



## Hamilton LRT bidders pulled back on participating months before cancellation, internal documents show

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Mon., Jan. 6, 2020 *timer* 8 min. read

The procurement for the Hamilton LRT was in trouble months before the Ontario Progressive Conservative government cancelled the transit project citing ballooning costs, with two of the three groups that had been shortlisted to bid on the line declining to participate in the process, and one major construction company pulling out altogether, according to internal Metrolinx documents.

The documents, which have not been made public but were obtained by the Star, show that in the run-up to the Ontario government pulling the plug on the LRT on Dec. 16, two of the consortia bidding on the project through a public-private partnership model cited concerns about a potential lack of provincial and municipal support for the line as a primary reason they weren't taking part.

Both Hamilton Mayor Fred Eisenberger and the city's LRT director, Kris Jacobson, said they were unaware of the procurement problems.

"It was unknown to me. It still doesn't make sense to me," said the mayor, who has been a strong supporter of the LRT. "My understanding to date is that as of the time they cancelled the project, all three bidders were in play and active."

Metrolinx is the arms-length provincial agency in charge of transit for the GTA.

Jacobson, who fronted the city's involvement in the Metrolinx-led project, said pauses and changes to large, "messy" multinational procurement processes are not uncommon. But the suggestion that two consortiums had stopped "engaging" in the process, or that one large construction partner had dropped out, was news to the city.

"We had not received any formal communication from the province that any of the partners had changed," Jacobson said.

Caitlin Clark, a spokesperson for Transportation Minister Caroline Mulroney, blamed the procurement problems on the previous Ontario Liberal government, which launched the LRT project.

“The challenges in the process developed by the previous government demonstrate why our government is committed to doing things differently. Our government is committed to delivering major transit projects better and faster,” she said.

Clark said that publicly revealing the “challenges” with the procurement would have “jeopardize(d) the commercial integrity of the procurement process,” but Mulroney “delivered an update to Mayor Eisenberger on procurement challenges and escalating costs in September 2019.”

In April 2018, the provincial government issued a request for proposals to design, build, finance, operate and maintain the LRT to three shortlisted groups of companies: Mobilinx, CityLine Transit Group and Ei8ht Transit.

But according to the Metrolinx documents, which include sections of reports dating from the fall of last year tracking the status of the LRT, CityLine and Ei8ht were “not actively engaging” in the process.

The groups cited “concerns around municipal and provincial support,” a lack of a “break fee” in the proposed LRT contract, and problems related to being asked to supply vehicles for the line.

A break fee is a payment issued as compensation for a broken contract. The fact the bidders wanted one included in the LRT deal indicates they believed there was a likelihood the project could be cancelled midstream.

Concerns among the bidding consortia were running so high that one of the principal team members of the Ei8ht Transit group, construction giant EllisDon, withdrew from the process completely in May 2019, according to the documents.

The other leading partners in Ei8ht — engineering firm Fluor and vehicle manufacturer Bombardier — attempted to enlist a replacement for EllisDon, but according to the documents they had “great difficulty in finding a suitable replacement” and were considering pulling out as well.

The documents state the consortium was planning to make a decision about whether to officially withdraw from the procurement process by mid-November. It’s not clear whether they made that decision before the LRT was cancelled.

A spokesperson for Bombardier said the company couldn’t comment on a procurement process, and none of the other leading members of Ei8ht or CityLine responded to questions Monday.

In an effort to alleviate the bidders’ concerns, the government agreed on Oct. 11 to add a break fee, the documents show. A little more than two months later, the province cancelled the LRT.

The province confirmed break fees would be paid as a result of the cancellation, but declined to say how much they would cost, citing the need to protect future procurements. Such fees are typically in the millions of dollars.

**Andy Manahan, executive director of the Residential and Civil Construction Alliance of Ontario, which represents labour and construction groups across the province, said he couldn't speak directly to the case of the Hamilton LRT. But he said bidders' reluctance to engage in a procurement could be a sign of problems with the public-private partnership (P3s) model, which the province plans to use for other major GTA transit projects.**

Under a P3, a government pays a private entity to deliver a project, on the condition the private company pays for any cost overruns or delays. The model has become popular with governments because its intention is to shift risk to the private sector and guarantee taxpayers don't foot the bill for unforeseen costs.

“What that kind of reasoning ignores is that the risk transfer has to be fair, and if it's not balanced then the private sector will tend to shy away,” Manahan said.

