



Office of the Auditor General

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

**Tabled at Audit Committee
November 26, 2019**

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Acknowledgements

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Original signed by:

Auditor General

Executive summary

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

¹ Report reference ACS2017-TSD-OTP-0001.

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.

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

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.

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.

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.

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.

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.

Detailed audit report

Introduction

The Audit of Stage 2 Light Rail Transit (LRT) Project Procurement was included in the 2019 Audit Work Plan of the Office of the Auditor General (OAG), approved by Council on April 24, 2019.

Background and context

The O-Train Line 1 Confederation Line is the first stage of the Light-Rail Transit (LRT) 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.

The first stage of the Confederation Line has been operational since September 14, 2019.

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.

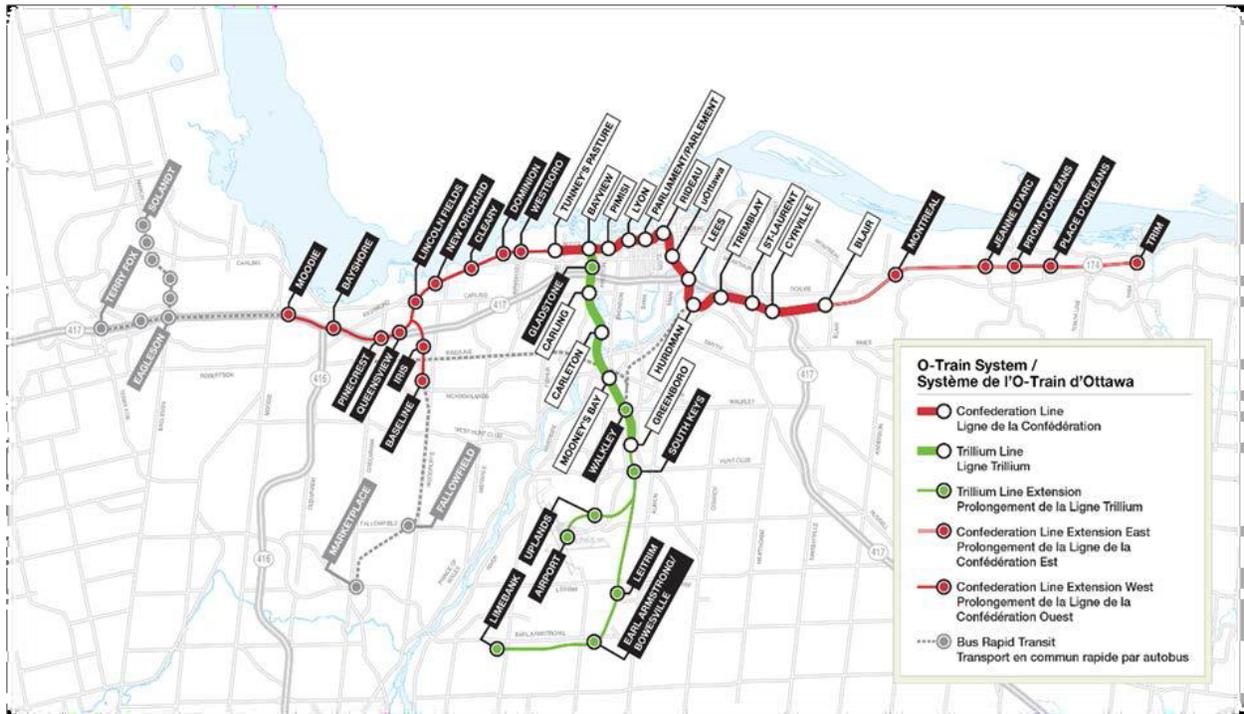
The City of Ottawa is responsible for managing the *procurement process* for the "Design, Construction, Finance, and Maintenance" of the Stage 2 Trillium Line Extension Project.

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* report⁴, which established the

⁴ Report reference ACS2017-TSD-OTP-0001.

competitive procurement process for the Stage 2 Light Rail project. On March 8, 2017, Council subsequently approved the subject report recommendations as amended.

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



Map taken from www.stage2lrt.ca.

Procurement approach and key steps

The City launched a request for qualifications (RFQ) process as a prequalification stage to the request for proposals (RFP). The intent was to identify parties capable to deliver on the LRT requirements for the Trillium Line extension. The bidders were to demonstrate their prior experience, their capability for best practices, their understanding of the Project's needs and their ability to meet the project requirements. The RFQ was posted on MERX on April 7, 2017. At the conclusion of RFQ process, three proponents were invited to participate in the RFP for the procurement of the Stage 2 Trillium Line. The RFP was delivered on July 17, 2017 to the qualified proponents (1) TransitNEXT, (2) Trillium Link, and (3) Trillium Extension Alliance.

