

Request for Approval to Apply Proposal Fees and Break Fees on Gardiner Expressway Rehabilitation Section 4, Grand Magazine Street to York Street

Date: November 25, 2025

To: General Government Committee

From: Chief Engineer and Executive Director, Engineering and Construction Services and Chief Procurement Officer, Purchasing and Materials Management

Wards: Ward 10 (Spadina-Fort York)

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report contains commercial and financial information that belongs to the City of Toronto and has monetary value or potential monetary value.

SUMMARY

The purpose of this report is to recommend to City Council the use of proposal and break fee mechanisms in the procurement for Gardiner Expressway Rehabilitation Section 4. Proposal fees are offered to partially offset the cost of competing in the Request for Proposal procurement process and are paid to each unsuccessful proponent upon confirmation of their compliance with set criteria, including a compliant technical proposal submission (“Proposal Fee”). Break fees are similarly meant to partially offset proponent costs, but they are made when a procurement is cancelled before it is awarded (“Break Fee”). The amount of the Break Fee is pro-rated based on the timing of the cancellation, to reflect the amount of work completed. These mechanisms were previously authorized by Council and used on the procurement for Gardiner Section 2 - Dufferin Street to Strachan Avenue, a Design-Build project that is nearing the end of the construction phase.

The City’s Owner’s Engineer and Technical Advisor, Stantec Consulting Ltd., is currently advancing the design of Gardiner Section 4. Based on the current level of design and engineering completed, it is expected that Gardiner Section 4 will be delivered in two parts. Part 1: Grand Magazine to Spadina Avenue and Part 2: Spadina Avenue to York Street. The two-stage procurement for Part 1 and the subject of this report is targeted to begin with a Request for Qualifications in early 2026, followed by the Request for Proposal phase to

which the Proposal Fee or Break Fee would apply. It is expected that construction will begin in 2027.

The Design-Build delivery method passes construction risk to the contractor and encourages innovative construction methods to achieve the City's goals for the project. This method contributed to the successful delivery of Gardiner Section 2.

In order for the City to evaluate the design element of proposals, proponents will be required to do significant design work (up to 60%) throughout the Request for Proposal procurement process. Qualified bidders capable of undertaking such projects expect Proposal Fees to partially compensate unsuccessful proponents for the effort expended on their proposal preparation. Similarly, a pro-rated Break Fee would also be expected in the unlikely event that the procurement is cancelled prior to contract award.

The up-front cost to the City of such fees is justified by, among other things, the quality of proponents that would be willing to bid on the project, the progression of design through the procurement process and robust participation by proponents, as well as the benefits of shifting the design risk from the City to the successful proponent.

RECOMMENDATIONS

The Chief Engineer and Executive Director, Engineering and Construction Services and the Chief Procurement Officer, Purchasing and Materials Management recommend that:

1. City Council authorize the Chief Engineer and Executive Director, Engineering and Construction Services and the Chief Procurement Officer, Purchasing and Materials Management to apply Proposal Fees and Break Fees to the Design-Build procurement for the Gardiner Expressway Rehabilitation Project - Section 4 (Part 1), based on the conditions set out in Appendix A and Confidential Attachment 1.
2. City Council directs that Confidential Attachment 1 remain confidential in its entirety, until the procurement processes for all sections of the Gardiner Expressway Rehabilitation Project are complete, as it contains commercial and financial information that belongs to the City of Toronto and has monetary value or potential monetary value.

FINANCIAL IMPACT

Funding for Gardiner Section 4 (Part 1) is available in the 2025-2034 Approved Capital Budget and Plan for Transportation Services and is inclusive of the Proposal Fees for the unsuccessful proponents, or Break Fees for all proponents (in the event a procurement is cancelled).

On December 13, 2023, City Council approved in principle the Ontario-Toronto New Deal, which includes a provincial commitment to upload the Gardiner and the Don Valley Parkway to the Government of Ontario, subject to a due diligence review still underway. As

part of the New Deal, the Province has provided funding for current and future operating and capital expenses related to both the Gardiner and Don Valley Parkway.

