



Attachment #1

KPMG LLP
Suite 3300 Commerce Court West
PO Box 31 Stn Commerce Court
Toronto ON M5L 1B2

Telephone (416) 777-8500
Fax (416) 777-8818
Internet www.kpmg.ca

Mr. Carlo Casale
Project Manager, Toronto Water
Metro Hall,
55 John Street
Toronto, Ontario
M5V 3C6

August 29, 2007

Re: Meter Replacement and Automated Meter Reading System Selection Process— Draft [Final] Report

Dear Mr. Casale:

The City of Toronto (“City”) retained KPMG LLP (“KPMG”) to monitor from a fairness perspective the City’s process to select a private partner for the planned Meter Replacement and Automated Meter Reading System. The procurement process was managed by the City with the assistance of EMA Inc. (“EMA”).

The procurement process undertaken by the City involved one phase:

- Request for Proposals (“RFP”)

This letter summarizes KPMG’s findings and conclusions regarding the monitoring of the RFP stage for this procurement. It presents an overview of the process, KPMG’s scope of work, and KPMG’s observations during the RFP stage, which serve as the basis for the analysis and conclusion.

The scope of the engagement is limited to the commencement of our involvement in November, 2006 and the conclusion of the procurement process, namely when a decision has been made by the City. This draft letter covers the events that occurred between the commencement of our involvement and August 17th, 2007.

I Overview of the Process

On February 12th, 2007, an RFP was issued to the market with regard to the Meter Replacement and Automated Meter Reading System. The RFQ solicited statements of qualifications from interested parties to qualify and had a closing date of March 12th, 2007.

As part of the RFP, Proponents were to submit their technical proposal and their financial proposals in separate envelopes to facilitate separate technical and financial evaluations. The financial proposals would remain sealed until the finalization of scoring of the technical evaluation.

On February 15th, 2007 an information meeting was held for all Proponents. An overview of the RFP was presented, and Proponents were given an opportunity to ask questions.

Several extensions to the RFP closing of March 12th, 2007 were issued to all Proponents in the form of Addendum with the final extension to April 16th, 2007 being issued in Addendum #9. Between the RFP issue date of February 12th, 2007 and the extended RFP deadline of April 16th, 2007, nine addenda were released. These addenda contained answers to questions submitted by Proponents and notified Proponents of changes to the RFP documents.

The City, with the assistance of EMA, established and finalized a detailed evaluation process and evaluation criteria prior to the RFP closing. The evaluation process was to include the following individuals:

Evaluation Teams	Team Members	Team Role
Bid Review Committee	Carlo Casale (Toronto Water) Alex Marich (Toronto Water) Michael Gouthro (Legal Services) Elaine R. Holt (Legal Services)	<ul style="list-style-type: none"> Responsible for deciding if a bid containing irregularities is valid
Opening Committee	John McNamara (Purchasing) Andy Nanjad (Purchasing)	<ul style="list-style-type: none"> Responsible for opening proposal envelopes at the appropriate times and evaluating the mandatory proposal requirements
Evaluation Panel	Carlo Casale (City of Toronto) Peter Douchanov (City of Toronto) Anthony Fabrizi (City of Toronto) Rick Rawlison (City of Toronto) Cosmo Donato (City of Toronto) Sue Macdonald (City of Toronto)	<ul style="list-style-type: none"> Responsible for conducting review and official scoring of technical/management and financial proposals

The proposals were evaluated under three major steps: mandatory evaluation, technical/management evaluation and financial evaluation.

Step 1: Mandatory Criteria Evaluation – Proponents were required to submit and execute a number of forms provided to them in the RFP. The Bid Review Committee assisted if any irregularities in the mandatory criteria were present

Step 2: Technical Scoring by the Evaluation Panel – For those Proponents that had passed Step 1, the Evaluation Panel would review the technical submissions against pre-established criteria and develop draft scores. The Evaluation Panel would develop individual scores that would be aggregated and averaged with supporting comments. The evaluation score was calculated out of 60. Proposals achieving the minimum required 50% on each section of the technical evaluation would proceed to the next step of financial proposal evaluation. Those proposals not achieving a score of 50% on their technical proposal would not proceed to Step 3 and their financial proposals

would be returned unopened. Financial proposal evaluation (Step 3) would commence when the Evaluation Panel has agreed to their final technical scores.

Step 3: Financial Proposal Evaluation – The Opening Committee would conduct a review of the documents in the financial envelope to ensure all financial proposal mandatory requirements have been met. In the event of an irregularity, the matter would be referred to the Bid Review Committee for a decision on whether the proposal would still be valid. Members of the Evaluation Panel would evaluate the financial proposals of the Proponents passing the minimum technical scoring requirement of 50%. The financial score was calculated out of 40 points. The Proponent with the lowest price would be awarded a score of 40. Higher priced Proponents would be awarded fewer points on the basis of a percentage of the price against the lowest Proponents price.

