

**In the matter of the Commission of Inquiry appointed pursuant to section 1A of the  
Commission of Inquiry Act 1935 dated 24 February 2016**

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**Second Witness Statement of Curtis Stovell**

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1. I am Curtis Stovell I am currently  
the Accountant General. I make this witness statement in response to the Witness  
Summons dated 20 September 2016 pursuant to section 9 of the Commission of Inquiry  
Act 2016.
  - (i) What request did you in fact receive and what did you decide? Is there a record of  
your decision(s) and if there is, may we please have a copy or copies as  
appropriate? In this regard, we understand that there was an initial memorandum  
dated September 25<sup>th</sup> 2014, followed by two others dated May 11<sup>th</sup> 2015 and  
March 26<sup>th</sup> 2016?
2. I received a request from the Financial Secretary, Anthony Manders, via email on 26  
September 2014 at 9:27am. The email is attached at pages 1-4 of my Annex I. My  
decision was to provide permission to waive the Financial Instructions' requirement for  
three (3) quotations for the services to be provided under the Letter Agreement with the  
Canadian Commercial Corporation ("CCC") (pages 127 – 142 of my Annex I). This  
decision is documented in the memorandum from me to the Financial Secretary dated 25  
September 2014, also attached at pages 5-22 of my Annex I. There were two subsequent  
memoranda to the Financial Secretary on this topic attached, dated: a) 11 May 2015  
(page 23 of my Annex I); and b) 7 March 2016 (pages 24 – 25 of my Annex I).
  - (ii) Does the above represent the entirety of your communication with the Ministry of  
Finance on this matter, and if not, what other communication has there been? May  
we please have copies of such records if there are any.
3. There were various email communications between me and the Ministry of Finance. The  
email correspondence is attached at pages 26 -126 of my Annex I).
  - (iii) On what basis did you make your decision? In this regard, specifically, what  
documentation were you provided for review and on which you made your  
decision? May we please have copies?



4. My decision was based on the information provided in the initial email from the Financial Secretary on 26 September 2014, the Letter Agreement and Memorandum of Understanding, the CCC White Paper 2013 (at pages 127 – 147 of my Annex I), review of information on CCC available on the internet, and discussions with the Financial Secretary.

(iv) Was there any documentation which you requested but were not provided?

5. I do not recall having requested information that was not provided.
6. I believe that the facts stated in this witness statement are true to the best of my knowledge and belief.

  
Curtis Stovell

September 26, 2016  
Date





**In the matter of the Commission of Inquiry appointed pursuant to section 1A of the  
Commission of Inquiry Act 1935 dated 24 February 2016**

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**Witness Statement of Curtis Stovell**

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**ANNEX I**

**Pages 1 - 142**



## Stovell, Curtis

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**From:** Manders, Anthony  
**Sent:** Friday, September 26, 2014 9:27 AM  
**To:** Stovell, Curtis  
**Subject:** FW: Airport Entrustment

Curtis,

Can you give me a call on this. The Minister wants to get a response to the Governor today.

AM

**From:** Richards, Everard T.  
**Sent:** Thursday, September 25, 2014 9:24 AM  
**To:** Manders, Anthony  
**Subject:** FW: Airport Entrustment

FS  
Do we have this??

**From:** Fergusson, George D.  
**Sent:** Wednesday, September 24, 2014 6:51 PM  
**To:** Richards, Everard T.  
**Cc:** Premier Michael Dunkley; Trevor Moniz MP ([tmoniz@mglaw.bm](mailto:tmoniz@mglaw.bm)); Deputy Governor  
**Subject:** RE: Airport Entrustment

Dear Minister,

Thank you for this response, which I do appreciate. I am writing in some haste as I am about to go to an engagement and will be travelling or in meetings for the next two days.

One immediate query would be whether it would be possible, ideally, to share the Accountant General's written approval, as per Financial Instructions, to the project being done outwith the terms of Financial Instructions, or at least the terms in which the Government's reasons were put to him and the fact that he did approve. This may sound (and is) bureaucratic. But it would help officials in the UK satisfy Ministers that all the procedures have been followed.

I will respond in slightly slower time if there are other points we need to follow up.

Best wishes,  
GF

**From:** Richards, Everard T.  
**Sent:** Wednesday, September 24, 2014 6:24 PM  
**To:** Fergusson, George D.  
**Cc:** Premier Michael Dunkley; Trevor Moniz MP ([tmoniz@mglaw.bm](mailto:tmoniz@mglaw.bm)); Deputy Governor  
**Subject:** RE: Airport Entrustment

Dear Governor,

I have to say I am impressed with your precision in keeping your promise: you said you would respond by the week of the 22<sup>nd</sup> and first thing in the morning of the 22<sup>nd</sup> I have your response. Thank you for giving this your priority of attention in spite of "distractions" like the Scottish referendum.

I will try to answer your queries in order.

1. The Government's reasoning for making an exception to Financial Instructions.
  - a. For the record, I have outlined these reasons in some detail already in previous missives to you, so I will summarize them here.
  - b. There is an overriding and urgent need to create jobs in the island as unemployment is at the highest level since World War II. A new airport terminal would create jobs and, on a long term basis, create a gateway to Bermuda that is consistent with the Bermuda brand of first tier, first class and first world. The present terminal fails those requirements, as parts of it date back to the 1940's.
  - c. There are three broad alternative options to construct a new terminal:
    - i. Issue a global RFP, with or without a P3 partner.
    - ii. Issue an RFP limited to local construction entities
    - iii. Enter an agreement with CCC in their infrastructure development program.
  - d. The only option out of the three available that will **NOT** add to the Bermuda Government's debt or contingent debt is option three – CCC. In view of Bermuda's >\$2 billion debt, this factor is critical.
2. As I have stated before, time is definitely of the essence.
  - a. Every job that is created represents an additional source of tax revenue, through payroll taxes and increased consumption taxes. The sooner those jobs are created the sooner that revenue can accrue. Currently Government's debt service costs accrue at \$10,800,000 per month. That alone is an imperative to accelerate any revenue creating measures as much as possible. The airport terminal is one of several infrastructure projects, most of them private sector based in the hospitality sector, that Government is promoting by way of tax concessions for this very same purpose. These projects share a common theme with the Canadian option for the airport: - they are short term and long term job creators that will not impact Government's balance sheet.
  - b. We are trying to learn from our experiences. The procurement process for the recently completed acute care wing of the hospital took 5 years and cost in excess of \$10 million in consultants' fees alone. We cannot afford this kind of excess. The Canadian option accelerates the procurement process ( the standard for an air terminal is about 2 ½ years ) by about half and eliminates consulting fees by about 75%.
3. The procurement will have a range of mechanisms that will allow the Government of Bermuda to assure value for money during the delivery of the project. These include the following:
  - a. The development work is meant to be phased, with the opportunity to pause at the end of each phase to confirm value for money continues to be delivered prior to the start of construction.
  - b. The Government will be independently advised on technical, economic, and finance issues, and will have full audit rights of any work completed or planned. In addition, contractors will be selected based on their commitment to deliver value for money, and will be required to demonstrate how they are delivering value for money during the development and delivery of the project. If value for money is not being delivered, the Government will have the rights to step in and replace contractors.
  - c. By partnering with the Government of Canada, via CCC, we will have access to a further pool of resources and expertise to ensure value for money. As an arm of government, CCC is not driven by commercial incentives alone and will represent broader interests associated with preserving a strong bilateral relationship between the two governments.

- d. It is important to understand that the very structure of the transactions we are contemplating inherently motivates vendors to keep construction costs low, because they are being given the opportunity to recoup and make a profit on the back-end management services ( concession ) agreement over an agreed upon term. The risk of being charged too much for construction is far less than if they don't spend enough building us the exceptional quality of terminal building that we require as a matter of public policy. Therefore, the value for money verification mechanisms in a contract of this nature also include highly qualitative, functional, descriptive and operational criteria that the contract should stipulate and mandate. That is why it is important to put "the highest professional standards of care and service delivery for the design and operation of the airport" into the all the agreements. If we do not get the quality of terminal building contracted for, we need that to be a breach of the agreement, which in turn allows us to seek compensation for damages. Again, that is the key value for money compensation mechanism at play in this construct/finance/concession P3 arrangement.
  - e. The involvement of private capital (by way of a bond issue) will drive a greater level of economic and financial discipline than is likely through a more traditional procurement model with public funding alone. By ensuring long term private capital commitment, incentives will be aligned to take a long term view by the private sector partners and ensure value for money is being delivered. With the skills and international experience of the strong team we are putting together, we expect to deliver the best possible results. These structural elements are powerful tools that allow us to effectively govern the development and delivery of the project.
- 4. Regarding Canadian rules of best practices, I am confident there will be no issues for HM Government. Bermuda's success in international business is closely linked to Canadian best practices as our entire accounting and auditing system are based on Canadian GAAP which is one of the world standards. I have already forwarded the name of the CEO of CCC for your reference.
  - 5. Insofar as potential UK liability is concerned, it is the Government's view, having consulted our AG, that there is no potential liability for HM Government. The Bermuda Government has engaged many international firms ranging from engineering to legal to financial. Any number of these have been sole sourced arrangements for various sound reasons. These have been carried out under the auspices of that formal piece of British law known as the Bermuda Constitution Order 1968. Never has HM Government considered those arrangements as having any potential liability attached to her. This is no different. However, if HM Government still believes there is a potential liability they can absolve themselves in the entrustment letter. This is a strictly commercial arrangement using the auspices of the Canadian Government to assist its own companies and in the process greatly assisting us.

Thank you very much.

ETR

**From:** Fergusson, George D.  
**Sent:** Monday, September 22, 2014 9:57 AM  
**To:** Richards, Everard T.  
**Cc:** Premier Michael Dunkley; Trevor Moniz MP ([tmoniz@mglaw.bm](mailto:tmoniz@mglaw.bm)); Deputy Governor  
**Subject:** Airport Entrustment

Dear Minister,

We have had a set of questions from the FCO relating to the Entrustment on the Airport project. I believe that the more fully we can provide answers to these, the more likely they will be able to justify the unusual contract arrangement to UK Ministers.

First, it appears from Financial Instructions that, if the project is not covered by the FIs or that an exception to the FI rules is being made for a specific situation, the Accountant General's approval needs to be given in writing. It would be very useful if the Accountant General's reasoning, or the Government reasoning that he has accepted, could be shared with the FCO.

Linked to this, it would be useful to understand the justification (which may be the same as the presentation to the Accountant General) for the project to get underway so quickly as to require avoiding normal contract procedures. This is understood in general terms, but is there a specific analysis of the potential benefit to the Bermuda economy of different timetables (or, perhaps easier to show, what the impact of an early date might be on the deficit)?

The proposed mitigation procedures – the KPMG-type check on value for money and the independent builders – have been noted and welcomed. But it would be good to have more clarity on what the risks are that these measures would mitigate; and how the mitigation would work in practice. For instance, what would the Government of Bermuda be able to do if the auditors find that the contractors are not likely to provide value for money? What locus would they have to require amendments to the arrangements between the CCC and the subcontractors, given that the Government of Bermuda is not a party to those agreements? And similar issues if the building inspectors were to find problems. (This question may be relatively self-answering. I assume that the auditors, working with the building experts, will assess the value for money of the overall project, and that cost problems within the agreed price will be a problem for CCC rather than the Government of Bermuda; and that building standards, and their assessment, will be written into the contract).

They would like to be assured about the process by which the CCC awards subcontracts and their governing standards for including firms in their pool of potential subcontractors. We should be able to get these separately from Ottawa or Toronto. It is hard to imagine a problem in this respect, but the FCO wants to ensure that the Canadian rules conform with UK expectations of good practice.

Much of this relates to the UK Government trying to protect itself. It can probably be assumed that the CCC would bear any legal risk in relation to the award of subcontracts, for instance any complaint of unfairness by an unsuccessful bidder for a contract. But, given that the UK Government is involved to the extent of being asked to provide the entrustment, firms that were excluded from the overall award of the contract to CCC might argue that they have lost out by it not being properly put out to tender and try to argue that the UK bears some liability for this.

Best wishes,  
GF

*George Fergusson*  
*Governor of Bermuda*  
*Government House*  
*11 Langton Hill*  
*Pembroke HM13*  
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GOVERNMENT OF BERMUDA

Ministry of Finance

Accountant General Department

## Memorandum

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

### Items under consideration

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

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

### Objective

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

### Relevant FI

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

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

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

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

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

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

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

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

#### Discussion

#### **Memorandum of Understanding**

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

#### **Letter of Agreement**

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

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

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



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

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

### **Factors Considered**

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

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

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

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

### **Conclusion**

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

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



Copy to: Dionne Morrison-Shakir; Crystal Burgess – Assistant Accountants General

# LETTER AGREEMENT



50 O'Connor Street, 11th floor,  
Ottawa, Ontario K1A 0S6  
Toll Free in Canada and U.S. :  
1-800-748-8191

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www.ccc.ca



# CCC

Canadian Commercial Corporation  
Corporation Commerciale Canadienne

Effective as of June 1, 2014

Bermuda Government  
c/o Ministry of Finance  
Government Administration Building  
2nd Floor,  
20 Parliament Street  
Hamilton HM 12  
Bermuda

Attention: **Anthony Manders,**  
**Financial Secretary**


Dear Sir:

## Re: CCC and Bermuda Airport Revitalization Project

Falling within the purview of a non-binding Memorandum of Understanding signed by each of the Canadian Commercial Corporation, a corporation established pursuant to the *Canadian Commercial Corporation Act*, R.S.C. 1985, c. C-14 ("CCC") and the Government of Bermuda ("Bermuda"), each of CCC and Bermuda propose that this letter agreement ("Letter Agreement") establish a protocol to facilitate and expedite the further discussion and additional future commercial agreements concerning the intended framework related to the structuring, organization and implementation of a potential project in Bermuda, in particular the redevelopment of Bermuda's L.F. Wade international Airport (the "Airport"). Such Airport project shall be referred to herein as the "Project". Bermuda confirms, and CCC acknowledges, that Bermuda considers the Project to be of the utmost national and domestic interest to Bermuda.

CCC and the Government of Bermuda ("Bermuda") each acknowledge that they are in a process of, dialogue and exclusive negotiation toward a series of commercial agreements concerning the structuring, development and implementation of the Project in an expedited manner. Save and except for the provisions noted herein to specifically survive the termination of this Letter Agreement, all rights of exclusivity herein in favour of CCC shall terminate upon the termination of this Letter Agreement for any reason whatsoever.

It is anticipated that the Project will be structured, organized and implemented between the CCC and Bermuda, and that the Project would have its own implementing agreements, commercial structure and financing arrangements or plan. Each party reserves the right to negotiate the implementing commercial agreements concerning the Project (either between the parties or with third parties) containing those terms and conditions that each of the parties require to protect their rights and interests. CCC and Bermuda acknowledge and confirm that the transactions



contemplated by this Letter Agreement are strictly commercial in substance and scope, and are strictly local and domestic in nature. Bermuda states that such domestic commercial transactions are not (in any manner or to any extent) related to, or otherwise concern, any public policy interest, affairs outside of Bermuda, or matters of public law whatsoever.

The intent is for the Project to be developed and operated under a long term concession model, including the establishment of a special purpose concessionaire for the financing, design, construction, operation and maintenance of the Project. It is expected that a significant portion (portion to be determined) of the Project will be financed on a private, non-recourse basis, such portion to be financed primarily based on the forecast future revenue stream of the Airport.

The approach to structuring the implementation and financing of the Project, will be subject to further discussions between the parties, taking into account the economics of the Project and all other relevant considerations.


#### Structure & CCC Team

CCC will source premier Canadian development and construction expertise to develop and implement the Project under the CCC umbrella. Any firm or firms so selected shall have been subject to CCC's due diligence and vetting in terms of technical, financial and managerial capabilities and shall be subject to prior due diligence and approval to be completed by Bermuda. CCC shall, as a matter of transparency and cooperation, provide Bermuda with reasonably complete, accurate and current information concerning the nature and scope of such firm selection due diligence and vetting undertakings. The selected Canadian firm, together with its team of required specialist consultants, advisors and subcontractors shall, together with CCC, constitute the "CCC Team".

Given the control over the procurement by CCC of the CCC Team, the parties agree that Bermuda will, as a condition of entering into any definitive project management agreements, satisfy itself that such agreements contain fair and reasonable terms and conditions that will address Bermuda's reasonable "value for money" requirements.

Furthermore, Bermuda will have the right to conduct its own due diligence concerning the veracity, intensity and quality of the CCC Team membership qualification and CCC's selection methodology.

The CCC Team shall include an experienced private airport development group comprised of a well-qualified Canadian infrastructure developer selected by CCC (said developer, together with its chosen partners and advisors constitute the "CCC Developer"), which shall develop the Project, in collaboration with Bermuda, Airport Management and all relevant stakeholders. The CCC Developer shall, prior to the execution of project and financing agreements, form a special purpose project company ("Airport ProjectCo") to raise equity and debt financing and to enter into a concession and other commercial agreements with third parties concerning the operation of the Project, including leases and other commercial arrangements associated with the Project. CCC shall not take an ownership stake or play a role in Airport ProjectCo. Due to restrictions in its mandate, subject to the following provision, CCC's participation in the contractual



agreements for the Project will be limited to the construction phase of the Project development. Airport ProjectCo will therefore, in such circumstances of Project progress, constitute the prime contractor with Bermuda for all definitive agreements concerning the Project's operations management, concessions and financing phases, for which Airport ProjectCo shall remain contractually obligated and committed to the Project throughout the entire term of the Project life.

Airport ProjectCo will contract with CCC for the design and construction of the Project, and as such, CCC will constitute the Prime Contractor for the delivery of the Project's construction capital program to Bermuda on time and on budget, ensuring the Project and Bermuda benefit from the Government of Canada's guarantee to perform the contract in accordance with its terms and conditions. CCC will, in turn subcontract all such performance obligations to the Canadian contractor member of the CCC Team with development and construction expertise, who will oversee the management and delivery of the design and construction of the Airport, as well as the execution of a prudent and professional subcontracting strategy in compliance with all employment associated applicable laws in Bermuda and which will provide assurances of significant opportunities for local (Bermudian) employment.

Bermuda shall retain the necessary transactional, legal, financial, technical and other advisors to assist Bermuda in the development of the Project and engagement with the CCC Team.

#### Airport Project Development Phases

The main work phases anticipated in relation to the development of the Project are as laid out below. The parties, by signing this Letter Agreement, acknowledge that it is their intent, subject to their respective approval processes and the termination rights noted herein, to complete each of the phases within the timeframe stipulated therein, subject to reasonable adjustments to accommodate circumstances and delays that cannot be reasonably determined at this time. The parties acknowledge that work on Phase 1 commenced in July of 2014 under the anticipation of the signing of this Letter Agreement.

#### **Phase 1a: Preliminary Due Diligence, Project Scoping and Airport Project Concept:**

Phase 1a activities will include a broad due diligence assessment by all parties and project definition and scoping exercise including consultation with Bermuda and all relevant stakeholders and leading to the development of a conceptual structure and preliminary plan for the Project (the "Airport Project Concept"). It is the intent of the parties that during Phase 1a the list of activities will be completed at the CCC's Team cost and in a format and to the requirements of the CCC Team and the results shall be shared with Bermuda as necessary for Bermuda to determine if it wishes to move forward with the CCC Team for the development of the Airport.

The main activities relating to the development of the Airport Project Concept will include, without limitation:

- Aviation market, traffic and airline analysis



- Aeronautical and commercial revenue analysis
- Analysis of tourism and international business development initiatives and proposed enablers of change to reverse decline
- Initial Traffic forecast
- Master Plan review & collaborative workshop to prioritize and confirm capital investment needs
- Develop initial concept options for terminal area
- Initial construction schedule and execution plan
- Development of high level capital cost scenarios
- Operational cost, organization and staffing review
- High level operating model, structures and allocation of scope
- Exploration of commercial and organizational structures for future operations
- Commercial business review and identification of opportunities to optimize the commercial business
- Financial due diligence
- Review of economic growth and development plans of Bermuda Tourism Authority and Bermuda Business Development Agency
- Analysis of required financial support from Bermuda
- Preliminary financial model and exploration of financing options including potential debt and equity financing sources
- Preliminary technical and asset due diligence
- Preliminary legal due diligence
- Assessment of Bermuda's local capacity and development
- Outline of the local procurement strategy options which provide transparency and opportunity for consultation by Bermuda

Immediately following the execution of this Letter Agreement, the CCC Team will be given access to all relevant information, data, studies, personnel, advisors and past advisors of Bermuda that are relevant to the Project, including access to all relevant authorities and stakeholders for the purpose of conducting their due diligence examination of the Airport Project ("**Bermuda Data**"). The parties agree that all Bermuda Data is the proprietary and highly confidential information of Bermuda and all Bermuda Data that is known to, or is in the possession of, CCC and any CCC Team member shall be kept in the strictest confidence, shall only be used for the purposes of this LOA and shall be protected and kept secure from unauthorized viewing, use, transmission, reprography, or access, as well as from any harm, theft, misappropriation, sabotage or corruption in accordance with generally accepted professional practices and standards of care within Canada.

During Phase 1a, the parties will hold collaborative planning and design workshops with the Airport management team and its advisors as well as other relevant stakeholders, in order to discuss and build consensus on the Airport Project Concept, taking into account all relevant



technical, operational, risk management, legal compliance, economic and political considerations.

The Airport Project Concept shall include, without limitation, high level design concepts, preliminary capital cost estimates, preliminary financial modeling and a preliminary financial plan as well as an indicative outline of the proposed commercial and operating structures. The Airport Project Concept developed by the CCC Team will be presented to, and shared with, Bermuda at the conclusion of Phase 1a.

The target date for the conclusion of Phase 1a is *December 31, 2014*.

#### **Phase 1b- Airport Development Agreement**

At the conclusion of Phase 1a, the parties will arrive at a 'Go-No-Go' decision for the Project; if the Project is a 'Go' for both parties, the parties will expeditiously proceed to negotiate and enter into a definitive Airport Development Agreement (the "**Airport Development Agreement**") which shall set out the agreed plan (the "**Airport Development Plan**") by which the Project will be advanced from Airport Project Concept to full implementation and performance. The Airport Development Plan shall form a fundamental and material part of the Airport Development Agreement. Either party may decide not to proceed with the Project at any time prior to the completion and execution of the Airport Development Agreement without obligation to the other party, including to any member of the CCC Team.

Required legislative, regulatory or other government approvals of Bermuda and Canada will be expressly identified in the Airport Development Agreement and required to be in place prior (as pre-conditions) to the effectiveness of the Airport Development Agreement.

The target date for the conclusion of Phase 1b is *March 31, 2015*.

In the event of a 'No-Go' decision by either Bermuda or the CCC Team, in the event that Bermuda wishes to use the work product of the CCC Team generated in Phase 1a ("**CCC Work Product**"), the CCC Team shall provide Bermuda with the right to use the CCC Work Product (whether only for its own internal purposes or for any other commercial purposes) subject to, and conditional upon, reasonable commercial terms and conditions (including with respect to CCC Team compensation) that are mutually agreed by the parties prior to any such use. In the event that the parties cannot agree upon the reasonable commercial terms and conditions, then upon the request of the CCC Team, Bermuda shall return all copies of the CCC Work product and provide a declaration that all copies have been deleted or destroyed.

In the event, however, that within a period of 3 years from a 'No-Go' decision, Bermuda elects to proceed with the Project including utilization of CCC Work Product, in addition to the right of compensation noted in the immediately preceding paragraph, the CCC team shall be granted a right of first offer to undertake the Project on reasonable terms and conditions, including based on the provisions and reinstatement of this Letter Agreement at that time. The provisions of this

1A

12.



paragraph and the one preceding it shall survive the termination of this Letter Agreement for any reason.

**Phase 2: Development Agreement Deliverables to Construction and Concession Contracts**

The intended target date for execution of the definitive agreements that will be required for the implementation of the Project (the "Construction and Concession Contracts") is *June 30, 2015*.

The main activities and deliverables relating to the Project for Phase 2 will be detailed in the Airport Development Agreement and will include:

- Detailed traffic demand forecasts
- Detail enablers required of change to promote growth
- Schematic design
- Detailed capital and operating costs
- Detailed construction schedule and execution plan
- Development of robust local procurement strategy
- Definition of regulatory structure and pathway to enabling legislation
- Financial model and financing plan
- Establishment of risk allocation model based on market precedents and anticipated lender requirements
- Envisioned Project organization and operating structures including role definition and scope allocation between Airport ProjectCo and Bermuda
- Project staffing and transition of personnel
- Commercial model including regulated fee structure, annual escalation formula and permitted development charges for future capital programs
- Required support from Bermuda
- Environmental processes
- Acquisition of any required land or right of way
- Operational transition on execution of agreements
- Exploration of multilateral and private sector financing sources
- Negotiation and execution of the Construction and Concession Contracts


**Phase 3: Financing Phase:**

Following execution of the Construction and Concession Contracts, the Project will enter into the financing phase. Key activities during the financing phase shall include:

- Lender due diligence activities including completion of traffic, revenue, operating cost and capital cost reports from third party advisors

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13.

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- Drafting, negotiation and execution of drop-down agreements including major subcontracts
  - Drafting and negotiation and execution of financing agreements
  - Promulgation of enabling legislation
  - Property rights and access secured
  - Assignment of existing contracts, as required
  - Regulated rates and charges established and published
  - Required Bermuda Government approvals, authorizations and permits in place
  - Receipt of an international investment grade credit rating by an internationally recognized rating agency
  - Requisite insurance coverage retained and in place
  - Lender approval of Airport Operating Budget
  - Completion of all required environmental studies and approvals by the relevant parties
  - Commercial agreements with tenants and subconcessionaires in place
  - Transfer and transition of employees
  - Financial Plan submitted and approved
  - Lender collateral package delivered and effect
  - Bermuda Government support arrangements finalized
  - Financial model delivered
  - Equity commitments secured
  - Opening of project accounts
  - Closing legal opinions
  - Canadian Government approvals issued
  - First drawdown request in place

The target date for Financial Close is *December 31, 2015*.

#### CCC Work Product

Except with respect to: (i) any confidential information of Bermuda; (ii) any studies, forecasts and designs that Bermuda has paid for to CCC or member of the CCC Team; (iii) the Airport Project Concept; and, (iv) other property that is owned by Bermuda, any proposal, concept, designs, materials and work product of any kind developed by CCC or members of the CCC Team (including CCC Work Product) will: (a) be the sole and exclusive property of CCC or the relevant member of the CCC Team; (b) discussions and negotiations with CCC or CCC Team members; and, (c) shall be kept confidential by Bermuda until the successful completion of negotiations and execution of the Construction and Concession Contracts, subject only to the requirements of applicable law. The provisions of this paragraph shall survive the termination of this Letter Agreement for any reason.

#### Interim Project & Initiatives

Any actual or reasonably contemplated material capital expenditure, operational changes or other activity or engagement on the part of Bermuda concerning the Project that may be materially relevant to the Project shall be disclosed by Bermuda to CCC and the CCC Team members.





### Exclusivity

From the date of this Letter Agreement, until March 31, 2015, CCC and the CCC Team shall have the exclusive right to implement the Project, subject to the terms set forth in this Letter Agreement and as otherwise agreed between the parties.

