Ottawa Light Rail Commission

John Traianopoulos
on Wednesday, May 11, 2022

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OTTAWA LIGHT RAIL COMMISSION

INFRASTRUCTURE ONTARIO - JOHN TRAIANOPOULOS

MAY 11, 2022

--- Held via Zoom Videoconferencing, with all participants attending remotely, on the 11th day of May, 2022, 2:01 p.m. to 4:53 p.m.

COMMISSION COUNSEL:

Kate McGrann, Co-Lead Counsel Member
Liz McLellan, Litigation Counsel Member

PARTICIPANTS:

John Traianopoulos, Infrastructure Ontario

Sarit Batner, Julie Parla and Morgan Watkins
McCarthy Tétrault LLP

ALSO PRESENT:

Judith Caputo, Stenographer/Transcriptionist
Chris Delic, Virtual Technician

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NUMBER/DESCRIPTION	PAGE NO.
(None).	

* * The following is a list of documents undertaken to be produced or other items to be followed up * *

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The documents to be produced are noted by U/T and appear on the following pages: 104:17, 105:1

-- Upon commencing at 2:01 p.m.

JOHN TRAIANOPOULOS: AFFIRMED.

LIZ MCLELLAN: Good afternoon, Mr. Traianopoulos. I am going to read you a quick script and then we'll get into the substance of your interview.

The purpose of today's interview is to obtain your evidence under oath or solemn declaration, for use at the Commission's Public Hearings.

This will be a collaborative interview such that my co-counsel, Ms. Kate McGrann, might intervene to ask certain questions. If time permits, your counsel may also ask follow-up questions at the end of this interview.

This interview is being transcribed, and the Commission intends to enter this transcript into evidence at the Commission's Public Hearings, either at the hearings or by way of procedural order before the hearings commence.

The transcript will be posted to the Commission's public website, along with any corrections made to it after it is entered into evidence.

The transcript, along with any corrections later made to it, will be shared with the Commission's participants and their counsel on a confidential basis before being entered into evidence.

You will be given the opportunity to review your transcript and correct any typos or other errors before the transcript is shared with the participants or entered into evidence. Any non-typographical corrections made will be appended to the transcript.

Pursuant to Section 33 (6) of the Public Inquiries Act, 2009: "A witness at an inquiry shall be deemed to have objected to answer any question asked him or her upon the ground that his or her answer may tend to incriminate the witness or may tend to establish his or her liability to civil proceedings at the instance of the Crown or of any person, and no answer given by the witness at an inquiry shall be used or be receivable in evidence against him or her in any trial or other proceedings against him or her thereafter taking place, other than a prosecution for perjury in giving such evidence."

As required by Section 33 (7) of that

Act, you are hereby advised that you have the right to object to answer any questions under section 5 of the Canada Evidence Act.

And I realize that I forgot to introduce myself, as well as Ms. McGrann.

My name is Liz McLellan. I am Commission Counsel, and Ms. McGrann is the Co-Lead Counsel on the Commission.

JOHN TRAIANOPOULOS: Thank you.

LIZ MCLELLAN: To confirm, you have been affirmed today?

JOHN TRAIANOPOULOS: Yeah.

LIZ MCLELLAN: Okay. So can you just walk us through your experience, including your prior experience on LRT projects?

JOHN TRAIANOPOULOS: Okay. So, my first LRT would have been the Ottawa LRT, in terms of a full project scope.

Prior to that, I did work on the Union Station to the airport. It's called the UP Express, which is in Toronto, as you may have heard of. That was a more simple project, a design-build-finance. So that was a rail project which does predate the Ottawa LRT.

After Ottawa LRT, I've worked on the

Finch LRT, the Hurontario LRT in Mississauga, the Eglinton Crosstown LRT in Toronto.

And they're not LRTs, but I've worked on most, if not all, of the IO Metrolinx transit projects in some capacity, either indirectly as a project lead or in my current role as an SVP of a group that supports all the projects.

LIZ MCLELLAN: And so what was the capacity of your role on the Ottawa LRT? What was your title and what was the main area for the base of your role?

JOHN TRAIANOPOULOS: So I was a manager in what was called the "Project Finance Group." It's now relabelled "Transaction Finance," but it's essentially the same group.

And in that capacity, we support a project team, which is typically led at IO by project delivery. So we're part of the project team. And my role was specifically making sure in helping advise the City on all of the project financing and some of the commercial implications of the deal itself.

And this would have been informed by a bit of experience doing it at IO at the time for -- starting in 2007, so about four years. So I was a manager by then, and a manager on a file is sort of seen as the project lead for that discipline. So I wasn't the overall project lead, but I was, within IO, the project representative or lead on the project financing elements.

I don't know if you want me to go deeper.

LIZ MCLELLAN: No. We'll drill into some of the areas that you've mentioned, but that's a great overview.

JOHN TRAIANOPOULOS: Okay.

LIZ MCLELLAN: Do you have anything else to add though?

JOHN TRAIANOPOULOS: No. The only main point I will add that I believe is relevant is, in that role, I also had a relationship with some of the advisors. So Deloitte, for example, was -- we call them transaction advisor, but the project finance team historically at IO always managed that relationship, whether we hired them or not. So it was another important part of the role was to make sure Deloitte was busy and working hard on it.

LIZ MCLELLAN: So, generally, on IO's involvement, how and when did IO get involved in the LRT project?

JOHN TRAIANOPOULOS: The "when" is a bit fuzzy; I will have to confirm back a date. I recall the early days, maybe in and around 2009 or so, there was some early meetings around a potential role for IO and then asked to go -- I recall going to the City to present a bit of an education session on how P3s work, what IO might do, in terms of a service offering. So I was part of that; I do recall that meeting. This was a long time ago so I'll do my best.

So that was sort of the start of the formulation of a potential role. And we looked at it very similar to any IO project where you have a central procurement group on behalf of the Province for Ontario projects that can help structure projects, help run procurements in an efficient way. So we very much saw it, you know, it's a big -- while it's a City project, it's still a big project in Ontario. So it made some sense to us to advise if that worked for the City.

So I was part of that initial kind of brainstorm about what IO could do, and just having been with IO for a couple of years, I was tasked with educating some of the City staff on how P3s work.

LIZ MCLELLAN: Okay, go ahead, sorry.

JOHN TRAIANOPOULOS: So that was the early part of it. And then, as you know, we've eventually formulated a procurement advisory role.

LIZ MCLELLAN: And so were you involved from the get-go then?