Project and roles

The Procurement Management Office (PMO) developed an organizational structure and the corresponding roles and responsibilities of the key players to the LRT procurement team on February 16, 2017.

Key roles (see organizational chart on page 12) introduced included the City Procurement Lead, the Procurement Team Coordinator, and the Technical Procurement Lead.

The Stage 2 Trillium Line was structured as a Public-Private Partnership (P3) project, also referred to as a *Design-Build-Finance-Maintain* procurement (DBFM). The DBFM procurement process is different from a traditional RFP approach, in that the City enters into a project agreement with a consortium which includes the necessary expertise such as project management, financing, construction, engineers, design team, as well as maintenance responsibilities for the civil infrastructure and rolling stock (i.e., vehicles, railborne or other) which are necessary to provide the range of service listed in the project agreement. The consortium will maintain the asset until the City assumes responsibility for the maintenance at the end of the project agreement, in 30 years.

The City obtained guidance and project leadership from Infrastructure Ontario during the LRT Stage 1 process and has continued to apply their approach in Stage 2 of the procurement. Infrastructure Ontario RFQ & RFP templates were utilized as a baseline and adjusted as deemed necessary by the City and the external legal counsel involved on the project.

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, engineering, construction, and project management consultants. These experts were relied upon to assist in the drafting of the RFQ & RFP documents to reflect the needs and requirements of the City.

A Fairness Commissioner (FC) was hired⁵ by the City to observe all steps of the procurement. The role of the FC was to act as an independent observer with respect to the fairness of the competitive process, to monitor the City's conduct of the process, and to confirm that Proponents were treated consistently and fairly.

⁵ The Fairness Commissioner was involved before the RFQ and remains in an active role at the time this report was written.

RFQ and RFP processes

We noted that the RFQ was distributed to the vendor community on April 7, 2017 by means of MERX, an electronic tendering service. The RFP documents were not made public but were distributed only to the three qualified proponents on July 17, 2017.

The practice with respect to the disclosure of RFP documents for P3 public procurement in Ontario and Canada is mixed. In some cases, following an RFQ resulting in a smaller number of selected proponents, the RFP document is not available publicly as it may contain more sensitive information that is shared during a P3 RFP process. In Ontario, it is seen that the standard practice of Infrastructure Ontario⁶ 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 Columbia⁷.

During both the RFQ and RFP processes, the City responded to questions from interested parties. In some cases, the questions necessitated addenda to the RFQ/RFP documents in order to provide greater clarity on the requirements or process.

The RFP process allowed the City to undertake a series of collaborative commercially confidential meetings with each proponent. The objective of these meetings was to provide the proponents with clarity on the RFP documents, validate compliance matters and to better understand the project.

Bid submission

The RFP closed on August 10, 2018 and all three invited vendors submitted a technical bid. Financial bids were due and delivered on September 21, 2018.

⁶ 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.

⁷ 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 measurable benefits for taxpayers.

Bid evaluation team

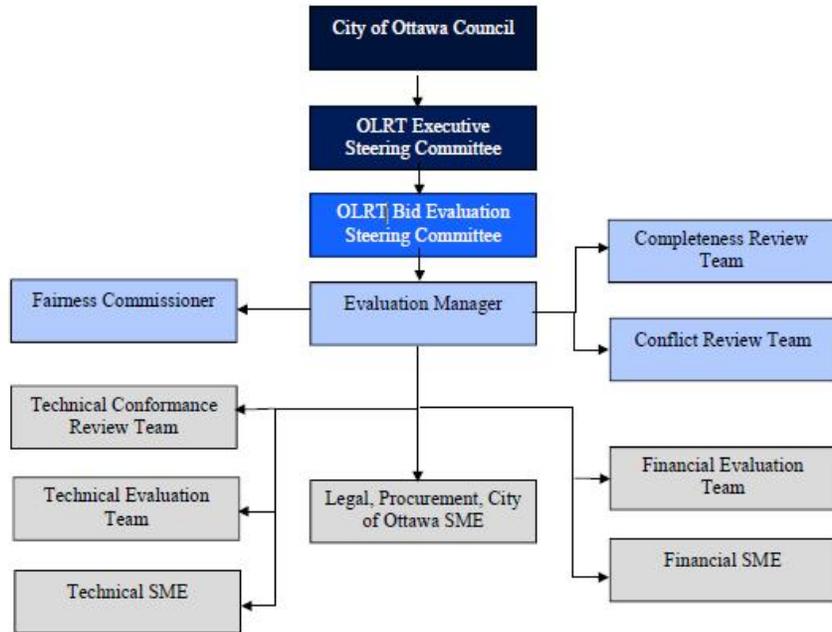
The evaluators, selected by the senior management of the Transportation Services Department, were subject to mandatory training sessions on the evaluation process. An *Evaluation Framework – RFP*, shared with all evaluators, is a document which was developed with the objective⁸ to describe and outline the evaluation process to be used to select the preferred proponent and, in doing so, safeguard the interests of the City from claims of an invalid or unfair process. The Framework addressed the evaluation methodology, the role of Ottawa Light Rail Transit (OLRT) Bid Evaluation Steering Committee in the approval process, as well as the consensus process. The Framework also addressed situations of a scoring impasse, and the steps to be taken to resolve conflicts.

