



GOVERNMENT OF BERMUDA

Ministry of Finance

Accountant General Department

Memorandum

To: Anthony Manders – Financial Secretary
From: Curtis Stovell – Accountant General 
Date: 25th September, 2014
Subject: Sole Source Engagement of Canadian Commercial Corporation

Items under consideration

The Bermuda Government (“Government”) desires to enter into the following with the Canadian Commercial Corporation (“CCC”):

- i) a Memorandum of Understanding (“MOU”) regarding Air Transport;
- ii) a Letter Agreement (“LA”) specific to the airport and bridge projects.

Objective

Determine the applicability of procurement rules in Financial Instructions (“FI”) and ensure FI compliance to the extent applicable.

Relevant FI

s.2.12: Permission to depart from FI must be sought from the Accountant General in writing...Departure from these instructions without the written permission of the Accountant General is not permitted.

s.8.2.3 (1): Goods and Services with an estimated value in excess of \$5,000 shall be obtained on the basis of at least 3 quotations.

s.8.3.1: A minimum of three written quotations or tenders, using the Invitation to Tender or Request for Quotation, are to be considered before the acceptance of the supply of goods or services in excess of \$50,000...Contracts included here are for goods and services in excess of a total of \$50,000, which are not relevant to or part of expenditure for Capital Development as defined in s.12.1.2.

s.12.1.2: The accounting responsibility for capital development expenditure rests with the Permanent Secretary of Public Works...The exception of (to) the assigned

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accounting responsibility includes capital development projects for which the Minister of Finance delegates the responsibility for expenditure to a Ministry other than Public Works...

s.12.2: ...The tendering process must be in accordance with FI Section 8 or Public Works written procedures...Any decisions on capital projects managed and executed by ministries and departments outside of the Ministry of Public Works, as approved by Cabinet, are to be made by the Permanent Secretary or Head of Department of the respective Ministry in a manner that is consistent with the tendering processes outlines above as governed by the written procedures of FI Section 8 or Public Works written procedures.

Note that FI contain many additional specifics regarding the requirement for a written agreement, Cabinet approval of agreements exceeding \$50,000, amongst other things that while important, are not the focus of this memo. This is not to diminish the fact that these other FI requirements must be met.

Discussion

Memorandum of Understanding

The MOU document contains no specific financial terms or obligations, so is technically outside the scope of FI. The MOU is relevant however, because it is the authorising document under which any specific agreements will be issued.

Letter of Agreement

The LA for the Airport and Bridge Projects refers to services to be provided by CCC to Government in return for fees to be paid to CCC. Whether the CCC fees are paid directly by the Government or borne by the project and its external financing is not relevant. These factors confirm that the LA is covered by and must comply with FI.

Note that my analysis is restricted to the relationship between CCC and Government. It is premature to consider contracts that will be awarded under the projects so far in advance of even procurement service agreements being established by CCC and Government.

Drawing from the relevant provisions of FI above, based on the scope of the projects under consideration, I assume that the total value of fees to be paid to CCC will exceed \$5,000 and \$50,000, which makes the LA subject to the requirement of a minimum of 3 written quotations based on written tender or request for quote (s.8.2.3 and 8.3.1). Government's request is to appoint CCC to provide services in connection with the airport and bridge projects without engaging in a formal tender process. Under s.2.12 of FI, my permission is required in writing for any departure from FI, in this case the failure to obtain 3 written quotations.

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Additionally, s.12 of FI mandates that capital projects are the responsibility of the Permanent Secretary of Public Works or formally delegated by the Minister of Finance to a ministry other than Public Works.

Factors Considered

The Minister of Finance has detailed the urgency and national importance of the projects – that is job creation and the declining condition of the existing facility. A tender process would mean a significantly longer timeline before shovels are in the ground. I agree that this is a factor in favour of sole sourcing CCC.

The financing structure of the projects is beneficial to Bermuda in that any debt issued will not be attributed to Bermuda's indebtedness. At this point I have reservations about the ability of the projects to sustain the related debt, but that will be addressed at the end of the first phase of the engagement when the decision on whether to proceed with development is taken. So I consider the financing arrangement to strongly support sole sourcing CCC.

The Government holds that the reputability and experience of CCC support the likelihood that they will bring the projects in successfully. I reviewed available materials about CCC, and their public reputation as specialists in government-to-government solutions, including those involving infrastructure, align with the Ministry of Finance's ("MOF") recommendation of CCC. That the MOF also met with a client country of CCC, for whom they built an airport, that endorsed CCC's performance in their jurisdiction is also a strong positive factor for selecting CCC.

The fee structure for the remuneration of CCC appears to still be under discussion. As such it is difficult to evaluate value for money until terms are solidified. It is clear at this stage that the activities under all phases of the LA appear quite comprehensive.

Conclusion

Under ideal circumstances a competitive tender process is always preferable. In the case of the airport and bridge projects, based on the above factors supporting the appointment of CCC I give permission to waive the requirement for 3 quotations for the services to be provided under the LA. My permission is provided on the condition that when available, further information be provided on CCC's fees, even at a high level, to enable an evaluation of value for money for their services.

FI also require that the Minister of Finance formally delegates responsibility for the projects to the managing ministry if it is not Public Works. This delegation of responsibility must be documented in writing and provided to me at earliest convenience.