JOHN TRAIANOPOULOS: I would say so. There may have been conversations before my involvement. I wouldn't necessarily know. Maybe perhaps at higher levels, but I don't know. But I've been with IO for a while, so I would have been one of the early ones to participate. And I do recall some pretty early meetings before any procurement was launched. So I was there, yeah.

LIZ MCLELLAN: And how did IO become involved? Did the City reach out to IO, or was there a requirement by the Province in terms of their funding contributions that the project be handled as a P3 and overseen by IO in that respect?

JOHN TRAIANOPOULOS: I don't know how that happened. We were asked -- the only thing I do recall is we were asked by our CEO at the time, which was David Livingston, to prepare materials for -- and to go to Ottawa to prepare materials and go to Ottawa for a presentation on what we do and what we could offer. That's my first memory of the project. There may have been conversations before that; I wouldn't know.

LIZ MCLELLAN: Do you know generally if there is a requirement, if the Province has committed to funding on a project and if it's appropriate that it be a P3, is there a requirement by the Province that the project be run by IO or as a P3?

JOHN TRAIANOPOULOS: I don't believe there is a firm requirement. It certainly wasn't explained to us in that way that, you know, with the funding comes IO, at least not to me. I don't -- I can't recall any specific link between the two. There may have been conversations, again, around that, but, again, I'm not aware of anything like that.

LIZ MCLELLAN: Were you involved with the Province's P3 screening process?

JOHN TRAIANOPOULOS: On this project or generally?

LIZ MCLELLAN: This project.

JOHN TRAIANOPOULOS: No. I don't believe so. I'm hesitating a little bit because there is work on what we call a value-for-money assessment which gets into whether or not you should do a P3 or not. But I don't think it's formally part of the P3 screen that would have been done at the time by Ministry of Infrastructure. So I'm a bit hesitant on exactly what P3 screen means.

LIZ MCLELLAN: Were you involved in a value-for-money assessment on the LRT project?

JOHN TRAIANOPOULOS: Yes. I was involved in reviewing some initial value-for-money work that was done by Deloitte and commenting on it, just from having done it so many times, and giving our views early on whether or not we thought there were any holes in it or other things to consider.

If I also recall, we did -- I can't remember exactly when, but we've openly shared our value-for-money methodology and some of the materials with Deloitte, just as an advisor and as a partner. So we're in regular conversations around how to do value for money and how to frame it.

I also believe that, at some point, some of our underlying risk matrices and numbers that in the DBFM were used in some calculation of value for money.

LIZ MCLELLAN: When did the value-for-money assessment take place?

JOHN TRAIANOPOULOS: I don't recall the date. I'd have to go back and check. I don't recall. I do recall one would have been done before IO got involved, and I remember having to review it and look at it. I can't recall if we did an update or a refresh. But it would have been very early on in the project. And I don't think it was done after, like, after financial close or post award. It was very much a preliminary exercise to determine if the model made sense or not with the City.

LIZ MCLELLAN: Who conducted the value-for-money assessment that you reviewed?

JOHN TRAIANOPOULOS: Deloitte.

LIZ MCLELLAN: Okay. And do you recall any of the conclusions from that report?

JOHN TRAIANOPOULOS: Not offhand. Not offhand. I recall that DBFM at some point was a favourable conclusion and positive value for money was generated, hence the DBFM.

I just can't recall what the very, very initial report said. Because they were still debating back then between different models and different solutions. We initially thought that the City didn't want or have a preference for a P3, which is fine.

So I can't recall if the early reports pared down or weeded out some models or not. But, at some point, it is likely that a positive DBFM was generated.

LIZ MCLELLAN: What gave you the impression that the City did not have a preference to go to P3?

JOHN TRAIANOPOULOS: If I recall, there was always -- and this is going back to the very early days, so it may be a bit foggy here as well. It was pretty clear upfront that the City had an affordability challenge, like, they had a budget and a cap. So adding financing adds cost to that issue. If you have a hard number, it just solves you, and a private financing is more expensive than what the Province or City can borrow at.

So it was our initial impression that maybe they don't want to use that model for good affordability reasons. I'm not exactly sure what changed that recommendation or their minds. That was the initial thought. Because if I recall, they looked at things, even design-build-maintenance, where you could have design and a build component and a maintenance component without the use of third party financing.

IO doesn't typically do that model, but it's possible. You know, there were sort of, within the project team, maybe a feeling that they weren't up for that due to affordability reasons. But it was just -- we were just sort of guessing, speculating why it might be. And I don't know exactly how it all changed or changed what was in their mind or any of that. But, in the end, it was a DBFM, and I'm fairly certain it was a positive DBFM case for doing that.

LIZ MCLELLAN: Who communicated to you that there was an affordability issue? Or how was that communicated?

JOHN TRAIANOPOULOS: Prior to the procurement, I don't recall. It may have been -- sorry, I don't recall. I don't recall.

In the procurement, affordability was talked about a lot and that became more clear, but there was -- I'm sure no surprise there, there was affordability challenges with the project throughout. But prior to the procurement, I don't remember where, maybe we got that sense.

LIZ MCLELLAN: Okay. And then taking a step back, can you just generally describe IO's role on the project with a view to the fact that IO acts as an agent to the Crown?

JOHN TRAIANOPOULOS: This is my view of our role and what I understood my role to be. We were there to provide commercial procurement structuring advice to the City. I didn't view it personally as much different in my capacity, whether I'm advising, you know, Metrolinx or a provincial client or our own -- or projects that we signed agreement for. So it didn't feel much different to me.

We had a sort of professional responsibility to get the best Project Agreement and the best deal terms we could get. And, for me, get it financed. We always say make it biddable and bankable, right? And provide value for money.

So I didn't view it as any different. I wouldn't -- when you say, in terms of an agent of the Crown, like, what do you mean by that?

SARIT BATNER: I was actually just going to let this play out a little bit. But, in this project, IO was not acting in that capacity, right?

LIZ MCLELLAN: Okay. Okay.

Can you just speak generally to IO's -- like, what does that mean in terms of IO acting as agent of the Crown?

SARIT BATNER: So, in this project, IO was brought in as an advisor to the City; that is the capacity that they acted in.

So I don't know that this witness is qualified to talk about what it means to be an agent of the Crown. But either which way, in this project, they were brought in as an advisor to the City. And I see -- I don't know if Kate wants to weigh in on that.

KATE MCGRANN: I thought maybe I could jump in with a quick follow-up question here.

