providing (i) more detail about (how the of evaluation criteria will be applied to the applicants/bidders submissions, and (ii) a more detailed breakdown of high level evaluation criteria when compared with the evaluation information routinely provided by IO in its AFP procurements. IO should consider this issue in the future.</i></p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
(c) criteria for disqualification or rejection of a bidder, legal terms and conditions? <sup>68</sup>	Both the template RFQ and RFP documents set out the legal terms and conditions that will govern the prequalification process and the procurement process, including IO's rights with respect to the right to disqualify a proposed prequalified party or proponent or reject a prequalification submission or proposal. <sup>69</sup> Other legal terms and conditions included in each of the template RFQ and RFP documents include provisions related to applicable law, conflicts of interest, unethical behaviour or inappropriate bidding practices, confidential information, freedom of information legislation, proponent costs and limitation of liability (in the RFP only) and other legal matters. <sup>70</sup>	☑ Consistent with best practice.
16. Do the procurement documents use internationally accepted technical standards whenever possible? <sup>71</sup>	In addition to project-specific technical standards which are often internationally recognized (or at least federally or provincially recognized), the template RFP documents and attached project agreement reference the Canadian Standards Association standards, developed by the internationally recognized Canadian-based organization, the CSA Group. Furthermore, IO also provides information and links to commonly used standards on its website and will incorporate many of them into its procurement documents, as applicable. For example, where applicable, well-established technical standards, such as the Canadian Handbook of Practice for Architects <sup>72</sup> and LEED best practices <sup>73</sup> are used.	☑ Consistent with best practice.

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>17. Is the procurement governed by a clearly defined set of rules and, to the extent possible, is decision making a process based on objective criteria?<sup>74</sup></p>	<p>In accordance with the IO Procurement Policy, IO must evaluate prequalification applications and RFP proposals consistently and in accordance with the evaluation criteria, rating and methodology set out in the relevant procurement documents.<sup>75</sup> Furthermore, the template procurement documents are structured such that evaluation criteria must be set out in advance, including the relative weighting of criteria. For example, the template RFQ documents contain evaluation criteria in Section 6.<sup>76</sup> Applicants are ranked based on these evaluation criteria.<sup>77</sup> Similarly, the template RFP documents set out the evaluation criteria, evaluation categories to which such criteria are applied, and the scoring process, including applicable minimum score requirements.<sup>78</sup></p> <p>The requirement to make procurement decisions on the basis of clearly defined rules is consistent with IO's obligations under Canadian procurement law which requires a procuring authority to evaluate submissions solely on the basis of evaluation criteria that have been disclosed during the procurement process: a procuring authority is precluded by Canadian law from evaluating based on undisclosed criteria.</p> <p>With respect to decisions in relation to procurement method, the IO Procurement Policy requires that IO select the appropriate procurement approval authority and procurement method taking into account the value of the procurement.<sup>79</sup> The IO Procurement Policy prohibits taking any actions that reduce the value of procurements in order to avoid any requirements regarding competition, approvals or reporting.<sup>80</sup> Alternative, non-competitive procurement methods can only be used if: (i) the circumstances of the case fall within one of the allowable listed exceptions, (ii) a business case supports the non-competitive procurement, and (iii) proper advance approvals have been obtained.<sup>81</sup> The IO Procurement Policy also requires that procurement approvals follow IO's Delegations of Authority which sets out the approval framework for all activities and transactions by applicable legislation and government policies, ensuring senior management oversight of these decisions.<sup>82</sup></p> <p>Finally, the Evaluation Framework contains processes and safeguards to prevent the inappropriate introduction of bias or subjectivity (for example, multiple evaluators from different organizations, subject matter expert reports, and consensus scoring).</p>	<p>☑ Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>18. Do the procurement rules allow only limited discretionary decision-making (with adequate checks and balances and monitoring)?<sup>83</sup></p>	<p>The IO Procurement Policy permits IO to exercise discretion in the selection of the appropriate procurement method based on procurement category (goods, services or consulting services) and the value of the procurement.<sup>84</sup> The discretion to select methodology is constrained by the category of goods and/or services and the procurement value, and there is senior oversight on the selection, providing checks and balances to ensure compliance with the policy.</p> <p>In addition, the IO Procurement Policy permits the use of non-competitive procurement methods provided that the conditions are met and appropriate approvals are obtained.<sup>85</sup> Similarly, senior oversight over the discretion to not competitively procure certain goods and services is provided through the approval process, thereby validating that there is a business case to support the non-competitive procurement and ensuring that an appropriate allowable exemption listed in the IO Procurement Policy is applicable under the circumstances.</p> <p>In relation to the AFP RFQ and RFP processes, IO has reserved itself discretion in relation to a number of issues, including disqualification of proponents, awarding of the work and cancellation of the process. However, IO is limited in its exercise of discretion by its obligations under Canadian procurement law. In the RFP process in particular, IO's decision making is subject to certain legal obligations, notwithstanding discretion that IO has reserved for itself. For example, IO has reserved its right to "reject any or all" proposals received under an RFP, however under Canadian procurement law IO has an obligation to award to the highest ranked and compliant proponent, which limits its ability to exercise the discretion to reject proposals.<sup>86</sup></p> <p>Similarly, IO has reserved the right to cancel the RFP process in its sole discretion<sup>87</sup> but the exercise of discretion to cancel an RFP process is subject Canadian procurement law. Canadian procurement law imposes an obligation to exercise a cancellation right only in good faith which will limit IO's ability to cancel the RFP process.</p> <p>Finally, the Evaluation Framework divides the technical evaluation process into sub-groups of evaluation teams that work independently and are accountable to a supervising evaluation committee.</p>	<p>☑ Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
Equal Access to Project Information		
19. Do bidders have equal access to project information?	<p>IO ensures applicants/proponents have equal access to project information on AFP projects in several ways. For example, in accordance with the IO Procurement Policy, any additional information, clarification or modification of the procurement documents is provided in the same manner as the procurement documents themselves, usually through an electronic tendering system or data site.<sup>88</sup> This ensures that such information is provided to all applicants or proponents at the same time.</p> <p>The IO Procurement Policy also provides that communications from bidders received by employees of IO must be avoided and summarily directed to the contact person identified in the procurement documents in order to ensure that all bidders are provided with consistent information.<sup>89</sup> By ensuring a single point of contact at IO, the organization is able to effectively manage the dissemination of information to applicants/proponents.</p>	<input checked="" type="checkbox"/> Consistent with best practice.
20. Do all applicants, proponents, or bidders have access to the same level of information at the same time?	<p>Communication with applicants/proponents is through a single point of contact to ensure that all applicants/proponents are provided with information at the same time and to ensure that the information given does not change the intended meaning of the procurement document or any part therein.<sup>90</sup> Similarly, all commercially confidential meetings with bidders or proponents are held on the same day, or over two to three days, and all addenda and responses to questions are submitted electronically to a data room that all bidders can access at the same time.</p>	<input checked="" type="checkbox"/> Consistent with best practice.
Rejecting Non-Compliant Bids and Proposals		
21. Are non-compliant bids rejected?	<p>IO is required by Canadian procurement law to reject a bid if such bid is substantially non-compliant with the requirements of the procurement documents. In the template RFP documents, IO has defined the standard of material compliance, providing transparency to applicants/proponents of the basis on which IO will determine materiality for the purposes of rejecting a proposal.</p> <p>“Compliance” is defined as a proposal that conforms to the requirements of the RFP without material deviation. A “material deviation” in a proposal is any failure to comply with an RFP requirement that, in the sole discretion of IO: (a) impedes in any material way, the ability of IO to evaluate the proposal, (b) affects IO’s ability to enforce the proponent’s obligations pursuant to the RFP, or (c) constitutes an attempt by a proponent to revise IO’s or the proponents’ rights or obligations under the RFP documents in any way not permitted by the RFP.<sup>91</sup></p>	<input checked="" type="checkbox"/> Consistent with best practice.



Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>22. Does the procuring authority have the right to ask the bidder for clarification in a transparent and non-discriminatory manner?<sup>92</sup></p>	<p>The procedure for a “Request for Clarification” (RFC) during the template RFP evaluation process requires the evaluation coordinator, the fairness monitor, and IO legal counsel (if necessary) to review the request to determine whether the evaluation process can proceed in the absence of a response using reasonable judgment and assumptions, and if not, ensuring that the request is not intended to obtain new information or to correct deficiencies.<sup>93</sup> This supports a non-discriminatory approach to clarification which does not allow a proponent to correct deficiencies or otherwise improve its proposal by way of the clarification.</p> <p>Furthermore, IO is prohibited by Canadian procurement law from using the clarification process to permit a proponent to correct a material non-compliance with the requirements of the RFP documents.</p>	<p>☑ Consistent with best practice.</p>
<p>23. Are bid repairs and changes to the bid prohibited after the submission deadline?<sup>94</sup></p>	<p>Bid repair is not permitted by Canadian procurement law and is not permitted under the template RFP process.</p> <p>The IO procurement process only allows the revision of submissions before the submission deadline which prevents proponents from changing their proposals following the submission deadline.<sup>95</sup></p>	<p>☑ Consistent with best practice.</p>
<p>24. Does the procuring authority reserve the right to ask for clarifications when a bidder submits an abnormally low price?<sup>96</sup></p>	<p>IO has the capability to ask for clarifications throughout the RFP process.<sup>97</sup> Should the clarification reveal material issues with the bid, IO may then disqualify the bid for material non-compliance.<sup>98</sup> IO is also entitled to disqualify any bid that contains false or misleading information.<sup>99</sup></p> <p>Under Canadian procurement law, IO cannot use the clarification process where there is not a genuine ambiguity in a proposal. Therefore, if there is no ambiguity about the price that is submitted, even if it is abnormally low, IO is precluded from asking a clarification in relation to the price.</p>	<p>Not Applicable.</p>
<p>25. Does the procuring authority reserve the right to reject a bid if the price is abnormally low in relation to the subject matter of the procurement (and raises concerns about the ability of the supplier to perform the contract)?<sup>100</sup></p>	<p>Under Canadian procurement law, in a binding RFP process, which is the process used in IO’s AFP RFPs, IO is legally obligated to award the contract to the highest ranked proponent, whether or not IO is of the opinion that the price of such proponent’s proposal is abnormally low.</p> <p>To mitigate against the potential for a proponent submitting a poor technical submission and a low price as a bidding strategy, IO uses a minimum passing threshold in relation to compliance of the proponent’s design as well as design consultation during the RFP period to ensure that proponents submit compliant designs. Further, the ability of each proponent to perform the contract is assessed at the request for qualifications stage and only parties which meet the requirements set out in the RFQ may be prequalified.</p>	<p>Not Applicable.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
Fair Evaluation Process		
<p>26. Is the evaluation of the bids objective and in accordance with pre-disclosed criteria outlined in the procurement documents?<sup>101</sup></p>	<p>The IO Procurement Policy requires IO to evaluate submissions received consistently and in accordance with the evaluation criteria, rating and methodology set out in the procurement documents.<sup>102</sup> The template RFQ documents contain evaluation criteria in Section 6. Applicants are ranked based on these evaluation criteria.<sup>103</sup> The template RFP documents set out technical and financial evaluation categories and the scoring process, including the maximum and minimum points available for each category, as applicable.<sup>104</sup> The organization and structure of the evaluation categories are intended to correspond with the structure of the submission requirements.</p> <p>The template RFP documents also set out the method of scoring the financial submission which is based on the net present value of the proposal, the quality of the proposed financing plan and the incorporation of a held pricing facility into the financing plan.<sup>105</sup> The template RFP documents specify that if any one of the minimum scores for the technical or financial submission evaluation categories is not achieved by a proponent, IO may in its sole discretion determine whether such proposal will continue to be considered in the RFP process. The template RFP documents set out the considerations IO may take into account in making such determination.<sup>106</sup></p> <p>All evaluators at the RFP stage are required to attend an evaluator training, abide by strict conflict of interest rules, and complete their individual evaluation without discussion or sharing of ideas or information with other evaluators during the individual review phase of the evaluation process other than in certain specified circumstances where verification or clarification are required. If it is determined that any evaluator has been inappropriately biased in his or her evaluation, such evaluator may be removed or substituted in the process in accordance with the Evaluation Framework.<sup>107</sup></p> <p>The template RFQ Evaluation Framework and the template RFP Evaluation Framework both specify that if the evaluation committee believes that an undisclosed criterion has been applied or the criteria have not been applied in accordance with the Evaluation Framework, they can refer the evaluation back to the evaluation team for reconsideration, thus ensuring a fair evaluation process.<sup>108</sup></p> <p>In addition, both the RFQ and RFP evaluation is conducted in a segregated manner such that the technical and financial evaluators do not overlap. In 2015, IO adopted sequential evaluation in its AFP RFP processes such that financial evaluations are not conducted until after technical evaluations have concluded.</p> <p>Furthermore, IO is required by Canadian procurement law to disclose the criteria on which prequalification submissions or proposals, as applicable, will be evaluated and is precluded from applying undisclosed criteria during its evaluation process.</p>	<p>☑ Consistent with best practice.</p> <p><b>Commentary:</b> <i>While IO AFP Procurement Practices are consistent with best practice generally, there are an increasing number of procuring authorities providing much more detail about the application of evaluation criteria than the information provided by IO. IO should consider this issue.</i></p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
Evaluators and Evaluation Committees		
<p>27. Do the evaluation teams have the necessary technical expertise to evaluate the bids?<sup>109</sup></p>	<p>The template RFQ Evaluation Framework and the template RFP Evaluation Framework both provide that participants in the evaluation process are selected based on relevant competencies and experience, and also receive training through the organization.</p> <p>The evaluation of prequalification submissions in the template RFQ Evaluation Framework and the evaluation of proposals in the template RFP Evaluation Framework each involve several concurrent individual reviews.<sup>110</sup> No discussion or sharing of ideas or information regarding the content of the submissions is permitted by either Evaluation Framework among members of the evaluation teams, with the exception of matters where verification or clarification is required in connection with a request for clarification or pursuant to the engagement of a subject matter expert.<sup>111</sup></p> <p>The use of subject matter experts is allowed by both the template RFQ Evaluation Framework and the template RFP Evaluation Framework.<sup>112</sup> Subject matter experts are participants in the evaluation process who possess particular expertise with respect to certain of the contents and subject matter of the prequalification submissions or proposals. These individuals do not evaluate or score the prequalification submissions or proposals but they may support the evaluators in various ways including by reviewing designated sections and providing written reports or presentations to evaluators regarding those matters of the prequalification submission or proposal in their area of expertise, or answering questions when requested.<sup>113</sup> IO's use of subject matter experts allows evaluators to benefit from more specialized technical expertise, as required.</p>	<p>☑ Consistent with best practice.</p>
<p>28. Are the evaluation team members free of conflicts of interest?<sup>114</sup> Does the procuring authority require evaluators to sign a declaration that they do not have any shared interest with bidders or subcontractors that could compromise the objective and impartial exercise of their duties?<sup>115</sup></p>	<p>To be a participant in the evaluation process, evaluators must sign a "Participant Agreement and Undertaking", which includes a declaration that the participant does not have a conflict of interest with respect to his or her role in the evaluation process, or, the participant must disclose all relationships with listed entities that result in a perceived, potential or actual conflict of interest.<sup>116</sup></p>	<p>☑ Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>29. Is a fairness monitor present to ensure that no one evaluation committee member dominates the discussion or influences other members?<sup>117</sup></p>	<p>IO uses a fairness monitor for all of its AFP RFQ and RFP processes.</p> <p>The mandate of the fairness monitor includes: (i) reviewing all documents related to the evaluation process; (ii) attending all evaluation meetings, for the purpose of observing the evaluation process, including the consensus session following completion of individual evaluations; and (iii) observing the evaluation process in order to assess the extent to which the evaluation is fair, transparent, and conducted in accordance with the RFP documents. The fairness monitor reports to the legal and procurement teams during the “in-market” period and to the evaluation committee, as required, during the evaluation process with respect to fairness matters.<sup>118</sup></p>	<p>☑ Consistent with best practice.</p>
<p>30. Are evaluators rotated regularly?<sup>119</sup></p>	<p>While IO does not have a policy that explicitly requires the rotation of evaluators, the methodology by which evaluation teams are selected naturally leads to rotation because for each AFP evaluation process (prequalification and RFP), evaluators are selected from IO as well as the other sponsors (for example, hospitals, sponsoring ministry or agency, etc.) who are different from project to project.</p> <p>In addition, it is IO’s practice to include evaluators from IO that are not directly involved in the project. Finally, on most RFP processes, IO also engages third party subject matter experts to provide support to evaluators during the evaluation process and these advisors vary from project to project.</p>	<p>☑ Consistent with best practice.</p> <p><i>Commentary: IO should consider formalizing this principle in a brief policy statement in its Procurement Policy.</i></p>
<p>31. Are the bids evaluated by an evaluation committee, as opposed to a single individual?<sup>120</sup></p>	<p>The evaluation of prequalification submissions involves several concurrent, individual reviews which are used to generate a consensus score.<sup>121</sup> The consensus scores of individual evaluators are presented to the evaluation oversight committee, which is tasked with performing due diligence on the consensus results of the technical evaluation team and the financial evaluation team.<sup>122</sup></p>	<p>☑ Consistent with best practice.</p>
<p>32. Are members of the evaluation committee competent and free of conflicts of interest?<sup>123</sup> Does the procuring authority require evaluation team members to sign a declaration that they do not have any shared interest with bidders or subcontractors that could compromise the objective and impartial exercise of their duties?<sup>124</sup></p>	<p>To be a participant in the evaluation process, evaluators and evaluation committee members must sign a “Participant Agreement and Undertaking”, which includes a declaration that the participant does not have a conflict of interest with respect to his or her role in the evaluation process, or, the participant must disclose all relationships with listed entities that result in a perceived, potential or actual conflict of interest.<sup>125</sup></p>	<p>☑ Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
33. Are evaluators insulated from political pressure or interference? <sup>126</sup>	As a matter of practice, evaluation processes are conducted in confidence without the intrusion of any individuals other than the evaluation teams and the evaluation committee, subject to special circumstances when legal, financial or executive advice is sought. This principle is strongly supported by Canadian procurement law that requires that evaluation processes be fair and free from impact of political pressure.	☑ Consistent with best practice.
34. Are evaluation committee members rotated regularly? <sup>127</sup>	While IO does not have a policy that explicitly requires the rotation of evaluation committee members, the methodology by which the evaluation committee is selected naturally leads to rotation because for each AFP evaluation process (prequalification and RFP), the evaluation committee is selected from IO as well as the other sponsors (for example, hospitals, sponsoring ministry or agency, etc.) who are different from project to project.	☑ Consistent with best practice. <b>Commentary:</b> IO should consider formalizing this principle in a brief policy statement in its Procurement Policy.
35. Are multiple and/or different staff involved in different phases of the procurement process? <sup>128</sup>	Yes. IO staff at different levels (and the other sponsor's staff at different levels) participate in the process at various stages. For example, individual evaluators tend to be those with direct involvement in the technical or financial management of the specific project, whereas the evaluation committee tends to be representatives of IO senior management as well as senior representatives of the sponsoring agencies. Lawyers at both the project level as well as the management level participate, as do procurement staff at all levels.  IO's integrated approach to the delivery of projects means that individuals from several branches (for example, delivery, legal, procurement, finance, communications, budget and cost management) are involved in an AFP procurement process.	☑ Consistent with best practice.

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
Avoidance of Conflict of Interest and Bias		
<p>36. Does the procuring authority have a conflict of interest code of conduct?<sup>129</sup></p>	<p>IO has a Code of Conduct as well as a Conflict of Interest and Confidentiality Policy which establish rules with respect to conflicts of interest, and which apply to all employees and appointees of IO.<sup>130</sup> Additionally, IO also has a Confidentiality and Conflict of Interest By-Law.<sup>131</sup> IO's employee contracts also include a code of conduct and individuals may be required to reaffirm their compliance with the code of conduct on a periodic basis.<sup>132</sup></p> <p>The Code of Conduct requires, among things, that the employee not place his/her personal interests in conflict with the best interests of IO and the Government of Ontario. The onus is put on employees who believe that they may have a real, potential or perceived conflict of interest to disclose it immediately.<sup>133</sup></p> <p>The Code of Conduct imposes a continuing obligation on employees and appointees to declare any material financial interest in or with those entities that do business with IO. Such declarations are made to the Ethics Executive who, if an actual conflict of interest is found to exist, will require the employee or appointee to divest him or herself of the financial interest.</p> <p>The Conflict of Interest and Confidentiality Policy imposes specific financial disclosure requirements on appointees and executive vice presidents of IO who routinely work on matters that might involve the private sector and who have access to confidential information about the matter obtained through their employment at IO.<sup>134</sup></p>	<p><input checked="" type="checkbox"/> Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>37. Does the procuring authority have a mandatory periodic disclosure of interests?<sup>135</sup></p>	<p>While the Ontario Ministry of Finance will report on the salaries of some senior IO employees (as they do for all high paid government employees through the “sunshine list”), it is not IO’s policy to otherwise publicly disclose the financial interests of its employees.</p> <p>The Code of Conduct requires, among things, that the employee not place his/her personal interests in conflict with the best interests of IO and the Government of Ontario. The onus is put on employees who believe that they may have a real, potential or perceived conflict of interest to disclose it immediately.<sup>136</sup></p> <p>The Code of Conduct imposes a continuing obligation on employees and appointees to declare any material financial interest in or with those entities that do business with IO. Such declarations are made to the ethics executive who, if an actual conflict of interest is found to exist, will require the employee or appointee to divest him or herself of the financial interest.</p> <p>In addition to each employee’s general obligations pursuant to the Code of Conduct and the Conflict of Interest and Confidentiality Policy, the template Evaluation Framework requires each participant in the evaluation process to sign a “Participant Agreement and Undertaking” which includes a statement that they do not (and their spouses, partners, and children do not) have any interests, activities or relationships, financial or otherwise, with any of the entities or individuals involved in the preparation of the proponents’ proposals, a list of which is included as a schedule to the Participant Agreement and Undertaking.<sup>137</sup></p> <p>The Evaluation Framework further provides that a conflict review team is responsible for ensuring that all participants in an evaluation process are clear of any disclosed conflicts of interest and that any actual, potential or perceived conflicts of interest are adequately managed or mitigated.<sup>138</sup></p>	<p>☑ Consistent with best practice.</p> <p><b>Commentary:</b> IO should consider imposing similar disclosure requirements on employees of its co-sponsors who participate in the project procurement process. Any agreement that IO signs with a co-sponsor should include that the co-sponsor disclose (i) its own process for the disclosure of financial interests of its staff, and (ii) any conflict of interest discovered by the co-sponsor.</p>
<p>38. Does the procuring authority implement and provide training on its code of conduct that commits the authority to a strict anti-corruption policy?<sup>139</sup></p>	<p>Employees and appointees are required to complete training on compliance with the Code of Conduct in the course of employment orientation. As part of IO’s annual attestation program, employees and appointees must complete an annual certification, attesting to familiarity with and compliance with the Code of Conduct.<sup>140</sup></p> <p>With respect to individual procurement processes, participants in the evaluation are required to take part in participating training provided by the evaluation coordinator with respect to the evaluation, which includes a review of the participant’s confidentiality and conflict of interest obligations and the corresponding statements each participant is required to agree to in the “Participant Agreement and Undertaking”.<sup>141</sup></p>	<p>☑ Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>39. Does the procuring authority's code of conduct prohibit officials from accepting positions at companies with which the government did business, to hold another position in a different branch of government, or to hold a position in a statutory organ of a private entity?<sup>142</sup></p>	<p>Employees of IO must follow the conflict of interest rules for public servants and former public servants set out in Regulation 381/07 under the <i>Public Service of Ontario Act, 2006</i>.<sup>143</sup> These rules prohibit employees from certain activities including accepting gifts, disclosing confidential information, or engaging in outside business activities that conflict with their public service duties.<sup>144</sup></p> <p>In particular, post-service restrictions include a restriction on “switching sides” in respect of a particular proceeding or transaction for a period of 12 months after ceasing to be an employee at IO, as well as a prohibition applicable to certain senior employees against accepting positions with certain public entities or private entities with which the government did business for a 12 month period.<sup>145</sup></p> <p>IO also has a process by which it identifies, on a project by project basis, persons who are ineligible to participate on bidding teams.</p>	<p>☑ Consistent with best practice.</p>
<p>40. Does the code of conduct mandate disclosure of personal interests, including ownership in private companies, financial assets, the amount and source of non-government income, the amount and source of close family members and any outside activities in which an official has a leadership role.<sup>146</sup></p>	<p>IO's Code of Conduct includes disclosure requirements whereby all employees and appointees must disclose any material financial interest in or with those entities that do business with IO.<sup>147</sup></p> <p>Employees and appointees are only required to disclose other information including ownership in private companies, financial assets, non-governmental income and leadership roles to the extent such condition constitutes a conflict of interest.</p> <p>IO does require employees of its co-sponsors in AFP procurements to declare personal financial interests if they are “participants” in the evaluation process. However, it does not receive a broad disclosure from the employees of its co-sponsors.</p>	<p>☑ Consistent with best practice.</p> <p><b>Commentary:</b> <i>IO should consider imposing similar disclosure requirements on employees of its co-sponsors who participate in the project procurement process. Any agreement that IO signs with a co-sponsor should include that the co-sponsor disclose (i) its own process for the disclosure of financial interests of its staff, and (ii) any conflict of interest discovered by the co-sponsor.</i></p>
<p>41. Does the procuring authority prohibit officials from accepting hospitality from all bidders or proponents or prospective bidders or proponents?<sup>148</sup></p>	<p>IO's Code of Conduct, Conflict of Interest and Confidentiality Policy and the IO Procurement Policy each specify that an appointee or employee of IO must not accept a gift (defined as any benefit over \$10) if a reasonable person might conclude that the gift could influence the appointee or employee when performing his or her duties at IO. In particular, gifts may not be accepted from entities who may do business, are seeking to do business or have had dealings with IO or the Government of Ontario in the past, or who may provide services, are seeking to provide services or are providing service to IO or the Government of Ontario.</p> <p>However, employees and appointees are permitted to accept gifts of nominal value (under \$10) if given as an expression, courtesy or hospitality if doing so is reasonable in the circumstances.<sup>149</sup></p>	<p>☑ Consistent with best practice.</p>



Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
42. Does the procuring authority require bidders or proponents to adopt codes of conduct and to provide integrity assurances? <sup>150</sup>	Proponents must also have internal policies and codes of conduct to participate in the procurement process. The template RFP documents require submission of a certificate of officer confirming that the proponent has internal policies establishing ethical standards for its bidding practices which prohibit inappropriate bidding practices and unethical behaviour, and that the proponent has internal processes and controls in place which monitor its bidding practices to ensure compliance with such policies. <sup>151</sup> In addition, IO recently revised its template RFP documents to provide that a proponent may be disqualified if the proponent, any proponent team member, identified subcontractors or any directors, officers, employees or affiliates have engaged in a prohibited act, or if any such parties are a restricted person. Prohibited acts include offering gifts or other consideration as inducements, breaching or committing offences under applicable law in respect of corrupt or fraudulent acts, and defrauding or attempting to defraud IO. <sup>152</sup>	☑ Consistent with best practice.
43. Are applicants required to have anti-corruption codes of conduct and policies in place? <sup>153</sup>	The template RFQ documents provide IO with the right to require any or all applicants provide copies of their internal policies, processes and controls establishing ethical standards for its bidding practices and evidence of compliance with such policies, processes and controls. <sup>154</sup> The template RFQ and RFP documents both require the submission of an officer's certificate certifying that the applicant company has internal policies establishing ethical standards for its business practices and internal process and controls to monitor such practices. <sup>155</sup> Additionally, IO now requires proponents provide it with a certificate of a third party accounting firm confirming that the proponent has implemented adequate controls with respect to integrity and ethical bidding practices.  Also, IO template RFQ, RFP and project agreements typically include protections to ensure that certain types of restricted persons cannot participate in AFP projects. Restricted persons include persons whose primary business is the illegal manufacture, sale, or distribution of narcotics, arms, or who are involved in terrorism, and individuals who have been sentenced to prison for any criminal offence or Provincial statute (other than Highway Traffic Act sentences). Inclusion of a restricted person in a project is strictly prohibited throughout the project term, including through any transfer of Project Co's ownership interest. Any breach of this term of the agreement is an event of default.	☑ Consistent with best practice.
<b>Procurement Procedural Safeguards</b>		
44. Are tender security requirements in the procurement process applicable to all bidders? <sup>156</sup>	Where proposal security requirements are included in an AFP procurement process, IO's practice is to impose the same proposal security requirement on all proponents.	☑ Consistent with best practice.

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
45. Do the procurement documents specify the form, amount and other principal terms of the security? <sup>157</sup>	Where proposal security is required, IO's RFP documents specify the form of such proposal security, amount and terms.	☑ Consistent with best practice.
46. Are the details of the permitted methods of submission explicitly set out and adhered to strictly?	The template RFQ and RFP documents specify that submissions must be couriered or submitted by hand, and that submissions sent by facsimile, electronic mail, telex or other telegraphic means will not be accepted. <sup>158</sup> The "Compliance and Disqualification Review Guideline" sets out suggested responses to various examples of non-compliance situations in the RFQ and RFP process, including failures to comply with instructions with respect to permitted methods of submission. <sup>159</sup>	☑ Consistent with best practice.
47. Are late bids rejected and returned unopened? <sup>160</sup>	While the IO Procurement Policy does not specify that late bids must be rejected, the template RFQ documents state that IO must reject late bids without discretion. <sup>161</sup> Similarly, late submissions are not accepted under the template RFP documents, and late bids are returned unopened to the proponent. <sup>162</sup>	☑ Consistent with best practice.
48. Are time limits and deadlines explicitly set out in the documents and do they take into consideration the size and complexity of the project? <sup>163</sup>	<p>The IO Procurement Policy mandates that sufficient time must be given to vendors to prepare and submit bid responses.<sup>164</sup> Various deadlines and timeframes are revised on a project-by-project basis taking into account the complexity of the project and the corresponding length of the procurement process.</p> <p>The template RFQ and RFP documents each set out the respective submission deadlines and clearly state that submissions must be received by IO no later than the date and time set out in the documents.<sup>165</sup></p>	☑ Consistent with best practice.
49. Are deadlines that appear in the procurement documents strictly enforced and applicable to all bidders? <sup>166</sup>	<p>While the IO Procurement Policy does not require late bids to be rejected, the template RFQ documents state that IO must reject late bids without discretion.<sup>167</sup> Similarly, late submissions are not accepted under the template RFP documents, and late bids are returned unopened to the proponent.<sup>168</sup> Also, the Compliance and Disqualification Review Guidelines suggests that late RFQ submissions and late RFP submissions be rejected.<sup>169</sup></p> <p>IO has administrative procedures in place to ensure that all late submissions are recorded and reported on.</p>	☑ Consistent with best practice.

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<b>Whistleblower Protection</b>		
<p>50. Does the whistleblower policy provide protection for whistleblowers?<sup>170</sup></p>	<p>IO's "Disclosure of Wrongdoing and Procedures Policy" provides protection from reprisal for employees and others who disclose wrongdoing and who are directly involved in an investigation. Information with respect to reporting issues, violations or complaints is available on IO's website.<sup>171</sup></p> <p>Employees have a choice of reporting internally to their direct report (this can be done on an anonymous basis) or to the Integrity Commissioner, an independent officer specially appointed to, among other things, review and receive disclosures of wrongdoing related to members of Ontario's public service.<sup>172</sup></p> <p>The policy states that no person who in good faith makes an allegation of wrongdoing will be subject to any form of employer reprisal, including dismissal, suspension or any other type of discipline. Where an employee believes that he or she has been retaliated against after bringing forward a good faith allegation of wrongdoing, such employee may file a complaint with the Ontario Labour Relations Board.<sup>173</sup></p>	<p>☑ Consistent with best practice.</p>
<b>Fairness Monitors</b>		
<p>51. Does the procuring authority use independent monitors to oversee the procurement process?<sup>174</sup></p>	<p>IO uses an independent third party fairness monitor retained by IO for all of its AFP RFQ and RFP processes. The fairness monitor has oversight during the RFQ and RFP processes on all communication with applicants and proponents, as applicable, including any meetings between IO and applicants or proponents.</p> <p>With respect to evaluation, the fairness monitor reviews all documents related to the evaluation process, attends all evaluation meetings, for the purpose of observing the evaluation process, including the consensus session following completion of individual evaluations, observes the evaluation process in order to assess the extent to which the evaluation is fair, transparent, and conducted in accordance with the RFP documents. During the procurement process, the fairness monitor also provides input to IO on fairness issues that may arise, for example, in relation to conflicts of interest, replacement of proponent team members, breach of confidentiality, disqualification or cancellation.</p> <p>The template RFQ Evaluation Framework and the template RFP Evaluation Framework both provide that a fairness monitor verifies that the evaluation has been carried out in a fair, open and transparent manner.<sup>175</sup> The fairness monitor submits a report to IO at the conclusion of the RFQ process and the RFP process confirming that the respective processes have been conducted fairly. The fairness monitor's letter is publicly disclosed.</p>	<p>☑ Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<b>Cancellation of Procurement Process/Rejection of All Submissions</b>		
<p>52. Does the procuring authority indicate in advance the potential reasons for cancelling the procurement process without awarding the contract?<sup>176</sup> Is the procuring authority restricted to rejecting all bids in only the following cases: (i) all bids are substantially above the budget, (ii) one bid is received, (iii) two bids with the same price are received, or (iv) where there is a lack of competition?<sup>177</sup></p>	<p>IO does specify that any bid that is legally non-compliant will be disqualified and it establishes its standard for “material deviations” that constitute a failure to comply.<sup>178</sup> This, however, is a matter of procurement law in Canada and not a “discretionary disqualification”.</p> <p>The template RFP documents provide for special circumstances, such as the receipt of only one compliant proposal, at which time IO may cancel the RFP and enter into negotiations with the compliant proponent.<sup>179</sup> If no compliant proposals are received, IO may take a number of actions, including entering into negotiations with any one of the proponents or carrying out a process where proponents can correct material deviations without changing their commercial and financing sections.<sup>180</sup></p> <p>The exercise of discretion to cancel the RFP process is subject Canadian procurement law which imposes an obligation to exercise a cancellation right only in good faith which will limit IO’s ability to cancel the RFP process.</p>	<p>☑ Consistent with best practice.</p> <p><b>Commentary:</b> <i>Restrictions on rejecting all bids are a matter of Canadian procurement law.</i></p>
<b>Awarding to the Highest Ranked Bidder</b>		
<p>53. Is the procuring authority’s award decision publicized quickly?<sup>181</sup></p>	<p>Under IO’s disclosure policy, the winning consortium team/vendor is disclosed without any prescribed delay following execution of the applicable agreement.<sup>182</sup></p> <p>In the case of an RFQ, the pre-qualified parties are typically notified following completion of the evaluation process, in accordance with the IO Notification Process Guideline.<sup>183</sup> For an RFP, the winning consortium is announced following financial close.</p>	<p>☑ Consistent with best practice.</p>
<p>54. Are the unsuccessful bidders notified with an offer to explain why their bid was not accepted?<sup>184</sup></p>	<p>The template RFQ and RFP documents both provide that any applicant or proponent that has not been approved to proceed or that is unsuccessful may request a debriefing from IO.<sup>185</sup></p> <p>According to the IO Procurement Policy, the purpose of the debriefing session is to give IO an opportunity to communicate with unsuccessful vendors and to provide them with an explanation of why they were not successful with their submission.<sup>186</sup> The Debriefing Guideline indicates that generally debriefings should take place after financial close unless IO determines that they should be sooner.<sup>187</sup></p> <p>IO’s standard approach to debriefing also indicates that the intention of the debriefing is to provide feedback on the specific unsuccessful submission or proposal and to educate the applicant/proponent, educate the market/industry and explain how the applicant/proponent could have improved its submission. Debriefing sessions are not intended to be a forum for the applicant/proponent to provide supplemental information, debate the evaluation criteria or for the applicant/proponent to attempt to influence the evaluation process.<sup>188</sup></p>	<p>☑ Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
55. Is there a standstill period between announcing the winner and signing the contract (15 days)? <sup>189</sup>	Given the complex process of commercial and financial close in AFP procurement, this approach is not appropriate.	Not Applicable.
<b>Negotiations and Change Orders – Signing the Contract as Bid</b>		
56. Does the procuring authority confirm that the final contract conforms to the requirements in the procurement documents? <sup>190</sup>	<p>According to IO’s negotiations guidelines, the substance of the negotiations cannot result in a modification in the scope of the project to the extent that a fundamentally different scope is created, and further, the substance of the negotiations cannot result in a change in the price or scope of the project such that if the change had been applied equally to other proponents, a different ranking of proponents would have followed.<sup>191</sup> In some procurement processes, IO has adopted an approach to fairly “re-scope” a project in the event that all bids exceed a disclosed affordability threshold.</p> <p>Furthermore, in accordance with Canadian procurement law, IO in its RFP process is only permitted to undertake limited negotiation provided such negotiations are contemplated in the procurement documents and do not result in a “material change” to the terms and conditions of the contract.</p>	☑ Consistent with best practice.
57. Does the procuring authority have a system that monitors change orders/variations that affect the price beyond a cumulative threshold? <sup>192</sup> Are change orders/variations monitored and approved at a senior level? <sup>193</sup>	<p>The standard governance and project controls for IO construction projects are structured to provide controls on the project works, to manage risks and to ensure a successful project outcome.</p> <p>In the past, IO instituted various oversight measures, including: review and approval of all variations by an IO claims committee and cost consultant review of all variation pricing.<sup>194</sup></p> <p>On a typical project, IO attempts to ensure a clear project governance structure by setting out clear roles and responsibilities for the project sponsor and IO during implementation of the project with respect to oversight and approval of change orders/variations. On typical IO projects change orders/variations are classified into two categories (non-discretionary changes and discretionary changes). Non-discretionary changes are changes that are directly tied to the project’s approved scope of work but were unforeseeable based on the background data and due diligence. These are eligible for funding under the “Post Contract Contingency” (PCC) included in the project budget. On typical IO projects, non-discretionary changes with a potential cost greater than \$75,000 require IO review and approval before proceeding. Discretionary changes are scope changes requested by the project sponsor but not eligible for funding under the PCC included in the project budget. On some IO projects, depending on the project sponsor, there are formal approval processes in place to approve discretionary changes initiated by the project sponsor.<sup>195</sup></p> <p>Finally, the various governance agreements that are signed between IO and its co-sponsors have governance requirements intended to manage variations (see, for example, the Project Implementation Plan, Charter and Memorandum of Understanding)</p>	☑ Consistent with best practice.

