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**Tuesday 4 November 2008**

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des débats  
(Hansard)**

**Mardi 4 novembre 2008**

**Standing Committee on  
Government Agencies**

Agency review:

Ontario Infrastructure Projects  
Corp. (Infrastructure Ontario)

**Comité permanent des  
organismes gouvernementaux**

Examen des organismes  
gouvernementaux :

Société ontarienne de travaux  
d'infrastructure (Infrastructure  
Ontario)

Chair: Julia Munro  
Clerk: Douglas Arnott

Présidente : Julia Munro  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES  
ORGANISMES GOUVERNEMENTAUX

Tuesday 4 November 2008

Mardi 4 novembre 2008

*The committee met at 0904 in room 228.*

## SUBCOMMITTEE REPORT

**The Chair (Mrs. Julia Munro):** Good morning, and welcome to the Standing Committee on Government Agencies. This morning, our first order of business is the report of the subcommittee on committee business dated Thursday, October 30. I'm looking for someone to move its adoption.

**Mrs. Maria Van Bommel:** I move adoption of the report.

**The Chair (Mrs. Julia Munro):** Thank you. Any discussion? All in favour? The motion is carried.

## AGENCY REVIEW

ONTARIO INFRASTRUCTURE PROJECTS  
CORP. (INFRASTRUCTURE ONTARIO)

**The Chair (Mrs. Julia Munro):** We then have, as our second order of business, the resumption of our agency reviews. We are very pleased to have with us again officials from Infrastructure Ontario. Infrastructure Ontario has accepted the committee's invitation to respond to stakeholder presentations that were made to the committee in September.

Mr. Ross, I believe? Welcome once again to the committee. As I think you know, you will have up to 10 minutes for an opening statement to respond to stakeholder issues that were raised, followed by five minutes to provide committee members with a short overview of your offer for a fuller briefing on market capacity. Then we'll continue from there.

**Mr. David Livingston:** Thank you very much, Madam Chair. My name is David Livingston. Mr. Ross could not attend this morning. I'm the president and CEO of Infrastructure Ontario, as you may remember from the last time we were here. With me I have Jim Dougan on my left, who is the executive vice-president of project delivery, and on my right is Bill Ralph, who is the CFO and the senior vice-president in charge of infrastructure lending.

Just because I'm sure you never have the opportunity for some prepared remarks at the beginning of these things, I thought I would offer a couple, if you will bear with me.

Before I get into some of the specific items that were raised by stakeholders back on September 17, I'd like to reiterate something we said last time we were here, and that is that Infrastructure Ontario was created to deliver projects on time and on budget, to achieve value for money, and to protect the public interest.

I think there have been statements made that suggest we're being set up for anything else, and I think that's inaccurate. All of us—the staff, the board—work to the highest ethical standards to protect the public interest and to make a positive difference in the lives of all Ontarians. In fact, I dare say you'll not find a more dedicated group of individuals anywhere who are working harder to provide all of us—our families, our friends, our neighbours—access to the kind of health care services that our hospitals will deliver or the kind of legal services that the courts will deliver.

I'd like to now respond to some of the comments made regarding accountability and transparency.

Infrastructure Ontario has in place some of the most transparent procurement processes in the province. For all of our projects, we disclose the names of all the short-listed bidders, the name of the winning bidder and the total contract price of the winning bidder. In addition, in all of our project contracts, we publish value-for-money reports, and requests for proposals for each infrastructure project are posted on our website. All of our projects are open to an independent third party review by the Auditor General's office.

I know that some groups like to make comparisons between what we do and previous P3 models that were developed and used in Ontario. However, unlike those other models, AFP is guided by the Building a Better Tomorrow framework, which outlines five key principles, including transparency, value for money, public ownership and public control, and that the public interest is paramount.

It's important to understand what these principles mean. They mean that public health care is protected, all the hospitals built using AFP are publicly owned, publicly operated and publicly accountable, and that the private sector never touches the patient. It means that the private sector is contractually obligated to deliver hospitals on time and on budget. It means that taxpayers are protected from cost overruns, and the private sector will be penalized if a project is delivered late. It means that key project documents are posted online. It means that

AFP will only be used to deliver an infrastructure project if value for money can be demonstrated.

**0910**

We want to make sure that we are using taxpayers' money wisely as we build. That's why we've gone to experts in this field to make sure that there is real value for money for taxpayers and that more risks are pushed onto the private sector and not the public. It is the private sector that delivers construction expertise and risk management, while the public sector continues to own and control health care services.

There are a number of other items that were raised when we last met. I want to take a moment to clarify Infrastructure Ontario's mandate and how projects are assigned to us.

It is the government that determines what projects, when and where, that we do. We simply manage to deliver these projects once they have been assigned to us. Most of our current projects are in the health care and justice sectors. Should the government wish us to execute projects in other sectors, it is a decision that they will make, not Infrastructure Ontario.

There's also a fair bit of interest regarding value for money. I'd like to take a moment to talk about that a little bit further. Value for money is determined by directly comparing the estimated costs of delivering a project under traditional delivery methods, versus the cost of delivering it under alternative financing and procurement, AFP. The cost difference is the estimated value for money. On each of our projects, external advisers are engaged throughout the value-for-money process to oversee our methodology and risk quantification. A third party chartered accounting firm then completes the value-for-money assessment of the project and reviews the report. They will then sign off on the accuracy and appropriateness of the analysis.

