

# **THE CITY OF EDMONTON**

## **DESIGN, BUILD, FINANCE OF THE VALLEY LINE WEST LIGHT RAIL TRANSIT PROJECT**

### **Request for Proposals Financial Proposals VLS-3**

**FAIRNESS MONITOR**

**LETTER REPORT**

**October 29, 2020**

**DESIGN, BUILD, FINANCE OF THE VALLEY LINE WEST LIGHT RAIL TRANSIT PROJECT**  
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**TO: Procurement Due Diligence Committee**

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**General**

This Fairness Report is specific to the final procurement phase (Financial Proposal (VLS-3)) of the multi-stage evaluation process utilized for the Design, Build, Finance of the Valley Line West Light Rail Transit Project (“Project”). The final procurement phase is described in detail in the Request for Proposals (RFP) No. 932410 issued by the City of Edmonton (“City”).

B. Larkin & Associates Ltd. and Owen D. Pawson Law Corporation (a joint venture) were appointed by the City of Edmonton on May 28, 2018 to provide Fairness Monitor services to the City for selected projects and were subsequently appointed as Fairness Monitor for the Valley Line West Light Rail Transit Project on December 17th, 2018. Our role as Fairness Monitor is to provide monitoring and oversight of the procurement process as an independent observer to ensure that the competitive selection process is transparent, fair and equitable. We do not validate the decision regarding the determination of the Preferred Proponent but we do provide assurance regarding the overall fairness of the evaluation process.

**Background**

After conclusion of the Sourcing Event (the initial phase of the procurement), each of the three shortlisted Respondents was determined to have: the capacity to design, build and partially finance the Project; suitable experience managing the commissioning and integration of LRT operating systems; demonstrated experience in raising the required private financing; and, demonstrated financial stability and capacity to undertake the Project and provide the required financing.

After the Sourcing Event shortlisting of the three Proponents, the Request for Proposals (RFP) for the Project was issued in March 2020. As noted, there was a multi-stage process implemented for the evaluation of each of the specific submissions required during the RFP phase. In lieu of conducting information sharing meetings at the beginning of the RFP, the City posted pre-recorded video files and slides providing technical detail and an overview of the Project Agreement and conducted a web-based interactive question period after providing sufficient time to review the presentation materials. There were subsequently two rounds of confidential collaborative meetings with the three Proponents (held virtually through video conferencing) and subsequent confidential meetings that the City held (again via video conference) with each Proponent concerning specific topics that were selected by the Proponents. Proponents also participated in eight utility and pipeline stakeholder meetings during this phase of the procurement.

The City responded to 814 Requests for Information (RFIs) submitted by the Proponents during the RFP phase of the procurement. These RFIs were approximately evenly split between the Proponents. The RFI process ended as of October 8, 2020 although the City was able to respond to RFIs submitted after that date in its discretion (and as permitted under the RFP).

***VLS-1 Phase***

The VLS-1 phase of the RFP stage of the procurement closed April 21, 2020. Proponents were consulted at the beginning of the RFP phase regarding impacts of the Covid-19 pandemic on

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their ability to respond to the RFP. The City subsequently extended the closing for the VLS-1 submission by two weeks. The VLS-1 required the Proponents to submit affirmation of their teams as they had been identified at the close of the Sourcing Event. In accordance with the RFP, the Proponents submitted that reaffirmation in response to the RFP criteria for VLS-1. All three Proponents then proceeded to develop their technical proposals. Technical submissions were received August 18, 2020.

#### ***VLS-2 Phase***

The City created 35 evaluation teams comprised of a combination of City staff, ConnectEd Transit Partnership and Ernst & Young (the process and financial advisor to the City). Team members were asked to consider each Proponent's technical submission against the full range of 35 topics identified in the draft Project Agreement. Those evaluation teams then considered and evaluated the technical submissions in accordance with the requirements of the draft Project Agreement on a "pass" or "fail" basis. The Instructions to Proponents of the RFP stated that, in order to achieve a "pass", a technical submission must demonstrate a good understanding and/or good probability of success when considered against the requirements of the Draft Project Agreement. During the evaluations, the evaluation teams issued 496 requests for clarifications (RFCs) to the Proponents through the Contact Person. Those RFCs were spread relatively evenly across all three Proponents. As the responses to those RFCs were received by the City, they were considered by the evaluation teams during their pass/fail evaluations of the submissions. Upon the conclusion of the evaluations of the technical proposals, all VLS-2 submissions were determined to achieve a "pass" as measured against the requirements of the draft Project Agreement. There were no "fails". Pursuant to the RFP, all three Proponents were then invited to develop and submit a Financial Proposal.

