

**Report to
Rapport au:**

**Finance and Economic Development Committee
Comité des finances et du développement économique
9 March 2020 / 9 mars 2020**

**and Council
et au Conseil
25 March 2020 / 25 mars 2020**

**Submitted on March 2, 2020
Soumis le 2 mars 2020**

**Submitted by
Soumis par:
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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2020-CMR-OCM-0002

SUBJECT: LRT STAGE 2 PROCUREMENT LESSONS LEARNED SCOPE

**OBJET: ÉTENDUE DES TRAVAUX RELATIFS À L'ANALYSE DES LEÇONS
APPRISES LORS DU PROCESSUS D'APPROVISIONNEMENT DE
L'ÉTAPE 2 DU PROJET DE TRAIN LÉGER SUR RAIL**

REPORT RECOMMENDATION

That the Finance and Economic Development Committee recommend Council approve the LRT Stage 2 Procurement Lessons Learned planned scope of work in response to items 3 and 4 from the Motion Substitute for Menard/Meehan Motion – LRT Stage 2 Procurement.

RECOMMANDATION DU RAPPORT

Que le Comité des finances et du développement économique recommande au Conseil d'approuver la portée projetée du rapport sur les leçons apprises de l'approvisionnement de l'Étape 2 du TLR en réponse aux points 3 et 4 de la motion de substitution de la motion Menard/Meehan – Approvisionnement de l'Étape 2 du train léger sur rail.

BACKGROUND

At the February 12, 2020 meeting of City Council, Mayor Watson and Councillor Menard introduced the following motion, which was unanimously approved by City Council:

WHEREAS in Ontario, the Provincial government has made P3 procurement screening a requirement for partnership funding for projects of \$100 million or greater in value to improve value for money as compared to more traditional procurement models such as design-bid-build (and this was also a requirement for federal funding for the Stage 2 LRT project); and

WHEREAS the Stage 2 Light Rail Transit (LRT) project, which was approved and deemed appropriate to be procured as a P3 by PPP Canada as a requirement for federal funding, incorporated a number of third-party review mechanisms for the Stage 2 LRT procurement process, including as follows:

- A 'Lessons Learned' report from the Stage 1 LRT procurement, undertaken by a consultant;
- An Independent Fairness Commissioner who oversaw the entire Stage 2 Procurement Process and confirmed "compliance with the fairness requirements of the RFQ and RFP process and further confirm that the process resulting in the selection of the winning proposal was consistent with the RFQ and RFP; and
- An Independent Rail Certifier who indicated that the system met the requirements for substantial completion under the Project Agreement; and

WHEREAS, when questions were raised about the Stage 2 LRT procurement process, City Council also asked the City of Ottawa's Auditor-General, a statutory officer that is independent of the City's administration and who reports directly to Council, to audit this process; and

WHEREAS after having full and unfettered access to all procurement documentation with respect to the Stage 2 LRT procurement process and all City officials and advisors who oversaw the process, the City of Ottawa's Auditor General and his independent consultant team (Samson and Associates) reported on November 26, 2019 that the procurement process was followed and was consistent and compliant with the Trillium Line RFP and that the delegated authorities were adhered to by City officials and advisors, but that improvements in the procurement process could be made; and

WHEREAS, due to the on-going problems with the Stage 1 LRT and bus operations over the course of the first five months of the service, Members of Council and the public are continuing to express concerns about the Stage 2 Trillium Line Procurement, in particular in light of the technical evaluation scores; and

WHEREAS, although staff has advised that the winning proponent, TNext (or TransitNext), was a technically compliant bid and that the technical parts of the bid that did not meet Council's criteria for the project were addressed to the City's satisfaction before the March 6, 2019 City Council meeting approving the selection of TransitNext and included in the executed contract, neither Council or the public has seen the documents that support staff's assertions and they have a right to see them now that the procurement is closed; and

WHEREAS these documents would not be complete without Council and the public also seeing the legal opinion by Norton Rose Fulbright, dated October 23, 2018 and titled, "Trillium DBFM RFP-Technical Evaluation Bid Evaluation Steering Committee Discretion and Re-evaluation"; and

