



**STAFF REPORT
ACTION REQUIRED**

Consolidated I&T Data Centre - P3 Canada Fund

Date:	January 16, 2012
To:	Government Management Committee
From:	Deputy City Manager & Chief Financial Officer
Wards:	All
Reference Number:	P:\2012\Internal Services\SP\gm12001sp (FS #14854)

SUMMARY

Funding for the construction of a Consolidated Data Centre was incorporated in the 2012 Recommended Capital Budget and is also included in the 2013-2021 Recommended Capital Plan for Information and Technology.

An opportunity has arisen to take advantage of a grant from the P3 Canada Fund for up to 25% of eligible costs if this project is procured through a public-private partnership. This report recommends that City Council endorse the use of a public-private partnership approach to procuring this facility if the City is successful in securing a grant from the P3 Canada Fund for 25% of the eligible costs.

This report also recommends that, if the grant is secured, Ontario Infrastructure and Lands Corporation (“Infrastructure Ontario”, also known as “IO”) be retained as the City's procurement lead in order to benefit from the experience IO has recently gained in leading the procurement, through a public-private partnership, of the Province's \$365 million data centre facility.

RECOMMENDATIONS

The Deputy City Manager & Chief Financial Officer recommends that:

1. Council endorse the use of a public-private-partnership ("P3") approach, in accordance with the requirements set out by the P3 Canada Fund, for the procurement of the Consolidated Data Centre project subject to:

- a. the City securing a grant from the P3 Canada Fund for 25% of the Consolidated Data Centre Project's eligible costs, and
 - b. a positive result to a Value for Money analysis, undertaken to compare a traditional project construction and delivery methodology, with a P3 methodology
2. Subject to Recommendation No.1 above, Council authorize the Deputy City Manager & Chief Financial Officer to negotiate and enter into an agreement with Ontario Infrastructure and Lands Corporation ("IO") under which:
 - a. IO would act as Commercial Procurement Lead for the delivery and construction of the Data Centre as set out in Appendix A at total fee not to exceed \$850,000
 - b. IO would retain the necessary additional external advisory expertise, as outlined in the body of this report, under separate amendments to the IO Agreement, as may be required to support the structure, scope definition, and preliminary due diligence for delivery of this project as a P3, at a cost not to exceed \$4.55 million, subject to the City retaining final approval authority
 - c. IO would be authorized to implement the P3 procurement process that leads to the best outcome for the City as long as the process remains competitive, transparent, fair and consistent with general procurement law.
3. Council direct staff to report back to Council prior to awarding the design, construction and delivery of the Data Centre to a successful P3 construction consortium
4. Council authorize the Deputy City Manager & Chief Financial Officer to negotiate and execute all necessary agreements, including any agreements with PPP Canada, and to provide any necessary indemnifications related to this matter, in a form that is satisfactory to the City Solicitor.

Financial Impact

Funding for the Consolidated Data Centre project, in the amount of \$114.520 million (gross) has been included in the 2012 Recommended Information & Technology Capital Budget and in the 2013-2021 Recommended Capital Plan.

This report recommends that an application be submitted to the P3 Canada Fund for a funding contribution equal to 25% of the project's eligible costs.

One of the principal conditions applied to grants from the P3 Canada Fund is that the project be procured through a public-private partnership ("P3"). IO is in the process of carrying out a preliminary Value for Money analysis. Early indications are that procurement through this approach will likely have a positive impact on net overall project costs (even in the absence of a grant from P3 Canada). Therefore, it is likely that

the combined impact of procurement through a P3, together with a contribution from the P3 Canada Fund, will result in a greater than 25% reduction in the City's costs associated with the project.

This report also recommends that IO be retained as commercial procurement lead, with a maximum total fee of \$850,000, and that IO be granted the authority to retain additional external advisory expertise, subject to City approval, with a total maximum cost of \$4.55 million. It is anticipated that these costs will be funded from the overall budget previously approved for the Data Centre project.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of February 24, 2011 (EX 3.3), Council approved the 2011 Information & Technology Capital Budget and 2012-2020 Capital Plan budget, which included construction of the first phase of a Data Centre for the City.