### Termination

Bermuda shall be entitled, on seven (7) days prior written notice, to terminate this Letter Agreement at any time prior to the execution of the Airport Development Agreement if either (a) Bermuda elects not to proceed with the Project for any reason, including in the event that CCC and its third party subcontractors or advisors fail to produce an Airport Project Concept that, in Bermuda's determination, fails to satisfy the commercial, economic and other public interest requirements of Bermuda; or (b) Bermuda approvals necessary to develop the Airport are not likely to be obtained; or (c) CCC or any member of the CCC Team fundamentally or materially breaches this Letter Agreement.

CCC shall be entitled, on seven (7) days prior written notice, to terminate this Letter Agreement at any time prior to the execution of the Airport Development Agreement if either: (a) CCC elects not to proceed with the Project for any reason; (b) a 'No-Go' decision is made during or at the end of Phase 1; (c) Bermuda fundamentally or materially breaches this Letter Agreement; (d) there is a material delay in reaching a 'Go-No-Go' decision; (e) if at any point CCC determines in its sole discretion that the Project is not viable; or (f) Government of Canada approvals have not been obtained.

In the event of termination by either party pursuant to the above provisions, save and except for the provisions noted herein to specifically survive the termination of this Letter Agreement, neither party shall have any liability, duty, compensation or payment obligation to the other whatsoever in connection with this Letter Agreement. Save and except for the provisions that survive termination specifically noted above, CCC and Bermuda shall not have any other duty, responsibility, liability or compensation obligations to the other in any connection therewith regardless of the nature, cause or circumstances of such termination, whether arising in law, equity or otherwise.

This Letter Agreement will automatically terminate upon execution of the Development Agreement. CCC and Bermuda agree that the period of project exclusivity in favour of CCC and the CCC Team, as well as the CCC's right to receive any compensation set out in this Letter Agreement shall survive any termination of this Letter Agreement for any cause whatsoever.

### Development Costs

The development of the Project during Phases 1, 2 and 3 will entail significant internal and third party development costs and expenses ("**Development Costs**") on the part of the CCC Team.

Until such time as an Airport Development Agreement is executed between the parties, Development Costs incurred by the CCC Team during Phase 1, assuming the scope and duration



of Phase 1 are as envisioned in this Letter Agreement, will be 'at the sole and exclusive cost of the CCC Team.

The parties acknowledge that the Development Agreement will contain a provision that substantiated Development Costs for Phases 1 and 2, plus a 20% mark-up, shall be reimbursed to CCC if Bermuda terminates the Airport Development Agreement for reasons other than expressly permitted therein or it otherwise abandons the Project, or otherwise refuses to perform same for reasons other than for material breach of the Airport Development Agreement by CCC.

The parties intend that in the case of a 'Go' after Phase 1a, all Development Costs that have been necessarily incurred in accordance with normative industry practices in Canada or internationally for a project of this nature and that are related to the development of the Project that have been incurred from the inception of Phase 1a shall ultimately be borne by the Project and form part of the project financing.

#### Miscellaneous Provisions


The parties agree that all information, documents, assessments, analyses, reports, calculations or work products provided by one party to the other party pursuant to this Letter Agreement shall be provided on an "as is" basis without any representation, warranty or covenant as to quality, completeness, accuracy, currency, or reliability and each party hereby disclaims and denies any such representation, warranty and covenant whatsoever.

Except as otherwise agreed herein with respect to Development Costs, each party shall pay their own respective legal, management, travel and administrative costs and expenses associated with this Letter Agreement and the negotiation and execution of the definitive agreements contemplated herein.

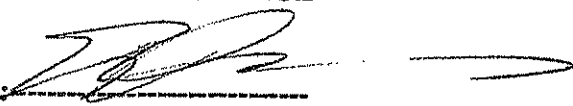
This Letter Agreement shall be provided exclusively governed by and in accordance with the laws of the British Overseas Territory of Bermuda. Each party hereby represents, warrants and covenants that it has all of the requisite authority, power and unqualified right to enter into and perform this Letter Agreement.

All disputes that cannot be amicably settled shall be referred to arbitration and settled pursuant to the rules and procedures set out in the *Arbitration Act* (Ontario), as that statute may be amended from time to time. Such arbitration shall be before a single arbitrator appointed either by the mutual agreement of the parties, or otherwise pursuant to the *Arbitration Act* (Ontario). The arbitration shall be governed by Bermuda law and shall take place in Toronto, Ontario or such other place as may be agreed upon by the parties. The decision of the arbitrator with respect to the dispute shall be final and binding on the parties.

The parties agree that the English language version of this Letter Agreement shall be the exclusive governing and interpretive linguistic version of this Letter Agreement, regardless of what other languages either party may otherwise translate this Letter Agreement into.

 IN WITNESS WHEREOF this Letter Agreement has been executed on behalf of THE GOVERNMENT OF BERMUDA as represented by the Ministry of Finance, and the CANADIAN COMMERCIAL CORPORATION by their duly authorized representatives on the date first written below.

MINISTRY OF FINANCE

By:   
The Hon. E.T. ( Bob ) Richards J.P., M.P.  
Minister of Finance

Date: 11/24/14

CANADIAN COMMERCIAL CORPORATION

By:   
Luc Allary  
Regional Director, Caribbean and Central America

Date: 10/11/14

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**Memorandum of Understanding**

**Between**

**CANADIAN COMMERCIAL CORPORATION**

**And**

**GOVERNMENT OF BERMUDA**

**November 10th, 2014**

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**MEMORANDUM OF UNDERSTANDING BETWEEN THE CANADIAN COMMERCIAL  
CORPORATION AND THE GOVERNMENT OF BERMUDA CONCERNING  
COOPERATION IN THE FIELD OF AIR TRANSPORT**

***Preamble***

The Canadian Commercial Corporation, a corporation established pursuant to the Canadian Commercial Corporation Act, R.S.C. 1985, c. C-14 and the Government of Bermuda, as represented by the Deputy Premier and Minister of Finance, hereinafter referred to as the "Participants", recognize the importance of collaboration to pursue projects for the mutual benefit of both public institutions.

This non-binding Memorandum of Understanding ("MOU") takes into account the Government of Bermuda's wish to access Canadian commercial capabilities for identified local Bermudian projects which would be subject to the approval of the Participants.

The Canadian Commercial Corporation works with foreign customers and Canadian suppliers to facilitate mutually acceptable commercial solutions to the participants. Contracts entered into by the Canadian Commercial Corporation provide the foreign buyer with the assurance of the Government of Canada that the contracts will be performed and completed in accordance with their terms and conditions.

AND, the Government of Bermuda recognizes that the redevelopment and efficient long term operation of Bermuda's L.F. Wade International Airport ("Airport"), and its associated infrastructure, are crucial conditions for the promotion of world class airport services and the overall domestic economic development of Bermuda.

**The Government of Bermuda and the Canadian Commercial Corporation have reached the following understanding:**

***1. PURPOSE***

This MOU is intended for the Participants to continue to foster collaboration through participation in mutual discussions and in the development of an Airport related infrastructure project that is considered to be of mutual benefit.

## **2. GUIDING PRINCIPLES**

The following principles form the basis for our discussions between the Canadian Commercial Corporation and the Government of Bermuda in developing projects principally related to Airport re-development.

- i. The Participants intend that this MOU is applicable to projects between the Participants and that projects may be the subject of this MOU by mutual consent.
- ii. The Canadian Commercial Corporation is committed to forming strategic alliances with state governments through their departments and their agencies to facilitate the development of specific opportunities for mutual benefit.
- iii. This MOU does not, and is not intended, to create binding contractual or legal obligations between the Participants, but instead to record the intentions of the Participants to engage in further discussions toward the culmination of formal agreements being entered into between the Participants.
- iv. This MOU will not, and is not intended to, impede or impair other opportunities or projects being pursued or that may exist by Canadian suppliers and the Government of Bermuda or any ministries, departments, agencies or organs thereof.
- v. The existence of this MOU does not preclude third parties, including Canadian suppliers, from directly contracting with Government of Bermuda, whether through its authorities, ministries, departments, agencies or other representatives.

## **3. GENERAL BENEFITS**

- i. The Canadian Commercial Corporation and the Government of Bermuda may refer to this MOU as a means to contract specified Airport projects as a means for contemplating, promoting, reviewing and implementing specified commercial projects within Bermuda. The Participants intend that any such Airport projects will be subject to the prior approvals of the Government of Bermuda and the Canadian Commercial Corporation and such other approvals as may be required by either Participant.
- ii. The Canadian Commercial Corporation, through qualified Canadian companies, can assist in the development and implementation of domestic projects that enhance performance of the transportation sector, and also provide optimal contribution to national, social and economic development within Bermuda.

- iii. The Canadian Commercial Corporation can assist in the structuring of potential commercial Airport projects, as appropriate. Depending on circumstances surrounding the acceptable projects, the Canadian Commercial Corporation has the capability of identifying appropriate sources of funding from official export credit agencies, commercial banks and private sources of funding in order to advance specific projects.
- iv. The Canadian Commercial Corporation would, whenever possible, during the course of project execution, promote and facilitate long term sustainability principles for the domestic benefit of Bermuda, such as training, education and knowledge (including technology) transfer.

#### **4. THE RESPONSIBILITIES OF THE PARTICIPANTS:**

The Canadian Commercial Corporation and the Government of Bermuda enter into this MOU with the intention of implementing its provisions at the earliest opportunity.

To facilitate project development and implementation, the Canadian Commercial Corporation will act as the point of contact in Canada for specified project enquiries from the Government of Bermuda.

#### **5. COMMUNICATION**

All correspondence and communication between the Participants will be made by and between:

The Government of Bermuda point of contact, which, for the purposes of this MOU, is:

The Government of Bermuda  
c/o Mr. Aaron Adderley  
General Manager  
L.F. Wade International Airport  
Department of Airport Operations  
3 Cahow Way  
St. George's GE CX, Bermuda  
Tel: (441) 299-4850 Email: atadderley@gov.bm

and

The Canadian Commercial Corporation point of contact which, for the purposes of this MOU, is:

Canadian Commercial Corporation

c/o Mr. Donald Olsen  
Director, Business Development and Sales  
11<sup>th</sup> floor, 50 O'Connor Street  
Ottawa, Ontario, Canada, K1A 0S6  
Tel: (613) 995-0946 Email: dolsen@ccc.ca

## 6. DURATION

This MOU will take effect upon its execution and delivery, and it will remain in effect for a period of three (3) years. The term of this MOU may be extended upon the mutual consent of the Participants.

## 7. TERMINATION


This MOU may be terminated at any time by either Party, upon thirty (30) days prior written notice. However, the validity of any other contract, agreement or obligation that may exist in connection with this MOU will not be affected by the termination of this MOU.

**Signed** in duplicate in Bermuda, on this 10th day of November 2014, in the English and French languages.

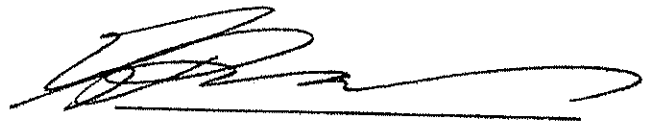
**FOR THE CANADIAN COMMERCIAL  
CORPORATION**



**IN THE PRESENCE OF**



**FOR THE GOVERNMENT OF  
BERMUDA**



**IN THE PRESENCE OF**







GOVERNMENT OF BERMUDA

Ministry of Finance

Accountant General Department

## Memorandum

**To:** Anthony Manders – Financial Secretary; Francis Richardson – PS MTDT  
**From:** Curtis Stovell – Accountant General  
**Date:** 11<sup>th</sup> May 2015  
**Subject:** Airport Redevelopment Sole Source

This memorandum is a follow-up to my earlier memo – “Sole Source Engagement of Canadian Commercial Corporation” – dated 25<sup>th</sup> September 2014 (attached FYI).

In the conclusion of the above-noted memorandum, I waived the requirement for 3 quotations, under the condition that “...when available, further information be provided on CCC’s fees, even at a high level, to enable an evaluation of value for money for their services.” At this time I am requesting that my office be provided with the value for money analysis that has been performed in this respect. It is critical that this information be provided prior to the go/no-go redevelopment decision. This question was raised again at the end of the 7<sup>th</sup> May Public Accounts Committee meeting. The information can be provided to me via email.

Additionally, note that based on the information available, I consider the use of a general contractor hand-picked by CCC to also be a sole source requiring ACG approval to waive Financial Instructions requirements for multiple quotes. It is my expectation that a formal request to sole source will be forthcoming to me in writing to that effect, allowing me and the OPMP sufficient time to digest, query and respond.

Particularly in light of recent items in the press alluding to prior contact of the MOF by the contractor identified by CCC, it is critical that all aspects of this project’s consideration follow the current F.I. requirements and be able to stand up to the highest degree of scrutiny.

I greatly appreciate your assistance.



GOVERNMENT OF BERMUDA

Ministry of Finance

Accountant General's Department

## Memorandum

To: Anthony Manders – Financial Secretary; File  
From: Curtis Stovell – Accountant General  
Date: 7<sup>th</sup> March 2016  
Subject: Airport Redevelopment Sole Source

This memorandum is a follow-up to my two earlier memos dated 25<sup>th</sup> September 2014 and 11<sup>th</sup> May 2015.

In my May 11 memo I indicated that I considered the selection of a contractor (Aecon) by CCC to be a sole source requiring ACG approval to waive Financial Instructions. I note the following excerpt from the CCC document outlining their selection of contractor:

**"In the case of the redevelopment of the L.F. Wade International Airport in Bermuda, CCC was introduced to the potential opportunity by Aecon, a Canadian company."**

I was initially of the understanding that it was CCC who introduced Aecon to this transaction. My read of this is that Aecon was the intended construction partner, which was not my initial understanding when the CCC Letter Agreement (LA) was provided to me. If it is fact that Aecon was in train prior to the engagement of CCC and the intent was far more forward looking than I could appreciate at the time, I can understand the Minister's view that my sole source comments encompassed the breadth of the project. However, based on my limited awareness with respect Aecon at that time, that certainly could not have been my intent. I have reviewed the correspondence I have in hand, and did not find any mention of Aecon leading up the sole source memo I issued in 2014.

Based on my read of the above-mentioned CCC document and their indication that Aecon was the originator of the transaction, I can say that I was under the impression that the construction contractor was yet to be selected. My interpretation of CCC's selection document is that my original impression was incorrect. However, based on my understanding at that time that there was no contractor selected, I was not providing permission through the construction phase of the project. My understanding was that a contractor would be identified subsequent to my sole source permission memo and I would have requested information on Aecon at the time of the LA, had I been aware that identification had already taken place.

To: Anthony Manders – Financial Secretary  
From: Curtis Stovell – Accountant General  
Date: 7<sup>th</sup> March 2016  
Subject: Airport Redevelopment Sole Source

Notwithstanding my comments above, it is clear that CCC thoroughly vets its counterparties using a fairly rigorous set of procedures and this testifies to the reputability and soundness of Aecon. This supports the likelihood of satisfactory execution of the project. What it does not provide clarity on is whether there were/are alternative suitable entities capable of similar execution that CCC might have worked with, and that is ordinarily one of the key elements of a sole source request. This doesn't preclude sole source permission being given, but does result in a diminished argument in my view.

With there having been measures identified to address deficiencies per the 2015 entrustment letter, I look forward to the following:

1. Agreement of the UK on the measures proposed by Government to address the key gaps;
2. The required evidence-based report from Government on the completion of the agreed-upon measures;

Once the two above items are complete, I am satisfied that the conditions to provide sole source permission for the project will have been met.

*US*  
UPDATE:  
BASED ON A COMMUNICATION FROM  
THE FCO TO THE GOVERNOR, DATED MAY 6, 2016,  
THE UK GOVT HAS NOW AGREED TO THE MEASURES  
AS OUTLINED BY THE BDA GOVT. I.E. ITEM #1 ABOVE  
IS SATISFIED *CS* 5/30/2016

## Stovell, Curtis

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**From:** Manders, Anthony  
**Sent:** Friday, September 26, 2014 10:27 AM  
**To:** Stovell, Curtis  
**Subject:** Airport  
**Attachments:** CCC Bermuda MOU Airport Redevelopment -18 July 2014.doc; CCC Bermuda Letter Agreement 21 July 2014.doc  
  
**Sensitivity:** Confidential

Curtis,

Attached are the MOU and LOA. These documents are currently being worked on by legal counsel so these are the final versions.

AM

*Anthony Manders, C.G.A  
Financial Secretary  
Government of Bermuda | Ministry of Finance*

*Government Administration Building  
30 Parliament Street, Hamilton HM 12, Bermuda  
Direct: 441 297 7501  
Fax: 441 275 5727  
E-mail: [amanders@gov.bm](mailto:amanders@gov.bm)*



**Stovell, Curtis**

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**From:** Manders, Anthony  
**Sent:** Friday, September 26, 2014 6:17 PM  
**To:** Stovell, Curtis  
**Subject:** CCC  
**Attachments:** Memo - FI and CCC airport project Sept2014 (2).docx  
**Sensitivity:** Confidential

Minister,

Attached is the ACG reply; he views this as a sole source as Government is paying fees to CCC:

Here is his synopsis. It may not be exactly what we were looking for though. Comments?

## Memorandum

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

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### Items under consideration

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

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

### Objective

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

### Relevant FI

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

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

**s.8.3.1:** A minimum of three written quotations or tenders, using the Invitation to Tender or Request for Quotation, are to be considered before the acceptance of the supply of goods or services in excess of

\$50,000...Contracts included here are for goods and services in excess of a total of \$50,000, which are not relevant to or part of expenditure for Capital Development as defined in s.12.1.2.

**s.12.1.2:** The accounting responsibility for capital development expenditure rests with the Permanent Secretary of Public Works...The exception of (to) the assigned accounting responsibility includes capital development projects for which the Minister of Finance delegates the responsibility for expenditure to a Ministry other than Public Works...

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

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

### Discussion

#### **Memorandum of Understanding**

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

#### **Letter of Agreement**

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

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

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

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

#### **Factors Considered**

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

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

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

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

### Conclusion

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

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

*Anthony Manders, C.G.A*  
*Financial Secretary*  
*Government of Bermuda | Ministry of Finance*

*Government Administration Building*  
*30 Parliament Street, Hamilton HM 12, Bermuda*  
*Direct: 441 297 7501*  
*Fax: 441 275 5727*  
*E-mail: [amanders@gov.bm](mailto:amanders@gov.bm)*



## **Stovell, Curtis**

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**From:** Manders, Anthony  
**Sent:** Friday, August 15, 2014 10:26 AM  
**To:** Stovell, Curtis  
**Cc:** Adderley, Aaron  
**Subject:** FW: Draft engagement letter and CIBC Work Plan  
**Attachments:** 2014-07-23 Bermuda Airport\_FA engagement letterLM.doc; 2014-07-21 LF Wade Redev - Scope of Work - final.docx

**Importance:** High

Curtis,

This is something for you when you are back in the Office.

The Government is moving forward with the re-development of the airport. We have been exploring various options to fund capital projects. One such alternative involves contracting with the Canadian Commercial Corporation (CCC) within the Government of Canada. CCC is a Crown corporation (government-owned enterprise) of the Government of Canada and is governed by its enacting legislation, the 1946 Canadian Commercial Corporation Act (ACT). The Act outlines CCC's broad mandate, which is to assist in the development of trade by helping Canadian companies access government procurement markets abroad and by helping Governments of other nations obtain goods (and services) from Canada. The legislation also provides CCC with a range of powers, including the ability to export goods (and services) from Canada either as principal or as agent in such a manner and to such an extent as it deems appropriate.

We are in the process of getting approval from the UK to move forward with this proposal.

Meanwhile we have been trying to line up the advisors we need to move this complex project forward. The Minister has been working with CIBC on this and they have sent the attached proposal for the Minister's consideration. He has confidence in CIBC and would most likely wish to hire them after the due diligence has been conducted.

We are seeking to ensure all is in order if we are to engagement CIBC. As these are specialized services we most likely will seek to sole source this and may need a waiver from FIs.

We can discuss when you are back in the office.

AM

**From:** Richards, Everard T.  
**Sent:** Sunday, August 03, 2014 9:14 AM  
**To:** Manders, Anthony  
**Subject:** FW: Draft engagement letter and CIBC Work Plan  
**Importance:** High

FS

I hope you've enjoyed your cup match holiday. I know you enjoyed the result!

However, it's back to work. Attached is Laurie's contract and work plan. I need this before Cabinet on Tuesday!!! Please prepare a short Cab Memo in this regard.

ETR



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**From:** Mahon, Laurie [Laurie.Mahon@cibc.com]  
**Sent:** Wednesday, July 30, 2014 1:23 PM  
**To:** Richards, Everard T.; Adderley, Aaron  
**Cc:** Fleming, Andrew; Maly, Jiri; Reaney, Craig  
**Subject:** Draft engagement letter and CIBC Work Plan

Hi Bob. Attached please find a draft of our proposed engagement letter and work plan for the airport P3. We understand that CCC/Aecon have sent you an MOU, and we would like to be in a position to help you review and negotiate that. We are available to talk at your earliest convenience.

Warm regards, Laurie

 **Laurie Mahon** | Managing Director and Head, Global Infrastructure Finance | CIBC World Markets Corp | 425 Lexington Avenue | New York, NY 10017 | 212-856-3783 | Mobile: 973-294-8972

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**Stovell, Curtis**

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**From:** Manders, Anthony  
**Sent:** Friday, September 26, 2014 4:16 PM  
**To:** Stovell, Curtis  
**Subject:** FW: Urgent.... CCC: LOA  
  
**Importance:** High  
**Sensitivity:** Confidential

Curtis,

FYI: As advised we are still working on these documents; at the end of this all of this will be clarified or there will be a no-go. Good to have a good lawyer.

Do you need anything else? Will you have a response today.

AM



**Stovell, Curtis**

---

**From:** Manders, Anthony  
**Sent:** Friday, September 26, 2014 2:33 PM  
**To:** Stovell, Curtis  
**Subject:** RE: Airport

**Sensitivity:** Confidential

Curtis,

OPMP had some questions and I replied to them just recently. They asked why Canada and if any other countries had similar models. CCC did do an airport in Quito, Ecuador. Aaron knows the GM at that airport and he provided his support of the CCC model. The Quinto GM was at the meeting we had in Canada and gave glowing reports. As you may know from your time in Transport MPW don't get involved in airport projects, so they have not been involved.

**From:** Stovell, Curtis  
**Sent:** Friday, September 26, 2014 12:05 PM  
**To:** Manders, Anthony  
**Subject:** RE: Airport  
**Importance:** High  
**Sensitivity:** Confidential

FS,

Did OPMP provide MOF with any feedback on the retention of CCC for the project? For example, specifically:

- CCC's performance track record?
- Whether CCC's model is comparable to industry standards for this type of development?
- Whether the urgency and national importance of the matter are sufficient justification for sole sourcing CCC?
- Providing MOF with names of other organisations that could provide services on a similar scale?

Additionally – as this is a capital project, what has MPW' involvement been in the process to date?

Thanks,  
Curtis

Curtis A. Stovell, CPA-CA  
Accountant General

Internal Ext. 2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Friday, September 26, 2014 11:43 AM  
**To:** Stovell, Curtis  
**Subject:** RE: Airport  
**Sensitivity:** Confidential

Here is the CCC White Paper.

I'll get the answers to your questions and revert back.

AM

**From:** Stovell, Curtis  
**Sent:** Friday, September 26, 2014 11:40 AM  
**To:** Manders, Anthony  
**Subject:** RE: Airport  
**Importance:** High  
**Sensitivity:** Confidential

FS,

It was the annexes to the CM that I did not have. The MOU is one of them. Do you also have Annex I (illustration of Govt to Govt infrastructure overview)? That would be helpful.

Please see the following excerpt from the draft LOA, in the Development Costs section:

**"...Development Costs incurred through to financial close shall be reimbursed to the CCC Developer, together with a market based multiplier and development fee, at financial close."**

A couple of questions from that excerpt: i) what are the multiplier and fee? ii) how have we satisfied ourselves that the multiplier and development fee are industry standard/competitive/value for money?

Thanks,  
Curtis

**Curtis A. Stovell, CPA-CA**  
**Accountant General**

Internal Ext. 2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Friday, September 26, 2014 10:27 AM  
**To:** Stovell, Curtis  
**Subject:** Airport  
**Sensitivity:** Confidential

Curtis,

Attached are the MOU and LOA. These documents are currently being worked on by legal counsel so these are the final versions.

AM

*Anthony Manders, C.G.A*  
*Financial Secretary*  
*Government of Bermuda | Ministry of Finance*

*Government Administration Building*

30 Parliament Street, Hamilton HM 12, Bermuda  
Direct: 441 297 7501  
Fax: 441 275 5727  
E-mail: [amanders@gov.bm](mailto:amanders@gov.bm)



## Stovell, Curtis

---

**From:** Stovell, Curtis  
**Sent:** Friday, August 15, 2014 12:30 PM  
**To:** Manders, Anthony  
**Subject:** RE: Draft engagement letter and CIBC Work Plan

Thanks FS. I will take a look for certain. FYI, I would like to be actively involved in the airport redevelopment as it proceeds.

Rgds,  
Curtis

Curtis A. Stovell, CPA-CA  
Accountant General

Internal Ext. 2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

---

**From:** Manders, Anthony  
**Sent:** Friday, August 15, 2014 10:26 AM  
**To:** Stovell, Curtis  
**Cc:** Adderley, Aaron  
**Subject:** FW: Draft engagement letter and CIBC Work Plan  
**Importance:** High

Curtis,

This is something for you when you are back in the Office.

The Government is moving forward with the re-development of the airport. We have been exploring various options to fund capital projects. One such alternative involves contracting with the Canadian Commercial Corporation (CCC) within the Government of Canada. CCC is a Crown corporation (government-owned enterprise) of the Government of Canada and is governed by its enacting legislation, the 1946 Canadian Commercial Corporation Act (ACT). The Act outlines CCC's broad mandate, which is to assist in the development of trade by helping Canadian companies access government procurement markets abroad and by helping Governments of other nations obtain goods (and services) from Canada. The legislation also provides CCC with a range of powers, including the ability to export goods (and services) from Canada either as principal or as agent in such a manner and to such an extent as it deems appropriate.

We are in the process of getting approval from the UK to move forward with this proposal.

Meanwhile we have been trying to line up the advisors we need to move this complex project forward. The Minister has been working with CIBC on this and they have sent the attached proposal for the Minister's consideration. He has confidence in CIBC and would most likely wish to hire them after the due diligence has been conducted.

We are seeking to ensure all is in order if we are to engagement CIBC. As these are specialized services we most likely will seek to sole source this and may need a waiver from FIs.

We can discuss when you are back in the office.

AM

**From:** Richards, Everard T.  
**Sent:** Sunday, August 03, 2014 9:14 AM  
**To:** Manders, Anthony  
**Subject:** FW: Draft engagement letter and CIBC Work Plan  
**Importance:** High

FS

I hope you've enjoyed your cup match holiday. I know you enjoyed the result!

However, it's back to work. Attached is Laurie's contract and work plan. I need this before Cabinet on Tuesday!!!  
Please prepare a short Cab Memo in this regard.