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

DECISION HISTORY

On September 17, 2024, by the authority of General Government Committee, the Chief Engineer and Executive Director, Engineering and Construction Services was authorized to enter into an agreement with Stantec Consulting Ltd. to provide Owner's Engineer and Technical Advisor services for Gardiner Section 4. A copy of the General Government Committee Decision Document can be found at:

<https://secure.toronto.ca/council/agenda-item.do?item=2024.GG16.8>

On December 13, 14 and 15, 2023, City Council approved in principle the terms of the [Ontario-Toronto New Deal Working Group Term Sheet](#) and authorized the City Manager, the Chief Financial Officer and Treasurer, and other staff as required, to continue discussions with the Government of Ontario and to take the necessary actions to implement the Core Commitments. A copy of the City Council Decision Document can be found at:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.CC13.2>

On February 2 and 3, 2022, by the authority of City Council, the Chief Engineer and Executive Director, Engineering and Construction Services and the Chief Procurement Officer, Purchasing and Materials Management were authorized to apply Proposal Fee and Break Fee to the Design-Build procurements for the Gardiner Sections 2 and 3. A copy of the City Council Decision Document can be found at:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.IE27.3> and a copy of the Report for Action can be found at:

<https://www.toronto.ca/legdocs/mmis/2022/ie/bgrd/backgroundfile-174672.pdf>

On December 13, 2016, by the authority of City Council, the New Implementation Approach for the F.G. Gardiner Expressway Revised Strategic Rehabilitation Plan was adopted. A copy of the City Council Decision Document can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX20.14>

On September 30, 2015, by the authority of City Council, the F.G. Gardiner Expressway Strategic Rehabilitation Plan Procurement Strategy was adopted. A copy of the City Council Decision Document can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX8.12>

On April 1, 2014, by the authority of City Council, the Strategic Plan for the Rehabilitation of the F.G. Gardiner Expressway was adopted. A copy of the City Council Decision Document can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PW29.1>