WHEREAS the City is currently completing the Environmental Assessment, preliminary engineering and costing on Stage 3 LRT which, once completed will extend LRT to the fast-growing communities of Barrhaven, Kanata and Stittsville and it is expected that the City will have a proposal ready for consideration by the Province of Ontario and the Government of Canada by the end of 2020; and

WHEREAS, given that provincial funding for Stage 3 is anticipated to require the use of a P3 approach, and City Council's decision on the Stage 3 Procurement Process should be informed by the lessons learned in Stage 1 and Stage 2 of LRT, starting with the improvements recommended by the City's Auditor-General and augmented by a third-party review;

THEREFORE BE IT RESOLVED that City Council approve the following in substitution for the Motion from Councillors Menard and Meehan:

1. That Council direct the City Manager to release the Stage 2 Light Rail Transit Trillium Line Project Procurement documents, including the technical compliance scores, the technical evaluations and the specific bid amendments made to the contract to ensure that Council's criteria for the project are going to be met, to City Council and the public as soon as possible and in advance of the March 3, 2020 Finance and Economic Development Committee meeting; and
2. that City Council waive its solicitor-client privilege with respect to the October 23, 2018 legal opinion by Norton Rose Fulbright, titled, "Trillium DBFM RFP- Technical Evaluation Bid Evaluation Steering Committee Discretion and Re-evaluation" so that it can be included for release with the above-noted procurement documents; and
3. that an independent consultant be engaged to undertake a 'Lessons Learned' exercise on the Stage 2 Light Rail Transit Project Procurement Process, building on the recommendations in the Auditor-General's November 26, 2019 report titled, "Audit of Stage 2 Light Rail Transit (LRT) Project Procurement", as well as options to strengthen any of the following key public procurement principles: Transparency, Integrity, Value for Money, Openness, Fairness, Competition and Accountability, such that the work is completed in time for the Stage 3 procurement process; and
4. that the scope of work and recommended consultant for the Lessons Learned exercise be brought to the Finance and Economic Development Committee and full Council for their approval by the end of Q2 2020, with the intention that the consultant's report be presented to Committee and Council by November 2020; and
5. that City Council direct staff to incorporate a review of the City's Public-Private Partnership Policy, in addition to the City's Purchasing By-law and the Delegation of Authority By-law, as part of the Mid-Term Governance Review process, which includes consultation with every Member of Council.

SCOPE OF WORK – LESSONS LEARNED

Based on Council's motion and in reference to items 3 and 4, the following scope of work is to be undertaken by an independent consultant who will be engaged to undertake a 'Lessons Learned' exercise on the Stage 2 Light Rail Transit Project Procurement Process, building on the recommendations in the Auditor General's November 26, 2019 report titled, "Audit of Stage 2 Light Rail Transit (LRT) Project Procurement", as well as options to strengthen any of the following key public procurement principles: Transparency, Integrity, Value for Money, Openness, Fairness, Competition and Accountability, such that the work is completed in time for the Stage 3 procurement process.

1. Stage 2 Procurement Lessons Learned

- i. Review and assess the recommendations provided by the Auditor General in the report titled, "Audit of Stage 2 Light Rail Transit (LRT) Project Procurement" (ACS2019-OAG-BVG-0011) against best practices in other jurisdictions in order to provide background information and make recommendations that address the following items:
 - i. Summarize best practices from other agencies for publication of RFP documentation and recommend a policy for releasing and publishing documents to ensure transparency to the public and marketplace.
 - ii. Summarize best practices from other agencies for selection and appointment of evaluation committees and recommend a selection process for evaluation committees.
 - iii. Summarize best practices from other agencies for the level, scope, and nature of training to be provided to evaluators and recommend a framework for training of future evaluators.
 - iv. Assess and review best practices in the marketplace that are used to ensure bid compliance with RFP submittals including the use of design presentation meetings (DPM), commercially confidential meetings (CCM), phased or gated bid compliance processes, and/or other procurement best practices to ensure that bidders comply with mandatory requirements and avoid an unnecessary non-compliance determination. Provide a recommended preferred approach to ensuring mandatory bid requirement compliance.