ETR

---

**From:** Mahon, Laurie [Laurie.Mahon@cibc.com]  
**Sent:** Wednesday, July 30, 2014 1:23 PM  
**To:** Richards, Everard T.; Adderley, Aaron  
**Cc:** Fleming, Andrew; Maly, Jiri; Reaney, Craig  
**Subject:** Draft engagement letter and CIBC Work Plan

Hi Bob. Attached please find a draft of our proposed engagement letter and work plan for the airport P3. We understand that CCC/Aecon have sent you an MOU, and we would like to be in a position to help you review and negotiate that. We are available to talk at your earliest convenience.

Warm regards, Laurie

 **Laurie Mahon** | Managing Director and Head, Global Infrastructure Finance | CIBC World Markets Corp | 425 Lexington Avenue | New York, NY 10017 | 212-856-3783 | Mobile: 973-294-8972

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**Stovell, Curtis**

---

**From:** Stovell, Curtis  
**Sent:** Friday, September 26, 2014 4:04 PM  
**To:** Manders, Anthony  
**Subject:** RE: LOA

**Sensitivity:** Confidential

Thanks FS.

CAS

Curtis A. Stovell, CPA-CA  
Accountant General

Internal Ext. 2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Friday, September 26, 2014 2:58 PM  
**To:** Stovell, Curtis  
**Subject:** FW: LOA  
**Sensitivity:** Confidential

FYI:

---



## Stovell, Curtis

---

**From:** Stovell, Curtis  
**Sent:** Thursday, November 20, 2014 1:43 PM  
**To:** Manders, Anthony  
**Subject:** RE: Recent News re. LF Wade International Airport project

FS,  
A couple of recommended changes below. I'm not comfortable with the term "project" when it comes to the discussion of FI. My review was limited to the issue of engaging CCC to manage this process. I did not give the green light for them under the assumption that the project would be given automatically. I would steer clear of putting "project" and FI in the same breath.

Rgds,  
Curtis

I can also confirm that we have already consulted with the Accountant General, who is responsible for Financial Instructions, and have received the required approval to move forward with *the engagement of CCC project*. However Mr. Speaker it is important to note that no contracts have been issued for any works, and that prior to any contractors being brought on board, this Government will establish the procurement parameters with CCC based on best practices. We will no doubt share this information with the general public. The procurement process will be completely transparent.

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6414-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Thursday, November 20, 2014 1:26 PM  
**To:** Stovell, Curtis  
**Subject:** RE: Recent News re. LF Wade International Airport project

What about this?

Mr. Speaker I can confirm that we have received the appropriate Entrustment Letter from Her Majesty's Government in the UK to move forward with the project, despite the fact that a recent legal opinion established that a separate Entrustment was not necessary. I can also confirm that we have already consulted with the Accountant General, who is responsible for Financial Instructions, and have received the required approval to move forward with the

project. However Mr. Speaker it is important to note that no contracts have been issued for any works, and that prior to any contractors being brought on board, this Government will establish the procurement parameters with CCC based on best practices. We will no doubt share this information with the general public. The procurement process will be completely transparent.

**From:** Stovell, Curtis  
**Sent:** Thursday, November 20, 2014 9:19 AM  
**To:** Manders, Anthony  
**Subject:** RE: Recent News re. LF Wade International Airport project  
**Importance:** High

FS,

There are things that I would quibble with in the Shadow Minister's statements, but for me the problematic statement is:

"...for the Minister to get on the radio this morning and say that it would take too long and too expensive (to do) a proper RFP flies in the face of the financial instructions of this country and may also contravene the Good Governance Act..."

What is key is precisely what the Minister's original statement was (which I do not have). The context of this entire matter needs to be clarified so that it is understood that NO contracts have been issued for ANY works. And that prior to any contractors being brought on board, this Government will establish the procurement parameters with CCC based on BEST PRACTICES. The offer of information sharing with the Opposition once we reach that point could even be made if desired. There would be no harm in us allowing the contracting and purchasing process be completely transparent.

Secondly, IF the Shadow Minister's concern is that CCC's role as overarching manager of the project is what should have been RFP'd, then the Minister's reference to the length and cumbersome nature of conducting an RFP is absolutely on point. But clearly, regardless of local involvement in the execution of the project, which is an objective and a certainty, there is no capacity amongst local firms to do what CCC has been asked to do. Any specifics that you want to take from my memo granting the waiver to advertise are fine.

As far as the numbers mentioned, I don't know that it's worth a back and forth on that. However, it has to be noted that if we use the Shadow Minister's \$25M of revenue generated by LF Wade Int'l, we also must consider the actual cost of RUNNING the facility. 2012/13 and 2013/14 actual expenditures were in excess of \$25M each yr. The focus should be on the net contribution, not the revenues.

That's all I've got.

Rgds,  
Curtis

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6414-2622

Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Thursday, November 20, 2014 8:35 AM  
**To:** Stovell, Curtis  
**Subject:** RE: Recent News re. LF Wade International Airport project

Curtis,

Do you have any thoughts/comments on this. I want to put something in the Ministerial Statement the Minister is making tomorrow.

AM

**From:** Stovell, Curtis  
**Sent:** Wednesday, November 19, 2014 12:45 PM  
**To:** Fox, David G.  
**Cc:** Manders, Anthony  
**Subject:** RE: Recent News re. LF Wade International Airport project

Thanks very much. We will take a look and get back to you.

Rgds,  
Curtis

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6414-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Fox, David G.  
**Sent:** Wednesday, November 19, 2014 12:44 PM  
**To:** Stovell, Curtis  
**Cc:** Manders, Anthony  
**Subject:** RE: Recent News re. LF Wade International Airport project

Dear Sirs,

Please see (attached) the original email that was sent to me late yesterday by ZBM's Tari Trott, which included the text of the reported remarks by Mr. Burt.

I am aware that the remarks were carried yesterday and this morning on the TV news, and also on radio newscasts.

I have not found any other instance in any other local media of these remarks.

I hope this helps.

Best regards,

Dave



**David Fox**  
Public Affairs Officer  
**Government of Bermuda**  
|  
**Department of Communication and Information** |  
Global House | 43 Church Street| Hamilton, Bermuda HM12

**Main Line: 441 295 5151**

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**E: [dqfox@gov.bm](mailto:dqfox@gov.bm)**

**[www.dci.gov.bm](http://www.dci.gov.bm)**

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**From:** Stovell, Curtis  
**Sent:** Wednesday, November 19, 2014 12:34 PM  
**To:** Fox, David G.  
**Cc:** Manders, Anthony  
**Subject:** Recent News re. LF Wade International Airport project

Good day David,

I have become aware of certain claims in the press by the Shadow Minister of Finance that the above announced project constitutes a violation of Financial Instructions, which are my responsibility as Accountant General. The statements made to the press may warrant a formal release from us to address them. However, I do not have the full scope of all coverage on this issue.

Would it be possible for you to send me a list/summary of every article on this topic? The Financial Secretary and I will review all of what has been said to determine if a formal response should be put out. If you have any questions, do not hesitate to contact me.

Regards,  
Curtis

**Curtis A. Stovell, CPA, CA**  
Accountant General



Ministry of Finance  
Government of Bermuda

Accountant General's Department  
51 Andrew's Place, Church St.  
Hamilton, HM 12  
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Direct Tel: 441-279-2622

Fax: 441-296-2911  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

## Stovell, Curtis

---

**From:** Manders, Anthony  
**Sent:** Monday, September 29, 2014 9:50 AM  
**To:** Stovell, Curtis  
**Subject:** RE: Sole Source CCC

**Importance:** High

Curtis,  
Minister was fine with your submission. Couldn't really pick it apart. Can you make the minor changes that I suggested and sign and pdf. Back to me.  
Good work!

AM

**From:** Stovell, Curtis  
**Sent:** Friday, September 26, 2014 5:14 PM  
**To:** Manders, Anthony  
**Subject:** Sole Source CCC  
**Importance:** High

FS,  
Please see the attached. I've attached pdf and Word in case you have comments so that either of us can make the changes. Otherwise the pdf should be used. It may not be exactly what you are looking for though. See the conclusion at the bottom of the memo. I think that's the best I can do without making it look as if I simply agreed to everything. There are a couple of things that need to be taken care of.  
Rgds,  
Curtis



## Stovell, Curtis

---

**From:** Stovell, Curtis  
**Sent:** Monday, September 29, 2014 11:57 AM  
**To:** Manders, Anthony  
**Subject:** RE: Sole Source CCC  
**Attachments:** SKMBT\_C45414093010500.pdf

FS,  
Please see the attached pdf final document, changes made. Do not hesitate to contact me if there are any further questions.  
Regards,  
Curtis

**Curtis A. Stovell, CPA-CA**  
**Accountant General**

Internal Ext. 2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Monday, September 29, 2014 9:50 AM  
**To:** Stovell, Curtis  
**Subject:** RE: Sole Source CCC  
**Importance:** High

Curtis,  
Minister was fine with your submission. Couldn't really pick it apart. Can you make the minor changes that I suggested and sign and pdf. Back to me.  
Good work!

AM

**From:** Stovell, Curtis  
**Sent:** Friday, September 26, 2014 5:14 PM  
**To:** Manders, Anthony  
**Subject:** Sole Source CCC  
**Importance:** High

FS,  
Please see the attached. I've attached pdf and Word in case you have comments so that either of us can make the changes. Otherwise the pdf should be used. It may not be exactly what you are looking for though. See the conclusion at the bottom of the memo. I think that's the best I can do without making it look as if I simply agreed to everything. There are a couple of things that need to be taken care of.  
Rgds,  
Curtis

## **Stovell, Curtis**

---

**From:** Manders, Anthony  
**Sent:** Friday, September 26, 2014 4:19 PM  
**To:** Stovell, Curtis  
**Subject:** RE: Urgent.... CCC: LOA  
**Sensitivity:** Confidential

Thanks Curtis.

AM

**From:** Stovell, Curtis  
**Sent:** Friday, September 26, 2014 4:18 PM  
**To:** Manders, Anthony  
**Subject:** RE: Urgent.... CCC: LOA  
**Sensitivity:** Confidential

Working on the response now (it feels like forever). Will have before eob today.

Curtis A. Stovell, CPA-CA  
Accountant General

Internal Ext. 2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Friday, September 26, 2014 4:16 PM  
**To:** Stovell, Curtis  
**Subject:** FW: Urgent.... CCC: LOA  
**Importance:** High  
**Sensitivity:** Confidential

Curtis,

FYI: As advised we are still working on these documents; at the end of this all of this will be clarified or there will be a no-go. Good to have a good lawyer.

Do you need anything else? Will you have a response today.

AM

**From:** Duncan Card [<mailto:CardD@bennettjones.com>]  
**Sent:** Friday, September 26, 2014 3:44 PM  
**To:** Manders, Anthony  
**Cc:** Adderley, Aaron; Paul Blundy  
**Subject:** Urgent.... CCC: LOA  
**Importance:** High  
**Sensitivity:** Confidential

FS,

The following is our advice for further revisions to the LOA and to answer your questions:

First, with regard to the first penalty amount of 35 % for termination by Bermuda, we feel that the 35% "penalty" is unreasonable for a termination situation, and so we took that out of our first iteration. The CCC/Aecon put it back in. Paul and I think it should stay out.

Second, with respect to the Development Cost multiplier, there are several issues and recommended changes.

1. That obligation must be qualified ( at the outset of that paragraph ) by the addition of the parenthetical "excluding legal costs" because those are not reimbursable (see the obligation for the parties to pay their own legal costs under " Miscellaneous Provisions", previously titled "Other Costs")
2. We argue that the phrase that you have quoted should be deleted since the previous sentence stipulates that the Development Costs will be rolled-in to the overall project costs as part of the project financing, which CCC/Aecon will profitably recoup, and therefore they do not need to pull them out for "additional" ( double dipping ) compensation. Why would we add on another layer of profit unless we are getting the underlying costs at true out-of-pocket cost.
3. There is no way we could establish a "market based" multiplier because there are too many factors to consider and no visibility into any kind of comparable "market". A multiplier would also be punitive in a circumstance where the project is a "Go" ? Is it meant to be a reward to CCC/Aecon for a Go forward performance ?
4. What is the multiplier for? If we are forced to accept a mark-up on development costs it should be on a principled basis, such as an objectively verifiable 10% for overhead and profit.
5. As noted above, what is the "Development fee" going to add? Presumably they will have included profit in their pricing.

We recommend that the next draft of the LOA that is returned to CCC both deletes the 35% penalty for termination ( although we might end up at negotiating a 10 or 12 % mark-up ) and deleting the entire multiplier provision that you have identified for all of the above noted reasons.

Duncan

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**Stovell, Curtis**

---

**From:** Simmons, Graham D.  
**Sent:** Wednesday, December 16, 2015 7:12 PM  
**To:** Stovell, Curtis  
**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

No.

**From:** Stovell, Curtis  
**Sent:** Wednesday, December 16, 2015 7:11 PM  
**To:** Simmons, Graham D.  
**Subject:** Fw: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Graham, was the OPMP privy to specific areas/items targeted and addressed during the negotiation of the ADA?

**From:** [castovell@gov.bm](mailto:castovell@gov.bm)  
**Sent:** Wednesday, December 16, 2015 19:06  
**To:** Manders, Anthony  
**Subject:** Re: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

OK thanks. In your view, what many deficiencies were already addressed? I can tell what BJ believe are left by their gap memo, but I'm up against the clock too. Is there a gist of what was deemed already addressed?  
Thanks

**From:** Manders, Anthony  
**Sent:** Wednesday, December 16, 2015 18:56  
**To:** Stovell, Curtis  
**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Curtis,

Duncan was not in the Office today but provided this quick reply. Hope this helps.

**Answer:** Without having the time ( today ) to go back through the entire Deloitte Report and identify every single gap ( small and/or immaterial ) to explain how they have now been superseded by the negotiations of the ADA, it is our preliminary view ( subject to Deloitte's input noted below ) that all of the Deloitte Report gaps that are not expressly listed in the DRAFT "summary of gaps list" have either now been resolved ( superseded ) by the ADA, or are not applicable at all because they could only have been undertaken in the context of a competitive tendering situation, or they are minor in nature and ( thus ) not material to the good governance of the Airport Project. At this time ( subject to Deloitte's advice ), we believe that both the gaps that are currently delineated, and their corresponding remedial measures, will be acceptable to the FCO ( as stipulated in the Entrustment Letter ).

It is important to know that we have taken a very diligent approach to our assessment. For that purpose, the Government has retained Deloitte to provide us with their advice on this very matter. We have asked the author of the Deloitte Report to review our DRAFT summary list of Green Book gaps ( which you are now referring ) and to advise us if the number of gaps we have identified can, in fact, be reduced, ....or if we have missed any gaps that they feel are not redundant and are material to the transaction's good governance ( as it has been legitimately structured outside of a competitive tendering situation, and thus inherently not applicable to much of the Green Book ).

Finally if you read the last gap entry in our DRAFT gap summary, you may agree with us that ( at the end of the transaction, but before it is closed ) that one single undertaking ( once all of the business, commercial, governance, financial, social and risk allocation terms and conditions are fully known ) can fully address almost all of the gaps that are included in our current list of 23 gaps. We have not yet received any advice from Deloitte, although they have had that Draft summary gaps list since before the end of November.

**From:** Stovell, Curtis  
**Sent:** Wednesday, December 16, 2015 9:48 AM  
**To:** Manders, Anthony  
**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm  
**Importance:** High

Anthony,  
The Bennet Jones memo #1 5(iii) indicates that "many of the deficiencies" have been addressed. Can you provide me with the list of deficiencies being referred to. This is quite important.  
Thanks,  
Curtis

iii) Many of the Green Book deficiencies that were identified in the Report (as at May 8, 2015) have now been addressed and ameliorated by the Government in the subsequent course of the airport projects transactional development, including via certain terms and conditions of the Airport Redevelopment Agreement that was entered into between the Canadian Commercial Corporation ("CCC") and the Government as at August 24th, 2015; and,

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Wednesday, December 16, 2015 6:33 AM  
**To:** Stovell, Curtis  
**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Here it is:  
The Ministry received a waiver from Financial Instructions for the redevelopment of the Airport, on a sole source basis, by contracting with the Canadian Commerce Corporation using a Government to Government approach.

MOF position is thta this was for the entire project:

The Accountant General waived the requirement for 3 quotations under the FI "for the services to be provided under the LA". , based on numerous provisions of the Letter of Agreement the services to be provided under the LA expressly includes all of the subsequent agreements of the Project up to financial close.

The LA clearly includes the entire "series of commercial agreements concerning the structuring, development and implementation of the Project" ( page 1 of the LA ). The LA also states that " Each party reserves the right to negotiate the implementing commercial agreements concerning the Project... " ( Page 1 of LA ).

Even the numerous express references to the services in the LA in relation to the Airport Re-development Agreement are clearly anticipated in ( under ) the LA. The LA clearly sets out the agreement of the parties to proceed to negotiate all of the subsequent services and agreements necessary for, and up to, financial close.

With regard to the ACG's Memo, the following is noted :

The CCC fees are not a matter of the relationship between the Government and CCC. The fees paid to CCC by Aecon are a private matter as between a Prime Contractor and a Subcontractor, the liability for which are ultimately to be assumed by private investors not the Government.

The Government does not engage Aecon, therefore there was no need to seek another sole source waiver. The only agreement that the Government enters into is with CCC, the prime contractor. A sole source waiver has already been provided for this.

all liabilities and obligations are to the CCC.

I can also confirm that there was no prior contact of the MOF by the contractor identified by CCC (Aecon).

The Ministry has provided the ACG with the information on the fees and the CCC selection process of Aecon. The Ministry continues to work through this matter with the ACG and will keep him fully informed of the progress of this project.

Good Luck

AM

---

**From:** Stovell, Curtis

**Sent:** Tuesday, December 15, 2015 8:42 AM

**To:** Manders, Anthony

**Subject:** Re: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

FS,

It wouldn't hurt for me to have it.

Thanks

**From:** Manders, Anthony

**Sent:** Tuesday, December 15, 2015 08:35

**To:** Stovell, Curtis

**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Curtis,

Do you want to see what we sent to the PAC in support of the MOF position? They probably will ask you if these positions are reasonable.

Let me know.

---

**From:** Stovell, Curtis  
**Sent:** Monday, December 14, 2015 3:15 PM  
**To:** Somner, Clark  
**Cc:** Manders, Anthony  
**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Good day Mr. Somner.

I am confirming my availability for Thursday, December 17.

Rgds,  
Curtis

**Curtis A. Stovell, CPA, CA**  
**Accountant General**

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Somner, Clark  
**Sent:** Friday, December 11, 2015 12:10 PM  
**To:** Stovell, Curtis  
**Cc:** David Burt; [cole.simons@hsbcpb.com](mailto:cole.simons@hsbcpb.com)  
**Subject:** Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Good Day Mr. Accountant General,

The Chairman of the Public Accounts Committee requests your attendance at its next meeting, scheduled for **Thursday, 17<sup>th</sup> December 2015 at 2:00pm in the Senate Chamber.** Note that this meeting is expected to be open to the public.

Kind Regards.

*Clark W. Somner*  
*Deputy Clerk to the Legislature*

*Legislature Department*  
*House of Assembly*  
*21 Parliament Street*  
*Hamilton HM 12*  
*BERMUDA*

*Tel.: (441) 292-7408*  
*Fax: (441) 292-2006*  
*Email: [csomner@gov.bm](mailto:csomner@gov.bm)*





## **Stovell, Curtis**

---

**From:** Stovell, Curtis  
**Sent:** Thursday, December 17, 2015 6:29 PM  
**To:** Manders, Anthony  
**Subject:** Re: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Don't think they will call you. They will call Transport though.

**From:** Manders, Anthony  
**Sent:** Thursday, December 17, 2015 18:22  
**To:** Stovell, Curtis  
**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

So is this the end of the PAC saga or are they going to call me again?

AM

**From:** Stovell, Curtis  
**Sent:** Thursday, December 17, 2015 9:52 AM  
**To:** Manders, Anthony  
**Cc:** Simmons, Graham D.  
**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm  
**Importance:** High

Anthony,

Per the Minister's original email to the Governor:

3. The procurement will have a range of mechanisms that will allow the Government of Bermuda to assure value for money during the delivery of the project. These include the following:
  - a. The development work is meant to be phased, with the opportunity to pause at the end of each phase to confirm value for money continues to be delivered prior to the start of construction. What VFM confirmation work was performed at the end of the initial phase? If none, what are the specific phases referred to in this statement?
  - b. The Government will be independently advised on technical, economic, and finance issues, and will have full audit rights of any work completed or planned. In addition, contractors will be selected based on their commitment to deliver value for money, and will be required to demonstrate how they are delivering value for money during the development and delivery of the project. If value for money is not being delivered, the Government will have the rights to step in and replace contractors. Is this the case? Which contractors does Government have the right to replace? What is the agreed-upon mechanism(s) in place for replacement of contractors?

For the underlined portions above. What VFM confirmation work was performed at the end of the initial phase, or did that phase not count? If not, what are the specific phases referred to in the statement.

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Thursday, December 17, 2015 9:10 AM  
**To:** Stovell, Curtis  
**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Curtis,

Here are some of the issues resolved. I am still reviewing and may send more information.

AM

No defined communication strategy for the ongoing delivery of the project; including communications to, and documenting feedback from the public, regulators, airport travelers, stakeholders and commercial "partners". (There has been much consultation with various stakeholders over the last few months. This is ongoing)

#### **Economic Business Case" Gaps**

This is work in progress see below:

Options	Commentary
<b><i>A. Internal Options</i></b>	
<b>A-I. Maintain The Airport At Current Levels</b>  <i>This is the alternative of merely maintaining the most urgent repairs and safety considerations; avoidance of capital expenditure unless urgently required for safety or legal compliance. This is the "status quo" option.</i>	<b>Advantages:</b> 1) No short term capital cost. 2) No transaction costs. <b>Disadvantages:</b> 1) The currently deteriorated physical infrastructure is costly to maintain, and repairs may require capital expenditure. 2) There are increasing security issues that must be incorporated into maintenance programs. 3) Public and personnel safety standards must be considered, since liability will precipitate from any harm caused by late/poor maintenance. 4) Increasing amount of management/operational time must be devoted to deteriorating infrastructure, public complaints, and reputational management. 5) Maintenance costs will increase.
<b>A-II. Varying Degrees of Capital Renovation</b>  <i>As in the prior alternative, but with a program for distinct strategic investments in individual infrastructure components over a</i>	<b>Advantages:</b> 1) Limited capital costs. 2) Opportunity to prioritize expenditures. 3) Less disruption of airport services than a complete rebuild. <b>Disadvantages:</b>

<p><i>prolonged timeframe.</i></p>	<ol style="list-style-type: none"> <li>1) Hard to plan successive and incremental capital improvements that will all, over time, have continuity and "fit together".</li> <li>2) Risk of piecemeal changes being, in the aggregate, more expensive than a single macro-renovation.</li> <li>3) Not always possible to choose the priority projects correctly (e.g. something further down on the list might fail first).</li> <li>4) Continuing disruptions to Airport operations over a longer period.</li> </ol>
<p><b>A-III. Entire Airport Renovation Staged In Phases (e.g. current Cayman Airport Revitalization)</b></p> <p><i>As in the prior alternative, but the program for renovation would constitute a staged wholesale replacement over a prolonged schedule.</i></p>	<p><i>Advantages:</i></p> <ol style="list-style-type: none"> <li>1) Limited capital costs.</li> <li>2) Opportunity to prioritize expenditures.</li> <li>3) Less disruption of airport services than a complete rebuild.</li> </ol> <p><i>Disadvantages:</i></p> <ol style="list-style-type: none"> <li>1) Requires the same detailed design and replacement architectural planning as building an entirely new Airport, however the logistics of phased development can be very difficult to manage over much longer period of time (construction resources arriving, then leaving; successive governments; disruption to operations/passenger experience for many years, etc.).</li> <li>2) All of the same issues that must be considered for Option A-II above. Such "phased development" projects can be very expensive and often requires a dedicated (experienced) full-time Project Management Team over many years.</li> </ol>
<p><b><u>B. External Options: Public Sector Collaborations With Private Sector</u></b></p>	
<p><b>B-I. Government Rebuilds Airport At Its Expense &amp; Outsources Facility Operations &amp; Management</b></p> <p><i>Government designs and builds the Airport at its cost and expense. Government retains a private sector "facility/operations" management enterprise to operate the Airport as a fee paying lease for a fixed term. All standards, risk allocations, scope of service (etc.) is governed by the Airport Operations Service Agreement.</i></p>	<p><i>Advantages:</i></p> <ol style="list-style-type: none"> <li>1) Government has full control over design and construction</li> <li>2) Service provider takes on operations risk and risk of profitable operation</li> </ol> <p><i>Disadvantages:</i></p> <ol style="list-style-type: none"> <li>1) Government control of design exposes Government risk of "scope creep": Government procured infrastructure historically suffers from poor scope definition and failure to create business case for desired features.</li> <li>2) Government is exposed to design and construction cost overruns.</li> <li>3) Government has full capital funding obligation.</li> <li>4) Government borrowing capacity may hit its limit.</li> <li>5) Lack of integration between design and construction on the one hand, and facility operation services, on the other hand opens door to disputes and "finger pointing" between design/construction and the operation service provider over premature failure/lifecycle costs</li> </ol>

	<p>6) No optimization of capital cost vs. operations cost (eg. buying a ten year product that you plan to replace three times or paying much more for a 15 year product you plan to replace only twice.</p>
<p><b>B-II. Design Build Finance Operate (DBFO)</b></p> <p><i>Single private sector enterprise is retained on a "turn-key" basis to undertake all aspects of the Airport revitalization, including operation for typical 25 to 35-year period. Government maintains control over operation quality via a comprehensive contract and regulatory interface.</i></p>	<p><i>Advantages:</i></p> <ol style="list-style-type: none"> <li>1) Integration of design/construction with operations allows optimization of capital cost vs. operating cost.</li> <li>2) No "finger pointing" over premature failure or warranty claims.</li> <li>3) No immediate capital costs</li> <li>4) Limited financial risk to Government (no public sector guarantee).</li> <li>5) When structured through a unique Canadian Commercial Corporate "Prime" structure, the Government transfers to C.C.C. all "on time; on spec.; on budget" construction project delivery risk.</li> </ol> <p><i>Disadvantages:</i></p> <ol style="list-style-type: none"> <li>1) Loss of flexibility to introduce new uses or services</li> <li>2) Financing cost built in at a higher cost than pure government financing</li> <li>3) Transactions can be very complex since there is full integration of construction with facility operation services.</li> </ol>
<p><b>B-III. Design Build Operate (DBO)</b></p> <p><i>Same as DBFO but the Government must finance the capital construction costs of the project. Much like multination corporations who outsource the development of large infrastructure (large data centres, resorts, factories) which they must pay to create and operate with both revenue risk and profit ownership.</i></p>	<p><i>Advantages:</i></p> <ol style="list-style-type: none"> <li>1) Integration of design/construction with operations allows optimization of capital cost vs. operating cost.</li> <li>2) No "finger pointing" over premature failure or warranty claims.</li> <li>3) Lower cost of financing because government credit</li> </ol> <p><i>Disadvantages:</i></p> <ol style="list-style-type: none"> <li>1) Government borrowing capacity used up.</li> <li>2) Loss of flexibility to introduce new uses or services</li> </ol>
<p><b>B-III. Design Build (DB)</b></p> <p><i>Private sector designs and builds a facility which is financed by Government, but unlike A-III, that one project is not phased over time. The private sector must deliver the facility "on time, on spec, on budget" as a single point of liability for the creation of the facility exactly as bid. Private sector Facility Management Services are outside of the scope of a DB transaction.</i></p>	<p><i>Advantages:</i></p> <ol style="list-style-type: none"> <li>1) Integration of design and construction creates an advantage over traditional design/bid/build procurement by reducing delivery time.</li> <li>2) Lower cost of financing because government credit.</li> </ol> <p><i>Disadvantages:</i></p> <ol style="list-style-type: none"> <li>1) Cost overrun exposure from scope-creep.</li> <li>2) No protection against escalation of operating costs.</li> <li>3) "Finger pointing" over premature failure or warranty claims.</li> <li>4) Government borrowing capacity used up</li> </ol>
<p><b>B-IV. Construction Procurement; Facility Management Procurement</b></p> <p><i>Design/build or traditional design/bid/build procurement required for construction, but also includes an invitation for the builder to</i></p>	<p><i>Advantages:</i></p> <ol style="list-style-type: none"> <li>1) Integration of design and construction creates an advantage over traditional design/bid/build procurement by reducing delivery time.</li> <li>2) Lower cost of financing because government credit.</li> </ol> <p><i>Disadvantages:</i></p>

<i>collaboratively team with a Facility Management Service Provider to operate the Airport on a fee for service basis (Airport revenues belong to the Government, and a service fee is paid by Government to the facility management service provider).</i>	<ol style="list-style-type: none"> <li>1) Cost overrun exposure from scope-creep.</li> <li>2) No protection against escalation of operating costs.</li> <li>3) "Finger pointing" over premature failure or warranty claims.</li> <li>4) Government borrowing capacity used up</li> </ol>
<b>C. External Option – Private Sector Alone</b>	
<b>C-I. Privatization</b>  <i>Government sells the land, transfers all business assets and personnel to purchaser. Purchaser agrees to DBFO to contracted standards of "best practices" and subject to ongoing Government control through a statutory regime of highly regulated oversight and governance. No reversion to public sector, and all risk of business transfers, e.g. British Post, to the private sector. Government's remaining risk is the impact of Airport performance on the economy/reputation.</i>	<i>Advantages:</i> <ol style="list-style-type: none"> <li>1) No capital cost to Government</li> <li>2) No operating cost to Government.</li> <li>3) Revenues generated from sale</li> </ol> <i>Disadvantages:</i> <ol style="list-style-type: none"> <li>1) Except as regulated, loss of control over infrastructure.</li> <li>2) Often requires the sale (entire assignment) of foundational assets (such as land) to the private sector.</li> <li>3) Onerous regulatory oversight role for Government on an ongoing basis.</li> <li>4) Public policy challenges related to labour, etc.</li> </ol>

What are the mechanisms relied upon by Government to determine, prioritize, and secure normative commercial (market) terms and conditions. ( the ADA addresses these issues)

### "Financial Business Case" Gap

Aecon/UBS are required to provide Bermuda an updated financial model every three months as part of the conditions of the Airport Development Agreement. We have received the model and it is being reviewed independently by CIBC.

