

City of Ottawa

Competitive Procurement Process for the
Ottawa LRT Stage 2
Trillium Line Extension Project

Fairness Commissioner's Final Report



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1. Project Highlights

1.1 Project Background and Objectives

The City of Ottawa (“City”) is responsible for managing the procurement process for the design, construction, finance, and maintenance of the Trillium Line Extension Project, which is made up of the Trillium Mainline Extension and the Airport Spur Line through a public-private partnership (“P3”). The City will select the P3 concessionaire and manage the P3 concession agreement.

The Trillium Line Extension Project was originally, at RFQ issuance, an 8 km extension of the existing single-track, diesel-powered line from present terminus at the Greenboro station to Bowesville station, two new stations on the Existing Trillium Line, and a spur line to the Ottawa Macdonald-Cartier International Airport. This scope was expanded during the procurement to approximately an 11.5 km extension of the existing single-track, diesel-powered line from its present terminus at Greenboro station to a new Limebank station, as well as a 4.5 km link to the Ottawa Macdonald-Cartier International Airport that will connect to the mainline at the South Keys Station. The maintenance and life cycle portion of the project will apply to both the Project and the Existing Trillium Line.

1.2 Fairness Engagement Scope of Work

P3 Advisors was selected by the City to act as the Fairness Commissioner and perform the following functions:

- Act as an independent observer with respect to the fairness of the competitive process and monitor the City’s conduct of the process, and to confirm that Proponents were treated consistently and fairly;
- Address matters that are related to fairness throughout the process, including the maintenance of confidentiality, and avoidance of conflict of interest;
- Review of the RFQ and RFP prior to issuance;
- Review of communications with Proponents during the RFQ and RFP, including correspondence and participation in meetings;
- Participate in and/or provide training to participants on interactions with Proponents during meetings, the evaluation process, and other matters related to fairness;
- Review of material related to the evaluation, including the guidelines and process;
- Monitor the evaluation process; and
- Prepare a report on the fairness of the process.

2. Competitive Selection Process – Request for Qualifications

2.1 Development of the Request for Qualifications

P3 Advisors reviewed the RFQ prior to it being publicly posted and all of our comments related to fairness were satisfactorily addressed by the City, prior to issuance. We confirm

that, from a fairness perspective, the requirements were clear and the RFQ provided the interested parties a fair process. This was further confirmed by the participants, who did not express concerns about the fairness of the process. The RFQ was publicly posted on MERX on April 7, 2017.

2.2 RFQ Open Period Process

Throughout the RFQ open period, the City responded to the questions from the Proponents and issued addenda to provide greater clarity on the requirements and process. P3 Advisors reviewed all documents that were posted to confirm that they were acceptable from a fairness perspective.

2.3 RFQ Evaluation Preparation

The evaluation process and roles and responsibilities of all participants in the RFQ evaluation process was documented within the City's Evaluation Framework. The framework was finalized prior to any activity related to the RFQ evaluation being undertaken. P3 Advisors reviewed the framework and confirmed that all of our fairness comments were satisfactorily addressed prior to the framework being distributed to the evaluators.

The Evaluation Review Committee, which provided oversight over the evaluation process, and the Evaluation Teams were established in advance of any evaluation activity. All participants in the evaluation process, including evaluators, subject matter experts, and observers were required to participate in a training session in preparation for their role in the process. Each participant was required to sign a conflict of interest declaration, which included a continued commitment to the avoidance of conflicts and respect of confidentiality commitments. Project participants were notified of the appointment of a Fairness Commissioner. Any matters related to actual, potential or perceived conflicts of interests were reviewed and cleared by the Conflict Review Team and Fairness Commissioner prior to the individual's participation in the evaluation. Any conflicts relating to the members of the Conflict Review Team were cleared directly by the Fairness Commissioner.

The City established evaluation sub-teams that corresponded to the related rated RFQ submission packages, which included:

- Technical Evaluation Team; and
- Financial Evaluation Team.

These sub-teams were supported by a comprehensive team that included the evaluation procurement coordinator, administration and logistics, consensus facilitators and note takers.