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
58. Does the procuring authority monitor the volume of change orders/variatio <sup>196</sup>	On typical IO projects, non-discretionary changes with a potential cost greater than \$75,000 require IO review and approval before proceeding. <sup>197</sup> In addition, there may also be requirements for further approvals based on the aggregate value of the variations. On some projects, there may also be a threshold based on the aggregate costs of the variation enquiries. <sup>198</sup>	☑ Consistent with best practice.
59. Does the procuring authority have a system to ensure ongoing compliance with the specifications in the contract?	<p>IO has systems to monitor project implementation. On a typical project, this is done through (i) having a clear governance structure, roles and responsibilities, (ii) having strong project controls in place, and (iii) having an ongoing strong role and involvement of an independent certifier. Specifically, IO's template project agreements require the establishment of a "works committee" whose membership includes representatives appointed by IO and Project Co. This committee is responsible for receiving and reviewing all matters related to the works under the contract. IO also requires various quality management systems, and plans and reserves itself the right to perform periodic monitoring, spot checks and auditing of these quality measures. IO's template project agreements also provide for certain reporting requirements and a detailed design development process that includes submittal reviews by the planning design and compliance team to ensure that the developing design by Project Co continues to meet the project requirements.</p> <p>On IO projects, an independent certifier is retained to monitor and inspect the work. The independent certifier is responsible for certifying substantial completion and providing a list of minor deficiencies. The responsibilities of the independent certifier include conducting inspections of the work as necessary to be satisfied that the works are proceeding in accordance with the requirements of the project agreement.</p> <p>On some IO projects, there are requirements for the use of certain on-line project management software. This software acts as a repository for project documents (including important submittals and reports). The software also includes workflow processes for submittals, change management (variations) and cash allowance disbursements. The software also provides daily notifications of new activities on the system.<sup>199</sup></p> <p>On typical IO projects, variations are tracked monthly to monitor the volume of variations. Also there is a process of regular internal project reporting including the AFP construction committee, AFP continuing improvement committee, and AFP steering committee.</p>	☑ Consistent with best practice.

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
Opportunity to Resolve Complaints and Remedies		
<p>60. Does the procurement process have an independent complaint mechanism to appeal decisions at any time during the process?<sup>200</sup></p>	<p>The IO Procurement Policy provides a complaint process. Vendors who wish to make a complaint are to contact IO's corporate secretary who will act in a consistent, fair, impartial and timely manner.<sup>201</sup></p> <p>IO uses a fairness monitor for all of its AFP RFQ and RFP processes. The mandate of the fairness monitor includes: (i) reviewing all documents related to the evaluation process; (ii) attending all evaluation meetings for the purpose of observing the evaluation process, including the consensus session following completion of individual evaluations; and (iii) observing the evaluation process in order to assess the extent to which the evaluation is fair, transparent, and conducted in accordance with the RFP documents. The fairness monitor reports to the evaluation committee as required during the evaluation process with respect to fairness matters.<sup>202</sup></p> <p>Applicants in an RFQ process or proponents in an RFP process are provided with contact information for the fairness monitor and may raise fairness concerns or complaints to the fairness monitor.</p>	<p><input checked="" type="checkbox"/> Consistent with best practice.</p>
Transparency		
Publication and Consultation		
<p>61. Does the procuring authority disseminate information relating to the procurement process widely?<sup>203</sup></p>	<p>IO's Procurement Policy states that the goal of IO's disclosure policy is to provide as much information as possible to the public, while ensure the protection of commercially sensitive information, in order to ensure that private sector entities will continue to participate in IO's procurement processes.<sup>204</sup> IO publishes RFQs for project applicants, RFPs for project proponents, the final project agreement (three to six months post financial close to remove commercially sensitive information) and publicly discloses the total project cost, the winning consortium/vendor, and its value for money reports. It does not disclose the drafts of the project agreement attached to the RFP or contracts for goods, consulting services and non-consulting services excluding construction services except to the extent they are posted on electronic tendering systems.<sup>205</sup></p>	<p><input checked="" type="checkbox"/> Consistent with best practice (as applicable).</p>
<p>62. Does the procuring authority disseminate information through a web portal?<sup>206</sup></p>	<p>Under the IO Procurement Policy, communications with vendors are to be made through easily accessible methods. The RFQ for a project is typically posted on MERX.<sup>207</sup> For the RFP, an internet based platform (a data room) is used to provide the RFP documents, addenda and background information to prequalified parties.<sup>208</sup> This service may be used to circulate questions or requests for clarification to all prospective applicants.<sup>209</sup></p> <p>IO maintains an up to date list of past, current and upcoming projects on its website. Redacted RFP and project agreement documents, news releases and other information concerning the status and the achievement of key milestones of each project including the commencement and completion of construction are also available through this website.</p>	<p><input checked="" type="checkbox"/> Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>63. Does the procuring authority publish project and procurement information fairly and openly to all bidders or proponents? Does such information include detailed project information, detailed descriptions of the procurement approach, submission requirements, selection criteria, key elements of the evaluation process, contractual obligations and technical specifications?<sup>210</sup></p>	<p>Requests for Qualification documents are posted to electronic tendering systems that provide vendors with access to information related to open competitive procurements. Requests for Proposals are disclosed on IO's website concurrently with their release to qualified proponents.<sup>211</sup></p> <p>The template RFQ and RFP documents each contain detailed project information and key provisions related to the procurement including the evaluation criteria that will be used in prequalifying entities and selecting a successful applicant/proponent, contact person, the submission deadline and other key dates, and other important information.</p> <p>The template RFP documents attach the draft project agreement, including the project's technical specifications.</p> <p>IO publishes the final project agreement (three to six months post financial close to redact commercially sensitive information) and publicly discloses the total project cost, the winning consortium/vendor, and its value for money reports.</p> <p>See also Assessment Criteria 10 and 20.</p>	<p>☑ Consistent with best practice.</p>
<p>64. Does the procuring authority's procurement policy require the publication of advance notice of an intention to procure a project?</p>	<p>Under the IO Procurement Policy, communications with vendors are to be made through easily accessible methods. An electronic tendering system and/or publishing notices in one or more newspapers that are easily accessible to the market are required by the policy to be used.<sup>212</sup></p> <p>IO publishes RFQs for project applicants, RFPs for project proponents, the final project agreement (three to six months post-financial close to remove commercially sensitive information), the total project cost, the winning consortium team/vendor, HR transfers and value for money reports (six months following financial close).<sup>213</sup></p> <p>The RFQ documents and associated communications can be obtained by potential applicants through the MERX tendering services (e-procurement).<sup>214</sup> The MERX service may be used to circulate questions or requests for clarification to all prospective applicants.<sup>215</sup></p> <p>The IO Procurement Policy states that it will be responsive to its vendors and potential vendors, including by ensuring that vendors have reasonable notice and opportunity to compete in the procurement process and through consultations with vendors and potential vendors regarding the procurement process.<sup>216</sup></p>	<p>☑ Consistent with best practice.</p>



Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
65. Does information provided to bidders or proponents include information on the subject matter of the procurement, the deadline for bid submissions, where the procurement documents will be available and contact information?	Yes, the template RFQ and RFP documents each contain a description of the project, relevant information with respect to the coordinates of the contact person or contact persons and rules regarding communication with IO, where to obtain the RFQ or RFP documents, as applicable, the respective submission deadlines, <sup>217</sup> the rules applicable to the procurement and other important information.	☑ Consistent with best practice.
66. Does the procuring authority publish its evaluation criteria?	Yes, IO provides evaluation criteria for both the RFQ and RFP to applicants and proponents as part of the relevant template procurement documents. The template RFQ documents contain the terms and conditions of the RFQ, evaluation criteria that will be used in prequalifying applicants, the evaluation process, the submission deadline and other important information. <sup>218</sup> Similar information is available in the template RFP documents. The template RFP documents identify all pre-qualified parties, provides an overview of the procurement process, sets out the technical specifications, submission requirements, important dates, provides information on the required form of the proposal, the evaluation categories/scoring and evaluation process, general legal terms and conditions, and other relevant information. <sup>219</sup> The RFP is only distributed to pre-qualified parties so the evaluation criteria are not available to the public.	☑ Consistent with best practice.
67. Is the procuring authority cautious not to disseminate information that would enable bidders to effectively engage in bid rigging or market allocation schemes? <sup>220</sup>	For AFP procurements, there is a small number of bidders capable of carrying out the work. In the bid community, these bidders are known to one another. As a result, tools such as maintaining the confidentiality of the short listed bidders are ineffective.  However, the RFP and RFQ documents do impose strict communication rules as well as explicit rules prohibiting collusion.	Not Applicable.

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
Requests for Information		
68. Are all communications concerning requests for and provision of additional information about the project, or the procurement process, in writing and circulated to each bidder that was provided with the procurement documents? <sup>221</sup>	Applicants and proponents can solicit clarifications and additional information from IO through a written question and answer or request for information process in both the RFQ and RFP processes. IO issues its written responses to such questions to all applicants/proponents, unless the question is properly categorized as a commercially confidential question. <sup>222</sup> If a request categorized as confidential is determined, in IO's discretion, to be a question of general application then the proponent is given an opportunity to withdraw the question. However, if IO determines that such question would provide significant clarification to proponents, it may issue a clarification dealing with the same subject matter to all applicants or proponents. <sup>223</sup>	☑ Consistent with best practice.
Public Bid Opening		
69. Are bids opened immediately after the submission deadline? <sup>224</sup>	IO's policies are silent on the timing of the opening of bids. However, submissions are logged as they are received <sup>225</sup> and the opening of the submissions and performance of a completeness and procurement compliance review is the first step of both the RFQ and RFP evaluation processes. <sup>226</sup>	☑ Consistent with best practice.
70. Are bids opened publicly? <sup>227</sup> Are key elements of the bids disclosed at the opening, including bidder identity, bid price, beneficial ownership of corporate bidders and information responsive to the evaluation criteria? <sup>228</sup>	IO does not open bids publicly. For example, the template RFQ documents state that the prequalification submissions will not be opened publicly. <sup>229</sup> Under IO's disclosure policy, the total project cost, the winning consortium team/vendor, HR transfers, value for money reports, and the final project agreement are all disclosed following completion of the evaluation process. <sup>230</sup>	Not Applicable. <b>Commentary:</b> <i>In procurements in which a technical evaluation is carried out, it is a good procurement practice for this to be carried out "blind" to the prices. This is done in AFP procurements and, therefore, prices cannot be publicly disclosed after submission.</i>
71. Are important pages of the opened bids countersigned by the tender opening officers in the presence of the bidders? <sup>231</sup>	IO's procedures do not involve opening any parts of the bids in the presence of applicants or proponents. IO has the right to reject bids submitted in unsealed envelopes. <sup>232</sup>	Not Applicable. See Commentary immediately above.
72. Are the bids opened in the same place that they are received? <sup>233</sup>	Prequalification submissions and bid submissions are received at IO and are kept in secure rooms. Any relocation or storage at any other location must be approved by the evaluation coordinator. <sup>234</sup>	☑ Consistent with best practice.