In addition to this, we have undertaken other steps to ensure that we have developed a comprehensive and rigorous value-for-money methodology. Earlier this year, we asked Ontario's internal auditor to review a number of our business processes. We are very pleased to say that one of the key findings was that our value-for-money methodology was sound.

I'd also like to note that the government of Canada's public-private partnership screening guidelines list Infrastructure Ontario's value-for-money assessment guide, which is available on our website, as its preferred tool for determining value for money.

I know there were also questions raised regarding staff transfers on our design, build, finance and maintain projects. I want to assure the committee that Infrastructure Ontario's mandate is to build quality infrastructure on time and on budget, not change the terms that are set out in collective bargaining agreements. In fact, we ensure that the terms and conditions in collective bargaining agreements of transferred public employees are honoured in all cases. Whatever terms and conditions have been established as part of the collective bargaining agreement, we will ensure that, substantively, those are re-

spected. That means that whatever successor rights or benefit provisions exist in the current agreement will be honoured.

I would also like to clarify that only those employees who provided hard facilities maintenance services may be affected. Examples of hard facilities maintenance services include maintaining the elevator, electrical and ventilation services, moving, security, parking, grounds maintenance—that kind of thing. Examples of services that will not be included in our hospital projects are laundry-linen services, portering, housekeeping, waste services, medical equipment maintenance and patient food services.

The government's commitment here is firm. Hospitals will continue to be publicly owned, publicly controlled, publicly accountable and built with a transparent process, while holding the public interest paramount.

I would just like to finish off my remarks by addressing something that is surely top of mind for all of us, and perhaps you, and that's the state of the financial markets today. Over the last few weeks, we have continued to hit important milestones that indicate significant progress for our program. We've been releasing the RFPs for projects such as the Windsor Regional Hospital and the Toronto South Detention Centre. We have celebrated the opening of renovated and expanded facilities at the Trillium Health Centre in Mississauga, west of Toronto. We've reached financial close on the Woodstock General Hospital project, which is a significant DBFM that was closed in the middle of all this turmoil, which shows that projects can get done. We continue to successfully deliver on our mandate of making projects happen on time and on budget.

On the loan side of Infrastructure Ontario, we are in an excellent position to provide support and assistance to projects that are priorities at the municipal level and face their own challenges as a result of current market conditions. The numbers speak for themselves, so it's worth noting that we've surpassed our full-year targets and already provide one of the largest programs of its kind in North America.

Having said this, I don't want to leave you with the impression that everything will necessarily go as planned. There may be circumstances where we may not be able to reach financial close on a project in the same way as in previous projects. This does not mean that we need to redevelop the AFP program, but that we will continue to monitor the situation closely and deal with issues on a project-by-project basis. The worst time to make fundamental changes to a program is when you're in the depths of whatever difficulties are being created. We will re-examine this once markets return to some semblance of normalcy, and in the meantime we will deal with projects on a case-by-case basis.

Despite these challenging times, I want to assure the committee that all of us at Infrastructure Ontario remain committed to getting things done and we will continue to prove the government wise for investing their support in our collective efforts.

Today, at the beginning of my remarks, there were a number of issues raised by stakeholders and we've tried to address these items that appear to be of most concern. However, I want to assure you all that we will continue to work with stakeholders, as we have done regularly over the past three years, to constantly address their issues on an ongoing basis. This is not just a one-time thing we do when asked; we consider it a fundamental part of our business.

Thank you for your time and attention, and I'll ask Jim to take a few moments to speak to a few other items, including market capacity.

**Mr. Jim Dougan:** Thank you, David. I know some stakeholders have raised concerns regarding the level of risk transfer to the private sector on our projects and have indicated that bidders are staying away from them. I would like to highlight for the committee the level of participation that we have seen on our projects to date.

Since 2005, we've had an average of eight bidders respond to requests for qualifications on our build-finance projects, and four bidders—and recently five or six bidders—respond to the request for qualifications on our design, build, finance and maintain projects. Certainly, we are attracting a great deal of interest from the industry on our projects.

I would also note that our projects are quite large. The average capital cost of our projects under construction is over \$200 million. Given this, only a certain number of companies have the ability to bid on these projects, whether they're AFP projects or traditional projects. However, those who are capable of bidding have not only expressed interest in our projects, but are also actively participating in the AFP program. And evidence to this can be seen that we've closed 22 projects and have 22 projects now under construction.

There was also discussion by stakeholders around the project costs and schedules, and the opinion of one stakeholder was that AFP projects would run into the same problems as traditional design-bid-build projects. For our 22 projects under construction, I am pleased to report to the committee that all of them are tracking on time and on budget. In fact, most of the projects are tracking ahead of schedule. A number of these projects have already reached 60%, 70%, 80% and, in some cases, over 90% completion. And as you can see—we circulated the photographs of the projects that are under construction just so you get to see what's actually going on in the field, the bricks and the mortar—this is actually happening.

This report is substantiated by monitoring the key performance indicators on these projects. So it's more than just an opinion; it's actual performance on the site.

Our efforts are being noticed, as evidenced by the headline that we saw last week in the Sudbury Star, which read: "Hospital Work on Time: Builder Says Construction Might Be Completed Early."

With respect to the issue of project bundling, I would like to assure the committee and stakeholders that this is not a priority for Ontario government infrastructure

projects. When it is considered, it is only for potential design and program efficiencies. But ultimately we want to say to smaller firms in Ontario that there are plenty of opportunities through the AFP program and other delivery methods in years to come.