At the time, it was envisioned that the Data Centre would be built in two phases; the first of which would involve the construction of the full building shell (total gross floor area of 129,298 square feet) along with the components that would support the use of 18,650 square feet for raised floor computer server operations. The remainder of the raised floor data hall area was intended to be completed in a subsequent construction phase, approximately 8 – 10 years later.

ISSUE BACKGROUND

Following Council approval of the budget for this project, staff became aware of the project's potential eligibility for a substantial funding contribution from the P3 Canada Fund.

The P3 Canada Fund has been established by PPP Canada (a Crown corporation created by the Federal government) to provide grants which will encourage various public entities to consider a public-private partnership approach towards the procurement of new infrastructure projects. Grant amounts are limited to a maximum of 25% of a project's construction and delivery costs. It is important to note that under a P3 approach, the City would continue to own the infrastructure, and therefore, does not involve a privatization of assets.

In June, 2011 City staff submitted an application to PPP Canada requesting that the Consolidated Data Centre project be considered for eligibility under the P3 Canada Fund. In order to lever the maximum contribution from the Fund, the City's application was based on a full, single-phase, build-out of the facility rather than on the two-phase approach indicated in the original budget submission for the project.

City staff were informed by PPP Canada in September, 2011 that the City's Data Centre project had passed through the initial project screening process. However, as PPP Canada had determined that the Project does not fully meet all of the Fund criteria, PPP Canada staff will now need to take the Project Information through a federal "Memorandum to Cabinet" process to seek an exemption decision on project eligibility.

Before a final decision can be made by PPP Canada, the City will also need to submit a business plan which addresses the following:

- Project description;
- Project feasibility;
- Project goals, social benefits, economic benefits;
- Procurement analysis, including how this project will be delivered as a P3;
- (P3) Market Sounding;
- (P3) Value for Money Analysis;
- Project funding;
- Procurement Strategy;
- Project Team, Project Governance Structure; and
- Project Implementation Plan, Timeline.

IO (a Crown corporation created by the Province of Ontario that has focused on the alternative project delivery of various provincial and other Ontario public sector capital project initiatives) has been assisting City staff, at no cost, in the development of this business case. Through this exercise, the City has been benefiting from IO's experience in undertaking the initial stages of background investigation, performing Value for Money analyses, undertaking market soundings, and identifying feasible P3 procurement strategies.

In order to meet deadlines for completion of the overall project by the 1st quarter of 2016, a business case will need to be submitted to PPP Canada in early 2012, so the Project can be considered by the PPP Canada Board at its meeting of March 2012.

COMMENTS

Structuring the Consolidated Data Centre Project as a Public-Private Partnership

PPP Canada has indicated that, in order to be eligible for a contribution from the P3 Canada Fund, a project needs to be structured so that there will be "meaningful private sector involvement" in at least two of the four project elements described below:

- Design
- Build
- Finance
- Operate (this can be either maintenance or operation of the infrastructure)

Also, PPP Canada requires that one of the four project elements must include either Operate/Maintain, or Finance. PPP Canada defines "meaningful private sector involvement" as the private sector having all or almost all of the responsibility for carrying out that element except in the case of finance, in which case the private sector is to be entirely responsible for arranging private financing during the construction or operations/maintenance of the facility. It should be noted that consideration of various P3 models may raise labour trade considerations. The details will be provided to Council, in camera, as required.

City IT staff have indicated that the day-to-day operations of the proposed Data Centre must continue to be carried out by City staff in order to ensure the security and integrity of the City's data and computer systems. The design element, though, was considered to be an essential element to be managed by the private sector in order to meet project deadlines (the current design is incomplete) and to gain the maximum benefit from private sector design innovation.

As a result, the potential models were:

- Design, Build, Finance (DBF)
- Design, Build, Finance, Maintain (DBFM)

However, PPP Canada has indicated a strong preference for a model in which the private partner has a long-term relationship with the project through maintenance of the building so that the private partner is provided with a strong incentive for the best possible design and construction quality.