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>73. Has the procuring authority taken steps to ensure that the bids cannot be tampered with?<sup>235</sup></p>	<p>In accordance with the Evaluation Space/Location Guideline for IO, submissions are stored in spaces/locations with two layers of physical security: an external entrance by means of a locked door as well as an entrance to the evaluation room where materials are to be stored by a locked door.<sup>236</sup> The distribution of keys to the evaluation room and cabinets are controlled and limited only to individuals/evaluators involved in the evaluation process.<sup>237</sup> Electronic copies of submissions are not uploaded to network drives or emailed, only the original CD-ROMS or USB memory sticks are used when the electronic versions are consulted.<sup>238</sup></p> <p>Original versions of the submissions are secured separately by the completeness review team.<sup>239</sup> Participants in the evaluation are not permitted to remove submissions from the rooms designated for evaluation by the evaluation coordinator unless otherwise agreed to by the evaluation coordinator.<sup>240</sup></p> <p>The responsibilities of the evaluation coordinator includes ensuring that all security provisions within the Evaluation Framework are followed and coordinating logistical arrangements required to give effect to document security.<sup>241</sup> Further, the completeness review team is responsible for opening the prequalification submissions and ensuring the safe and secure storage of original copies and digital copies of each submission.</p>	<p>☑ Consistent with best practice.</p>
<b>Confidentiality</b>		
<p>74. Is the procurement process operated under principles of confidentiality? For example, are the names of the evaluation committee members and names of the bidders kept confidential until the submission deadline?<sup>242</sup></p>	<p>The IO Procurement Policy restricts any participant in the evaluation process from publicly disclosing, promoting or advertising their role in the evaluation process without the express written consent of the evaluation committee.<sup>243</sup></p> <p>No member of the evaluation committee is permitted to make disclosure of any of the contents of the evaluation process except as permitted by the Evaluation Framework, including where any occurrence of wrongdoing could compromise the integrity and fairness of the evaluation process, or where information obtained in the course of the process could represent a material enterprise-wide risk to IO outside the project. Such disclosure may be made to IO's legal counsel in such a situation.<sup>244</sup></p> <p>In both the RFQ and RFP, applicants/proponents are prohibited from disclosing matters related to the procurement process without IO's consent.<sup>245</sup></p>	<p>☑ Consistent with best practice.</p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
Ensuring Accountability		
Diligent Record Keeping		
75. Does the procuring authority have policies in place to ensure diligent record keeping of a procurement process?	The Evaluation Frameworks each contain provisions requiring evaluation worksheets, and notes in the case of the RFP, to be archived in accordance with applicable law.	☑ Consistent with best practice.
Independent Monitors		
76. Does the procuring authority involve independent monitors? <sup>246</sup>	While IO does not have a formal “social witness programme”, it does engage independent third party monitors of its AFP procurement processes. In addition, in support of public transparency, IO publishes RFQs for project applicants, RFPs for project proponents, the final project agreement (three to six months post financial close to remove commercially sensitive information) and publicly discloses the total project cost, the winning consortium/vendor, and its value for money reports.	☑ Consistent with best practice.
Monitoring and Dealing with Unethical Procurement Practices by Bidders or Proponents		
77. Does the procuring authority reserve the right to reject any bidder that offers to give a gratuity to any current or former officer or employee of the procuring entity? (This includes an offer of employment.) <sup>247</sup>	Yes, the template RFP documents reserve rights for IO to reject a Proposal or replace any proponent in the event that IO determines that a proponent has or may have engaged in inappropriate bidding practices or unethical behavior. <sup>248</sup> Further, a proponent may be disqualified if there are any convictions related to inappropriate bidding practices or unethical behaviour by the proponent or any of its affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction. <sup>249</sup> An officer of the proponent is required to execute a certificate certifying that the proponent has conducted itself with integrity and has not engaged in any inappropriate bidding practices or unethical behavior in the course of the procurement, disclosing any relevant convictions, acknowledging that the prohibition on such bidding practices applies to current and former employees which they were under the control of the company, and certifying that the company has internal policies establishing ethical standards for its bidding practices. <sup>250</sup> Also, IO template RFQ, RFP and project agreements typically include protections to ensure that certain types of restricted persons cannot participate in AFP projects. Restricted persons include persons whose primary business is the illegal manufacture, sale, or distribution of narcotics, arms or who are involved in terrorism and individuals who have been sentenced to prison for any criminal offence or Provincial statute (other than Highway Traffic Act sentences). Inclusion of a restricted person in a project is strictly prohibited throughout the project term, including through any transfer of Project Co’s ownership interest. Any breach of this term of the agreement is an event of default.	☑ Consistent with best practice.

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
78. Are bidders assessed as to whether they have unfair competitive advantage or a conflict of interest? <sup>251</sup>	<p>The template RFP documents require proponent team members to sign a declaration confirming that they are not involved in political lobbying to influence the outcome of the RFP, that they have not discussed the RFP with any other proponent, that they do not have any actual or perceived conflict of interest, and that they do not have relevant confidential information that was received outside the RFP process.<sup>252</sup> The template RFQ documents also require disclosure of any instance of unfair advantage.<sup>253</sup></p> <p>In addition, the template RFQ and RFP documents each incorporate a regime of entities ineligible to participate in the procurement process by virtue of their involvement with IO or other sponsors of a given project.<sup>254</sup> These “ineligible persons” are disclosed in the respective data sheets.</p>	<input checked="" type="checkbox"/> Consistent with best practice.
79. Is a process in place to manage or mitigate conflicts of interest or to reject a bidder where a conflict cannot be managed or mitigated?	<p>The template RFP documents provide that, in the event a perceived, potential or actual conflict of interest exists or arises in respect of a proponent, the proponent may be asked to provide its proposed means to mitigate and minimize to the greatest extent practicable any perceived, potential or actual conflict of interest. IO reserves the right to exclude any proponent, team member or advisor on the grounds of conflict of interest or to waive any such conflict of interest upon such terms and conditions as IO requires to satisfy itself that the conflict of interest has been appropriately managed, mitigated and minimized, including requiring the proponent to put in place such policies, procedures, measures and other safeguards as may be required by and acceptable to IO.<sup>255</sup></p>	<input checked="" type="checkbox"/> Consistent with best practice.
<b>Sanctions</b>		
80. Does the procuring authority have (or have access to) administrative or judicial processes to sanction any corrupt or fraudulent conduct? <sup>256</sup>	<p>IO has the powers conferred upon it by the <i>Ontario Infrastructure and Lands Corporation Act</i>.<sup>257</sup> While IO does not have the capability to prescribe criminal penalties for contravention of its processes, IO does have the ability to craft procurement policies that dis-incentivize unethical acts or other bad behaviour. For example, IO can disqualify a proponent from the procurement process for convictions related to unethical practice.<sup>258</sup></p>	<input checked="" type="checkbox"/> Consistent with best practice (as applicable).

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
Debarment, Suspension and Integrity Pacts		
<p>81. Does the procuring authority maintain a list of companies for which there is sufficient evidence of their involvement in corrupt activities to preclude them from participating in the procuring authority's procurement processes?</p>	<p>It does not appear that IO maintains a registry of automatically precluded entities. However, IO has implemented provisions into its procurement process that creates, in essence, a discretionary debarment policy. The provisions give IO the right to disqualify applicants and proponents due to unethical bidding practices or convictions in both the RFQ and the RFP processes.<sup>259</sup></p> <p>While not a debarment framework per se, IO recently revised its template RFP documents to provide that a proponent may be disqualified if the proponent, any proponent team member, identified subcontractors or any directors, officers, employees or affiliates have engaged in a prohibited act, or if any such parties are a restricted person. Prohibited acts include offering gifts or other consideration as inducements, breaching or committing offences under applicable law in respect of corrupt or fraudulent acts, and defrauding or attempting to defraud IO.<sup>260</sup> In addition, these new disqualification rights include a right to disqualify a proponent that has failed to disclose an actual conflict of interest of it or any proponent team member in the current or any IO procurement process occurring in the past 12 months.<sup>261</sup></p>	<p><input checked="" type="checkbox"/> Mostly consistent with best practice.</p> <p><b>Commentary:</b> <i>Note that debarment policies are often controversial in the market and must be exercised with great care. Such policies must be introduced to a market with great care. IO should consider (i) including its ethical bidding requirements in its AFP Procurement Policy as well as in its template documents, and (ii) considering the implementation of a debarment policy for unethical bidding practices and/or corruption.</i></p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>82. Does any debarment policy in place have clearly defined rules for debarments, including the length of debarment, the potential reasons for debarment and the criteria that will be exercised in discretionary debarments?<sup>262</sup></p>	<p>IO does not have a formal debarment policy and as a result, debarment is on a case-by-case basis within a specific procurement policy.</p> <p>The template RFQ documents specify that IO may disqualify an applicant where the applicant or any team member has been disqualified from an IO procurement process as the result of any convictions related to: (i) inappropriate bidding practices, (ii) unethical bidding practices, (iii) unethical behaviour in relation to a public or broader public sector tender, or (iv) procurement in any Canadian jurisdiction.<sup>263</sup> The template RFQ documents include Form C-3, which requires disclosure of any conviction determined in the previous five years involving fraud, fraudulent misrepresentation or professional misconduct.<sup>264</sup></p> <p>The template RFP documents provide that a proponent (or proponent team member) may be disqualified if the proponent (or proponent team member), among other things: (i) has been convicted of an offense in connection with IO (and any other sponsors), or any Ministry, agency, board or commission of the province of Ontario, (ii) has been convicted, relating to inappropriate bidding practices or unethical conduct in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction, or (iii) has committed a material breach of any existing agreement between the proponent and IO (or any other sponsors).<sup>265</sup></p> <p>The rules are clear that the right to disqualify a proponent for unethical practice is limited to cases where a relevant conviction has been entered against the particular proponent.</p> <p>While not a debarment framework per se, IO recently revised its template RFP documents to provide that a proponent may be disqualified if the proponent, any proponent team member, identified subcontractors or any directors, officers, employees or affiliates have engaged in a prohibited act or if any such parties are a restricted person. Prohibited acts include offering gifts or other consideration as inducements, breaching or committing offences under applicable law in respect of corrupt or fraudulent acts, and defrauding or attempting to defraud IO.<sup>266</sup> In addition, these new disqualification rights include a right to disqualify a proponent that has failed to disclose an actual conflict of interest of it or any proponent team member in the current or any IO procurement process occurring in the past 12 months.<sup>267</sup></p>	<p><input checked="" type="checkbox"/> Mostly consistent with best practice.</p> <p><b>Commentary:</b> <i>Note that debarment policies are often controversial in the market and must be exercised with great care. Such policies must be introduced to a market with great care.</i></p>
<p>83. Does the procuring authority publish its registry of debarred entities?</p>	<p>IO does not publish a registry of debarred entities.</p>	<p>Not Applicable.</p> <p><b>Commentary:</b> <i>IO does not yet have a registry of debarred entities.</i></p>

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
<p>84. Does the procuring authority require its bidders to sign “integrity pacts” or similar documents as corruption prevention tools that are appropriate for large, complex projects?<sup>268</sup></p>	<p>Although IO does not enter into standalone “integrity pacts” with applicants or proponents, many features of such documents have been incorporated into the IO procurement process and are therefore considered to be a form of mandatory “integrity pact”.<sup>269</sup></p> <p>All participants (including the evaluation team members, evaluation committee members, the fairness monitor and the subject matter experts) must sign a “Participant Agreement and Undertaking” that, among other things, addresses conflicts of interest and confidentiality issues.<sup>270</sup></p> <p>Applicants and proponents must have internal policies and codes of conduct to participate in the procurement process. For example, the template RFQ documents include Form C-4, which requires an officer’s certificate certifying that the applicant company has internal policies establishing ethical standards for its business practices and internal processes and controls to monitor such practices.<sup>271</sup></p> <p>The template RFP documents state that IO can disqualify any proponent who colludes (directly or indirectly) with another proponent (or proponent team member, or any of their respective advisors, employees or representatives), whose proposal reveals a conflict of interest, or for any convictions related to inappropriate bidding practices or unethical behaviour by the proponent or the proponent team in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction.<sup>272</sup></p> <p>The template RFP documents require team members to sign a declaration confirming that: (i) they are not involved in political lobbying to influence the outcome of the RFP, (ii) they have not discussed the RFP with any other proponent, (iii) they do not have any actual or perceived conflict of interest, and (iv) they do not have relevant confidential information that was received outside the RFP process.<sup>273</sup> A certificate of an officer confirming that the proponent has not engaged in inappropriate bidding practices or unethical behaviour, that the code of conduct extends to employees, and that there are no convictions related to inappropriate bidding practices or unethical behaviour by the proponent or its affiliates is required of all proponents.<sup>274</sup></p> <p>Additionally, IO now requires proponents to provide it with a certificate of a third party accounting firm confirming that the proponent has implemented adequate controls with respect to integrity and ethical bidding practices.</p>	<p>☑ Consistent with best practice.</p>



Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
Professionalism of Procurement Activities		
Procurement Professionals		
85. Has the procuring authority developed and implemented a professional procurement group or department? Is the group recognized as such and supported in their enforcement of procurement rules and obligations? Are procurement professionals well-trained on a regular basis? <sup>275</sup>	IO has a procurement group which consists of staff who are procurement specialists. These individuals are supervised by a senior vice president of procurement. In addition, the procurement group is a division of the Legal Department and is supported by IO's legal team.	☑ Consistent with best practice.
86. Do the procurement professionals have access to legal expertise on procurement?	IO's procurement professionals have access to both in house and external legal expertise on procurement.	☑ Consistent with best practice.
87. Does the procuring authority have a clear chain of responsibility within the procuring authority's organization, with clearly defined delegated levels of authority? <sup>276</sup>	The reporting lines and responsibilities within IO are clear and spelled out in organizational charts.	☑ Consistent with best practice.