So I think that you've answered this to a certain extent, but just to follow up, what changes, if any, were there to your role by virtue of IO's position and role on the Ottawa project as compared to other projects that you've had experience on?

JOHN TRAIANOPOULOS: I see. Okay. Not a whole lot was different. So, typically, or if we're an agent of the Crown or if it's an IO-led project, there would be some maybe minor changes to my role within the governance structure.

So, for example, if it was, you know, an IO-led project or a provincial project, the finance representative from IO would likely be the financial evaluation lead, because that's just our practice and that makes sense.

So here, in terms of overall governance, it was clear and we were obviously okay with it, that the City finance staff would be the evaluation lead. And the lead doesn't mean a whole lot, other than a bit of a title and some responsibilities with coordinating evaluators. So there are minor things like that within the role.

But, like, on the legal side, I'll let someone more qualified to answer. But, obviously, we didn't sign this Project Agreement. If we're agent for the Crown, we have authority to sign in certain respects, so that's different.

But day-to-day in my role as a professional project finance part of the team, like, it didn't feel, you know, that different in any real way. I think the City did a good job of making us feel part of the team, and I certainly felt pretty empowered to give advice and be trusted where needed.

KATE MCGRANN: With respect to the work done by yourself and the other advisors, first of all, you mentioned Deloitte. Were there any other advisors to the City that you interacted with?

JOHN TRAIANOPOULOS: Yeah, we retained one, Bank of Montreal, BMO Capital Markets. And we worked together as a team. So the project finance team was City finance, my team, myself, and Deloitte and BMO kind of formed the four pillars of the team.

KATE MCGRANN: Any other advisors to the City that you interacted with or worked with on the project?

JOHN TRAIANOPOULOS: I interacted with the entirety of the project team. So the technical advisor, I'm afraid -- I forget her [sic] name, I apologize. But we were part of many project meetings with many advisors. But, for me, it was mostly BMO, Deloitte. But we would have worked with and interacted with the Fairness Commissioner, fairness advisors, the legal advisor for sure, which was BLG, if I recall, and the technical advisor, where it made sense.

KATE MCGRANN: Would that be Capital Transit Partners or CTP?

JOHN TRAIANOPOULOS: Right, yeah. They were a consortium with a few advisors, yeah, CTP.

KATE MCGRANN: In terms of your interactions with the finance team and the advisors more generally, any difference in your work by virtue of IO's role in this project as compared to normal?

JOHN TRAIANOPOULOS: The only -- the main difference is we didn't retain the financial transaction advisor, being Deloitte. So we work with them all the time on many projects. Typically, contractually, our group, my team, would procure that contract and sign off on that one.

So that was the one kind of contractual difference, but again, day-to-day, a lot of familiar faces within these teams so we just worked together as if it was a regular IO project. It didn't really feel different.

KATE McGRANN: Would it be fair to say that, on this project, IO is one of several advisors to the City, whereas on other projects, IO may be receiving advice but ultimately IO is making the determination about the next step forward?

JOHN TRAIANOPOULOS: I think that's a fair summary in some ways. I think, for the project finance group, to be a bit more candid about it, is I think, you know, we were -- Ottawa didn't have a project finance team, so I think they saw us as much as an advisor, but day-to-day they really trusted us and Deloitte and BMO to work together to come up with solutions. So maybe by exception, I think we were pretty much seen in our typical role. But yes, we were one of many advisors. But we had a lot of, I'd say on some aspects, a lot of say and influence because we're specialists in kind of procurement and project finance and other areas so...

KATE MCGRANN: Any challenges, disputes or disagreements as between IO's advice on this project and those of other advisors or the City's desire to head in a certain direction?

JOHN TRAIANOPOULOS: Do you mean on the project financing elements, or anything at all?

KATE MCGRANN: Starting with the project finance, and then I'll ask you to follow up if there are any other areas that you're aware of.

JOHN TRAIANOPOULOS: Nothing material really comes to mind. I'd have to go back and see if there's any minor disagreements. Over a few years of a procurement, there's probably something.

But nothing that really stands out.

The one that's more generic is there were some debates around what to do about geotechnical risk and what makes sense commercially. So the project finance team, mostly through advice from BMO, was more of the view that this risk is too hard to transfer, it's not really marketed right now, you know, tunnel projects have been hard in the U.S. So that was one where there was a difference of opinion between at least BMO and what the City wanted. But that was okay. Like, there was discussions around that, and in a project team, there's bound to be commercial debates and discussions about what to do.

So that was one that came to mind as something that we independently went out and got advice for and tried to form a recommendation to the City based on how the lenders would view it and some of the financiers. But I can't think of anything else, right now, contentious or material, in terms of major disagreements or disagreements.

KATE MCGRANN: I anticipate that Ms. McLellan will have some questions for you about the geotechnical risk transfer, so we'll get there when we get there.

Thanks very much. That's it for me for now.

JOHN TRAIANOPOULOS: Okay.

LIZ MCLELLAN: So were you involved with negotiating the MOU with the City that's entered into in 2011?

JOHN TRAIANOPOULOS: I don't believe so. I don't recall being involved in the MOU negotiation. What I will say is what's typical is, if we're doing any MOU, I would be asked for input on what my role should say or could be. So it's possible that I would have given commentary to our project team on that, but I don't recall having a real active main role in negotiating an MOU.

LIZ MCLELLAN: Do you recall having any discussions with your team about the MOU or certain terms within the MOU, if you didn't provide feedback on what your role should be, any other discussions?

JOHN TRAIANOPOULOS: I don't recall.

LIZ MCLELLAN: Okay. Is the entering into an MOU standard on these types of projects for IO?

JOHN TRAIANOPOULOS: Yes, I believe so, yes.

LIZ MCLELLAN: Have you reviewed the MOU?

JOHN TRAIANOPOULOS: I don't recall. I might have.

LIZ MCLELLAN: I was going to ask if the terms are typical of what you've seen, but it seems that you have not looked at the MOU.

JOHN TRAIANOPOULOS: If I did, it would have been over a decade ago and I wouldn't be able to know what's in there right now.

LIZ MCLELLAN: So the MOU did contemplate IO's ongoing role in the project following procurement through to the maintenance aspect. Are you familiar with that?

JOHN TRAIANOPOULOS: Yes. That was -- yeah.

LIZ MCLELLAN: What were the circumstances around that plan?

JOHN TRAIANOPOULOS: Going through construction or into maintenance, or both?

LIZ MCLELLAN: Carrying on into maintenance later.