Training sessions were developed and facilitated by the contracted legal counsel acting as the contracting authority on behalf of the City. The participants were provided with a copy of the training material, the RFP, and the *Evaluation Framework – RFP*. The facilitator focused on the responsibility and scope of the evaluators for each Committee.

The Framework outlined the reporting structure to guide the evaluation process. The reporting structure below shows that all subcommittees were coordinated by an Evaluation Manager and were subject to the oversight of the OLRT Bid Evaluation Steering Committee (BESC), and the OLRT Executive Steering Committee (ESC).

⁸ Source: Evaluation Framework-RFP.

Stage 2 Procurement Process Reporting Structure.



Note: Review Teams and Review Committee are terms used interchangeably.

The ESC was responsible, among other things, to make decisions on matters of substance related to the RFP evaluation, and to rule on any material non-conformance issues.

The BESC was responsible, among other things, to review and approve the work and findings of the evaluation teams, and to rule (subject to approval from the ESC and the Fairness Commissioner) on any non-conformance issue identified by the evaluation teams.

The process to evaluate the bid submissions included five committees, two of which were administrative in nature.

Conflict Review Committee

This Committee had an administrative role which was responsible to ensure that all participants in the evaluation process, in particular individual evaluators and subject matter experts, were clear of any disclosed conflicts of interest and that any perceived, potential or actual conflicts of interest were adequately managed or mitigated.

Completeness Review Committee

This Committee had an administrative role which was responsible to ensure that all submitted proposals were, from a procurement perspective only, compliant with mandatory submission requirements and complete in accordance with the RFP documents (specifically, Section 6.5.1).

Technical Conformance Committee

This Committee was responsible to review the proponents' technical submission to ensure general conformance to the RFP.

Technical Evaluation Committee

This Committee was responsible to evaluate all technical submissions.

Financial Evaluation Committee

This Committee was responsible for evaluating all financial submissions.

Audit objectives and criteria

The objective of this audit is to determine whether the Stage 2 Trillium Line procurement process was conducted in accordance with the Request for Proposal (RFP) and was aligned with the principles of fairness, openness, and transparency.

In addition, the audit will determine whether City staff adequately fulfilled their responsibilities as set out in the delegation of authority approved by Council in accordance with the principles of the Municipal Act.

Audit Objective #1

Assess the openness, transparency and fairness of the Stage 2 Trillium Line RFQ / RFP documents.

Audit Objective #2

Assess the compliance of the Stage 2 Trillium Line evaluation process against RFP documents and the established evaluation framework.

Audit Objective #3

Assess the appropriateness of the Delegation of Authority (DoA) for Stage 2 Trillium Line Procurement as drafted by City staff, and related disclosure to Council.

Scope

The scope of the audit included an examination of the LRT procurement process of the Stage 2 Trillium Line. The procurement for the Confederation Line (Stage 1 and 2) are not in scope.

The audit will examine the Stage 2 Trillium Line procurement process (RFP, evaluation, and contract award) and the Delegation of Authorities.

Audit approach and methodology

The audit methodology included the following activities:

- Interviews with key staff and consultants from the Transportation Services Department and the City of Ottawa; and
- Review of relevant procurement documentation (e.g., RFP documents, individual and consensus evaluation results, guidelines, procedures, organizational charts, legal memorandum, as well as documentation received from subject matter experts including legal counsel).

The audit fieldwork was substantially completed by July 31, 2019.

Audit observations and recommendations

Audit objective #1

We expected the City to use a procurement vehicle and employ practices and processes to ensure the procurement of the Stage 2 Trillium Line was conducted in an open, fair, and transparent fashion for all bidders. This includes the use of a public tendering service, an open dialogue with interested bidders through vendor sessions and questions and answers, a clearly defined procurement process in the RFP documents with similar P3 projects, and an adherence to the stated process.

Openness and transparency

The RFQ was distributed to the vendor community by means of MERX, an electronic tendering service. Posting the requirements on MERX provides a high level of openness and transparency to the vendor community as the information shared by the Sponsor during the procurement process is shared to all interested parties simultaneously and on a timely basis. Following the RFQ identification of qualified proponents, the RFP documents were not made public. As indicated previously, this practice is seen at times

with different government bodies, whereas RFPs, redacted for sensitive information, are also seen publicly available during procurements.

