

Legislative
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Assemblée
législative
de l'Ontario

STANDING COMMITTEE ON GOVERNMENT AGENCIES

REPORT ON AGENCIES, BOARDS AND COMMISSIONS

ONTARIO INFRASTRUCTURE PROJECTS CORPORATION
(INFRASTRUCTURE ONTARIO)

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The Honourable Steve Peters, MPP
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Government Agencies has the honour to present its Report and commends it to the House.

A handwritten signature in cursive script, reading 'Julia Munro'.

Julia Munro, MPP
Chair

Queen's Park
May 2009

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1st Session, 39th Parliament
(as of December 12, 2007)

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KEVIN DANIEL FLYNN was replaced by LOU RINALDI on February 19, 2009.

RANDY HILLIER was replaced by GERRY MARTINIUK on March 25, 2009.

FRANCE GÉLINAS was replaced by HOWARD HAMPTON on April 9, 2009.

MARIA VAN BOMMEL was replaced by RICK JOHNSON on April 9, 2009.

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INTRODUCTION

Under Standing Order 108(f) the Standing Committee on Government Agencies is given the mandate to review the operation of all agencies, boards and commissions (ABCs) to which the Lieutenant Governor in Council makes some or all of the appointments, and all corporations to which the Crown in right of Ontario is a majority shareholder. The Committee is empowered to make recommendations on such matters as the redundancy of ABCs, their accountability, whether they should be sunsetted and whether their mandate and roles should be revised.

In accordance with the terms of reference, the Committee reviewed the Ontario Infrastructure Projects Corporation (Infrastructure Ontario) on September 17, 2008.

Appearing before the Committee from Infrastructure Ontario were Mr. Tony Ross, Chair; Mr. David Livingston, President and CEO; Mr. Jim Dougan, Executive Vice-President, Project Delivery; and Mr. Bill Ralph, Chief Financial Officer and Senior Vice-President, Infrastructure Lending.

The following stakeholder groups also addressed the Committee on September 17, 2008:

- the Ontario General Contractors Association, represented by Mr. Clive Thurston, President and the Ottawa Construction Association, represented by Mr. Mike Sharp, Chairman (joint presentation);
- the Ontario Hospital Association, represented by Mr. Mark Rochon, Chair of the Board of Directors;
- the Ontario Health Coalition, represented by Ms. Natalie Mehra, Director;
- the Labourers' International Union of North America, represented by Mr. Joseph Mancinelli, International Vice-President and Chair of the Labourers' Pension Fund of Central and Eastern Canada; Mr. Lou Serafini, President, Fengate Capital; and Mr. David D'Agostini, Administrator, Pension Fund for Central and Eastern Canada; and
- the Ontario Federation of Labour, represented by Mr. Wayne Samuelson, President and Ms. Sheila Block, Director of Research.

A written submission was also received from the Ontario Chamber of Commerce (dated September 22, 2008) and signed by Len Crispino, President and CEO.

Infrastructure Ontario accepted the Committee's invitation to respond to the stakeholder presentations. Accordingly, the corporation, represented by Messrs. Livingston, Dougan and Ralph, reappeared before the Committee on November 4, 2008.

The Committee wishes to express its appreciation to all those who made submissions, whether during our public hearings or subsequently. This report represents the Committee's findings and recommendations with respect to Infrastructure Ontario. The Committee recognizes the value of infrastructure investments to Ontario's economy, especially during these times of economic uncertainty.

Our recommendations seek to improve the operation of Infrastructure Ontario. A concern of the Committee is enhancing the agency's transparency and public disclosure. We urge the Minister responsible for Infrastructure Ontario – the Minister of Energy and Infrastructure – to give serious and thoughtful consideration to the Committee's findings and recommendations.

Organization of the Report

The first part of this report reviews the establishment, organization, statutory responsibilities and operation of Infrastructure Ontario.

The report then summarizes the testimony and related submissions of Infrastructure Ontario and the various stakeholder groups. The summary includes any recommendations put forward for the Committee's consideration.

In the third part of the report, the Committee discusses issues surrounding the operation of Infrastructure Ontario, and presents its own recommendations.

ESTABLISHMENT OF INFRASTRUCTURE ONTARIO

Background

On November 7, 2005 the Ontario government established the Ontario Infrastructure Projects Corporation to implement Ontario's major infrastructure projects using alternative financing and procurement (AFP) methods.

On July 17, 2006 under the *Ontario Infrastructure Projects Corporation Act, 2006* the Ontario Strategic Infrastructure Financing Authority and the Ontario Infrastructure Projects Corporation were amalgamated under the name of Ontario Infrastructure Projects Corporation, commonly known as Infrastructure Ontario (IO).¹ Infrastructure Ontario is classified as an Operational Enterprise Agency, which in general "sell[s] goods or services to the public in a commercial manner."²

¹ Infrastructure Ontario, *Annual Report, 2007-2008* (Toronto: Infrastructure Ontario, 2008), 32. The *Ontario Infrastructure Projects Corporation Act, 2006* appeared as Schedule I of the *Budget Measures Act, 2006*.

² Ontario, Public Appointments Secretariat, *General Information, Glossary of Terms*, p. 2. Internet site at <http://www.pas.gov.on.ca/scripts/en/generalInfo.asp#7>, accessed on 7 September 2008.

Ontario Government initiatives supporting infrastructure

The Province's *Building a Better Tomorrow* (July 2004), developed by the former Ministry of Public Infrastructure Renewal, outlined a framework for planning, financing and procurement for Ontario's public sector. This framework applies to infrastructure initiatives undertaken by Ontario government ministries and agencies.

In 2006 the Ministry of Public Infrastructure Renewal explained that under the framework, "appropriate public ownership and control are maintained" and "new alternative financing and procurement strategies [will be used] that encourage private investors like pension plans to invest in public infrastructure."³ Infrastructure Ontario was identified as a "Crown corporation that oversees the delivery of large-scale, complex infrastructure projects" and "uses private sector expertise to deliver projects on time and on budget using best practices recognized worldwide."⁴

The establishment of an Ontario agency focussed on infrastructure was preceded by the ReNew Ontario infrastructure investment plan (May 2005) which outlined \$30 billion in planned infrastructure investments over the five-year period 2005-2010. This plan includes investments in health, education, transportation, affordable housing, and municipal and rural infrastructure across Ontario, including the Greater Golden Horseshoe and the North.⁵ The Plan involves "new 'made-in-Ontario' approaches to financing and managing large, complex infrastructure projects."⁶

ORGANIZATION AND RESPONSIBILITIES OF INFRASTRUCTURE ONTARIO

Organizational structure

Infrastructure Ontario falls under the authority of the Ministry of Energy and Infrastructure (established in June 2008). From 2003-2008 the Ministry responsible for public infrastructure was known as the Ministry of Public Infrastructure Renewal.

From an organizational perspective, the *Ontario Infrastructure Projects Corporation Act, 2006* specifies the following:

³ Ontario, Ministry of Public Infrastructure Renewal, *Building a Better Ontario*, 2006, p. 2. Internet site at <http://www.pir.gov.on.ca/english/aboutpir/docs/corporatebrochure.pdf>, accessed on 10 September 2008.

⁴ Ibid., p. 2.

⁵ Ontario, Ministry of Public Infrastructure Renewal, "Province targets over \$30 billion to renew public infrastructure," *News Release*, 25 May 2005, pp. 1-2. Internet site at <http://www.pir.gov.on.ca/English/news/2005/q2/n20050525.htm>, accessed on 4 September 2005.

⁶ Ontario, Ministry of Public Infrastructure Renewal, "ReNew Ontario Progress Report 2007," p. 1. Internet site at <http://www.pir.gov.on.ca/english/infrastructure/renew.htm>, accessed on 4 September 2008.

- The board of directors of the Corporation is composed of at least three and not more than 11 members who are appointed by order of the Lieutenant Governor in Council (Cabinet). The board must manage or supervise the management of the business and affairs of the Corporation. At present there are 10 members of the board and three standing committees: governance and compensation, audit, and credit and risk management.
- The term of office of a director is determined by order of the Lieutenant Governor in Council. A director is eligible to be reappointed.
- The Lieutenant Governor in Council shall by order designate a director as the chair and may designate one or more directors as vice-chairs.
- The Lieutenant Governor in Council may appoint a Chief Executive Officer for the Corporation.

