



16th Legislative Assembly of the Northwest Territories

Standing Committee on Government Operations

Report on the Review
of the Report of the Auditor General
on Northwest Territories
Deh Cho Bridge Project – 2011,
Department of Transportation

Chair: Mr. Kevin Menicoche

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Legislative Assembly
Standing Committee on Government Operations
Assemblée législative
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May 12, 2011

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Government Operations is pleased to provide its Report on the Review of the Report of the Auditor General on Northwest Territories Deh Cho Bridge Project – 2011, Department of Transportation, and commends it to the House.

Kevin Menicoche, MLA
Chairperson

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**STANDING COMMITTEE ON
GOVERNMENT OPERATIONS**

**REPORT ON THE REVIEW OF THE REPORT OF THE
AUDITOR GENERAL ON NORTHWEST TERRITORIES
DEH CHO BRIDGE PROJECT – 2011,
DEPARTMENT OF TRANSPORTATION**

TABLE OF CONTENTS

General Comments	1
Phase I	2
Recommendation 1	3
Phase II	4
Recommendation 2	4
Recommendation 3	5
Recommendation 4	5
Recommendation 5	6
Recommendation 6	6
Conclusion.....	6
Recommendation 7	6

**STANDING COMMITTEE ON
GOVERNMENT OPERATIONS**

**REPORT ON THE REVIEW OF THE REPORT
OF THE AUDITOR GENERAL ON NORTHWEST TERRITORIES
DEH CHO BRIDGE PROJECT – 2011,
DEPARTMENT OF TRANSPORTATION**

The Standing Committee on Government Operations held its public review of the Report of the Auditor General on Northwest Territories Deh Cho Bridge Project – 2011, Department of Transportation on April 19th and 20th, 2011. The Committee thanks the Auditor General, Ms. Sheila Fraser, and her staff for their work in preparing the report and in assisting the Committee with its review. The Committee also thanks the Deputy Minister of Transportation and his staff for their participation, as well as officials from the Financial Management Board Secretariat and the Department of Justice.

GENERAL COMMENTS

The Committee's mandate includes reviewing reports of the Auditor General of Canada, and making recommendations to the Government of the Northwest Territories (GNWT). The Committee wants to ensure that the GNWT demonstrates its accountability to the public.

The audit was undertaken at the request of the Legislative Assembly in March, 2010. It covered the period between September 2000 and October 2010. The Auditor General's work for this report, "Northwest Territories Deh Cho Bridge Project – 2011, Department of Transportation" was substantially completed by October 29, 2010. It was tabled on March 1, 2011, during the Fifth Session of the 16th Legislative Assembly.

Bridge construction was in progress throughout the audit and it remains under construction with a target completion date of November 2011.

Phase I refers to the period between 2000 and 2010 when the Deh Cho Bridge project was referred to as a public-private partnership (P3). Phase II began in April 2010 when the GNWT formally assumed full responsibility for the project, including construction management.

The Auditor General found that the project was not a P3, in that no significant risks were shared with the private partner. The project's risks increased substantially when the GNWT authorized construction without a fully developed bridge design. After taking over the project, the Department of Transportation (the Department) had a framework in place to manage the key risks, but the audit found weaknesses in the risk matrix. In the auditors' view, significant risks remain in the areas of scope, schedule and cost.

The focus of the audit was to determine whether the GNWT adequately managed the risks of entering into a P3; and, whether, since taking over the project, the Department had established a framework to manage the key risks associated with the project's quality, schedule, scope and cost. The audit considered only the actions of the GNWT, not other aspects of the project such as the Deh Cho Bridge Corporation (DCBC) or contractors.

The audit report makes three recommendations related to the Deh Cho Bridge and future projects. The Committee agrees with the recommendations and supports the Department's response to them.

PHASE I

As the audit report explains, the purpose of a P3 is to shift a portion of the risks of a public project to a private sector partner who brings technical and financial capacities to the project. A P3 procurement strategy carries risks in that the public sector must establish a working relationship with a suitable partner and clearly negotiate each party's obligations to the project.

In the case of the Deh Cho Bridge, the audit found that the project was not a P3 because the private sector partner had no equity to invest in the project, and limited capacity to manage a project on that scale. The GNWT assumed more and more risk as the cost of the project increased, without shifting any significant risks to the private partner as anticipated in a conventional P3.

As a sidebar, the Auditor General's report presents an exhibit of the perspective of the community of Fort Providence and its relationship with the GNWT throughout the Deh Cho Bridge project. The Committee does not want to preclude the possibility of future partnerships between communities and the GNWT in the area of infrastructure projects, but stresses that an approved process must be followed, consistent with the Auditor General's recommendation that the GNWT establish a senior project oversight committee to provide advice

on the steps required to develop a major project and act as a forum for discussing project objectives, risks, procurement and other relevant matters.

Recommendation 1:

The Standing Committee on Government Operations recommends that the GNWT finalize a public-private partnership policy. This policy should include provisions to ensure that:

- **the GNWT undertakes an analysis of its full financial exposure;**
- **the roles and responsibilities of the GNWT and its partner(s) are clearly defined; and**
- **due diligence is carried out on the partner's capacity to fulfill its roles and obligations.**
- **risks and opportunities are proportionately shared; and**
- **the GNWT establishes a clear understanding of a community's objectives and abilities when entering a partnership with a community.**

Cabinet should provide a timeline for the finalization of the public-private partnership policy within the life of the 16th Legislative Assembly.