- v. Undertake a detailed review of best practices and provide recommendations on the use of delegated authority by staff in other Canadian municipalities and governmental agencies for major light rail project procurements, including organizational reporting structures, specifically in relation to how other agencies undertake the following:
- Articulate the level of delegation and clearly identify the impacts of delegation with respect to reporting protocols, information sharing including any specific constraints on informing sharing, and remaining level of engagement in decision making;
 - Implement a reporting frequency to elected officials, including both major reporting cycles and minor checkpoint reporting throughout all phases of procurement, in order to enable a fair and transparent outcome;
 - Balance the use of delegation of authority with the need for elected official oversight of the procurement process including when issues arise during the procurement processes such as the use of discretion clauses to continue a team in the process, use of discretion to waive requirements such as affordability caps, and/or undertake changes to scope during the procurement process that are requested by either party;
 - Achieve transparency on the outcomes of technical and financial evaluations that support recommendations of preferred proponents to elected officials for approval including the level of reporting on evaluation outcomes, scoring, ranking, and negotiation with proponents; and,
 - Approval of preferred proponents by elected officials;
- vi. Provide an overview of best practices and recommendations for specific supporting roles on large scale procurements including the following:
- Use of Fairness Commissioners and other independent advisors to support procurement governance and to ensure the integrity of large-scale procurements;

- Processes for conflict clearing of key stakeholders including administrative staff, technical and financial evaluators, steering committee members, and key decision makers; and,
- Best practices for the use of fraud and waste hotlines and other independent reporting mechanisms.

2. Future Procurements

- Review and present best practices for future light rail or similar linear infrastructure procurements including in order to achieve Transparency, Integrity, Value for Money, Openness, Fairness, Competition and Accountability:
 - Review procurement options including but not limited to Public-Private-Partnerships (PPP), Construction Manager at Risk (CMAR) or Construction Manager / General Contractor (CMGC), and Alliance delivery models, or other major infrastructure procurement methodologies in the context of the City's existing Design Build Finance Maintain (DBFM) contracts as part of a Stage 3 expansion and recommend preferred procurement strategies in order to ensure transparency, integrity, value for money, openness, fairness, competition, and accountability for outcomes;
 - Review best practices for governance of large-scale procurements including the interrelationship between technical and engineering teams, legal advisory support, procurement management teams, evaluation committees, steering committees, executive decision makers, and elected officials and recommend preferred governance models that will enable transparency, integrity, value for money, openness, fairness, competition, and accountability for outcomes;
 - Based on an overall review of the Stage 2 procurement process, propose at least two procurement models and governance frameworks for the Stage 3 procurement that will ensure the following key public procurement principles are achieved: Transparency, Integrity, Value for Money, Openness, Fairness, Competition and Accountability.

PROCUREMENT OF SERVICES

Based on the approval of this scope, City of Ottawa Supply Services would be used to issue a request for proposals to engage an independent consultant.

This review is best undertaken by a third-party consulting or legal firm with no prior involvement in the Stage 2 City of Ottawa light rail procurement but with specific experience and decision-making experience with municipal bylaws and governance processes, public agency procurement processes, Infrastructure Ontario P3 or other similar public procurement agency contract templates, and with large scale linear infrastructure procurement projects.

NEXT STEPS

Consistent with Recommendation 4 in Motion 27/6 and based on the approval of this scope of work, staff will be bringing forward the recommended consultant and budget for the Lessons Learned exercise to the Finance and Economic Development Committee and full Council for their approval by the end of Q2 2020, with the intention that the consultant's report be presented to Committee and Council by November 2020.

RURAL IMPLICATIONS

This is a City-wide report.

CONSULTATION

This report is administrative in nature and therefore no consultation was required.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a City-wide report.

LEGAL IMPLICATIONS

There are no legal implications associated with this report.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

ACCESSIBILITY IMPACTS

There are no accessibility implications associated with this report.

TERM OF COUNCIL PRIORITIES

No specific 2018-2022 Term of Council Priorities have been identified in the preparation of this report.

DISPOSITION

With Council's approval of this scope of work, Supply Services will issue a request for proposals to engage an independent consultant.