Assessment Criteria	Assessment of Infrastructure Ontario	Conclusion/Recommendation
In-House Expertise		
88. Does the procuring authority have in-house technical and financial expertise?	IO has both technical and financial expertise in house and experts in each of these areas are assigned to each AFP project to assist in all aspects of the procurement process and the implementation of the contract.	<input checked="" type="checkbox"/> Consistent with best practice.
Ethics Training		
89. Does the procuring authority carry out ethics training as a tool to raise awareness of integrity issues and conflict of interest issues that may arise during the procurement process? <sup>277</sup>	Employees and appointees are required to complete training on compliance with the code of conduct in the course of employment orientation. As part of IO's annual attestation program, employees and appointees must complete an annual certification, attesting to familiarity with and compliance with the code of conduct. <sup>278</sup>	<input checked="" type="checkbox"/> Consistent with best practice.
90. Does the procuring authority carry out procurement training on a regular basis? <sup>279</sup>	The template RFQ and RFP Evaluation Framework documents set out pre-evaluation procedures that require evaluator training, which includes a review of the obligations of participants pursuant to the "Participant Agreement and Undertaking", the communications protocol and the general roles and responsibilities of the participants. <sup>280</sup>	<input checked="" type="checkbox"/> Consistent with best practice. <b>Commentary:</b> <i>Given the importance that procurement plays in the AFP program, IO should consider instituting a requirement for regular procurement training for staff involved in procurement and for evaluators.</i>

## End Notes

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- <sup>1</sup> *Broader Public Sector Procurement Directive*, Management Board of Cabinet, July 1, 2011.
- <sup>2</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 6.0.
- <sup>3</sup> *Ontario Public Sector Procurement Directive*, December 2014, s. 3 and *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 6.0.
- <sup>4</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 6.0.
- <sup>5</sup> *Curbing Corruption in Public Procurement: A Practical Guide*, Susanne Kuhn and Laura Sherman, Transparency International, July 2014, page 12.
- <sup>6</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 6.
- <sup>7</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 6.
- <sup>8</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 6.
- <sup>9</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 6.
- <sup>10</sup> *Building A Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework For Ontario's Public Sector*, July 27, 2004.
- <sup>11</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7, 2015, s 3.6, 7.1 and 7.8. See also *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, 3.2 and 3.3.
- <sup>12</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7, 2015, s 3.6. See also *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, 3.2.
- <sup>13</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7, 2015, s 7.11. See also *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, 3.9.
- <sup>14</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, s 6.
- <sup>15</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, s 5.1.
- <sup>16</sup> *Infrastructure Ontario Template Request For Proposals Schedule 3 Part 4 Proposal Format and Evaluation*, Infrastructure Ontario, 2015, s 2.0.
- <sup>17</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7, 2015, s 7.6(4). See also *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s 10.1(3).
- <sup>18</sup> *Evaluation Framework – Request for Proposals (Version 1.0)*, Infrastructure Ontario, November 25, 2015, s 1.1(b). See also *Evaluation Framework- Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 1.1(a). See also *Evaluation Framework – Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 1.1(a).
- <sup>19</sup> *Evaluation Framework – Request for Proposals (Version 1.0)*, Infrastructure Ontario, November 25, 2015, s 1.1(b). See also *Evaluation Framework- Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 1.1(b).
- <sup>20</sup> *Evaluation Framework – Request for Proposals (Version 1.0)*, Infrastructure Ontario, November 25, 2015, s 2.2, 3.2, 3.3 and 4.2. See also *Evaluation Framework- Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 2.2, 3.2, 3.3 and 4.2.
- <sup>21</sup> *Evaluation Framework – Request for Proposals (Version 1.0)*, Infrastructure Ontario, November 25, 2015, s 4.3.
- <sup>22</sup> *Evaluation Framework – Request for Proposals (Version 1.0)*, Infrastructure Ontario, November 25, 2015, s 3.2. See also *Evaluation Framework – Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 3.2.
- <sup>23</sup> *Evaluation Framework – Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 2.2(1)(b)(vi)(A). See also *Evaluation Framework – Request for Proposals (Version 1.0)*, Infrastructure Ontario, November 25, 2015, s 2.2(1)(b)(vi)(A).
- <sup>24</sup> *Evaluation Framework – Request for Proposals (Version 1.0)*, Infrastructure Ontario, November 25, 2015, s 2.2(4). See also *Evaluation Framework – Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 2.2(4).

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- <sup>25</sup> *Guidebook on Anti-Corruption in Public Procurement and the Management of Public Finances: Good Practices in Ensuring Compliance with article 9 of the United Nations Convention against Corruption*, United Nations Office on Drugs and Crime, September 2013, page 16. See also: *Curbing Corruption in Public Procurement: A Practical Guide*, Susanne Kuhn and Laura Sherman, Transparency International, July 2014, page 23.
- <sup>26</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 7.3.
- <sup>27</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 8.
- <sup>28</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, Schedule 1.
- <sup>29</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s. 7.5.
- <sup>30</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 7.3.
- <sup>31</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 7.3.
- <sup>32</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 7.7.
- <sup>33</sup> *Guidebook on Anti-Corruption in Public Procurement and the Management of Public Finances: Good Practices in Ensuring Compliance with article 9 of the United Nations Convention against Corruption*, United Nations Office on Drugs and Crime, September 2013, page 5. See also: *Curbing Corruption in Public Procurement: A Practical Guide*, Susanne Kuhn and Laura Sherman, Transparency International, July 2014, page 23. See also *UNCITRAL Model Law on Public Procurement*, United Nations Commission on International Trade Law, January 2014, Articles 27-32.
- <sup>34</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 8.
- <sup>35</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 7.4 and *Ontario Infrastructure and Lands Corporation Delegations of Authority*, December 10, 2015.
- <sup>36</sup> *Integrity in Public Procurement Good Practice from A to Z*, Organisation for Economic Co-Operation and Development, 2007, page 45. See also *Public Procurement Law and Corruption*, Maira Martini, Transparency International, June 12 2015, page 6.
- <sup>37</sup> *Ontario Infrastructure and Lands Corporation Delegations of Authority*, December 10, 2015.
- <sup>38</sup> *Curbing Corruption in Public Procurement: A Practical Guide*, Susanne Kuhn and Laura Sherman, Transparency International, July 2014, page 19.
- <sup>39</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, Schedule 2, item (a).
- <sup>40</sup> *Guidebook on Anti-Corruption in Public Procurement and the Management of Public Finances: Good Practices in Ensuring Compliance with article 9 of the United Nations Convention against Corruption*, United Nations Office on Drugs and Crime, September 2013, page 18.
- <sup>41</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 12.6.
- <sup>42</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, Appendix B, Table 1.
- <sup>43</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, Appendix A – RFQ Data Sheet, RFQ Section 6.1(2) – Evaluation Categories.
- <sup>44</sup> *Guidebook on Anti-Corruption in Public Procurement and the Management of Public Finances: Good Practices in Ensuring Compliance with article 9 of the United Nations Convention against Corruption*, United Nations Office on Drugs and Crime, September 2013, page 10.
- <sup>45</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, Appendix A – RFQ Data Sheet, RFQ Section 6.1(2) – Evaluation Categories.
- <sup>46</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, Appendix 5 – Technical Evaluation Team.
- <sup>47</sup> *Evaluation Framework – Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 2.2(1)(b)(vi)(A). See also *Evaluation Framework – Request for Proposals (Version 1.0)*, Infrastructure Ontario, November 25, 2015, s 2.2(1)(b)(vi)(A).
- <sup>48</sup> *Curbing Corruption in Public Procurement: A Practical Guide*, Susanne Kuhn and Laura Sherman, Transparency International, July 2014, page 15.
- <sup>49</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, Table 1, s 2.1.
- <sup>50</sup> *Curbing Corruption in Public Procurement: A Practical Guide*, Susanne Kuhn and Laura Sherman, Transparency International, July 2014, page 17.

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- <sup>51</sup> *Evaluation Framework – Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015. *Evaluation Framework – Request for Proposals (Version 1.0)*, Infrastructure Ontario, November 25, 2015.
- <sup>52</sup> “Building Systems Design Guidelines”, Infrastructure Ontario, accessed December 10, 2015, <<http://www.infrastructureontario.ca/Templates/DoingBusinessWithUs.aspx?id=2147492748&langtype=1033>>.
- <sup>53</sup> See *Infrastructure Ontario Template Request For Proposals Schedule 3 Part 1 Technical Submission Requirements*, Infrastructure Ontario, 2015, s (B)1.3.
- <sup>54</sup> See *Infrastructure Ontario Template Request For Proposals Schedule 3 Part 1 Technical Submission Requirements*, Infrastructure Ontario, 2015, s (B)4.0.
- <sup>55</sup> *UNCITRAL Model Law on Public Procurement*, United Nations Commission on International Trade Law, January 2014, Article 10.
- <sup>56</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s 6.3.1.
- <sup>57</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, s. 2.2.
- <sup>58</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s. 1.2, 1.3, 3.1, 3.2.1, 3.3., 4, 6 and 10.
- <sup>59</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, s. 3.6.
- <sup>60</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s 3.2.
- <sup>61</sup> *Guidebook on Anti-Corruption in Public Procurement and the Management of Public Finances: Good Practices in Ensuring Compliance with article 9 of the United Nations Convention against Corruption*, United Nations Office on Drugs and Crime, September 2013, page 16.
- <sup>62</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, Appendix A – RFQ Data Sheet, RFQ Section 6.1(2) – Evaluation Categories.
- <sup>63</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, s. 3.12.
- <sup>64</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, s. 5.2.
- <sup>65</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s 3.6.
- <sup>66</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s 3.6(9).
- <sup>67</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s 8.1.
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- <sup>229</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7, 2015, 5.1.
- <sup>230</sup> *Ontario Infrastructure and Lands Corporation Procurement Policy*, Infrastructure Ontario, January 17, 2013, s 10.1.
- <sup>231</sup> *Curbing Corruption in Public Procurement: A Practical Guide*, Susanne Kuhn and Laura Sherman, Transparency International, July 2014, page 23.
- <sup>232</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7, 2015, s 7.6(1)(j).
- <sup>233</sup> *Curbing Corruption in Public Procurement: A Practical Guide*, Susanne Kuhn and Laura Sherman, Transparency International, July 2014, page 23.
- <sup>234</sup> *Evaluation Framework – Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 3.3 (a). See also: *Evaluation Framework – Request for Proposals (Version 1.0)*, Infrastructure Ontario, November 25, 2015, s 3.3(a).
- <sup>235</sup> *Curbing Corruption in Public Procurement: A Practical Guide*, Susanne Kuhn and Laura Sherman, Transparency International, July 2014, page 23.
- <sup>236</sup> *Infrastructure Ontario Evaluation Space/Location Guideline for IO*, July 2010, s 1.
- <sup>237</sup> *Infrastructure Ontario Evaluation Space/Location Guideline for IO*, July 2010, s 2.
- <sup>238</sup> *Infrastructure Ontario Evaluation Space/Location Guideline for IO*, July 2010, s 4.
- <sup>239</sup> *Evaluation Framework – Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 3.3(b). See also *Evaluation Framework – Request for Proposals (Version 1.0)*, Infrastructure Ontario, November 25, 2015, s 3.3(b).
- <sup>240</sup> *Evaluation Framework – Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 3.3(c).
- <sup>241</sup> *Evaluation Framework – Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 2.2(2)(b)(iii).
- <sup>242</sup> *Rapport de la Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction* (Charbonneau Commission's Report), France Charbonneau and Renaud Lachance, November 2015, Part 5, Chapter 2, page 130.
- <sup>243</sup> *Evaluation Framework – Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 5.6.
- <sup>244</sup> *Evaluation Framework – Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 5.5(1).
- <sup>245</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s 3.3.3.
- <sup>246</sup> *Curbing Corruption in Public Procurement: A Practical Guide*, Susanne Kuhn and Laura Sherman, Transparency International, July 2014, page 29.
- <sup>247</sup> *UNCITRAL Model Law on Public Procurement*, United Nations Commission on International Trade Law, January 2014, Article 21 s1(a).
- <sup>248</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s 10.1(5).
- <sup>249</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s 7.1.2(1)(j).
- <sup>250</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, Schedule 5A – Certificate of an Officer.
- <sup>251</sup> *UNCITRAL Model Law on Public Procurement*, United Nations Commission on International Trade Law, January 2014, Article 21 s1(b).
- <sup>252</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, Schedule 5.
- <sup>253</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7, 2015, Appendix C, Form C-3.
- <sup>254</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7, 2015, s.7.11 and *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s 3.9.2.
- <sup>255</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s 3.9.
- <sup>256</sup> *Curbing Corruption in Public Procurement: A Practical Guide*, Susanne Kuhn and Laura Sherman, Transparency International, July 2014, page 16.
- <sup>257</sup> SO 2011, c9, Schedule 32, s6.

