

Governance Board Bylaw Review

Draft Amendments

Recommendation:

That the LRT Governance Board recommend to City Council:

That Administration prepare a bylaw to establish Valley Line Stage 1 project governance making the LRT Governance Board the approving authority for the LRT Project Request for Proposals as outlined in the June 19, 2014, Transportation Services report CR_1022rev.

Report Summary

This report seeks LRT Governance Board direction on project governance for the Valley Line Stage 1 Project procurement.

Previous Council/Committee Action

At the April 17, 2014, LRT Governance Board meeting, the following motion was passed:

That the April 17, 2014, Transportation Services report CR_1022, be referred back to Administration to return to the June 19, 2014, LRT Governance Board meeting or a special meeting to be called by the Chair at an earlier date.

Report

Background

The LRT Governance Board (the Board) was established on February 29, 2012, by Bylaw 15659. The Board was given delegated authority to ensure that best practices were undertaken to determine the best construction method, select contractors, control expenditures within approved budgets, community consultation, public communications, permit applications, utility coordination, and approve scope changes. The Board was also given limited approving authorities in relation to sole source agreements, land transactions and tender calls that exceeded the City Manager's authority.

Council determined the route and made some budgetary allocations prior to the time the Board was established. Council approved a Public Private Partnership (P3) delivery model for Valley Line Stage 1 after the Board was established. There are no specific authorities in Bylaw 15659 addressing the P3 delivery model requirements.

Under the direction and in consultation with the Board, Administration has selected legal, financial and technical advisors to provide advice and services relating to the P3 delivery model procurement. A Fairness Monitor has been appointed for the project as well. The Board has received numerous information reports and provided feedback to City Administration during its meetings. It approved the Request for Qualifications and evaluation process to determine proponents that will be invited to submit proposals.

Following Council's approval of funding, the Request for Qualifications was issued on April 23, 2014. The Request for Proposal is scheduled to be issued in September of 2014. The Request for Proposal and its associated processes and approvals need to be developed in a confidential manner to protect the integrity of the procurement. The proposed form of P3 agreement will form part of the Request for Proposal when issued.

Project Decision Makers

There are four different decision making bodies involved with Project Governance for the Valley Line Stage 1:

1. **Council:** Council makes decisions with respect to budget (and funding plans), City Policy, and statutory decisions (expropriation, transportation bylaws).
2. **Standing Committee:** Standing Committees of Council make decisions with respect to public engagement and contract authority (that exceeds City Manager authority).
3. **LRT Governance Board:** Considering the expertise of the members of the Board, it is best positioned to provide expert due diligence regarding finance, transportation planning, civil engineering and legal issues in large scale infrastructure projects. An expert Board would not normally undertake detailed review of the financial, legal, engineering or planning aspects of a project but it would review the process undertaken in each of these disciplines to be satisfied that the Project is being undertaken in a prudent and diligent manner.
4. **City Manager (and City Administration):** The City Manager has assembled a Project Team which includes personnel from LRT Design & Construction, Transit, Transportation Operations, Roads Design & Construction, Transportation Planning, Drainage Services, Finance, Law, Materials Management, Corporate Communications, Urban Planning & Environment, and Neighbourhood, Parks & Community Recreation. This Project Team has been enhanced with the retention of technical, legal, process and financial advisors with P3 experience. The Project Team has the necessary City technical, legal and commercial expertise and P3 technical, legal and commercial expertise to undertake the Project and is well positioned to make technical, legal and commercial decisions for the Project.

At this stage in the Valley Line Stage 1 Project, many decisions have already been made by various decisions makers. Attachment 1 summarizes the decisions, their type and who made those decisions.

As the Valley Line Stage 1 Project enters the procurement stage, the types of decisions that need to be made are primarily technical, legal, commercial and due diligence although some further policy and budget decisions may be required depending on the results of the procurement. Attachment 2 summarizes the decisions, their type and the decision making body who will make those decisions.