During both the RFQ and RFP processes, the City responded to questions from interested parties. In some cases, the questions necessitated addenda to the RFQ/RFP documents in order to provide greater clarity on the requirements or process.

The RFP process allowed the City to undertake a series of collaborative commercially confidential meetings with each proponent. The objective of these meetings was to provide the proponents with clarity on the RFP documents, validate compliance matters and to better understand the project.

The approach and activities conducted by the City during the RFQ and RFP process were appropriate and involved many industry engagements activities which encouraged openness and transparency for all bidders.

Our audit involved the review of all solicitation documents, the review of industry engagement consultations and all the questions and answers that resulted from the RFP process.

In our opinion, this resulted in a process which is open and transparent to the three qualified proponents, and consequently, no contentious issues were raised by the proponents. However, in future projects, the City may wish to consider disclosing all procurement documents (similar to Infrastructure Ontario practices) to all interested parties to ensure the process is open and transparent, and accessible to anyone (such as the public and Members of Council) with an interest to peruse the documents.

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.

Audit objective #2

We expected the City to conduct the procurement evaluation of the bid submissions in such a way that the evaluation of the Stage 2 Trillium Line was in compliance with the process communicated in the RFP documents. This includes the use and adherence to the Evaluation Framework document which was drafted and communicated to the evaluation teams. The intent of the Evaluation Framework was to provide clarity on the evaluator training, the reporting structure, responsibilities of the committee as well as individuals, and the authorities entrusted in individuals and committees.

Evaluation

Upon receipt of clearance from the Conflict of Interest Review Committee and the Completeness Review Committee, the evaluation process for the technical conformance and technical evaluation began. Each Committee required that each evaluator perform an individual assessment and evaluation of each bid submission, followed by a group consensus meeting to finalize the scores as a group. The consensus results were then presented to the BESC for approval.

The conformance evaluation process assessed the bid submissions to identify their conformance with the stated RFP requirements. The conformance evaluation process culminated with a consensus session and identified whether bid submissions were compliant with the RFP requirements. It is our understanding that this evaluation process was pivotal in the determination of whether a proponent could deliver on the requirements. No material deviations were identified in each of the three bids. Following the approval from BESC, the technical conformance evaluation report was shared with the technical evaluation committee as a reference. The sharing of the report made permissible by the *Evaluation Framework – RFP*.

Once the financial submissions cleared the administrative reviews (i.e., conflict of interest and completeness review), the financial evaluation committee performed an affordability assessment, which had the purpose to quickly identify if the three financial bids received were deemed affordable in accordance with the parameters set out by Council. The receipt of three unaffordable submissions is not desirable as it may require the City to re-launch the whole RFP process or require Council to increase budgetary limits for the project.

The affordability assessment was presented to BESC in an anonymous fashion⁹ in advance of the results of the financial evaluation. Furthermore, the Evaluation Framework document did not permit that the results of the financial information be shared with members outside the BESC until such a time where the successful bidder was identified and approved.

The affordability assessment was followed by the complete financial evaluation of the submissions.

The technical evaluation committee assessed technical submission requirements as stated in the RFP. They are listed in Appendix C.

The RFP document¹⁰ provided for a maximum number of points a proponent could obtain in response to the proposal submitted by a proponent for each criterion. The document also highlighted the minimum score (70%) to be achieved to be deemed compliant and continue to be considered in the evaluation process. While the minimum score was established, the RFP also contained a clause that enabled the City to allow for a proponent not meeting the minimum score to proceed to the Financial evaluation. This is not an unusual clause for these types of procurements. The latter clause is a standard approach for Infrastructure Ontario projects. While the inclusion of a phased-bid compliance process whereby bidders are provided with an opportunity after the solicitation closing date to rectify a finding of non-compliance, is widely used in large Federal Government procurement to avoid eliminating a bid for items of low significance.

The “discretion clause” is meant to provide the City with some flexibility and possibly, avoid disqualifying a bidder unnecessarily. The interviews held during the audit indicated that the discussions held during the consensus meetings were open and frank, and thus in our opinion, fair. At the conclusion of the consensus session, the results were presented to the BESC for approval.

The results of the technical evaluation committee were such that two of the three bidders exceeded the minimum required score (for each area) to continue to be considered as a potential successful proponent, while one bidder did not achieve the minimum required score. This conclusion was considered surprising to the members of

⁹ The results were presented in a way that BESC was not provided the name of the bidders who were, or were not, affordable.