The Act also provides that the Corporation shall, within 90 days after the end of the fiscal year, submit an annual report to the Minister. The audited financial statements of the Corporation must be included in the report. The Minister must submit the annual report to the Lieutenant Governor in Council and must then table the report before the Legislative Assembly.

Statutory responsibilities

The major responsibilities of Infrastructure Ontario, as set out in section 3 of the *Ontario Infrastructure Projects Corporation Act, 2006*, include

- providing financing for municipalities and for such other public bodies as may be specified by regulation (as described below, Infrastructure Ontario has administered various loan programs in this regard);
- obtaining funding to finance its activities; and
- undertaking project and contract management of infrastructure projects in Ontario assigned to it by the Minister (these projects are undertaken on an Alternative Financing and Procurement basis).

Ontario Regulation 220/08 under this Act sets out the types of public bodies to which financing may be provided by Infrastructure Ontario. They include municipalities, universities and colleges (listed in Schedule 1 of this Regulation), corporations incorporated by municipalities, not-for-profit long-term care providers, not-for-profit residential hospices, other public corporations, housing providers, local service boards, and certain institutions for the arts.

With respect to the obtaining of funding, Infrastructure Ontario issues debt to fund its loan programs. As of March 31, 2008 Infrastructure Ontario had \$950 million of Infrastructure Renewal Bonds, \$323 million in Ontario Opportunity Bonds and \$359 million in Commercial Paper outstanding. Infrastructure Ontario also had a \$1 billion loan with the Province of Ontario and a \$120 million loan with the Ontario Clean Water Agency. It further has a line of credit to fund project costs to completion, and as of March 31, 2008 had an outstanding

principal amount of \$60 million with the Ontario Financing Authority. In August 2008 Infrastructure Ontario completed a new \$300 million Infrastructure Renewal Bond issue.⁷

Operation of Infrastructure Ontario

Application of the Alternative Financing and Procurement model to infrastructure projects in Ontario

Infrastructure Ontario uses an Alternative Financing and Procurement model, which while ensuring “public ownership of core assets such as hospitals, schools, and water and wastewater facilities” acts to leverage “private financing and expertise to strategically rebuild and maintain vital infrastructure [within Ontario], on time and on budget.”⁸ Former Public Infrastructure Renewal Minister David Caplan stated that Ontario’s AFP approach is “not just a new terminology (for P3: public-private-partnership); it is really a made-in-Ontario solution. We want it to be reflective and descriptive of what we were actually trying to do.”⁹

Infrastructure Ontario points out that

we’ve brought more than two dozen projects to market, worth more than \$5 billion. Over 100,000 jobs are expected to be generated in the province from the AFP projects assigned to Infrastructure Ontario.¹⁰

This infrastructure project management responsibility has become the major responsibility of this agency. Individual infrastructure projects are assigned to the agency by the Ontario government, which also sets overall infrastructure priorities.

Infrastructure Ontario has the further responsibility of providing advisory services related to infrastructure development across the broader Ontario public sector.

Administration of public infrastructure loan programs

In addition to its responsibility as a central program management agency for AFP projects, Infrastructure Ontario administers public infrastructure loan programs available to municipalities, universities and other public bodies. These loan programs, supported by the Ontario government, serve as “an alternative

⁷ Municipal Information Network, “Infrastructure Ontario Successfully Places Infrastructure Renewal Bond Issue,” 22 August 2008. Internet site at http://www.municipalinfonet.com/news_detail.asp?ID=95631, accessed on 29 August 2008.

⁸ Infrastructure Ontario, *2006-2007 Annual Report* (Toronto: Infrastructure Ontario, 2007), 7.

⁹ Renew Canada, “Rebranded P3s still troubling,” *News Release*, 28 May 2008. Internet site at <http://www.newswire.ca/en/releases/archive/May2008/28/c5307.html>, accessed on 1 September 2008.

¹⁰ Infrastructure Ontario, *Home Page*. Internet site at <http://www.infrastructureontario.ca/en/index.asp>, accessed on 29 August 2008.

financing solution designed to help public sector clients renew infrastructure and deliver value to customers and residents.”¹¹

The Mission of Infrastructure Ontario reflects these responsibilities, providing that

we use the best of public and private-sector expertise to expand and renew public assets. We deliver public infrastructure projects on time and on budget using best practices recognized worldwide. We provide affordable rates of financing and project management expertise to a diverse public sector customer base. In short, Infrastructure Ontario makes public infrastructure projects happen.¹²

Growth of Infrastructure Ontario's portfolio and responsibilities

Infrastructure projects

By the end of the 2006-07 fiscal year, Infrastructure Ontario had brought 18 major infrastructure projects to market worth an estimated \$6.3 billion. Most of these were in the health care sector (with a total of 15); two were justice-related; and the other involved a provincial government data centre. A further 20 publicly-announced projects had yet to be brought to tender.

During 2007-08, 30 AFP projects were either under construction or at various stages of consideration. Sixteen projects involving 14 health facilities, one youth centre, and one courthouse fell in the former category; the remaining 14 projects included 11 projects related to health facilities. Thus, most of the project responsibilities have related to the health sector and, more particularly, hospitals.

Also during 2007-08, the scope of AFP projects expanded into the energy and transportation sectors. On March 7, 2008 the RFP (Request for Proposal) for the Nuclear Procurement Project at Darlington was released. As well, by the end of this fiscal year, the pre-qualified bidders had been named for the Ontario Highway Service Centres Project for major “400 series” highways.¹³ With respect to the transportation sector, Infrastructure Ontario has provided infrastructure assessment advice to Metrolinx – the transportation planning agency for the Greater Toronto Area.

¹¹ Infrastructure Ontario, *OSIFA [Ontario Strategic Infrastructure Financing Authority] Loan Program*, 2008. Internet site at http://www.infrastructureontario.ca/en/loan/loans_and_services/index.asp, accessed on 29 August 2008.

¹² Infrastructure Ontario, *Annual Report, 2007-2008*, 18.

¹³ *Ibid.*, pp. 6-7.

Loan program

The Ontario Strategic Infrastructure Financing Authority (OSIFA) loan program offers affordable, longer-term, fixed rate loans to support the development of local infrastructure projects. In December 2006 it was expanded to include municipal corporations, federated and affiliated colleges, and not-for-profit long-term care homes. In March 2008, the Ontario Budget revealed that the loan program would again be expanded to include local service boards, non-profit professional arts training institutions, and social/affordable housing providers.¹⁴ This expansion was put in place in August 2008.¹⁵ Infrastructure Ontario's *2007-2008 Annual Report* indicates that over \$1.5 billion in loans had been advanced to public sector partners relating to 650 infrastructure projects in communities across Ontario.¹⁶

Grant program

During 2007-08, Infrastructure Ontario administered the one-time Municipal Infrastructure Investment Initiative (MIII), a \$450 million grant program, which was designed to help municipalities provide safe and reliable local infrastructure.¹⁷ Infrastructure Ontario, however, did not make the decisions on the allocation of funds to municipalities; rather, such decisions were made by the former Ministry of Public Infrastructure Renewal.

The grant program was launched in the fall of 2007 and funding applications were accepted up to February 15, 2008.¹⁸ This initiative supports the ReNew Ontario Infrastructure Plan that was announced in May 2005. The size of individual grants under MIII appears to range from \$2,591 for fire hall renovations for the Local Services Board of Jolques to \$20 million for the central archives and library of the City of Ottawa.¹⁹

Recent proponent selection for Niagara Health System - St. Catharines complex

This project represents a major example of a health care AFP infrastructure project involving Infrastructure Ontario.

In August 2008, Plenary Health was selected as the preferred proponent to design, build, finance and maintain a 375-bed acute care community hospital in

¹⁴ Background information contained in Briefing Binder provided to the Committee by Infrastructure Ontario, August 2008, "Other", Item 24, p. 9.