**From:** Stovell, Curtis  
**Sent:** Wednesday, December 16, 2015 7:11 PM  
**To:** Manders, Anthony  
**Subject:** Re: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

OK thanks. In your view, what many deficiencies were already addressed? I can tell what BJ believe are left by their gap memo, but I'm up against the clock too. Is there a gist of what was deemed already addressed?  
 Thanks

**From:** Manders, Anthony  
**Sent:** Wednesday, December 16, 2015 18:56  
**To:** Stovell, Curtis  
**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Curtis,

Duncan was not in the Office today but provided this quick reply. Hope this helps.

**Answer:** Without having the time ( today ) to go back through the entire Deloitte Report and identify every single gap ( small and/or immaterial ) to explain how they have now been superseded by the negotiations of the ADA, it is our preliminary view ( subject to Deloitte's input noted below ) that all of the Deloitte Report gaps that are not expressly listed in the DRAFT "summary of gaps list" have either now been resolved ( superseded ) by the ADA, or are not applicable at all because they could only have been undertaken in the context of a competitive tendering situation, or they are minor in nature and ( thus ) not material to the good governance of the Airport Project. At this time ( subject to Deloitte's advice ), we believe that both the gaps that are currently delineated, and their corresponding remedial measures, will be acceptable to the FCO ( as stipulated in the Entrustment Letter ).

It is important to know that we have taken a very diligent approach to our assessment. For that purpose, the Government has retained Deloitte to provide us with their advice on this very matter. We have asked the author of the Deloitte Report to review our DRAFT summary list of Green Book gaps ( which you are now referring ) and to advise us if the number of gaps we have identified can, in fact, be reduced, ... or if we have missed any gaps that they feel are not redundant and are material to the transaction's good governance ( as it has been legitimately structured outside of a competitive tendering situation, and thus inherently not applicable to much of the Green Book ).

Finally if you read the last gap entry in our DRAFT gap summary, you may agree with us that ( at the end of the transaction, but before it is closed ) that one single undertaking ( once all of the business, commercial, governance, financial, social and risk allocation terms and conditions are fully known ) can fully address almost all of the gaps that are included in our current list of 23 gaps. We have not yet received any advice from Deloitte, although they have had that Draft summary gaps list since before the end of November.

**From:** Stovell, Curtis

**Sent:** Wednesday, December 16, 2015 9:48 AM

**To:** Manders, Anthony

**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

**Importance:** High

Anthony,

The Bennet Jones memo #1 5(iii) indicates that "many of the deficiencies" have been addressed. Can you provide me with the list of deficiencies being referred to. This is quite important.

Thanks,

Curtis

iii) Many of the Green Book deficiencies that were identified in the Report (as at May 8, 2015) have now been addressed and ameliorated by the Government in the subsequent course of the airport projects transactional development, including via certain terms and conditions of the Airport Redevelopment Agreement that was entered into between the Canadian Commercial Corporation ("CCC") and the Government as at August 24th, 2015; and,

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6279-2622

Direct Dial: 279-2622

Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Wednesday, December 16, 2015 6:33 AM  
**To:** Stovell, Curtis  
**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Here it is:

The Ministry received a waiver from Financial Instructions for the redevelopment of the Airport, on a sole source basis, by contracting with the Canadian Commerce Corporation using a Government to Government approach.

MOF position is that this was for the entire project:

The Accountant General waived the requirement for 3 quotations under the FI "for the services to be provided under the LA", based on numerous provisions of the Letter of Agreement the services to be provided under the LA expressly includes all of the subsequent agreements of the Project up to financial close.

The LA clearly includes the entire "series of commercial agreements concerning the structuring, development and implementation of the Project" ( page 1 of the LA ). The LA also states that " Each party reserves the right to negotiate the implementing commercial agreements concerning the Project... " ( Page 1 of LA ).

Even the numerous express references to the services in the LA in relation to the Airport Re-development Agreement are clearly anticipated in ( under ) the LA. The LA clearly sets out the agreement of the parties to proceed to negotiate all of the subsequent services and agreements necessary for, and up to, financial close.

With regard to the ACG's Memo, the following is noted :

The CCC fees are not a matter of the relationship between the Government and CCC. The fees paid to CCC by Aecon are a private matter as between a Prime Contractor and a Subcontractor, the liability for which are ultimately to be assumed by private investors not the Government.

The Government does not engage Aecon, therefore there was no need to seek another sole source waiver. The only agreement that the Government enters into is with CCC, the prime contractor. A sole source waiver has already been provided for this.  
all liabilities and obligations are to the CCC.

I can also confirm that there was no prior contact of the MOF by the contractor identified by CCC (Aecon).

The Ministry has provided the ACG with the information on the fees and the CCC selection process of Aecon. The Ministry continues to work through this matter with the ACG and will keep him fully informed of the progress of this project.

Good Luck

AM

---

**From:** Stovell, Curtis  
**Sent:** Tuesday, December 15, 2015 8:42 AM

**To:** Manders, Anthony

**Subject:** Re: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

FS,

It wouldn't hurt for me to have it.

Thanks

**From:** Manders, Anthony

**Sent:** Tuesday, December 15, 2015 08:35

**To:** Stovell, Curtis

**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Curtis,

Do you want to see what we sent to the PAC in support of the MOF position? They probably will ask you if these positions are reasonable.

Let me know.

---

**From:** Stovell, Curtis

**Sent:** Monday, December 14, 2015 3:15 PM

**To:** Somner, Clark

**Cc:** Manders, Anthony

**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Good day Mr. Somner.

I am confirming my availability for Thursday, December 17.

Rgds,

Curtis

Curtis A. Stovell, CPA, CA

Accountant General

Internal Ext. 6279-2622

Direct Dial: 279-2622

Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Somner, Clark

**Sent:** Friday, December 11, 2015 12:10 PM

**To:** Stovell, Curtis

**Cc:** David Burt; [cole.simons@hsbcpb.com](mailto:cole.simons@hsbcpb.com)

**Subject:** Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Good Day Mr. Accountant General,

The Chairman of the Public Accounts Committee requests your attendance at its next meeting, scheduled for **Thursday, 17<sup>th</sup> December 2015 at 2:00pm in the Senate Chamber.** Note that this meeting is expected to be open to the public.



Kind Regards.

*Clark W. Somner*  
*Deputy Clerk to the Legislature*

*Legislature Department*  
*House of Assembly*  
*21 Parliament Street*  
*Hamilton HM 12*  
*BERMUDA*

*Tel.: (441) 292-7408*  
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## Stovell, Curtis

---

**From:** Manders, Anthony  
**Sent:** Thursday, December 17, 2015 12:59 PM  
**To:** Stovell, Curtis  
**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Curtis,

Apologies, I have been out of Office and have to go to another meeting:

Here is some more information from Bennett Jones.

### All of Strategic Case

S1

S2 ( that reflection/assessment was done before the ADA was signed )

S3 , was arguably never a gap, as CIBC and our firm have advised on that flexibility throughout the transaction

S4 CCC, Aecon and Bermuda now have a well defined communications committee and strategy across numerous communications programs

S5 just because the government has not written that report does not make that a gap. That "rankings of benefits" advice ( and related considerations) have been essential aspects of our commercial negotiations.

### Economic Case

E1 – That gap has arguably never existed. I have been very acutely aware of what the Government's priorities for critical success for this project have been all along, as instructed by the Ministry of Finance/DAO. Those are essential to know in order to conduct any commercial negotiations. Just because there is not a fixed single definitive report titled "Appraisal of Critical Success Factors", doesn't mean they do not exist in concrete terms. Also, the Green Book is a *planning guide for competitive procurement*, which this is not. Therefore, one of the benefits of a collaborative process is to allow the base priorities of critical success targets amended over time, thus flexibly moving some down the priority list and adding new opportunities to the list.

E4 – much of this gap has, in fact, been addressed and has formed a significant part of both my firm's and CIBC's commercial and legal advice during the transaction thus far. I have extensive experience in public sector transaction related to VFM assessments, audits and opinions. The Government is acutely conscious of VFM criteria, factors and variables, and we have relied on that knowledge during the course of our commercial negotiations, much if that effort well reflected in the "foundational" terms and conditions of the ADA. Again, much of that gap is based on the Green Book's assumption that such undertakings are pre-transaction planning exercises for competitive tendering, whereas in the developmental, collaborative "joint venture" formulation with the private sector, the Government has been balancing early stage VFM objectives and priorities with new transactional challenges, opportunities and offers for "value" that organically develop as the transaction continues to be commercially formulated. The Deloitte report mentions other business case VFM issues, and this response is the same across them all.

### Commercial Case

C1 – The Government has invested many hundreds of hours into considering, assessing and deliberating around the CCC's highly unique and innovative model for a private sector project. In a Green Book styled "competitive tendering planning process", it is normal to find an exhaustive "pre-procurement planning report" of that nature ( especially advisable where civil servants do not have the assistance of highly experienced transactional advice ). However, this is not that situation and an entirely different commercial venture ( not a procurement ) is being formulated. It is very clear from the nature and quality of the commercial depth of the ADA, that the Government has an excellent understanding of all of the material commercial variables that inform the transaction structure. Full diagrams of the detailed transaction structure exist at this time ( highly confidential ) and the ADA obviously proves that the Deloitte Report's gap that " The proposed deal itself is not very clearly defined, particularly in respect of key drivers of value for the Government" is no longer true in any respect. Other Gaps therein are also completed, including with regard to the Government's review and due diligence

over CCC's own vetting process for the selection of Aecon. Again, however, the Green Book is a resource guide for competitive procurement planning ( i.e., to buy goods and services from commercial vendors ... which Bermuda is not doing in this case ! ), and not meant to apply for the undertaking of joint commercial transactions with G8 nations who are putting their reputation and assets on the line for a full " on time, on budget and on spec" contract performance guarantee. Therefore, many of the commercial case gaps cited from the Green Book are arguably not applicable to the current transaction.

C2 – arguably, many of these "gaps" are simply incorrect and the Government has arguably satisfied them from the outset. The Government has never relied on Aecon's or CCC's commercial positions. This is not a sole source procurement situation where the "vendor" proposes a fixed, turn-key" solutions, with all of the commercial terms and conditions that go along with that proposal. The Government has not relied on CCC or Aecon for VFM strategies, which is assumed by the gap description. The Government has forged, and continues to forge very clear commercially and socially driven KPIs, Service Levels, performance standards, VFM requirements, ....all without any reliance on CCC or Aecon.

**From:** Stovell, Curtis

**Sent:** Wednesday, December 16, 2015 7:11 PM

**To:** Manders, Anthony

**Subject:** Re: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

OK thanks. In your view, what many deficiencies were already addressed? I can tell what BJ believe are left by their gap memo, but I'm up against the clock too. Is there a gist of what was deemed already addressed?

Thanks

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**Answer:** Without having the time ( today ) to go back through the entire Deloitte Report and identify every single gap ( small and/or immaterial ) to explain how they have now been superseded by the negotiations of the ADA, it is our preliminary view ( subject to Deloitte's input noted below ) that all of the Deloitte Report gaps that are not expressly listed in the DRAFT "summary of gaps list" have either now been resolved ( superseded ) by the ADA, or are not applicable at all because they could only have been undertaken in the context of a competitive tendering situation, or they are minor in nature and ( thus ) not material to the good governance of the Airport Project. At this time ( subject to Deloitte's advice ), we believe that both the gaps that are currently delineated, and their corresponding remedial measures, will be acceptable to the FCO ( as stipulated in the Entrustment Letter ).

It is important to know that we have taken a very diligent approach to our assessment. For that purpose, the Government has retained Deloitte to provide us with their advice on this very matter. We have asked the author of the Deloitte Report to review our DRAFT summary list of Green Book gaps ( which you are now referring ) and to advise us if the number of gaps we have identified can, in fact, be reduced, ....or if we have missed any gaps that they feel are not redundant and are material to the transaction's good governance ( as it has been legitimately structured outside of a competitive tendering situation, and thus inherently not applicable to much of the Green Book ).

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**Importance:** High

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iii) Many of the Green Book deficiencies that were identified in the Report (as at May 8, 2015) have now been addressed and ameliorated by the Government in the subsequent course of the airport projects transactional development, including via certain terms and conditions of the Airport Redevelopment Agreement that was entered into between the Canadian Commercial Corporation ("CCC") and the Government as at August 24th, 2015; and,

Curtis A. Stovell, CPA, CA  
Accountant General

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Even the numerous express references to the services in the LA in relation to the Airport Re-development Agreement are clearly anticipated in ( under ) the LA. The LA clearly sets out the agreement of the parties to proceed to negotiate all of the subsequent services and agreements necessary for, and up to, financial close.

With regard to the ACG's Memo, the following is noted :

The CCC fees are not a matter of the relationship between the Government and CCC. The fees paid to CCC by Aecon are a private matter as between a Prime Contractor and a Subcontractor, the liability for which are ultimately to be assumed by private investors not the Government.

The Government does not engage Aecon, therefore there was no need to seek another sole source waiver. The only agreement that the Government enters into is with CCC, the prime contractor. A sole source waiver has already been provided for this.

all liabilities and obligations are to the CCC.

I can also confirm that there was no prior contact of the MOF by the contractor identified by CCC (Aecon).

The Ministry has provided the ACG with the information on the fees and the CCC selection process of Aecon. The Ministry continues to work through this matter with the ACG and will keep him fully informed of the progress of this project.

Good Luck

AM

---

**From:** Stovell, Curtis  
**Sent:** Tuesday, December 15, 2015 8:42 AM  
**To:** Manders, Anthony  
**Subject:** Re: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

FS,  
It wouldn't hurt for me to have it.  
Thanks

**From:** Manders, Anthony  
**Sent:** Tuesday, December 15, 2015 08:35  
**To:** Stovell, Curtis  
**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Curtis,

Do you want to see what we sent to the PAC in support of the MOF position? They probably will ask you if these positions are reasonable.

Let me know.

**From:** Stovell, Curtis  
**Sent:** Monday, December 14, 2015 3:15 PM  
**To:** Somner, Clark  
**Cc:** Manders, Anthony  
**Subject:** RE: Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Good day Mr. Somner.

I am confirming my availability for Thursday, December 17.

Rgds,  
Curtis

**Curtis A. Stovell, CPA, CA**  
**Accountant General**

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Somner, Clark  
**Sent:** Friday, December 11, 2015 12:10 PM  
**To:** Stovell, Curtis  
**Cc:** David Burt; [cole.simons@hsbcpb.com](mailto:cole.simons@hsbcpb.com)  
**Subject:** Public Accounts Committee - Thursday, 17th December 2015 @ 2:00pm

Good Day Mr. Accountant General,

The Chairman of the Public Accounts Committee requests your attendance at its next meeting, scheduled for **Thursday, 17<sup>th</sup> December 2015 at 2:00pm in the Senate Chamber.** Note that this meeting is expected to be open to the public.

Kind Regards.

*Clark W. Somner*  
*Deputy Clerk to the Legislature*

*Legislature Department*  
*House of Assembly*  
*21 Parliament Street*  
*Hamilton HM 12*  
*BERMUDA*

*Tel.: (441) 292-7408*  
*Fax: (441) 292-2006*  
*Email: [csomner@gov.bm](mailto:csomner@gov.bm)*

## Stovell, Curtis

---

**From:** Stovell, Curtis  
**Sent:** Monday, February 22, 2016 6:14 PM  
**To:** Simmons, Graham D.  
**Subject:** Re: More CCC -Aecon Due Diligence info

Thanks Grahan,

Agreed. It's unfortunate because had I been aware that Aecon was already on board, I would have been able to make some sort of reference to the selection process. Alas not.

Rgds

Curtis

**From:** Simmons, Graham D.  
**Sent:** Monday, February 22, 2016 18:10  
**To:** Stovell, Curtis  
**Subject:** RE: More CCC -Aecon Due Diligence info

Curtis,

The Letter Agreement provides in part that "CCC will source premier Canadian development and construction expertise to develop and implement the Project under the CCC umbrella. Any firm or firms so selected shall have been subject to CCC's due diligence and vetting in terms of technical, financial and managerial capabilities and shall be subject to prior due diligence and approval to be completed by Bermuda."

It seems to me that your approval of Aecon's participation in the project would have been required in order for the Government to satisfy its obligations under the LA. The language of the LA suggests that CCC had not selected Aecon (and Bermuda had not approved any such selection) on the date when the LA became effective. That being the case, the sole source waiver you granted could not have covered the selection of Aecon.

Regards,

Graham

**From:** Stovell, Curtis  
**Sent:** Monday, February 22, 2016 3:48 PM  
**To:** Simmons, Graham D.  
**Subject:** FW: More CCC -Aecon Due Diligence info

Graham,

Any comments or concerns before I proceed? The FS has already responded with no particular issues.

Thanks,  
Curtis

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Stovell, Curtis  
**Sent:** Thursday, February 11, 2016 5:23 PM  
**To:** Manders, Anthony  
**Subject:** RE: More CCC -Aecon Due Diligence info

FS,

I have not written the memo as yet, but based on my read of the CCC document (excerpt in my previous email) and their indication that Aecon was the originator of the transaction, I can say that that was not my original understanding and that I was under the impression that the construction contractor was yet to be selected. My interpretation of CCC's document is that my original impression was incorrect. However, based on my understanding at that time that there was no contractor selected, I was not providing permission through the construction phase of the project. My understanding was that a contractor would be identified subsequent to my sole source permission memo and I would have requested information on Aecon at the time of the LA had I been aware that identification had already taken place.

Notwithstanding the above, it is clear that CCC thoroughly vets its counterparties using a fairly rigorous set of procedures, and this testifies to the reputability and soundness of Aecon. As I mentioned previously, this supports the likelihood of satisfactory execution of the project. What it does not provide clarity on is whether there were/are alternative suitable entities capable of similar execution that CCC might (have) work(ed) with, and that is ordinarily one of the key elements of a sole source request. This doesn't preclude sole source permission being given, but does result in a diminished argument in my view.

With the work required to close identified entrustment "gaps", once accepted, I am satisfied that the conditions to provide sole source permission for the project will have been met.

Rgds,  
Curtis

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Thursday, February 04, 2016 4:58 PM  
**To:** Stovell, Curtis  
**Cc:** Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: More CCC -Aecon Due Diligence info

Curtis,

I can't confirm this; I don't know who introduced who to the project. My first involvement in the project was at a meeting in CCC's Offices in Toronto back in June 2014. This was after the Ministry of Finance was presented the CCC White Paper. I believe this all came about from the former Quiport President explaining the CCC proposal to the CEO of the Bermuda Airport. The CCC Government to Government approach was considered unique for the reasons below.



- Enables earliest development of the new terminal and associated works supported by an expert delivery team;
- Customized solution is developed in collaboration with Bermuda;
- Expedites project procurement; early start, early finish;
- Guarantees that contracts will be performed per the terms and conditions mutually agreed upon;
- Due diligence conducted to satisfy CCC of the Canadian's supplier's technical, financial and managerial capability to deliver on the contract;
- Concession approach requires no outlay for the airport authority and no new debt;
- Enhanced Bilateral Relationship;
- Total transparency, adhering to international best practices;
- Respect and adherence to socially responsible business practices;

AM

**From:** Stovell, Curtis  
**Sent:** Thursday, February 04, 2016 3:37 PM  
**To:** Manders, Anthony  
**Cc:** Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: More CCC -Aecon Due Diligence info

FS,

Further to the information below and attached to your original December 17 email, the CCC December 2015 selection document notes that:

**"In the case of the redevelopment of the L.F. Wade International Airport in Bermuda, CCC was introduced to the potential opportunity by Aecon, a Canadian company."**

I was initially under the impression that it was CCC who introduced Aecon to this transaction. My read of this is that Aecon was always the intended construction partner (at a minimum), which was not my initial understanding when the CCC LA was provided to me. If it is fact that Aecon was in train prior to the engagement of CCC and the intent was far more forward looking than I appreciated at the time, I can understand the Minister's view that my sole source comments encompassed the breadth of the project. However, based on my limited awareness wrt Aecon, that certainly could not have been my intent. I have reviewed the correspondence I have, and did not see any mention of Aecon leading up the sole source memo I issued in 2014.

Can you confirm my current understanding that:

- Although not mentioned in the MOU or LA, that Aecon was the identified counterpart for the new airport prior to the introduction of CCC?
- If Aecon was identified prior, were any other organisations considered by Bda Govt, even outside of the CCC framework, who may have similar capabilities, e.g. Ellis Don of Canada?
- The vetting by CCC of Aecon is sound in its approach and speaks to the competency and capacity of Aecon and the likelihood of successful implementation of the construction project. However, as Aecon was the approaching party, only Aecon was considered, and there may be other likewise-sound entities (within Canada) able to execute to the same degree?

This has all been bouncing around for some time and I apologise if I am repeating questions asked previously. The point of introduction of Aecon to the project is critical, as their early involvement was not made clear when I was asked to provide a sole source view in 2014.

Thanks,  
Curtis

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Thursday, December 17, 2015 10:43 AM  
**To:** Simmons, Graham D.  
**Cc:** Stovell, Curtis; Azhar, M. Rozy  
**Subject:** FW: More CCC -Aecon Due Diligence info  
**Importance:** High

Graham,

This was forwarded to me from a request Elaine made to the CCC.

AM

**From:** Wendy Dempsey [<mailto:wdempsey@CCC.CA>]  
**Sent:** Wednesday, December 16, 2015 6:52 PM  
**To:** Howard, Gregory J. ([gjhoward@gov.bm](mailto:gjhoward@gov.bm)); Duncan Card  
**Subject:** CCC Response to Procurement Office Request

Dear Greg and Duncan:

In response to the request by Elaine J. Blair of the Office of Project Management & Procurement for detailed information on CCC tendering process and practices, attached please find a copy of CCC's Buyer's Manual that explains CCC's Value Proposition and the Integrity Compliance and Due Diligence completed on Canadian contractors prior to CCC entering into a contract with a foreign buyer.

CCC does not complete a tendering process when selecting its suppliers for international projects. **Canadian suppliers are matched to projects in a number of different ways such as through the Trade Commissioner Service at Canada's Embassies and High Commissions, through trade missions and trade shows, through CCC's direct contact with buyers and through relationships developed by Canadian contractors themselves with buyers.** Supplier selection is detailed in the Buyer's Manual we have provided for your reference.

While CCC does not complete a tendering process, it does require each of its contractors to complete a rigorous due diligence process to ensure that the companies that CCC selects to work with on international projects have the technical, managerial and financial strength to deliver the commitments contained in the contract and have suitable standards of business ethics to satisfy the integrity requirements of the Government of Canada. The process for Integrity Compliance and Due Diligence is laid out in detail in the Buyer's Manual along with CCC's own commitments to ethical business practices.

The CCC due diligence is completed for the Corporation's own assurance and CCC does not provide the assessment documentation or certification documentation to the buyer. CCC can, however, respond to any

particular questions that Bermuda may have about our supplier and their major subcontractors in order to support Bermuda's own due diligence requirements. As a general guideline on CCC's approach, we also attach a sample of the initial questionnaire that CCC has its suppliers complete before CCC starts to work with the supplier on a particular project.

The sequencing of CCC's due diligence process is on-going from the initial contact with a contractor until an actual contract with a buyer is signed, wherein a full signed certification is required. Prior to this stage, data is collected and companies are either accepted or ruled out based on the information gathered by CCC.

In the case of the Aecon Group, CCC has assessed Aecon as a proven performer for project delivery. CCC refreshed its due diligence on the Aecon Group and completed a certification for the commitments contained in the Airport Development Agreement and will once again refresh this certification for the project agreement phase of the project.

Once CCC and the purchasing government reach the contract stage, the contracts negotiated by all parties are commercial contracts. When CCC signs the commercial contract, it offers the assurance of the Government of Canada, an AAA rated entity, that the contract will be performed per the agreed terms and conditions. Often financing for CCC-led projects can be obtained at better rates due to CCC's involvement and financial rating.