¹⁰ Part 3 to Schedule 3 of the RFP.

the BESC since all three bidders were deemed to be capable (by the RFQ evaluation process) as vendors to deliver on the project following the RFQ stage, and the conformance evaluation did not identify any material conformance deviations. The expectation along with the findings in the Technical Evaluation Committee report raised some concerns over the evaluation process employed by the Technical Evaluation Committee. Conceptually, evaluation committees are tasked with documenting their rationale when assigning a score to a rated requirement. The justification is important to assist the evaluation team in their overall assessment as well as to assist their oversight body during their assessment of the evaluation results. This is also useful in the eventual debriefing with the unsuccessful proponents. The audit found that the BESC felt the justification for the evaluation results not meeting the minimum score was not always directly in line with the RFP requirements, and the scoring grid guidance was possibly misunderstood. To clarify and ensure the evaluation was performed as fair as possible, the BESC provided direction to the evaluation committee to re-convene and re-perform the consensus exercise, along with additional guidance and clarification. A legal opinion was obtained by the BESC to assist them during their decision process to re-evaluate. The steps taken in the decision process were reviewed by the Fairness Commissioner and they observed no fairness issues.

The technical evaluation committee, as requested, met again to review the consensus evaluation results. Consequently, the consensus results changed from the initial evaluation, but one proponent was still not meeting the minimum score in two areas (two of four areas). The technical evaluation lead presented once again the results to the BESC.

One of BESC's responsibilities was to review and approve the work and findings of the evaluation teams and to rule (subject to approval from the ESC and the Fairness Commissioner) on any non-conformance issue identified by the evaluation teams. The BESC considered the revised results, and in light of the absence of material conformance deficiencies and/or deviations¹¹ as well as other considerations, proceeded to recommend that the ESC exercise its discretionary rights as set out in RFP to determine whether that proponent's proposal would continue to be considered in the RFP Process.

¹¹ It was noted that no materially significant deviations were observed in the RFQ process, as well as the Technical Conformance Review process during the RFP bid submission review.

Following the receipt of a legal opinion supporting the use of the RFP’s “City discretion” clause, ESC accepted the recommendation by BESC on October 26, 2018 and allowed the bidder to proceed to the next step of the RFP evaluation process.

The proponent which was allowed to proceed was eventually selected as the winning bidder, with the lowest financial bid. While the successful proponent did not have the best technical bid, all the areas identified as concerns were later resolved as part of the first negotiations with the proponent (a preliminary contract negotiation step). Our interviews with evaluators and other stakeholders’ who were part of the process indicated that no one doubted that the bidder could deliver on the project requirements following the first negotiations process.

The OAG has found that the procurement followed the RFP requirements and was conducted in a fair, open and transparent manner with bidders.

Throughout the process, a Fairness Commissioner was involved starting before the issuance of the RFQ documents to the end of the RFP process. The Fairness Commissioner’s duties are to “*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*”¹². The Fairness Commissioner did not identify any unresolved issues resulting in a fairness issue in the procurement process and provided an unqualified opinion¹³.

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. While the City established the process, the need for re-consensus and the use of discretion¹⁴ are indicators that the process could be improved.

1. Evaluator experience

We had expected to observe evidence of the application of criteria and documentation for the selection of evaluators considering the importance of these roles, however, no criteria or documents were used in decision making. In our discussions with the City, a selection of technical evaluators considered the participant’s experience. However, the members selected for the Technical Evaluation Committee did not have P3

¹² P3 Advisors Draft Final Report dated May 31, 2019.

¹³ P3 Advisors Fairness Commissioner’s Final Report.

¹⁴ Part 3 to Schedule 3 to RFP (version 5.4). Part B, article 3 (c) – page 9.

procurement bid evaluation experience, except for one member of the evaluation committee who had conducted some areas of technical evaluation for the Stage 1 LRT procurement. P3 projects are considerably different from traditional procurement projects and in our view, related evaluation experience, combined with the experience using the Infrastructure Ontario templates should be considered important when selecting evaluators. While the evaluators possessed relevant operational experience in rail related activities, some with P3 projects, we found that four of the five Technical Evaluation Committee evaluators did not possess procurement evaluation experience for P3 projects. In the event of an absence of P3 procurement evaluation experience among the evaluators, the City should have considered additional training and coaching to evaluators involved, or alternatively, could have considered obtaining the services of contractors with this expertise.