Members are pleased that the Department agreed to share the Process Convention for Review for alternatively financed projects with the Committee, mentioned in the Department's response to the Auditor General's first recommendation. This process convention forms the basis of a P3 policy.

The findings in Paragraph 33 of the Auditor General's report raised concern among some Members. In September 2007, the *Contract of Indemnification Exemption Regulations* were amended to allow for a specific indemnity in the Concession Agreement in favour of the Deh Cho Bridge Corporation. This amendment exempted the Minister of Finance from, among other statutory requirements, the requirement to give Members of the Legislative Assembly at least 14 days notice, and enabled the GNWT to make a major financial commitment that now approaches \$200 million. Members noted that the Concession Agreement was signed and the amendment to the regulations made after the legislature had been dissolved.

During the public meeting, the Auditor General's review team expressed the opinion that the Executive Council acted within its legal authority to make the amendment. The Financial Management Board Secretariat confirmed that the GNWT had used exemption regulations to enter into a contract or agreement on previous occasions.

The Committee is pleased that, as indicated in the public meeting, the government is considering bringing forward changes to the *Financial Administration Act* that would modify the current process so that all indemnities would come before the Legislative Assembly.

PHASE II

The Committee is satisfied that the Department has updated the information in its risk matrix in response to the Auditor General's second recommendation, that the Department update the risk matrix and provide more complete information on mitigation measures responding to potential risks.

The Department provided the Committee a measure of confidence that it is closely monitoring the day-to-day progress of the Bridge. Department officials identified plans for environmental remediation at the site, electrical work, and clean-up within the project's current budget and general environmental liabilities. The Department has considered the cost of an ice bridge and ferry service should the Bridge be delayed. The Department has \$1 million in a separate budget for toll collection, which, it concedes, is small, but the amount is being discussed.

The Department did not address lifecycle or additional remedial costs in its responses. The Committee observes that paragraph 65 of the Auditor General's report includes mention of a catwalk as a necessary part of the design, however, in the public meeting, the Department stated it has decided to build the Bridge without one. The Committee is at a loss to explain this discrepancy.

Recommendation 2:

The Standing Committee on Government Operations recommends that the Department of Transportation thoroughly investigate the necessity and practicality of installing a catwalk, and report back to Members with other options for maintenance and inspection duly compared, within the scope of the Canadian Highway Bridge Design Code.

The Auditor General's final recommendation is that the Department ensure that a single authority certifies that the design and construction of the bridge meet the Canadian Highway Bridge Design Code, and that certification be obtained before the Bridge is open to traffic. The Department assured the Committee that it is seeking the most practical means to ensure that the Bridge is signed off by an Engineer of Record.

Further quality testing will be required for a single Engineer of Record to sign off on the Bridge, which will carry additional costs. If the GNWT's own engineer signs off as Engineer of Record, the GNWT will once again assume all the risk that entails.

Recommendation 3:

The Standing Committee on Government Operations recommends that before the Deh Cho Bridge opens to traffic, the Department of Transportation ensure that a qualified authority certifies that the design and construction of the Deh Cho Bridge meet the Canadian Highway Bridge Design Code.

The Committee is concerned that the Department may bury or delay costs in an effort to remain within the current project budget. The Committee noted that the Deh Cho Bridge Project includes many costs that are internal to the Department and the GNWT as a whole. For example, the Committee understands that legal action is being considered, but cost implications are unknown.

Recommendation 4:

The Standing Committee on Government Operations recommends that the Department keep all Members of the Legislative Assembly fully apprised of progress on the Bridge and cost implications, and provide regular updates to the Standing Committee on Economic Development and Infrastructure. These updates should include details specifically related to project risks, schedule, toll collection and establishing an Engineer of Record.

The Department should provide Members with a timeline and total cost for the completion of the Deh Cho Bridge project at the earliest possible date.

Recommendation 5:

The Standing Committee on Government Operations recommends the Department should provide an all-in, total cost for the project when it is complete that clearly identifies internal costs to the Legislative Assembly and the public.

The Committee understands that the Department has yet to provide a formal action plan on how it will implement the Auditor General's recommendations.

Recommendation 6:

The Standing Committee on Government Operations recommends that the Department of Transportation provide and make public a detailed action plan to implement the recommendations contained in the Auditor General's report on the Deh Cho Bridge Project, within 90 days.

CONCLUSION

Members expressed varied levels of satisfaction that the Department is working to implement the Auditor General's recommendations. Further work is needed to finalize a policy for alternatively financed projects, address inspection and maintenance requirements for the Bridge, and ensure it is certified as an integrated unit by an appropriate authority. The Committee is keenly aware that risks remain in the areas of the project's schedule, scope and cost, and expects to be kept fully apprised of the progress made toward the project's completion.

Recommendation 7:

The Standing Committee on Government Operations recommends that the Government of the Northwest Territories provide a comprehensive response to this report within 90 days.