JOHN TRAIANOPOULOS: Sorry, I'm not aware of any maintenance role. I'm aware of contemplation of a construction oversight, management role. But I wasn't aware that there was a maintenance role contemplated.

LIZ MCLELLAN: Okay. And then, in terms of the construction oversight role, what were you aware of on that?

JOHN TRAIANOPOULOS: I was aware that our project delivery team would keep one or two people staffed on the project to help oversee its construction, to deal with any major issues, to attend any major works committee meetings, etcetera.

My role would have been very ad hoc. We tend to have the benefit of, after financial close, not necessarily always being involved unless there's, you know, a major issue. And our delivery team would reach out to me if they needed advice or help with any sort of major issue, especially if it involved lenders or equity because we're kind of the other side of the table of the lenders.

LIZ MCLELLAN: Right. And then were the two IO representatives that were to stay on during the construction phase, did they actually stay on during the construction phase?

JOHN TRAIANOPOULOS: The only one I recall being on construction was Meghan O'Donnell, now Mulligan. I think she was on the file. And Kitty Chan -- I could have this wrong but I recall Kitty Chan being involved somewhat in Ottawa.

LIZ MCLELLAN: And did they ever reach out to you and consult with you on any of the issues or experiences they had during that time?

JOHN TRAIANOPOULOS: I recall one. There may be others. I recall when there was a sinkhole issue on the project, there was some conversations around how the Project Agreement works, if it is going to be compensated, how does the payment work. So there was some general questions about that, and how do the lenders get paid, if at all. So I do recall being involved in some e-mail communication back and forth on that.

Sorry, one other one came to mind just as I thought of it. I was also -- this was after financial close, so technically the construction, the City asked us to help educate them on how the maintenance term will work eventually. So, once they get past substantial completion, there's a whole, as you know, 30-year contract.

We were asked to present to the City just some lessons learned on implementing the Project Agreement during that term, so I was one of, I think, two or three presenters that went to the City to do a bit of an education session on the maintenance term, and specifically for me, how some of the lending works and the payment mechanism and things like that.

LIZ MCLELLAN: So what were some of the key recommendations within that presentation?

JOHN TRAIANOPOULOS: I don't recall the recommendations. Some of the lessons learned that are common in that I recall were to -- you know, some obvious ones, build good relationships with Project Co, learn how to sort of deal with the unexpected, but I don't recall the recommendations in there.

I do recall it was a bit more of -- at least from what I presented -- a bit more of a 101 level education session on it. Because some of the staff that were in the procurement were not the same staff that were going to be working on the eventual implementation. So, for example, my counterpart in City finance doesn't work on the maintenance.

LIZ MCLELLAN: Right.

JOHN TRAIANOPOULOS: So there was -- there's a different audience to educate. So it was more about getting them up to speed on what the contract says and what it means and how to enforce it.

LIZ MCLELLAN: And then are you aware of an amending agreement that was entered into in 2013 between IO and the City?

JOHN TRAIANOPOULOS: No.

LIZ MCLELLAN: Okay. And then just your view at the outset, if you can recall, did you feel that the City had the resources and expertise it needed to oversee the project?

JOHN TRAIANOPOULOS: I wouldn't be able to form an intelligent view on that.

LIZ MCLELLAN: Based on comparative projects, even though there wasn't at the time in terms of light rail projects, but just based on what you had seen.

JOHN TRAIANOPOULOS: I would say, on the project financing side, they didn't, which is largely why I think they hired Deloitte and us to supplement that lack of expertise.

On the technical side, CTP was a big team and a lot of advisors. The City staff themselves were a little bit thin, but that is fairly typical, actually, in some of these projects because a lot of these municipalities don't always do mega-projects, right? So it wouldn't make sense to build necessarily a very, very large team internally when you're only doing a once-in-a-generation project.

But, yeah, I didn't feel like -- I have no reason to say that they were understaffed or it didn't feel like, you know, people weren't prepared. I actually found some of the City staff very competent and very, you know, commercially reasonable and pretty easy to work with. Like, I actually had a pretty positive experience with the people I worked with there.

LIZ MCLELLAN: And who did you work with?

JOHN TRAIANOPOULOS: So, my main counterpart was Mona Monkman. She's retired now but she was the City Deputy Treasurer. She was kind of our go-to.

And then, within the City, there was the higher level, the City Manager; there was John Jensen was there as one of the more senior leads; Gerry Chaput [sic], I think was his name, something like that, he was one of the technical aids. So those were the main ones I recall, and then a host of advisors.

LIZ MCLELLAN: And so switching to the selection of the model, were you involved in advising the City on which model to go with, including in the end choosing the design-build-finance-maintain model?

JOHN TRAIANOPOULOS: I don't recall having a direct line into that. I would say the role was more to review some of the value-for-money work that was done and comment on it.

I do recall IO did have -- state a preference to the City to use a DBFM, for good reasons. I'm just not -- I'm a bit lost if it was a formal recommendation or if it was just something that sort of evolved over time. But yes, like, IO uses DBFMs for very good reasons many times, so that was definitely, you know, a supported recommendation from us. And I would have helped assist in some of that logic and rationale as to why.

LIZ MCLELLAN: And what would some of those very good reasons be?

JOHN TRAIANOPOULOS: Well, the main ones are, from our perspective, it always comes down to risk transfer and price certainty. So, if the objective is to get price certainty and risk transfer, the P3s tended to have a good track record of achieving those objectives.

The lender oversight was something that we always valued. It's the comfort of having a third party financier reviewing, putting their money at risk, first and foremost. If there are issues, it's comforting as sort of -- as the taxpayer's point of view that it's someone else has skin in the game, a financial interest in it.

So, and also the due diligence they bring. So there's a whole process, advisory processes, etcetera, that diligence the project to make sure that it's viable, there's enough budget in it, etcetera.

So, like, we rely heavily on that model. Most of our projects are classic P3s. Some are changing now. But those same reasons applied in the City's context, like, it was a very big, complex project. At the time the P3 market was pretty established, lenders were interested, rates were reasonable; it seemed to fit the right criteria. So I wouldn't see any reason why we wouldn't recommend what worked for us. And we sort of followed that same logic into the City's project.

LIZ MCLELLAN: So, other than the size and complexity of the project, were there any other reasons that you felt a DBFM was appropriate for the LRT project for the City's purposes?

