



MINISTRY OF ENERGY
OFFICE OF ENERGY SUPPLY
REQUEST FOR PROPOSALS
FOR
UP TO 1,000 MW OF RENEWABLE ENERGY SUPPLY
FROM RENEWABLE GENERATING FACILITIES
WITH A CONTRACT CAPACITY OF
BETWEEN 20.0 MW AND 200.0 MW, INCLUSIVE
(RENEWABLES II RFP)

FAIRNESS REVIEW

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EXECUTIVE SUMMARY

This report presents our findings and conclusions as Fairness Commissioner for the Request for Proposals (RFP) process for the procurement of up to 1,000 MW of Renewable Energy Supply from Renewable Generating Facilities with a Contract Capacity of between 20.0 MW and 200.0 MW, inclusive, known as the Renewables II RFP. This is a final report on the procurement process. We were engaged in late April 2005 and were involved in an advisory capacity in the finalization of the procurement strategy and RFP document. We also monitored and observed the process from issuance of the RFP up to and including the completion of the evaluation process.

The Fairness Commissioner acts as a neutral, disinterested and independent monitor for the procurement process. We were not part of the RFP development or evaluation teams. We reported directly to the Manager, Renewable Energy Supply and Acting Assistant Deputy Minister, Office of Energy Supply for the Ministry of Energy, who were responsible for the Renewables II RFP process.

The RFP was not written in an unduly restrictive manner and is not biased towards any particular Proponent or type of renewable generating technology. The RFP document is generally based on the standard Management Board Secretariat RFP Precedent template.

The RFP was issued in final form on June 17, 2005 and closed on August 31, 2005. Three addenda to the Renewables II RFP and two addenda to the RES II Contract were issued. Proponents had 51 working days (a day other than Saturday, Sunday or a Statutory Holiday) and 75 calendar days to prepare Proposals in response to the RFP. In our opinion this was an adequate amount of time to prepare a Proposal for an RFP of the complexity and scope of the Renewables II RFP.

Proposals and associated evaluation documents were kept in secure locations at all times. All deliberations of the evaluation team were conducted behind closed doors at the Ministry offices at the Queen's Park office complex in Toronto, Ontario. The contents of the Proposals and identities of the Proponents were only known to the evaluation team members, the Ontario Shared Services procurement advisor, legal counsel and the Fairness Commissioner. Pricing information was only revealed upon the conclusion of Stage 2 Technical and Financial Evaluations and only for those Proposals that were successfully advanced to Stage 3 Proposal Price Evaluation.

All the evaluators were qualified to undertake the evaluation of the Proposals and we have no concerns about the qualifications of any of the evaluators.

We believe that the evaluation process outlined in the RFP was strictly adhered to by the evaluators. We are satisfied that all Proposals were objectively evaluated against the evaluation criteria published in the RFP.

Twenty-two (22) Proposals were received by the RFP closing time on the RFP closing date, August 31, 2005 at 3:00 pm EDT. One Proposal was disqualified in Stage 2 Technical and Financial Evaluation for not meeting some of the Minimum Mandatory Financial Requirements. Two Proposals were disqualified in Stage 3 Proposal Price Evaluation because the Proposal Price Statements contained statements that qualified the prices bid.

Evaluation team members were informed prior to starting the evaluation of their requirements to disclose any conflicts of interest and to keep all evaluation-related information confidential. Each evaluator was asked to sign a statement to this effect. The Ministry informed us that all the evaluators signed this statement. Other Ministry staff supporting the evaluation process, the OSS procurement advisor and Fairness Commissioner also signed the same declarations regarding conflict of interest and confidentiality.

Proponents were required to disclose and declare any actual or potential conflict of interest, which included by definition in the RFP any knowledge of confidential information of the Crown. None of the Proponents indicated any actual or potential conflict of interest.

In summary, based on our review, we are satisfied that the Renewables II RFP process was conducted in a procedurally fair, open, and transparent manner.

All Proposals received were evaluated against the evaluation criteria published in the RFP. We detected no bias either for or against any particular Proponent in the application of the evaluation criteria. The evaluation criteria were applied objectively using the process published in the RFP.

1.0 INTRODUCTION

This report presents our findings and conclusions as Fairness Commissioner for Request for Proposals (RFP) process for the procurement up to 1,000 MW of Renewable Energy Supply from Renewable Generating Facilities with a Contract Capacity of between 20.0 MW and 200.0 MW, inclusive, known as the Renewables II RFP. This is a final report on the procurement process. We were engaged in April 2005 and were involved in an advisory capacity in the finalization of the procurement strategy and RFP document. We also monitored and observed the process from issuance of the RFP up to and including the completion of the evaluation process.