¹⁵ Ontario, Ministry of Energy and Infrastructure, "Province Expands Infrastructure Ontario's Loan Program," *News Release*, 8 August 2008. Internet site at <http://www.globeinvestor.com/servlet/story/CNW.20080808.C2633/GIStory>, accessed on 29 August 2008.

¹⁶ Infrastructure Ontario, *Annual Report, 2007-2008*, 5.

¹⁷ Ibid.

¹⁸ Association of Municipalities of Ontario, "AMO Welcomes Ontario's \$150 Million Infrastructure Investment," *New Release*, 25 February 2008, p. 1. Internet site at <http://www.newswire.ca/en/releases/archive/February2008/25/c5671.html?view=print>, accessed on 5 September 2008.

¹⁹ Ontario, Ministry of Public Infrastructure Renewal, "Provincial Funding for Local Infrastructure Priorities," *Backgrounder*, 28 March 2008.

St. Catharines. This project will replace older health care facilities and expand health services in Niagara Region.

Following financial closure, the final cost of the project will be disclosed.²⁰ Construction is slated to begin in the spring of 2009 with completion scheduled for 2011.²¹

This is the first new hospital to be constructed as a design-build-finance-maintain (DFBM) project. Infrastructure Ontario explains that this

new financing model transfers responsibility to the winning bidder [Plenary Health] for designing the facility, constructing the facility, arranging financing for its construction and maintaining the building for a 30-year [contract] period. Transferring most construction-related cost and schedule risks and entering into maintenance arrangements with the winning project team ultimately benefits the public by ensuring the new hospital is built on time, on budget and well-maintained over the 30-year period.²²

SUMMARY OF SUBMISSIONS TO THE COMMITTEE

This part of the report summarizes the submissions to the Committee made by Infrastructure Ontario and the various stakeholder groups. A summary of the recommendations put forward by these stakeholders is included.

We make several references to these submissions in the next part of the report where we discuss our findings and recommendations.

Infrastructure Ontario

Infrastructure Ontario noted that it was created in 2005 to help manage the delivery of major infrastructure projects in Ontario. Its business is split into two components: infrastructure project delivery, which uses alternative financing and procurement to deliver projects on time and on budget; and the administration of the Ontario Strategic Infrastructure Financing Authority loan program, which has made over \$1.7 billion in affordable loans available to public sector partners.

To date Infrastructure Ontario has put more than \$6 billion of capital projects into the market and 20 projects are under construction. The agency has also been

²⁰ Infrastructure Ontario, "Preferred proponent selected for Niagara Health System's new health care complex," *News Release*, 8 August 2008.

²¹ "NHS [Niagara Health System] picks builder for new hospital," *Niagara Falls Review*, 9 August 2008.

²² Infrastructure Ontario, "Preferred proponent selected," p. 3.

assigned responsibility for specific projects in the transportation and energy sectors. It has a strong culture of transparency, accountability and value-for-money.

Comments by Infrastructure Ontario officials included the following:

- **Role of Infrastructure Ontario:** Infrastructure Ontario's role is not to decide what projects should be initiated; rather its role is one of executing the projects that are assigned to it by the Ontario government. The agency accepts and understands that infrastructure priorities are established by the Ontario government.
- **Infrastructure models:** Infrastructure Ontario uses two models for its infrastructure projects: the build-finance model which is generally used for an addition to an existing building, or the reconstruction of something already in existence; and the design-build-finance-maintain model which usually involves the construction of a new facility and its longer-term operation over a 25 to 30-year period.
- **Nature of projects:** In some cases Infrastructure Ontario has determined that some projects should not be conducted on an AFP basis and these have been handed back to the government. Generally infrastructure projects undertaken by the agency are large and complex.
- **Disclosure of costs:** The agency does not release a cost breakdown of the various components of a project as it does not believe that it would be in the province's interest to do so. This would harm the competitive process and the quality of the bids. Rather, Infrastructure Ontario has been posting one number, either the GPC (guaranteed price contract) with respect to build-finance projects, or the net present value with respect to design-build-finance-maintain projects.
- **Project budget and changes:** When the government assigns an infrastructure project to the agency, it is assigned with a budget. All current projects are operating within the Cabinet-approved budget. There have been no cases where the scope of a project has been modified after the selection of the winning bidder. Sometimes changes have occurred, as directed by the government, at the RFP (request for proposal) stage of a project.
- **Transparency:** Infrastructure Ontario maintains that it is quite transparent. The following are disclosed: their RFQs (requests for qualification); their RFPs; who qualifies; and the project agreements.
- **Value-for-money audits:** Infrastructure Ontario indicated that it has not undergone a value-for-money assessment by the Auditor General of Ontario. It was pointed out that an internal audit of Infrastructure Ontario was recently carried out within the government and that the agency received a good report that was shared with the risk committee of its board. For every project an internal value-for-money assessment is reviewed by a competitively procured auditor to confirm that there is value, and that the process used is a market process.

- **Mechanical and electrical trades:** A market capacity study involving Infrastructure Ontario had identified the local availability of mechanical and electrical tradespeople as a constraint on infrastructure projects, particularly hospital projects. Project staging is necessary to ensure that too many projects do not overlap at the same time.
- **Pre-qualification process:** Infrastructure Ontario is in the process of revamping its pre-qualification process for companies, or bidders, to make the process simpler. Documents have also been standardized to reduce legal costs.
- **Sustainability:** Infrastructure Ontario indicated that the DBFM model results in more sustainable facilities. It was indicated that LEED (Leadership in Energy and Environmental Design) standards are decided on a project-by-project basis; seven or eight of the 20 projects under construction are LEED-certified.
- **Municipal Rural Fund:** Infrastructure Ontario clarified that COMRIF (Canada-Ontario Municipal Rural Infrastructure Fund) allocations are only available for publicly-owned, not privately-owned, infrastructure projects.²³
- **Loans:** In reviewing applications for loans, Infrastructure Ontario assesses the ability of the public body to repay the loan. A total of \$1.3 billion out of the \$1.7 billion in loan allocations have been provided to northern and rural communities. Many municipal clients for loans are repeat clients.
- **Satisfaction surveys:** Infrastructure Ontario conducts an annual client satisfaction survey. The agency seeks to achieve a satisfactory or better rating from at least 80% of its clients. Based upon two years of surveys, the satisfaction level from the lending clients is very high.
- **Darlington project:** The Darlington nuclear procurement project was assigned to Infrastructure Ontario by the government. Three nuclear companies are bidding to install the reactors at this site. The agency has engaged outside advisers, mostly legal, in connection with the project.

Ontario General Contractors Association and Ottawa Construction Association

The Ontario General Contractors Association and the Ottawa Construction Association made a joint presentation.²⁴ The former represents the interests of general contractors and the construction industry generally; the latter, which has over 900 members, represents the construction community in Ottawa.

²³ This infrastructure fund does not involve Infrastructure Ontario. Industry Canada and the Ontario Ministry of Agriculture, Food and Rural Affairs are each responsible for administering and implementing this federal-provincial program for the five-year period 2004-05 to 2008-09 on behalf of their respective governments.

²⁴ The transcript of the presentation of these groups to the Committee appears at Ontario, Legislative Assembly, Standing Committee on Government Agencies, *Hansard: Official Report of Debates*, 39th Parliament, 1st Session, 17 September 2008: A-278-A-283. The Committee also received a written submission from the Ontario General Contractors Association, dated September 17, 2008.

In their submission to the Committee, these associations made the following comments:

- The Ontario General Contractors Association expressed support for the creation of the Ministry of Public Infrastructure Renewal to provide a direct voice for the construction industry to government in Ontario. It believes that infrastructure is essential to our quality of life in Ontario. Recognizing that the focus of Infrastructure Ontario has been the health sector, the Association supports the expansion of the agency's mandate to include roads, waterworks and sewage treatment facilities.
- With respect to such matters as the bundling of projects, concerns were raised that the process reduces bidders and competition and is detrimental to small contractors. The Ontario General Contractors Association feels that consideration should be given to the qualification-based selection of consultants, whereby qualifications and not only price are considered first. There is a need for an open and transparent system of accountability to ensure proper planning of infrastructure expenditures. Projects should be rolled out and planned in concert with the industry. The Association further applauded the Ontario government for its announcement regarding the establishment of a new College of Trades.²⁵
- The Ottawa Construction Association expressed concern that large infrastructure projects in the Ottawa area have not delivered work to the smaller construction subtrades. With respect to facility maintenance contracts, it believes that the requirement to keep or use existing staff or unions should be removed. Concern was also expressed that the cost and risk of bidding on larger AFP projects is high for smaller contractors and that, as a result, they are excluded from such projects.