JOHN TRAIANOPOULOS: Well, the City wanted, and all the -- benefitted from having that integration of the design and the maintenance as well. So you have a design team working with the build team, working with the maintenance team, to optimize a system for the longer term, and that's another big benefit of -- whether it's financed or not, just wrapping in the maintenance, you have that 30-year perspective. So, things like energy, efficiency, cost matter, right? So you can make design decisions that would impact, you know, either lower cost maintenance down the road or energy savings, etcetera. So it's all factored into that whole life costing, which was another kind of big benefit of a way to look at it.

Like, this is whole life costing, you're maybe even willing to trade off -- you know, it's like if you're buying an electric vehicle now, you'll pay more upfront and you'll deal with that, but you'll get years of maintenance and energy savings.

It's the same sort of logic in the DBFM. You don't exactly care about the buckets of cost, you care about the whole life cost more than anything.

LIZ MCLELLAN: And so I assume that we know the answer to this question, but did you advise on the quantum of financing for the model?

JOHN TRAIANOPOULOS: Yes. Yes, with the caveat that we knew the City had an affordability ceiling and a constraint. So, under a constraint of affordability, you can only finance so much before it gets too expensive. So I'd say, yes, we did recommend different financing options with that constraint in mind.

LIZ MCLELLAN: Was there an initial financing amount that Deloitte and IO suggested to the City?

JOHN TRAIANOPOULOS: I don't recall. Long-term, I recall it landed at 300 million. It may have been between 300 and 400; I don't recall the number.

LIZ MCLELLAN: Was 300, was that what Deloitte and IO came up with, or was that through discussions with the City? How is that number arrived at?

JOHN TRAIANOPOULOS: It would have been largely us and Deloitte coming up with that sort of joint recommendation. The sizing of how much to keep in long-term is a function of how much can you afford, but also a function of how much do we think is enough skin in the game or capital at risk to deal with the risk transfer.

IO, on our transit deals, typically targets -- targeted 15 percent of capital costs. So, Eglinton Crosstown is at 15 percent, for example. Some of our highways are at 15 percent. So it's less than our social projects, which is more. And the main reason is these are very, very large projects, so you have a big capital cost number. Even 15 percent is a lot to finance.

You know, ideally, you would want to finance as much as you can afford or as much as you can bear, but you have to do that tradeoff between how much is enough to drive that incentive.

Our view at IO is $300 million or 15 percent is still a lot of money. And no one is going to walk away from that and leave it, even at $300 million, because that's a big loss for lenders, for example, to take.

So the behaviour isn't necessarily shaped entirely by the size of that cheque. The behaviour is shaped by being enough to matter and to sting. And the conclusion was, you know, that order of magnitude, 15 percent or 300 million, would be enough.

LIZ MCLELLAN: And then so you kind of already answered this in your response, but did IO, from what you recall, advocate for a higher financing component than what was ultimately selected?

JOHN TRAIANOPOULOS: I recall a 400 million number at some point came up in some of the material I was also just reading earlier. I recall that number. But I don't recall if we ever recommended to go higher than that. I think we said 300 to 400 is kind of that sweet spot.

LIZ MCLELLAN: Was 300 to 400 the ideal amount, or was that a number that was proposed in mind with a view to the City's affordability limitations?

JOHN TRAIANOPOULOS: Both. Both. Like, we -- whether it was a -- even if they had a bigger affordability cap, we would not, on a transit deal, typically recommend much more than that anyways.

So, for example, when we structured the Eglinton Crosstown, we structured it at 15 percent and we didn't -- there's always an affordability cap, but that was just our recommendation for that despite what the capital cost affordability cap might be.

So, we were mindful of the affordability cap and we were definitely constrained by it, so we couldn't do too much. But the 15 percent order of magnitude range -- it's not exactly 15 percent but it's close -- was in line with transit and civil precedent at the time. So it was the normal range of values.

LIZ MCLELLAN: So, if affordability weren't an issue, what would a higher financing component have accomplished on the project?

JOHN TRAIANOPOULOS: I'll try to answer this a bit technically, and you can follow up.

So, the more financing you put in long-term, so the more financing that survives after substantial completion -- we call it "skin in the game" -- but it just means there's a bigger cash cushion in the project to deal with issues in the maintenance term. So if there's, for example, a default of Project Co, that pool of money is available to the contracting authority, in the case of the City of Ottawa, to rectify issues.

So the way it works is, just assuming for a second the lenders don't want to step in, they just want to walk away and, you know, move on with life, that pool of money would then be available to the City to deal with future overrun costs.

So if, let's just say in year two of the maintenance term, Project Co defaulted, for whatever reason, the City would then be able to forecast the remaining 28 years of costs in the project, which would typically be higher because you're in default, you have to find a new maintenance provider; you're going to likely get charged a premium. And to rectify any deficiencies in construction that may still be lingering, the City would be able to take that money and use that as a source of funds and pay for the overruns. So you effectively go through what we call compensation on termination calculation.

So, the bigger the debt and equity cheque, just the bigger security you have to deal with future cost overruns in a default. So it's that comfort of how much is enough? You know, these are non-recourse project financing projects. How much is enough in those sort of doomsday scenarios where you're looking to replace Project Co.?

Prior to default, it doesn't matter because it's running fine and Project Co is not in default and lenders are being paid back. So it's really that default trigger that's used as that security package.

LIZ MCLELLAN: So, really, it would result in the City having additional funds and then therefore less pressure being put on the Project Co financially, in the event of a delay or any issue that may arise?

JOHN TRAIANOPOULOS: Not so much in delay, because delay risk is passed down to the contractors, and if they're late, they have to pay damages, liquidated damages, interest, delayed interest to the lenders.

It's more in default where, you know, that pool of money is borrowed and not there. So, if there's a $2 billion project like this one and you borrow -- let's just use the numbers -- you borrow $300 million against Project Co, so you've paid 1.7 billion by substantial completion. This is a simple example. You haven't paid for the whole system yet, you've deferred the payment. So you've mortgaged it, basically. And that's nice to have, right? Because the worst thing that can happen is you fully pay for something, Project Co is long gone -- and this is what can happen on a design-build or even design-build-finance -- and then something catastrophic happens to the system, you're having to sue for damages and all that.

The nice thing about the model is that it's cash that's been held back. It's liquid because you hold it, right? So it's kind of the ultimate form of security. So, the bigger the pot of money, the less risk, in a way, the City is taking on those default events in terms of having to deal with the rectification costs of those.

LIZ MCLELLAN: What were the liquidated damages that you just referenced that, was it RTG had to pay?