Therefore, the assessment of an alternative project delivery structure has focused on the DBFM model. City staff are currently working with IO to complete a detailed "Value for Money" assessments which compare the forecasted financial outcomes under the DBFM model with the forecast outcome under the traditional Design, Bid, Build project delivery model.

The Value for Money ("VFM") assessment attempts to quantify the value of the risks retained by the City under each model. In order to achieve a positive VFM, the value of the reduction in risks achieved through a P3 needs to be greater than the total value of certain cost elements which are typically larger under a P3 model such as:

- Financing Spreads (financing costs are typically higher for the private partner as they reflect the risk taken on by the private partners)
- Risk Premium (e.g. contractors charge additional premiums to reflect the additional risks transferred to the private partners)
- Various Ancillary and Transaction Costs (e.g. additional 3rd party advisory costs for the P3 procurement process, additional costs experienced by the private partner in setting up a special purpose project entity made up of the various specialist firms)

On a preliminary basis, the VFM analysis has indicated a positive outcome for the DBFM model relative to the traditional project delivery model.

As part of the P3 delivery process, the VFM analysis will be updated two more times with the final VFM analysis performed on the actual firm bid from the preferred proponent which will be presented to Council prior to award.

Infrastructure Ontario as Commercial Procurement lead

As discussed above, IO has been aiding City staff with the Value for Money assessment of the various P3 project delivery models.

This report recommends that the City also retain the services of IO as Commercial Procurement Lead, on a sole source basis, for the purposes of undertaking the delivery and construction of the Data Centre as a P3, subject to receiving a funding commitment under the P3 Canada Fund.

Under this arrangement, IO's role would be to advise and guide the City throughout the P3 procurement phase, from conception through to commercial and financial close. In addition, IO would also engage, and manage the external advisory expertise as required for the purposes of this project as described below. Finally, IO would review and comment on project management documentation, and provide project management oversight during the design and construction phase. The scope of services that would be offered by IO is summarized in Appendix A to this report.

Staff are proposing that IO be retained for this role for the following reasons:

- IO has successfully carried out this role for the delivery of the \$365 million Guelph Data Centre Project for the Ministry of Government Services (this project, which was implemented under a Design, Build, Finance and Maintain model, is the most similar project in Ontario to the City's proposed Consolidated Data Centre project)
- IO has extensive experience with the delivery of large scale public service infrastructure P3s in Ontario
- IO has a proven "Alternative Financing and Procurement" methodology, which will improve the likelihood that the P3 structure will transfer project schedule and cost risks from the City to the private sector in an optimal manner
- Availability of IO's existing P3 template procurement documentation and project agreement, which will be customized for City use
- Potential private sector proponents are already familiar with IO, its processes, and documents – this will promote the broadest possible level of interest amongst potential private partners
- IO's participation would be viewed favourably by PPP Canada, improving the likelihood of a favourable response to the City's application to the P3 Canada Fund

IO has agreed to carry out the procurement lead role for the City on a cost recovery basis with its total fee capped at a maximum amount of \$850,000.

Appendix 'B' provides a description of the MOU that would be entered into by the City and IO, as well as the proposed steps in the Request for Qualifications and Request for Proposals.

Project Expert Advisory Support

Additional external advisory expertise will be required to support the project procurement process. The nature of the advisory support to be retained will depend on the project specifications, as they are determined, and will likely include the advisors listed in Table 1 below:

Table 1 – External Advisors Required to Support Project Procurement Process	
Type of Advisor	Description
Planning, Design & Compliance Advisor	<ul style="list-style-type: none"> provides planning, design and construction compliance services from schematic design stage to project completion, technical input into preparing bid documents, part of evaluation team for bid proposals
Legal Advisor	<ul style="list-style-type: none"> external legal advisor with specific experience with P3s
Fairness Monitor	<ul style="list-style-type: none"> monitors Infrastructure Ontario’s conduct of its procurement process to ensure that it is in accordance with the relevant procurement document (RFQ or RFP), from proponent submission to the selection of a preferred proponent
Process/Transaction Advisor	<ul style="list-style-type: none"> assists in the procurement phase on process and protocol
Financial advisor	<ul style="list-style-type: none"> provides strategic financial advice, value for money analyses
Cost Consultant	<ul style="list-style-type: none"> develops pricing estimates as required to properly evaluate the financial component of the bids
Facilities Management Advisor	<ul style="list-style-type: none"> advisory services include output specification, advice throughout bidder procurement and negotiation process
Environmental Consultant	<ul style="list-style-type: none"> advisory services include output specification, advice throughout bidder procurement and negotiation process