2. Score grid guidance

The evaluation process was documented in the RFP and the *Evaluation Framework – RFP* document. The process provided guidance to both the bidders and the evaluators with respect to the minimum score requirement (i.e., 70%). The understanding however of what constituted 70% was not included in the RFP document. The *Evaluation Framework – RFP*, to assist the evaluators, provided additional guidance as to the possible method – in principle - to score responses. Through the interviews, our audit indicated that there was a lack of clarity on how to assess criteria in relation with the scoring grid, more specifically, what is “Marginal” (70%) and what is “Poor” (below 70%). As noted above in “Evaluator Experience”, more clarity would have been beneficial to a team of evaluators with little experience with P3 technical evaluation or with evaluation process using the Infrastructure Ontario templates and/or process.

The OAG review of the Technical Evaluation Committee’s responsibilities and its scoring grid in contrast to the responsibilities of the Technical Conformance Committee identified unclear elements between the two Committees. Typically, RFP evaluations include both a technical evaluation and a financial one. In the case of the Trillium Line procurement, there was a technical evaluation and a technical conformance evaluation; in addition to the financial evaluation. To avoid confusion, each Committee’s responsibility and relative importance should be clearly emphasized and reflected in their respective scoring attribution. The OAG’s appreciation of the evaluation was such that the technical conformance evaluation was critical in demonstrating the bidders’ ability to meet the RFP requirements, and the technical evaluation was an attribution of points reflective of the bidders’ ability to demonstrate how requirements

would be met. This lack of clarity was corroborated by feedback received from individuals interviewed during the audit.

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.

Audit objective #3

We expected the City to fulfill their responsibilities as set out in the delegation of authorities approved by Council for this procurement in accordance with the principles of the Municipal Act. This includes the adherence to the delegated authorities and the sharing of an appropriate level of information to Council in accordance with the reporting protocol set out by Council.

As previously stated, the Finance and Economic Development Committee's (FEDCO) considered the report recommendations during its meeting of February 24, 2017. Said recommendations were subsequently approved by Council during its March 8, 2017 meeting. The Delegation of Authorities was drafted by staff and reviewed by the City Clerk and Solicitor's Department, Legal Services Branch.

The Delegation of Authorities provided, in our opinion, substantial authority to City staff in the conduct of the Stage 2 Trillium Line Extension procurement. In particular, Council approved the following:

Recommendation 3:

Approve the procurement model and process for the Stage 2 Light Rail Transit Project...to direct staff to proceed with the Design, Build, Finance, and Maintain (DBFM) procurement process for the Trillium Line extension... and to receive the information on the Project Schedule...

Recommendation 4.

Approve the following related issues...delegate the authority to the Ottawa Light Rail Transit Executive Steering Committee to confirm and recommend to Council the preferred proponent(s) at the close of the Request for Proposals...

Recommendation 8:

Delegate the authority to the City Manager to address any unforeseen matters with respect to proceeding with the procurement and next steps towards implementation of the Stage 2 Light Rail and related projects on the understanding that any actions will be consistent with Council direction on this matter, within the relevant project budgets, undertaken with the concurrence of the Mayor and any affected Ward Councillor, and reported back to Council either through the Finance and Economic Development or as part of the report recommending the contract award, as appropriate.

The OAG noted that while the delegated authorities are clear in the March 8, 2017 Report to Council, the absence of the reporting protocol is noted. The reporting protocol is an important element of the delegated authority equation. It balances out the power vested in City staff with the reporting of information Council deems necessary to remain informed and be knowledgeable in their decision making. In particular, the reporting protocol could have identified the information Council wanted to receive, along with the timing of when it desired to receive this information (such as status updates,

clarifications, notifications, procurement issues of risk to the City, timelines, disclosures, etc.).

The 2017 Report recommendations, which were reviewed by FEDCO for Council approval, recommended that staff confirm and recommend the preferred proponent at the close of the RFP. As such, the decision to endorse a proponent was decided in November 2018 by the ESC and presented to FEDCO on February 12, 2019, and Council on March 6, 2019. The reporting provided by staff is consistent with the reporting protocol included in the delegated authorities.

It is unclear to the OAG if the agreed upon delegation of authorities by Councillors was fully understood and properly communicated in the March 2017 Report to reflect the Councillors' information needs. This lack of clarity was evidenced as some Councillors recently expressed dissatisfaction with the level of information being disclosed in conjunction with the March 2019 report and an insufficient amount of time to digest the information for purposes of approving the preferred proponent.

In our opinion, the authorities delegated to staff could be directly linked to a reporting protocol where equal and opposite disclosure is incorporated in the reporting process. This is supported through the Municipal Act and City policies on delegation of authority and accountability and transparency. Section 270 (1) of the Municipal Act states that: *A municipality shall adopt and maintain policies with respect to the following matters: 5) The manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public.* This policy, the Accountability and Transparency Policy, outlines seven guiding principles, one of which states, "Every new delegation of power or authority will have a corresponding accountability mechanism" and defines accountability and transparency:

Accountability – The principle that the municipality is obligated to demonstrate and take responsibility for its actions, decisions and policies and that it is answerable to the public at large.