In the case of the Bermuda Airport Project, the terms and conditions will be negotiated between highly experienced negotiators with significant P3 and airport experience, ensuring that the contract is fair for all parties and, most important, ensuring that a completed airport can be delivered within the time and budget noted in the contract(s).

Please note that I will be the CCC point of contact for any additional questions.

Regards,

Wendy

---

Wendy Dempsey

Assistant General Counsel  
Avocate générale adjointe

Canadian Commercial Corporation | Corporation commerciale canadienne  
700 - 350 rue Albert Street T: 613-996-4075  
Ottawa, Ontario, Canada E: [wdempsey@CCC.CA](mailto:wdempsey@CCC.CA)  
K1A 0S6  
[www.ccc.ca](http://www.ccc.ca)



Gouvernement  
du Canada

Gouvernement  
du Canada



CCC

Canadian Commercial Corporation  
Corporation Commerciale Canadienne

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## Stovell, Curtis

---

**From:** Manders, Anthony  
**Sent:** Monday, May 30, 2016 8:26 AM  
**To:** Stovell, Curtis  
**Subject:** RE: More CCC -Aecon Due Diligence info  
**Attachments:** Bermuda Airport Entrustment.pdf

OK; The UK accepted recently see attached.

AM

**From:** Stovell, Curtis  
**Sent:** Sunday, May 29, 2016 11:57 AM  
**To:** Manders, Anthony  
**Subject:** Re: More CCC -Aecon Due Diligence info

The memo is in the office, i'll send it in the morning. But remember that the proposed actions wrt the gaps have to be accepted by the UK, which is what the memo says. Is that going to be good enough?

CAS

**From:** Manders, Anthony  
**Sent:** Sunday, May 29, 2016 10:53  
**To:** Stovell, Curtis  
**Subject:** RE: More CCC -Aecon Due Diligence info

Curtis,

We didn't even discuss FIs yesterday at the PAC. They want those schedules! Burt asked for your approval; have you done the memo yet?

AM

**From:** Stovell, Curtis  
**Sent:** Thursday, February 11, 2016 5:23 PM  
**To:** Manders, Anthony  
**Subject:** RE: More CCC -Aecon Due Diligence info

FS,

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Curtis

**Curtis A. Stovell, CPA, CA**  
**Accountant General**

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Thursday, February 04, 2016 4:58 PM  
**To:** Stovell, Curtis  
**Cc:** Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: More CCC -Aecon Due Diligence info

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Curtis

**Curtis A. Stovell, CPA, CA**  
**Accountant General**

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Thursday, December 17, 2015 10:43 AM  
**To:** Simmons, Graham D.  
**Cc:** Stovell, Curtis; Azhar, M. Rozy  
**Subject:** FW: More CCC -Aecon Due Diligence Info  
**Importance:** High

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AM

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**Sent:** Wednesday, December 16, 2015 6:52 PM  
**To:** Howard, Gregory J. ([gjhoward@gov.bm](mailto:gjhoward@gov.bm)); Duncan Card  
**Subject:** CCC Response to Procurement Office Request

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conditions. Often financing for CCC-led projects can be obtained at better rates due to CCC's involvement and financial rating.

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Please note that I will be the CCC point of contact for any additional questions.

Regards,

Wendy

---

Wendy Dempsey

Assistant General Counsel

Avocate générale adjointe

Canadian Commercial Corporation | Corporation commerciale canadienne

700 - 350 rue Albert Street

Ottawa, Ontario, Canada

K1A 0S6

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King Charles Street  
London  
SW1A 2AH

Tel: 0207 008 2742  
[www.gov.uk/fco](http://www.gov.uk/fco)

(Letter sent via Electronic Mail)

6 May 2016

Mr George Fergusson  
Governor of Bermuda  
Government House  
Hamilton  
Bermuda

Dear Governor,

Bermuda Airport - Entrustment


1. I wrote to you on 17 July 2015 to inform you that the United Kingdom Government had delegated authority to the Government of Bermuda to enter into a contract with CCC to redevelop the airport subject to a number of requirements.
2. As you know, evaluation work was undertaken last year by Deloitte which assessed whether the project for the redevelopment of the airport represented value for money for Bermuda according to the requirements of the Full Business Case under Her Majesty's Treasury Green Book guidance for appraisal of public spending proposals.
3. The requirement which the Government of Bermuda is therefore seeking confirmation on, is paragraph 6(b) of the 17 July 2015 entrustment letter, see below:  
  

*"The United Kingdom Government and the Government of Bermuda must agree on what measures are required to address the deficiencies that are identified by Deloitte in their assessment report(s)"*
4. Officials in my directorate have been in discussion with members of the Bermuda Ministry of Finance on the Key Gaps and Remedial Measures documentation that was provided to address this requirement. We have been informed that Deloitte has also reviewed all of the proposed measures.
5. Completion of the measures that have been identified will greatly improve the business case and reduce risks around the project. I am therefore content for the

Government of Bermuda to proceed to the next stage, 6(c), "*publish a written evidence-based assurance that the required measures have been taken before the Contract can be concluded*".

6. At official level, we have requested to see the critical path to understand the key milestones of this project and opportunities for closer engagement around the risk register. Such steps should also help support the completion of future requirements.
7. I should be grateful if you could pass our thanks to the Government of Bermuda for their engagement thus far.

Yours sincerely,



Director, Overseas Territories  
Foreign & Commonwealth Office

**Stovell, Curtis**

---

**From:** Stovell, Curtis  
**Sent:** Monday, May 30, 2016 9:32 AM  
**To:** Manders, Anthony  
**Subject:** RE: More CCC -Aecon Due Diligence info

Noted FS. It is also the completion of the work to complete the measures identified that is critical, but the acceptance of the proposed actions is a good start.

Rgds,  
Curtis

**Curtis A. Stovell, CPA, CA**  
**Accountant General**

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Monday, May 30, 2016 8:26 AM  
**To:** Stovell, Curtis  
**Subject:** RE: More CCC -Aecon Due Diligence info

OK; The UK accepted recently see attached.

AM

**From:** Stovell, Curtis  
**Sent:** Sunday, May 29, 2016 11:57 AM  
**To:** Manders, Anthony  
**Subject:** Re: More CCC -Aecon Due Diligence info

The memo is in the office, i'll send it in the morning. But remember that the proposed actions wrt the gaps have to be accepted by the UK, which is what the memo says. Is that going to be good enough?

CAS

**From:** Manders, Anthony  
**Sent:** Sunday, May 29, 2016 10:53  
**To:** Stovell, Curtis  
**Subject:** RE: More CCC -Aecon Due Diligence info

Curtis,

We didn't even discuss FIs yesterday at the PAC. They want those schedules! Burt asked for your approval; have you done the memo yet?

AM

**From:** Stovell, Curtis  
**Sent:** Thursday, February 11, 2016 5:23 PM  
**To:** Manders, Anthony  
**Subject:** RE: More CCC -Aecon Due Diligence info

FS,

I have not written the memo as yet, but based on my read of the CCC document (excerpt in my previous email) and their indication that Aecon was the originator of the transaction, I can say that that was not my original understanding and that I was under the impression that the construction contractor was yet to be selected. My interpretation of CCC's document is that my original impression was incorrect. However, based on my understanding at that time that there was no contractor selected, I was not providing permission through the construction phase of the project. My understanding was that a contractor would be identified subsequent to my sole source permission memo and I would have requested information on Aecon at the time of the LA had I been aware that identification had already taken place.

Notwithstanding the above, it is clear that CCC thoroughly vets its counterparties using a fairly rigorous set of procedures, and this testifies to the reputability and soundness of Aecon. As I mentioned previously, this supports the likelihood of satisfactory execution of the project. What it does not provide clarity on is whether there were/are alternative suitable entities capable of similar execution that CCC might (have) work(ed) with, and that is ordinarily one of the key elements of a sole source request. This doesn't preclude sole source permission being given, but does result in a diminished argument in my view.

With the work required to close identified entrustment "gaps", once accepted, I am satisfied that the conditions to provide sole source permission for the project will have been met.

Rgds,  
Curtis

**Curtis A. Stovell, CPA, CA**  
**Accountant General**

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Thursday, February 04, 2016 4:58 PM  
**To:** Stovell, Curtis  
**Cc:** Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: More CCC -Aecon Due Diligence info

Curtis,

I can't confirm this; I don't know who introduced who to the project. My first involvement in the project was at a meeting in CCC's Offices in Toronto back in June 2014. This was after the Ministry of Finance was presented the CCC White Paper. I believe this all came about from the former Quiport President explaining the CCC proposal to the CEO of the Bermuda Airport. The CCC Government to Government approach was considered unique for the reasons below.

- Enables earliest development of the new terminal and associated works supported by an expert delivery team;
- Customized solution is developed in collaboration with Bermuda;
- Expedites project procurement; early start, early finish;

- Guarantees that contracts will be performed per the terms and conditions mutually agreed upon;
- Due diligence conducted to satisfy CCC of the Canadian's supplier's technical, financial and managerial capability to deliver on the contract;
- Concession approach requires no outlay for the airport authority and no new debt;
- Enhanced Bilateral Relationship;
- Total transparency, adhering to international best practices;
- Respect and adherence to socially responsible business practices;

AM

**From:** Stovell, Curtis  
**Sent:** Thursday, February 04, 2016 3:37 PM  
**To:** Manders, Anthony  
**Cc:** Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: More CCC -Aecon Due Diligence info

FS,

Further to the information below and attached to your original December 17 email, the CCC December 2015 selection document notes that:

**"In the case of the redevelopment of the L.F. Wade International Airport in Bermuda, CCC was introduced to the potential opportunity by Aecon, a Canadian company."**

I was initially under the impression that it was CCC who introduced Aecon to this transaction. My read of this is that Aecon was always the intended construction partner (at a minimum), which was not my initial understanding when the CCC LA was provided to me. If it is fact that Aecon was in train prior to the engagement of CCC and the intent was far more forward looking than I appreciated at the time, I can understand the Minister's view that my sole source comments encompassed the breadth of the project. However, based on my limited awareness wrt Aecon, that certainly could not have been my intent. I have reviewed the correspondence I have, and did not see any mention of Aecon leading up the sole source memo I issued in 2014.

Can you confirm my current understanding that:

- Although not mentioned in the MOU or LA, that Aecon was the identified counterpart for the new airport prior to the introduction of CCC?
- If Aecon was identified prior, were any other organisations considered by Bda Govt, even outside of the CCC framework, who may have similar capabilities, e.g. Ellis Don of Canada?
- The vetting by CCC of Aecon is sound in its approach and speaks to the competency and capacity of Aecon and the likelihood of successful implementation of the construction project. However, as Aecon was the approaching party, only Aecon was considered, and there may be other likewise-sound entities (within Canada) able to execute to the same degree?

This has all been bouncing around for some time and I apologise if I am repeating questions asked previously. The point of introduction of Aecon to the project is critical, as their early involvement was not made clear when I was asked to provide a sole source view in 2014.

Thanks,  
 Curtis

Curtis A. Stovell, CPA, CA

**Accountant General**

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Thursday, December 17, 2015 10:43 AM  
**To:** Simmons, Graham D.  
**Cc:** Stovell, Curtis; Azhar, M. Rozy  
**Subject:** FW: More CCC -Aecon Due Diligence info  
**Importance:** High

Graham,

This was forwarded to me from a request Elaine made to the CCC.

AM

**From:** Wendy Dempsey [<mailto:wdempsey@CCC.CA>]  
**Sent:** Wednesday, December 16, 2015 6:52 PM  
**To:** Howard, Gregory J. ([gjhoward@gov.bm](mailto:gjhoward@gov.bm)); Duncan Card  
**Subject:** CCC Response to Procurement Office Request

Dear Greg and Duncan:

In response to the request by Elaine J. Blair of the Office of Project Management & Procurement for detailed information on CCC tendering process and practices, attached please find a copy of CCC's Buyer's Manual that explains CCC's Value Proposition and the Integrity Compliance and Due Diligence completed on Canadian contractors prior to CCC entering into a contract with a foreign buyer.

CCC does not complete a tendering process when selecting its suppliers for international projects. **Canadian suppliers are matched to projects in a number of different ways such as through the Trade Commissioner Service at Canada's Embassies and High Commissions, through trade missions and trade shows, through CCC's direct contact with buyers and through relationships developed by Canadian contractors themselves with buyers. Supplier selection is detailed in the Buyer's Manual we have provided for your reference.**

While CCC does not complete a tendering process, it does require each of its contractors to complete a rigorous due diligence process to ensure that the companies that CCC selects to work with on international projects have the technical, managerial and financial strength to deliver the commitments contained in the contract and have suitable standards of business ethics to satisfy the integrity requirements of the Government of Canada. The process for Integrity Compliance and Due Diligence is laid out in detail in the Buyer's Manual along with CCC's own commitments to ethical business practices.

The CCC due diligence is completed for the Corporation's own assurance and CCC does not provide the assessment documentation or certification documentation to the buyer. CCC can, however, respond to any particular questions that Bermuda may have about our supplier and their major subcontractors in order to support Bermuda's own due diligence requirements. As a general guideline on CCC's approach, we also

attach a sample of the initial questionnaire that CCC has its suppliers complete before CCC starts to work with the supplier on a particular project.

The sequencing of CCC's due diligence process is on-going from the initial contact with a contractor until an actual contract with a buyer is signed, wherein a full signed certification is required. Prior to this stage, data is collected and companies are either accepted or ruled out based on the information gathered by CCC.

In the case of the Aecon Group, CCC has assessed Aecon as a proven performer for project delivery. CCC refreshed its due diligence on the Aecon Group and completed a certification for the commitments contained in the Airport Development Agreement and will once again refresh this certification for the project agreement phase of the project.

Once CCC and the purchasing government reach the contract stage, the contracts negotiated by all parties are commercial contracts. When CCC signs the commercial contract, it offers the assurance of the Government of Canada, an AAA rated entity, that the contract will be performed per the agreed terms and conditions. Often financing for CCC-led projects can be obtained at better rates due to CCC's involvement and financial rating.

In the case of the Bermuda Airport Project, the terms and conditions will be negotiated between highly experienced negotiators with significant P3 and airport experience, ensuring that the contract is fair for all parties and, most important, ensuring that a completed airport can be delivered within the time and budget noted in the contract(s).

Please note that I will be the CCC point of contact for any additional questions.

Regards,

Wendy

---

Wendy Dempsey

Assistant General Counsel

Avocate générale adjointe

Canadian Commercial Corporation | Corporation commerciale canadienne

700 - 350 rue Albert Street

Ottawa, Ontario, Canada

K1A 0S6

[www.ccc.ca](http://www.ccc.ca)

T: 613-996-4075

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Government  
of Canada

Gouvernement  
du Canada



CCC

Canadian Commercial Corporation  
Corporation Commerciale Canadienne

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**Stovell, Curtis**

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**From:** Manders, Anthony  
**Sent:** Monday, February 02, 2015 7:00 PM  
**To:** Stovell, Curtis  
**Subject:** RE: Delegation of accounting responsibility for Airport projects  
**Sensitivity:** Confidential

What date should I make this?

**From:** Stovell, Curtis  
**Sent:** Monday, February 02, 2015 3:13 PM  
**To:** Manders, Anthony  
**Subject:** RE: Delegation of accounting responsibility for Airport projects  
**Sensitivity:** Confidential

FS,

**FI 12.1.2:**

The accounting responsibility for capital development expenditure rests with the Permanent Secretary of Public Works...The exception of (to) the assigned accounting responsibility includes capital development projects for which the Minister of Finance delegates the responsibility for expenditure to a Ministry other than Public Works...

This is about who the Accounting Officer is for the project and under FI it must be the MOF that makes the delegation. The memo wording that I am looking for is very short.

**To:** Francis Richardson - PS Tourism Development & Transport  
**Re:** Airport Development Project – Canadian Commercial Corporation

"In accordance with Financial Instructions s.12.1.2, the Ministry of Finance hereby delegates the responsibility for capital development expenditures relating to the redevelopment of the LF Wade International Airport, to the Permanent Secretary of the Ministry of Tourism Development & Transport."

Copy me on the memo and we're done.

CAS

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6414-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Monday, February 02, 2015 1:35 PM  
**To:** Stovell, Curtis  
**Subject:** FW: Delegation of accounting responsibility for Airport projects  
**Sensitivity:** Confidential

This should cover it.  
Let me know what you think

AM

**From:** Adderley, Aaron  
**Sent:** Monday, February 02, 2015 12:18 PM  
**To:** Manders, Anthony  
**Cc:** Richardson, Francis  
**Subject:** RE: Delegation of accounting responsibility for Airport projects  
**Sensitivity:** Confidential

AM – I think the following from the Civil Airports Act pretty much covers it:

**Supplemental powers of Minister**

For the purpose of exercising and discharging his functions under section 4, the Minister shall, without prejudice to the generality of section 4, have the following supplemental powers—

the Minister may, in co-operation with the Minister responsible for Works and Engineering, cause plans to be prepared, select sites, and cause the necessary works to be executed—

for the improvement, alteration or maintenance of any works, buildings, plant, equipment or facilities appurtenant to the Bermuda airport or connected with the operation of any air navigation services; for the construction of new works or buildings, and for the provision of new plant, equipment or facilities for the purposes of the Bermuda airport or in connection with the operation of any air navigation services;

the Minister may enter into any contract necessary for carrying out any of the works, matters or things referred to in section 4;

the Minister may, for such purposes, whether or not directly connected with civil aviation, as the Minister considers appropriate, allot areas, buildings or parts of buildings at the Bermuda airport for the use of any department or branch of the Government of Bermuda or of Her Majesty's Government in the United Kingdom, or for the use of any company, undertaking or organization having lawful business at the airport, and may withdraw or vary any such allotment;

(6)

(7)

(8)

(9)

5 (1)

(a)

(i)

(ii)

(b)

(c)

4

**CIVIL AIRPORTS ACT 1949**

subject to subsection (1A), the Minister may lease or let any area, building or part of a building at the Bermuda airport to any department or branch of Her Majesty's Government in the United Kingdom or of the Government of the United States of America, or to any company, undertaking or organization having lawful business at the airport; and

the Minister may enter into a contract with any company, undertaking or organization for placing the Bermuda airport, or any buildings, plant, or equipment appurtenant thereto, or any facilities or services (whether in being or not) being facilities or services at the Bermuda airport connected with the operation of civil aviation services, under the management and control of the company, undertaking or organization, on such terms and conditions, and subject to such exceptions, limitations or restrictions, as appear to the Minister expedient.

The Minister shall obtain the approval of the Cabinet and of the Legislature

before entering into any lease or letting agreement under subsection (1)(d) that is for—  
a term exceeding 5 years; or  
terms, renewable at the option of the lessee or tenant, exceeding in the aggregate 5 years.

No lease or letting agreement referred to in subsection (1A) shall be for—  
a term exceeding 120 years; or  
terms, renewable at the option of the lessee or tenant, exceeding in the aggregate 120 years.

The approval of the Legislature referred to in subsection (1A) shall be expressed by way of resolution passed by both Houses of the Legislature approving the lease or letting agreement in question and communicated to the Governor by message.

Any power conferred upon the Minister by this Act to provide buildings or other premises for any purpose shall be deemed to include a power to equip the buildings or premises with such furniture, equipment, apparatus and instruments as may be reasonably necessary for the premises to be used for that purpose.

Any power conferred upon the Minister by this Act to provide buildings or other premises or to provide accommodation or equipment for any purpose shall be deemed to include a power to enter into an agreement with any person for the use, upon such terms as may be agreed, of any suitable buildings, premises, accommodation or equipment provided by, or under the control of, that person; and, if it appears to the Minister convenient in the circumstances, to enter into an agreement for the services of any staff employed in connection therewith.

*[Section 5 amended by 1994:48 effective 28 December 1994; subsection (1)(c) substituted by 2003:2 s.2 effective 19 March 2003; section 5 amended by 2009:27 s.2 effective 7 July 2009]*



Aaron Adderley  
General Manager  
Bermuda L.F. Wade International Airport  
3 Cahow Way St. Georges GE CX, Bermuda  
T: 441.299.4850 F:441.293.5677 E: [atadderley@gov.bm](mailto:atadderley@gov.bm)  
[www.bermudaairport.com](http://www.bermudaairport.com)

**From:** Manders, Anthony  
**Sent:** Monday, February 02, 2015 11:53 AM  
**To:** Adderley, Aaron  
**Cc:** Richardson, Francis  
**Subject:** Delegation of accounting responsibility for Airport projects  
**Sensitivity:** Confidential

Aaron,

Do you have any formal authority which delegates the accounting responsibility for Airport projects to your Minister?

AM

Anthony Manders, C.G.A.  
Financial Secretary  
Government of Bermuda | Ministry of Finance

Government Administration Building  
30 Parliament Street, Hamilton HM 12, Bermuda  
Direct: 441 297 7501  
Fax: 441 275 5727  
E-mail: [amanders@gov.bm](mailto:amanders@gov.bm)



**Stovell, Curtis**

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**From:** Manders, Anthony  
**Sent:** Tuesday, December 15, 2015 4:05 PM  
**To:** Stovell, Curtis  
**Cc:** Azhar, M. Rozy; Simmons, Graham D.  
**Subject:** RE: Airport Redevelopment  
**Attachments:** Deloitte Report Gaps Deficiencies and Entrustment.pdf

Curtis

Here is the list that is being worked on with regard to the gaps identified in the Deloitte Report>

AM

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**From:** Stovell, Curtis  
**Sent:** Tuesday, December 15, 2015 10:24 AM  
**To:** Manders, Anthony  
**Cc:** Azhar, M. Rozy; Simmons, Graham D.  
**Subject:** RE: Airport Redevelopment

FS,

What is in place to ensure that the Deloitte-identified gaps are addressed prior to the final Agreement? Is there a MOF document that identifies the specific gaps and the approach(es) that are being taken to rectify them? If not, there needs to be a formal document with responsibility, strategy, and timeline identified.

Rgds,  
Curtis

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Saturday, December 12, 2015 9:25 AM  
**To:** Azhar, M. Rozy; Simmons, Graham D.; Stovell, Curtis  
**Subject:** RE: Airport Redevelopment

Also don't forget we have the Deloitte Report and the commitments in the Entrustment letter. These have to be fixed before we can sign the final Agreement. So there is a lot of work that has to be done. This should also provide some level of comfort to OPMP and the ACG. The Deloitte report list all the gaps and these must be resolved. This process will ensure that we do everything needed; we would then be close to the UK Green Book standards.

AM

**From:** Azhar, M. Rozy  
**Sent:** Friday, December 11, 2015 12:22 PM  
**To:** Simmons, Graham D.; Manders, Anthony; Stovell, Curtis  
**Subject:** RE: Airport Redevelopment

OK – See you then.

**From:** Simmons, Graham D.  
**Sent:** Friday, December 11, 2015 12:13 PM  
**To:** Manders, Anthony; Stovell, Curtis; Azhar, M. Rozy  
**Subject:** Re: Airport Redevelopment

Let's meet at the ACG's offices.

**From:** Manders, Anthony  
**Sent:** Friday, December 11, 2015 12:10 PM  
**To:** Stovell, Curtis; Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: Airport Redevelopment

I am fine either way.  
AM

---

**From:** Stovell, Curtis  
**Sent:** Friday, December 11, 2015 12:09 PM  
**To:** Manders, Anthony; Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: Airport Redevelopment  
Or ACG if desired.

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**From:** Manders, Anthony  
**Sent:** Friday, December 11, 2015 12:09 PM  
**To:** Stovell, Curtis; Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: Airport Redevelopment  
Our Boardroom is booked. Can we meet at OPMP?

AM

-----Original Appointment-----

**From:** Stovell, Curtis  
**Sent:** Friday, December 11, 2015 10:16 AM  
**To:** Stovell, Curtis; Simmons, Graham D.; Manders, Anthony; Azhar, M. Rozy  
**Subject:** Airport Redevelopment  
**When:** Friday, December 11, 2015 1:00 PM-2:00 PM (UTC-04:00) Atlantic Time (Canada).  
**Where:** Ministry of Finance

**MEMORANDUM**

TO: Jessica Mello  
Director, Consulting  
Deloitte Ltd.

FROM: Duncan C. Card

COPY TO: Greg Howard  
Attorney General's Chambers

DATE: November 24, 2015

CLIENT:

RE: Deloitte Report Gaps/Deficiencies And Entrustment Compliance

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**Entrustment Requirements**

On November 10, 2014, the U.K. Government's Secretary of State, acting on behalf of the Foreign & Commonwealth Office of the U.K. ("FCO") government, issued a letter of constitutional authorization and delegation to Bermuda (c/o H.E. Governor George Fergusson) to enter into a contract with the Canadian Commercial Corporation ("CCC") to redevelop L.F. Wade International Airport. On May 8<sup>th</sup>, 2015, Deloitte Ltd. ("Deloitte") delivered a report to the FCO and Bermuda government concerning certain aspects of the airport revitalization project ("Report"). On July 6, 2015, the Foreign & Commonwealth Office ("FCO") amended the Preliminary Entrustment in several respects, including the addition of specific references to the Report ("Amendment"). Due to further discussions between Bermuda and the FCO, the FCO issued a final entrustment letter (the "Final Entrustment") that replaced both the Preliminary Entrustment and the Amendment (both of which ceased to "have effect" in favour of the Final Entrustment). The Final Entrustment contains the following two specific references to the Report:

1. "I have also considered the assurances I have received from the evaluation work undertaken by an independent accounting firm of internationally reputable standing, which assessed whether the project for the redevelopment of the airport represents Value for Money for Bermuda according to the requirements of the Full Business Case under Her Majesty's Treasury Green Book guidance for appraisal of public spending proposals."
2. "Subject to the requirements set out in paragraphs 6 and 7, the United Kingdom Government delegated authority to the Bermudian Government to enter into a contract with



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CCC to redevelop the airport (the "Contract"), as follows:

(b) The United Kingdom Government ("UK") and the Government of Bermuda must agree on what measures are required to address the deficiencies that are identified by Deloitte in their assessment report(s).

(c) The Government of Bermuda must publish a written and evidence-based assurance that the required measures have been taken before any agreement can be concluded."

**Bermuda's Required Entrustment Undertakings**

As noted above, the Final Entrustment stipulates that the following two separate undertakings must be performed before Bermuda may enter into the proposed airport revitalization agreement with the CCC:

1. The UK and Bermuda must agree on what measures are required to address the deficiencies in the Report; and,
2. Bermuda must "publish" a "written and evidence-based assurance" that the agreed upon "required measures" have been taken.

Therefore, the following six steps must be undertaken to satisfy the two above noted Final Entrustment requirements:

1. Bermuda must specifically identify the precise "deficiencies" and "gaps" in the Report that will require remedial measures;
2. Once those particular deficiencies and gaps are identified, Bermuda must formulate the remedial and curative measures that are "required to address" such deficiencies and gaps;
3. Bermuda must then submit to the UK its proposal with respect to: (i) the deficiencies and gaps in the Report that require measures; and, (ii) the remedial measures that are required to be undertaken by Bermuda;
4. Bermuda and the UK must agree on the deficiencies and measures referred to in subparagraph (3) above;
5. Bermuda must undertake such agreed remedial measures; and,
6. Bermuda must publish a written and "evidence-based" assurance that such agreed remedial measures have been "taken".

