

Council Member Inquiry Form
Demande de renseignement d'un membre du Conseil

Subject: Stage 2 LRT: Procurement Process and Delegated Authority

Objet : Étape 2 du projet de train léger : processus d'approvisionnement et pouvoirs délégués

Submitted at: City Council

Présenté au : Conseil municipal

From/Exp.:

Date: March 27, 2019

File/Dossier :

Councillor/Conseiller(e) :
D. Deans

Date : le 27 mars 2019

OCC 02-19

To/Destinataire :

General Manager, Transportation Services Department / Directeur général, Direction générale des transports

Inquiry:

On March 6th, 2019, City Council approved, on the basis of available information provided by senior staff and external legal counsel, the staff-recommended Stage 2 LRT proponent to construct and maintain the north-south Trillium line. Since then, concerns have been raised by the media and the public with regard to the integrity of the procurement process that resulted in the staff recommendation to Council.

To ensure that the residents and taxpayers of Ottawa have complete confidence in the transparency and integrity of the Stage 2 LRT procurement process, could staff please outline, clarify, and confirm the staff delegated authority for this procurement and when and how this delegated authority was used in the process. Specifically:

- 1. Upon what exact delegated authority have staff relied on as it pertains to the procurement process for Stage 2 LRT? Please point to any and all clauses and legal interpretations that governs this process.**
- 2. Could the language in the above-noted delegated authority provide staff with the discretion to depart from the City's *Purchasing By-law*, the relevant Project Agreements or any other governing documents? For**

example, could staff use this delegated authority to allow a proponent who did not achieve the technical threshold of 70% to move forward in the process?

- 3. If yes (to the above), is this use of this delegated authority considered to be emergency or special circumstance as defined under the delegated authority bylaw (2016)?**
- 4. If yes (to the above), could staff please explain what reporting mechanism is being used to advise Council of the use of special/or emergency delegated authority as required in our delegated authority bylaw as per section 5.**
- 5. If the use of delegated authority was not deemed special or emergency in nature, then could staff please advise how they are meeting the accountability and transparency requirements as per our Delegations of Powers Bylaw?**
- 6. Whether in the LRT procurement the requirement to achieve a minimum of 70% in the technical scoring is an absolute pass/fail, or whether the delegation of authority to recommend a winning proponent given to staff in 2017 has mechanisms to override that requirement.**

Demande de renseignement :

Le 6 mars 2019, le Conseil municipal, à la lumière des renseignements fournis par les cadres supérieurs et les conseillers juridiques externes, a approuvé l'Étape 2 du projet de train léger recommandée par le personnel, qui consiste à construire et à entretenir la Ligne Trillium nord-sud. Depuis, les médias et le public ont soulevé des préoccupations concernant le processus d'approvisionnement, desquelles a découlé la recommandation du personnel au Conseil.

Afin que les résidents et contribuables d'Ottawa aient entièrement confiance en la transparence et en l'intégrité du processus d'approvisionnement de l'Étape 2 du projet de train léger, le personnel pourrait-il énumérer, clarifier et confirmer ses pouvoirs délégués liés à l'approvisionnement, et indiquer comment et à quels moments ils ont été utilisés durant le processus? Plus précisément :

- 1. De quels pouvoirs délégués précis le personnel a-t-il bénéficié durant le processus d'approvisionnement de l'Étape 2 du projet de train léger?**

Veillez indiquer toute disposition et interprétation juridique régissant ce processus.

- 2. Est-ce que la formulation des pouvoirs délégués susmentionnés donne la possibilité au personnel de contourner les dispositions du *Règlement sur les approvisionnements* de la Ville, des ententes de projet pertinentes ou de tout autre document constitutif? Par exemple, le personnel pourrait-il utiliser ces pouvoirs délégués afin de permettre à un promoteur qui n'a pas atteint le seuil technique de 70 % de progresser dans le processus?**
- 3. Si oui, cette utilisation des pouvoirs délégués est-elle considérée comme une utilisation en cas d'urgence ou de circonstances particulières aux termes du *Règlement municipal sur la délégation de pouvoirs* (2016)?**
- 4. Si oui, le personnel peut-il décrire le mécanisme de signalement utilisé pour aviser le Conseil de l'application de pouvoirs délégués en cas d'urgence ou de circonstances particulières, comme exigé à l'article 5 du *Règlement municipal sur la délégation de pouvoirs*?**
- 5. Si l'utilisation de ces pouvoirs délégués n'est pas liée à une situation d'urgence ou à des circonstances particulières, le personnel peut-il expliquer en quoi il respecte les exigences en matière de responsabilisation et de transparence du *Règlement municipal sur la délégation de pouvoirs*?**
- 6. Dans le processus d'approvisionnement du train léger, est-il absolument nécessaire d'avoir une note technique d'au moins 70 %, ou est-ce que les pouvoirs délégués conférés au personnel en 2017 pour sélectionner les promoteurs sont assortis de mécanismes permettant de contourner cette exigence?**