Transparency – The principle that the municipality will conduct its business in an accessible, clear and visible manner and that its activities are open to examination by its stakeholders.

The audit revealed that the delegation of authorities in the March 8, 2017 Report essentially limited the role of Council in the procurement process to one of approving the preferred proponent, or not. By providing more information to Council than what

was planned, it might have engaged Council in the bid decision (evaluation), which per legal counsel hired to advise on this procurement, would have involved Council in the evaluation decision process, contrary to the established evaluation framework as set out in the RFP. It was perceived that this could legally expose the City in terms of the established process and timelines of the RFP. Furthermore, the delegation of authority obtained in 2017 clearly delegated the evaluation to City staff.

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.

Other

The City of Ottawa, as described in the Fraud and Waste Policy, 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 is 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. A key component of the policy is the whistle-blower protection which protects and supports individuals who call attention to a questionable or illicit activity in an attempt to have the activity brought to an end. The identity of an individual alleging fraud or waste, together with the identity of any individual alleged to have committed fraud or waste or involved in an investigation under this Policy, will be kept confidential and protected from disclosure as required by the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and other applicable legislation.

During the course of the audit, it was noted not all interviewees were aware of the City's Fraud and Waste Hotline. In particular, not all were aware that it could be used to report concerns with respect to non-compliance of City practices or other non-financial questionable related matters. The reporting of allegations of fraud or waste through other means, including Councillors and the media, may not result in the most effective resolution of the concern brought forth.

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.

Appendix A – Glossary

| | |
|-------------------------------|--|
| BESC | Ottawa Light Rail Transit (OLRT) Bid Evaluation Steering Committee |
| CA | Contracting Authority |
| ESC | Ottawa LRT Executive Steering Committee |
| MERX | Electronic tendering service |
| OLRT | Ottawa Light Rail Transit |
| P3 | Public-Private Partnership |
| PMO | Procurement Management Office. Members include City staff and third-party subject matter experts. |
| Phased Bid Compliance Process | A process that can be incorporated into solicitations. It provides bidders with an opportunity, after the solicitation closing date, to correct a finding of non-compliance. Where a bidder is evaluated as non-compliant, they will be offered an opportunity to submit additional or different information in order to be re-evaluated as compliant. |
| RFQ | Request for Qualifications |
| RFP | Request for Proposals |
| Sponsor | City of Ottawa |

Appendix B – Timeline

| Start | End | Activity |
|--------------|------------|---|
| 7-Apr-17 | 20-Jun-17 | RFQ Posting (MERX) |
| 17-Jul-17 | 10-Aug-18 | RFP Posting (by invitation) – Technical |
| 17-Jul-17 | 21-Sep-18 | RFP Posting (by invitation) - Financial |
| 8-Aug-18 | 13-Aug-18 | Training Sessions held by Legal SME |
| 13-Aug-18 | 17-Aug-18 | Completeness Review – Technical |
| 24-Sep-18 | 24-Sep-18 | Completeness Review – Financial |
| 15-Aug-18 | 16-Aug-18 | Conflict of Interest Review |
| 20-Aug-18 | 31-Aug-18 | Conformance Review |
| 5-Sep-18 | 6-Sep-18 | Conformance Review Consensus |
| 20-Aug-18 | 24-Sep-18 | Technical Evaluation Review (individual) |
| 26-Sep-18 | 2-Oct-18 | Technical Evaluation Review (consensus) |
| 10-Oct-18 | 22-Oct-18 | Technical Evaluation Review (2nd consensus) |
| 24-Sep-18 | 24-Sep-18 | Affordability Review |
| 25-Sep-18 | 30-Oct-18 | Financial Evaluation (individual) |
| 31-Oct-18 | 31-Oct-18 | Financial Evaluation (consensus) |

| Date | Key Event |
|-----------|---|
| 24-Feb-17 | FEDCO consideration of the Project Definition and Procurement Plan Report (ACS2017-TSD-OTP-0001) |
| 8-Mar-17 | Council Approval of the above-noted Project Definition and Procurement Plan |
| 13-Jul-17 | Pre-Qualification Notification of Trillium Line Proponents |
| 13-Aug-18 | Training Communication sent to Evaluators |
| 12-Sep-18 | Conformance Report Presentation to BESC |
| 24-Sep-18 | Conformance Report Presentation to Technical Evaluators |
| 24-Sep-18 | Affordability Review Presentation to BESC |
| 3-Oct-18 | 1st Technical Evaluation Presentation to BESC |
| 9-Oct-18 | Written Direction from BESC to Technical Evaluation Committee |
| 23-Oct-18 | 2nd Technical Evaluation Presentation to BESC |
| 26-Oct-18 | BESC Decision Regarding Technical Evaluation & Presentation to ESC |
| 1-Nov-18 | Financial Assessment & Final Rankings Presentation to BESC |
| 7-Nov-18 | Briefing to ESC (Final) and Finalization of Successful Bidder |
| 27-Feb-19 | Council (Committee of the Whole) received and tabled the Contract Award of Ottawa's Stage 2 LRT Projects and Related Matters report (ACS-2019-TSD-OTP-0001) |
| 6-Mar-19 | Council consideration and approval of the above-noted report |
| 29-Mar-19 | Financial Close (Commercial Close) |
| 2-Apr-19 | Signed Project Agreement |