JOHN TRAIANOPOULOS: Yeah. So, when I say "liquidated damages," I mean from the perspective of RTG's damages to their lenders. So whenever a project is late in a P3, the lenders will still need to be paid their interest, and like any lender. So those would be damages, liquidated damages, that Project Co will typically pass down to the design-build contractor to pay back Project Co, to then pay the lenders delay interest.

So, because the short-term lenders were supposed to be out, or taken out at substantial completion, they're still there and there's still interest charges on their loan, those will become payable by Project Co, who then typically again passes that risk down to the contractors.

And then the long-term lenders would have been expecting payments, repayments to their bonds. There isn't a monthly payment from the City until there's completion. So there's no source of funds to pay for that, so they would also hit the contractor with damages to pay for that.

LIZ MCLELLAN: Are you aware of what the quantum of damages that were being paid was?

JOHN TRAIANOPOULOS: I'm not aware. It's not hard to find. We'd be able to sort that out through the financial model. But I don't have that off the top of my head, no.

LIZ MCLELLAN: Okay. So how was the IO team built that worked on this project?

JOHN TRAIANOPOULOS: So, the IO team,

like, you mean who was on it? Or how did it come together, or both?

LIZ MCLELLAN: How were people selected? Was it based on who has transit experience? How was it put together?

JOHN TRAIANOPOULOS: I see. I don't know. I know I was asked to work on it by my boss at the time, just as being -- having the capacity and having some P3 experience between the UP Express and then on the social side. I always felt pretty, still relatively young, so anybody who had a bit of experience within IO would have been an asset to that team. I do recall, and I do think a strong team was formed within IO.

In terms of how it was staffed and who made those decisions, each division in each department puts their own resources on a project team. That wouldn't have been something that I would have really have had a say on or a view on.

LIZ MCLELLAN: And were there comparable projects for IO to draw from?

JOHN TRAIANOPOULOS: Yeah, there were. So, at the time there weren't too many P3 transit projects in Canada, but there was the Canada Line in British Columbia, Vancouver. That was a DBFOM, I believe. There was -- there were projects in the U.S. There was one in Colorado I recall. And there were projects in the UK. UK has been doing P3 transit for a long time.

There wasn't a DBFM, as far as I know, in Ontario yet. So I would say Canada Line was probably the most mature -- the most thought-out in Canada, so that was actually used in some of the precedent research that Deloitte did. We were coming up with certain ideas for certain parts of the agreement.

LIZ MCLELLAN: And forgive me, I don't know the BC equivalent of IO. But were there any consultations between the IO team and whoever oversaw that project in BC?

JOHN TRAIANOPOULOS: I don't recall if there were. We regularly talked to British Columbia. So they were called Infrastructure BC -- sorry, they were called Partnerships BC, they're now called Infrastructure BC. I don't recall if there were. It wouldn't surprise me if there were. We have good open relationships and regular dialogue with them, so... I just don't remember if we had a specific meeting on it.

LIZ MCLELLAN: And were there any

challenges or growing pains to adjust to IO working on an LRT, one that hadn't really been done before?

JOHN TRAIANOPOULOS: Yes, I think so. At least for, speaking for myself, it was a newer asset class, so there was some education to do on how different regimes would work.

We were mindful to not just say, well, it's template, that's how we do our social projects so let's just copy and paste and do the same thing because, for example, site conditions comes to mind, where maybe you can have a risk allocation mechanism within a social project, dedicated site, smaller site. But you have to be more open-minded about what to do on an LRT.

So there was sort of an openness and a culture of let's not just take the last one and do it again and let's try to actually get educated on what makes sense for this asset class. And a lot of that you learn through the procurement itself and the bidders, who are very vocal on what they think the risk allocation should be. So that's why we also had advisors, third party advisors, Deloitte, BMO, for example, because they did have some experience outside of just social P3s to help us.

LIZ MCLELLAN: So I understand that a template for the Project Agreement was based on work on hospitals and buildings. So was there an interest, from IO's perspective, to have a template that could work for a transit project such as an LRT?

JOHN TRAIANOPOULOS: Well, there is now. So we've formed discrete sets of documents by asset class, and they're different -- they're very similar in a lot of ways and they're different in certain areas, for sure.

So I wouldn't say there was -- at the time there wasn't an off-the-shelf template, and this is where we would have pulled in precedent from other jurisdictions and advice from other advisors who would know those documents better than us, to form Ontario's first kind of LRT template, if you will.

We say "template," but we tend to do a project and then make it a template and adjust it as we go. Because, if you do it once, you can then have some lessons learned and improve it for next time.

I'll give you another example. So, in the payment mechanism, which I worked on a lot, we didn't have one, a transit template. So this is where Deloitte would have had access to those documents in other jurisdictions to help form one for us.

LIZ MCLELLAN: And did you work with Deloitte on how they came to provide recommendations on how the payment mechanism should be structured?

JOHN TRAIANOPOULOS: Yes.

LIZ MCLELLAN: And so what did those discussions entail, or what were their recommendations based on?

JOHN TRAIANOPOULOS: So the payment mechanism is an important document in the Project Agreement and it's a -- there's a lot of work and time that goes into forming it and a lot of consultation with advisors and with the project team to make sure that it's -- we call it calibrated, but make sure it's sort of fair and reasonable.

The intent of a payment mechanism is to kind of shape and enforce behaviour and penalties if things are not going well, but it has to be balanced so it's not overly punitive or not punitive enough. It's a bit of a balancing act.

So it was an entire work stream in itself to have a payment mechanism. Whether it was a formal working group or not, it might have been. We might have called it a working group, but there was a team that was working on the payment mechanism.

It would have required -- it did require some technical expertise as well to make sure that -- the payment mechanism sort of enforces the maintenance specifications, so you need technical people who understand maintenance well to help shape it. So the work would have included one, if not several, workshops. Actually, more than one for sure, workshops on coming up with the principles of what to do in the payment mechanism, how to calibrate it, so how severe are the deductions, how severe are what we call failure points, you know, if things -- besides just monetary penalties, there's a regime where, if you're failing constantly, you can actually get to a default under the payment mechanism.

So that was a lot of work. Deloitte led that, with us kind of at the table as well, opining on all the terms, talking to the bidders about it, and coming to a final contract.

LIZ MCLELLAN: Who provided the technical expertise?

JOHN TRAIANOPOULOS: It was a gentleman named Keith MacKenzie, I recall, was at meetings. I think he was with CTP. He was a link to us. This is a real test of the memory.