Recommendations of the Ottawa Construction Association

- There should be more disclosure and more consultation with construction stakeholders by Infrastructure Ontario.
- There should be more effort on behalf of smaller contractors by Infrastructure Ontario.

Ontario Hospital Association

The OHA is a voluntary association representing Ontario's 157 not-for-profit hospital corporations.²⁶

²⁵ Ontario, Ministry of Training Colleges and Universities, "Ontario Advances New College of Trades," *News Release*, 16 September 2008. Internet site at <http://www.edu.gov.on.ca/eng/document/nr/08.09/nr0916.html>, accessed on 18 September 2008.

²⁶ The transcript of the presentation of this association to the Committee appears at Standing Committee on Government Agencies, *Hansard: Official Report of Debates, 39th Parliament, 1st Session*, 17 September 2008: A-283-A-288.

In their submission to the Committee, the OHA made the following comments:

- It expressed the view that Ontarians expect to be treated in modern hospitals built according to the best design practices and equipped with the latest medical technology. Good hospital design promotes better clinical outcomes, increases safety, and reduces stress for both patients and staff.
- It was noted that in 2003 Ontario's hospital sector faced a \$8.4 billion capital renewal deficit. Under traditional financing models, hospital construction could only proceed when the government had all the required funding and consequently hospital upgrades were delayed or not started at all.
- In May 2005 the ReNew Ontario capital renewal strategy was launched, with a \$5-billion investment in hospital capital renewal over five years, the introduction of the AFP model and dedicated project management through Infrastructure Ontario. The AFP model, has allowed hospitals and the government to leverage the financing power of the private sector to fund hospital capital renewal, while retaining title to the finished hospital. Since the introduction of the AFP model three years ago, 21 hospital projects have begun, and 15 others are in their preliminary phases.
- The OHA attaches high importance to the creation of Infrastructure Ontario. Since 2005 this Association and Infrastructure Ontario have developed a strong and very productive partnership. The OHA comments that under the government's capital renewal strategy and with the presence of Infrastructure Ontario, new hospitals are being built, both on time and on budget, while retaining full public ownership of the facility.

Recommendation of the Ontario Hospital Association

- Infrastructure Ontario should release the generic output specification document for hospital projects as soon as possible in order to help hospitals develop their design plans on a consistent basis, in terms of environmental design, energy conservation, equipment selection and costing.

Ontario Health Coalition

This Coalition is a public interest group on health care in Ontario, with 78 local health coalitions.²⁷

In their submission to the Committee, this Coalition made the following comments:

- Its primary concern about Infrastructure Ontario is the lack of public interest protections related to the governance of the agency, and in the management of projects. There are no public interest voices on the agency's board of directors

²⁷ The transcript of the presentation of this coalition to the Committee appears at Standing Committee on Government Agencies, *Hansard: Official Report of Debates, 39th Parliament, 1st Session*, 17 September 2008: A-288-A-292.

and there is no legislation in Ontario to guard the public interest with respect to public accountability, transparency, access to information, cost overruns, and accurate public reporting. The *Ontario Infrastructure Projects Corporation Act* also does not include a legal framework for P3s (public-private partnership projects).

- Concern was expressed that long-term 30-year design-build-finance-maintain hospital projects, such as the Niagara-St. Catharines project, could be transferred totally into private hands. The Coalition cites Scotland as an example where the cost of privatizing the infrastructure is the absence of any public accountability.
- On an individual project level, the Coalition commented about costs and inadequate public disclosure regarding hospital projects in North Bay, Peterborough, and Sault Ste. Marie. Other projects of concern are located in Brampton and Ottawa.²⁸
- The Coalition maintained that with “such closeness of relationships between the industry and the bodies that are meant to oversee the P3 projects, which deal with billions of dollars of public funds, that it’s a set-up for a scandal, it’s a set-up for misuse of money.”²⁹

Recommendations of the Ontario Health Coalition

- A moratorium should be placed on P3s.
- A legislative framework for P3s should be established. The question of whether or not P3 privatization is the way to go should be revisited.
- The public interest should be paramount.
- Value for money must be demonstrable.
- Appropriate public control and ownership as well as accountability must be preserved.
- All processes must be transparent.

Labourers' International Union of North America

The Labourers' International Union of North America (LIUNA) represents over 800,000 workers throughout North America primarily in the construction industry, with approximately 90,000 across Canada and 60,000 in Ontario,

²⁸ Neither the William Osier Health Centre project in Brampton nor the Royal Ottawa Hospital project have been assigned to Infrastructure Ontario, but are managed by the Ministry of Health and Long-Term Care.

²⁹ Standing Committee on Government Agencies, *Hansard: Official Report of Debates*, 39th Parliament, 1st Session, 17 September 2008: A-292.

including 33,000 in the Greater Toronto Area. The LIUNA Pension Fund for Central and Eastern Canada is headquartered in the GTA.³⁰

In their submission to the Committee, LIUNA made the following comments:

- The LIUNA Pension Fund engages in infrastructure investing, especially in hospital projects across Ontario. LIUNA maintains that for every million dollars spent on construction, over 9,000 hours of employment are created and significant economic activity is generated. These investments in infrastructure result in a win-win situation for the community, the government, and the union pension plan.
- Infrastructure projects allow for the employment of numerous construction trades and for the training of apprentices, including opportunities for the training of “youth at risk”, Aboriginal persons, and women. This union has also earmarked an additional \$100 million for investment in transportation infrastructure.
- The LIUNA pension plans have patient long-term investment expectations for public infrastructure. Pension funds are described as a natural investor in P3 projects.
- LIUNA’s experience in investing in numerous infrastructure projects has been a very positive experience, creating excellent long-term returns for their pension plan.
- With respect to the potential involvement of smaller contractors in AFP projects, LIUNA indicated that in these cases all the risk is transferred to the building consortia; smaller contractors cannot assume this degree of risk.

Recommendations of LIUNA

- We encourage the Ontario government to continue with their expansive infrastructure program and we are looking forward to working with Infrastructure Ontario to build and rebuild our transportation infrastructure.
- We encourage the Ontario government to procure funding for transportation infrastructure projects.

Ontario Federation of Labour

The Ontario Federation of Labour (OFL) represents over 700,000 workers who belong to 1,500 affiliated local unions in Ontario.³¹

³⁰ The transcript of the presentation of this union to the Committee appears at Standing Committee on Government Agencies, *Hansard: Official Report of Debates, 39th Parliament, 1st Session*, 17 September 2008: A-292-A296. The Committee also received a written submission from this union, dated September 17, 2008.

³¹ The transcript of the presentation of this labour organization to the Committee appears at Standing Committee on Government Agencies, *Hansard: Official Report of Debates, 39th Parliament, 1st Session*, 17 September 2008: A-296-A299. The Committee also received a written submission from the OFL, dated September 17, 2008.

In their submission to the Committee, the OFL made the following comments:

- The OFL states that alternative financing and procurement reduces public ownership and public policy control, since administrative control is shifted away from taxpayers to private sector providers.
- From the investors' point of view, there is no difference between an AFP or a P3 project. In these projects, there is a clash between for-profit service delivery and good quality public services.
- The evidence shows that the costs of P3s are higher than traditional government financing.
- P3s are a more expensive way to pay for public infrastructure and that AFP hospital projects will lead to a 27% increase in costs. Governments can borrow money much more cheaply, whereas for-profit service providers need to focus on the bottom line.
- Infrastructure Ontario lacks accountability and transparency. The OFL remarks that the initial value-for-money assessments that determine whether the Ontario government will proceed with AFP financing are kept secret.