Options for P3 Project Governance

Under the current bylaw, the Board is a Council committee with a mandate and approval authorities that do not fit with a P3 delivery model. The governance structures and process options for a P3 delivery model include:

1. **Board as an Approving Authority:** Board would remain a Council committee receiving reports from Administration and acting as the approving authority for the procurement.
2. **Board as Project Auditor:** Board as a Council committee acting as the auditor for decisions made by Administration (as purely an oversight body).
3. **Board as Advisor to Administration:** Board as an Administrative committee working with Administration to develop the terms of procurement and the agreement form, with regular reporting to Standing Committee and/or Council.
4. **Transportation Committee as Approving Authority:** Transportation Committee acting as the approving authority for the procurement and award of P3 Agreement.
5. **Administration as Approving Authority:** Administration with or without an Administrative committee, using experts to develop the terms of the procurement, and approving the award of the P3 Agreement.

Given the complexity of inter-related conditions of the Request for Proposal required to obtain the best P3 Agreement for the City to design, build, operate and maintain the Valley Line Stage 1 Project, need for technical, commercial and legal expertise, project timelines, and need for confidentiality, ordinary Council and committee report processes for approval of a Request for Proposal would not be sufficiently nimble to develop the Request for Proposal within the timelines for the project. Attachment 3 outlines the above options, along with advantages and disadvantages and additional considerations for each option.

Given the advantages and disadvantages of each option and the types of decisions that need to be made with respect to the Project as procurement is commenced, Administration recommends the option that would provide the Board with the authority to approve the terms of the procurement upon which the City Manager will award the P3 Agreement (Option 1 in Attachment 3).

Proposed Governance Option – Bylaw 16766 – LRT Governance Board Bylaw

Attachment 4 provides a draft bylaw for review. The bylaw addresses several issues that were noted in Transportation Services report CR_894, named Governance Board Bylaw Review, and considered by the Board at its February 4, 2014, meeting.

1. **Project Description:** The LRT Project is defined as the southeast to downtown portion of the Valley Line.
2. **Mandate:** The Board's mandate is clarified to establish it as the approving body for the Request for Proposal for the LRT Project.

3. **Board Reporting to Council:** The Board will provide a semi annual report to Council on the status of the LRT Project. Other reports will be at the discretion of the Board and Council.
4. **Board Authority:** The Board's authority is clarified to include the approval of the procurement process including the Request for Qualifications and Request for Proposals pursuant to which the City Manager will award the P3 Agreement for the LRT Project. In exercising this authority, the Board must consider Council approved budgets and financial commitments and City Manager advice with respect to budgets and expenditures for the LRT Project.
5. **Procedures:** The Board and members are required to maintain confidentiality regarding the procurement process and close its meetings as permitted by the *Municipal Government Act*.
6. **General:** The Bylaw and Board created under the Bylaw will terminate 90 days after the P3 agreement has been signed.

Pursuant to this governance model, Administration would develop the terms of the procurement based on the City and P3 technical, legal and commercial expertise of the Project Team. The Board would review and approve the terms of procurement if the Board determines that Administration developed them in a prudent and diligent manner. If the Board is not satisfied that the Project is being undertaken in a prudent and diligent manner, the Board would require that Administration reconsider the terms of procurement. The award of the P3 Agreement will be done by the City Manager pursuant to the results of the procurement process which is approved by the Board.

Corporate Outcomes

Review of the mandate and composition of this Council's Committee to create a well managed City.

Legal Implications

The Board's bylaw needs to be revised to clarify its mandate with respect to the P3 delivery model.

Justification of Recommendation

Revisions to the LRT Governance Board Bylaw would clarify the mandate and authority of the Board and the reporting requirements for Council consistent with a well managed City.

Attachments

1. Decisions made for the Project
2. Decisions to be made for the Project
3. Valley Line Project Governance Options
4. Bylaw 16766 - Draft LRT Governance Board Bylaw

Others Reviewing this Report

- K. Rozmahel, General Manager, Corporate Services
- L. Rosen, Chief Financial Officer and Treasurer