

Governance Board Bylaw Review

Draft Amendments

Recommendation:

That the LRT Governance Board recommend to City Council:
That Bylaw 16766 be given the appropriate readings.

Report Summary

Following the required review by the LRT Governance Board, Administration is providing a draft amending bylaw to amend Bylaw 15659 for the Board's consideration and recommendation to Council. Proposed amendments to the bylaw dealing with the City Manager's delegation are provided for the Board's information.

Previous Council/Committee Action

At the February 4, 2014, LRT Governance Board meeting, the following motion was passed:

That Administration bring forward for review, draft amendments to Bylaw 15659.

Report

Bylaw 15659 - LRT Governance Board Bylaw, created the LRT Governance Board on February 29, 2012. Under the provisions of the bylaw, the Board must review its own bylaw, including its mandate and composition. The Board directed Administration to prepare draft amendments to Bylaw 15659 for its review.

Due to the evolution of the project and the work of the Board, substantial changes to the current bylaw are warranted. As they are extensive, a new draft bylaw, Bylaw 16766 was prepared to continue the Board and its membership with a revised mandate, the addition of terms of reference, and simplified procedures. The bylaw is attached to this report as Attachment 1.

Administration also prepared new Bylaw 16813 to delegate to the City Manager the authority to issue the request for qualifications and the request for proposal, and award the agreement for the southeast to downtown LRT line. This bylaw is presented to the Board for its information, but review of City delegations documents lies outside of the Board's mandate.

When Bylaw 15659 was passed, Council had already decided on the route for the southeast to downtown LRT line, but the model for delivery had not been decided. Council gave the Board a mandate to oversee the LRT Project and ensure that best practices were undertaken in relation to the LRT Project. It was also given delegated specific monetary authorities to approve contracts above the City Manager's delegated authority.

Board members with expertise in construction, finance, transportation planning and engineering were recruited for the Board. Council subsequently determined that the southeast to downtown portion of the LRT Project would be delivered first.

Since its inception the Board has received numerous information reports for discussion but has only exercised its decision making authority to approve an advisor's contract and the issuance of the request for qualifications for the project.

Council's decision to deliver the project through a public-private partnership significantly changes the work to be performed by Administration and the Board. Instead of approving multiple agreements at different points in time; all of the work to be performed, including design, construction, finance, operations and maintenance requirements will fall within the P3 Agreement as one large procurement. The P3 Agreement will govern all legal relations between the City and the contractor for the project. Risk allocation, contingencies and dispute resolution are all governed by the contract. The form of the proposed private-partnership agreement is included in the request for proposal.

The engineering, project management, financial, legal and other expertise of the Board is essential to the successful development of the procurement process and the P3 agreement. Development of the terms must be done in a strictly confidential manner to prevent claims of bias, bid rigging or other challenges to the integrity of the procurement process.

Administration has developed significant expertise in the area of public procurement, but this is the City's first P3 procurement. The expertise of the LRT Governance Board in P3 and large infrastructure project management complements the City Administration's public procurement expertise. Working together the Board and Administration's skills and expertise will maximize the City's potential for developing optimal terms and conditions for the procurement. The City has retained a fairness monitor to monitor and report on the fairness of the procurement.

The draft bylaws presented with this report provide for a collaborative effort between Administration and the LRT Governance Board. Regular semi-annual reports on the status and progress of the project will be brought to Council through a Standing Committee, Council will determine the budget, deal with public engagement and manage other aspects of the project, while the Board and City administration focus on developing the competitive procurement process and the P3 agreement.

The draft of the new LRT Governance Board bylaw addresses the following:

1. Project Description

The Valley Line is the name assigned to the the southeast to west LRT lines. The Board's role in the project is to provide its expertise to develop the P3 agreement for the southeast to downtown portion of the line.

2. Mandate and Terms of Reference

The Board's current mandate is to provide "oversight" to the LRT Project. The mandate has been changed to specifically address the Board's role in working with the City Manager to develop and implement the competitive procurement process and P3 agreement.

The City's Procedures and Committees Bylaw requires committee bylaws to contain terms of reference to guide each committee's work. Terms of reference have been added to explain how the Board will fulfill its mandate and the matters that it will consider while performing its work. The draft mandate and terms of reference were prepared in light of the evolution of the Board's role and the work that is needed to select the P3 contractor for the southeast to downtown portion of the Valley Line.

3. Role of the Board

The majority of the approving authorities and functions set out in Bylaw 15659 do not correspond to the Board's now established role in providing its technical and other expertise required for this project to administration. They are also not aligned with what will be required for the next step in the LRT Project – the development and implementation of the competitive procurement process.

The new draft bylaw provisions contemplate the Board's advisory role operating in tandem with Administration. The Board and Administration will jointly report to Council on the status of the project by reporting through the Standing Committee chosen by Council. All public engagement would be managed by a Council standing committee, to ensure that policy makers are receiving input from the public directly. The Board will then be able to focus its skills and expertise on providing advice on the development of the best procurement process.

Once the P3 Agreement is approved, scope changes and contingencies are managed through the contract management mechanisms established in the contract. There is no substantive role for a board during construction because dispute mechanisms are governed by other structures developed for the contract.

4. Board Reporting to Council

Currently, the Board provides only a semi-annual report to Council regarding the contracts approved for the project. Most of its work has consisted of reviewing Administration reports and providing input.

As the Board is accountable to Council it should have a more regular reporting expectation to provide input on the status of the project. The new draft bylaw provides that the Board will report semi-annually in conjunction with the City Manager. Reports will be public unless the matters under discussion must be given in camera to protect

the integrity of the procurement process. This will ensure that Council has current relevant information on the status and progress of the project at regular intervals.

The City Manager will of course be required to report to Council to seek approved budgets for the capital expenditures and funding plan approvals in relation to the operational commitments for a 30 year period.

5. Procedures

The Board's meetings will continue to be governed by the Procedures and Committees Bylaw, but the nature of a procurement of this scale will require considerable confidentiality to ensure that the process is not tainted. For ease of communication with Administration, the Board has been given the power to relax the procedural rules to open up a freer dialogue with Administration.

6. Deadlines

The Board was conceived prior to the time a decision on the delivery method and the scope of the initial work was made. Now that the project will proceed as a P3, the board will have an active role during the procurement, but not during the construction phase. If budget matters arise during the project, they would be referred to Council. All other matters will be determined by the contractual provisions and through contractually established resolution mechanisms.

The Board's mandate will be completed once the procurement is approved. The City's Civic Agencies Policy C575 requires an end date for committees that either coincides with the work undertaken or in advance of the election of a new Council.

Policy

Civic Agencies Policy C575

Corporate Outcomes

Review of the role and mandate of this Council committee will help to create a well managed City.

Legal Implications

If Bylaw 16676 is approved, the LRT Governance Board would be continued as a Council Committee with the same members who will work under a revised mandate and terms of reference. If Bylaw 16831 is approved, the City Manager would work with the Board to develop and then issue the Request For Proposal for the Valley Line and approve the P3 Agreement that flows from the Request For Proposal.

Justification of Recommendation

The members of the LRT Governance Board were selected on the basis of their expertise in construction, finance, and large scale infrastructure project governance and management. Their expertise will help the City to develop the best procurement process and P3 agreement for the southeast to downtown portion of the Valley Line. The revised mandate and terms of reference help achieve that goal. The authorities in the original bylaw are not required in a P3 context.

Attachments

1. Bylaw 16766 – LRT Governance Board Bylaw
2. Proposed Bylaw 16813 – LRT Procurement Delegation Bylaw

Others Reviewing this Report

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