2.4 RFQ Responses Receipt, Completeness/Compliance Validation and Conflict of Interest Review

The RFQ Submission Deadline was June 20, 2017, 15:00:00, and RFQ Responses were received at the Norton Rose Fulbright Canada office located on the 15th floor of 45 O’Conner Street in Ottawa, Ontario. Five (5) RFQ Responses were received in advance of the deadline.

The City’s Completeness and Compliance Review Team undertook a review to confirm that the Responses were substantially complete, and that the Mandatory Criteria relating to bid completeness requirements were met. The City’s Conflict Review Team reviewed the mandatory declarations included in the RFQ, including those that required conflict of interest disclosure and reviewed to confirm that there were no Conflicts of Interest, as defined in the RFQ. The teams recorded any observations, proposed clarifications (if required) and reviewed the Responses received from the Proponents. The evaluation participants were granted access to the Responses that met the completeness and mandatory requirements.

P3 Advisors reviewed the receipt and completeness/compliance validation processes and confirm that they were acceptable from a fairness perspective. P3 Advisors was involved in, and reviewed, the conflict review process and confirm that it was acceptable from a fairness perspective.

2.5 Evaluation of the Technical and Financial Responses

Each of the sub-teams identified in Section 2.3 undertook the scoring of Responses for the rated criteria, which were based on the Evaluation Categories and Scoring Table included in Appendix A of the RFQ – RFQ Data Sheet. A consensus evaluation process was used to evaluate the Responses, using clearly set-out evaluation criteria and evaluation rating scales. The participants engaged in a fulsome exchange of views leading to evaluation results, which were agreed to by the evaluators and were summarized in a presentation to the Procurement Development Committee (“PDC”). The PDC did not score the Responses, they performed due diligence on the results. Questions and comments made by the PDC were responded to by the evaluation teams.

P3 Advisors attended all of the consensus meetings and observed that the proceedings were in accordance with the RFQ and Evaluation Framework. P3 Advisors confirms that the process was fair, transparent and unbiased.

2.6 RFQ Evaluation Review Committee Process Approval

As a final step in due diligence related to the RFQ evaluation, the Executive Steering Committee (“ESC”) reviewed the consolidated evaluation results from the PDC. The ESC did not score the Responses. To conclude the RFQ evaluation process, the ESC approved the consolidated recommendation of the PDC. Three (3) Proponents were shortlisted through the RFQ process and were invited to proceed to the subsequent RFP stage:

- TransitNEXT
- Trillium Extension Alliance
- Trillium Link

2.7 **RFQ Debriefing Process**

The RFQ provided the opportunity for unsuccessful Proponents to request a debriefing following the conclusion of the RFQ. Sessions with the Proponents were held on August 2, 2017. The Fairness Commissioner participated in all debriefing sessions and confirmed that a consistent approach to each debriefing session was applied and that the sessions were conducted in a fair and transparent manner.

3. **Competitive Selection Process – Request for Proposals**

3.1 **General Processes Related to the Request for Proposals**

P3 Advisors reviewed the RFP prior to it being posted, and our comments related to fairness were satisfactorily addressed by the City, prior to it being made accessible to the Proponents who were invited to participate in the RFP process. We confirm that, from a fairness perspective, the requirements were clear. The RFP was distributed to the Proponents on July 17, 2017.

A P3 Advisors representative reviewed the protocols and practices related to the City's virtual data room, e-Builder, in order to confirm that appropriate measures were in place to protect the confidentiality of the Proponent's confidential information. P3 Advisors confirms that the structure and processes related to the virtual data room are satisfactory from a fairness perspective.

3.2 **RFP Open Period Process**

Throughout the RFP open period, the City responded to the questions (Requests for Information) from the Proponents and issued addenda to provide greater clarity on the requirements and process. P3 Advisors reviewed all documents that were posted to confirm that they were acceptable from a fairness perspective.

Through the RFP process, P3 Advisors observed communications between the Proponents and the City, including all presentations that have been made by the City to the Proponents. Furthermore, as an integral part of the RFP open period, the City undertook a series of collaborative commercially confidential meetings ("CCMs") with each of the Proponent teams. The objective of these meetings was to provide the Proponents with an opportunity to gain clarity on the project documents (including the technical requirements), validate compliance matters and better understand matters that could enhance the project outcome. Each of these CCM meetings was attended and observed by a member of the P3 Advisors team in order to monitor that the proceedings were consistent and in accordance with the RFP.