Response (Date: 2019-Aug-01)

- 1. Upon what exact delegated authority have staff relied on as it pertains to the procurement process for Stage 2 LRT? Please point to any and all clauses and legal interpretations that governs this process.**

The "*exact delegated authority*" that "*staff relied on as it pertains to the procurement process for Stage 2 LRT*" was the express authority granted by City Council in the public report entitled, "**STAGE 2 LIGHT RAIL TRANSIT IMPLEMENTATION - PROJECT DEFINITION AND PROCUREMENT PLAN**" (the "Report"): see [ACS2017-TDS-OTP-0001](#). As summarized in more detail below, this Report, once approved by Council, authorized City staff to undertake a new, competitive "**procurement model**" for both the Confederation Line and the Trillium Line Extensions of the Stage 2 LRT Project. This authority was largely adapted from the previous procurement for the Stage 1 LRT Project entitled, "**DESIGN, BUILD, FINANCE AND MAINTENANCE OF OTTAWA'S LIGHT RAIL TRANSIT (OLRT) PROJECT**": see [ACS2012-ICS-RIO-0004](#), approved by Council on December 19th, 2012.

The Report is comprised of three main parts [**emphasis added**]:

- 1. Part One** "describes the additional scope that Council is being asked to include in the Stage 2 LRT procurement process, including alignment adjustments based on public consultation and adjustments not included in the core Stage 2 plan";
- 2. Part Two** "lays out the proposed approach to holding a vigorous competition and the role the private sector partner for the first stage of Confederation Line, Rideau Transit Group (RTG), will play in setting the stage for good market participation"; and
- 3. Part Three** "covers some of the specific activities the City will undertake to be ready to implement Stage 2, including approaches to maintain mobility and bus service through construction as well as the approach to assembling the required lands".

The Executive Summary provides the following succinct description of the purpose of this Report in the following manner [**emphasis added**]:

"This report provides recommendations that meet Council's direction and, if approved, would allow for a competitive procurement process for all three extensions to begin with the release of formal Request for Qualification (RFQ) documents in the coming weeks. It also lays out a strategy that incorporates bundled and supporting projects, while best ensuring these projects are built without creating undue risk or

compromising the City's affordability. This is possible due to a number of factors, including the timely commitment from the federal and provincial governments to fund transit and other green initiatives, the expertise gained from the successful, innovative and award-winning procurement for the Confederation Line, and the opportunity for the Stage 2 LRT Project and related projects to leverage the experience and lessons gained through the construction of the Confederation Line [Stage 1] project. The recommendations in this report accomplish the following:

- Propose a procurement model for the construction of the Confederation Line extensions and related projects, the Trillium Line extension and related projects and vehicle acquisition and vehicle maintenance to provide best value and predictable pricing, and ensure that operational risks are mitigated".

Within the Report's eight recommendations are 16 specific delegations of authority provided by Council to staff to implement the competitive procurement process described in the 125 page document. For convenience, those recommendations are set out below with the express delegations **highlighted** for ease of reference

That Council approve the implementation of the Stage 2 Light Rail Transit Project and related projects as outlined in this report and as follows:

1. Approve that the following be incorporated into the procurement process for the Stage 2 Light Rail Transit Project:

a. The alignment changes and other refinements to the functional design for the Stage 2 Light Rail Transit Project, as described in this report, and as follows:

i. The Confederation Line West Extension, as follows:

- 1. Alignment Improvement at Richmond Road;**
- 2. Alignment Improvement and Station Shift at Lincoln Fields;**
- 3. Pinecrest Creek Re-alignment at Iris Station;**
- 4. Bayshore Station Shift;**
- 5. Goldenrod Bridge Connection.**

ii. The Trillium Line South Extension, as follows:

- 1. Airport Station Shift;**

2. Relocated Walkley Yard Maintenance and Storage Facility;

3. Leitrim Road Overpass Shift.

- b. The Trim Extension and the Airport Rail Link, as described in this report and conditional on full funding from the federal and provincial governments and achieving a Memorandum of Understanding with the Ottawa MacDonald-Cartier International Airport Authority;**
- c. The Moodie Extension and Maintenance and Storage Facility, as described in this report;**
- d. The recommended projects for ‘bundling’ into the Stage 2 Light Rail Transit Project procurement process, as described in this report, and as follows:**
 - i. The planned City works listed in Appendix 3;**
 - ii. The Ministry of Transportation of Ontario’s Highway 417 (Maitland Ave. to Highway 416) Expansion Project, on the understanding the project will be fully funded by the provincial and federal governments and conditional on an Interface Agreement;**
 - iii. The Highway 174 (between Montreal Road and Jeanne d’Arc Blvd.) Project to explore advancing the ultimate Highway 174 configuration, as described in this report and subject to the identification of a funding source;**
- e. The following actions related to the projects being included in the Stage 2 Light Rail Transit Project Procurement process:**
 - i. Direct staff to initiate an Environmental Assessment (EA) addendum to the West Transitway Extension Environmental Assessment Study (Bayshore Station to Moodie Drive) to advance the conversion from bus rapid transit to light rail transit, as described in this report, and file the addendum with the Ministry of the Environment and Climate Change in accordance with Ontario EA Regulation 231/08 for transit projects;**
 - ii. Direct staff to initiate an Environmental Assessment (EA) addendum to the Confederation Line West Extension Environmental Assessment Study (if required) to expand the Bayshore Station bus facility, as described in this report, and file the addendum with the Ministry of the**

Environment and Climate Change in accordance with Ontario EA Regulation 231/08 for transit projects;

2. Approve the updated *Stage 2, Ottawa LRT Business Case*, attached as Appendix 4;
3. Approve the procurement model and process for the Stage 2 Light Rail Transit Project, as described in this report, including as follows:
 - a. Delegate the authority to the City Manager to execute the Memorandum of Understanding (MOU) between the City of Ottawa and the Rideau Transit Group, as described in this report; and
 - i. Approve the \$492 million budget and funding sources for the Memorandum of Understanding (MOU) with the Rideau Transit Group, as outlined in this report and conditional on these costs being eligible for federal and provincial funding; and
 - ii. Delegate the authority to the General Manager, Transportation Services, to proceed with the MOU variations of the Rideau Transit Group's work, and to negotiate, finalize and execute an agreement with the long-term lenders, if required, as described in this report.
 - b. Direct staff to proceed with the Design, Build, Finance (DBf) procurement process for the Confederation Line East and West extensions and related projects, as described in this report;
 - c. Direct staff to proceed with the Design, Build, Finance, Maintain (DBFM) procurement process for the Trillium Line extension and related projects, as described in this report;
 - d. Receive the information on the Project Schedule, as outlined in this report.
 - e. Delegate authority to the City Manager to negotiate, finalize and execute an agreement with Infrastructure Ontario, if required, as outlined in this report.
4. Approve the following related issues and actions for the implementation of the Stage 2 Light Rail Transit Project and related projects, as outlined in this report:

- a. Receive the information on the cost estimates for the Stage 2 Light Rail Transit and related projects and the update on the federal and provincial partnership funding;
- b. Receive the information on the short-listed options for addressing traffic and mobility during construction as described in this report; and
 - i. Approve the advanced purchase of 34 lifecycle replacement buses in 2017 and the associated \$28 million budget, to be funded as described in this report;
- c. Approve the following actions with respect to land assembly and property acquisition for the Stage 2 Light Rail Transit Project and related projects, as described in this report and as follows:
 - i. Direct Corporate Real Estate Office staff to proceed with the acquisition of the property interests required to facilitate the construction, use and maintenance of the Stage 2 Light Rail Transit Project and related works, as described in this report;
 - ii. Delegate the authority to the General Manager, Corporate Services and City Treasurer to place any by-laws required pursuant to the *Expropriations Act* for the purposes of authorizing the making of applications for approval to expropriate property and authorizing the expropriation of property rights, on a Council Agenda, if necessary to facilitate the construction, use and maintenance of the Stage 2 Light Rail Transit Project and related works, with the concurrence of the Mayor and the Ward Councillor, and as described in this report;
 - iii. In addition to the authority contained in Delegated Authority By-law No. 2016-369, delegate the authority to the General Manager, Corporate Services and City Treasurer to approve any real estate transaction involving the acquisition of any interest in, or right to use, real property for the purposes of the Stage 2 Light Rail Transit Project and related works, including any offer of compensation payable under the *Expropriations Act*, and execute documentation as required and any amendments thereto, regardless of the total value of the transaction, provided it is accordance with the requirements of the Real Property Acquisition Policy, is within the project budget for the Stage 2 Light Rail

- Transit Project and has the concurrence of the Mayor and the Councillor whose ward includes the relevant property;
- iv. Direct staff to report the details of the real estate transactions related to the Stage 2 Light Rail Transit Project and approved under delegated authority, including expropriations, to the Finance and Economic Development Committee and City Council after all property interests required for the Stage 2 Light Rail Transit Project and required works have been acquired by the City and all claims for compensation have been settled; and
 - v. Delegate the authority to the Director, Corporate Real Estate Office to enter into agreements with the Ministry of Transportation of Ontario (MTO) providing for the use of City-owned property by the Ministry of Transportation for nominal consideration for the purposes of widening and other Highway 417 works between Preston Street and Maitland Avenue in exchange for the use of property owned by the Ministry of Transportation by the City for nominal consideration for the purposes of the Stage 2 Light Rail Transit Project and related projects, as described in this report.
- d. Delegate the authority to the Ottawa Light Rail Transit Executive Steering Committee to confirm and recommend to Council the preferred proponent(s) at the close of the Request for Proposals and to, at the discretion of the City Manager, be the decision-making and escalation authority with respect to contract and construction matters; and
- i. Delegate the authority to the City Manager to add or remove members of the Ottawa Light Rail Transit Executive Steering Committee as required;
- e. Receive the information on the Communications and Stakeholder Relations approach.
5. Approve the following with respect to relevant partner agreements for the Stage 2 Light Rail Transit Project and related projects:
- a. Delegate the authority to the City Manager to negotiate and finalize the Contribution Agreements with the federal and provincial governments for the Stage 2 Light Rail Transit Project and related projects, as described in this report, and including full funding for the Trim Extension and Airport

Rail Link and delegate the authority to the Mayor to execute the final Contribution Agreements;

- b. Delegate the authority to the City Manager to negotiate, finalize and execute documents required to implement the terms of the Agreement in Principle between the City and the National Capital Commission dated May 10th, 2016, as outlined in this report, including the Property Term Sheet, together with any required amendments to the terms of the Agreement in Principle reasonably required to permit the completion of the matters described in the Agreement in Principle;**
 - c. Delegate the authority to the City Manager to negotiate, finalize and execute the Memorandum of Understanding with the Ottawa Macdonald-Cartier International Airport Authority with respect to the Airport Rail Link, based on the principles outlined in this report;**
 - d. Delegate the authority to the City Manager to negotiate, finalize and execute the Interface Agreement with the Ministry of Transportation of Ontario's, with respect to bundling the Highway 417 (Maitland Ave. to Highway 416) Expansion Project, as outlined in this report;**
 - e. Delegate the authority to the City Manager to negotiate, finalize and execute the Agreement in Principle with Public Service and Procurement Canada with respect the construction of a Goldenrod Bridge, as outlined in this report;**
 - f. Receive the information with respect to the Indigenous Community Engagement Strategy for the Stage 2 Light Rail Transit Project, as outlined in this report;**
 - g. Receive information on the provision and location of public washrooms for the Stage 2 LRT Project, as outlined in the report;**
 - h. Receive the information with respect to the Public Art Program for the Stage 2 LRT Project, as outlined in the report.**
 - i. Receive information on the incorporation of pedestrian and cycling connectivity in the Stage 2 LRT Project, as outlined in the report.**
- 6. Approve the inclusion of Station-Oriented Development Opportunities for Baseline Station, Cleary Station and Pinecrest Station in the Design, Build,**