#### ***VLS-3 Phase***

As required by the RFP, Financial Proposals were to be submitted on October 27, 2020. At the end of this Financial Proposal (VLS-3) phase of the procurement, the Proponent with the lowest price Proposal (subject to certain conditions as outlined in the RFP) was to be recommended as the Preferred Proponent. That Proponent would then be invited to enter into negotiations with the City to conclude and sign the final Project Agreement for the design, construction and partial financing of the Project. Execution of the Project Agreement and financial close for the procurement is currently slated for December 23, 2020 (the "financial close long stop date").

#### **Confidentiality and Conflict of Interest**

In establishing evaluation teams for the various phases of the RFP including the Financial Proposal (VLS-3) phase, each potential team member and subject matter expert was required to complete both a confidentiality undertaking and an "obligation acknowledgement form". The confidentiality undertaking was intended to ensure the participants in the evaluation process did not disclose any information related to the evaluation process. The obligation acknowledgement form was intended to identify any relationships that participants in the evaluation process had with any of the Proponents or their team members or key individuals.

A Relationship Review Committee (RRC) was established for the Project and had the responsibility to review, investigate and suggest resolutions to manage any conflict of interest or unfair advantage issues or any other matters that may arise in relation to the implementation and

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administration of the procurement process. The RRC reviewed the obligation acknowledgement forms of all persons involved in the evaluation process to identify and address any perceived, potential or actual conflict of interest issue. This included the Financial Proposal (VLS-3) phase of the procurement process. The RRC also reviewed equivalent relationship disclosure forms that were completed by the three Proponents. The obligation acknowledgement forms were submitted to the RRC for vetting as a requirement for any of the Evaluation Team members or subject matter experts receiving submissions from the Proponents. This was a rigorous process. The RRC reviewed all conflict of interest disclosures from the three Proponents and the relationship disclosures from the Project Team personnel as well as consultants engaged in the evaluation process. As Fairness Monitor, we worked with the RRC during reviews of certain individuals. We observed that the RRC would identify concerns regarding the disclosed relationships and would, as necessary, require specific mitigation measures be undertaken before the subject person could have any involvement in the evaluation process.

### **Fairness Monitoring and Observations**

In advance of the Financial Proposal (VLS-3) Closing, the City created an Evaluation Team comprised of City staff and Ernst & Young.

The City provided a Final Interest Rate Setting Submission (IRSS) to the Proponents prior to submission of their Financial Proposals in order to provide interest rate fluctuation protection to the Proponents from the period from the date of issuance of the Final IRSS to Financial Close. This protection was required for the Proponents to develop a Financial Model for submission as part of their Financial Proposal. The information required for development by Proponents of their Financial Plan was comprehensively detailed in the RFP. The development of a Financial Model required each Proponent to make assumptions on a variety of matters including consistency of fees and costs, total capital cost, macro-economics, taxation, accounting policies, proposal development costs and base rates and credit spreads on debt. Proponents submitted their indicative Financing Plans on September 11, 2020 approximately six weeks prior to Financial Proposal (VLS-3) Closing Time for review and comment by the City. Those indicative Financing Plans reflected the financing plan that each Proponent intended to implement for the Project including comprehensive information about the Proponent's proposed financial structure and financial instruments.

The deadline for submission of Financial Proposals was 9:00 a.m. local time, October 27, 2020. The Instructions to Proponents of the RFP stated that the Financial Proposals were to be submitted to the City electronically - except for the Preferred Proponent Deposit (a letter of credit) that Proponents were to submit as part of their Financial Proposal. In accordance with the RFP, that letter of credit was to be delivered physically to the City. Two Financial Proposals were received (one Proponent withdrew voluntarily from the competitive selection process). We have been advised that the remaining two Proponents both submitted Financial Proposals, including the letters of credit that were properly transmitted and delivered in accordance with the RFP. Neither Financial Proposal was late.