3.3 **RFP Evaluation Preparation**

The evaluation process and roles and responsibilities of all participants in the RFP evaluation process was documented within the City's Evaluation Framework. The framework was

finalized prior to any activity related to the RFP evaluation being undertaken. P3 Advisors reviewed the framework and confirmed that all our fairness comments were satisfactorily addressed prior to the framework being distributed to the evaluators.

The Bid Evaluation Steering Committee (“BESC”), and Executive Steering Committee provided oversight over the evaluation process, and the Evaluation Teams were established in advance of any evaluation activity. All participants in the evaluation process, including evaluators and Subject Matter Experts were required to participate in a training session in preparation for their role in the process. Each participant was required to sign a conflict of interest declaration, which included a continued commitment to the avoidance of conflicts and respect of confidentiality commitments. Project participants were notified of the appointment of a Fairness Commissioner. Any matters related to actual, potential or perceived conflicts of interests were reviewed and cleared by the Conflict Review Team and Fairness Commissioner prior to the individual’s participation in the evaluation. Any conflicts relating to the members of the Conflict Review Team were cleared directly by the Fairness Commissioner

The City established evaluation sub-teams that corresponded to the related rated RFP submission criteria, which included:

- Technical Conformance Team;
- Technical Evaluation Team; and
- Financial Evaluation Team.

These sub-teams were supported by a comprehensive team that included the evaluation procurement coordinator, Technical Conformance Team members, Financial Subject Matter Experts, consensus facilitators and note takers.

The Technical Conformance Team members and Financial Subject Matter Experts reviewed the submissions and provided reports that identified where Proponents exceeded, met, were unresponsive or deficient to the requirements. The Technical Conformance Team did not score the submissions, and the Fairness Commissioner reviewed all of the Technical Conformance Team and Subject Matter Expert reports prior to the evaluators receiving them.

3.4 Security of Proponent Information

The City developed and implemented a rigorous security policy related to protecting the confidentiality of the Proponent Submissions. The Fairness Commissioner reviewed the approach related to maintaining confidentiality.

3.5 RFP General and Technical Submission Receipt, Completeness/Compliance Validation, and Conflict of Interest Review

The RFP General and Technical Submission Deadline was August 10, 2018, 17:00:00, and the RFP Technical Submissions were received at the Norton Rose Fulbright Canada office located on the 15th floor of 45 O’Conner Street in Ottawa, Ontario. All three (3) Proponents’ RFP General and Technical Submissions were received in advance of the deadline.

The City’s Completeness Review Team undertook a review to confirm that the Submissions were substantially complete, and that the Mandatory Criteria requirements relating to bid completeness were met.

The City’s Conflict Review Team reviewed the mandatory declarations included in the RFP, including those that required conflict of interest disclosure and reviewed to confirm that there were no Conflicts of Interest, as defined in the RFP.

The team recorded any observations, proposed clarifications (if required) and reviewed the Submissions received from the Proponents. The Completeness Review Team and the Conflict Review Team presented their conclusions to the BESC, and the evaluation participants were granted access to the Submissions that met the completeness and mandatory requirements.

P3 Advisors oversaw the receipt and completeness/compliance validation processes and the conflict of interest review, and confirm that they were acceptable from a fairness perspective.

3.6 Affordability Review

In accordance with the RFP, the Financial Subject Matter Experts conducted an Affordability Review to determine whether any or all of the Affordability Prices submitted as part of the Proponents’ Financial Submission exceeded the established Affordability Criteria disclosed in the RFP.

The Financial Subject Matter Experts determined that two (2) of the three (3) Proponents’ Financial Proposals exceeded one or both of the Affordability Thresholds (the Capital Cost Affordability Cap and the Aggregate Cost Affordability Gap) and presented these results, on a no-name basis, to BESC. As a result, the City’s ESC exercised its rights under Section 6.5.3 of the RFP, as presented by the BESC, to not award a score of zero (0) on the Price Proposal component of the Financial Submission to the Unaffordable Proposals in order to establish the overall ranking as contemplated in the RFP Section 6.5.4. .

