

**2003 – 2004 Highway Maintenance Contracts  
Frequently Asked Questions  
Last Update September 10, 2003**

**Service Area 04 (Howe Sound)**

Q1. In Amendment # 4, the Ministry has made changes to the Damage to Gov't Property status. These changes reflect incorrect number of claims, unrecovered cost, recovered costs, direct recovery by the contractor and total cost amounts for the period January 31, 1997 to December 31, 2002. Can the Ministry post the correct amounts so that this information is not misleading?

**A. An updated report is included in Amendment # 5 of the RFP.**

Q2. Further to August 18, 2003 FAQs Question and Answer #28, that has not been fulfilled;

Service Area 4 RFP Volume I: Chapter 1 Unique Aspects to RFP and Maintenance Agreement in Service Area 4 E. reads as follows:

*E. Article 16 of the Maintenance Agreement deals with the Sea to Sky Highway Severance which involves a transfer of the Province's responsibility of that portion of the Maintenance Agreement pertaining to the Sea to Sky Highway to a Concessionaire. Article 16 includes a process whereby the Province will establish an Annual Price which will apply under a separate maintenance agreement between the Contractor and the Concessionaire for the supply of Services on the Sea to Sky Highway.*

Volume I: Chapter 1 Instructions to Proponents – 2. Definitions as:

**“Concessionaire”** means a party to whom the Province transfers the responsibility for the operation and maintenance of the Sea to Sky Highway.

Volume II – Maintenance Agreement defines “Sea to Sky Highway Maintenance Contract” in section 1.1 (s) as:

*(s) “Concessionaire” means the party identified as such under the Sea to Sky Highway Maintenance Contract, which party may but will not be obligated to be, a concessionaire as that term is defined in the Transportation Investment Act ;*

The Transportation Investment Act defines “Concessionaire” in section 1 – definitions as:

**“concessionaire”** means a person who, under a valid and subsisting concession agreement, holds the interests, rights and obligations that the minister has, by that concession agreement, agreed to transfer, grant or impose;

Volume II – Maintenance Agreement defines “Sea to Sky Highway Maintenance Contract” in section 1.1 (aaaa) as:

*(aaaa) “Sea to Sky Highway Maintenance Contract” means the contract for the provision of Services on and in connection with the Sea to Sky Highway made between the Concessionaire and the Contractor on the terms and conditions included in Schedule 25 of this Agreement;*

We have not yet been provided with a copy of the Schedule 25 - Sea to Sky Maintenance Agreement.

Our concerns are raised from a) the definitions of Concessionaire are not consistent and b) the obligation of the Concessionaire seems to differ dramatically between definitions; in first case the wording of “Concessionaire” indicates the Concessionaire accepts the agreement as settled by the Province, in the second definition indicates that the Concessionaire “**may but will not be obligated to be...**” under the Provinces contract.

Is the Concessionaire obligated to accept the Sea to Sky Highway Maintenance Agreement or is a new agreement to be negotiated between the Concessionaire and the Contractor?

Our expectation and understanding is that, if the Province elects to apply the Sea to Sky Severance Process, then the Contractor will enter into a separate Maintenance Agreement with the Concessionaire, and this agreement has been described as the Sea to Sky Highway Maintenance Agreement in definition Section 1.1 (aaaa). This separate agreement would, we expect, be similar in terms to the agreement with the Province for the severed area, but would also contain a provision to the effect that if the Concessionaire will not be obligated to the terms entered into between the Contractor and the Province, then the agreement between the Province and the Contractor shall be reinstated. If this provision were not in the agreement, the Contractor could, unilaterally be left without any contract after being awarded a contract, and would seem to be grossly unfair.

To be certain that our understanding is correct, we would like to be able to view a copy of Schedule 25 Sea to Sky Highway Maintenance Agreement to assess its provisions before submitting our Proposal. If we are not able to see the agreement, perhaps you are able to give us a written assurance that such a provision will be in the agreement. Failing all of that, we would have to submit our proposal with certain “subjects” relating to the unseen Schedule 25.

**A. These issues should be addressed in amendment # 5 to the RFP.**