Unless indicated otherwise, all capitalized terms in this report have the same meaning as the corresponding terms in the Renewables II RFP and RES II Contract.

2.0 ROLE OF FAIRNESS COMMISSIONER

In Ontario, procurement is conducted in a manner that will stand the test of public scrutiny, encourage competition and reflects fairness in the spending of public funds. Competition among Proponents is encouraged through open processes that afford vendors equal access to Government of Ontario procurement opportunities.

To provide the vendor community with the confidence that the contemplated procurement is conducted in a fair manner that is consistent with the above-mentioned principles, the province often retains the services of a Fairness Commissioner to monitor the process and to advise it on matters that pertain to the fairness of the RFP process.

The Fairness Commissioner acts as a neutral, disinterested and independent monitor for the procurement process. We were not part of the RFP development or evaluation teams. We reported directly to the Manager, Renewable Energy Supply and Acting Assistant Deputy Minister, Office of Energy Supply, who were responsible for the Renewables II RFP process.

3.0 BACKGROUND

The Government of Ontario has set a goal for increasing Ontario's renewable energy supply. The Renewables II RFP is one of the procurement Initiatives that the Ministry of Energy has adopted to acquire additional renewable energy capacity for Ontario.

The Renewables II RFP was targeted at renewable generating projects that had capacities between 20.0 MW and 200 MW. Subject to its reserved rights, the Ministry intended to acquire up to 1,000 MW of contract capacity. The Renewables II RFP was open to Proponents who already had a RES Contract resulting from the RFP for 300 MW of Renewable Energy Supply (RES RFP) issued last year by the Ministry, however, the combined RES Contract and RES II Contract capacities could not exceed 200 MW. To be eligible, each renewable generating facility had to be connected to the IESO-controlled grid and had to be a participant in the IESO-administered markets. The proposed renewable generating facilities must not have achieved commercial operation before January 20, 2004 and cannot achieve commercial operation later than October 31, 2008. There were contractual incentives to achieve commercial operation prior to December 31, 2007. Also, the renewable generating project cannot have its connection point located in an Excluded Sub-Zone, as defined in Appendix L of the Renewables II RFP.

The Ministry required the services of a Fairness Commissioner to monitor, document and verify the fairness of the Renewables II RFP process. This report addresses our review of the entire Renewables II RFP process.

Unlike the previous RES RFP issued last year by the Ministry, the Renewables II RFP process was not a staged procurement process where interested firms were required to pre-qualified as part of a Request for Qualifications (RFQ) process to become Proponents to the Renewables II RFP. The Renewables II RFP was posted to the www.ontarioelectricityRFP.ca website for any interested Proponent to respond to.

Prior to initiating the RFP process, the Ministry advised Ontario Power Generation (OPG) that it would not be prohibited from participating as a Proponent or as part of a Proponent team. The Ministry works very closely with the OPG on shareholder issues. In order to avoid any potential or actual conflicts of interest, we advised the Ministry that staff members involved in OPG affairs that may relate to the RFP must not be involved in the any of the RFP-related decision making or evaluation of Proposals. No Proposals received in response to the Renewables II RFP indicated any OPG involvement in this regard.

4.0 RFP DOCUMENT

The main issue from our perspective is ensuring a fair and transparent evaluation process given the diverse nature of the Proponents, as they were potentially a mix of for-profit corporations and co-operative corporations, and diverse renewable generation technologies they could propose to offer (wind, biomass, biogas, and hydroelectric). This presented a challenge to consistently evaluating Proponents and the renewable generation technologies they proposed. Fair treatment required that each Proponent and the renewable generation technology they proposed were evaluated consistently against only the evaluation criteria published in the RFP.

The RFP was not written in an unduly restrictive manner and was not biased towards any particular Proponent or type of renewable generating technology. The RFP document was generally based on the standard Management Board Secretariat RFP Precedent template.

The RFP described the complete scope of work, provided Proponents with the information necessary to prepare a Proposal and price the scope of work, and was written such that it elicited the information required to assess the Proposals against the published evaluation criteria. The RFP set out the requirement that successful Proponents will be required to enter into a contract (RES II Contract) that was not materially changed from the version issued with the RFP. The RES II Contract was essentially structured as a power purchase agreement, where successful Proponents are paid their bid price for the energy generated under the contract.

Section 2.0 Description of Deliverables provided background information, described the Ministry's role and the ongoing role of the Ontario Power Authority (OPA), and described the deliverables. Section 5.0 described the RES II Contract and provided examples of payment calculations under the RES II Contract.