3.7 Evaluation of the RFP Technical Submission

Prior to the Technical Evaluation, each proposal was reviewed by a Technical Conformance Team, who, with the assistance of subject matter experts, established whether the proposals met the output specifications set out in the RFP. All three proposals were deemed to be technically compliant. P3 Advisors monitored the Technical Compliance Evaluation including a review of the final Technical Compliance Report prior to its release to the Technical Evaluation Team. The Technical Compliance Evaluation was acceptable from a fairness perspective.

The Technical Evaluation Team undertook the scoring of Submission for the rated criteria, which were based on the criteria included in RFP - Schedule 3 Part 1 and RFP Schedule 3 Part 3. A consensus evaluation process was used to evaluate the Submissions, using clearly set-out evaluation criteria and evaluation rating scales. The participants engaged in a fulsome exchange of views leading to evaluation results, which were agreed to by the evaluators and were summarized in a presentation that included the results for each Submission. The participants performed their roles diligently through the evaluation process.

P3 Advisors attended all of the consensus meetings and observed that the proceedings were in accordance with the RFP and Evaluation Framework. P3 Advisors confirms that the process was fair, transparent and unbiased.

The presentation of the findings of the Technical Evaluation Team was reviewed by the Bid Evaluation Steering Committee prior to being provided to the Executive Steering Committee. The BESC did not score the Submissions, they performed due diligence on the results. Questions and comments made by the BESC were responded to by the Technical Evaluation Team. The Fairness Commissioner reviewed any comments that the BESC had on the findings prior to providing the comments to the evaluators.

3.8 RFP Technical Submission Evaluation Review Committee Process Approval

The Executive Steering Committee reviewed the consolidated results from the evaluation from the Bid Evaluation Steering Committee. The ESC did not score the Submissions. Questions they had were addressed and responded to by the members of the BESC.

P3 Advisors attended all Executive Steering Committee meetings and observed that the proceedings were in accordance with the RFP and Evaluation Framework and confirm that they were fair, transparent and unbiased.

3.9 RFP Financial Submission Receipt and Completeness/Compliance Validation

The RFP Financial Submission Deadline was September 21, 2018, 17:00:00, and RFP Financial Submissions were received at the Norton Rose Fulbright Canada office located on the 15th floor of 45 O'Conner Street in Ottawa, Ontario. All three (3) Proponents' RFP Financial Submissions were received in advance of the deadline.

The City's Completeness Team undertook a review to confirm that the Submissions were substantially complete, and that the Mandatory Criteria requirements were met. The team recorded any observations, proposed clarifications (if required) and reviewed the Submissions received from the Proponents. The evaluation participants were granted access to the Submissions that met the completeness and mandatory requirements.

P3 Advisors oversaw the receipt and completeness/compliance validation processes and confirm that they were acceptable from a fairness perspective.

3.10 Evaluation of the RFP Financial Submission

As a result of the Affordability Determination, the City's ESC exercised its rights under Section 6.5.3 of the RFP to not award a score of zero (0) on the Financial Submission to the Unaffordable Proposals. As a result, the Financial Evaluation Team reviewed the proposals and assessed a Financial Score in order to establish the overall ranking as contemplated in the RFP Section 6.5.4.

P3 Advisors attended all of the consensus meetings and observed that the proceedings were in accordance with the RFP and Evaluation Framework. P3 Advisors confirms that the process was fair, transparent and unbiased.

3.11 Preferred Proponent

In accordance with the RFP, the highest ranked Proponent was recommended to the ESC as the Preferred Proponent.

3.12 RFP Debriefing Process

The RFP provided the opportunity for unsuccessful Proponents to request a debriefing following the conclusion of the RFP. Sessions with the Proponents were held on April 16 and April 17, 2019. The Fairness Commissioner participated in all debriefing sessions and confirmed that a consistent approach to each debriefing session was applied and that the sessions were conducted in a fair and transparent manner.

4. Conclusion

We confirm 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.

Our fairness review was conducted without influence and as of the date of this report, we confirm that we are satisfied that, from a fairness perspective, the processes undertaken related to the City of Ottawa Stage 2 Trillium Line Extension Project has been conducted in a fair, open and transparent manner. As Fairness Commissioner for this Project we are satisfied that the City has followed the procedures in accordance with the applicable RFQ, RFP and City of Ottawa policy documentation and that the participants followed the procedures and fairly applied the evaluation criteria.

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