Step 4: Evaluation of combined Technical and Financial Proposal scoring – The technical score and financial scores would then be aggregated to determine a total evaluation score out of 100. Based on the final combined scores, the Proponents would be ranked, with the highest ranked Proponent being identified as the preferred Proponent.

Step 5: Authorization would then be required from the Public Works and Infrastructure Committee before proceeding to negotiations with the preferred Proponent.

Step 6: Negotiations – The City would then commence negotiations with the preferred Proponent.

On April 16th, 2007, the RFP closing date, proposals were received from three Proponents as follows:

- 1 Itron
 - Submitted both technical and financial proposals
- 2 Neptune
 - Submitted both technical and financial proposals
- 3 Asplundh (VSI)
 - Submitted both technical and financial proposals

All proposals were received before the submission deadline.

In addition to the three proposals received, the City received a non-bid letter from Elster Metering and IBM Global Business Services, outlining their areas of concerns around the RFP and an additional approach, and additionally a letter from Badger stating that they are being used as the Alternate meter on the Asplundh proposal and would not be submitting a separate bid. These letters were reviewed by the Bid Review Committee and as such deemed the alternate approaches offered in the letter from Elster Metering and IBM Global Business Services outside the evaluation procedures in the RFP and would not be evaluating their response. Formal responses were issued to both Elster Metering and IBM Global Business Services were sent on April 24th, 2007.

On April 16th, 2007 immediately after the RFP closing, the mandatory criteria screening of the technical proposals was conducted by the Opening Committee. All three Proponents passed the Mandatory Criteria Evaluation. The proposals were then distributed to the Evaluation Panel for screening.

Confidentiality and conflict of interest's forms were completed by all evaluators and relevant staff of the City and its consultants prior to the commencement of the evaluation and all members were cleared as having no conflicts of interest.

Between the periods of April 16th to May 11th, 2007, the individual Evaluation Panel members reviewed the Technical submissions and created individual draft scores in line with the evaluation marking system developed in the evaluation process. On May 14th to May 16th, 2007, the Evaluation Panel met to discuss their individual draft scores for each technical proposal evaluation section. Additionally, during the Evaluation Panel meetings, technical experts were called in to provide insight into their specific areas of expertise on the Proponents technical proposals. The Technical Screening followed the pre-established evaluation criteria.

On 23rd May, 2007, a clarification question regarding the Proponents accepting the City's mandatory terms and conditions were issued to all three Proponents. The RFP stated that each proponent must accept the City's mandatory terms and conditions to be compliant. On 24th May, 2007, all three clarification responses were received on time and both Itron and Neptune declined to accept the City's mandatory terms and conditions.

On 4th June, the Bid Review Committee met to discuss the non-compliant issue for both Itron and Neptune, during which the decision was taken to withdraw both Proponents from the procurement process. Both Bidders were informed of this decision by letter on the 29th June.

As per the Evaluation Criteria, the remaining Bidder, VSI, was issued with clarification questions on their technical proposal and invited to give a presentation regarding their proposal and clarification answers on the 13th June. Following the presentation the Evaluation team finalized the technical scores and VSI achieved the minimum score as mentioned above.

The final step of the evaluation process, the Financial Proposal Evaluation, took place immediately after the evaluation of the technical proposals was completed. Only the price proposals of those proponents who had passed step 2 of the evaluation process, namely VSI, were opened. On the 10th July, clarification questions were issued to VSI regarding their financial submission.

VSI's respective answers to the financial clarification questions led to some revisions in their financial submission. However, the price proposed by this proponent was considered unacceptable, based on their price being above an updated business case price prepared by City staff. The decision was taken to request from Council, authority to negotiate, in areas of the contract other than the mandatory terms and conditions, with the sole remaining Proponent.

II Scope of Work

In November, 2006, KPMG was engaged by the City to assist in monitoring that a fair process be conducted in the selection of a preferred Proponent for the RFP mentioned above. KPMG was to undertake the following:

- Monitor and report on the procurement process; and
- Comment on the fairness of the procurement process.

KPMG's role was solely that of an observer to the procurement process. KPMG did not develop the RFP or participate in the evaluation of the proposals. As the fairness monitor, KPMG's scope did not involve the assessment of the appropriateness of the project's technical requirements and the financial requirements, the evaluation criteria or the proposals. The scope of the engagement was limited from the commencement of our involvement in November, 2006.