The RFP set out a three-stage evaluation process in s. 3.0. Stage 1 Evaluation for Completeness screened Proposals solely to determine if they were complete as described in s. 3.2. The Stage 2 Technical and Financial Evaluations described in s. 3.3 served to screen Proposals to assess their compliance with certain minimum mandatory technical and financial requirements. Proponents were required to provide certain information that addressed these minimum technical and financial requirements, and based on whether or not the information was provided and that the information demonstrated compliance, a Proponent was deemed to be compliant or not compliant with each

mandatory requirement. The detailed Minimum Mandatory Technical Requirements were set out in s. 3.4 of the RFP. The Minimum Mandatory Financial Requirements were set out in s. 3.5 of the RFP. The information provided by Proponents in response to Stage 2 was information that would be common to all types of projects, regardless of the type of renewable generating technology that was proposed. The RFP clearly stated what Proponents had to provide in terms of information in order to achieve compliance with the mandatory requirements. All Proposals that were compliant with all the Minimum Mandatory Technical and Financial requirements were advanced to the last stage of the evaluation process, Stage 3 Proposal Price Evaluation.

Section 3.6 set out the required format and other requirements for the Proposal Price Statement, which would be evaluated in Stage 3 Proposal Price Evaluation. In terms of Proposal pricing, a Proponent was required to submit a single price (in dollars and cents) of energy per MW-h. Proponents were clearly instructed to submit prices in a separate envelope so that this pricing information was segregated from the other parts of its Proposal. The pricing form was contained in Appendix E Proposal Price Statement of the RFP. Both s. 3.6 and Appendix E clearly stated, in our opinion, the instructions for completing the form and that failure to comply with the instructions would result in disqualification.

There were two parts to Stage 3 Proposal Price Evaluation. The first part was the Sub-Zone Screen, detailed in s. 3.7(a), which was done to ensure that the IESO-controlled grid would have sufficient capacity accommodate the projects without having to increase the capacity of the various sub-zones. Appendix L to the Renewables II RFP contained location maps and capacities of the various sub-zones across the province. In their Proposals, Proponents were required to identify the sub-zone in which the connection points to the IESO-controlled grid for their projects were located. During the first part of Stage 3, the RFP indicated that the price envelopes were to be opened and Proposals were to be ranked in ascending order by price bid within each sub-zone. The Proposals up to, but not including, the marginal Proposal that took the cumulative capacity beyond the sub-zone limit set out in Appendix L for each sub-zone were to be passed on to the second part of Stage 3. The marginal Proposals and the Proposals that exceeded the sub-zone limits were to be set aside and not evaluated further unless another Proposal became invalid subsequently.

Once the Sub-Zone Screen was completed, those Proposals that passed the screen were to be ranked in ascending order of prices bid to form a Stack, as described in s. 3.7(b). A Proposal was to be selected for inclusion in the Stack of selected Proposals provided that its capacity and the cumulative total of those projects that preceded it in the ranking were less than 450 MW. The marginal Proposal that took the cumulative capacity of the Stack of selected Proposals beyond 450 MW was also to be included in

the Stack of selected Proposals. The Weighted Average Price in \$/MWh of the Proposals in the Stack of selected Proposals was to be calculated and a price equal to 110 percent of this Weighted Average Price was to be set as a Price Ceiling.

Section 3.7 (c) described the process for selecting additional Proposals. Proposals continued to be accepted from the ranking provided that the Proposal price was less than the Price Ceiling and the cumulative capacity of these Proposals and Proposals in the Stack of selected Proposals was less than or equal to 1,000 MW. Additionally, the Ministry reserved the right to select Proposals with bid prices less than 115 percent of the Weighted Average Price that were not already selected, provided that the cumulative capacity of all Proposals selected did not exceed 1,000 MW.

In s. 3.7(d) the process for repeating the evaluation in the event a Proposal became invalid was set out in s. 3.7(d).

5.0 DEDICATED WEBSITE

The Ministry continued to use a dedicated, third-party website (www.ontarioelectricityRFP.ca) as a communications vehicle with Proponents. The Ministry had used the same website successfully for its two previous procurement initiatives.

We did not object to using the dedicated website as we believed that it is advantageous for all. The dedicated website permitted the simultaneous dissemination of information and consolidated this information, which facilitated its use by Proponents. Proponents were able to obtain documents related to the RFP expeditiously thereby allowing them to use their time more efficiently. Proponents were invited to subscribe to an email list whereby they would be automatically notified of any new posting to the website.

This website is hosted externally, and used certain security measures to deter unauthorized access to the website ("hacking"). There were no reported or known instances of unauthorized access to the website during the Renewables II RFP process.