So now I'd like to just touch on the capacity study. We provided a handout at the beginning of the meeting. I think the important thing here is to comment that the capacity issue doesn't just apply to AFP projects; this applies to all projects, no matter what the delivery method is, and really applies right across the country, not only in Ontario.

In 2007, we conducted an analysis of the trends in the construction industry and the possible impact that these trends would have on our projects. We concluded that capacity in the construction market in Ontario would become even more limited and, as such, we would need to carefully manage the flow of projects to the market to preserve a healthy bidding environment and good value for public dollars.

#### 0920

The biggest constraint on market capacity that we saw was the availability of sophisticated trade contractors, primarily mechanical/electrical, project management expertise within these contractors and key skilled trades able to undertake large, complex projects. We also noted constraints in the general contractor community, where there are a limited number of those who are able to handle these types of projects, and although we have been and continue to be successful attracting foreign firms with general contractor capacity to Ontario, these firms still face the constraint of the sophisticated trade contractors and the skilled trades not being available.

Further complicating matters was that, unlike previous points in the construction industry in Ontario, construction was booming all across Canada. As a result, there would be little or no ability for Ontario to draw upon construction resources from other parts of the country. Also significant was the level of construction activity in Ontario, and this activity was not just limited to one or two sectors. In addition to the boom in the residential sector, there were several projects in the commercial and industrial sectors expected to enter the market and, for our projects, this meant that there would be little or no capacity to draw from other sectors.

Another challenge concerned the number of large, complex projects that were expected to come to the market in the next couple of years in the industrial, commercial and institutional sector and the capacity of the industry to bid simultaneously on these types of projects. General contractors and subcontractors already face constraints on resources when preparing bid submissions for large, complex projects. However, of more concern is their lack of capacity to bid on multiple projects of this size and complexity at the same time.

So to help manage construction capacity risk, we recommended that the flow of projects be staged such that there is more gap and less overlap between them. We are also looking to shorten the period between the release

of the request for proposals and financial close in order to free up bidding teams to work on successive projects, and we will continue efforts to standardize our request for proposal documents further, as well as continuing to make the RFP process more consistent and stable.

Thank you, Madam Chair. We'd be pleased to respond to any questions the members may have.

**The Chair (Ms. Julia Munro):** Thank you very much. We'll begin with Ms. Gélinas.

**M<sup>me</sup> France Gélinas:** I get to start. Good morning. Thank you for your presentation. The first issue I want to address is one that the Labourers' International Union of North America presented. The people who were here were actually responsible for their pension fund and they were certainly engaged in infrastructure investing and saw a good fit. A pension fund is looking for long-term investment and they saw that investing in an infrastructure project gives them this 25, 30 years, which is the type of window they're looking at. They saw it as a good fit and an opportunity for them to invest their members' pension into Ontario, because they do have a significant—I think 33,000 members in the GTA alone and 60,000 members in Ontario.

They started to talk about a pension fund being, at the basis, risk-averse. They don't invest in any sort of investment tools that have risk attached to them, so when I questioned them about the whole—and they didn't refer to it as alternative financing and procurement; they saw it as a clear P3. So using their language, when they looked at those P3s, they are there to transfer the risk to the consortia, including the one who puts the money forward.

When I asked them about how you reconcile the fact that your pension fund's number one priority is to avoid risk for the investment of your members versus this linkage they saw between having the opportunity to invest in Infrastructure Ontario's 25-year, 30-year project, they made it clear that the projects were so lucrative that there was no risk to their members, that they would never sign on to a deal where it did not pay enough, and then well above that, to cover any amount of risk that they had to take with the DBFM project. That meant that the Ontario taxpayer was to pay such a big premium for them to assume the risk that even a risk-adverse investor saw those as great deals—nothing but a great deal. If the over-and-above premium for risk was not big enough for them, they would not sign on.

I'm one of those taxpayers and I represent another 100,000 of them in my riding that are not so keen on paying risk premiums to the amount that we're led to believe. How do you reconcile this? That people who invest in those projects see them as so lucrative that there is really no risk involved.

**Mr. David Livingston:** There are a number of things in there. I guess first and foremost, I think it's fair to say that the reason that Infrastructure Ontario exists is that, historically, there have been many instances, unfortunately, in the province where big projects have gone significantly over time and over budget. To suggest that

there is not a risk in that regard is just incorrect. It certainly happens.

The primary purpose or the primary goal of the Infrastructure Ontario AFP program is to put the accountability for delivering on time and on budget into the hands of the private sector. The reason that we put the financing on their side of the table during the construction period is so that they are incented to deliver to the contract that we have set out.

The equity money that goes into a project—I think the view that this is risk-free is in the eye of the beholder. Certainly, the banks that are lending to these projects, as well, that expect that the equity money is going to get hit before their money gets hit, view that there is risk in it. As we're seeing in the market today, we have banks that are not lending to these projects because of the inherent risks that they see involved. I think it is incorrect to say that there is not risk. I think the weight of evidence in the market would suggest that that's not the case.

I would probably just add that we rely on the competitive process, as Jim said in his remarks. We have several bidders on every project. All of the elements of that bid go into the making for a competitive bid, so it's the cost of construction, the cost of maintenance, the cost of design and the cost of financing. All the bidders are highly incented to sharpen their pencil and make sure that they're delivering value for the taxpayer. All of this gets captured in the value-for-money report that we do at the end that compares it to the traditional way of doing things.