I remember Keith being involved, and Gerry Chaput [sic], at a more higher level, would have been involved in some of those discussions on the technical side.

There may have been others; I just can't recall the names.

LIZ MCLELLAN: And did you feel that, in the end, the document was balanced following those workshops and discussions, and discussions with the bidders?

JOHN TRAIANOPOULOS: I did. And it's also a matter of the bidders accepting it and bidding to it. So, the best evidence of a failed payment mechanism is nobody will bid to it and you won't get it through lenders and lenders' technical advisors and all the people looking at it.

So, by virtue of bidding to it and by virtue of nobody saying they're going to walk over the payment mechanism, towards the end, you know, we viewed it as biddable because it was bid to.

So, you know, we tried to look at precedent. We tried to be fair in the level of penalties. The team was very much focused on achieving behaviour and not just being a tool to beat up Project Co over. It's really just meant to be sort of enough -- kind of back to the lending perspective as well, enough financial incentive to matter but not necessarily, you know, bankrupt somebody in the first week. It was sort of that balance.

LIZ MCLELLAN: And what was some of the feedback that you received from the bidders about the payment mechanism?

JOHN TRAIANOPOULOS: The main area of feedback -- I recall two. One was what we call the deduction curve. So, when deductions start and how severe they are was always something that they wanted it less severe and more relief on deductions. We wanted more, so there was a lot of that commentary.

The second one, which is something we ended up calling, it's a "non-Project Co cause." It's a bit of a funny title. But the idea -- and there was a lot of discussions around this, the idea of that one was, because it's a DBFOM [sic], the operator is OC Transpo or the City, the bidders were very much keened into the fact that there are many things that the operator or other third parties do that they can't control that would impact their ability to perform.

So they wanted more excuse -- more of these excusing events, so that, in the event that there's a loss of service or interruption of service because of it, they didn't want to be financially deducted or on the hook for that. That was a main area of focus of getting that list right.

For example, Ottawa is the Nation's Capital, so there's a lot of discussions what if there's protests; what if there's blockades; what happens in those scenarios?

So, we were very open to that, to understand that, if they truly can't mitigate and control those events, it wouldn't be fair to deduct against their payment because there's nothing they can do about them. But where they can mitigate and control, we thought it was sort of fair game to have a pay mec to respond to that.

So a lot of commentary around, I'd say

those two come to mind as the main -- which is typical in all pay mec's, those are the two things that bidders want less risk on, and we try to push more on where we can.

LIZ MCLELLAN: How was the bidders' feedback implemented into the document as it is today?

JOHN TRAIANOPOULOS: So we get -- we had meetings called commercially confidential meetings, where they can raise concerns. They send us comment tables, etcetera, they send us recommendations on changes. We take those very seriously because, again, our job is to make sure the procurement is successful, and we need to challenge ourselves too, to make sure we're not being unfair or too punitive.

So the comments would come in. We'd review them as a project team. We'd try to see if there's themes between the three bidders, are they all saying the same thing? Is it one? Is it two? If all three are saying the same thing, the comments are forceful, they may have a point. There's a bit of that sort of judgment call around how to look at bidders' comments.

We would then, as a team, form

recommendations on changes to make to our own documents and our own regimes, and take those -- you know, if there were minor changes, we can just make them at our level. If there were major changes, we'd make sure to get buy-in from the senior management on the project.

LIZ MCLELLAN: And so who would you have to get buy-in from?

JOHN TRAIANOPOULOS: I would get buy-in from Rob Pattison, which is our clear kind of project delivery head. I believe John Jensen was kind of the City's -- I think I have that right, I have so many projects here -- was the City's day-to-day lead.

If those two supported your commercial advice, that seemed to be enough to make the change.

KATE MCGRANN: What were the precedent projects referred to build out the maintenance piece you've been discussing?

JOHN TRAIANOPOULOS: Canada Line for sure. Denver, Colorado Eagle line, I think it was called, was on the list. Hudson-Bergen LRT comes to mind, just the name. There's, I'm sure, a presentation on this somewhere with the precedent research. I don't know if I've got this all right, but those are in my head.

KATE MCGRANN: Do you recall if any of the precedent projects were DBFM delivery models?

JOHN TRAIANOPOULOS: I believe Colorado was a DBFM. And Canada Line was a DBFOM, which is similar in terms of the payment mechanism except you have to deal with the operator risk and figure out what risks to take back because the operator is not Project Co. So, in a DBFOM, you can transfer more risk because it's an integrated operator.

KATE MCGRANN: So the Denver one, do you recall any other DBFM precedent projects that were referred to in building up this maintenance piece?

JOHN TRAIANOPOULOS: I don't recall. There may have been.

KATE MCGRANN: The reliability requirements, any discussion of introducing a curve or sort of an increasing reliability requirement to allow for a learning curve on the system, basically?

JOHN TRAIANOPOULOS: Like a bedding in?

KATE MCGRANN: Yeah, like a bedding in.

JOHN TRAIANOPOULOS: We talked about a

bedding in period, which was on other projects. And we decided, with the City, to not do one, if I recall.

And the main reason there was -- this one actually did go up the chain a bit. The main reason to not to do a bedding in on this one was the City took a view that -- and we supported it, it wasn't just the City's view -- that the system should be operating fully day one, and the public's confidence is shaped in those first few months of how it performs. Also, the City was relying on revenue in the system to help pay for it. So there was a feeling that let's not signal or go with the bedding in because those first few months are actually pretty critical in building that public confidence.

This was a view I recall shared by, or communicated by, John Jensen on this one. Because bedding in does come up every project, and it did come up as something the bidders always prefer because it gives them a bit of time to adjust.

But, to be clear, a bedding in period does not absolve anybody from the payment mechanism. There would still be one and there would still be default rights; it just lessens the penalties for a few months, typically. It doesn't mean they're off the hook.

If we had done a bedding in period, we would have still calibrated it at a level, and if it was really bad performance, there would still be default triggers. It wasn't meant to sort of be a risk-free period, ever.

KATE MCGRANN: Any other reasons for not including a bedding in period, other than what you've described?

JOHN TRAIANOPOULOS: Not that I recall, no.

KATE MCGRANN: Any consideration of building in something prior to revenue service to account for bedding in of the system, shaking out the bugs, learning curve of the new operator and maintainer, anything like that?

JOHN TRAIANOPOULOS: To be contemplated, is that what you're asking?

KATE MCGRANN: Yes.

JOHN TRAIANOPOULOS: I don't recall. We may have.