Now that the Government of Bermuda has retained Deloitte on an advisory and consultative basis to assist both my firm and the Attorney General's Chambers concerning both such "gap" identification and their associated remediation, we now seek Deloitte's advisory guidance as follows:

**Step #1: Identification of Deficiencies**

The Report identified certain gaps in the formulation of the airport project's overall "Business Case", or "Five Case" model, that is recommended and prescribed in the Green Book. The Five Cases that the Green Book prescribes are:

1. Strategic Case;
2. Economic Case;
3. Commercial Case;
4. Financial Case; and,
5. Management Case.

The following is a draft summary of the material gaps and deficiencies that the Government of Bermuda and its various advisors has determined Deloitte identified in their May 8<sup>th</sup>, 2015 Report concerning the correspondence between the Bermuda Government's (the "Government") development Airport Revitalization "Business Case", and the Business Case prescriptions contained in the U.K. Government's Green Book ("Green Book"). However, before, such gaps are delineated, it is important to note that our summary of the Report's material gaps and deficiencies in the Government's Business Case as at May 8, 2015 was prepared based on the following principles:

- (i) The Report contained numerous recommendations, deficiencies, and commentary that was (understandably) duplicated in several parts of the Report, and we have consolidated those references into a single "deficiency" description where appropriate;
- (ii) We have focused on the Report's commentary and Green Book deficiencies that are pervasively, based on general public sector procurement practice, either material or germane to projects of a similar nature and scope to the Airport Project. We have, conversely, not included some of the more minor or less substantive (albeit reasonable) criticisms of the Government's Business Case formulation where same would generally be regarded as being non-material to public sector governance, public expenditure oversight and reasonable public sector project management practices;
- (iii) Many of the Green Book deficiencies that were identified in the Report (as at May 8, 2015) have now been addressed and ameliorated by the Government in the subsequent course of the airport projects transactional development, including via certain terms and conditions of the Airport Redevelopment Agreement that was entered into between the Canadian Commercial Corporation ("CCC") and the Government as at August 24<sup>th</sup>, 2015; and,

- (iv) Many of the Green Book's fundamental pre-suppositions assume that public sector authorities will always (i.e., as in the course of a competitive tendering process) be engaged in a sequential process of internal Business Case development, procurement planning and competitive tendering engagement, rather than in an alternative collaborative, incremental and developmental process with a prospective sole-source vendor where both parties mutually develop and negotiate a full Business Case (in all of its aspects). In the course of the latter process, the parties collaboratively work together to structure a complete and competitive commercial transaction that is customized to the public sector's particular requirements.

With regard to principle (iv) noted above, in order for the Government to determine which Report gaps (and which corresponding remedial measures) are relevant to complying with the Final Entrustment, the Government must first take into account the fact that the legitimate (and approved) procurement process that has been undertaken by the Government in this instance (i.e. a collaborative, developmental and incremental process of Business Case formulation with a prospective P3 partner) is not considered by the Green Book. As such, and to a great extent, the procurement methodology that the Government legitimately relied upon is outside of, and irrelevant to, many of the Green Book's "competitive tendering" oriented Business Case formulation prescriptions (especially in terms of sequence). As well, the collaborative and incremental development process of Business Case formulation that has been undertaken by the Government over many months of deliberation and negotiation is fundamentally different from a procurement process whereby a fully formulated (but unsolicited) proposal is submitted to the Government for discreet evaluation - which is also not the present case. Therefore, many so-called gaps in the Green Book's guiding prescriptions are (for good reasons) not relevant to the timing, evaluation process, assessment chronologies or transaction comparisons that have been undertaken by the Government in its Business Case formulation process. For example, much of the extremely valid discussion in the Report about the Green Book gaps associated with sole-source procurement (as at May 8, 2015) have since (and have now) been addressed in the ordinary course of the Project's incremental and collaborative commercial formulation process, including via the related contract negotiations, that have taken place between the parties subsequent to the date the Report was issued.

The following is the summarized list of Business Case "gaps" cited in the Report:

**"Strategic Business Case"**

**Citation**

- |  |            |
|--|------------|
| 1. Written strategic case that addresses: overall project objectives; Government's ongoing strategy for airport governance and operations evaluation; state the required business outcomes; concessionaire reporting obligations; Government rights of audit and oversight; included references to procurement options and which of those fit with the strategic objectives (time, cost, expert engagement, CCC benefits). | Page 22-23 |
| 2. No defined communication strategy for the ongoing delivery  | Page 23    |

of the project; including communications to, and documenting feedback from the public, regulators, airport travelers, stakeholders and commercial "partners".

3. Risk-Benefit assessment: including limitations; constraints; dependencies; assumptions; and ranking of desired benefits by stakeholder. In the Strategic case, the case for change should be based on a rigorous assessment of the business needs associated with the existing arrangements and the potential scope of the proposed spend in relation to the anticipated benefits and potential risks. As well as the key spending objectives for the project, these aspects provide a basis for selecting and evaluating options in the next stages.

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#### **"Economic Business Case" Gaps**

Page 24

4. Identification of Critical Success Factors in relation to factor prioritization or for structured alternative "preferred solution" option assessment, including a Public Sector Comparators as a delivery option.
5. Clearly structured assessment of alternative project options to address the strategic objectives; short listed options and assessment of project scope taking options into account; preferred solution identified/review/reasons/within risk, benefit, affordability and VFM context (needs a clear NPV assessment, risks and non-monetary benefits) from a holistic Government perspective.
6. Reference/Consideration should be made to the Green Book's "Social Time Preference" ratio of 3.5% p.a. in real terms to discount economic cash flows for the NPV.
7. Address VFM in the context of the Economic Case and the alternative project options for preferred delivery models; VFM objectives should include the full range of benefits, like: industrial support for tourism, socio-economic job creation, GDP stimulation, industrial support for international business sector, infrastructure impact on "brand", etc.
8. Address Public Sector Comparators in the context of delivery options and risk/benefit comparisons.
9. The Economic Case should describe how the VFM will be assessed and determined, and at what stage of the collaborative and incremental transaction structuring, such VFM assessment will be undertaken.

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**"Commercial Business" Case Gaps**

10. There is little evidence of Government driving a procurement strategy to obtain best value from a sole-sourced collaborative/development process of business case formulation. **Note:** Bermuda has obtained thorough and detailed legal advice on this matter which remains privileged and highly confidential, and thus not disclosed to third parties.
11. What are the mechanisms relied upon by Government to determine, prioritize, and secure normative commercial (market) terms and conditions. Page 28
12. What are the commercial priorities for the entire project, including financial, risk tolerance, governance, sustainability, return on investment, personnel training, economic/social benefits, airport operations cost efficiency, gain sharing, etc.? Page 28
13. How does the procurement process of a collaborative and incremental formulation of the Business Case, and the corresponding contracting documents, over the course of the project's development promote the development of a commercially "market" P3? Page 28
14. How will all of the commercial terms and conditions of the Project be market benchmarked given the lack of competitive tendering? How will VFM outcomes be "tested" and market-assessed? Page 30-31
15. How will the Government undertake performance verification and govern quality: KPIs; financial arrangements; labour terms; benchmarking/audit/reports/independent inspections; gain sharing; local supplier duties; change management; dispute resolution; remedial provisions; regulatory considerations; transfer of risk, etc. Page 31
16. How will Government deliver its duties, obligations and concession contributions? How will the Government performance "back-office" be constituted? The Commercial Case must take the Government's support, cost, financing mechanism, and ability to deliver into account. Page 32

**"Financial Business Case" Gap**

17. The project requires a definitive financial model, structure and full and robust descriptions to address numerous financial Page 35

issues; cost; sources of trading; affordability; savings; capital and current requirements; net effect on prices; impact (if any) on balance sheet; income and expenditure account; impact (if any) on debt and credit rating; complete financial picture (all accounting treatments).

18. How will Government address the risk of an independent construction company delivering highly specialized, experienced and professional "concessioned" airport operations services? Also, the financial model will need to be revised once the concession revenues/model is settled.
19. Assessment of airport operations cost and income efficiencies over 20 years (maintenance, power, environmental, HVAC, etc.) Page 35
20. Financial model subjected to stakeholder consultation and concurrence. Page 36
21. Financial model should be subject to an independent peer review. Page 35

#### **"Management Case" Gaps**

22. Overall the Green Book deficiency related to the "Management Case" of the overall Business Case are answers to the following key prescriptions:
  - (i) Have all the Project management and governance systems, methods, support services, and administrative structures that the Government will require been identified? Page 37
  - (ii) Have the public policy, business management, governance oversight, and cultural implications of the intended services been identified, understood and taken into account? Page 37
  - (iii) Has there been a detailed review of the confidentiality and security issues associated with both the Business Case development process and the ongoing performance of airport operation services by the private sector service provider?
  - (iv) What are the management programs that will be required, such as: quality assurance; Program Methodology (MSP); Program Methodology (Prince2); External advisors; Risk Management; Dispute Resolution; Change Management; Performance verification and assessment mechanisms; Government reviews; VFM assessments; Operational Page 37

Contingency Plans; Contract administration/management; and, Quango intermediary - all aspects;

(v) What are the management risks and how will they be addressed? A project governance and management strategy with monitoring arrangements must be formulated. How will they be monitored, reported, assessed and managed contractually, by governance oversight and by relationship management (communications)?; and,

Page 38

(vi) Project contingency "fail-safe" plans; Contingency Plans (as stated above); step-in rights; third party Project risk mitigation; alternative delivery options and resources necessary to allow Government to exercise such contingencies.

Page 38

### **"Overall Business Case" Gap**

The following "deficiency" (as that term is used in the Final Entrustment) is an amalgam of numerous constructive comments, questions and validity identified as Business Case omissions in the Report:

23. Even though so many of the Report's identified Green Book gaps arise out of the Green Book's inherent assumption that there is a consistent chronological order to the forging of public sector transactions, the Report appears to acknowledge that the Airport Project can be considered in the context of the Green book if, once all of the material, structural, commercial, transactional, service performance, social, public sector cost, funding, allocation of risk, personnel and ongoing project governance aspects of the Business Case have been completed and settled, a definitive Business Case is then documented, reviewed and assessed, with respect to all of those Business Case elements from the following perspectives: VFM; Cost-Risk/Benefit; Cost/Funding; Social; and Market Benchmarking perspective.

**Stovell, Curtis**

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**From:** Manders, Anthony  
**Sent:** Tuesday, April 12, 2016 9:28 AM  
**To:** Simmons, Graham D.; Adderley, Aaron  
**Cc:** Stovell, Curtis  
**Subject:** RE: Airport Redevelopment Project Board  
**Attachments:** SKMBT\_C45116040812390.pdf

FYI:

Attached is the reply we received from the FCO with regard to the Deloitte Report/ Entrustment issue. We will reply soonest.

AM



**From:** Stefan Hoyte (Sensitive)  
**Sent:** 08 April 2016 15:14  
**To:** Karen Neal (Sensitive)  
**Cc:** Jo Burden (Sensitive); Miriam Sachak (Sensitive)  
**Subject:** Bermuda airport - measures to address gaps in business case OFFICIAL\_SENSITIVE

Dear Mr Manders

Many thanks for your Gap Measures Proposal report in response to the terms included in the letter of entrustment dated 17 July 2015. The letter set out the following requirements to be fulfilled before the Bermudian Government can enter into a contract with the Canadian Commercial Corporation ("CCC"):

6. *(a) The cost of the construction of the airport must be wholly borne by CCC and the selected developer and sub-contractors. No debt should appear on the balance sheet of the Government of Bermuda that relates to the airport construction.*

*(b) The United Kingdom Government and the Government of Bermuda must agree on what measures are required to address the deficiencies that are identified by Deloitte in their assessment report(s).*

*(c) The Government of Bermuda must publish a written and evidence-based assurance that the required measures have been taken, before the Contract can be concluded.*

7. *The Government of Bermuda will keep the United Kingdom Government informed as to the progress of its negotiations with the CCC, including through the provision of a copy of the Contract at least one month in advance of signing and a copy of the Contract within one month of its conclusion. This is to ensure that:*

*(a) The United Kingdom Government's responsibility for the Government of Bermuda's compliance with its international commitments and obligations is not compromised; and*

*(b) All financial obligations and commitments arising from the Contract with the CCC are the sole responsibility of the Government of Bermuda, unless it has otherwise been agreed with the United Kingdom Government.*

In line with requirement 6.(b), the Government of Bermuda submitted details of the measures that would be taken to address the deficiencies that were identified by Deloitte Ltd. in that company's report to both the Government of Bermuda and the UK Government dated 18 May 2015 ("Report").

I would like to thank the Government of Bermuda for all the work necessary in putting together this list of measures. While there are some concerns remaining, I believe that the measures the Government of Bermuda has identified do in large part address the deficiencies identified in the Report. However, I would like to ask for several points of clarification before making a full

assessment of the suitability of the approach. Addressing each element of the HM Treasury's Green Book Five Case model in turn below:

#### Strategic Case

The Report judges the strategic case to be well-defined and does not identify any serious gaps.

#### Economic Case

The measures set out in the Government of Bermuda's letter to address gaps in the economic case are largely satisfactory, particularly the proposed Options Comparison Report. However, the Government of Bermuda should ensure that the selection of options analysed in the Options Comparison Report is wide and offers, in the words of the Deloitte Report "a clear appraisal of options from a Government perspective with which to engage the market." In addition, it is important that the wider benefits of different options, for example through job creation or boosts to tourism, are also considered in the Options Comparison Report.

#### Commercial Case

The measures that the Government of Bermuda propose to remedy gaps in the commercial case help but do not necessarily guarantee a full, robust commercial case. Since single-source contracting absents competitive tension, it is imperative to demonstrate that this approach will drive value for money for the Bermudian people. The proposed Assessment Report is welcome, but must include an assessment of how to drive value and minimise risk from a Government of Bermuda perspective, rather than just from the perspective of the commercial partners.

#### Financial Case

The measures that the Government of Bermuda propose around the financial case for the project are mostly satisfactory to address the deficiencies identified in the Report. However, there is no mention of two deficiencies highlighted in the report, namely the need for a peer review for the financial model and the need for the financial model to be updated to study concession structure and all costs to the Government of Bermuda related to the airport. I would welcome some reassurance that these concerns will be addressed in the proposed reports.

#### Management Case

Given the Report's assessment that the management case is the least mature of the Five Cases, it is encouraging to see the Government of Bermuda commit to several reports supporting the development of this case. In particular, the preparation of a comprehensive contingency plan will add real value to the project and help minimise risks for the Government of Bermuda. A detailed risk management strategy is essential to the successful delivery of a project, and should be covered robustly in the proposed DAO report.

I should be grateful if you could respond with clarifications and/or assurances on the points contained above.

Kind regards,

Stefan

Stefan Hoyte | Economist | Overseas Territories Directorate | Foreign and Commonwealth Office |  
Tel+44(0) 207 008 4678 | Echo 808 4678 |

**Stovell, Curtis**

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**From:** Manders, Anthony  
**Sent:** Saturday, December 12, 2015 9:25 AM  
**To:** Azhar, M. Rozy; Simmons, Graham D.; Stovell, Curtis  
**Subject:** RE: Airport Redevelopment

Also don't forget we have the Deloitte Report and the commitments in the Entrustment letter. These have to be fixed before we can sign the final Agreement. So there is a lot of work that has to be done. This should also provide some level of comfort to OPMP and the ACG. The Deloitte report list all the gaps and these must be resolved. This process will ensure that we do everything needed; we would then be close to the UK Green Book standards.

AM

**From:** Azhar, M. Rozy  
**Sent:** Friday, December 11, 2015 12:22 PM  
**To:** Simmons, Graham D.; Manders, Anthony; Stovell, Curtis  
**Subject:** RE: Airport Redevelopment

OK – See you then.

**From:** Simmons, Graham D.  
**Sent:** Friday, December 11, 2015 12:13 PM  
**To:** Manders, Anthony; Stovell, Curtis; Azhar, M. Rozy  
**Subject:** Re: Airport Redevelopment

Let's meet at the ACG's offices.

**From:** Manders, Anthony  
**Sent:** Friday, December 11, 2015 12:10 PM  
**To:** Stovell, Curtis; Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: Airport Redevelopment

I am fine either way.

AM

---

**From:** Stovell, Curtis  
**Sent:** Friday, December 11, 2015 12:09 PM  
**To:** Manders, Anthony; Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: Airport Redevelopment

Or ACG if desired.

---

**From:** Manders, Anthony  
**Sent:** Friday, December 11, 2015 12:09 PM

**To:** Stovell, Curtis; Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: Airport Redevelopment

Our Boardroom is booked. Can we meet at OPMP?

AM

-----Original Appointment-----

**From:** Stovell, Curtis

**Sent:** Friday, December 11, 2015 10:16 AM

**To:** Stovell, Curtis; Simmons, Graham D.; Manders, Anthony; Azhar, M. Rozy

**Subject:** Airport Redevelopment

**When:** Friday, December 11, 2015 1:00 PM-2:00 PM (UTC-04:00) Atlantic Time (Canada).

**Where:** Ministry of Finance

**Stovell, Curtis**

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**From:** Manders, Anthony  
**Sent:** Tuesday, December 15, 2015 11:09 AM  
**To:** Stovell, Curtis  
**Cc:** Azhar, M. Rozy; Simmons, Graham D.  
**Subject:** Re: Airport Redevelopment

Curtis

Yes we have that in place through the consultants. Without this being completed we cannot sign the final agreement and the deal will not be done so we have the list and it is being worked on.

Also chambers has reengaged Deloitte so that we can run all the proposed actions through them before we go to the FCO. We have to close the gaps. The consultants are all working on this.

Just thinking of the Deloitte engagement which is under \$50,000 and will be managed through chambers. I think they would need a waiver from FI. No work has been done on this yet. For the record if Chamber have not asked for a waiver then I am seeking the waiver to get three quotes. The reason being that Deloitte did the original report and it would be illogical to seek another service provider .

I will send you the list of gaps identified .

AM

Sent from my iPhone

On Dec 15, 2015, at 9:24 AM, "Stovell, Curtis" <[castovell@gov.bm](mailto:castovell@gov.bm)> wrote:

FS,

What is in place to ensure that the Deloitte-identified gaps are addressed prior to the final Agreement? Is there a MOF document that identifies the specific gaps and the approach(es) that are being taken to rectify them? If not, there needs to be a formal document with responsibility, strategy, and timeline identified.

Rgds,  
Curtis

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Saturday, December 12, 2015 9:25 AM  
**To:** Azhar, M. Rozy; Simmons, Graham D.; Stovell, Curtis  
**Subject:** RE: Airport Redevelopment

Also don't forget we have the Deloitte Report and the commitments in the Entrustment letter. These have to be fixed before we can sign the final Agreement. So there is a lot of work that has to be done. This should also provide some level of comfort to OPMP and the ACG. The Deloitte report list all the gaps and these must be resolved. This process will ensure that we do everything needed; we would then be close to the UK Green Book standards.

AM

**From:** Azhar, M. Rozy  
**Sent:** Friday, December 11, 2015 12:22 PM  
**To:** Simmons, Graham D.; Manders, Anthony; Stovell, Curtis  
**Subject:** RE: Airport Redevelopment

OK – See you then.

**From:** Simmons, Graham D.  
**Sent:** Friday, December 11, 2015 12:13 PM  
**To:** Manders, Anthony; Stovell, Curtis; Azhar, M. Rozy  
**Subject:** Re: Airport Redevelopment

Let's meet at the ACG's offices.

**From:** Manders, Anthony  
**Sent:** Friday, December 11, 2015 12:10 PM  
**To:** Stovell, Curtis; Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: Airport Redevelopment

I am fine either way.

AM

---

**From:** Stovell, Curtis  
**Sent:** Friday, December 11, 2015 12:09 PM  
**To:** Manders, Anthony; Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: Airport Redevelopment

Or ACG if desired.

---

**From:** Manders, Anthony  
**Sent:** Friday, December 11, 2015 12:09 PM  
**To:** Stovell, Curtis; Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: Airport Redevelopment

Our Boardroom is booked. Can we meet at OPMP?

AM

-----Original Appointment-----

**From:** Stovell, Curtis

**Sent:** Friday, December 11, 2015 10:16 AM

**To:** Stovell, Curtis; Simmons, Graham D.; Manders, Anthony; Azhar, M. Rozy

**Subject:** Airport Redevelopment

**When:** Friday, December 11, 2015 1:00 PM-2:00 PM (UTC-04:00) Atlantic Time (Canada).

**Where:** Ministry of Finance



## Stovell, Curtis

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**From:** Manders, Anthony  
**Sent:** Tuesday, December 15, 2015 10:48 AM  
**To:** Stovell, Curtis  
**Subject:** Re: Airport Construction and CCC - Entrustment Letter and Deloitte Report

Yes the meeting did take place. We said we were looking at the accounting treatment. No formal feedback was provided.

AM

Sent from my iPhone

On Dec 15, 2015, at 9:25 AM, "Stovell, Curtis" <[castovell@gov.bm](mailto:castovell@gov.bm)> wrote:

FS,  
Did this meeting take place? Did OAG provide formal feedback in writing or vice versa?  
Thanks,  
Curtis

**Curtis A. Stovell, CPA, CA**  
**Accountant General**

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Monday, August 03, 2015 9:20 AM  
**To:** Stovell, Curtis  
**Subject:** RE: Airport Construction and CCC - Entrustment Letter and Deloitte Report

Yes someone from ACG should be at the meeting.

AM

**From:** Stovell, Curtis  
**Sent:** Monday, August 03, 2015 9:10 AM  
**To:** Manders, Anthony  
**Subject:** RE: Airport Construction and CCC - Entrustment Letter and Deloitte Report

Anthony,

I am on leave until the 17<sup>th</sup>. A bit difficult to bring someone else in at this point, but Crystal is acting and someone from ACG should be at the meeting?

Rgds,  
Curtis

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Monday, August 03, 2015 7:51 AM  
**To:** Stovell, Curtis  
**Subject:** FW: Airport Construction and CCC - Entrustment Letter and Deloitte Report

Hello Curtis,

I am trying to arrange a meeting with the OAG on the above issue. Attached is the Entrustment letter, Can you make Wednesday morning?

AM

**From:** Heather A. Jacobs Matthews [<mailto:hmatthews@oagbermuda.bm>]  
**Sent:** Friday, July 31, 2015 8:57 AM  
**To:** Manders, Anthony  
**Cc:** Claude Nantel  
**Subject:** RE: Airport Construction and CCC - Entrustment Letter and Deloitte Report

Hi Anthony,  
Thanks for your email. (And yes, I know I shouldn't be writing to you on Cup Match :) and particularly to the father of Somerset's Captain).  
Wednesday morning is good for me. Claude is on vacation leave on-island however I am certain that he will be agreeable to meet on Wednesday whatever time is good for you. By copy of this email, I am requesting him to confirm his availability. I would also suggest that Curtis be invited to the meeting once Claude confirms.  
Have a wonderful Cup Match holiday.  
Kind regards,  
Heather

---

**From:** Manders, Anthony [[amanders@gov.bm](mailto:amanders@gov.bm)]  
**Sent:** Tuesday, July 28, 2015 8:44 AM  
**To:** Heather A. Jacobs Matthews  
**Cc:** Claude Nantel  
**Subject:** RE: Airport Construction and CCC - Entrustment Letter and Deloitte Report

Good morning Heather,

I think a discussion on this now is a good idea.  
I am available next Wednesday morning, if that works for OAG.

Regards  
Anthony

**From:** Heather A. Jacobs Matthews [<mailto:hmatthews@oagbermuda.bm>]  
**Sent:** Monday, July 27, 2015 1:25 PM  
**To:** Manders, Anthony

**Cc:** Claude Nantel

**Subject:** Airport Construction and CCC - Entrustment Letter and Deloitte Report

Good afternoon Anthony,

We have received a copy of the recent entrustment letter from the UK advising that no debt should appear on the CF's financial statements in relation to the construction of the airport. Perhaps we can have initial discussions, at your convenience, to discuss what kind of partnership is envisaged and the accounting treatment of the project by the Government. This will impact the subsequent event note in the CF 2015 financial statements.

I look forward to hearing from you.

*Heather A. Jacobs Matthews, JP, FCPA, FCA, CFE*  
*Auditor General*

*Office of the Auditor General*  
*Reid Hall - Penthouse, 3 Reid Street*  
*Hamilton HM11, Bermuda*

*Phone: 441-292-2700; Fax: 441-295-3849*

*Website: [www.oagbermuda.gov.bm](http://www.oagbermuda.gov.bm)*

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**Please think of the environment before printing this message.**

<image001.png>

Email secured by Check Point

**Stovell, Curtis**

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**From:** Manders, Anthony  
**Sent:** Tuesday, February 23, 2016 8:49 AM  
**To:** Stovell, Curtis  
**Subject:** GAP Remedial Measures Proposal To FCO  
**Attachments:** Final GAP Measures Proposal.pdf

Curtis,.

FYI:

Attached is the final ( Deloitte vetted ) form of Gaps Remedial Measures Proposal for the Government of Bermuda's submission to the FCO for their review and approval pursuant to the Entrustment terms.

AM

**Compliance By The Government of Bermuda  
with U.K. Government's Entrustment  
Related To The Redevelopment of L.F. Wade  
International Airport. ("Airport")**

The Government of Bermuda hereby submits, for agreement by The United Kingdom Government ("U.K. Government"), the following measures that are required to address the deficiencies that have been identified by Deloitte Ltd. ("Deloitte") in that company's H.M. Treasury "Green Book" report to both the Government of Bermuda and the U.K. Government ("U.K. Government") dated 18<sup>th</sup> of May, 2015 ("Report").

**Introduction**

The U.K. Government provided the Government of Bermuda with its authorization and entrustment to proceed with the Government of Bermuda's proposed contractual arrangements with the Canadian Commercial Corporation concerning the redevelopment of the Airport pursuant to the letter of Entrustment from the Foreign & Commonwealth Office of the U.K. Government, which was addressed to H. E. Governor Ferguson dated 17<sup>th</sup> of July, 2015 ("Entrustment"). The Entrustment, in part, stipulates as follows:

Subject to the requirements set out in paragraphs 6 and 7, the United Kingdom Government delegates authority to the Bermudian Government to enter into a contract with CCC to redevelop the airport (the "Contract") . . .

(b) The United Kingdom Government ("UK") and the Government of Bermuda must agree on what measures are required to address the deficiencies that are identified by Deloitte in their assessment report(s).

**Submission of Remedial Measures for U.K. Government Agreement**

Pursuant to the Entrustment, the Government of Bermuda hereby requests the U.K. Government's agreement that the following are the remedial measures that are required to address the deficiencies that were identified by Deloitte in the Report, which are hereby submitted pursuant to the Entrustment.

We wish to advise the U.K. Government that the following delineation of Key Gaps and Remedial Measures, and Commentary has been prepared by the Government of Bermuda with the direct assistance of several consulting firms and legal advisors, including Deloitte, Leigh Fisher (London, U.K. office), and Bennett Jones (Bermuda) Ltd.