The documents don't spell out specific reasons the companies were concerned about a lack of political support for the LRT. But uncertainty had swirled around the Hamilton project for years.

After a contentious debate, Hamilton city council agreed in a decisive April 2017 vote to go ahead with the plan. But the election in June 2018 of Premier Doug Ford, who in his days as a Toronto councillor had expressed an antipathy for LRTs, led to speculation the project could be cancelled.

In August 2018, Metrolinx paused spending for the LRT in what the agency described as a freeze on “discretionary” expenditures mandated by the new provincial government. It was the only Metrolinx project affected by the spending pause.

Seven months later, in March 2019, then transportation minister Jeff Yurek announced the freeze was lifted and the LRT would go ahead.

Hamilton city council also contributed to the uncertainty, with some members pledging to vote against the LRT if its operating and maintenance costs, which the municipality had agreed share, turned out to be too high.

The documents reviewed by the Star contain a detailed breakdown of the province's budget for the LRT, which the government said was generated by Infrastructure Ontario.

It shows that Infrastructure Ontario's estimation that the LRT would cost about \$1 billion to construct remained on the province's books into the fall of last year. The budget projected all elements of the LRT, including financing, operations and contingencies, would cost \$3.75 billion, just \$87 million more than its approved budget.

However, the documents note the cost could rise. The experience with previous transit projects indicated “the current approved funding envelope may not be achievable which could result in proponent bids exceeding the approved budget.”

Those bids were never reviewed, because the province cancelled the LRT before any of the consortia could officially submit one.

A consultant report current Transportation Minister Mulroney cited to justify the LRT's cancellation set a much higher estimate of \$5.5 billion for the full cost of the line, including financing, operations and contingencies.

The provincial government has refused to release the report or even say which third party produced it, claiming it contains "proprietary and commercially confidential" information. But the Metrolinx documents reveal the third party was Turner & Townsend, an infrastructure consultancy firm that has previously done work for Metrolinx and the City of Toronto.

Infrastructure Ontario contracted the firm to review the LRT in the summer of 2019, and the company submitted its report on Oct. 22.

About a month prior to that, on Sept. 26, Mulroney met with Eisenberger and advised him the LRT was way over budget. Mulroney also met with him about the project earlier, on Sept. 5, but the mayor reportedly balked at discussing the issue when the minister asked him to sign a nondisclosure agreement.

Asked why Mulroney met with Eisenberger before the consultant had submitted its final report on LRT costs, Clark said the minister did so to share "information about expected cost increases" in "an effort to be transparent with the City of Hamilton."

Clark said Infrastructure Ontario commissioned the third-party estimate to reflect "significant changes in the construction market, including cost escalation pressures."

Although the province has refused to release the full consultant report, it did publish a summary of its findings.

Compared to the Metrolinx projections in the documents the Star reviewed, the major cost escalation in the consultant report is attributable largely to higher estimates for construction, vehicles, construction financing and contingencies for any cost-overruns built into the budget.

Turner & Townsend estimated those costs at \$2.9 billion, while the province previously estimated just \$1.54 billion, a little more than half the consultant's figure.

Hamilton's mayor said he had not seen the provincial budget document before, but suggested it looked like "the right order of magnitude" as opposed to the "ludicrous" \$5.5-billion estimate from the provincial consulting review.

"Somebody's playing with the numbers. They added some zeros, or didn't do the math properly, or decided they wanted to inflate numbers to justify their case," Eisenberger said of the Turner & Townsend review. "There is no justification for inflating the numbers by some two billion. It just makes no sense."

Clark claimed it was the previous Liberal government that kept the true cost of the LRT under wraps, and the documents “affirm the statement of the government on Dec. 16 announcing the cancellation of the procurement.”

“While privately knowing the project would cost nearly \$3.7 billion, the Liberals positioned the LRT as a project that could be afforded with a \$1-billion provincial capital contribution,” she said.

Eisenberger rejected that argument, pointing out the Hurontario light rail project in Mississauga was commonly referred to as a \$1.4-billion project in capital spending. The final 30-year cost, however, was a provincially approved \$4.6 billion.

Mississauga’s project was also scaled back to address budget concerns near the end of procurement. “We didn’t get the benefit of that opportunity,” the mayor said.

Clark said the province “is keeping its commitment of \$1 billion in capital funding for transportation and transit projects in Hamilton” and will create a Hamilton Transportation Task Force to determine how best to use the money. The task force “will consider both transit and highway projects, including Light Rail Transit (LRT).”