KPMG's work was based on the following:

- Review of the RFP document prior to issue;
- Meetings with the City and EMA to discuss the RFP document;
- Review of the evaluation process, evaluation criteria and evaluation tools;
- Review of addenda, and questions and answers issued prior to the RFP deadline;
- Review of clarification questions issued to the Proponents;
- Review of the evaluation documentation;
- Observations of the following:
 - Proponents meeting – February 15th, 2007
 - RFP closing – April 16th, 2007
 - Evaluation of mandatory requirements – May 10th, 2007
 - Evaluation of Technical Proposals – May 14th and 15th, 2007
 - Bid Review Committee – June 4th, 2007
 - VSI Proposal and Clarification Presentation – June 13th, 2007

Whilst KPMG has reviewed the information provided, KPMG has not audited or otherwise independently verified the accuracy of the information provided.

III Fairness Principles

KPMG's approach to fairness monitoring of the evaluation processes was based on a set of fairness principles, developed by KPMG, which describe the foundation of a fair and consistent process. These principles have been developed based on KPMG's experience in conducting transaction and procurement processes and monitoring fairness. These fairness principles were discussed with the City at the onset of our assignment, and it was agreed that the fairness monitoring would be based on these principles:

- *Fairness Principle 1* — All potential Proponents have the same opportunity made available to them to access information;
- *Fairness Principle 2* — The information made available to Proponents should be sufficient to ensure that the Proponents have the opportunity to fully understand the opportunity;
- *Fairness Principle 3* — All potential Proponents have reasonable access to the opportunity;
- *Fairness Principle 4* — The criteria established in the invitation documents truly reflect the needs and objectives in respect of the project;
- *Fairness Principle 5* — The evaluation criteria and the evaluation processes and procedures are established prior to the evaluation of submissions;
- *Fairness Principle 6* — The evaluation criteria, invitation documents, and evaluation processes are internally consistent;
- *Fairness Principle 7* — The pre-established evaluation criteria and evaluation process are followed; and
- *Fairness Principle 8* — The evaluation criteria and process are consistently applied to all submissions.

In applying these fairness principles, the following guidelines were used to help determine the fairness of the evaluation processes:

- **Variations** — A variance from the Fairness Principles is deemed to have occurred if a circumstance(s), situation(s) or event(s) occurs during the process that is addressed in a manner that is inconsistent with or departs from one or more of the Fairness Principles.
- **Violations - Individual Variations** — A violation from the fairness principles is deemed to have occurred if an individual variance is deemed to have resulted in a process where one or more Proponent(s) (potential, successful or unsuccessful) enjoyed a material advantage over any other or conversely, was subject to a material disadvantage and the material advantage or disadvantage affected the results of the process. If so, a *violation* of the Fairness Principles would have occurred and, consequently, the overall process would be deemed to be unfair in that respect.

- **Violations – Collective Variances** — A violation from the fairness principles is deemed to have occurred if an individual variances, when considered collectively, resulted in a process where one or more Proponent(s) (potential, successful or unsuccessful) enjoyed a material advantage over any other or conversely, was subject to a material disadvantage and the material advantage or disadvantage affected the results of the process. If so, a *violation* of the Fairness Principles would have occurred and, consequently, the overall process would be deemed to be unfair in that respect.

IV Analysis of Variances

This section details key circumstances, situations and events that occurred during our review of the entire transaction where significant variances from the Fairness Principles occurred. It is common that processes of this type are subject to numerous variances from the Fairness Principles; in the interests of brevity, we do not present the less significant variances in this report. Each variance, whether presented in this report or not, has been assessed individually and collectively in the context of the overall transaction, as to whether a violation of the Fairness Principles has occurred.

A Limited Disclosure of Information

On 13th April, 2007, three telephone discussions were held between a City representative and a Proponent outside of the RFP clarification procedure. Our understanding of the events that occurred has been determined from discussions with City representatives and is as follows:

During the first telephone discussion, information was discussed regarding the City's general requirements around bid bonds and where this information could be accessed on the web. Additionally, discussions took place regarding where the City's purchasing procedures could be located on the web. It was consequently noted that this information was only available to internal staff. At this point, the City representative enquired as to whether the individual was intending to submit a proposal for a City contract and whether it was a specific contract. This is the when the individual identified themselves as working for one of the Proponents. The City representative then enquired as to whether there was a contact person for the RFP, which the individual stated that there was. The conversation ended with the City representative referring the individual to that contact person.

A further call was made by the Proponent and during the second discussion a second individual was spoken with. During this discussion information was discussed around the basis upon which the bond amount is to be calculated and the difficulty that the Proponent was having around their surety company issuing such a bid bond under these conditions. The City representative then told the Proponent that they would contact the project manager for further clarification.

After the second conversation, the City representative contacted the project manager to seek further clarification regarding the bid bond issue. The project manager then gave permission to contact the Proponent for clarification purposes regarding the bid bond and to explain the terms around it which had been incorrectly explained during the second conversation.