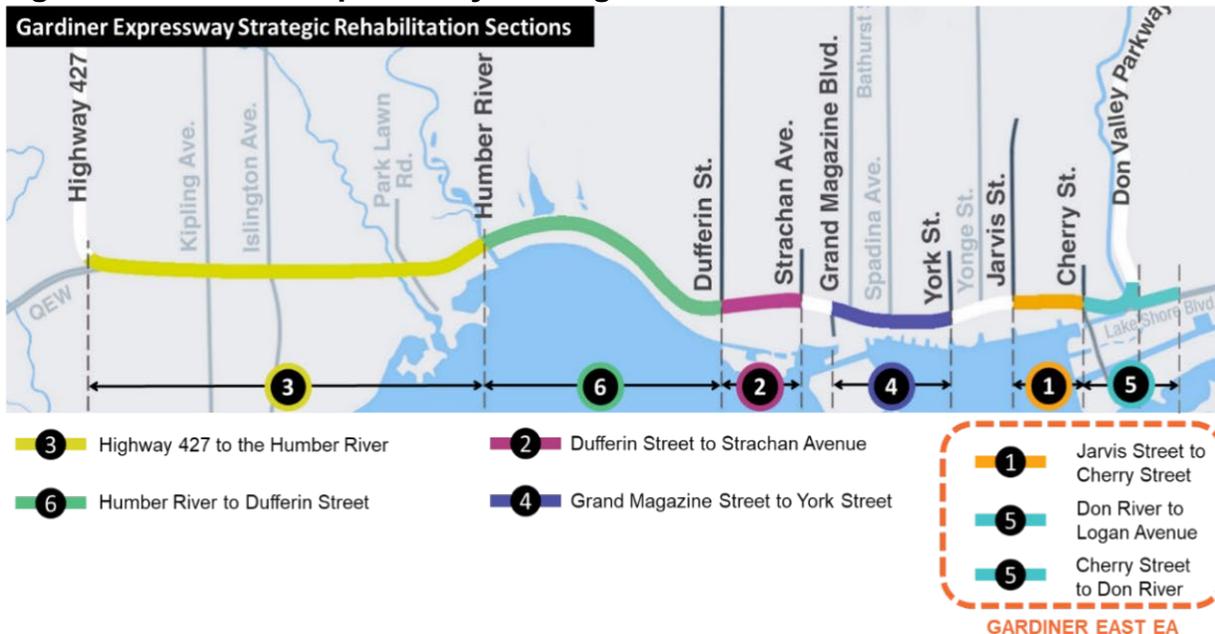
COMMENTS

Background

The F.G. Gardiner Expressway is more than 60 years old and is undergoing critical rehabilitation as part of a Strategic Rehabilitation Plan adopted in December 2016. Drawing on detailed investigations and condition assessment data for both the at-grade and elevated sections of the Expressway, the Strategic Rehabilitation Plan consists of six separate complex projects. Figure 1 shows the projects in the Strategic Plan.

Gardiner Section 1, from Jarvis Street to Cherry Street was completed in 2021 and Gardiner Section 2, from Dufferin Street to Strachan Avenue, and Gardiner Section 3, from Hwy 427 to Humber River are currently under construction.

Figure 1: Gardiner Expressway Strategic Rehabilitation Plan Sections



Procurement Options for Large and Complex Construction Projects

The Engineering and Construction Services Division traditionally delivers its capital projects using a Design-Bid-Build model. Using this model, engineering design and construction services are procured separately, in a sequential manner. Typically, the services of a consulting engineering firm are procured first, to develop a detailed engineering design and construction tender package (drawings and specifications) for the project. Contractors then bid on the tender package and the construction of the project is awarded to a qualified construction company with the lowest priced bid. In the Design-Bid-Build model the City assumes many of the risks associated with engineering design. These risks increase with the project size and complexity as well as other factors such as unknown subsurface conditions, proximity of other projects, conflicts with site constraints, and constructability issues which may have been overlooked in the design.

An alternate delivery model, referred to as Design-Build, is often utilized on large and complex construction projects to reduce the amount of risk carried by the project owner. Design-Build projects can also reduce the overall project cost and leads to a decrease in the overall project duration from design to construction completion. In a Design-Build delivery model, the owner typically pre-qualifies three (3) Design-Build Teams consisting of contractors and consulting engineers based on the Teams' experience, expertise, and demonstrated ability to deliver projects of a similar scale and complexity. Each of the Design-Build Teams work to prepare a preliminary design (typically at the 30% level) with an associated construction schedule and cost. Due to the competitiveness of the bidding process, each of the three Design-Build Teams incorporate design and construction innovation into their proposals to reduce the overall construction schedule and project cost. For projects involving the rehabilitation of the Gardiner, where traffic impacts are significant, the proposed construction schedules and lane closure durations will be weighted heavily in the overall evaluation of the proposals received.

This approach provides for an opportunity to reduce the overall project schedule, because the engineering design and construction is the responsibility of a single Design-Build Team and, therefore, construction can begin in advance of having all the engineering design work completed. Additionally, because of the competitiveness in the bidding process, innovations in design and construction techniques can further reduce the construction schedule.

Proposal Fees on Design-Build Procurements

During the procurement phase of a large-scale Design-Build project, each pre-qualified Design-Build Team works for approximately eight (8) to ten (10) months to prepare a proposal submission in response to the Request for Proposal (RFP). The City intends to pre-qualify three Design-Build Teams to participate in the procurement process for Gardiner Section 4 (Part 1). The consulting engineers on each pre-qualified team will make significant efforts completing structural analyses and calculations, preparing engineering drawings, developing staging and traffic management plans, as well as working with experts on the means and methods for construction. Engineers and constructability experts will work to develop innovative solutions to reduce the construction schedule and bid price. The Design-Build Teams also participate in a series of commercially confidential and design presentation meetings with the City while the RFP is in market.

Given the level of effort and costs expended by the Design-Build Teams in the preparation of their bid submissions, Proposal Fees are now an industry standard to attract top-tier Design-Build Teams to participate in this type of procurement process for large scale projects. Proposal Fees are typically offered as a percentage of the estimated capital construction cost, depending on project complexity and market conditions at the time of procurement. Confidential Attachment 1 provides a summary of the Proposal Fees estimated to be paid to the unsuccessful proponents on Gardiner Section 4 (Part 1).