6.0 ADEQUATE TIME TO PREPARE A PROPOSAL

Proponents require sufficient time to prepare Proposals in response to the RFP. The larger the scope of the RFP and more complex it is, the longer the time that should be provided for Proponents so that they can understand the RFP requirements, assimilate the information in the RFP, conduct whatever research they deem necessary, consult legal counsel and arrange financing for their projects. The timetable of the RFP is presented in Table 1, below.

Table 1 – RFP Timetable

Event	Date
Release of the Draft Renewables II RFP and Contract	April 22, 2005
Release of the Draft RES II Contract	April 29, 2005
Technical Consultation Session	May 6, 2005
Release of the Renewables II RFP and Contract	June 17, 2005
Proponent Deadline for Questions	July 15, 2005
Deadline for Issuing Addenda	August 5, 2005
Proposal Submission Deadline	August 31, 2005 (by 15:00:00 pm local Toronto time)

The Draft Renewables II RFP was issued on April 22, 2005. The RFP was issued in final form on June 17, 2005 and closed on August 31, 2004. Proponents had 51 working days (a day other than Saturday, Sunday or a Statutory Holiday) and 75 calendar days to prepare Proposals in response to the RFP. In

our opinion this was an adequate amount of time to prepare a Proposal for an RFP of the complexity and scope of the Renewables II RFP.

7.0 ADEQUATE COMMUNICATION TO PROPONENTS

It is important that all Potential Proponents received access to the same and adequate information about the RFP and the associated process at the same time and in a timely manner.

The Renewables II RFP was posted to the dedicated website in draft form on April 22, 2005 and in final form on June 17, 2005. The Ministry also issued a press release on April 19, 2005 announcing the issuance of the Draft Renewables II RFP on April 22, 2005. There was also a MERX posting on April 25, 2005 announcing the release of the Draft Renewables II RFP on the dedicated website. This MERX posting was updated on June 20, 2005 after the Renewables II RFP was released in final form. Further postings were made on August 10 and August 19, 2005 announcing that the Proposal Submission Deadline had been extended in Renewables II RFP Addenda #1 and #2 (refer to Section 8.0 of this report).

While the Renewables II RFP was still in draft form, a technical consultation session was held to inform Proponents about the RFP. The presentation slides and verbatim transcript of the session were posted to the dedicated website for the benefit of Proponents who could not attend

All RFP-related documents at the website were posted in electronic form, specifically in Adobe Portable Document Format (pdf), for downloading. Three addenda to the Renewables II RFP, as well as two addenda to the RES II Contract, were also issued and these too were posted to the website in electronic format.

All questions received and answers given were posted to the dedicated website. All questions posed by Proponents were answered. We monitored all communications with Proponents. We reviewed all questions received and answers posted. Any information identifying a Proponent was removed by the Ministry prior to posting the question and answer. The Ministry staff member responsible for doing this was not part of the evaluation team and did not

communicate any identifying information to any evaluation team member in order not to bias them.

In Renewables II RFP Addendum #1, the Ministry revised s. 4.1(a) to provide for a means for Proponents to communicate with the Ministry on procedural matters after the Proposal Submission Deadline. This was instituted in response to the feedback the Ministry received from Proponents after the two procurement initiatives undertaken by the Ministry last year. Proponents were instructed in the revision to s. 4.1(a) that they could send any communication regarding any procedural matters to a special email address, procedures@ontarioelectricityRFP.ca. Three communications, with two coming from a single Proponent, were received after the Proposal Submission Deadline at this email address. One message was from counsel to a Proponent that was inquiring about a clarification of the interpretation of 3.3.9(a)(ii) of the RFP. The Proponent had ongoing business dealings and did not want to violate this provision of the RFP. We advised that the Ministry could if it wished provide the clarification because it was a collateral issue that did not relate to the evaluation of the Proposals. The Ministry provided the requested clarification.

The other communication to the email address was from a Proponent about a procedural matter related to the submission of its Proposal. We advised the Ministry that a specific response to the contents of the message was not warranted as it would reveal information about the status of the evaluation of the Proponent's Proposal, but that a message acknowledging receipt of the message could be sent. The Ministry sent the acknowledgement.