The final conversation held between the City representative and the Proponent discussed the bid bond that was required and corrected the statement that was made to the Proponent in the second conversation. The telephone number of another City representative was also provided so that the Proponent could discuss issues they were having around obtaining a bid bond.

From our understanding, it appears that that the only significant information that was passed on during the initial call related to a reference to the form of the bid bond. The RFP gave no such references. It is our assessment that this did not give a material advantage to the Proponent but in any event did not affect the overall outcome of the procurement.

During the second discussion, the only significant information passed on related to the basis upon which the bond amount is to be calculated. The information passed on during the initial discussion was incorrect but was corrected during the follow-up call after the City representative communicated with the Project Manager. We reviewed how clear this information was documented in Addendum #5, which is where it is contained, and agreed that it is quite clear therein. Accordingly, the Proponent gained no material advantage by receipt of this information, as others could ascertain it for themselves by reading the Addendum.

On that basis, we do not believe that the matter discussed herein represents a violation of the fairness principles.

B Submission of Bid Bond in Envelope One

On 18th April, 2007, upon more detailed review of the submissions by a member of the Opening Committee, it was found that one of the Proponents included their bid bond and agreement to bond in envelope one and not envelope two as instructed in the subsequently issued addenda. The original RFP indicated that the agreement to bond to be submitted in envelope 1. An Addendum issued later amended the instructions such that both bonds were to be included in envelope 2. The proponent had acknowledged receipt of all addenda.

The purpose of having the bid bond in envelope two with the pricing information is to ensure that the technical aspects of the proposal can be evaluated on their merits without knowledge of price. The bid bond is 10% of the total proposal price and, therefore, the total proposal price can be readily known if the bid bond is included in envelope one should that information become known by the evaluation team.

Upon discussions with the City's legal counsel, it was determined that the member of the Opening Committee had not revealed the information seen to any further members of the Evaluation Panel and had signed an affidavit that the individual had not revealed nor would reveal the information that the individual was partial to. The original information was sealed and included with the Proponents envelope 2.

Based on the evidence available to us only, then, this breach of price information does not appear to have led to a fairness violation.

C Mandatory Technical Compliance

During the periods of April 16th to May 11th, 2007, the individual Evaluation Panel members reviewed the Technical submissions. During this period the Evaluation Panel members had concluded that all three Proponents had not met all mandatory technical requirements. This raised the issue as to whether the Proponents were non-compliant in their technical submissions.

On May 10th, 2007, the Bid Review Committee met to discuss the areas of technical compliance. On review of the RFP document issued to the Proponents Appendix E – Proposal Evaluation Table(s), the scoring was based on the following scale:

- 0 – Did not meet RFP requirements and is unacceptable
- 1 – Did not meet RFP requirements and is acceptable
- 2 – Met RFP Requirements
- 3 – Exceeded RFP Requirements
- 4 – Significantly exceeded RFP requirements

As a result, the Bid Review Committee concluded only if the solution was deemed to be unacceptable to the RFP requirement (i.e. a score of 0) was the Proponent to be deemed non-compliant.

Consequently, each area that did not fully met the RFP requirement was passed to the City’s technical experts to determine if the Proponents solution was deemed acceptable to the City. We have been informed by the City that these areas were all deemed to be acceptable to the City for all Proponents.

Based on the evidence available to us and the City’s technical opinion only, then, this technical compliance does not appear to have led to a fairness violation.

D Preferred Proponent Recommendation by City Staff

As mentioned, in regard to the RFP, one proponent proceeded to the final step of the evaluation process. Thus, the only price envelope that was opened was that of VSI and as stated in the RFP, “The assignment must be awarded to the Proponent with the highest overall score, unless otherwise approved by Council”. According to the pre-established process, as only one price was opened, VSI, by default, become the preferred proponent with the highest score.

V Conclusions

This conclusion is based only on information that we have had made available until the date of this letter. This is subject to change in the future.

For reasons as described in the above analysis, in our opinion, the above noted variances from our Fairness Principles, together with the other less significant variances, do not individually or collectively constitute a violation of our Principles.

As such, KPMG is satisfied that the evaluation process was fair to all proponents.

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Notwithstanding the foregoing, KPMG expressly authorizes the addressee to share this letter with the rest of the evaluation team and to disclose the conclusions contained within this letter to other individuals within the City of Toronto, without further express written permission.

Comments in this letter are not intended as, nor should they be interpreted to be, advice or opinion of a legal nature. Such matters should be referred to the City's legal counsel.

Should any information, which was not available to KPMG as at the date of this letter, become available subsequently, KPMG reserves the right to review such information and adjust this letter accordingly.

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If you have any questions or require clarification on aspects of this letter, please do not hesitate to contact the undersigned.

Yours very truly,

Will Lipson
Managing Director