Recommendations of the OFL

- The mandate of Infrastructure Ontario should be changed to stop the alternative financing and procurement model for the delivery of public services since this model is an expensive and dangerous way to finance public infrastructure.
- The Ontario government should provide true transparency by providing the public with enough information to really evaluate these deals.
- The Standing Committee on Government Agencies should request the Ministry of Energy and Infrastructure to provide the following information: the number and cost of all change orders in AFP projects; the number and timelines for delays in all AFP projects; and whether the AFP program will be expanded into the transit, transportation, water, energy and educational fields.

The OFL also said that the Government Agencies Committee should recommend the following actions:

- Establish an immediate moratorium on Infrastructure Ontario's AFP projects and move back to the traditional way of financing public projects.
- Do not approve or announce any additional AFP projects where contracts have not been signed.
- For signed contracts, provide total disclosure of all financial aspects of agreements.
- For AFP projects where contracts have not been signed, shift the financing to traditional government financing.

- Ask the Provincial Auditor for an immediate value-for-money assessment of AFP projects.

Ontario Chamber of Commerce

The Ontario Chamber of Commerce (OCC) is a federation of 160 local chambers of commerce and boards of trade across Ontario, representing 57,000 businesses.³²

In their submission to the Committee, the OCC made the following comments:

- The OCC welcomes the establishment of Infrastructure Ontario to increase opportunities for private sector involvement in public infrastructure projects.
- The Chamber believes that by applying private sector expertise and capabilities, the province has adopted an innovative approach to help alleviate Ontario's infrastructure deficit.
- It supports the expansion of Infrastructure Ontario's responsibilities beyond hospital and justice sector projects into other areas, such as transportation and transit. The extension of highways 407, 427 and 406 and the widening of highways 402 and 69 are identified as priority projects.
- The OCC also supports a stronger relationship between Metrolinx and Infrastructure Ontario to take advantage of public and private sector expertise and resources to meet transportation project targets.

Reappearance of Infrastructure Ontario before the Committee

Overview

During its reappearance before the Committee on November 4, 2008, Infrastructure Ontario addressed the following matters:

- **Role of Infrastructure Ontario:** It was reiterated that this agency was created to deliver infrastructure projects on time and on budget, to achieve value for money, and to protect the public interest.

The primary goal of the Infrastructure Ontario AFP program is to put the accountability for delivering projects on time and on budget into the hands of the private sector. At the same time, AFP projects are guided by the principles of public ownership and public control. Since 2005 the agency has attracted an average of eight bidders to RFQs for its build-finance projects, and from four to six bidders to RFQs for the design-build-finance-maintain projects. The average capital cost of infrastructure projects under construction is over \$200 million; 22 projects are now under construction; and all of them are tracking on time and on budget, with most ahead of schedule.

³² The Committee received a written submission from the OCC, dated September 22, 2008.

Value for money is determined by directly comparing the estimated costs of delivering a project under traditional delivery methods, versus the cost of delivering it under AFP.

All of the agency's staff and the board work to the highest ethical standards to protect the public interest.

- **Accountability and transparency:** Infrastructure Ontario maintains that it has in place some of the most transparent procurement processes in Ontario. It is an open process while "trying to preserve that important element of making sure that people are incented to beat bids and do better next time, not to use it [i.e., the information Infrastructure Ontario makes available] as a floor."³³

Important infrastructure project information which is published include the project agreement with some details deleted for competitive reasons; the total value of the winning bid; and a value-for-money report.

Infrastructure Ontario's Annual Report includes items required by Management Board of Cabinet, such as total infrastructure project expenses. The agency has also acted on the suggestions of the government's internal auditor. As well, the Auditor General of Ontario has the right to come in at any time.

- **AFP hospital projects:** Hospitals built under the AFP model are publicly owned, operated and accountable, and the "private sector never touches the patient."³⁴ The maintain component of design-build-finance-maintain projects applies to "maintaining the building" and "making sure that at the end of the concession, the 30-year term, the building is handed back in proper condition."³⁵ It is the "fabric of the building that is being maintained."³⁶

Laundry and linen services, porter services, housekeeping, waste services, medical equipment maintenance and patient food services are not included in the maintenance components of Infrastructure Ontario hospital contracts.

The private sector is contractually obligated to deliver hospitals on time and on budget; it will be penalized if a project is delivered late. The private sector delivers construction expertise and risk management, while the public sector continues to own and control health care services.

- **Impact of infrastructure projects on collective bargaining agreements:** The agency ensures that the terms and conditions in collective bargaining agreements of all public employees transferred to Infrastructure Ontario projects are always honoured. This means that successor rights or benefit provisions in current agreements are honoured.
- **Project bundling (that is the grouping of small projects into one big project) and opportunities for smaller contractors:** It was indicated that bundling is

³³ Standing Committee on Government Agencies, *Hansard: Official Report of Debates*, 39th Parliament, 1st Session, 4 November 2008: A-368 (testimony of Mr. Livingston).

³⁴ Ibid., p. A-359 (testimony of Mr. Livingston).

³⁵ Ibid., p. A-367 (testimony of Mr. Dougan).

³⁶ Ibid.

neither a priority for Ontario government infrastructure projects nor part of the agency's strategy.

There are plenty of opportunities for smaller firms in Ontario to participate in the AFP program. Bidders have an incentive to use local trades and labour because they are available and are less expensive. In Ottawa the general contractors have established local offices where they are able to engage local subcontractors.

Where there is sensitivity regarding the employment of local labour, Infrastructure Ontario may ask proponents within the RFQ to submit a plan on how they would utilize local labour and trade contractors.

- **Impact of economic conditions on project and loan activities:**
Notwithstanding the current state of the financial markets, Infrastructure Ontario has over the last few weeks released RFPs for two additional infrastructure projects, reached "financial close" on another hospital project, and opened the renovated and expanded facilities at the Trillium Health Centre in Mississauga. With respect to the loan side of its operations, it has surpassed full-year targets. The agency will continue to monitor the economic situation closely and deal with issues on a project-by-project basis. As private sector construction activity slows down, this could increase the capacity of sub-trades and general contractors to take on work. Any perception that costs will go down as a result of what is happening in the world will be reflected in infrastructure project bids.

Supplementary documentation

In response to matters raised during its earlier appearance, Infrastructure Ontario distributed the following two background documents to the Committee:

- ***Market Capacity: An Environmental Scan:*** This document states that Infrastructure Ontario has brought infrastructure projects with a capital value in excess of \$7.5 billion to the market in the past 35 months. The availability of contractors is considered to be the most severe constraint for institutional projects. More particularly, there is limited availability of mechanical and electrical contractors for large complex institutional projects, such as hospitals. Limitations of trades also affect the ability to attract foreign contractors.

To mitigate these market capacity constraints, various strategies were recommended including adjusting the timing of individual infrastructure project releases; shortening the RFP to Financial Close period; and standardizing RFP documents. The Province has also allocated funding to skills training. It was further indicated that the findings of this study apply to all major construction projects, and not just AFP projects, across Canada.

In 2007 Infrastructure Ontario concluded that it would need to carefully manage the flow of projects to market to preserve a healthy bidding environment and good value for public dollars.

- **Construction Status Report – Current Site Photographs:** This document provides current information on 24 infrastructure projects that are under way – 21 health care projects, one courthouse, one youth centre, and one data centre. Construction start dates, substantial completion dates and project site photos are provided for each project.

COMMITTEE FINDINGS AND RECOMMENDATIONS

Support for the establishment and operation of Infrastructure Ontario

Discussion

The Committee supports the establishment of Infrastructure Ontario, now under the authority of the combined Ministry of Energy and Infrastructure, to increase opportunities for the involvement of the private sector in Ontario infrastructure projects using the alternative financing and procurement model. Under AFP, project risks are appropriately shared on a contractual basis between the public and private sectors.

The Committee also understands and accepts that infrastructure priorities are established by the Ontario government, which then assigns infrastructure projects in various fields to Infrastructure Ontario. The Committee further recognizes that Infrastructure Ontario may advise the Ontario government on the capacity of the construction industry to undertake infrastructure projects.