Appendix C – Technical submission requirements

The technical evaluation committee assessed technical submission requirements as stated in the RFP which include the following:

General Technical Requirements, such as

- Project Management Plan
- Integrated Management System
- Environmental Management Plan
- Construction Communications and Stakeholder Engagement
- Works Schedule
- Risk Management Plan
- Systems Integration Management Plan
- Early Works Agreement

Design Requirements, such as:

- Civil and Guideway Design
- Utilities, Geotechnical, Drainage and Stormwater Management, Urban Design and Landscape Architecture
- Systems Design Submission
- Station Design Submission
- New Walkley Yard Design
- Vehicle Fleet Design
- Airport Link
- System Safety and Security Certification
- Dow's Lake Tunnel Design

Construction, such as

- Emergency Response Plan
- Traffic and Transit Management Plan and Construction Access Management Plan
- Construction Plan
- System Testing and Commissioning Plan
- Health and Safety Certification
- Mobility Matters Lanes

Maintenance and Rehabilitation, such as

- Maintenance & Rehabilitation Approach to Part 1 of Schedule 15-3 of the Project Agreement
- Maintenance & Rehabilitation Approach to Appendix A (Maintenance Performance Requirements) to Schedule 15-3 of the Project Agreement
- Maintenance & Rehabilitation Approach to Appendix B (Asset Preservation) to Schedule 15-3 of the Project Agreement
- Maintenance & Rehabilitation: Approach to Appendix C (Expiry Date Requirements) to Schedule 15-3 and Schedule 23 – Expiry Transition Procedure of the Project Agreement

Appendix D – Audit criteria

Audit Objective #1

Assess the openness, transparency and fairness of the Stage 2 Trillium Line RFQ / RFP documents.

Criteria:

- The RFQ process ensured that potential bidders obtained an equal chance at qualifying for the RFP through a transparent process
- The RFP process involved the appropriate level of expertise and oversight to ensure its strategy, requirements, and established evaluation process would result in an open, fair, and transparent process
- The roles and responsibilities established during the RFP process were well defined and communicated
- The RFP documents for this P3 project were developed using best practices (Infrastructure Ontario / Infrastructure Canada) and aligned with the project's need.
- The development of the RFP documents involved sufficient interactions with bidders, key stakeholders, and subject matter experts to assess its reasonableness
- The RFP evaluation criteria were clear and measurable

Audit Objective #2

Assess the compliance of the Stage 2 Trillium Line evaluation process against RFP documents and the established evaluation framework.

Criteria:

- The process utilized to select the evaluators resulted in an appropriate level of competency and experience
- The training provided to the members of the evaluation teams was sufficient for both experienced and inexperienced evaluators. In addition, the training addressed the particularities of a P3 design-build-finance project.
- The conflict of interest review was comprehensive and / or in accordance to best practices

- The completeness review was adequate and in accordance with the RFP documents
- The technical conformance review was adequate and in accordance with the RFP documents
- The technical evaluation was undertaken in compliance with the stated RFP criteria for both the initial consensus and the second consensus
- The technical evaluation team members were able to hold open, frank, and balanced discussions during both consensus processes
- The financial evaluation was performed in accordance with the RFP
- The BESC and ESC oversight of the bid consensus scores, and ultimately the ESC's decision to proceed and award the contract to SNC Lavalin was in accordance with the RFP and the Delegation of Authority (DoA)

Audit Objective #3

Assess the appropriateness of the DoA for Stage 2 Trillium Line Procurement as drafted by the City staff, and related disclosure to Council.

Criteria:

- The DoA approved by Council clearly communicated the delegation of authority for the Stage 2 Trillium Line, and identified the appropriate disclosure mechanism for the information to be disclosed (clarity, timelines, disclosures); and the timing of the information being presented to Council
- The reporting by staff to Council respected the DoA requirements, such as but not limited to Quarterly reporting; March 2019 report / memorandum on contract award; and responses provided to Council regarding contract award