After the Proponent Deadline for Questions had expired and before the Proposal Submission Deadline, a Proponent contacted the Ministry about a procedural matter. The special email address was only activated after the Proposal Submission Deadline. The matter related to a transaction by the Proponent, which was subject to disclosure requirements that necessitated a press release. The Proponent was concerned about not running afoul of the prohibited communication restriction in s. 4.9 (g)(ii), which required prior written approval of the Ministry for such a release. We advised that the Proponent was only complying with the requirements of the RFP in this regard and that while directly contacting the Ministry was certainly irregular, the question and answer functionality at the dedicated website was removed when the Proponent

Deadline for Questions had expired. There was no other way for the Proponent to obtain the Ministry's consent to the press release. We advised that the Ministry should deal with the Proponents request as set out in s. 4.9(g)(ii) and that the Proponent should not be disqualified since in our opinion the Proponent was not in any way attempting to influence the RFP process.

We were personally contacted by a Proponent by telephone prior to the Proposal Submission Deadline. We advised the Proponent that the contact was inappropriate and that the deadline for submitting questions had expired, so that there was no way for the Ministry to respond to questions in any event. We advised that the Proponent should not be disqualified as it had not attempted to influence the process. The Ministry accepted this advice.

Questions of clarification were asked of several Proponents as part of the evaluation process. Ontario Shared Services (OSS) administered this process on behalf of the Ministry and OSS identified as the single point of contact for this clarification process. We also monitored this request for clarifications process. All Proponents complied with the process outlined by OSS in its questions of clarification. All communications were confirmed in writing, either by fax or e-mail.

8.0 ADEQUATE NOTIFICATION OF CHANGES IN REQUIREMENTS

All potential Proponents had to receive the same and adequate notification about changes to the RFP requirements, and if necessary the Closing Date had to be revised to permit Proponents to prepare a response in light of the changed requirements.

There were three Renewables II RFP and two RES II Contract addenda issued.

Table 2 – Addenda Summary

No.	Release Date	Description
1	August 5, 2005	Renewables II RFP Addendum #1 – revisions to RFP ss. 3.4, 3.5, 4.1. 5.1, Appendices A, B C, D and H. The Proposal Submission Deadline was extended to August 24, 2005. RES II Contract Addendum #1 – revision to contract definitions in s. 1.1, and specific contract language in ss. 1.7, 2.1, 2.2, 2.3, 2.5, 2.6, 3.1, 3.4, 6.4, 7.1, 8.6, 10.2, 10.5, 11.3, 12.1, 12.2, 13.3, 15.2, 16.5, 16.6, 16.8, and Exhibit D.
2	August 18, 2005	Renewables II RFP Addendum #2 – Revision to s. 4.1 to extend the Proposal Submission Deadline to August 31, 2005. Revisions to Appendices B, H and M of the RFP. RES II Contract Addendum #2 – Entire replacement of s. 16.5(d).
3	August 26, 2005	Renewables II RFP Addendum #3 – revision to s. 3.9(e) of the RFP.

Renewables II RFP Addenda #2 and #3, and RES II Contract Addendum #2 were issued after the published the deadline for issuing addenda of August 5, 2005 revised in Renewables II RFP

Addendum #1. The RFP s. 4.2 (c) did contain a reserved right for the Ministry to issue addenda after the deadline. We advised that if the Ministry thought that the contemplated addendum was of sufficient importance, it could use its reserved right. The Ministry wanted to extend the submission deadline for submission of Proposals for the benefit of all Proponents and also believed that the addenda provided needed clarity to the Renewables II RFP and RES II Contract. The deadline for asking questions was not extended.

All of the above-mentioned addenda were posted in pdf format at the website for downloading.

9.0 CONFIDENTIALITY AND SECURITY OF DOCUMENTS

All Proposals and evaluation documents had to be kept strictly confidential and in a secure location. Documents relating to the Renewables II RFP process also had to be kept secure.

During development of the Renewables II RFP, the draft document was circulated only to those that were working on the document or that were reviewing and commenting on the document.

Proposals and associated evaluation documents were kept in secure locations at all times. The Proposals were kept in a locked conference room at the Ministry of Energy offices in the provincial government office complex at Queen's Park in Toronto, Ontario. Evaluation documents were also stored in the same secure location. The contents of the Proposals and identities of the Proponents were only known to the evaluation team members, the OSS procurement advisor, legal counsel and the Fairness Commissioner.

Evaluators were permitted to remove documents from Ministry offices in order to read and individually evaluate the Proposals. The Ministry established a document control process to keep track of documents that were transported off site. Prior to removing the documents from the Ministry offices, the evaluators were briefed on the proper procedures to follow with the documents and were required to sign an undertaking that they agreed to abide by these procedures and the document control process. All Proposals removed offsite by the evaluators were accounted for and no documents are missing.

All deliberations of the evaluation team were conducted behind closed doors at the Ministry offices at the Queen's Park office complex in Toronto, Ontario.