Finance (DBf) procurement process for the Confederation Line East and West extensions, as described in this report;

7. Delegate the authority to the City Manager to accept and approve changes to the Stage 2 Light Rail Transit Project design, in accordance with the principles outlined in this report, with the concurrence of the Ward Councillor and the Mayor;
8. Delegate the authority to the City Manager to address any unforeseen matters with respect to proceeding with the procurement and next steps towards implementation of the Stage 2 Light Rail and related projects on the understanding that any actions will be consistent with Council direction on this matter, within the relevant project budgets, undertaken with the concurrence of the Mayor and any affected Ward Councillor, and reported back to Council either through the Finance and Economic Development or as part of the report recommending the contract award, as appropriate.

Part Two of the Report is specifically entitled, "**PROCURING STAGE 2**" (page 74) and has two subsections called, "**Confederation Line East and West Procurement**" (page 82) and then "**Trillium Line Extension Procurement**" (page 84), wherein much of the proposed procurement model is explained in detail. There are also other specific areas of the Report that set out additional explanations for supplementary delegations of authority. For example, there is a section entitled, "Delegated Authority for Future Design Modifications and Unforeseen Matters," on pages 115-116, which draws from the December 11, 2013, Council-approved process to respond to such matters by seeking the approval of the Mayor and the impacted Ward Councillor.

In the **LEGAL IMPLICATIONS** section, there is a further summary of the intent of this Report as it relates to the procurement model being proposed, along with the delegated authority being requested:

"The approval of the recommendations contained in this Report will provide staff with the necessary direction and delegated authority to commence procurement for the various elements of the Stage 2 extension of the Confederation and Trillium Line Light Rail Services."

This section summarizes the "*proposed procurement model*" in the following manner:

"The proposed procurement structure has been designed to ensure the greatest

value to the City. By extracting those portions of Stage 2 likely to impair the competitive procurement of the work necessary to complete Stage 2, namely the acquisition of additional rolling stock, expansion of the Maintenance and Storage Facility and system and train maintenance, the proposed procurement model offers a mechanism by which the City will be able to secure optimal pricing through competitive tension amongst multiple bidders. Such a model faces a limited risk of challenge by virtue of the fact that the additional work to be done by RTG was contemplated as part of the draft Project Agreement provided to proponents in the initial Request for Proposals (RFP) process used for Stage 1. As such, the original procurement process contemplated the possibility that further work might flow from the initial contract award. In light of this, and as the Project Agreement for Stage 1 was drafted to expressly provide for extensions at the discretion of the City, the proposed procurement model is considered to be fair and well insulated from legal challenge. The proposed model has been comprehensively reviewed by the City's external legal counsel retained to support the Stage 2 Project, whose detailed Summary of Legal Issues is found at Appendix 9."

The Report was thoroughly discussed at both the Finance and Economic Development Committee (FEDCO) meeting and at City Council. There were 14 delegations at the FEDCO meeting of February 24th, 2017, as well as two written submissions, and four hours of discussion.

There were no motions approved by Committee.

On March 8th, 2017, City Council spent just over two hours considering this Report. There were four motions considered by Council, of which all were approved. None of these related to changing the proposed procurement model or the amount of delegated authority to staff that would accompany its implementation. Ultimately, the recommendations in the Report, were "carried" unanimously by City Council. Three Members of Council "dissented" on Recommendation No. 4(c)(iv), which directed staff to continue the previously delegated authority process regarding the disclosure of expropriation matters at a subsequent date.

Following this, the Stage 2 LRT procurement model was implemented by staff pursuant to the directions and delegated authorities approved by Council.

- 2. Could the language in the above-noted delegated authority provide staff with the discretion to depart from the City's *Purchasing By-law*, the relevant Project Agreements or any other governing documents? For**

example, could staff use this delegated authority to allow a proponent who did not achieve the technical threshold of 70% to move forward in the process?

