

Governance and Approvals Models and Protocols Summary

Recommendation:

That the Valley Line Stage 1 procurement approval sequence, as outlined in the November 26, 2013, Transportation Services report CR_755, Governance and Approvals Models and Protocols Summary, be approved.

Report Summary

This report examines the role and visibility of a Public-Private Partnership (P3) Project Governance Board in the shortlisting and selection of Request for Proposal proponents and approval of selected contractor (Preferred Proponent). An overview of best practice and recent Canadian P3 transit projects provide context for the consideration of different approaches. A Procurement Approval Sequence is recommended for adoption.

Report

1. Background

Valley Line LRT - Stage 1 is the first transit Public-Private Partnership (P3) to be undertaken by the City of Edmonton. There are only a limited number of transit P3 projects completed or underway to date in Canada.

The majority of best practice experience is based on provincial rather than municipal jurisdiction as municipalities have their own unique protocols and public interfacing dynamics.

Private sector confidence in the integrity and objectivity of the process is fundamental to creating the competitive tension and innovation that will result in the highest value-for-money outcome. Thus, the presence of an independent Fairness Monitor throughout the P3 procurement process is an important feature of this form of procurement.

There are two municipal and one regional transit P3 projects completed or underway in Canada. These are the Ottawa LRT, the Waterloo LRT and the Vancouver (Canada Line) ALRT (Automated LRT). Best practices for Alberta P3 projects are contained in the 2011 'Alberta's Public-Private Partnership Framework and Guideline'. Additional P3 best practice findings are contained in the Conference Board of Canada August 2013 report 'Delivering Value Through Public-Private Partnerships at Home and Abroad' and the 2012 Transportation Association of Canada 'Synthesis of Practice for Implementing Public-Private Partnerships in Transportation Related Projects'.

2. Governance Board Roles and Responsibilities

The LRT Governance Board (the Governance Board) was established by City Council in February 2012 through Bylaw 15659. The Governance Board is a committee of Council with a mandate for oversight of the Valley Line project.

The Governance Board ensures best practices are undertaken in regard to the Valley Line project through oversight of management decisions affecting construction, procurement, contractor selection, expense control, community consultation and communication, permits and utility co-ordination. The Governance Board has the authority to allocate funds made available by Council and other orders of Government.

All Governance Board meetings are held in public; however, in accordance with sections 24 and 25 of the *Freedom of Information and Protection of Privacy Act*, commercially sensitive items will be received in private.

The Governance Board has the authority to approve agreements and tender calls that exceed the City Manager's delegated authority. In doing so, the Governance Board will be responsible for approving: the Request for Qualification and Request for Proposal evaluation criteria; Request for Qualification and Request for Proposal evaluation process; and, various elements of the project agreement.

The Governance Board will review the evaluation criteria and evaluation process, and make a determination that adequate resources have been allocated to the process to allow for a fair and thorough evaluation.

With respect to the evaluation process, the Governance Board reviews the report of the Fairness Monitor to assess whether:

- The pre-established evaluation process has been followed.
- The pre-established evaluation criteria have been applied diligently.
- The pre-established evaluation criteria have been applied consistently.
- The pre-established evaluation criteria have been applied without bias.

3. Best Practices

Direct meetings between approval granting bodies (boards or city councils) and proponents is not a common practice until such time as the preferred proponent has been selected. There are greater political risks associated with municipal P3 projects as a result of the municipal decision making process; this process may create opportunities for Councils to bring a project to a halt after it has entered into procurement process. The City of Edmonton P3 Policy C555 contemplates approval by Committee/City Council prior to the procurement commencing and only requires further approval by Committee/City Council if scope or budget changes are required during the procurement process.

Among factors that have made the Canadian P3 model attractive is a consistent and predictable procurement process. Mechanisms to maintain private sector confidence are critical to the P3 procurement process. The procurement process must be perceived as free of political and other interference. In all cases Selection Committees are tasked with evaluation of the proponent presentations based on pre-established criteria and a Fairness Monitor is in place to provide independent confirmation of the fair and unbiased implementation and administration of all proceedings. The recommended short list (Request for Qualifications stage) and Preferred Proponent (Request for Proposals stage) are presented to the governing approval entity for formal approval.

The Alberta Model sets out Evaluation Process Guidelines to ensure a fair and competitive transaction process:

- The evaluation criteria and evaluation process, established prior to any submission being reviewed, is set out in the Request for Qualifications and Request for Proposal;
- The evaluation criteria, evaluation process and transaction documents are internally consistent; and,
- The pre-established evaluation criteria and evaluation process are consistently applied in an unbiased manner.

Final Submission Evaluation - Alberta Model structure is shown in Attachment 1.

4. Canadian Transit P3 Comparables

Vancouver Canada Line

Governance for Canada line is provided by Canada Line Rapid Transit Inc. (CLCO), a TransLink subsidiary established by the four main funding parties. CLCO executed the final Concession Agreement with the winning proponent InTransit BC. Project funding was provided by the Greater Vancouver Transportation Authority (TransLink), the B.C. provincial government, the federal government and the Vancouver International Airport Authority.