Further, City staff conducted a market sounding for GS2 in June 2021, which included eight (8) prominent construction companies with a track record of delivering large scale construction projects in the region. Proposal Fees were identified by the majority of the companies as an important determining factor when making a decision to participate in a Design-Build procurement process. In particular, the construction companies indicated that

top tier consulting engineering companies will not join a Design-Build Team to participate in the procurement process without a portion of their effort being compensated through Proposal Fees. For GS2, the City approved and paid a Proposal Fee to the unsuccessful proponent.

Current market conditions further exacerbate the issue as the volume of available work in the region, including work associated with Provincial Transit Expansion, has grown exponentially. Top tier consulting engineers have ample choice regarding which major projects they choose to pursue. Many of the large Provincial projects are expected to follow a Design-Build model, and the use of Proposal Fees is anticipated to be standard practice in these procurements. Examples of recent projects in the region that have utilized a Design-Build procurement model with Proposal Fees are presented in Table 1.

Table 1: Examples of Regional Large-Scale Projects which included Proposal Fees in a Design-Build Procurement Model

Project	Approximate Value
GS2 - Dufferin Street to Strachan Avenue	\$300 million
GO Rail Expansion - Davenport Diamond Rail Grade Separation	\$175 million
GO Rail Expansion - Kipling Bus Terminal	\$73 million
Cortellucci Vaughan Hospital (formerly Mackenzie Vaughan Hospital)	\$1.3 billion
Sheridan College Hazel McCallion Campus Expansion	\$67 million
Highway 427 Expansion	\$616 million
QEW/Credit River Improvement Project	\$314 million
Finch West Light Rail Transit	\$2.5 billion

Break Fees on Design-Build Procurements

If a Design-Build project is cancelled during the procurement process, the pre-qualified Design-Build Teams may have expended a significant level of effort but will not have reached the proposal submission stage that would qualify them for a Proposal Fee payment. In these scenarios, each of the participating Design-Build Teams are offered Break Fees to partially offset their incurred costs. Break Fees are typically of similar value to the Proposal Fees and payment is pro-rated depending on the timing of the cancellation. Design-Build Teams would be paid either a Proposal Fee or Break Fee, but not both.

Break Fees are now considered an industry standard. Given the political nature of the Gardiner rehabilitation projects, top-tier Design-Build teams may choose not to participate in the procurement processes if Break Fees are not offered. Confidential Attachment 1

provides a summary of the Break Fees estimated to be paid to the proponents if GS4 (Part 1) is cancelled during the procurement process.

Procurement Timing for Gardiner Section 4 Part 1

The elevated portion of the Gardiner between Grand Magazine and York Street has reached the end of its service life. Based on the current level of design and engineering completed, it is expected that Gardiner Section 4 will be delivered in two parts. Part 1 construction is expected to start in 2027, and Part 2 construction is expected to start in 2030, after the completion of construction for GS5. Advancing the deck replacement of GS4 (Part 1) is essential to ensure continued public safety and to avoid the cost of interim repairs.

The first stage of the procurement process for GS4 (Part 1) requires issuing a Request for Qualifications (“RFQ”). Responses to the RFQ will allow for the City to select the top three (3) Design-Build Teams that will be invited to participate in the RFP procurement process. The RFQ document will need to identify the use of Proposal Fees and Break Fees for the project to ensure that top-tier teams elect to participate in the procurement process. Engineering and Construction Services is planning to issue the RFQ to commence the procurement process in Q1 of 2026. Appendix A sets out the conditions for the Proposal Fee and Break Fees and how they would be used in the procurement for GS4 (Part 1).

CONTACT

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SIGNATURE

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ATTACHMENTS

Appendix A - Proposal Fee and Break Fee Conditions for GS4 (Part 1)

Confidential Attachment 1 - Proposal Fee and Break Fee Estimated Values for GS4 (Part 1)