We recognize the valuable role of Infrastructure Ontario in focussing on the key health care sector where 21 hospital projects have begun, and 15 others are in the preliminary stages. As noted by the Ontario Hospital Association, these efforts will contribute substantially to relieving the deficit in modern health care facilities for Ontarians.

The OHA also recommended that generic output specification documents should be released as soon as possible to help hospitals develop their design plans on a consistent basis, in terms of such factors as environmental design and energy conservation.³⁷ The Committee supports this proposal because it will advance the objective of improving the environmental performance of long-term public infrastructure projects.

Committee Recommendations

1. Infrastructure Ontario should continue and, where given authority by the Ontario government, expand its role to deliver essential infrastructure projects within Ontario using the alternative financing and procurement (AFP) model, which applies private sector financing and technical expertise, but retains public

³⁷ *Generic output specification documentation* consists of a set of guidelines and standards respecting the planning, design and construction of public hospital capital redevelopment projects in Ontario.

ownership of completed projects. Potential areas for the broader application of the AFP model could include electrical energy generation, transportation and transit, college or university facilities, and large-scale water treatment or wastewater treatment facilities.

2. Infrastructure Ontario should encourage the Ministry of Health and Long-Term Care to release the generic output specification documentation as soon as possible for hospital projects in order to help hospitals develop their design plans on a consistent basis, in terms of environmental design, energy conservation, equipment selection and costing.

Enhanced public disclosure regarding Infrastructure Ontario AFP projects

Discussion

The Ontario Federation of Labour and the Ontario Health Coalition raised issues of public accountability and financial disclosure with respect to Infrastructure Ontario, and individual projects under the authority of this agency. On the other hand, as explained by senior officials of Infrastructure Ontario, the Committee understands that some financial and other information pertaining to individual projects, if made public, would adversely affect competitive corporate interests and hinder the ability of this agency to negotiate in the best interests of the Ontario public.

As mentioned earlier, the *Ontario Infrastructure Projects Corporation Act, 2006* (s. 11(2)) requires Infrastructure Ontario to prepare an annual report for the Minister, which is then submitted to Cabinet and tabled in the Assembly (s. 11(3)). The Committee notes that Infrastructure Ontario's *2007-2008 Annual Report* contains information on projects under construction, open RFPs, closed RFPs, the naming of pre-qualified bidders and closed RFQs (request for qualification). Similar descriptive project information appeared in the agency's *2006-2007 Annual Report*.

Other sources of project information include the supplement to *ReNew Canada* entitled "The Top 100 – 2008 Canada's Biggest Infrastructure Projects," which describes nine infrastructure projects managed by Infrastructure Ontario under the headings location, type, project details, financing, and status.³⁸ Infrastructure Ontario also distributed a *Construction Status Report – Current Site Photographs* to the Committee which provides construction start dates, substantial completion dates and project site photos for 24 infrastructure projects currently under way. The Committee believes that transparency and public disclosure would be enhanced by the systematic expansion of individual project descriptions in Infrastructure Ontario's Annual Reports. As most infrastructure projects involve multi-year design and construction phases, the Committee believes this annual description will provide a standard up-to-date source of information on each project.

³⁸ "The Top 100, 2008, Canada's Biggest Infrastructure Projects", an Annual Supplement to *ReNewCanada*, January/February 2008.

The Committee also strongly believes that Infrastructure Ontario should continually balance the public right to know with appropriate commercial non-disclosure commitments. Infrastructure Ontario should review what constitutes commercial sensitivity and consider what additional details could be publicly disclosed.

Committee Recommendations

3. With respect to public infrastructure projects handled by Infrastructure Ontario, the public interest should be paramount; value for money must be demonstrable; appropriate public control and ownership must be preserved; accountability must be preserved; and all processes must be transparent. Infrastructure Ontario should continually review its policies to ensure enhanced transparency and public disclosure.
4. Infrastructure Ontario should review what constitutes commercial sensitivity and, on a case-by-case basis, should consider what additional details could be publicly disclosed while at the same time respecting commitments regarding commercial sensitivity.
5. Infrastructure Ontario should include within each Annual Report an Appendix containing a detailed description and status report for each AFP project falling under its authority.
6. For each of these projects, the Annual Report shall include enhanced, consistent and comparable information on the location; type; construction start date; substantial completion date; size of the project; total value of the contract; key contract participants and their roles; project details; project financing; and the current status of the project. In including this information, Infrastructure Ontario must still adhere to corporate and financial confidentiality requirements.
7. If significant issues arise with respect to a particular project, such as major cost issues, delays or design changes, Infrastructure Ontario should report this to Treasury Board/Management Board in a timely manner and consider reporting these matters in its Annual Report.

Impact of a slowing economy on infrastructure projects and spending

Discussion

A slowing economy is reflected in statistics which show that investment in the Canadian commercial real estate market has fallen by 24% in the first six months of 2008 compared to the record pace in 2007.³⁹ A slowdown may also reduce revenues flowing to provincial and municipal governments, lead to increased rates of unemployment and increase social service obligations.⁴⁰

³⁹ Jamie Sturgeon, "Commercial investment down 24%," *National Post*, 27 August 2008, p. FP5.

⁴⁰ Joanna Smith, "Shared concern on economy: Flaherty," *Toronto Star*, 30 August 2008, p. A16.

On the other hand, a slowing economy may reduce labour and material pressures in the major construction and infrastructure fields. In recent years, as noted by Infrastructure Ontario, construction and construction-related material costs in Ontario have escalated, and there are a limited number of qualified contractors who have the experience to manage large complex projects, such as in the hospital sector.⁴¹ With the change in the economy, the Committee believes that there may be reduced labour and material cost pressures in the construction field within Ontario.

There have been suggestions that during the period ahead, infrastructure investment should be a priority to create lasting benefits and lay the foundation for eventual economic recovery. The establishment of the new Ministry of Energy and Infrastructure in June 2008 represents recognition of the importance of infrastructure and energy-related investments to Ontario's economy.

Risk assessment of major public infrastructure projects

Discussion

Documentation provided by Infrastructure Ontario relating to "Risk Assessment and Management" associated with AFP projects outlines various categories of risk, including AFP Projects Risk, OSIFA (Ontario Strategic Infrastructure Financing Authority) Loan Program Risk, and Operational Risk.⁴²

The Ontario government and partner public agencies are planning to embark upon major long-term multi-billion dollar capital undertakings. Amongst others, these include the Nuclear Procurement Project at Darlington, components of the Metrolinx transportation-transit plan for the broader Greater Toronto Area, the commitment to provide upgraded dedicated highway access to a new border crossing between Windsor and Detroit (Detroit River International Crossing), and the upgrading of linkages to other border crossings.⁴³ On the other hand, slowing economic growth may reduce immediate demand for increased transportation-transit capacity and electrical energy growth.⁴⁴

For many of these transportation-transit projects and energy projects the approval process is complex and prone to delay; this can increase costs and delay necessary capital undertakings. Public infrastructure funding and employment during an economic downturn may prove less costly, and provide a cushion within the

⁴¹ Infrastructure Ontario, *2007-2010 Business Plan* (Toronto: Infrastructure Ontario, 2007): pp. 10-11.

⁴² Infrastructure Ontario, *Annual Report, 2007-2008*, 21-25. The report describes in detail the various sub-categories of risk that Infrastructure Ontario must consider.

⁴³ Ontario, Ministry of Transportation, "The Detroit River International Crossing Study Team Announces Preferred Access Road," *News Release*, 1 May 2008, pp. 1-2. Internet site at <http://www.mto.gov.on.ca/English/news/provincial/2008/080501.htm>, accessed on 1 September 2008.

⁴⁴ Tyler Hamilton, "Ontario urged to turn down electricity expansion," *Toronto Star*, 8 October 2008, p.B01.

economy. In a recent article on the current economic situation Nobel-laureate economist Joseph Stiglitz stated that

there are ways of thoughtfully shaping policy that can walk a fine line and help us get out of our current predicament. Spending money on needed investments – infrastructure, education, technology – will yield double dividends. It will increase incomes today while laying the foundation for future employment and economic growth.⁴⁵

Infrastructure Ontario reveals that it has conducted some project assessment advisory work for Metrolinx to identify projects that might be undertaken on an AFP basis. In its submission to the Committee, the Ontario Chamber of Commerce supports a stronger relationship between Metrolinx and Infrastructure Ontario to more effectively take advantage of public and private sector expertise and resources.