In keeping with the City's *Public Private Partnership Policy*, which provides that staff are to submit a recommended procurement strategy to City Council for its consideration, Council approved specific delegations of authority in this instance, meaning that staff is guided by the procurement model that was set out in the above-noted Report as amended and approved by Council. It was within that specific model and the delegated authority granted to staff by Council that the Stage 2 LRT procurement process was implemented. That said, staff is of the view that the process used to implement the Stage 2 procurement model was conducted in a manner consistent with the general procedures relating to procurements over \$500,000 outlined in Section 20 of the City's *Purchasing By-law*. With respect to the "technical threshold of 70%", that matter is addressed below in response to Question No. 6.

3. If yes (to the above), is this use of this delegated authority considered to be emergency or special circumstance as defined under the delegated authority bylaw (2016)?

The City's *Delegation of Authority By-law* was not applicable in this instance: please see the answers to Questions No. 1 and No. 2 above.

4. If yes (to the above), could staff please explain what reporting mechanism is being used to advise Council of the use of special/or emergency delegated authority as required in our delegated authority bylaw as per section 5.

Not applicable.

5. If the use of delegated authority was not deemed special or emergency in nature, then could staff please advise how they are meeting the accountability and transparency requirements as per our *Delegations of Powers Bylaw*?

The purpose of the City's *Delegation of Powers Policy*, first enacted by City Council in November 2007 and subsequently updated in February of 2013, is to provide "guidance regarding the scope of powers and duties that Council may delegate under its legislative and administrative authority" and also "establishes principles governing such

delegation.” The fifth principle set out in this *Policy* mandates as follows:

“Every delegation of a power or duty of Council shall be accompanied by a corresponding accountability and transparency mechanism.”

In addition to this principle, the 2007 report entitled, “**DELEGATION OF POWERS POLICY**”, being [ACS2007-CMR-CCB-0022](#), set out the following parameters to guide staff when exercising authority delegated from Council:

“In exercising any delegated authority, the delegate shall ensure the following:

- *Any expenditure related to the matter shall have been provided for in the current year’s budget;*
- *The scope of the delegated authority shall not be exceeded by the delegate;*
- *The consistent and equitable application of Council policies and procedures;*
and
- *Where required by the specific delegated authority, reports shall be submitted to Council advising of the exercise of a delegated authority and confirming compliance with the delegated authority and this Policy.”*

In other words, the “*accountability and transparency mechanism*” required for each delegated power is often met by a disclosure process that is appropriate under all of the circumstances. Specifically, Recommendation 4(d) of the Report expressly mandated that the following action occur as the key to the proposed procurement model:

“Delegate the authority to the Ottawa Light Rail Transit Executive Steering Committee to confirm and recommend to Council the preferred proponent(s) at the close of the Request for Proposals and to, at the discretion of the City Manager, be the decision-making and escalation authority with respect to contract and construction matters;”

For the procurement of the Stage 2 Project, the Executive Steering Committee (ESC) was responsible for receiving reports, presentations and made decisions on matters of substance related to the Request for Proposal (RFP) evaluation process raised by the Bid Evaluation Steering Committee. In addition, the ESC ruled on any material non-conformance issues, taking advice from the Bid Evaluation Steering Committee, and, endorsing the recommendation of the Preferred Proponent at the completion of the Evaluation Process for approval by the City Council.

With regard to this Report, and in light of Recommendation 4(d), the main disclosure mechanism was the recent report to Council on March 6th, 2019, entitled, “**CONTRACT AWARD OF OTTAWA’S STAGE 2 LIGHT RAIL TRANSIT PROJECTS AND**

RELATED MATTERS”: [ACS2019-TSD-OTP-0001](#).

The March 6, 2019 report to Council recommending the preferred proponent satisfies the disclosure requirements of the Procurement Bylaw and P3 Policy and is compliant with the reporting requirements as outlined in the “**STAGE 2 LIGHT RAIL TRANSIT IMPLEMENTATION - PROJECT DEFINITION AND PROCUREMENT PLAN**” ([ACS2017-TDS-OTP-0001](#)).