The board of CLCO consists of nine voting directors (no elected officials), two non-voting directors, and one senior staff member each from the City of Vancouver and the City of Richmond. At the end of each Request for Proposal and Best and Final Offer stage, CLCO appoints formal evaluation committees and sub-committees to evaluate each of the competing proposals. The sub-committees are charged with the obligation of providing fair and unbiased assessments of the submissions. External scrutiny of the process is provided by a Fairness Commissioner.

Ottawa LRT

Governance for the Ottawa LRT includes a number of parties. Council has an oversight role at a senior board governance level with a separate Project Committee comprising

City and Infrastructure Ontario representatives (a negotiated outcome of Provincial involvement) and a Rail Office project team that is responsible for planning and managing the process and development of the Project Agreement with substantial authority. The project follows the Province of Ontario's Alternative Financing and Procurement Delivery Model and the Infrastructure Ontario Evaluation Process. The Ottawa LRT Executive Steering Committee, comprising senior city staff including the city manager, has the role of selection committee for Request for Qualifications and Request for Proposal stages. A Fairness Commissioner oversees and attends the evaluation in a continuing role throughout the entire process.

The recommended proponent is submitted directly to Council, who awards the contract.

Waterloo Stage 1 Light Rail

The Region of Waterloo is currently evaluating the Request for Proposal for Stage 1 of a light rail transit system. This first stage includes a 19 km LRT route with 16 station stops.

The Regional Municipality consists of the three cities of Waterloo, Kitchener and Cambridge, plus four townships.

The Region has engaged Infrastructure Ontario as the Commercial Procurement Advisor for the project. In this role, Infrastructure Ontario provides advice to the Region during the procurement phase.

The Region established an evaluation committee and sub-committees comprised of advisors and employees. These evaluation committees recommend the preferred proponent to the Planning and Works Committee of the Region. The Planning and Works Committee, in turn, present their recommendations to the full Regional Council for approval. The Waterloo Request for Qualifications shortlist was announced on March 7, 2013.

Comparison of Selection Committees and Approvals is shown in Attachment 2.

5. Discussion

Recommendation

The Governance Board ensures due diligence of Request for Qualifications/Request for Proposal evaluation processes through adherence to board ratified Procurement Approval Sequence.

The Valley Line - Stage 1 Procurement Approval Sequence, outlined in section 6, provides a clear roll up process for the selection process and reflects best practices in P3 procurement.

Meetings During Selection Process

Insertion of the Governance Board into the evaluation and selection process, other than as an approvals body, may create a sense of uncertainty amongst proponents and possibly raise the following questions: Is there an opportunity for bias? What is the purpose of meeting with the Governance Board? Can proponents receive additional 'points' based on presentation to the Governance Board?

There is no precedent for direct meetings between approval granting bodies (boards or city councils) and proponents until such time as the Preferred Proponent has been selected.

6. Valley Line – Stage 1 Procurement Approval Sequence

Selection Committee Structure (Roll Up)

Request for Qualifications Stage:

- Request for Qualifications Document Approval – LRT Governance Board
- Special Committees – established to evaluate financial/commercial/legal issues, financial capacity and relationship; recommends to Selection Committee
- Review Committee (Fairness Monitor, Project Advisors)
- Selection Committee (City/External Specialists); recommends to Due Diligence Committee
- Due Diligence Committee (Branch Management Team, LRT Design and Construction); recommends to Governance Board
- Approval of Short List – LRT Governance Board

Request for Proposal Stage:

- Request for Proposal Document Approval (including draft Project Agreement) - LRT Governance Board
- Special Committees - Design submissions, Technical Reviews (Owner's Engineer & LRT Design and Construction), Commercial reviews (Financial and Legal Advisor & City), Legal reviews (Legal Advisor & City), Financial Plan review (Financial Advisor & City); recommends to Selection Committee
- Review Committee (Fairness Monitor, Project Advisors)
- Selection Committee recommends to Due Diligence Committee
- Due Diligence Committee (Director LRT Design and Construction) presents to Corporate Leadership Team
- Due Diligence Committee (Director and Manager LRT Design and Construction) recommends to Governance Board
- Approval of Preferred Proponent – LRT Governance Board
- Financial close

Valley Line LRT Procurement Approval Sequence shown in Attachment 3.

Policy

Transportation Master Plan – The Way We Move Strategic Direction 5.1:

The City will pursue expansion of the LRT to all sectors of the City with a goal to increase transit ridership and transit modes split, and spur the development of compact urban communities.

Policy C555 – Public Private Partnerships (P3):

The City of Edmonton is committed to achieving value for money in public infrastructure and service delivery while ensuring the public interest is protected and Council's priorities are met.

Corporate Outcomes

Citizens use public transit and active modes of transportation

Edmonton has sustainable infrastructure that fosters and supports civic and community needs

Justification of Recommendation

Approval of the Valley Line Stage 1 governance and approvals model and protocol structure will allow Administration to finalize the P3 procurement process and accompanying documents.

Attachments

1. Final Submission Evaluation - Alberta Model
2. Comparison of Selection of Committees and Approvals
3. Valley Line LRT Procurement Approval Sequence

Others Reviewing this Report

- D. H. Edey, General Manager, Corporate Services