The pricing component of each Proposal was submitted separately in a sealed envelope. After the RFP closed, OSS removed the pricing envelope and the Proposal security from the remaining contents of each Proposal and stored them at OSS offices, a separate physical location from the Ministry offices where the evaluation of Proposals was being done. The pricing submissions were kept separately in a locked cabinet until the pricing evaluation commenced. Members of the evaluation team evaluating the Minimum Mandatory Technical and Financial Requirements

did not have access to this pricing information until Stage 3 Proposal Price Evaluation. Pricing information was only revealed at the conclusion of Stage 2 Technical and Financial Evaluation and only for those Proposals that were successfully advanced to Stage 3 Proposal Price Evaluation.

All notes pertaining to the evaluation team's deliberations and scoring worksheets were placed in a file at the end of each team meeting and stored in a secure location. All e-mail messages were stored as hardcopy in the file along with all other RFP-related correspondence.

All teleconferences and faxes during Proposal evaluation stage of the process were over secure means.

We are not aware of any discussions about any Proposal or its evaluation among anyone except the evaluators, counsel, OSS procurement advisor, the Manager, Renewable Energy Supply who was responsible for the Renewables II RFP, and us. All members of the evaluation team signed confidentiality agreements pertaining to the evaluation process and information contained in the Proponents' Proposals. To our knowledge, no information about the Proposals or evaluation was communicated in any form to persons not directly involved with the evaluation process.

We are satisfied that the Proposal contents and all information generated in the evaluation process was kept secure and confidential at all times.

10.0 QUALIFICATIONS OF THE EVALUATION TEAM

The evaluation team members had to have the appropriate knowledge and expertise to review and evaluate the Proposals. The evaluation team was subdivided into a Stage 1 Evaluation for Completeness sub-team, a Minimum Mandatory Technical Requirements sub-team, and a Minimum Mandatory Financial Requirements sub-team. The Stage 1 Evaluation for Completeness sub-team was drawn from members of the other two sub-teams. There were seven evaluators in total with members being drawn from Ministry of Energy, Ministry of Finance (MOF), the Ministry of Natural Resources (MNR), the Independent Electricity System Operator (IESO), the Ontario Energy Board (OEB), and two external consultants. There was also an observer from the Ontario Power Authority (OPA), who did not participate in the scoring of any Proposal. The evaluation team was assisted and supported by other Ministry of Energy staff.

Only one of the evaluation team members was involved in the RFP process prior to his appointment as an evaluator, which is a good practice as involving persons not involved in the earlier parts of the process can serve to reveal and counter any bias that might be present with evaluators closely associated with the development of the RFP or implementation of the procurement process.

All had reviewed the RFP and familiarized themselves with the evaluation tools prior to commencing their evaluation of the Proposals. A training session was held to explain the evaluation process and evaluation tools to the evaluators. We attended the training sessions and spoke to the evaluators about our role as an observer of the process.

The evaluation teams also were advised by the Ministry of Energy's external legal counsel. Counsel provided advice only and did not participate in the scoring of Proposals.

All the evaluators were qualified to undertake the evaluation of the Proposals and we have no concerns about the qualifications of any of the evaluators.

11.0 COMPLIANCE WITH THE PROCESS

In order to ensure a fair process, the procedure established for conducting the procurement and published in the RFP must be followed and applied equally to all Proponents. We believe that the evaluation process outlined in the RFP was strictly adhered to by the evaluators.

Twenty-two (22) Proposals were received by the Proposal Submission Deadline. Additionally, there was one submission that was a notification that the entity had decided not to submit a Proposal, and this was not a Proposal. One Proposal was turned away from the OSS Tenders Office because the Proposal arrived after the Proposal Submission Deadline. This Proponent attempted to submit its Proposal afterwards, but was unsuccessful in doing so. The Ministry refused to accept this late submission of the Proposal and we concurred with this decision.

The following day another package in connection with the Renewables II RFP was delivered to the Tenders Office. It was unclear if the package was a new Proposal, or part of an already submitted Proposal. In any event, we advised the Ministry that it should not accept or open this package. The Ministry accepted this advice and did not open the package and returned it to the sender.

During the Stage 1 Evaluation for Completeness, one Proposal did not have the required number of copies submitted. Section 4.3(b) of the RFP requested that the Proposal submission include an original version and 11 copies. Nine copies were submitted and only three copies were in fact complete. We advised that the Proponent had substantially complied with the requirement set out in s. 4.3(b) and that this was more a matter of form over substance. The Ministry used the original version and complete copies to reproduce additional copies as required for evaluation purposes.

