

Audit of Stage 2 Light Rail Transit (LRT) Project Procurement

Purpose

The Audit of Stage 2 Light Rail Transit (LRT) Project Procurement examined the established procurement process and its adherence to the stated process, and ensured it was conducted in accordance with the principles of fairness, openness, and transparency. The audit also reviewed the adequacy in which City staff fulfilled their responsibilities as set out in the delegation of authority approved by Council.

Background and rationale

The O-Train Line 1 Confederation Line is the first stage of the Light-Rail Transit system in Ottawa. It forms part of OC Transpo's integrated transit network. It connects to the existing Bus Rapid Transitway at Tunney's Pasture Station in the west, Blair Station in the east, and to the O-Train Line 2 Trillium Line at Bayview Station. The City assembled a public-private partnership (P3) that includes financial commitments from the provincial and federal governments, and a private-sector project team, the Rideau Transit Group.

Stage 2 of the Light Rail Transit plan was introduced as a component of the City of Ottawa's 2013 Transportation Master Plan. It expands on the Line 1 Confederation Line and on the existing Line 2 Trillium Line. The Trillium Line extension, which uses diesel-powered vehicle technology, is an extension of the existing single-track line from present terminus at the Greenboro Station to Limebank Station and will also include the Airport Link to the Ottawa Macdonald-Cartier International Airport. The maintenance and life cycle portion of the project will apply to both the extension and the existing infrastructure of the Trillium Line.

The City of Ottawa was responsible for managing the procurement process for the "Design, Construction, Finance, and Maintenance" of the Stage 2 Trillium Line Extension Project.

On February 24, 2017, the Finance and Economic Development Committee (FEDCO) considered, for recommendation to Council, the *Stage 2 Light Rail Transit*

Implementation-Project Definition and Procurement Plan report¹, which established the competitive procurement process for the Stage 2 Light Rail project. On March 8, 2017, Council subsequently approved the subject report as amended.

Stage 1 and Stage 2's contracts for both the Trillium and Confederation Line were competitively awarded individually.

Findings

Our audit included interviewing City staff, key consultants involved in the Stage 2 Trillium Line procurement process and reviewing relevant procurement files. The audit focused on processes, practices and controls in two key areas, which were selected, based on risk:

- The procurement process (Request for Proposal (RFP), evaluation, and contract award); and
- The Delegation of Authority.

The key findings associated with the LRT Stage 2 Trillium Line procurement are as follows.

Openness and transparency of process

The Request for Qualification (RFQ) was distributed to the vendor community by means of MERX, an electronic tendering service. Following the RFQ identification of qualified proponents, the RFP documents were distributed to the qualified proponents for consideration. During both processes, the City responded to questions from interested parties and undertook a series of collaborative commercially confidential meetings with each proponent. The approach and activities conducted by the City during the RFQ and RFP process were appropriate and involved many industry engagement activities which encouraged openness and transparency for all bidders. We found that the procurement process undertaken for the requirements of the RFP for the Stage 2 Trillium Line was conducted in an open, fair, and transparent manner with bidders.

¹ Report reference ACS2017-TSD-OTP-0001.

In regard to openness and transparency to the public and Council, in Ontario, it is seen that the standard practice of Infrastructure Ontario² is to make publicly available redacted RFP documents to promote transparency to the public and the marketplace. Notable Infrastructure Ontario examples for similar projects where RFPs are publicly disclosed include; Hamilton LRT, Finch West LRT and Hurontario LRT. This transparent disclosure of RFPs is also seen in the Province of British Columbia at Partnerships British Columbia³.

Compliance with RFP documents

The procurement of the Stage 2 Trillium Line was structured as a Public-Private Partnership (P3) project, also referred as a Design-Build-Finance-Maintain procurement (DBFM). A Procurement Management Office was established, and an organizational structure was determined along with the roles and responsibilities of its key players. To achieve a successful outcome, the City called upon the services of numerous subject matter experts from various areas of expertise including external legal services, infrastructure projects and financial advisors, as well as engineering, construction, and project management consultants.

An Evaluation Framework was developed and shared with all evaluators which described and outlined the evaluation process used to select the preferred proponent and safeguard the interests of the City from claims of an invalid or unfair process. Training was developed and facilitated by the contracted legal counsel.

The evaluation of the procurement process was overseen by a Bid Evaluation Steering Committee and an Executive Steering Committee and included various subcommittees. The various subcommittees were responsible to review conflicts of interest, ensure the completeness of the bids, evaluate the technical conformance of the bids and to evaluate the bidders' proposal to the technical requirements, as well as to review and evaluate the financial submissions.