I think it is a view, but the weight of evidence of these projects, the weight of the value-for-money reports that come out of them and the view of everybody else who is involved with the process suggest that there is a lot of risk transfer and that the public is being appropriately rewarded for it.

**M<sup>me</sup> France Gélinas:** There were also other people who presented—and I should give you their names, I suppose. They were the Ontario General Contractors Association and the Ottawa Construction Association who presented. They said that a lot of the “on time and on budget” is not that much linked to their taking on the financing; it's really linked—and kudos to you—to the good work that you do upfront to define the project so that people really know. They basically praise the work that has been done by Infrastructure Ontario to really put projects out there that are clear and understood and don't require many changes as the project unfolds.

**0930**

So here again, there seems to be certainly a body of knowledge that has been developed at Infrastructure Ontario that allows this province to put out really well-understood construction projects, but they didn't see the financing part as having anything to do with delivering on time and on budget. They really saw the capacity that you had developed to really put out clear requests for proposals and the different steps that they explained, but I don't have time to go through them all. How do you reconcile this with your position?

**Mr. David Livingston:** First of all, we very much appreciate the compliment on behalf of all the people who work hard back at Infrastructure Ontario. Our thanks to the associations for the kind words about project management.

I'd probably answer the question with a question, sort of rhetorically. When the private sector has the financing responsibility on their side of the table during a project, and as the project's going along, say it's a \$200-million project and they're borrowing \$175 million and they're getting towards the end and they're now paying interest at the cost of X hundreds of thousand dollars a day, I think it's fairly obvious that they would be highly incented to deliver that project on time—well, actually ahead of time in order to be able to save the money.

So part of what we do with the financing is to incent them to the right behaviours, but the second and more fundamental thing, I think, is that inevitably in a project there are things that happen where there are disputes. We move the responsibility for those things to the bidder side of the table. If the public is financing that project and there's a dispute, there's not really a big cost to the contractor to say, "Well, let's just sit on this for a while until we get the dispute resolved," because it's the public that's now burning up the interest at the rate of hundreds of thousands of dollars a day. With them being accountable for the interest, the desire on their part to just kind of hold things up while we're trying to solve things is not going to happen. It incents the right behaviour to accept responsibility for the problem, fix the problem and move on and get this thing done.

So I would strongly argue that it's not that we don't do good project management. I think there is good project management involved, but the purpose of the financing is to make sure the right incentive is in place and there's the right alignment with the risks, so that they are motivated and directed to do that which they contractually sign up for. So we consider it part of a package that is what creates the value for money, and again, in the value-for-money reports that we publish, all those things are factored in in producing the ultimate value to the taxpayer.

**The Chair (Mrs. Julia Munro):** Thank you very much. I'd like to move on.

**Mr. Kevin Daniel Flynn:** A few questions on the issue of risk transfer. People call it "risk transfer," and sometimes you would think that would imply that it was being transferred for free, and in fact that risk is being either bought or sold, depending on what side of the coin you happen to be. How do you constantly ensure in that risk transfer process that the marginal benefits are equaling the marginal cost? How do you know that you're right on the cutting edge of where that risk transfer should be? Do you do an analysis on a monthly basis, on an annual basis, after each project is done?

**Mr. Jim Dougan:** Actually, each and every project, we go through the risk matrix, because every project is different, has its own unique aspects to it. As David mentioned in his comments, with the experts we have at the table, both internal and external, we make sure we go

through that, and we adjust the risk matrix to suit the profile of every project. That way, we know that we have the right balance going in. We're not just taking something that happened on a previous project and saying, "Well, that'll be good for this one as well."

**Mr. Kevin Daniel Flynn:** Okay, so as the project reaches completion, you can do an analysis that shows that you've done the right thing, and you can also compare it back to the traditional model, had that hospital been built in the old way of doing things?

**Mr. Jim Dougan:** That would be the baseline of the value-for-money analysis. We would have the baseline of the traditional delivery. We're just getting to completion on some of our projects, but that's part of our procedure that we put in place, that we'll go through the lessons learned and get a confirmation of the actual performance of the project.

**Mr. Kevin Daniel Flynn:** Okay. The review of the market capacity led to some projects being reshuffled. I was a major recipient of one of the reshufflings, not necessarily in a good way. In the private sector, if that problem arose, the private sector wouldn't just throw up its hands and say, "You know what? We're just going to have to move these projects back. That's too bad." They may say that's how it appears to be today, but we need someone to come forward and fix that. It seems one of the things you've said is that you're trying to increase the capacity; you're trying to move to a market where there's more capacity.

For the projects that I have in mind, I can still only think of three major contractors that are capable of doing that. One, as I understand it, is a bit of a newcomer to the field or is a blend or a partnership that's been created. Today in Ontario, are there still only three companies that are capable of building a hospital?

**Mr. Jim Dougan:** No. Working on increasing the capacity, we've seen an entrant from Michigan state that's joint-ventured with an Ontario firm. The firm from Michigan is very experienced. There are actually two firms from Michigan that form part of this joint venture, and they have very extensive experience in health care. They're sizable; they have a balance sheet that enables them to do this type of work

We're also seeing international players, coming in from Spain and the UK to participate on the projects, that are contractors as a base. Again, they look to joint-venture with smaller local firms to give them the local experience and knowledge to participate in these projects. When I mention that on our DBFM projects—again these are all large projects—we're seeing four, five, even six firms, consortiums, responding to our request for qualifications.