At the project and staff level, however, the procurement of the Stage 2 Project was also led by a vigorous accountability and transparency regime to ensure that the Delegation of Authority provided by Council and ESC was utilized appropriately. Staff in the Stage 2 Project office (O-Train Planning) were led by a procurement framework, overseen by legal advisors and the Fairness Commissioner, which set out the parameters for the accountability regime, including:

- Outlining how evaluations should be undertaken in a manner consistent with the Request for Proposal (RFP) documentation;
- Describing decision making authority at all levels;
- Describing the process for mitigating and/or resolving Conflicts of Interest;
- Identifying participants, accountabilities, and roles and responsibilities; and
- Ensuring that the evaluation process was carried out in a fair, open and transparent manner.

The Bid Evaluation Steering Committee (BESC), noted previously, was accountable to the ESC, and provided the highest level of oversight at the Stage 2 Project procurement level. BESC ensured that the procurement process was conducted by staff and advisors in accordance with the RFP requirements and that all required due diligence was conducted by the procurement and evaluation team throughout the process. The BESC was comprised of 4 members, including City staff, and external legal, technical and financial advisory representation. All work undertaken by staff as part of the procurement process was accountable to the BESC, who in turn reported to ESC.

To inform the recommendations and decision making of the BESC, and ultimately the ESC, the Stage 2 Project procurement process was supported by the following internal and external advisories, and third body monitoring participants:

Accountable Group	Key Responsibilities
Evaluation Manager	<ul style="list-style-type: none">• Accountable to BESC• Central resource for all Participants• Facilitated all meetings and communications including key processes (e.g., Requests for Information, etc.)

	<ul style="list-style-type: none"> • Secured document administration • Supported all Participants in the evaluation process
Evaluation Coordinators	<ul style="list-style-type: none"> • Accountable to BESC • Supported the Evaluation Manager
Fairness Commissioner	<ul style="list-style-type: none"> • Third party verification that the procurement has been conducted in a fair, open and transparent manner in accordance with the RFP • Provided fairness monitoring services and process support • Observed meetings and reviews communications • Provided a fairness report at the end of the process
Conflict Review Team	<ul style="list-style-type: none"> • Accountable to BESC • Ensured that all Participants, Proponents and Team Members are clear of conflicts of interest and that any potential conflicts are mitigated • Reviewed conflicts disclosed by Proponents and Participants • Made recommendations on mitigation measures
Completeness Review Team	<ul style="list-style-type: none"> • Accountable to BESC • Ensured that all Proposals are legally compliant and substantially complete • Reviewed each Proposal for completeness • Compiled a list of all individuals and team members named in each Proposal • Disclosed any conflicts outlined in the submissions to the Conflict Review Team
Technical Conformance Team	<ul style="list-style-type: none"> • Accountable to BESC • Reviewed of Technical Submissions to ensure material conformance with technical aspect outlines in RFP • Secured and keeps confidential the Technical Submissions, working papers and worksheets • Conducted a detailed review of technical proposals to determine conformance or deficiencies with the RFP Technical Requirements • Completed the Technical conformance report to inform the Technical Evaluation
Technical Evaluation Team	<ul style="list-style-type: none"> • Accountable to BESC • Reviewed and evaluates all Technical Proposals • Secured and keeps confidential all working papers, worksheets and Technical Submissions • Evaluated all Technical Submissions against the criteria provided in the RFP and reflected in the relevant worksheet • Participated in consensus meetings
Financial Evaluation	<ul style="list-style-type: none"> • Accountable to BESC • Reviewed and evaluates all Financial Proposals

Team	<ul style="list-style-type: none"> • Secured and keeps confidential all working papers, worksheets and Financial Submissions • Evaluated all Financial Submissions against the criteria provided in the RFP and reflected in the relevant worksheet • Led/participated in conformance consensus meetings
Subject Matter Experts	<ul style="list-style-type: none"> • Accountable to BESC • Provided expertise as required, on certain aspects of the Proposals • Provided responses to questions posed by the team • Requested to attend meetings as required as an observer for questions

As noted earlier, following the completion of the Stage 2 Project evaluation process, the Confederation Line and Trillium Line respective Preferred Proponents were identified to BESC and ESC for recommendation to City Council. Regular reporting was provided to ensure that both BESC and ESC were aware of the progress of the procurement evaluation process, and seek clarification, direction or decision making as required.

6. Whether in the LRT procurement the requirement to achieve a minimum of 70% in the technical scoring is an absolute pass/fail, or whether the delegation of authority to recommend a winning proponent given to staff in 2017 has mechanisms to override that requirement.