Geotechnical Consultant	<ul style="list-style-type: none"> • advisory services which include output specification, advice throughout bidder procurement and negotiation process
Independent Certifier	<ul style="list-style-type: none"> • ensures that construction milestones have been met and that construction has been delivered according to the City's requirements

Given IO's experience with managing this type of P3 procurement process, this report recommends that IO undertake the procurement process for the necessary specialist advisors. However, the City Solicitor will retain responsibility for procuring the necessary external legal expertise, and will have available the advice of IO as a resource. Where appropriate, IO's Vendor of Record lists will be utilized.

Under this arrangement, IO and the City will agree on the scope of work for each external advisor and IO and the City will agree on the process to be used by IO to procure the external advisors. IO will provide the City with a summary of the procurement activity, detailing the calls issued, bids received, and award details (firm and value). City staff will participate on the selection teams and have final approval rights.

Once each advisor has been selected, the City and IO will execute an amendment to the IO agreement with the City with respect to the scope of work and value of that advisor, to allow the City to reimburse IO for the cost of the external advisors. As part of IO's role, it will manage the advisors on behalf of the City with respect to their roles on this project. The estimated total cost for the procurement phase of additional external expertise is \$5.0 million, including the external legal expertise to be retained by the City Solicitor, and is included in the capital cost of the project. Further amendments to the IO Agreement will be required during the implementation phase of the project.

Next Steps

Pending a successful outcome to the federal P3 fund processes, IO will undertake the bid process to select a P3 partner, utilizing all of the external and internal expertise to do so. This is a complex form of procurement which may need to vary from standard City procedures in order to achieve a successful and timely outcome. This report recommends that IO be granted the authority to implement the procurement process that is most likely to lead to the best outcome for the City as long as the process remains competitive, transparent, fair and consistent with general procurement law.

There may be other agreements or undertakings which must be signed in order for the procurement process to move forward. This report seeks Council's approval to delegate to the Deputy City Manager & Chief Financial Officer the authority to negotiate and sign any such documentation, provided that it is in a form satisfactory to the City Solicitor.

Subsequent to undertaking the P3 bid process, to be led by IO, City staff will report back to Council with the pertinent details, and to request further approvals as may be required

to award the P3 contract to a private sector proponent for the construction and delivery of the Project and to proceed to the next phase of project delivery.

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SIGNATURE

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ATTACHMENTS

Appendix A: Infrastructure Ontario – Scope of Services Summary

Appendix B: Description of Memorandum of Understanding, Request for Qualifications,
Request for Proposals

APPENDIX A

Infrastructure Ontario – Scope of Services Summary

As Commercial Procurement Lead for the Data Centre project, IO will:

- work with City staff on an ongoing basis, providing the City with financial advice, analysis, oversight and guidance throughout the entire procurement process;
- assign dedicated IO staff to the project, and make available other internal resources as required;
- advise and guide the P3 procurement process from conception through to the implementation phase;
- provide IO best-practice documentation and reporting standards;
- supply IO P3 template procurement documentation and work with the City to customize documents for the project, including
 - Request for Qualifications (RFQ),
 - Request for Proposals (RFP),
 - Project Agreement;
- provide IO template project control documents, and customize for Data Centre Project, including
 - a "Project Charter", the purpose of which is to formalize the project objectives, define the project scope, and define the roles and responsibilities of IO and the City,
 - a "Project Implementation Plan"
- provide enhanced support to the City for negotiations with preferred proponent(s);
- procure external professional advisors as required to support a P3 transaction, using IO's Vendors of Record lists where possible. In support of this aspect, IO will provide a scope of services for each advisory role, validate and benchmark advisor costs;
- manage and coordinate external advisors, manage advisory costs within the approved project budget;
- monitor overall project benchmarks for scope, budget, schedule and risk control;
- track construction market trends and general contractor/trade exposure reports; and
- provide communications resource to the City for the project, offering assistance with drafting of press releases, external communications, and media inquiries.