**Mr. Kevin Daniel Flynn:** Now, did you have those four, five or six bidders in mind when you shifted the projects around?

**Mr. Jim Dougan:** Yes. We certainly did because the issue, as I touched upon in the comments, gets to be how many you can actually bid of these projects. It's one thing to have it at the general contractor level, but you

also have the trade contractors that are critical. The last time we met, I was explaining the value of mechanical-electrical in a health care project. It's 40% to 50% of the value of a project. There's a capacity issue there, probably more critical than what we have at the general contractor level. They can only take on and bid so many projects at one time. They just don't have the resources to do it.

**Mr. Kevin Daniel Flynn:** If you go beyond the firms themselves, and you realize that you've reached some sort of a limit in the capacity, you start to look at the process next. You start to look at things that you can do within your own process as far as the timing of the RFPs, how the document flow takes place. Can you advise us of any progress you've made perhaps since we met last or any progress you intend on making in that regard?

**Mr. Jim Dougan:** Since the last time, we're looking at the flow. We're certainly continuing to refine our requests for proposal. Looking at the market conditions, as David commented, with what's going on in the marketplace now, we're not trying to make a wholesale change, but we do have to make sure that, with our current projects, we adapt appropriately to keep our staging plan moving forward, as currently planned.

**Mr. David Livingston:** If I could add, I think Jim is being somewhat humble there. We benchmark our time from RFQ, when we first get processes going, to financial close against what's happening in the UK and Australia, where they've done hundreds of these projects. Our start-to-finish times compare very favourably. One of the reasons why we're able to attract foreign contractors to Canada and Ontario versus projects in Spain or Europe is because our processes are faster. They look at this as a way of being able to reduce their bid cost. So we are constantly looking to refine it, but we're refining it from a high standard.

0940

**Mr. Kevin Daniel Flynn:** The debate over whether AFP is a better way to go—there's a public debate that's raging out there and has been raging for some time. I'm not sure if the public was really engaged in that debate, other than that there are some stakeholders that obviously have expressed their concerns and their opinions as to whether the process is a valid one and one that saves the taxpayers money. How are you changing at Infrastructure Ontario so that you're able to better communicate in a fair and factual way with the public?

**Mr. David Livingston:** First and foremost, we do—I mean, we say it but we actually do it—engage a lot with all stakeholders. We don't view our task as simply to get the project done. When we are working in a community, we talk to the local construction association in the community, we talk to the stakeholders in the community, we are involved with the board of directors; some of their meetings are in public, some of them are in camera. I would say that we're highly visible. So what we're trying to do through that process is to explain what we do and how we do it. We do some of our own analysis and research on how people are reacting to what's being said.

The kind of feedback that we get suggests that—well, I don't think people will go to bed at night thinking, "Gee, I wonder how AFP is doing in the province today." There are other things to worry about. There is increasingly a sign that people are seeing projects go up, they're seeing them get done, they're seeing it happen on time and on budget, they are hearing it's somehow or other related to this process, they're linking the two together and it's creating a positive reaction.

I think that in the end, the proof is in: Does the project happen? Does it deliver the services that were promised? Does it come in on time and on budget? As increasingly that's happening, people are becoming increasingly convinced that it's the right way to go.

**Mr. Kevin Daniel Flynn:** Do you have a formal tool for doing it? Is that something you do on a case-by-case basis? Do you have a communiqué that goes out to people in a community where projects are taking place or do you just leave it to some sort of natural process to allow the information to get out to the public by osmosis or something?

**Mr. David Livingston:** We have kind of a regular approach to how we engage with local stakeholders. We try to replicate that every time, but not every community is the same and the number of stakeholders is not the same in every community. Especially on hospitals, we're working through the hospital board and the hospital corporation. I guess it's a bit of a waffle; it's both. It's not like there's a rigid list and we tick down the list, but there is a kind of standard process on who we should be talking to and how we should be talking to them, and we do that every time.

**Mr. Kevin Daniel Flynn:** Are you finding any evidence that as the public gets increased knowledge there's increased acceptance of the AFP process?

**Mr. David Livingston:** I would say so, yes.

**Mr. Kevin Daniel Flynn:** Something you could quantify?

**Mr. David Livingston:** Yes, as best as any of these can be quantified. We don't like to spend a lot of money doing—the money that we would spend doing polling or going out and doing research like that we think is better invested in just getting the structures built. So on the basis of the kinds of things that we do do or can afford to do, we think we get positive feedback.

**The Chair (Mrs. Julia Munro):** We must move on.

**Ms. Lisa MacLeod:** Welcome back to committee. I appreciate your taking the time to give us a follow-up briefing. I'm sure that many of the comments made by the stakeholders were welcome. I appreciate your bringing some solutions here today.

I wanted to talk a little bit about your ICI market and large-complex institutional projects under the market capacity study. Your bullets under "Attracting Foreign Contractors/Players" say that you have an "emphasis on related experience and contractor capacity" and it's "affected by constraints—lack of key trade contractors and skilled trades to undertake large-complex institutional projects."

You may recall that the Ontario General Contractors Association and the Ottawa Construction Association appeared before committee, and they highlighted a major concern among small contractors of projects being bundled: that it reduces bidders and competitions and that it's actually detrimental to their businesses. They also had a concern that large infrastructure projects in the city of Ottawa were not delivered to smaller subcontractors, and I think three in particular—the Montfort Hospital, the Ottawa cancer centre, both in my community of Nepean at Queensway Carleton, and also the Ottawa Hospital. I'm wondering if you could make some comments to their specific concerns that, by going to these larger international firms, they're not actually getting businesses in our smaller communities.