Almost two weeks after the Proposal Submission Deadline two envelopes were delivered to the OSS Tenders Office. The envelopes were opened by the Ministry in the presence of representatives of the Tenders Office and us. One envelope contained a letter from an entity that was not a Proponent requesting that the Ministry provide its bank with confirmation that

the entity was not a Proponent. We advised the Ministry that this was a collateral issue to the process since the entity was not a Proponent and it was therefore not an issue of procedural fairness. The other envelope contained two letters, one for each of the Proponent's submitted Proposals addressed to the Independent Fairness Commissioner relating to the package that was delivered to the OSS Tenders Office the day after the Proposal Submission Deadline. The letters indicated that the package that was returned to it only contained additional copies of the Proposals that were submitted prior to the Proposal Submission Deadline. We advised the Ministry that this was not an attempt to influence the process but was an explanation of the contents of the packages. We reiterated our earlier advice that regardless of the contents of the package it could not now be accepted. The Ministry accepted this advice and neither we nor the Ministry responded to the letters.

All of the Proposals received successfully passed Stage Evaluation for Completeness. During the Stage 2 Technical and Financial Evaluation, one Proposal was disqualified. The Proposal failed some of the Minimum Mandatory Financial Requirements set out in s. 3.5 of the RFP. This Proposal was set aside and was not advanced to Stage 3 Proposal Price Evaluation.

As part of Stage 2, the IESO was requested by the Ministry to review the single line electrical drawings submitted with each Proposal showing the proposed connection point for the project to the IESO-controlled grid. In s.3.4 (a)(iii) Proponents were required to submit a single line electrical drawing showing the proposed connection for their projects, and were advised that this drawing would be reviewed by either the IESO or Hydro One in order to verify the location of the proposed connection point with a sub-zone. As a result of this review, a clarification had to be issued to a Proponent to clarify the proposed connection point based only on the information contained in its Proposal.

Of the 22 Proposals received, one was disqualified as part of Stage 2 and 21 Proposals were passed on to Stage 3 Proposal Price Evaluation. Given the geographic dispersion of the projects, no Proposals were excluded as a result of the Sub-Zone Screen conducted in Stage 3. Furthermore, no Proposals were for projects located in Excluded Sub-Zones defined in Appendix L of the RFP. All Proposals passed the Sub-Zone Screen and were ranked in ascending order of prices bid to form a Stack. All Proposals up to and including the marginal Proposal that took

the cumulative capacity of the Stack of Proposals over 450 MW were selected for inclusion in the Stack of selected Proposals. Based on the prices bid and expected annual electricity output for the proposed projects in the Stack of selected Proposals a Weighted Average Price was calculated as set out in s. 3.7 (b) of the RFP. The Ceiling Price was calculated at 110 percent of this Weighted Average Price, as set out in s. 3.7(b), too. Additional Proposal were selected as was provided in s. 3.7(c)(i) where the Proposal price was less than or equal to the Ceiling Price, provided that the total capacity of all selected Proposals was less than or equal to 1,000 MW. The Ministry also exercised its reserved right to select Proposals whose price did not exceed 115 percent of the Weighted Average Price and where the cumulative capacity of all selected Proposals did not exceed 1,000 MW, in accordance with s. 3.7(c)(iii).

Two Proposals were disqualified in Stage 3 Proposal Price Evaluation. The reason for the disqualifications was that the prices bid were qualified by statements on the Proposal Price Statement. Section 3.6 set out that a Proposal Price Statement that deviated from the required format in s. 3.6 shall be disqualified. We note that Appendix E Proposal Price Statement contained the following instruction to Proponents in bold faced type:

“Prospective Proponents are advised that any deviation from this required format whatsoever, including the provision of a price range, conditional price, qualified price, or a incomplete price, shall result in disqualification of the Proposal”.

The instruction to Proponents was in our opinion clear and unequivocal and the consequences of non-compliance were also clear and unequivocal. The Ministry disqualified these two qualified Proposals and we concurred with this decision.

The Proposal Security and unopened Proposal Price Statement for the Proposal disqualified in Stage 2 was returned. The Proposal Securities for the Proposals unsuccessful in Stage 3 will be returned to these unsuccessful Proponents in accordance with s. 4.6 of the RFP upon announcement of the successful Proponents.

We attended each stage in the evaluation process for the Renewables II RFP. We are satisfied that evaluation process set out in the Renewables II RFP was complied with.

12.0 OBJECTIVITY RESPECTING THE EVALUATIONS

The Proposals received had to be evaluated objectively and diligently, as evaluators owe a duty of care to Proponents to do so. We are satisfied that all Proposals were objectively evaluated against the evaluation criteria published in the RFP.

Section 3.0 Submission and Evaluation of Proposals described the evaluation procedure in detail. As we have stated in Section 4.0 of this report, Proposals were subjected to a three stage process for evaluation.