Pre-Transaction Phase

During this phase, IO will:

- manage project due diligence, including
 - reviewing and confirming the project schedule and budget, which is to be verified by an independent cost consultant, to ensure that it is achievable and meets the needs of the City,

- working with the City to the define the project scope,
 - working with the City to coordinate enabling works, if any,
 - reviewing property analysis to identify constraints,
 - working with City to determine requirements for permits, licenses and approvals,
 - reviewing site investigations (geotechnical, environmental contamination, archaeological, heritage, etc.) to identify potential risks, constraints or requirements prior to construction,
 - determining the level of design required for each component of the project prior to release of RFP,
 - reviewing value engineering opportunities,
 - preparing Value for Money and risk analyses;
- work with the City and an external Planning, Design & Compliance Advisor, to manage the development of the project specific output specifications; and
 - manage the development and drafting of Request for Qualifications.

Transaction Phase

During this phase, IO will:

- manage the development of RFP;
- provide advice and assistance in relation to the Project Agreement, which will be included in the RFP;
- issue RFQ and RFP seeking a private-sector project consortium;
- establish and manage a virtual project data room;
- manage requests and responses to bidders for information or clarifications, and issue RFP addenda;
- manage and participate in "commercially confidential meetings" and design meetings with proponents;
- conduct completeness reviews on bid submissions (RFQ, RFP);
- lead RFQ and RFP evaluations, consensus meetings, and the selection of preferred proponent
 - ensure that the design and construction plans meet project specifications,
 - review and undertake analysis of term sheets, credit agreements, financial models, innovations, and detailed understanding of the proposed financing solution,
 - evaluate and validate the financial aspects of the transaction, including Value for Money analyses, project finance structure, financial model,
 - ensure that recommended financing solution is optimal;
- provide the City with financial advice, analysis, oversight and guidance throughout the entire procurement process;
- monitor financial and debt capital markets for trends, issues, and concerns raised by the investors, lenders, underwriters; and
- perform standardized/comprehensive rate set protocol to achieve financial close

- ensure that lenders and equity investors do not profit from movements in the financial marketplace between RFP submission and financial close (e.g. clearing spreads).

Implementation Phase

During this phase, IO will

- provide management oversight during construction, manage City-approved change orders, and draft monthly construction monitoring reports for the City;
- Monitor market trends to allow the city facility to keep current with evolving best practices, and provide support for any potential requested contract changes; and
- ensure that pricing and financial modeling issues are monitored, with full savings flowing back to the City if errors are found.

For clarity, the City will direct the successful proponent during the Design and Construction Implementation Phase.

APPENDIX B

Descriptions of Memorandum of Understanding, Request for Qualifications, Request for Proposals

Memorandum of Understanding (MOU):

- is the core agreement between IO and the City
- addresses project governance, clarifies roles, relationship, mutual expectations, accountability mechanisms
- describes basic principles, key responsibilities, costs, approvals, dispute resolution mechanisms, and the advisory procurement process
- to be drafted and executed after Council approval is received

Request for Qualifications (RFQ)

- is the first step in the procurement process for selecting a consortium to deliver the project
- is designed to evaluate both the technical and financial capabilities of bidders
- applications to be submitted must demonstrate a sufficient level of experience and expertise in defined evaluation categories
- RFQ submissions will be evaluated to pre-qualify project teams with design, construction and maintenance capabilities, experience and personnel, the financial strength to deliver the project, and where applicable, facilities management capabilities
- consortia teams are short-listed

Request for Proposals (RFP)

- short-listed consortia teams are invited to respond
- RFP document will include project Output Specifications, and Project Agreement
- pre-developed detailed framework will be used by IO and City staff to evaluate the technical and financial bid submissions for the purposes of identifying a preferred proponent
- Commercial Close Target Date- timing of execution of the finalized Project Agreement
- Financial Close Target Date- occurs simultaneously with Commercial Close, and described when closing conditions are satisfied, and remaining project documents are signed