**Mr. David Livingston:** I'll ask Jim to talk about Ottawa in a second.

At a general level, I think we have about 50 projects on our list of what's been assigned to us, and I think there is one project where we have bundling as part of it. So to suggest that bundling is an ongoing part of our strategy, that's just not the way we do things.

In terms of the use of local trades, especially local contractors, I guess there are a couple of things in play. First of all, this is a very competitive process, and so as a natural step, the bidders, whoever they are, whether they're big Canadian firms or big European firms or whoever, are highly incented to use local trades and local people because, frankly, they're available and it's less expensive to use them than to try to bring in people from other parts of the world. So our experience has been that there is a great use of local trades and local contractors in order to be able to deliver on time and on budget.

I guess the second thing is that where there are concerns about it in particular, there are instances where we have contemplated, in our evaluation process, putting incentives in for the use of local trades and local labour. I think that's also—

**Ms. Lisa MacLeod:** Could you explain that, then?

**Mr. David Livingston:** Yes, I'm going to actually get Jim to do that, especially to talk about Ottawa in particular.

**Mr. Jim Dougan:** Certainly in Ottawa, I'd argue that the projects that you've mentioned are large-complex projects and sort of fitting the type of contractors that are able to bid on those and actually execute the work. For the Montfort Hospital, EllisDon is the contractor; that contract is approaching \$200 million, very sizable. EllisDon has a local office in Ottawa, so they'd consider themselves a local contractor, and all the subcontractors working on the project would be from the local community.

In terms of the Ottawa Hospital and Queensway Carleton, PCL is the contractor on those projects. Again, they've had a local office for a very long period of time and would consider themselves a local contractor, and local subcontractors are engaged fully in those projects. There were some efficiencies. The Ottawa Hospital and the Queensway Carleton sites were deemed to be one

project because of the interface between the two projects. There are efficiencies in doing it, not just bundling for the sake of bundling, so I think that was the reason why we did that.

**Ms. Lisa MacLeod:** Okay. So that's the only project, right now, in Ontario where there is bundling?

**Mr. Jim Dougan:** The only project in Ontario that we have under way right now. As I mentioned in my comments, bundling is not a priority whatsoever in our program. I'd say the only time we'd consider it is if there are design or program efficiencies.

**Ms. Lisa MacLeod:** And can you speak more to the incentives, why it's an incentive for subcontracting with the subtrades?

**Mr. Jim Dougan:** It's actually natural in the industry. You're going to have the most competitive pricing if you utilize the local contractors and local labour. To import trades into a community is highly inefficient and very expensive. As David mentioned, on projects where there is more of a high sensitivity—so it would happen naturally, but if there is a high sensitivity—we introduce into our request for qualifications that the proponents submit a plan on how they would utilize local labour and trade contractors and then we'd evaluate them based on that plan, and then that would carry forward into the request for proposals and they'd have to follow through and demonstrate how they would actually execute that plan.

**Ms. Lisa MacLeod:** That brings me to another question, just for information's sake: So you're not solely lowest-cost compliant when you are awarding a contract; it's also for other qualifications. So this is also built in. Because I think that there is maybe a misperception out there that you award solely on the basis on lowest cost compliance.

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**Mr. Jim Dougan:** No. We do a request for qualifications. We make sure that the firms participating are most qualified, and part of what we think of as a qualification would be how to utilize the local community and the local labour. Then that does apply to the request for proposals as well. In the request for proposal, there are technical points. If it's a DBFM, there are obviously design scoring points and price points that make up the evaluation and the selection.

**Ms. Lisa MacLeod:** In terms of the Montfort Hospital, you say your substantial completion date will be November 23, 2009? Could you explain that, as well as the Queensway Carleton Hospital's substantial completion date of October 9, 2009? What is "substantial completion date," rather than just solely "completion date"? Is that just building it or are they going to be able to actually see patients?

**Mr. Jim Dougan:** It's actually a defined term in the industry, "substantial completion," so it's something everybody in the industry is familiar with, and that's when the site or the building is ready for beneficial use of the owner, so the owner, or the hospital in this case, would start moving in. They wouldn't necessarily be

offering clinical services on the substantial completion date, but they would start decanting exercises that they have in moving their operations into the facility.

**Ms. Lisa MacLeod:** Okay. Just to shift gears a little bit with respect to what we sort of saw yesterday in Ontario, which is the first time in our history that we've become a have-not province: We're seeing right around the world, obviously, that there are economic challenges. I'd just like to know to what degree you see the economic climate easing market capacity constraints to expedite or lower the cost for Ontario AFP projects.

**Mr. David Livingston:** I think that the capacity could be affected by what happens to the private sector. So as private sector activity slows down, that would increase capacity of sub-trades and general contractors to take on work and that could create some ability on our part to move projects along.

The scope of the program that the government has through AFP and through Infrastructure Ontario has not changed. We continue to want to put projects into the market. I think we're looking more at being driven by what's happening with others.

In terms of cost, where we're going to see the effect of that is in the bids. So the contractors and the subs, as they are bidding these things, are bidding based on the most current view that they have and what costs are going to be. As we said before, it's a competitive process, so if the perception is, as a result of what's happening in the world, that costs will go down, then we'll see that reflected in the bids. I think that we're set up in a way that we can naturally take advantage of whatever opportunities are presented to us.