The Stage 2 Trillium Line and Confederation Line Extension project RFP documents and processes incorporated industry best practices in relation to procurements of this scope and scale. These best practices contemplated that there may be circumstances where, to ensure best value to the City, flexibility and discretion would be appropriate and necessary throughout the bid process. Both procurement processes were conducted in accordance with the provisions in the RFPs, under the supervision of the independent Fairness Commissioner.

There were two steps in the procurement process related to technical requirements. To ensure a common understanding of those steps and where they fit in the overall procurement, the wider process is described in more detail below:

Bid Evaluation Process

Following the end of the Stage 2 LRT Project RFP in-market period and the receipt of technical and financial submissions from the six (6) proponent teams (TransitNEXT, Trillium Link, and Transit Extension Alliance for the Trillium Line; and, East West Connectors, Confederation Transit Group, and CL2 Partners for the Confederation

Line), a multi-step and multidisciplinary evaluation process was followed, which included:

1. Completeness Review: To ensure that all submissions were complete;
2. Technical Compliance Review: To ensure that all submissions were deemed to be technically compliant with the RFP requirements;
3. Technical Evaluation: The evaluation of all submissions on the basis of the technical RFP requirements; and,
4. Financial Evaluation: The evaluation of all submissions on the basis of the financial RFP requirements.

Therefore, there were two steps of the procurement process that relate to technical requirements, namely technical compliance and technical evaluation. With respect to the Technical Evaluation criteria set out in the RFPs issued to proponents in relation to the Trillium Line Extension and the Confederation Line Extension (and in keeping with industry best practices), Subsection 6.5.2(1) of the RFP for the Trillium Line Extension project set out the review and scoring of the technical submissions as follows:

“In Step 2 of the evaluation process, the Sponsor will open each Technical Submission and review the contents of the Technical Submission to assess whether it is in compliance with the terms and conditions of the RFP Documents.”

In addition, Subsection 6.5.2(4) of the RFP, provided the following broad discretion [emphasis added]:

“If a Proponent fails to achieve any of the minimum scores as set out in the applicable provisions of Part B – Proposal Evaluation of Part 3 of Schedule 3 to this RFP, then, as part of Step 2 of the evaluation process and pursuant to and in accordance with such provisions, the Sponsor may, in its sole discretion, determine whether that Proponent’s Proposal will continue to be considered in the RFP Process.”

The requirements to achieve a minimum of 70% in the technical scoring, therefore, was not an absolute pass/fail. The attached document provides the results of all the scores for the Confederation Line and the Trillium Line technical evaluations. All of the Trillium Line and Confederation Line proponents were deemed to be technically compliant with the RFP requirements.

After the completion of the technical evaluations, the technical results for each of the proponent submissions were presented by the BESC to the ESC. As per the RFP, without having disclosed the identity of any of the proponents, ESC exercised the discretion to permit staff to continue evaluating one of the Trillium Line proponents that

met the completeness and technical compliance review requirements but did not meet the 70% threshold for technical evaluations. This approach was based on legal advice around the use of discretion in the RFP and it was determined to be appropriate for several reasons, including the fact that the Proponent's technical submission had successfully completed the compliance review and it was advisable to mitigate the City's exposure to legal challenges.

It is important to note that allowing the Proponent to move to the financial evaluation step did not modify the technical score of this Proponent – the Proponent's proposal would be ranked based on its overall score, including the financial and technical scores, as per the RFP.

As such, the evaluations of the Stage 2 LRT bids, and the recommendation made by the Executive Steering Committee to Council were conducted by staff in accordance with the RFP requirements, which in turn were established in a manner consistent with the Recommendations in the Report carried unanimously by City Council on March 8, 2017.

Réponse (Date : le 1er août 2019)

Council Inquiries

Demande de renseignements du Conseil :

Response to be listed on the Finance and Economic Development Committee Agenda of September 10, 2019 and the Council Agenda of September 11, 2019

La réponse devrait être inscrite à l'ordre du jour de la réunion du Comité des finances et du développement économique prévue le 10 septembre 2019 et à l'ordre du jour de la réunion du Conseil prévue le 11 septembre 2019.