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- <sup>258</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s 7.1.2.
- <sup>259</sup> See *Alternative Finance and Procure Projects – Procurement Overview*, Presentation by David Ho, Infrastructure Ontario, September 29, 2015, slide 11.
- <sup>260</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s. 7.1.2.
- <sup>261</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s. 7.1.2.
- <sup>262</sup> “The Rise of Corporate Death Penalty: Understanding Suspensions and Debarments”, Adam K. Larksy and Oles Morrison, 2013.
- <sup>263</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, s7.6(1)(a).
- <sup>264</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, Appendix C, Form C-3.
- <sup>265</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s7.1.2.
- <sup>266</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s. 7.1.2.
- <sup>267</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s. 7.1.2.
- <sup>268</sup> *Integrity Pacts in Public Procurement: An Implementation Guide*, Juanita Olaya, Transparency International, 2013, page 25.
- <sup>269</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, page 39.
- <sup>270</sup> *Evaluation Framework – Request for Proposals (Version 1.0)*, Infrastructure Ontario, November 25, 2015, s 3.2.
- <sup>271</sup> *Design, Build, Finance and Maintain – Civil Sector Projects: Template Request for Qualifications (Draft Version 3)*, Infrastructure Ontario, October 7 2015, Appendix C, Form C-3.
- <sup>272</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, s 7.1.2.
- <sup>273</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, Schedule 5.
- <sup>274</sup> *Infrastructure Ontario Template Request For Proposals*, Infrastructure Ontario, 2015, Schedule 5A.
- <sup>275</sup> *Curbing Corruption in Public Procurement: A Practical Guide*, Susanne Kuhn and Laura Sherman, Transparency International, July 2014, page 17.
- <sup>276</sup> *Integrity in Public Procurement Good Practice from A to Z*, Organisation for Economic Co-Operation and Development, 2007, page 93.
- <sup>277</sup> *Tools to Reduce Private Sector Engagement in Grand Corruption During the Award of Public Contracts, Concessions and Licenses*, Sofia Wickberg, Transparency International, April 30 2013, page 7.
- <sup>278</sup> See *Ontario Infrastructure and Lands Corporation Code of Conduct*, Infrastructure Ontario, April 7, 2015, s 14.
- <sup>279</sup> *Tools to Reduce Private Sector Engagement in Grand Corruption During the Award of Public Contracts, Concessions and Licenses*, Sofia Wickberg, Transparency International, April 30 2013, page 7.
- <sup>280</sup> *Evaluation Framework – Request for Qualifications (Version 1.1)*, Infrastructure Ontario, October 6, 2015, s 5.2, s 3.1. See also *Evaluation Framework – Request for Proposals (Version 1.0)*, Infrastructure Ontario, November 25, 2015, s 3.1.

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## **APPENDIX B TO THE SPECIAL COMMITTEE REPORT**

## APPENDIX B TO THE SPECIAL COMMITTEE REPORT

### INFRASTRUCTURE ONTARIO REVIEW AND INVESTIGATION – BLAKES AND CHS RECOMMENDATIONS

#### Procurement and Conflict of Interest Recommendations

Blakes was asked by the Special Committee to provide recommendations on opportunities for continuous improvement of Infrastructure Ontario's procurement processes. We note that as the Blakes review progressed, both IO staff and Blakes identified a number of procurement changes (from "tweaks" to more detailed changes) that IO should be considering implementing in its AFP programme. Both the Special Committee and IO believed that there was no reason to delay the implementation of these suggested improvements. As a result, IO initiated changes and Blakes' advice and formal recommendations have either already been implemented or are in the process of being implemented.

Blakes recommendations (including the CHS Recommendations) are as follows:

#### General

1. Revise Infrastructure Ontario's current procurement policy to include policies specifically related to AFP projects and make that procurement policy available to the public. The AFP procurement policy should include a description of Infrastructure Ontario's approach to:
  - A. unethical bidding practices (i.e. in addition to the provisions that exist in the template RFP documents); and
  - B. compliance issues (for example, distinguishing between the types of failures to comply with the Request for Proposal that can result in disqualification and those that would merely result in a lower score) (and make the corresponding changes in the RFP documents).
2. Clarify the respective roles of legal opinions and fairness opinions in AFP procurement processes (particularly related to compliance).
3. Wrap-up all procurement processes with the preparation of a procurement file for each project containing all relevant and material documents (including all documentation related to the evaluation processes).

#### Conflict of Interest

4. Update the existing third party auditor report requirements (on whether proponents have systems in place to monitor conflict of interest disclosures and unethical bidding practices) to take account of any adjustments to the IO template documents, policies and practices.

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5. Reinforce by on-going training and through revisions to the Conflict of Interest Agreement and Undertaking that all potential conflicts of interest are to be disclosed to, and dealt with by, the Conflict Review Team.
6. In the RFQ and RFP processes, amend the existing procurement documents to require Applicants and Proponents to disclose the names of their team members (in draft and only for the purpose of assessing conflicts) at an earlier stage of the in-market period to allow the Conflict Review Team a reasonable length of time to assess the potential conflicts of interests of all Sponsor-side participants in the evaluation process.
7. Review operational practices in the preparation of the list that identifies the individuals on the proponent teams that should be checked by participants in the evaluation process for conflicts (Schedule A).
8. Clarify the obligation of proponents and proponent team members to disclose potential conflicts of interest relating to conflicts that may exist for their significant individuals in their personal capacities.
9. In the IO agreements and memoranda of understanding with co-Sponsors, include provisions that require co-Sponsors to investigate and disclose any potential conflicts of interest of their employees who will be involved in the applicable project.

### Financial/Construction Oversight Recommendations

10. IO should (i) implement a centralized repository for project data, (ii) memorialize projects once completed, and (iii) track project data in a consistent manner.
11. IO should update, on an ongoing basis, the methods and tools by which IO protects the construction oversight period (in its AFP projects) from any financial improprieties.

### Human Resources Recommendations

12. Retain IO's existing policy on the provision of references and provide training to IO staff on the policy.
13. Infrastructure Ontario's Executive Vice President, Human Resources or other senior Human Resources personnel, as determined by Infrastructure Ontario, should be involved in (i) all decisions relating to the dismissal of senior employees, and (ii) the messaging to IO staff with respect to such dismissals. The IO Executive Vice President, Human Resources (or his or her delegate) should ensure that all relevant details regarding a dismissal are placed in the employee's file.



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August 12, 2016

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Reference: 00071244/000061

Mr. George Zegarac  
Deputy Minister  
Ministry of Infrastructure  
3rd Floor Hearst Block,  
900 Bay Street,  
Toronto, ON M7A 1L2

Dear Mr. Zegarac:

Further to the letter from Minister Chiarelli to the Chair of the Board of Directors of Infrastructure Ontario (received on August 2, 2016) I am writing to provide further information regarding the report of the Special Committee to the IO Board of Directors that was presented to the IO Board on June 23, 2016 and provided to the Minister's counsel on June 24, 2016.

As you are aware, the Special Committee Report was supported by extensive legal advice and analysis provided by Blake, Cassels and Graydon, LLP and the forensic accounting analysis of Cohen Hamilton Steger & Co. Inc. ("CHS"), retained by Blakes. In our view, the scope of the review and investigation carried out by Blakes and CHS was appropriate and thorough.

The purpose of this letter is to confirm that the findings and recommendations of the Special Committee Report faithfully and accurately reflect the advice and analysis of the legal/forensic accounting team. We also confirm that the Special Committee Report does not omit any material finding, advice or recommendation provided by Blakes.

Yours truly,

Judy L. Wilson

c: Linda Robinson, Chair, Board of Directors, Infrastructure Ontario  
John Swinden, Co-chair, Special Committee  
Vito Sgro, Member, Special Committee  
Bert Clark, CEO, Infrastructure Ontario  
Marni Dicker, EVP, General Counsel & Corporate Secretary Infrastructure Ontario  
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August 12, 2016

**PRIVILEGED & CONFIDENTIAL**

Mr. George Zegarac  
Deputy Minister  
Ministry of Infrastructure  
3rd Floor Hearst Block  
900 Bay St, Toronto, ON M7A 1L2

Dear Mr. Zegarac:

**RE: INFRASTRUCTURE ONTARIO – FORENSIC ACCOUNTING REVIEW OF CERTAIN OF IO'S PROJECTS**

Dear Mr. Zegarac:

Further to the letter from Minister Chiarelli to the Chair of the Board of Directors of Infrastructure Ontario (received on August 2, 2016) we are writing to provide further information regarding the report of the Special Committee to the IO Board of Directors that we understand was presented to the IO Board on June 23, 2016 and provided to the Minister's counsel on June 24, 2016.

We understand that the Special Committee Report was supported by legal advice and analysis provided by Blake, Cassels and Graydon, LLP and the forensic accounting analysis of Cohen Hamilton Steger & Co. Inc. ("CHS"), retained by Blakes.

Specifically, Part C of the Special Committee Report was entitled "Vas Georgiou and Bondfield Projects Forensic Audit" and presented a summary of the methodology and findings from the forensic accounting review of certain of IO's projects that our firm, Cohen Hamilton Steger & Co. Inc. ("CHS") had undertaken pursuant to our retainer with Blakes, as set out in a report that we provided to Blakes dated June 6, 2016.

Page 2  
Mr. George Zegarac  
August 12, 2016

We have reviewed Part C of the Special Committee Report and confirm that the summary of the analyses, methodology and findings set out therein faithfully and accurately reflect the analyses, methodology and findings as set out in our report of June 6, 2016. We also confirm that Part C of the Special Committee Report does not omit any material finding or recommendation provided by CHS.

Please do not hesitate to contact us if you have any questions.