**Ms. Lisa MacLeod:** You use the term "on time, on budget," which is something Conservatives love to hear. But I'm wondering, in terms of the Queensway Carleton Hospital, the Montfort Hospital and the other infrastructure projects that you are in charge of right now that have a substantial completion date in 2009, do you expect any of those, as a result of the economic circumstances we're facing, to actually decrease some of your budget costs? Do you think that you might be under budget as a result of the changing times?

**Mr. David Livingston:** Well, when they bid these things, they bid them to fixed prices. That's—

**Ms. Lisa MacLeod:** Oh, so it's fixed prices.

**Mr. David Livingston:** They do; that's to their benefit.

**The Chair (Mrs. Julia Munro):** Thank you. I'll just take a couple of minutes to go around to each caucus for any further wrap-up questions. We'll go back to Ms. Gélinas.

**M<sup>me</sup> France Gélinas:** Okay. The next question I wanted to ask had to do with the freedom of access to information that was done for the North Bay Hospital. I have shown you what we got, which is hundreds of pages of nothing; not one number was there, although you talked about your number one principle being transparency to the public. We also reviewed the PricewaterhouseCoopers value-for-money assessment that they've done for the

North Bay Regional Health Centre project, and basically, they say that the terms of their contract were to look at the traditional delivery approach and how much that would cost versus the alternative financing and procurement, the AFP, how much that would cost. But in their comment, they say they "did not audit"—and I'm reading from the letter—"or attempt to independently verify the accuracy or completeness of the information or assumptions underlying the PSC [public sector comparator] ... " which was provided by you, by Infrastructure Ontario. They went on to say that they also did not have access to do an audit of the final offer, "nor have we audited or reviewed the successful proponent's financial model."

Basically what they're saying is that you gave them the price that you thought the public sector would have cost, you gave them the price as to what the AFP cost, they did the math and it was 8.7% cheaper. To me, this is not transparency, and for most Ontarians, it is not what we call transparency when we get pages and pages—my colleagues from the Liberals were talking about the public being really reluctant toward what you're doing. Part of this is because the transparency is not there, and they don't buy the competitive arguments that you're trying to put across.

It's the same thing when you talk about how what is included will never touch the patient. Well, I'm sorry; right now, we have hospitals that have been built under P3 where portering is included. It may not seem like part of health care to you, but to people who are using those hospital services, it is certainly part of what they consider hospital services and it is now in the hands of the private sector.

My question has to do with how you answer this uneasiness about transparency. Whenever we try to get something out of your agency, we get blank pages. And how, again, do you reconcile your idea that whatever we bundle up, as to what the private sector can deliver in our P3 hospitals, will never touch the patients, when, in reality, there are lots of privately controlled hospital services that are being delivered within the P3 hospitals that have been constructed to date?

**Mr. David Livingston:** Fortunately or unfortunately, our answer is going to be the same as it was last time on this. I think there are a few points that I would make. The first is that, as we said earlier, we've had the internal auditor review what we do and how we do it, and the internal auditor found our processes to be sound. We have, in all cases, as part of the auditor opinion—part of their job is to look at how we do things relative to how it's done in other jurisdictions, and they, in all cases, find our process to be consistent with what others do.

We mentioned that the federal government, in its own P3 methodology, referenced the Ontario value-for-money approach as being sound. So we think that the weight of evidence is that the way we go about it, the way we think about it, the way we do it is as good as anywhere else in the world, and that all of the independent looks at it say that it does produce value for money.

In terms of why we don't give out the detailed financial information, our concern always is that we are looking to get the best deal for the taxpayer; we want the lowest price. If we start giving out the individual details of the bidding information, our concern is that that will become the floor for every bid thereafter. So both from our point of view and—naturally, from the bidders' points of view, who also look at this as being to their competitive advantage in trying to put the best deal on the table, they don't want the information released.

Contrary to the view that we are doing this to be non-transparent, we believe we're doing it for the right reason, which is that this is what's going to allow us to keep bringing that bar down and keep bringing the financing costs down, and not trying to create an environment where we set a floor in the price and everything starts to get priced off of that. We are driven to deliver value for money and we think the way that we go about it is consistent and it is consistently producing the right results.

**The Chair (Mrs. Julia Munro):** We must move on. Mrs. Sandals?

**Mrs. Liz Sandals:** Just by way of comment, having spent a lot of hours in public accounts, when we first started back in 2003, what we were often hearing were construction horror stories about public projects that were not on time and were not on budget. My impression was, to reflect back on some of the earlier comments, that in a large part that was because projects were not well defined to start with, and it left room for a lot of argument later.

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Also, as you were talking about risk transfer and financing, you were actually outlining the script for what's going on at Guelph city hall right now, where a contractor has pulled out, or at least the city and the contractor have gotten into a dispute, at about 90% completion, and it's a little bit of a horror show.

However, what I wanted to ask you about is, when you're doing design-build-finance-maintain, I think the public perception is still that when we talk about "maintain," we're talking about sterilizing the autoclave or something like that. My perception of the maintain piece has been more that the contract is going to be awarded to somebody who's going to maintain essentially the building for however many years—25. So the maintain part of it is really, do you put in a high-quality flooring material that's going to last for 25 years, or do you bid saying, "We'll put in a lower-quality flooring material," knowing that you're going to have to replace it after 15 years, and that's what we're talking about with maintain—the actual nuts and bolts, the hard infrastructure. Which of those perceptions is right?

