

Subject: Light Rail Regulatory Monitor Compliance Officer Contract

File Number: ACS2023-CMR-OCM-0004

Report to Transit Commission on 13 April 2023

and Council 26 April 2023

Submitted on March 31, 2023 by Wendy Stephenson, Interim City Manager

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Ward: Citywide

Objet : Contrat de l'agent de surveillance et de conformité réglementaires du train léger

Dossier : ACS2023-CMR-OCM-0004

Rapport au Commission du transport en commun

le 13 avril 2023

et au Conseil le 26 avril 2023

Soumis le 31 mars 2023 par Wendy Stephenson, directrice générale par intérim

Personne ressource : David White, avocat général de la Ville, Services juridiques

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Quartier : À l'échelle de la ville

REPORT RECOMMENDATION(S)

- 1. That the Transit Commission recommend to Council that the contract for the Light Rail Regulatory Monitor and Compliance Officer for Confederation Line be renewed for a further five-year term on terms and conditions as set out in this report and delegate the authority to the Interim City Manager to execute the contract renewal on behalf of the City; and**
- 2. That the Transit Commission recommend that Council direct the Interim City Manager to bring a further report to the Transit Commission and**

Council to recommend any changes to the existing Confederation Line Light Rail System Regulatory Framework in Q3 2023.

RECOMMANDATION(S) DU RAPPORT

- 1. Que la Commission du transport en commun recommande au Conseil de renouveler pour un autre mandat de cinq ans le contrat de l'agent de vérification et de conformité réglementaires du train léger de la Ligne de la Confédération en vertu des conditions et des modalités définies dans le présent rapport, et de déléguer à la directrice municipale par intérim le pouvoir de procéder au renouvellement du contrat au nom de la Ville; et**
- 2. Que la Commission du transport en commun recommande au Conseil de charger la directrice municipale par intérim de soumettre au 3^e trimestre de 2023 un autre rapport à la Commission du transport en commun et au Conseil recommandant des changements éventuels au cadre réglementaire du réseau de train léger de la Ligne de la Confédération.**

BACKGROUND

Due to the existence of some interprovincial elements of the City's integrated transit system (specifically bus service to Gatineau), unlike many municipal light-rail transit systems in Canada, the light-rail components of the City's transit system are subject some federal regulation.

When the City's implementation plan for the Ottawa Light-Rail Transit project came before Council in 2011, the City and Transport Canada had been working toward an agreement that would permit the City to regulate the Confederation Line light-rail system more independently of federal regulation, consistent with other Canadian municipal transit systems that include light-rail components and in order to reflect the fact that Transport Canada generally does not provide active regulatory oversight for this type of transit system.

As part of Council's approval of the implementation plan for the Ottawa Light-Rail Transit project (ACS2011-ICS-RIO-0002), on July 14, 2011, Council delegated its authority to the Deputy City Manager of Infrastructure Services to finalize a regulatory delegation agreement with the federal government, as represented by the Federal Minister of Transport and delegated the authority to the Mayor to execute what is now referred to as the Transport Canada Delegation Agreement for the Confederation Line light rail transit system (the Transport Canada Delegation Agreement).

The Transport Canada Delegation Agreement, made effective on October 1, 2011, included provisions for the development, adoption, monitoring and enforcement of City rail transit regulations pursuant to a delegated regulation model. The delegated regulation model requires, among other things, that OC Transpo's compliance with City regulations and related programs be monitored by an independent Regulatory Monitor and Compliance Officer (RMCO), whose duties include reporting to the Transit Commission and Council.

On September 23, 2015, Council approved the governance and reporting requirements for the RMCO position as well as a municipal regulatory framework for what is now the Confederation Line Light-Rail Transit System (ACS2015-CMR-OCM-0018) (the 2015 LRT Report). The 2015 LRT Report provided that the RMCO would submit a multi-year, initial work plan to Council for approval three months prior to revenue service.

Following the recommendations of the 2015 LRT Report, the City established a Hiring Panel, consisting of Mayor Jim Watson, Deputy Mayors Bob Monette and Mark Taylor, Transit Commission Chair Stephen Blais and Transportation Committee Chair Keith Egli, which would engage an external recruitment firm, Lynda Naveda Consulting Ltd. to establish and implement an independent search process that would identify candidates of high quality to act as RMCO.

On November 27, 2017, a meeting of the Hiring Panel was convened to consider the *curricula vitae* of candidates who had been short-listed by the recruitment consultant for consideration by the Hiring Panel. Ultimately, the Hiring Panel selected Mr. Sam Berrada to act as the RMCO and directed the recruitment consultant and the City Clerk and Solicitor to negotiate a contract with Mr. Berrada. A negotiated contract was concluded, with Council approval.

At its meeting of February 28, 2018, Council approved Motion No. 65/6 appointing Sam Berrada as the Regulatory Monitor and Compliance Officer and the execution of a contract with Mr. Berrada's company SAB Vanguard Consulting. On March 2, 2018, the City entered a five-year contract for the RMCO which expired on March 2, 2023 (the RMCO Contract).

DISCUSSION

RMCO CONTRACT RENEWAL

The Interim City Manager, pursuant to Section 4 of the RMCO Contract, and in compliance with her authority under both the current Delegation of Authority By-law, being By-law No 2023-67, and consistent with the original authorization set out in 2015 LRT Report, extended the RMCO Contract from March 2, 2023, up to and including April 30, 2023.