During the current period of economic uncertainty, the Committee supports the continuation of prudent infrastructure investment in Ontario, but at the same time believes that more prudent risk assessment is warranted. Based upon the testimony of senior officials of Infrastructure Ontario, the Committee understands that no projects under way or being put out to bid through Infrastructure Ontario have been affected by the current economic uncertainties. Nonetheless, Infrastructure Ontario should enhance risk assessment methods for both existing and planned projects.

Committee Recommendation

8. Infrastructure Ontario in connection with the AFP projects under its authority should institute periodic and upgraded risk assessments to determine whether the international financial situation and the involvement of various financial partners represent any additional risk to the government of Ontario. If additional risk is established, Infrastructure Ontario in association with its parent Ministry should act to protect the public interest of Ontario.

Inclusion of innovative building design features in infrastructure projects

Discussion

In both the public and private sectors, greater attention is being paid to energy efficiency and improved building systems management to enhance environmental performance, and to reduce energy and utility consumption and waste generation, thereby lowering operating costs. Energy and resource conservation is also an objective of many Ontario government programs in the energy, natural resource, land use planning, transportation, government operations and educational fields.

⁴⁵ Joseph E. Stiglitz, "Reversal of Fortune," *Vanity Fair*, No. 579, November 2008, p. 138.

Infrastructure Ontario's design-finance-build-maintain infrastructure projects can have contract terms of 25 to 30 years and operating costs, including utility and energy components, will form a significant component of recurring long-term costs. In the hospital sector, energy, utilities, and waste generation and handling costs comprise significant components of operating costs. Some Ontario hospitals are actively seeking to reduce the use and costs of these elements.

As mentioned earlier, the Ontario Hospital Association made a recommendation regarding the release of specification documentation for hospital projects with the purpose of assisting hospitals to better incorporate environmental design and energy conservation in the design plans.

The Canada Green Building Council administers the LEED (Leadership in Energy and Environmental Design) for buildings that "certifies higher energy performance of buildings and communities."⁴⁶ LEED categories include sustainable sites, water efficiency, energy and atmosphere, materials and resources, and indoor environmental quality.

There may also be other innovative developments in building standards, and in the design of heating, cooling, insulation/ventilation and other mechanical and electrical components, that might be considered for future infrastructure projects. In the downtown core of Toronto, for example, many buildings, including the Ontario government complex and the Legislative Building, use the Enwave deep lake [Lake Ontario] natural cooling system to meet their building cooling needs.⁴⁷

Committee Recommendations

9. In its evaluation and approval of all AFP infrastructure projects assigned to it, Infrastructure Ontario, wherever possible, should use suitable recognized environmental standards, to achieve practical reductions in the use of energy, utilities and related materials.

10. Infrastructure Ontario should work with the host Ontario ministries to develop infrastructure project environmental standards respecting energy conservation, reduced utility consumption, the use of resources, and waste production. These environmental standards should be updated every five years to reflect new design, market or technological developments.

11. Infrastructure Ontario should encourage AFP project bidders to include innovative energy, utility or waste management practices or systems, or environmental design components in their bid proposals.

⁴⁶ Canada Green Building Council, *what is LEED and why certify?* Internet site at <http://www.cagbc.org/leed/what/index.php>, accessed on 2 September 2008.

⁴⁷ City of Toronto, "What's the City doing to shrink its footprint?" *Deep Lake Water Cooling and the City*, pp. 1-2. Internet site at <http://www.toronto.ca/environment/initiatives/cooling.htm>, accessed on 23 October 2008; and Enwave Energy Corporation, "History." Internet site at <http://www.enwave.com/history.php>, accessed on 23 October 2008.

Management of the Darlington nuclear procurement project

Discussion

Infrastructure Ontario is leading the commercial team (along with Ontario Power Generation, the Ministry of Energy and Infrastructure, and the Ministry of Finance) that will manage this procurement process. The Committee recognizes that this large infrastructure project could have important financial, design, employment, and materials sourcing implications for Ontario, especially during this period of economic uncertainty. The Committee also understands that the selection of a reactor technology for this project is the primary responsibility of the Ministry of Energy and Infrastructure, associated agencies and electrical utilities.

The invited corporate respondents for "Phase 2 of the RFP" are Areva NP, Atomic Energy of Canada Ltd., and Westinghouse Electric Company. One of these companies may be chosen as the preferred vendor by spring 2009.⁴⁸ In early November 2008, the deadline was extended from the end of 2008 to this date due to the complexity of the project and further discussions relating to the assignment of risk to the private sector. This extension is also "driven in part by continued volatility in global markets."⁴⁹ The Committee also notes that concerns have been expressed regarding potential cost overruns and delays in connection with new nuclear power undertakings.⁵⁰

Committee Recommendation

12. Infrastructure Ontario should continue to closely liaise and confer with officials of the Ministry of Energy and Infrastructure, Ministry of Finance, Ontario Power Authority, Ontario Power Generation, and Hydro One, where appropriate, so that Infrastructure Ontario has the capacity to handle the Darlington Nuclear Procurement Project.

Expanded role for AFP projects in the transportation and transit sectors

Discussion

During 2007-08 the mandate of Infrastructure Ontario was extended to include the consideration of a highway transportation project. The agency's 2007-2008

⁴⁸ "Infrastructure Ontario selects Darlington as site of new nuclear plant," *Daily Commercial News*, 17 June 2008, p. 1. Internet site at http://www.dcnonl.com/cgi-bin/dcnhome.pl?rm=print_story_id=28306, accessed on 29 August 2008; and Infrastructure Ontario, "Nuclear Procurement Project bid submissions expected in early 2009," *News Release*, 4 November 2008. Internet site at http://www.infrastructureontario.ca/en/news/io_news/2008/nov0408/News%20Release%20-%20RFP%20Extension%20Nov%204%20-%20FINAL.pdf, accessed on 6 November 2008.

⁴⁹ Infrastructure Ontario, "Nuclear Procurement," p. 1. The matter was also reported in Rob Ferguson, "Ontario delays picking reactor builder," *Toronto Star*, 5 November 2008, p. B8.

⁵⁰ Robert Benzie, "New reactors for Darlington," *Toronto Star*, 16 June 2008, p. B7.

Annual Report indicates that the Ontario Highway Service Centre project will be built as an AFP project.⁵¹

Infrastructure Ontario is also “engaged in an advisory role to Metrolinx to identify projects in the government’s ambitious MoveOntario 2020 [transportation] plan that could be delivered more efficiently using the AFP approach.”⁵²

In general, the Committee believes that as with initiatives with respect to hospitals, the AFP model could potentially advance priority transportation and transit infrastructure projects in a timely and cost effective manner. This would serve to ease congestion and support broader provincial and municipal land use objectives within the Greater Toronto Area. This model of project delivery may also be applicable to major transportation infrastructure projects in other parts of Ontario.

Committee Recommendation

13. The Ministry of Energy and Infrastructure should consider assigning Infrastructure Ontario a direct role in advising the government on the staging of priority transportation projects, including transit projects, using the AFP model within the Greater Toronto Area and, where applicable, in other parts of Ontario. This activity shall be carried out in a cost effective manner, reflective of prevailing economic and industry conditions, to both maximize efficiency and ensure timely delivery.

Accommodation of small contractors in large AFP projects

Discussion

The Ontario General Contractors Association and the Ottawa Construction Association expressed concern that smaller contractors are often excluded from bidding on the larger AFP projects managed by Infrastructure Ontario due to the size of the contracts, the increased risk and the cost of the bidding process. The Ottawa Construction Association recommended that more effort should be made by Infrastructure Ontario to accommodate smaller contractors. In response to these concerns, the Committee makes the recommendations below.