**Mr. Jim Dougan:** It's maintaining the building. It's all about the integration of the design, the construction and the facilities management right out of the facility, not the operations or anything else, and it's making sure that at the end of the concession, the 30-year term, the building is handed back in proper condition. That's really what we're talking about. As David mentioned in his comments, it's the mechanical systems, the electrical

systems, the elevators, the floors. The fabric of the building is what's being maintained.

**Mrs. Liz Sandals:** Thank you very much, because that's the thing I find the most confusing: What do we mean by "maintain"? A lot of people seem to think of it in terms of soft services, as opposed to hard infrastructure.

**The Chair (Mrs. Julia Munro):** Thank you very much. We'll finish up, then, with Ms. MacLeod.

**Ms. Lisa MacLeod:** Thanks, Madam Chair. I appreciate it.

Again, thank you for answering my previous questions. The only concern that I have at this point in time—I mean, we've talked a lot about the process, the economy and bidding. To go back to my colleague from Nickel Belt and her concerns with respect to transparency, I understand your concerns and I can see it from the other perspective of why you would want to be very cautious of releasing so very many details. At the same time, this is public money. I know a few of the organizations that came in were a bit more radical than maybe I would be comfortable with, supporting their views, and I certainly don't support a moratorium on AFPs. But what I do support is increased access to information when this is public money. I don't know if that's through the Auditor General or if it's from more disclosure from you folks at the end of the year through what the minister will ultimately table.

That's my biggest concern, that these are taxpayer dollars. It's funny, because we make the comment that you want to be on time and on budget. We could always be on time or late and over budget, but we can never be, as you say, under budget. So with taxpayer dollars at stake, is there a way that we could meet the public's right to know with your, I believe, right to control the circumstances in generating these projects and making sure they're built on time and on budget? Is there a compromise that you can think of, or is it something that we might have to put in this report so that we're actually given information that's critical to our communities, but also critical to the people we represent? It's their tax dollars. They are finding out this week that they're a have-not province. Many cities right now are starting their budget processes. People are thinking about money all the time. How do we let them know that we're spending their money the best way possible?

**Mr. David Livingston:** I'm going to ask Bill in a second to talk about what goes into our year-end report because we do publish a financial statement that is a public document. We talk about what we don't publish, but maybe we could talk about what we do publish.

In every project that we have, we publish the project agreement in all its detail. We do delete specific references for the reasons you mentioned, where we believe there's a competitive advantage to the province in doing so. We publish the total number so that everybody knows what the winning bid was, and we publish a value-for-money report.

We would say that there is a high degree of disclosure today around what we do and how we do it. We have

openly asked the internal auditor to come in and look at what we do. They had suggestions, and we acted on those suggestions. The Auditor General has the right to come in any time, and presumably they will some day. So it is an open process trying to preserve that important element of making sure that people are incented to beat bids and do better next time, not to use it as a floor.

But it is worth just talking for a minute about what we do put in our records other than what we publish on a project-by-project basis.

**Mr. Bill Ralph:** I think the only comment I would add to that is that the annual report we publish and which is tabled in the Legislature includes contents that are stipulated by Management Board of Cabinet. So it's not what we want to put in the report; it's what consistently, across the government, is included in annual reports of crown agencies. That includes things like total project expenses which mirror project recoveries from the ministries, which recoveries are then supported through the estimates process for each individual project. I think if you put all that together, at least at the higher level, there's a fair degree of disclosure.

**Ms. Lisa MacLeod:** But you talk about total project expenses, so I would find out, for example, the construction cost for the Montfort Hospital in total cost, not sort of where you may or may not have a cost overrun.

I think that's probably what my colleague is looking at, her concerns in terms of cost overruns, and if that were to occur, as an MPP, I think she would expect the right to know that information so that we can do our jobs in the Legislature that much more effectively.

So I appreciate your disclosure of what you are disclosing. I think, though, what we're looking for is a

little bit more detail in terms of what you can disclose, whether it's labour costs, material costs, land costs, and that would satisfy a lot of the questions. I think it would eliminate a lot of the ridicule that you would get from the health care coalition or the OFL, the Ontario Federation of Labour, who are quite critical of you, and I by no means share their view on virtually anything, with the exception of being more transparent with public dollars.

I just leave that with you. We'll have our opportunity, each of us, to make recommendations to the minister and the Legislature in the coming days, but I see no reason that you couldn't think, before that's tabled, on different mechanisms that would actually satisfy some of your critics.

**Mr. David Livingston:** Can I just make one comment? As I say, we do publish the total bid that's put out by the winning bidder. The presumption can be that that bid is within the budget that's given to us by the government to deliver that project. To us, a cost overrun is if it's over that bid, so that benchmark is a public benchmark. If at the end it costs more than that, then that will be known. But I would say there is disclosure around how we're doing with the bid.

**Ms. Lisa MacLeod:** Thank you.

**The Chair (Mrs. Julia Munro):** Thank you very much. That really concludes the time that we have available this morning, but we certainly appreciate that you've come again and provided us with further insight.

We're now going to move, for the remainder of our time, into closed session. So I will give people time in order to get organized for that, and we will have a brief recess.

*The committee continued in closed session at 1007.*







## CONTENTS

Tuesday 4 November 2008

<b>Subcommittee report</b> .....	A-359
<b>Agency review: Ontario Infrastructure Projects Corp. (Infrastructure Ontario)</b> .....	A-359
Mr. David Livingston	
Mr. Jim Dougan	
Mr. Bill Ralph	

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