The duties and responsibilities of the RMCO are consistent with the Transport Canada Delegation Agreement and the recommendations of the 2015 LRT Report, and are in accordance with Light Rail Regulation By-law 301-2015 (the LRT By-law).

In summary, the scope and responsibilities of the RMCO consist of the following:

- Compliance monitoring of safety and security regulations and programs identified by the City through the LRT By-law or by other means, including standards and requirements imposed by contract; and,
- The preparation and submission for information to the Transit Commission and Council of Annual Compliance Reports. The RMCO's mandate extends to the Confederation Line Light-Rail Transit System exclusively and any expansions or extensions to this light-rail transit system or other light-rail systems.

The RMCO's mandate and authority does not extend to:

- Heavy rail commuter operations such as the Capital / Trillium railway (Line 2); or
- Assessing adequacy, sufficiency, or effectiveness of the regulations put in place by the City through the LRT By-law or otherwise.

Mr. Berrada has expressed his willingness to continue in his role as the RMCO for a further period of five years from May 1, 2023 to April 30, 2028, with a termination by either party on 30 days written notice for convenience and with a further renewal provision on the same terms and conditions, save and except the term and compensation from \$1,500 *per diem* to an increase to \$1,700 *per diem* which is below the CPI rate from 2018. City staff consider the increased rate to be reasonable.

The extension of Mr. Berrada's term as RMCO for an additional five years will provide continuity and stability in the oversight of the Confederation Line as the East and West

extensions go into revenue service and become operational in the coming years and is recommended for both this reason and in light of the RMCO's strong performance in his regulatory oversight role over his prior term.

The Interim City Manager is recommending that Council renew the RMCO's contract for a further five-year period consistent with the terms and conditions outlined herein and, should Council approve this recommendation, Legal Services will prepare and arrange for the execution of the renewal contract.

CONFEDERATION LINE LIGHT-RAIL REGULATORY MATTERS

Like most rail transit regulatory regimes in Canada and elsewhere, including the municipal self-regulatory model, the primary focus of the City's light-rail transit regulatory regime is on the operator of light-rail assets and the related operating system. In the case of the City, this means the focus of the regulations is OC Transpo and other City departments responsible for the operation of the Confederation Line.

In order to meet the requirements of the Transport Canada Delegation Agreement, the Confederation Line regulatory regime requires a certain level of formal documentation as well as some level of independent regulatory oversight and administration. In other words, the Transport Canada Delegation Agreement would not permit OC Transpo to entirely regulate itself.

This separate oversight and administration role has been delegated by City Council to the City Manager who is supported by various personnel in the City Manager's Office, the RMCO, the City Clerk, and periodically other City employees and independent contractors, consultants and advisors as required from time to time.

On February 21, 2021, the City Manager signed the City Manager Designation LRT Regulations document (CMDD).

The purpose of the CMDD is to formalize, confirm, clarify and describe:

- LRT regulations applicable to the Confederation Line LRT System;
- Who the regulations apply to; and
- Guidance regarding the administration of the City's regulatory regime.

The CMDD describes programs, plans, practices, procedures, standards, rules, restrictions and other City imposed requirements in relation to the City's light-rail transit system (collectively LRT Regulations) that designated City departments or groups are

required to adopt and oversee. Many of the programs comprising LRT Regulations relate to the oversight of City departments and third-party contractors assigned responsibility for different aspects of the Confederation Line assets and system. Records with respect to these programs are also required to be maintained.

The CMDD also includes a master list of all LRT Regulations in place at the time of adoption of the CMDD as well as an overview of the LRT regulatory regime established in accordance with the recommendations of the 2015 LRT Report.

The primary focus of the LRT Regulations is safety and security in relation to the design, construction, operations and maintenance elements of the LRT system. The LRT Regulations also cover fares and other terms of service and rail corridor property related matters.

Since the development of the Confederation Line LRT regulatory regime between 2011 and 2015, and the adoption of the LRT By-law in 2015, a number of factors have prompted City staff to review that framework with a view of bringing back a report to the Transit Commission and Council for approval that may include:

- Updating the LRT By-law to capture administrative, organizational and operational changes.
- A potential update of the CMDD.
- Coordinating with City staff of various City departments of their other oversight activities including OC Transpo's robust Oversight Plan of Line 1.

The Interim City Manager is recommending that the Transit Commission recommend that staff bring a report back to the Transit Commission and Council for approval of any changes to the LRT Regulatory Regime as described above and in consultation with those City departments that play a role for Line 1 by no later than Q3 2023.

FINANCIAL IMPLICATIONS

There are no financial implications approving the recommendations in this report, as funding is available within Transit's existing operating budget. The increase in the compensation per diem rate will be funded within the existing operating budget.

LEGAL IMPLICATIONS

There are no legal impediments to approving the recommendations in this report.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a city-wide report.

CONSULTATION

Consultation was not required for this report

ACCESSIBILITY IMPACTS

There are no specific accessibility impacts associated with this report

DELEGATION OF AUTHORITY IMPLICATIONS

No additional delegated authority is being sought by staff as part of this report except as described in this report.

RISK MANAGEMENT IMPLICATIONS

No risk management implications have been identified associated with this report.

RURAL IMPLICATIONS

No rural implications have been identified associated with this report.

TERM OF COUNCIL PRIORITIES

No specific Term of Council priorities have been identified in the preparation of this report.

DISPOSITION

Legal Services will prepare and arrange for the execution by the Interim City Manager and Light Rail Regulatory Monitor Compliance Officer of the RMCO contract in accordance with the terms and conditions as described herein.