Yours truly,

**COHEN HAMILTON STEGER & CO. INC.**



Per: Peter Steger CPA, CA•IFA, CBV, CFE  
Principal



Per: Prem Lobo CPA, CA, CBV, CPA (ILLINOIS), CFE, CFF  
Principal

c: Judy Wilson, Blake, Cassels & Graydon LLP  
Linda Robinson, Chair, Board of Directors, Infrastructure Ontario  
John Swinden, Co-chair, Special Committee  
Vito Sgro, Member, Special Committee  
Bert Clark, CEO, Infrastructure Ontario  
Marni Dicker, EVP, General Counsel & Corporate Secretary Infrastructure Ontario  
William Braithwaite, Stikeman Elliott LLP



# Memorandum

**To: Infrastructure Ontario Board of Directors**

**From: Bert Clark, President and Chief Executive Officer**

**Cc: Marni Dicker, Executive Vice President, General Counsel and Corporate Secretary**  
**Ehren Cory, Divisional President, Project Delivery**

**Date: June 23, 2016**

**Re: Management Response to the Special Committee Report**

**CONFIDENTIAL AND COMMERCIALY SENSITIVE**

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The purpose of this memorandum is to set out the various changes that have been implemented, or are in the process of being implemented, by IO management in response to the Special Committee review and recommendations.

As the Special Committee Report notes: “...the Blakes legal review of IO’s AFP procurement practices identified a number of procurement changes (from “tweaks” to more detailed changes) that IO should consider implementing in its AFP program. Both the Special Committee and IO believed that there was no reason to delay the implementation of these suggested improvements. As a result, much of Blakes’ advice has either already been implemented or is in the process of being implemented” as summarized in this memorandum.

## **1. Infrastructure Ontario Procurement Policy**

**Special Committee Report:** The Special Committee Report includes a recommendation to revise Infrastructure Ontario’s current procurement policy and to make it available to the public. The recommendation also stated that the procurement policy should include a section that is dedicated to the AFP procurement process and describes Infrastructure Ontario’s approach to, (a) unethical bidding practices (in addition to the provisions that already exist in the template RFQ and RFP documents) and the potential to exclude bidders who have engaged in unethical bidding practices; and (b) compliance issues (for example, distinguishing between the types of failure to comply with the RFP that can result in disqualification and those that would merely result in a lower score).

### **Actions Taken by IO:**

***Recommendation is being implemented. Revisions to the AFP procurement policy are nearing completion.***

IO is currently developing a revised procurement policy that will account for and incorporate these recommendations, and IO plans to make the revised procurement policy available to the public following consultation with the ministry. The policy will permit IO to exclude bidders from future procurements where they have engaged in unethical bidding practices or breached conflict of interest requirements.

With respect to the concept of compliance issues, clarifying language has been implemented in all RFP documents and will be included in the procurement policy.

IO has already implemented the concept of “sequential evaluation” of proposals (i.e. the financial envelope is not opened until the technical evaluation is complete) to support the principle that all compliance and technical evaluation decisions are made without knowledge of price and this principle will also be contained in the policy.

## **2. Legal Opinions and Fairness Opinions**

**Special Committee Report:** The Special Committee Report contains a recommendation that the respective roles of legal opinions and fairness opinions in AFP procurement processes be clarified (particularly related to compliance).

### **Actions Taken by IO:**

***Recommendation has been implemented.***

IO has clarified the role of subject matter experts, including the fairness monitor and legal counsel, in the template Evaluation Framework to ensure that determinations of fairness are subject to review by legal counsel and made under the umbrella of the legal standard of fairness under Canadian law. Further, IO has clarified that only IO and the relevant procuring partners (e.g. Ministry, hospital, college, etc.), and not their third-party advisors, determine whether a Proposal is compliant in accordance with the terms of the RFP. The changes that appear in the template Evaluation Frameworks will be included in the IO procurement policy.

## **3. Preparation of Wrap-up Procurement File**

**Special Committee Report:** The Special Committee Report includes a recommendation that IO “wrap-up” all procurement processes with the preparation of a procurement file containing all relevant and material documents (including all documentation related to the evaluation process).

### **Actions Taken by IO:**

***Recommendation is being implemented as part of an enterprise-wide records management plan.***

IO has developed an enterprise-wide records management plan. The records management plan includes an internal restructuring of file management for AFP projects that will enable consolidated records of all procurement content for AFP projects. This file management restructuring system is currently in development by IO, and IO anticipates that it will be implemented for AFP projects going forward in the latter part of 2016.

Additionally, IO is undertaking an electronic evaluation environment pilot project for a live in-market RFP procurement to ensure that an electronic audit trail is available for all relevant procurement records. As part of IO’s continuous improvement process, implementation of the initiative on a program-wide basis will follow the completion of the pilot project.

## **4. Third-Party Auditor Reports**

**Special Committee Report:** The Special Committee Report includes a recommendation that IO update the existing third-party auditor report requirements (on whether Proponents have systems in place to monitor conflict of interest disclosure and unethical bidding practices) to take account of any adjustments to the IO template documents, policies and practices.

### **Actions Taken by IO:**

***Recommendation has been implemented.***

IO implemented the third-party auditor reports during the Special Committee review. The third-party audit firms are required to confirm that construction prime team members have appropriate internal policies, processes and controls establishing ethical standards for bidding practices (including with respect to reporting on conflicts of interest) in place, and that such policies, processes and controls, if consistently followed, are designed to provide a reasonable level of protection against unethical bidding practices, including failure to disclose conflicts of interest.

The third-party audit firm letters supplement the existing requirement in IO RFQs and RFPs for officers of the Applicant and Proponent Team Members to certify that they have not engaged in any unethical bidding practices, have the appropriate ethical bidding practice and conflict of interest policies in place, and have adhered to and followed such policies.

## **5. Revisions to Conflict of Interest Agreement and Undertaking and Training**

**Special Committee Report:** The Special Committee Report includes a recommendation that the Conflict of Interest Agreement and Undertaking be revised to state that all potential conflicts of interest are to be disclosed to, and dealt with by, the Conflict Review Team. The Special Committee Report also includes a recommendation that this should be reinforced through on-going training.

### **Actions Taken by IO:**

#### ***Recommendation has been implemented.***

IO has developed a revised Conflict of Interest Agreement and Undertaking (signed by Sponsors' participants in the evaluation process). The revisions make clear that all potential conflicts of interest during an evaluation are to be disclosed to, and dealt with by, the conflict review team that includes IO procurement and legal staff and which is convened on a project-by-project basis. Each project's conflict review team will be ultimately accountable to the General Counsel of IO, who will oversee an AFP conflict of interest committee that will make conflict of interest determinations based on the principles set out in the IO procurement policy.

IO currently provides training to all evaluators and will provide enhanced training going forward to all evaluators with respect to the revised Conflict of Interest Agreement and Undertaking.

## **6. Earlier Disclosure of Proponent Team Members**

**Special Committee Report:** The Special Committee Report includes a recommendation to amend the existing template procurement documents to require Applicants and Proponents to disclose the names of their team members at an earlier stage of the in-market period in order to allow the Conflict Review Team a more reasonable length of time to assess the potential conflicts of interest.

### **Actions Taken by IO:**

#### ***Recommendation is being implemented.***

IO is currently developing a set of revisions to the RFP procurement documents to require this earlier disclosure of Proponent Team Members which will be implemented in the coming months. The early disclosure by Proponents will include requirement to disclose the "significant individuals" referred to in recommendation #8, below.

Additionally, IO is implementing a process by which, before the RFP is issued, employees and advisors of the Sponsors on the applicable project will be required to confirm they do not have conflicts of interest in respect of the list of team members disclosed by Applicants in response to the RFQ.

## **7. List of Proponent Individuals for Conflict of Interest Screening**

**Special Committee Report:** The Special Committee Report includes a recommendation that IO review its operational practices in the preparation of the list that identifies the individuals on the bidding teams that should be checked by participants in the evaluation process for conflicts (Schedule A to the Conflict of Interest Agreement and Undertaking).

### **Actions Taken by IO:**

#### ***Recommendation has been implemented.***

IO reviewed its operational practices with respect to the screening of disclosed Applicant and Proponent team members for conflicts of interest. As a result of the review, IO implemented changes in the RFQ and RFP to prescribe the format by which Applicants and Proponents list

each individual (and corresponding team member) named in the prequalification submission or proposal, respectively. The bidders are now obliged to acknowledge that the Sponsors will use the contents of the lists provided to assess any perceived, potential or actual conflict of interest.

These revisions, and the corresponding revisions to internal operational practices, have allowed IO to perform more accurate due diligence with respect to the names added to "Schedule A" Conflict of Interest Agreement and Undertaking and have increased the amount of time available to the project's Conflict Review Team to assess perceived, potential or actual conflicts of interest.

## **8. "Significant Individuals" Obligation to Disclose Conflicts Of Interest**

**Special Committee Report:** The Special Committee Report includes a recommendation to clarify the obligation of bidders to disclose potential conflicts of interest relating to conflicts that may exist for individuals (including in their personal capacities) who have had a significant role in the development of the prequalification submission or proposal.

### **Actions Taken by IO:**

***Recommendation has been implemented.***

IO has developed revisions to the template RFQ and RFP documents, which will be included in upcoming RFQs and RFPs, designed to ensure that Applicants and Proponents, (i) identify their "significant individuals", which will include the concept of individuals who may not be specifically named within the bid or identified as an Applicant or Proponent Team Member, but who have had significant involvement in the development (or oversight) of the Prequalification Submission or Proposal and (ii) that such individuals disclose all perceived, potential or actual conflicts of interest.

## **9. Co-Sponsors and Conflicts of Interest**

**Special Committee Report:** The Special Committee Report includes a recommendation that, in agreements or memoranda of understanding with co-Sponsors, IO include provisions that require co-Sponsors to assess and disclose any potential conflicts of interest of co-Sponsor employees who will be involved in the applicable project.

### **Actions taken by IO:**

***Recommendation has been implemented.***

All future project memoranda of understanding with co-Sponsors will include an on-going obligation for co-Sponsors to disclose to IO all conflicts of interest or potential conflicts of interest that they are aware of involving the co-Sponsors' employees.

## **10. Tracking of Project Data**

**Special Committee Report:** The Special Committee Report included a recommendation that IO (i) implement a centralized repository for project data, (ii) memorialize projects once completed, and (iii) track project data in a consistent manner.

### **Actions taken by IO:**

***Recommendation is being implemented as part of an enterprise-wide records management plan.***

IO has developed an enterprise-wide records management plan. The records management plan includes an internal restructuring of file management for AFP projects that will enable consolidated records of all procurement content for AFP projects. This file management restructuring system is currently in development by IO, and IO anticipates that it will be implemented for AFP projects going forward in the latter part of 2016.

## 11. Construction Oversight

**Special Committee Report:** The Special Committee Report includes a recommendation to update, on an ongoing basis, the methods and tools by which IO protects the construction oversight period (in its AFP projects) from any financial improprieties.

### **Actions taken by IO:**

#### ***Recommendation has been implemented.***

IO has implemented a number of improvements on construction oversight, including:

- “Cash allowance policy parameters” for IO staff to follow in the event that the use of cash allowances is being contemplated (for the purpose of minimizing cash allowances as much as possible, prescribing the narrow circumstances in which cash allowances can be used, and describing the procedural requirements related to use of cash allowances);
- Mandating that, for design-build projects, any sponsor request to use specific products or vendors over a specific threshold must be reviewed and approved by the AFP Steering Committee and ensuring that the use of specific items or vendors are only used in certain, prescribed circumstances;
- Clarifying the existing variation protocol with co-Sponsors to include more detailed rules regarding approval requirements for major variations, funding authority for discretionary variations, and use of post-contract contingency;
- Implementing a formal “proceeding at risk” escalation process and lender notification in order to manage issues that may prevent or delay substantial completion;
- Implementing enhanced schedule management requirements in order to improve the quality of scheduling information and performance analysis, and to improve IO’s ability to evaluate and defend delay claims; and
- Constraining Project Co’s ability to claim compensation for delay events through the verification of Project Co’s scheduling information and adherence to the notification process.

## 12. Provision of References by IO

**Special Committee Report:** The Special Committee Report includes a recommendation that IO retain its existing policy on the provision of references, and provide training to IO staff on the policy.

### **Actions taken by IO:**

#### ***Recommendation has been implemented.***

IO’s EVP, Human Resources has sent out an enterprise-wide explanation of the existing policy on the provision of references with an explanation of the appropriate way to proceed.

## 13. Procedure for Dismissing Senior Employees

**Special Committee Report:** The Special Committee Report includes a recommendation that IO’s EVP, Human Resources (or other senior Human Resources personnel, as determined by IO), should be involved in, (i) all decisions relating to the dismissal of senior employees, and (ii) the messaging to IO staff with respect to such dismissals. The Special Committee Report also recommends that the IO EVP, Human Resources (or his or her delegate) ensure that all relevant details regarding any dismissal are placed in the employee file.

### **Actions taken by IO:**

#### ***Recommendation has been implemented.***