Key Gap	Remedial Measure (Assessment Reports)	Government of Bermuda's Commentary
<b><u>Strategic Case</u></b>		
1. Strategic Case Summary	At the Government of Bermuda's discretion: summarise the Strategic Case (mostly from existing documents) as the basis for communicating the case for change with stakeholders, including the public.	The Strategic Case has already been well-defined and is comprehensive at an 'in principle' level. This Remedial Measure has already been documented by the Government of Bermuda and used in many stakeholder and public ("Town Hall") meetings across Bermuda over the last six months.
<b><u>Economic Case Gap</u></b>		
2. Critical Success Factors (CSFs)	CSFs will be identified, prioritised, and used to inform the monetary and non-monetary benefits assessment in the options appraisal.	Although all material CSF's have been informally formulated and advanced in the ADA, a Government of Bermuda report will document the Airport Project's CSF's, and the contractual/transaction means by which the CSF's shall be secured.
3. Economic Options Appraisal	The Government of Bermuda will prepare a side-by-side short list of transaction options, including economic NPV, risks, costs and benefits (monetary and non-monetary) analysis and "Public Sector Comparator" (PSC), to identify the preferred option in economic terms.	This remedy has already commenced. Bennett Jones prepared a review of alternative transaction/project structure options, and Leigh Fisher and CIBC are now developing the economic NPV, risk, non-monetary costs and benefits for an options assessment ("Options Comparison Report"). The Options Comparison Report will include a PSC in its review of transaction alternatives together, with a review of the preferred options' selection factors and benefits.
4. Optimism Bias	Optimism bias will be explicitly quantified for this project and included in the assessment of project costs in the above options appraisal. A widely relied upon (industry best practice) methodology will be used for that analysis.	The Options Comparison Report will include the described optimism bias estimation and assessment.

<u>Commercial Case Gaps</u>		
5. Procurement Strategy	The Government of Bermuda will document its preferences and determinations that have lead to engaging in a collaborative joint - development initiative with CCC and its subcontractor rather than engaging in procurement alternatives (competitive, single-source, or otherwise).	<p>CCC/Aecon and the Government of Bermuda (via its Airport Project's Management Office, KPMG) will jointly develop the "roadmap" and critical path timeline, where each of the transaction stages for the Project will be clearly mapped and described.</p> <p>Such Assessment Report will: provide a value driving framework to ground the selected process; include detailed analysis on how to obtain best value from the selected process through best and most effective use of legal, technical, financial transaction and programme management support, and how related contract negotiations will be conducted; set out a clear roadmap and plan of activity to progress to Financial Close.</p>
6. Negotiation approach to drive value in the transactions formulation process	<p>(1) Conduct global transaction benchmarking to drive negotiations with the supplier toward market terms.</p> <p>(2) Set out Bermuda's target (ideal) concession structure (length, revenue share, structure and incentivisation, definition of revenue, annual escalation formula, revenue guarantees, etc.).</p> <p>(3) Review the proposed</p>	<p>(1) The Government of Bermuda will address this matter by the following two measures: (i) the Government of Bermuda will document and rely upon the highly reputable financial, airport business and legal transactional advice that it secures to ensure the transaction's terms are negotiated and kept "on market" and are consistent with international industry practices and standard commercial terms; and, (ii) the Government of Bermuda will prepare a report that will benchmark the transaction's outcomes to both the original CSRs and comparable global market transactions (taking into account the unique nature of the Project).</p>

	<p>perimeter of the PPP.</p> <p>(4) Establish service and safety standards (Key Performance Indicators, enforcement, cost effectiveness and consistency of operating margins).</p> <p>(5) Review infrastructure solution: is it fit for Bermuda's purpose?</p>	<p>(4) An Assessment report will be prepared that explains how the ADA (which was executed after Deloitte's May 8<sup>th</sup>, 2015 Report) clearly addresses the nature, scope and high degree of qualitative and quantitative KPIs including supporting benchmarking &amp; industry standards that will be specifically targeted and included in the definitive Project contracts. The Assessment Report noted in section 14 below, will also include a review of the final contract's reliance on such KPIs and how the Government of Bermuda will manage and monitor the performance of the transaction's governing Project Agreement during its 30 year term. As a matter of Project governance, such Assessment Report will also document how the Project's transaction structure will promote and facilitate accountability and transparency concerning the Government of Bermuda's oversight of the Airport's operations and performance of the Project Agreement.</p> <p>(5) See "Overall Business Case Gap" below.</p>
<p>7. VFM assessment of the proposed CCC deal for Bermuda</p>	<p>Conduct normative benchmarking of the transaction's commercial and contractual terms individually and as a whole, against comparable airport deals.</p>	<p>A brief report will be written fully describing the Bermuda Government's VFM objectives, criteria and mechanisms to benchmark the Project to "market standard" for comparative transactions. This report will also take into account the Public Sector Comparator noted in section 3 above. The ADA currently provides much of that information. See "Overall Business Case Gap", where the Government of Bermuda will also secure professional VFM opinions.</p>



<b><u>Financial Case Gaps</u></b>		
8. Shadow financial model to drive value in the negotiation	Build and utilise a full project financial affordability model from the Government of Bermuda perspective; Challenge and test key assumptions, concession structure and terms. Maintain the model on a "live" basis through negotiations to consider the impact of different concession structures and terms.	This Green Book prescription has already been undertaken by the Government of Bermuda at all stages of the Airport Project, with CIBC leading in collaboration with the Ministry of Finance, and with advice from both Leigh Fisher and HNTB (on design & construction). The Government of Bermuda will file a report documenting those efforts with the assistance of Bennett Jones to ensure that all of such variables have been considered in all commercial and contract negotiations. That Report will include outputs from the Project's financial model, as well as the key assumptions relied upon.
9. Affordability: budgetary impact	Assess budgetary impact against the 'as is' baseline needs to be understood.	The Government of Bermuda will prepare a brief report on Gaps 9 and 10, with reference to CIBC's ongoing assistance. That report will be outline expected future cash flows associated with the Project relative to status quo over a reasonable time horizon. That report will also highlight the long-term anticipated impact on the Government of Bermuda's tax base as well as other ancillary benefits associated with the Project.
10. Affordability: Accounting and balance sheet impact	Assess impact on balance sheet, credit ratings, debt. (Note the specific mention of this in the Entrustment and the Government of Bermuda's own stated objectives for the project.)	The Ministry of Finance will prepare a brief report on Gaps 9 and 10, with the assistance of CIBC. That report will outline the balance sheet accounting impact to the Government of Bermuda, as well as the impact to the Government of Bermuda's Sovereign Credit Rating and Debt Profile associated with the Project.
<b><u>Management Case Gaps</u></b>		
11. Programme and contract management	Set out the Government of Bermuda's plan for: The use of external advisors throughout the process; Transitioning staff and operations to the new model; Evaluation and realisation of expected benefits; Risk management.	The DAO will submit a written report on this matter to the PS Transportation and the FS Finance, containing a review of all advisors, their roles, DAO HR issues and social personnel benefits of the Project (including risk management issues)

12. Contingency plan	Set out the contingency plan should the recommended transaction fail at any stage.	A report will be prepared describing the ADA's stipulated off-ramps and Airport operations contingencies in the event of Commercial Close Financial Close failure, <u>and</u> upon a material failure of Airport operations during the 30 year operating term (including, "step-in rights" to ProjectCo).
13. Regulatory Framework and Regulation	<p>Establish the Government of Bermuda's Governmental authority that will govern and oversee the implementation and performance of the Project.</p> <p>Develop regulatory principles and framework (which would form the basis of the commercial agreement service standards).</p> <p>Develop tariff structuring and review mechanism.</p> <p>Monitoring function (penalty mechanisms for not meeting the service output requirement etc.)</p> <p>Deliver capacity building workshop/training.</p> <p>Assess the capacity of the Government of Bermuda to monitor the concession - i.e. whether regulatory/monitoring ought to be undertaken by a third party to extract ongoing value.</p>	DAO will prepare a report describing the formation of: the Project's Management Office (KPMG); the implementing concession legislation; Quango; the ADA's required governance/oversight provisions; the labour benefits to Bermuda in the ADA; and, how the Quango will monitor Airport operations and the performance of the 30 year contract by ProjectCo.
<b>"Overall Business Case" Gap</b>		
<p>14. The following or Business Case undertaking that is proposed by the Government of Bermuda is an amalgam of numerous constructive comments, questions and validity identified Business Case omissions in the Report. Even though so many of the Report's identified Green Book gaps arise out of the Green Book's inherent assumption that there is always a consistent chronological order to the forging of public sector transactions, the Report acknowledges that the Airport Project can be considered in the context of</p>		

the Green Book if, once all of the material, structural, commercial, transactional, service performance, social, public sector cost, funding, allocation of risk, personnel and ongoing project governance aspects of the Business Case have been completed and settled, a definitive Business Case is then documented, reviewed and assessed, with respect to all of those Business Case elements from the following perspectives: VFM; Cost-Risk/Benefit; Cost/Funding; Social; and market benchmarking.

As previously noted, this undertaking will be required by both the Ministry of Finance and Ministry of Transportation (as well as the Economic Development Committee of Cabinet) before the Commercial Close of the Project can be approved for submission to the Legislature of Bermuda. The unique nature of how the Project has been structured, developmentally formulated and collaboratively "engineered" over time with CCC/Aecon requires such a full and final reflective overview and assessment by the Government of Bermuda as an ordinary governance requirement, regardless of any Green Book prescriptions.

#### **Request for U.K. Government Agreement**

Pursuant to the Entrustment, please provide the Government of Bermuda with written confirmation that the U.K. Government accepts and agrees with, the above measures that are required to address the above cited "deficiencies" (as that term is used in the Entrustment) identified by the Report. Upon such written confirmation of such agreement, the Government of Bermuda will expeditiously proceed to implement such measures and publish a written and evidence-based assurance upon such measures have been taken pursuant to paragraph 6(c) of the Entrustment.

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**Stovell, Curtis**

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**From:** Stovell, Curtis  
**Sent:** Monday, February 22, 2016 3:48 PM  
**To:** Simmons, Graham D.  
**Subject:** FW: More CCC -Aecon Due Diligence info

Graham,

Any comments or concerns before I proceed? The FS has already responded with no particular issues.

Thanks,  
Curtis

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Stovell, Curtis  
**Sent:** Thursday, February 11, 2016 5:23 PM  
**To:** Manders, Anthony  
**Subject:** RE: More CCC -Aecon Due Diligence info

FS,

I have not written the memo as yet, but based on my read of the CCC document (excerpt in my previous email) and their indication that Aecon was the originator of the transaction, I can say that that was not my original understanding and that I was under the impression that the construction contractor was yet to be selected. My interpretation of CCC's document is that my original impression was incorrect. However, based on my understanding at that time that there was no contractor selected, I was not providing permission through the construction phase of the project. My understanding was that a contractor would be identified subsequent to my sole source permission memo and I would have requested information on Aecon at the time of the LA had I been aware that identification had already taken place.

Notwithstanding the above, it is clear that CCC thoroughly vets its counterparties using a fairly rigorous set of procedures, and this testifies to the reputability and soundness of Aecon. As I mentioned previously, this supports the likelihood of satisfactory execution of the project. What it does not provide clarity on is whether there were/are alternative suitable entities capable of similar execution that CCC might (have) work(ed) with, and that is ordinarily one of the key elements of a sole source request. This doesn't preclude sole source permission being given, but does result in a diminished argument in my view.

With the work required to close identified entrustment "gaps", once accepted, I am satisfied that the conditions to provide sole source permission for the project will have been met.

Rgds,  
Curtis

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
Email: [castovell@gov.bm](mailto:castovell@gov.bm)

**From:** Manders, Anthony  
**Sent:** Thursday, February 04, 2016 4:58 PM  
**To:** Stovell, Curtis  
**Cc:** Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: More CCC -Aecon Due Diligence info

Curtis,

I can't confirm this; I don't know who introduced who to the project. My first involvement in the project was at a meeting in CCC's Offices in Toronto back in June 2014 . This was after the Ministry of Finance was presented the CCC White Paper. I believe this all came about from the former Quiport President explaining the CCC proposal to the CEO of the Bermuda Airport. The CCC Government to Government approach was considered unique for the reasons below.

- Enables earliest development of the new terminal and associated works supported by an expert delivery team;
- Customized solution is developed in collaboration with Bermuda;
- Expedites project procurement; early start, early finish;
- Guarantees that contracts will be performed per the terms and conditions mutually agreed upon;
- Due diligence conducted to satisfy CCC of the Canadian's supplier's technical, financial and managerial capability to deliver on the contract;
- Concession approach requires no outlay for the airport authority and no new debt;
- Enhanced Bilateral Relationship;
- Total transparency, adhering to international best practices;
- Respect and adherence to socially responsible business practices;

AM

**From:** Stovell, Curtis  
**Sent:** Thursday, February 04, 2016 3:37 PM  
**To:** Manders, Anthony  
**Cc:** Simmons, Graham D.; Azhar, M. Rozy  
**Subject:** RE: More CCC -Aecon Due Diligence info

FS,

Further to the information below and attached to your original December 17 email, the CCC December 2015 selection document notes that:

**"In the case of the redevelopment of the L.F. Wade International Airport in Bermuda, CCC was introduced to the potential opportunity by Aecon, a Canadian company."**

I was initially under the impression that it was CCC who introduced Aecon to this transaction. My read of this is that Aecon was always the intended construction partner (at a minimum), which was not my initial understanding when the CCC LA was provided to me. If it is fact that Aecon was in train prior to the engagement of CCC and the intent was far

more forward looking than I appreciated at the time, I can understand the Minister's view that my sole source comments encompassed the breadth of the project. However, based on my limited awareness wrt Aecon, that certainly could not have been my intent. I have reviewed the correspondence I have, and did not see any mention of Aecon leading up the sole source memo I issued in 2014.

Can you confirm my current understanding that:

- Although not mentioned in the MOU or LA, that Aecon was the identified counterpart for the new airport prior to the introduction of CCC?
- If Aecon was identified prior, were any other organisations considered by Bda Govt, even outside of the CCC framework, who may have similar capabilities, e.g. Ellis Don of Canada?
- The vetting by CCC of Aecon is sound in its approach and speaks to the competency and capacity of Aecon and the likelihood of successful implementation of the construction project. However, as Aecon was the approaching party, only Aecon was considered, and there may be other likewise-sound entities (within Canada) able to execute to the same degree?

This has all been bouncing around for some time and I apologise if I am repeating questions asked previously. The point of introduction of Aecon to the project is critical, as their early involvement was not made clear when I was asked to provide a sole source view in 2014.

Thanks,  
Curtis

Curtis A. Stovell, CPA, CA  
Accountant General

Internal Ext. 6279-2622  
Direct Dial: 279-2622  
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**From:** Manders, Anthony  
**Sent:** Thursday, December 17, 2015 10:43 AM  
**To:** Simmons, Graham D.  
**Cc:** Stovell, Curtis; Azhar, M. Rozy  
**Subject:** FW: More CCC -Aecon Due Diligence info  
**Importance:** High

Graham,

This was forwarded to me from a request Elaine made to the CCC.

AM

**From:** Wendy Dempsey [<mailto:wdempsey@CCC.CA>]  
**Sent:** Wednesday, December 16, 2015 6:52 PM  
**To:** Howard, Gregory J. ([gjhoward@gov.bm](mailto:gjhoward@gov.bm)); Duncan Card  
**Subject:** CCC Response to Procurement Office Request

Dear Greg and Duncan:

In response to the request by Elaine J. Blair of the Office of Project Management & Procurement for detailed information on CCC tendering process and practices, attached please find a copy of CCC's Buyer's Manual that explains

CCC's Value Proposition and the Integrity Compliance and Due Diligence completed on Canadian contractors prior to CCC entering into a contract with a foreign buyer.

CCC does not complete a tendering process when selecting its suppliers for international projects. Canadian suppliers are matched to projects in a number of different ways such as through the Trade Commissioner Service at Canada's Embassies and High Commissions, through trade missions and trade shows, through CCC's direct contact with buyers and through relationships developed by Canadian contractors themselves with buyers. Supplier selection is detailed in the Buyer's Manual we have provided for your reference.

While CCC does not complete a tendering process, it does require each of its contractors to complete a rigorous due diligence process to ensure that the companies that CCC selects to work with on international projects have the technical, managerial and financial strength to deliver the commitments contained in the contract and have suitable standards of business ethics to satisfy the integrity requirements of the Government of Canada. The process for Integrity Compliance and Due Diligence is laid out in detail in the Buyer's Manual along with CCC's own commitments to ethical business practices.

The CCC due diligence is completed for the Corporation's own assurance and CCC does not provide the assessment documentation or certification documentation to the buyer. CCC can, however, respond to any particular questions that Bermuda may have about our supplier and their major subcontractors in order to support Bermuda's own due diligence requirements. As a general guideline on CCC's approach, we also attach a sample of the initial questionnaire that CCC has its suppliers complete before CCC starts to work with the supplier on a particular project.

The sequencing of CCC's due diligence process is on-going from the initial contact with a contractor until an actual contract with a buyer is signed, wherein a full signed certification is required. Prior to this stage, data is collected and companies are either accepted or ruled out based on the information gathered by CCC.

In the case of the Aecon Group, CCC has assessed Aecon as a proven performer for project delivery. CCC refreshed its due diligence on the Aecon Group and completed a certification for the commitments contained in the Airport Development Agreement and will once again refresh this certification for the project agreement phase of the project.

Once CCC and the purchasing government reach the contract stage, the contracts negotiated by all parties are commercial contracts. When CCC signs the commercial contract, it offers the assurance of the Government of Canada, an AAA rated entity, that the contract will be performed per the agreed terms and conditions. Often financing for CCC-led projects can be obtained at better rates due to CCC's involvement and financial rating.

In the case of the Bermuda Airport Project, the terms and conditions will be negotiated between highly experienced negotiators with significant P3 and airport experience, ensuring that the contract is fair for all parties and, most important, ensuring that a completed airport can be delivered within the time and budget noted in the contract(s).

Please note that I will be the CCC point of contact for any additional questions.

Regards,

Wendy

Wendy Dempsey

Assistant General Counsel

Avocate générale adjointe

Canadian Commercial Corporation | Corporation commerciale canadienne

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Ottawa, Ontario, Canada

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CCC

Canadian Commercial Corporation  
Corporation Commerciale Canadienne

An Overview of Government-to-Government  
Contracting for Infrastructure Projects:  
The Value Proposition

Canada

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# THE CANADIAN COMMERCIAL CORPORATION WITHIN THE GOVERNMENT OF CANADA

## INTRODUCTION TO THE CANADIAN COMMERCIAL CORPORATION

As the world was rebuilding in 1946, Canada had the means but not the mechanism to assist governments of other nations in their efforts. The Government of Canada responded with the creation of the Canadian Commercial Corporation (CCC). This new organization was formed to deliver the critical Canadian resources desperately needed by European Governments for reconstruction efforts and was designed to offer rapid acquisitions to meet critical needs while maintaining careful control over the significant public funds it was managing for these purchases.

CCC has evolved since that time but remains true to its original commitment to provide governments around the world with access to quality Canadian products and services that meet their critical infrastructure and national security needs.

CCC is a Crown corporation (government-owned enterprise) of the Government of Canada and is governed by its enacting legislation, the 1946 *Canadian Commercial Corporation Act (ACT)*. The Act outlines CCC's broad mandate, which is to assist in the development of trade by helping Canadian companies access government procurement markets abroad and by helping Governments of other nations obtain goods (and services) from Canada. The legislation also provides CCC with a range of powers, including the ability to export goods (and services) from Canada either as principal or as agent in such a manner and to such an extent as it deems appropriate.<sup>1</sup>

CCC is the export sales organization of the Government of Canada that promotes purchases from Canada by Governments of the other nations through commercial advocacy and Government-to-Government contracting. CCC's two main activities include:

- Entering Government-to-Government contracts as prime contractor for acquisitions from Canada; and
- Acting as procurement agent for Governments of other nations who seek Canadian goods and or services.

## CANADA'S INTERNATIONAL TRADE PORTFOLIO

CCC reports to the Parliament of Canada through the Minister of International Trade and tables a Corporate Plan and Annual Report with the Government of Canada each year on the Corporation's plans and results, respectively.

CCC, in conjunction with Foreign Affairs, Trade and Development Canada ("DFATD") and Export Development Canada ("EDC"), forms the Government of Canada's International Trade Portfolio. The portfolio is structured in such a way that all the portfolio organizations are mandated with complimentary roles to ensure the best results for Canadian companies doing business internationally.

*CCC brings over 65 years of international contracting experience and a deep knowledge of Canadian industry to meet your infrastructure project requirements.*

DFATD provides country specific advisory services and diplomatic engagement, EDC provides international financing and insurance and CCC provides international contracting and procurement services on a Government-to-Government basis. CCC works particularly closely with DFATD both in Canada and abroad through Canadian High Commissions, Embassies and Consulates to leverage their well-established international footprint with representation in over 150 offices worldwide.

<sup>1</sup> Canadian Commercial Corporation Act can be referenced at <http://laws.justice.gc.ca/eng/acts/C-14/index.html>

# CANADA'S LONG TRADITION OF INTERNATIONALISM AND COMMERCIAL COOPERATION

Since the Second World War, Canada has made a commitment to internationalism especially in political and economic matters. Canada has a long history of agreements for development assistance, defence cooperation and commercial/economic cooperation to strengthen bilateral relations with other nations. To this end, the Government of Canada has used such agreements as the basis for this deepened engagement with other nations.

## GOVERNMENT OF CANADA MECHANISMS FOR COOPERATION

To further strengthen Canada's links with other nations and implement agreements with Governments of other nations, the Government of Canada established particular organizations to take concrete actions that make cooperation a reality.

To support defence cooperation, the Government of Canada established the International and Industry Programs within the Department of National Defence for military-to-military relationships covering mutual areas of defence and security interest.

To support Canadian commercial and economic cooperation with European governments in the difficult years after the Second World War, the Government of Canada established CCC to provide a mechanism for Government-to-Government arrangements to access the products and expertise Canada has to offer.<sup>2</sup>

## CANADA'S FOCUS ON COMMERCIAL AND ECONOMIC COOPERATION

Where Canada and the Government of another nation, are "resolved to consolidate, deepen and diversify their commercial and economic relations to the full extent of their growing capacity to meet each others requirements on the basis of mutual benefit, to promote commercial exchanges at the highest possible level,"<sup>3</sup> Canada has a variety of trade policy instruments it employs to operationalize this intent. One of these tools is CCC.

To this end, CCC may work with other Governments, in accordance with their respective internal laws, policies and objectives, and in the spirit of a framework on commercial and economic cooperation, to:

- Co-operate at the international level and bilaterally in the solution of commercial problems of common interest;
- Use their best endeavours to grant each other the widest facilities for commercial transactions in which one or the other has an interest; and
- Take fully into account their respective interests and needs regarding access to and further processing of resources.

As such, the Government of Canada, through its trade policy instruments, including the CCC, seeks to foster mutual economic cooperation based upon common interests and the strengthening of relationships between Canada and other nations, in all fields deemed suitable, for:

- The development and prosperity of their respective industries;
- The opening up of new sources of supply and new markets;
- The creation of new employment opportunities; and
- Generally to contribute to the development of their respective economies and standards of living.<sup>4</sup>

Through this and its legislative mandate to assist in the development of trade between Canada and other nations, CCC holds a wider interest than simply the delivery of a commercial transaction. CCC is tasked with creating and sustaining a collaborative bilateral relationship built upon projects of mutual economic interest and significance.

<sup>2</sup> Canadian Commercial Corporation Act can be referenced at <http://laws.justice.gc.ca/eng/acts/C-14/index.html>

<sup>3</sup> EC, Framework Agreement for commercial and economic cooperation between the European Communities and Canada, [1976], L 260/2

<sup>4</sup> EC, Framework Agreement for commercial and economic cooperation between the European Communities and Canada, [1976], L 260/2

# THE SPECIAL QUALITIES OF A PROJECT USING THE GOVERNMENT-TO-GOVERNMENT APPROACH

## THE BENEFITS OF GOVERNMENT-TO-GOVERNMENT PROCUREMENT WITH CANADA

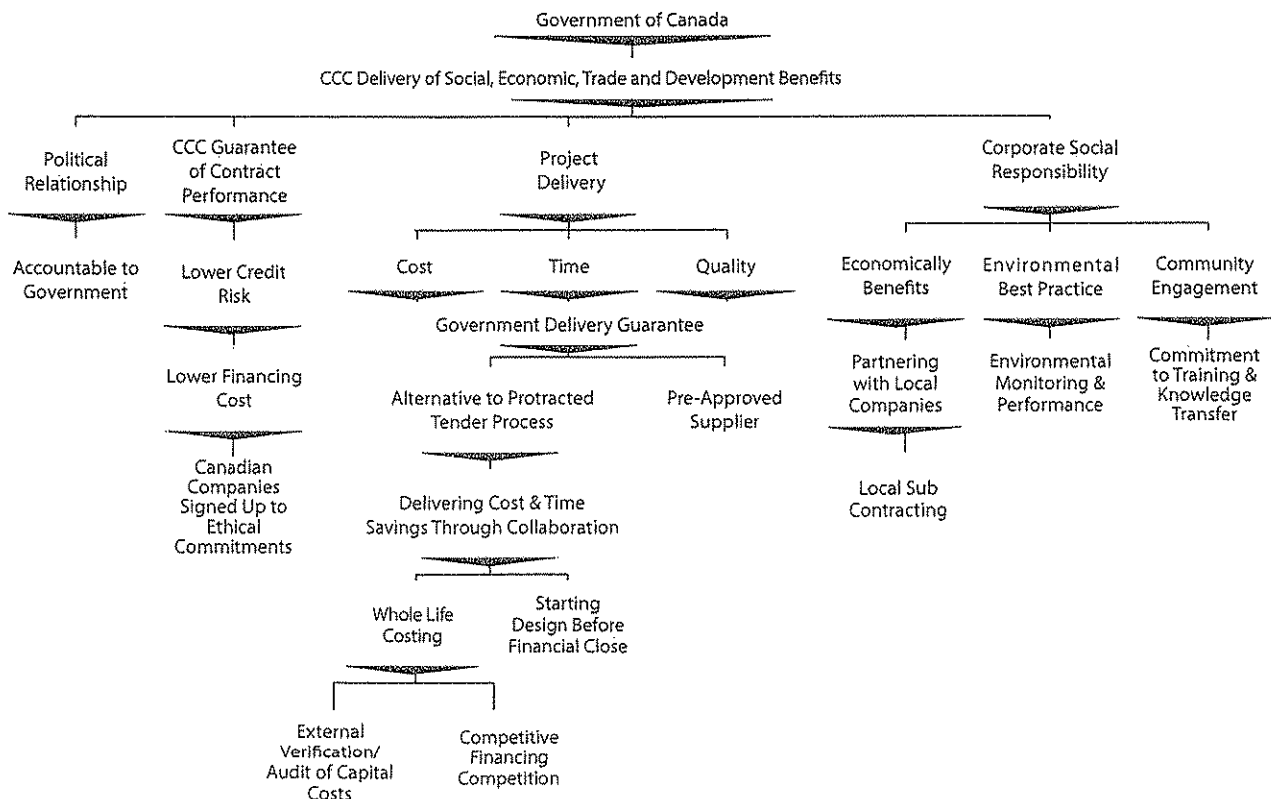
The CCC approach has a special quality that significantly reduces the commercial risk for a government buyer. The risks reduced are those that would normally be associated with an open call for proposals, including the investment in substantial up-front tender preparation costs, and the commercial risk and potential delay of at least two years in the award of a contract to an, as yet, unidentified party.