The Stage 1 Evaluation for Completeness was essentially a determination that the Proposals were complete. Each Proposal was examined against a checklist of information the RFP required Proponents to provide.

For the Stage 2 Technical and Financial Evaluations, evaluators individually read the Proposals and evaluated the mandatory financial or technical responses. The evaluators read the Proposals in a different, randomized order. This was done for two reasons. Firstly, it promoted individual evaluation since no two evaluators would be reviewing the same Proposal at the same time. Secondly, it minimized any bias that might occur had all the evaluators read the same Proposal first since the first few Proposals read often tend to anchor an evaluator's expectation on what to expect from subsequent Proposals. This can influence how they evaluate these Proposals.

The Ministry decided that evaluators were to reach a consensus decision on whether or not each Proposal had satisfied the Minimum Mandatory Technical and Financial Requirements.

On two occasions in October 2004, the evaluators met for the Stage 2 consensus evaluation sessions at which we were present. The purpose of the consensus was to examine each Proposal and to determine the compliance of the Proposal with the Minimum Mandatory Technical Requirements and Minimum Mandatory Financial Requirements by means of

consensus. The consensus sessions were chaired by the evaluation team leader who acted as a facilitator for these sessions. The evaluation team leader participated directly in the evaluation for compliance process. We detected no bias or favoritism by the evaluators during their participation in the consensus evaluation sessions.

Only those Proposals that met all of the Minimum Mandatory Technical Requirements and Minimum Mandatory Financial Requirements were advanced to Stage 3 Proposal Price Evaluation. The evaluation team members, OSS procurement advisor and fairness commissioner were present at the opening of the pricing envelopes. Only the pricing envelopes for the Proponents successfully advanced to this stage of the evaluation were opened. The process for the Stage 3 Proposal Price Evaluation was complied with in detail and we observed no deviations from this process.

In summary, we detected no bias or favoritism towards or against any particular Proponent. The Proposals were evaluated strictly against the evaluation criteria published in the RFP. A record of the consensus compliance determinations reached and reasons for the compliance determinations was maintained and kept by the evaluation team leader at the session.

13.0 PROPER USE OF ASSESSMENT TOOLS

Assessment tools must only be used to evaluate the Proponents' responses to the minimum technical and financial mandatory requirements and pricing outlined in the RFP, and must be based on the published evaluation criteria in the RFP. We reviewed all the evaluation tools used by the evaluators and we are satisfied that they accurately reflected the published evaluation criteria.

14.0 CONFLICT OF INTEREST

For the procurement to be fair there had to be no conflict of interest between the evaluators and the Proponents and between the Proponents and anyone involved in planning or conducting the procurement. Proponents must also not have had access to confidential information of the Crown as it pertains to the procurement.

Proponents were required to disclose and declare any actual or potential conflict of interest, which included by definition in the RFP any knowledge of confidential information of the Crown. None of the Proponents indicated any actual or potential conflict of interest.

Evaluation team members were informed prior to starting the evaluation of their requirements to disclose any conflicts of interest and to keep all evaluation-related information confidential. Each evaluator was asked to sign a statement to this effect. The Ministry informed us that all the evaluators signed this statement. Other Ministry staff supporting the evaluation process, the OSS procurement advisor and Fairness Commissioner also signed the same declarations regarding conflict of interest and confidentiality.

15.0 DEBRIEFINGS

The successful Proponents, as well as those that were unsuccessful as a result of being disqualified in Stages 2 and 3, will be notified by the Ministry.

The unsuccessful Proponents will be offered a debriefing session in accordance with s. 4.9(f) of the Renewables II RFP. The Ministry has indicated to us that those Proponents who were not selected in Stage 3 Proposal Price Evaluation will also be offered a debriefing opportunity once the RES II Contracts have been concluded with the successful Proponents.

Care needs to be taken to ensure that, in the debriefings, the successful Proponents' right to privacy regarding proprietary information of a commercial nature is protected as is stipulated under the *Freedom of Information and Protection of Individual Privacy Act*.

The evaluation team leader was responsible for developing summary notes on the consensus sessions for the mandatory technical and financial requirements compliance determination and the rationale and ground(s) for any Proposal disqualifications.

16.0 CONCLUSIONS

In summary, based on our review, we are satisfied that the Renewables II RFP process was conducted in a procedurally fair, open, and transparent manner.

All Proposals received were evaluated against the evaluation criteria published in the RFP. We detected no bias either for or against any particular Proponent in the application of the evaluation criteria. The evaluation criteria were applied objectively using the process published in the RFP.