Committee Recommendations

14. In awarding infrastructure contracts and negotiating with general contractors, Infrastructure Ontario should investigate methods to provide greater opportunities for local contractors in the construction, and possibly maintenance aspects, of infrastructure projects.

⁵¹ This project has been generally described as involving the modernization of 23 service centres on Highways 401 and 400.

⁵² Patricia Williams, “Infrastructure Ontario takes AFP model to the road,” *Daily Commercial News*, 28 May 2008. Internet site at http://www.dailycommercialnews.com/cgi-bin/dcnhome.pl?rm=print_story_id=27795, accessed on 29 August 2008.

15. Infrastructure Ontario, wherever practical, should include criteria for the employment of local labour within the RFQ (request for qualification) requirements whereby bidders must submit a plan on how they would utilize local labour and trade contractors to carry out the project. Local employment plans should be considered by Infrastructure Ontario in the assessment and decision making relating to the selection of qualified bidders (RFQ), and also during the subsequent RFP (request for proposal) stage of project decision making.

CONSOLIDATION OF COMMITTEE RECOMMENDATIONS

Support for the establishment and operation of Infrastructure Ontario

1. Infrastructure Ontario should continue and, where given authority by the Ontario government, expand its role to deliver essential infrastructure projects within Ontario using the alternative financing and procurement (AFP) model, which applies private sector financing and technical expertise, but retains public ownership of completed projects. Potential areas for the broader application of the AFP model could include electrical energy generation, transportation and transit, college or university facilities, and large-scale water treatment or wastewater treatment facilities. (pp. 19-20)
2. Infrastructure Ontario should encourage the Ministry of Health and Long-Term Care to release the generic output specification documentation as soon as possible for hospital projects in order to help hospitals develop their design plans on a consistent basis, in terms of environmental design, energy conservation, equipment selection and costing. (pp. 19-20)

Enhanced public disclosure regarding Infrastructure Ontario AFP projects

3. With respect to public infrastructure projects handled by Infrastructure Ontario, the public interest should be paramount; value for money must be demonstrable; appropriate public control and ownership must be preserved; accountability must be preserved; and all processes must be transparent. Infrastructure Ontario should continually review its policies to ensure enhanced transparency and public disclosure. (pp. 20-21)
4. Infrastructure Ontario should review what constitutes commercial sensitivity and, on a case-by-case basis, should consider what additional details could be publicly disclosed while at the same time respecting commitments regarding commercial sensitivity. (pp. 20-21)
5. Infrastructure Ontario should include within each Annual Report an Appendix containing a detailed description and status report for each AFP project falling under its authority. (pp. 20-21)
6. For each of these projects, the Annual Report shall include enhanced, consistent and comparable information on the location; type; construction start date; substantial completion date; size of the project; total value of the contract; key contract participants and their roles; project details; project financing; and the current status of the project. In including this information, Infrastructure Ontario must still adhere to corporate and financial confidentiality requirements. (pp. 20-21)

7. If significant issues arise with respect to a particular project, such as major cost issues, delays or design changes, Infrastructure Ontario should report this to Treasury Board/Management Board in a timely manner and consider reporting these matters in its Annual Report. (pp. 20-21)

Risk assessment of major public infrastructure projects

8. Infrastructure Ontario in connection with the AFP projects under its authority should institute periodic and upgraded risk assessments to determine whether the international financial situation and the involvement of various financial partners represent any additional risk to the government of Ontario. If additional risk is established, Infrastructure Ontario in association with its parent Ministry should act to protect the public interest of Ontario. (pp. 22-23)

Inclusion of innovative building design features in infrastructure projects

9. In its evaluation and approval of all AFP infrastructure projects assigned to it, Infrastructure Ontario, wherever possible, should use suitable recognized environmental standards, to achieve practical reductions in the use of energy, utilities and related materials. (pp. 23-24)

10. Infrastructure Ontario should work with the host Ontario ministries to develop infrastructure project environmental standards respecting energy conservation, reduced utility consumption, the use of resources, and waste production. These environmental standards should be updated every five years to reflect new design, market or technological developments. (pp. 23-24)

11. Infrastructure Ontario should encourage AFP project bidders to include innovative energy, utility or waste management practices or systems, or environmental design components in their bid proposals. (pp. 23-24)

Management of the Darlington nuclear procurement project

12. Infrastructure Ontario should continue to closely liaise and confer with officials of the Ministry of Energy and Infrastructure, Ministry of Finance, Ontario Power Authority, Ontario Power Generation, and Hydro One, where appropriate, so that Infrastructure Ontario has the capacity to handle the Darlington Nuclear Procurement Project. (p. 25)

Expanded role for AFP projects in the transportation and transit sectors

13. The Ministry of Energy and Infrastructure should consider assigning Infrastructure Ontario a direct role in advising the government on the staging of priority transportation projects, including transit projects, using the AFP model within the Greater Toronto Area and, where applicable, in other parts of Ontario. This activity shall be carried out in a cost effective manner, reflective of

prevailing economic and industry conditions, to both maximize efficiency and ensure timely delivery. (pp. 25-26)

Accommodation of small contractors in large AFP projects

14. In awarding infrastructure contracts and negotiating with general contractors, Infrastructure Ontario should investigate methods to provide greater opportunities for local contractors in the construction, and possibly maintenance aspects, of infrastructure projects. (pp. 26-27)

15. Infrastructure Ontario, wherever practical, should include criteria for the employment of local labour within the RFQ (request for qualification) requirements whereby bidders must submit a plan on how they would utilize local labour and trade contractors to carry out the project. Local employment plans should be considered by Infrastructure Ontario in the assessment and decision making relating to the selection of qualified bidders (RFQ), and also during the subsequent RFP (request for proposal) stage of project decision making. (pp. 26-27)

APPENDIX A
DISSENTING OPINION
OF THE
NEW DEMOCRATIC MEMBER OF THE COMMITTEE

Dissenting comments on Infrastructure Ontario Agencies Review report
France G  linas, NDP MPP

The Ontario New Democratic Party believes that the public-private partnership (P3, also known as AFPs) experiment initiated by the Mike Harris Progressive Conservatives and strengthened by the McGuinty Liberals should stop immediately.

The private sector's higher borrowing costs, greater transaction costs, the need for a risk "premium" in exchange for assuming liability for cost overruns, and a profit requirement makes P3s more costly than traditional procurement. The P3 model transfers ownership and control of public infrastructure from communities to for-profit corporations. The McGuinty government's "evidence" pointing to the P3 model as less costly is based on a series of questionable assumptions that are not even fully disclosed, preventing detailed public scrutiny.

Furthermore, the motivation for the McGuinty government's use of the P3 model – that traditional procurement led to uncontrollable cost overruns – has neither been researched nor proven. It is based on hearsay rather than evidence. During this review process, Infrastructure Ontario confirmed that it did not examine historical cost overruns at traditionally procured public infrastructure. The government does not know the degree to which cost overruns have occurred or the reasons why they've occurred.

New Democrats believe that the McGuinty Liberals' ideology, not balanced and reasonable public policy, is the underlying motivation for the adoption of the P3 model. A reasonable approach to cost overruns would be to understand why they were occurring and what solutions were available to address the problem. Only after that analysis has taken place should a government consider radical changes to a procurement model.

Putting ideology over evidence is almost certain to cost taxpayers dearly. According to a recent report by the Canadian Centre for Policy Alternatives, P3s may cost an *extra* \$585 million, rather than produce any savings at all. Taxpayer dollars and local control of our public infrastructure – from hospitals to courts – should not be jeopardized by ideological experiments, let alone by experiments that cannot be monitored by the public.

A province-wide moratorium should be placed on P3s. Along those lines, Ontario should not tie municipal infrastructure grants to the use of the P3 model, nor should they continue to support such a program being pursued by the Harper Conservative government.

As the organization designed to deliver P3 projects, Infrastructure Ontario should be disbanded. Alternatively, New Democrats would support the restructuring of Infrastructure Ontario to leverage its internal construction, architectural, legal and financing expertise to deliver projects using the traditional procurement model. Contracts would be designed to transfer cost overrun risk to the private sector. This would allow the province to achieve cost savings while maintaining public ownership and control.