The City conducted a completeness review and determined that both Proponents submitted Financial Proposals and letters of credit that met the mandatory criteria (submission on time; written in English). The City then electronically uploaded the Financial Proposals to a secure site for review by the Financial Evaluation Team and its advisors.

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Financial Proposals from each of the Proponents included: a final Financing Plan; a final Financial Model, a draft Project closing agenda (for Financial Close); a signed Early Works Agreement; a Financial Offer; the Preferred Proponent Deposit (noted above); certain reaffirmations and identified signed submission acknowledgement forms; and, resubmission of select Technical Proposal content. The resubmission of Technical Proposal content was optional while the final Financing Plan; final Financial Model, draft Project closing agenda and signed Early Works Agreement were provided for information. As noted above, the Financial Offer and the Preferred Proponent Deposit were mandatory and their submission was considered by the City on a “pass/fail” basis. In order to determine the Preferred Proponent, the RFP required the City to determine the lowest price Financial Offer. The Financial Offer for each Financial Proposal was calculated as the sum of the Total Capital Cost Amount and all Valued Items. The “Total Capital Cost Amount” provided by each Proponent was a detailed summary of the cost of 80 work breakdown items as those items were identified in the ITP and required by the Project Agreement. “Valued Items” were to be calculated as the sum of detailed costing of Target Lane Closure Costs, Target Transit Impact Costs, and Target Tree Compensation Value. Both Proponents submitted Financial Proposals consistent with the terms of the RFP.

The Evaluation Team then met to review the Financial Proposals and identify the lowest priced Financial Offer that was calculated in accordance with the process contained in RFP as described above. The lowest Financial Offer was then reviewed to ensure that it was not “abnormally low”. “Abnormally low” was described in the Instructions to Proponents as 20% lower than the next Financial Offer and less than an identified “risk-free cost estimate” which had been communicated to the Fairness Monitor prior to Closing. We confirm that the City provided that risk-free cost estimate to us prior to October 27. The lowest Financial Offer was not determined to be abnormally low. In addition, the Evaluation Team considered the affordability of the lowest Financial Offer given the capital budget approval and the overall Project budget. The lowest Financial Offer was considered to be “affordable”.

During our monitoring of the Financial Proposal Evaluation Team meeting, we observed that the members of the Evaluation Team had reviewed both of the Financial Proposals and were prepared to evaluate the Financial Offers based on the requirements of the RFP. We observed no partiality or bias during that meeting.

### **Conclusion**

Based on our Fairness Monitor activities including monitoring the communications between the City and Proponents, discussions and meetings with the Project team over the course of the RFP phase and our observations at the Evaluation Team meeting to discuss the Financial Proposals, it is our opinion that, the competitive selection process for the Financial Proposal (VLS-3) phase of the RFP for the Design, Build, Finance of the Valley Line West Light Rail Transit Project and the determination of the Preferred Proponent was conducted in a fair, open, transparent, consistent and unbiased manner. We are also of the opinion that the evaluation of the Financial Proposals was conducted in full accordance with the evaluation process and criteria established in the RFP.

We are satisfied that:

- the Project team consistently followed the requirements of the procurement process as that process was described in the Instructions to Proponents of the RFP;

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- the members of the Evaluation Team for the review of Financial Proposals followed the procurement and evaluation process described in the RFP and fairly applied the specified evaluation criteria; and
- where judgment and interpretation were allowed or required, the members of the Evaluation Team exercised reasonable judgment in a fair, unbiased and impartial manner.

We are satisfied that we have been provided with the appropriate access and information to render this fairness review concerning the Financial Proposal (VLS-3) stage of the procurement process for the Project.

Respectfully submitted by B. Larkin & Associates Ltd. and Owen D. Pawson Law Corporation (a joint venture),



Bill Larkin  
Fairness Monitor



Owen D. Pawson  
Fairness Monitor

**Dated this 29<sup>th</sup> day of October, 2020**