² Infrastructure Ontario (IO) is a Crown agency of the Province of Ontario that supports the Ontario government's initiatives to modernize and maximize the value of public infrastructure and real estate. For all major public infrastructure projects in the province, IO acts as the procurement and commercial lead.

³ Partnerships BC supports the public sector in meeting its infrastructure needs by providing leadership, expertise and consistency in the procurement of complex capital projects by utilizing private sector innovation, services and capital to deliver measureable benefits for taxpayers.

A fairness commissioner was actively involved in the Stage 2 Trillium Line procurement and provided an independent view with respect to the fairness of the competitive process.

We found that the City is generally meeting expectations. While we did not identify areas of non-compliance with the RFP, we have identified some areas for improvement to ensure a smooth evaluation process for future procurement.

Delegation of Authorities

The Delegation of Authorities outlined in Report ACS2017-TSD-OTP-0001, approved as amended by Council on March 8, 2017, provided substantial authority to City staff in the conduct of the procurement of Stage 2 Trillium Line Extension procurement. The Delegation of Authorities was drafted by staff and reviewed by the City Clerk and Solicitor's Department, Legal Services Branch. We noted that the delegated authorities were clear in the March 8, 2017 Report to Council (ACS2017-TSD-OTP-0001), however, an absence of a reporting protocol was noted. We found that the delegation of authorities in the March 8, 2017 Report limited the role of Council in the procurement process to one of approval of the preferred proponent.

Fraud and Waste disclosure

The City of Ottawa is committed to protecting its financial resources, property, information and other assets from any attempt either by members of the public, contractors, sub-contractors, agents, intermediaries or its own employees, to gain financial or other benefits by deceit or by any other illicit means. A Fraud and Waste Hotline was established to provide a reporting mechanism through which City employees or members of the public may confidentially and anonymously report allegations of fraud or waste. We found that not all participants in the procurement evaluation process were aware of the City's Fraud and Waste Policy, and its corresponding hotline.

Conclusion

The procurement of the Stage 2 Trillium Line was undertaken in such a way that it was compliant with the process described in the RFP documents which were provided directly to the bidders. Roles and responsibilities were clearly articulated, and oversight was commensurate with each Committee's role and authority. Opportunities for improvement have been identified to assist the City in future procurement activities. Although the delegated authorities were adhered to, reporting protocol and the sharing

of information to Council could be enhanced to ensure the process is better understood. The use of the Fraud and Waste Hotline to report perceived areas of concern in the proper context could have also been reinforced to ensure a resolution is achieved appropriately by designated senior officials in an effective fashion.

Recommendations and responses

Recommendation #1

In future P3 projects, or projects of significant public interest, the City should consider publishing RFP documents to ensure the process is more transparent to the public and the marketplace in the same manner as seen with similar entities (e.g. Infrastructure Ontario and Partnerships BC).

Management response:

Management agrees with this recommendation.

For P3 projects, or projects of significant public interest, the City will consider publishing RFP documents redacted to remove sensitive or commercially confidential information. This is consistent with the approach taken for the Central Library Request for Proposal. The P3 Policy and Procedures will be updated to reflect this recommendation by the end of Q2 2020.

Recommendation #2

In future P3 projects, the City should consider selecting a number of technical evaluation participants with sufficient relevant P3 experience in a procurement evaluation setting. Alternatively, guidance provided to lesser experienced participants through the training documentation and in-person sessions should be augmented to avoid confusion about scoring given the nature and complexities inherent in P3 type procurements.

Management response:

Management agrees with this recommendation.

The P3 Policy and Procedures will be updated to reflect this recommendation by the end of Q2 2020.

Recommendation #3

In future P3 projects, the City should consider using a phased bid compliance process clearly stated in the RFP. This would provide an opportunity to bidders to modify their submissions as part of the technical evaluation process, to provide missing or insufficient bid information in order to comply with mandatory requirements and avoid an unnecessary non-compliance determination.

Management response:

Management agrees with this recommendation.

The P3 Policy and Procedures will be updated to reflect this recommendation by the end of Q2 2020.

Recommendation #4

It is recommended that, in future procurement projects where authority is delegated to staff by means other than express delegations included in the Procurement By-law, the City ensures the Delegation of Authority recommendation include clear reporting protocols and specify what will be shared with Council and what will not be shared to avoid misunderstanding.

Management response:

Management agrees with this recommendation.

The Supply procedures manual will be updated to reflect this recommendation by the end of Q2 2020.

Recommendation #5

It is recommended that the City, in future procurement projects, ensures the reporting mechanism of (perceived or real) wrongdoing, fraud, or waste, is properly understood by all participants. This may be achieved by including the Fraud and Waste Policy in the training material provided to participants.

Management response:

Management agrees with this recommendation.

The Supply procedures manual will be updated to reflect this recommendation by the end of Q2 2020.