Contracting with CCC is not an 'end run' around a public tender but rather an ethical and efficient acquisition approach that should be considered in

specific circumstances for projects deemed critical to the economic and social development of the nation. Aside from the avoidance of extensive tender costs and time delays, there are many elements inherent in the CCC approach which provides value across a balanced scorecard of success factors.

*Involving CCC reduces acquisition risk to Governments with the offer of reliable Canadian companies, a guarantee of contract performance and an enhanced relationship with the Government of Canada.*

## BENEFITS OF A GOVERNMENT-TO-GOVERNMENT APPROACH



### The Added Value of a Political Relationship

CCC recognizes that the delivery of investments in infrastructure can often be a very lengthy process and fraught with risks in terms of delivery of the project. Elevating a project to a Government-to-Government engagement has the added advantage of tying the interests of sovereign nations to the development of a particular project. There is a mutual interest to ensure success together. This has been demonstrated effectively in other countries, most recently in Ecuador, where the involvement of CCC has facilitated resolution of project issues and has provided investor confidence in the project.

### The CCC Guarantee of Contract Performance

The Government of Canada, through CCC, guarantees that a project will be completed on time and on budget, as per the terms and conditions of the contract. The CCC approach carries with it the reputation and integrity of Canada as a sovereign government. No commercial company carries an equivalent guarantee to support its completion obligations.

*Last year, Governments around the world turned to CCC to purchase over \$1B in products and expertise from Canada. We are a trusted partner in delivering projects on time, on budget and to specification.*

Marc Whittingham  
President and CEO

### The Cost Savings of a CCC Guarantee

The CCC guarantee of contract performance may reduce the commercial risks to a Government by creating a more 'bankable' project. It acts to reduce perceived risk and may lower the risk premiums required from international debt markets. It provides an additional level of confidence that the development of the project will be delivered on time, on budget and to specification. As a consequence, there may be a superior value driven out in the financing of the project via this method of Government-to-Government contracting.

## THE CCC COMMITMENT TO ETHICAL BUSINESS PRACTICES

### Code of Conduct and Code of Business Ethics

CCC views business ethics as fundamental to successful business practices. Operating ethically means, at a minimum, conducting its affairs in accordance with the letter and spirit of the applicable laws of the countries in which CCC does business and complying with the Canadian *Corruption of Foreign Public Officials Act*. In addition, CCC requires its employees to conduct business with honesty, integrity and fairness. CCC's *Code of Conduct* and *Code of Business Ethics* defines the Corporation's commitment to ethical conduct, the environment and human rights. In addition, CCC's *Code of Conduct* spells out the policies and procedures that govern the behaviour of employees of the Corporation including conflict of interest. All employees sign an annual statement confirming they are in compliance with the requirements set out in these Codes.

### Personal Integrity of CCC Suppliers

CCC is committed to fulfilling its mandate with a high standard of integrity. CCC requires the same level of commitment to personal integrity from all persons the Corporation conducts business with. CCC has a mandatory requirement that its Canadian companies complete a Supplier Disclosure Form revealing any and all criminal convictions of the company and its principles for which a pardon has not been granted.

### Contractual Language

All CCC domestic contracts with Canadian companies include language dealing with Corruption and Bribery and International Sanctions. This language creates affirmative obligations on the Canadian company to behave in a manner consistent with the expectations of the Government of Canada. CCC contracts are typically based on international contracting standards, such as those of the World Bank.

## THE CCC ACCOUNTABILITY TO THE CROWN AND ITS OTHER STAKEHOLDERS

CCC, as a Crown corporation of the Government of Canada, is accountable to numerous stakeholders including its Shareholder, the Government of Canada, customers, employees and the larger domestic and international community.

### Financial and Performance Audits

The Office of the Auditor General of Canada conducts annual financial audits of CCC's financial statements as well as periodic special examinations of the Corporation and its performance. The Office of the Auditor General of Canada provides the Parliament of Canada with independent information, advice, and assurance regarding CCC's stewardship of public funds.

### Public Reporting

The Financial Administration Act requires that CCC prepare and make public a quarterly financial report within 60 days after the end of CCC's fiscal quarter to which the report relates for the first three fiscal quarters of the fiscal year.

Further, CCC must conduct its business in a transparent manner by filing a Corporate Plan and an Annual Report with the Parliament of Canada each year, through the Minister of International Trade.

### Prudent Management of Risk

CCC has established a comprehensive Enterprise Risk Management Program for the management of risks. This Program identifies the strategic, operational and transactional risks facing CCC. It also sets out the processes for their management in the areas of risk identification, assessment, response, control, monitoring, reporting, and communication.

## PURPOSE OF THE GOVERNMENT-TO-GOVERNMENT APPROACH

When delivering critical infrastructure, public procurement processes are designed to provide the requisite degree of transparency and to achieve a competitive economic outcome. In most instances these positive objectives are achieved; however, there are specific circumstances when such processes inhibit the ability of Governments to ensure project delivery in a timely way.

CCC would like to explore how your Government can achieve the benefits of a competitive public procurement process without triggering its drawbacks, by utilizing a risk-sharing, Government-to-Government approach. The fundamental objective of the Government of Canada, acting through the CCC, is to assist your Government by providing a preferred Canadian solution effectively, efficiently and that meets your needs in a timely manner.

Working directly with CCC to deliver public infrastructure offers a process designed to answer three important questions:

1. Is direct contracting with Canada the right choice at this time for your project?
2. How does the proposed delivery approach provide a value to your Government?
3. What are the assurances and controls that CCC puts in place to deliver the results anticipated for your project?

*Procurement with the Government of Canada represents a collaborative, trustworthy, reliable, accountable and quality assured solution which provides a lower risk-exposure than standard commercial tenders.*

For CCC, projects are not undertaken in response to a tender but are instead an offer to work together with your Government in a commercially cooperative and collaborative manner to reduce the costs, the risks and the timelines associated with delivering a project of real economic and social importance to the nation.

The Government of Canada, through CCC, provides access to a roster of fully vetted and approved Canadian companies, accompanied by a Government of Canada backed guarantee of contract performance to ensure your project will be completed in accordance with its terms and conditions, and CCC oversight through the life of the project.

As a Government of Canada agency, CCC has to demonstrate the viability of the projects it undertakes to an Internal Risk and Opportunities Committee and adheres to principles of good project management and ethical business practices, particularly where it actively promotes a project on a single source basis.



Marc Whittingham, President & CEO, at construction site for new Quito International Airport in Ecuador. Photo courtesy of Corporación Quiport S.A.



## HOW CCC WORKS WITH OTHER GOVERNMENTS

CCC understands the challenges inherent in international procurement for infrastructure projects: knowing where to find the products and services required; determining a supplier's capability; and ensuring that projects are delivered on time and on budget. Collaboration with CCC, through the mechanism of a Government-to-Government contract, will provide a Government with a timely, efficient and trustworthy alternative to a lengthy bidding process.

### Memorandum of Understanding

When a Government seeks to collaborate with Canada on a single project or multiple projects, CCC can become involved and elevate the collaboration to a Government-to-Government engagement through a Memorandum of Understanding (MOU). The MOU would outline a mutual commitment to explore how our two sovereign nations could develop this priority project for the government.

This MOU allows CCC and a government to explore how this Government-to-Government mechanism for directed contracting can meet its needs. The MOU also provides context for discussions on how the CCC can benefit the project with:

- A cost effective and tailored procurement solution for the project;
- Access to an impressive roster of Canadian companies who offer high quality products and services and who have satisfied CCC's robust due diligence review;
- Well established expertise in international contract structuring;
- Coordination services to assist in accessing project financing;
- Respect and adherence to socially responsible business practices;
- Risk mitigation of the project through active monitoring of the quality and progress of work and the administration of funds; and
- A Government of Canada's assurance that any contract signed will be completed in accordance with its terms and conditions.

### CCC as Prime Contractor

When CCC acts as prime contractor, a Government benefits from a Government-to-Government arrangement. Even though the performance obligations are flowed through to the Canadian company, CCC retains the legal responsibility for the completion of the contract according to its terms and conditions. As prime contractor, CCC will:

- Undertake an internal due diligence conducted to assure CCC that the Canadian company has capability to complete the contract successfully;
- Deliver a proposal for the project with the qualified Canadian company;
- Negotiate the international contract with the Government and issue the sub-contract to the preferred Canadian company;
- On instruction from the Government, hold in trust any advance payments received from the Government and disperse against progress on the contract;
- Manage the contract and monitor Canadian company performance; and
- Guarantee that the contract will be performed according to the terms and conditions agreed to by CCC and the Government.

### Quality Assurance

Collaboration with CCC offers access to an impressive roster of Canadian companies who offer high quality products and services and who have passed CCC's rigorous internal due diligence review. CCC assures cost effective and tailored procurement solutions, secures access to Canada's export capabilities while promoting socially responsible business practices, and well established expertise in contract structuring.

### Internal Due Diligence by the Government of Canada

CCC has a proven due-diligence process and in-depth knowledge of Canadian companies. Prior to contracting with the preferred Canadian company, CCC assures itself that the Canadian company proposed to undertake the work for a Government has the technical, managerial and financial capacity to deliver the project.

## Responsible End-to-End Management of the Project

As the contractor of record, the CCC has the responsibility of overseeing the financial administration of the contract over its entire duration—employing audited financial practices, ensuring milestones are met, and that the progress reporting requirements a Government has identified in the contract are fulfilled in a timely manner. Importantly, a Government can count on CCC to stay involved in the project right through to completion and closeout of the contract.

## Risk Mitigation

CCC actively monitors the quality and progress of the work and the administration of funds through the life of the contract. Advance payments received by CCC from a Government is held in trust and disbursed in accordance with the contract.

## Competitive Financing to Ensure Value for Money

Once the project has been structured, and in order to ensure that the concession contract is based upon the most cost effective package of debt financing, CCC can assist with the search for financing from both international banks and domestic financial institutions.

## Contract Performance

First and foremost, CCC, guarantees, through the Government of Canada, that a project will be completed in accordance with the terms and conditions of the contract. The CCC approach carries with it the reputation and integrity of the Government of Canada in addition to the Canadian company whereas in a competitive process the buyer is limited to the reputation and credit risks associated with the winning company.

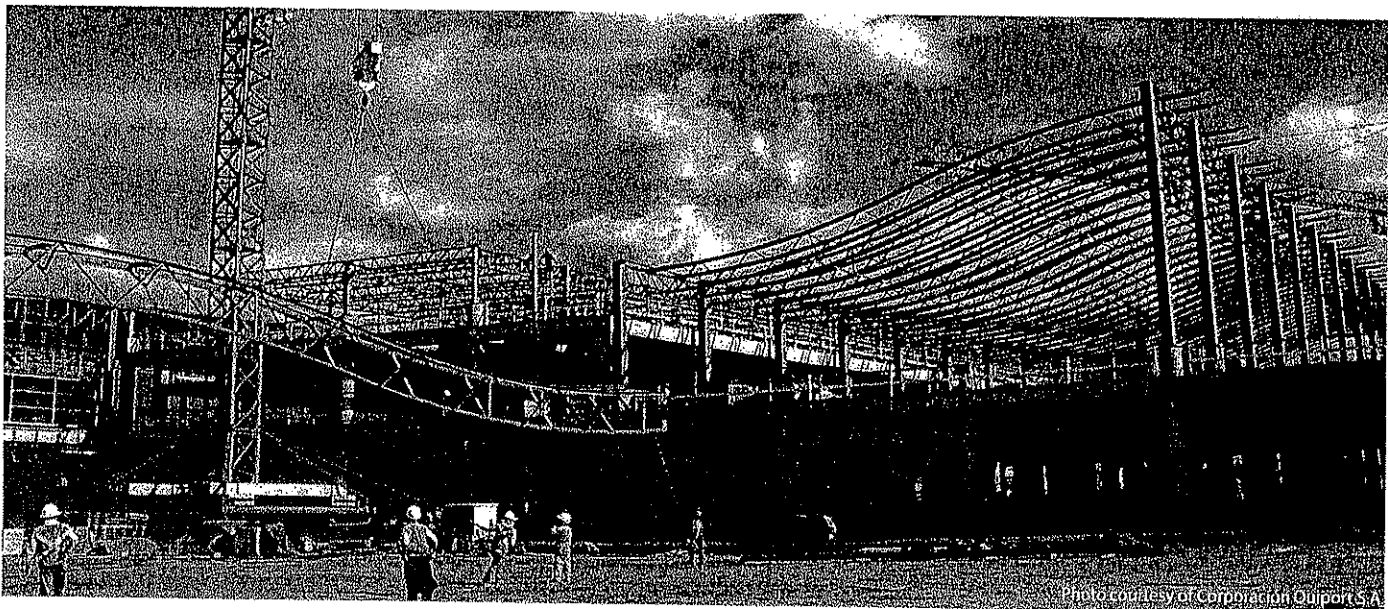


Photo courtesy of Corporación Quiports S.A.

## BENEFITS OF A GOVERNMENT-TO-GOVERNMENT APPROACH TO DELIVERING A PROJECT

Governments of many nations have recognized that value does not necessarily mean securing the lowest possible price, and that a number of factors have to be balanced for value to be delivered within an infrastructure project. The CCC acquisition model mirrors a number of similar recent developments within the public sector procurement domain.

This section sets out the key benefits which CCC delivers within the Government-to-Government model. CCC believes that this model can deliver a project more quickly and more efficiently.

to use CCC's vetted Canadian companies to develop infrastructure solutions with the added benefit of Government of Canada delivery assurance controls.

### Time Savings Through Collaboration

To illustrate the potential time savings that can be attributed to working with CCC an example of a typical timeline for a traditional procurement process for an airport concession has been laid out on the following page. A fully tendered airport concession exercise normally runs in the order of two and a half years in advance of the commencement of the work.

### DELIVERING VALUE IN COST AND TIME SAVINGS

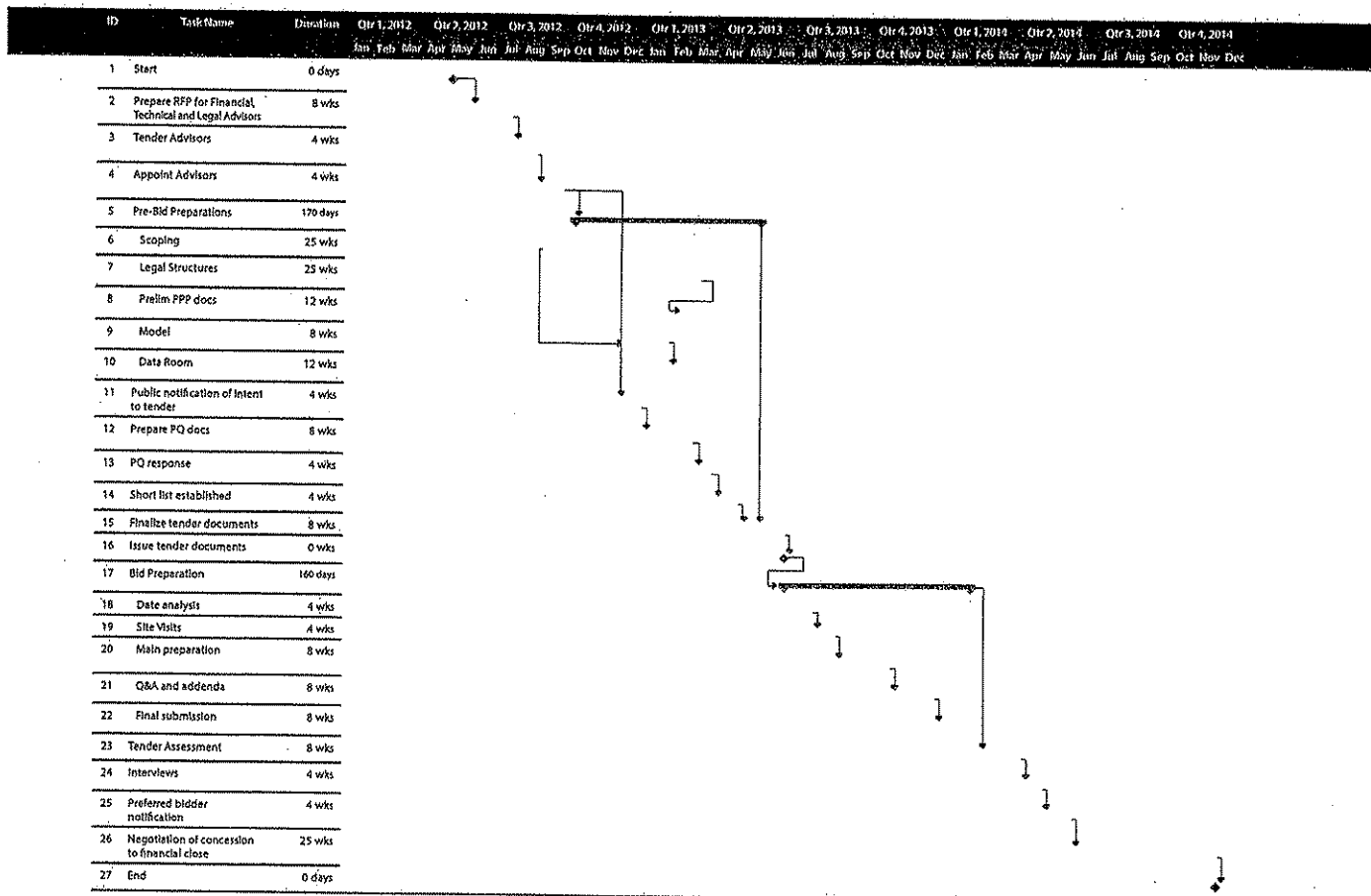
Traditionally, a project delivers value for money in three basic ways: delivering to cost, delivering on time and delivering the quality required. In recent years however, and often through painful learning experiences, the success criteria in terms of value for money have evolved significantly. CCC's value proposition also delivers on a broader range of criteria such as partnership, economic development, environmental sustainability, community relations and local job creation.

### Cost Savings Through Collaboration

The cost and time expense for a government in the full competitive tendering of an infrastructure project should not be underestimated. The costs of packaging a project for market, engaging advisors to prepare extensive documentation required for competitive tendering and the time required to prepare for, solicit and evaluate multiple proposals – with no assurance of a desirable or successful outcome – are significant. Additionally, an unsuccessful process poses the risk that a Government will be required to invest further in a new procurement process at a time of extreme fiscal prudence on the parts of governments world-wide.

The CCC mandate to foster closer economic ties with other governments in order to derive mutual benefit can deliver cost savings by contracting for this work through a pre-approved Canadian company via CCC. In effect, CCC is putting forward a platform for a Government

## AIRPORT CONCESSION EXAMPLE



In comparison to the above timescales, a government may enter into an MOU and Government-to-Government contract with CCC allowing CCC to engage on a collaborative basis to develop the project. In the time it would have taken to appoint advisors to prepare the tender documentation, the CCC has already started working with the government to investigate collaborative master planning and facilities solutions given the identified

physical constraints, to evaluate any master plan options, and to work towards:

- A delivery concept that meets the government's operational requirements;
- Scaling the required capital investment in the airport; and
- Delivering service standard improvements in parallel with capital improvements.

## COMPARISON OF TIMELINES

For comparative purposes, the following sets out key milestones for the two approaches:

Milestone	Competitive Tender	CCC Collaborative Approach	Milestone
Pre-Bid Preparation	May 2013	May 2013	Preliminary Design
Issue Tender Documents	Jan 2014	Aug 2013	Commercial Contracts
Tender Award	Jan 2015		
Financial Close	Aug 2015	Oct 2013	Financial Close
Construction Starts	Aug 2016	Oct 2013	Construction Starts
Construction Finishes	Feb 2018	Mar 2014	Construction Finishes

## DELIVERING VALUE IN TRANSFER OF RISKS

An essential component of the value for money analysis is the optimal allocation of risk between the procuring authority and the service provider. There are a large number of risks associated with delivering infrastructure projects and one of the key advantages of the concession model is the possible transfer of such risks. The transfer of risks from the procuring authority to the service provider inherently creates value by eliminating those risks for the procuring authority.

Under a concession model, a government would be able to transfer the design and construction risk, the financing risk, the maintenance and operational risk and the life cycle risk to CCC and its Canadian company. Additionally, under the CCC acquisition model, the Government would be able to transfer the procurement risk to CCC and its Canadian company. Procurement risk includes:

- Risk of incomplete or uncoordinated procurement documentation;
- Risk of an insufficient number of pre-qualified or interested contractors or subcontractors;
- Risk of delays in completing the procurement process;
- Risk that proponents lack experience with the procurement model; and
- Risk that project will not be delivered requiring reprocurement.

The project would transfer all of these risks from the Government to CCC and its Canadian company and thereby inherently deliver in value.

## DELIVERING VALUE IN WORLD-CLASS EXPERTISE AND STANDARDS OF QUALITY

### The Best Canada has to Offer the World

Canada is recognized as a world leader in the development and delivery of public infrastructure by way of public-private partnerships (P3). Canada's development and delivery of public infrastructure by way of P3 has become a benchmark model used by many governments around the globe to gain insights on best practices.<sup>6</sup> Over the past few years, Canada has delivered almost 160 P3 projects across a variety of sectors including transportation, energy, defence, education, healthcare, justice and others. Simply put, today Canada is a leader in the P3 market. Canadian developers, contractors, financiers and service providers have developed world class expertise in the delivery of privately financed and managed public infrastructure and CCC provides a platform for accessing this proven expertise.

### Specified Quality of Service Levels Based on International Standards

There are well recognised construction and service standards for infrastructure projects in a range of domains. CCC can work with a Government to ensure these are written into the construction agreement and concession agreement, as appropriate, and monitor this as part of the contract performance.

### Corporate Social Responsibility

With a contract on a Government-to-Government basis, there are a number of economic development and ethical commitments that are not common to a standard commercial contract.

## A Commitment to Environmental Best Practice

Major infrastructure projects today require investing in a robust environmental risk assessment and in a risk mitigation plan and monitoring activities. The CCC applies the *Canadian Environmental Assessment Act* which provides specific guidance on environmental impact assessments related to capital projects. Additionally, CCC will follow best international practices. There are many opportunities for creative, locally-led initiatives to be incorporated into projects, providing wider benefits from the project.

## Practical Community Engagement

The best projects embrace the need to build links with communities, schools and institutions of higher education. They establish education projects and work experience placements and seek out opportunities for benefits for the communities in which they operate. CCC encourages its Canadian companies to follow best practices, transferring knowledge and building skills locally, and would seek to explore delivering these additional wider benefits in conjunction with a project.

## Openness to Local Sourcing

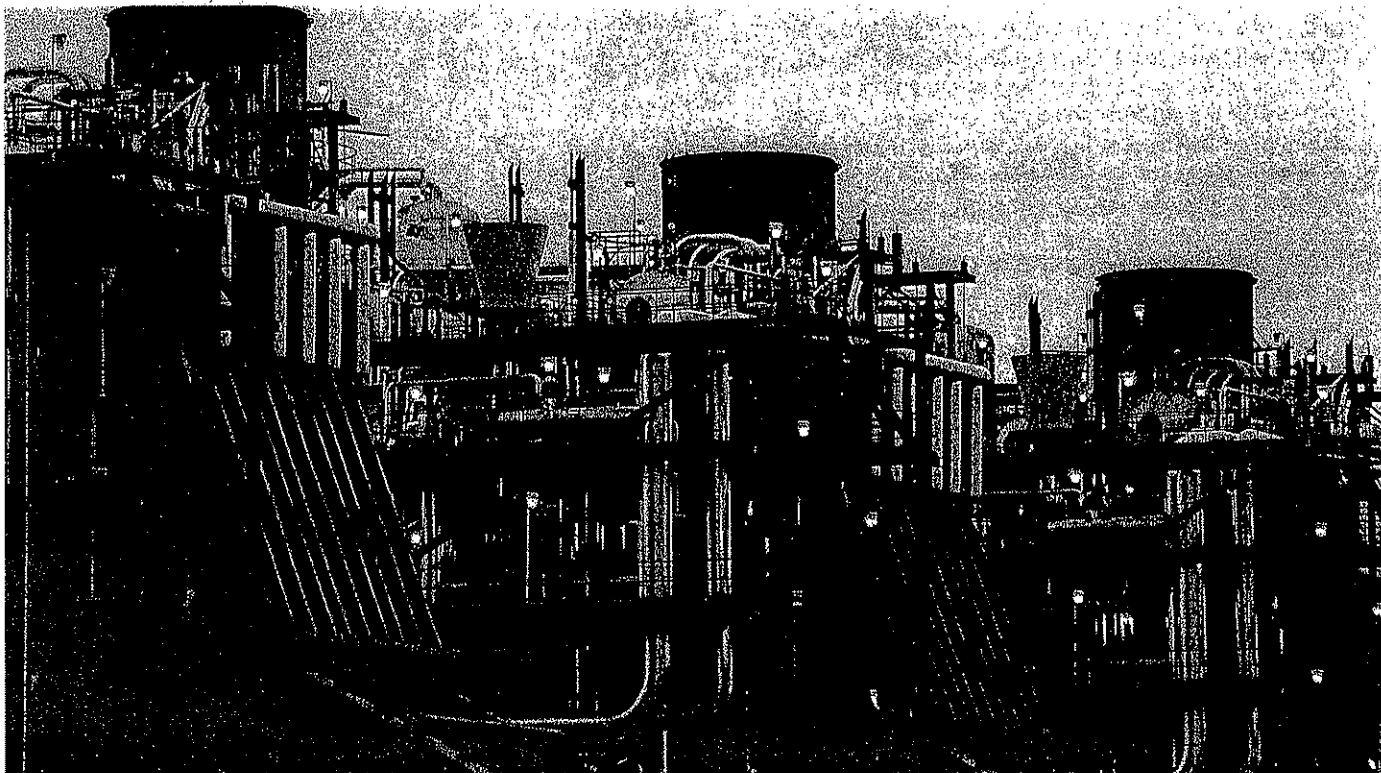
The structure of general contracting offered by CCC can provide an opportunity to local companies in sourcing products and services, within acceptable limits, ensuring that the maximum benefit of the project is captured by local companies and the wider local economy.

## Assurance from Independent Government Advisors

CCC supports the engagement of expert advisory firms by a Government to advise on the quality, deliverability and value of the proposal submitted to a Government by CCC. CCC expects nothing less and believes that this approach provides significant further assurances of value, increasing public defensibility of the mutually developed solution.

## Assurance from Independent Auditors

Evidence of market-based pricing can be introduced through an independent third-party audit of key aspects of the capital budget. This is accomplished by a government-commissioned third-party independent review of pricing and terms proposed by CCC.



## CONCLUSION

There are many benefits to explore in a Government-to-Government contract with the Government of Canada. The CCC would appreciate the opportunity to engage with senior officials of your Government to discuss how a Government-to-Government approach to the development of infrastructure projects might help make your plans a reality.

For further information on the CCC or to discuss how CCC could work with your Government to deliver a priority infrastructure project, please contact:

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