KATE MCGRANN: The precedent projects that you looked at, do you recall if any of them had bedding in periods?

JOHN TRAIANOPOULOS: I don't recall. It wouldn't surprise me if they did.

KATE MCGRANN: Were you involved at all in looking at the requirements for trial running?

JOHN TRAIANOPOULOS: No.

KATE MCGRANN: Who from Deloitte was working on the creation of the maintenance requirements?

JOHN TRAIANOPOULOS: I don't recall any -- so, I don't recall anyone working on the maintenance requirements. The payment mechanism itself, the two key people that were on the team were the partner -- he's now a partner -- was Remo Bucci. He was the lead on the project. And Michael Fishbein was kind of the day-to-day manager working on it.

KATE MCGRANN: Any discussions about whether the deductions built into the payment mechanism were to be capped out at the end of each month such that, no matter how badly you do in a month, you start fresh the next month? Or whether they were to be carried over such that you could start already dinged as a result of the prior month's performance?

JOHN TRAIANOPOULOS: The intent would

be to have deductions cap out at the monthly service payment level because it's always -- the formula says MSP, minus deductions, is what we pay, period. It doesn't -- it doesn't signal or say it can go negative. That's certainly the design intent, from my perspective, of what we do. And that's what every IO project does. So it would surprise me to interpret that differently.

KATE MCGRANN: Okay. And just to put it in super plain language for people who don't do this as often as you do, so, if I am the maintainer, even if I do a particularly abysmal job, I can't get paid any less than what I'm owed in month one? Once I go over to month two, I get to start from scratch with the full month's expectation and deductions may be applied to that?

JOHN TRAIANOPOULOS: Not quite, because the entirety of the monthly service payments at risk, including the repayment of capital. So the maintenance provider is part of that fee. They get paid what they bid.

But the maintenance provider is effectively also -- you know, if the risk is passed down, which they typically are, is also at risk for paying back the lender through Project Co. Project

Co is at risk, but Project Co would be asking the Maintenance Co to pay them back for having to pay the lender and equity.

KATE MCGRANN: The example I gave you was not particularly clear.

JOHN TRAIANOPOULOS: No, no, it's good.

KATE MCGRANN: I'll take a second run at this.

JOHN TRAIANOPOULOS: Yes, you're correct, they -- yes, they start fresh.

KATE MCGRANN: They start fresh every month?

JOHN TRAIANOPOULOS: Yes. What doesn't start fresh are the failure points. Those, by design, accrue and roll and are assessed on a rolling basis.

So the points are different. The dollars -- the design intent, my interpretation in design intent, would be that they're effectively capped at the monthly service payment.

KATE MCGRANN: I think you said that that is generally the case in IO projects. Did I get that right?

JOHN TRAIANOPOULOS: Yeah.

KATE MCGRANN: And why is that? Why is

it important to have that capped at the month and a fresh start the next month?

JOHN TRAIANOPOULOS: It's a lot, it's a lot of money. A single monthly service payment absorbed by a Maintenance Co, maintenance provider, is a lot of money. Their profit margins on these projects aren't necessarily huge. So, having to eat an entire loss of a month and pay back lenders is a lot.

We also have the comfort of, if it's really bad performance, the dollar deductions almost become irrelevant because you're likely going to be heading into a default anyways. So that's why the two work together.

And, again, the design intent of the payment mechanism is to have enough money at risk to shape behaviour. So, whether you lose your entire monthly service payments or two times it, you're still scrambling to do everything you can to rectify, right? At some point it doesn't help to put in more deductions.

Also, if you put in too many deductions or big loss, that can get priced in upfront. So we also have to balance how much of this will be priced as contingency upfront and paid for indirectly or not seen transparently by the City versus how much can you just live with.

Like, I would say, if someone loses their entire month, it's going to be a pretty bad scenario. It's probably going to -- like, it's likely to be closer to a default at that level.

KATE MCGRANN: Thank you.

LIZ MCLELLAN: So, in terms of IO's role in the procurement process, can you walk us through? So, how was IO involved in the financial evaluation aspect of the procurement process?

JOHN TRAIANOPOULOS: We were evaluators so we evaluated the proposals, the financial proposals. I, myself, was an evaluator, for example, so we were just part of the evaluation team.

I was also tasked with leading some of the preparation of materials, so the evaluation committee presentation that would have gone up the chain to get the RFP results approved. So very typical role for us, we do that on every project; it wasn't dissimilar.

Reviewing the bids, asking questions of the bidders, if there were any, we did all of that.

LIZ MCLELLAN: What kinds of things

were you looking for in your evaluations?

JOHN TRAIANOPOULOS: The first one is we do a compliance check: Did they comply with the terms of the RFP? Does their large financial model have any issues or errors with it that we need to flag, either as a compliance issue or something to deal with in the closing process? That's a big part of it.

Is the lending there? Is it committed? Are their commitment letters normal? Are there issues in the commitment letters that we should flag?

And that helps inform a quality score. So that's a bit of an exercise just to see whether we believe, one, are they going to be compliant and pass; and then, two, assuming they're passing, what score can we give them based on the strength of their financial plan?

And there's a whole evaluation framework that governs how to look at that and how to score a good versus a poor, versus a very good. So we follow that process, like we do in all procurements.

LIZ MCLELLAN: And were you involved at all in the technical evaluations?

JOHN TRAIANOPOULOS: No.

LIZ MCLELLAN: And were you involved in reviewing the overall results, overall score results?

JOHN TRAIANOPOULOS: No. No, they had it siloed, like finance and technical, yeah.

LIZ MCLELLAN: And then are you familiar with the Fairness Commissioner and what their role was?

JOHN TRAIANOPOULOS: Yes. I don't -- I've never seen their contract, but they were very much there, so I worked with -- they were part of the team in a way, yeah.

LIZ MCLELLAN: How did you interact with the Fairness Commissioner, or what kinds of questions did they have, what were they looking for?

JOHN TRAIANOPOULOS: So, their role was to make sure that we were treating the bidders fairly and we weren't having any bias towards one bidder versus another.

On Ottawa, they were actually very, very engaged. They were at most, or a lot of -- I shouldn't say "most." They were at a lot of even internal meetings, preparing for bidder meetings.

They offer guidance on how to communicate to bidders, for example, to make sure we're being fair and we're not coaching the bids, the bidders, on how to prepare their submissions.

They would review, if we issued in the evaluation, if we issued requests for clarifications, which is a normal process, they would review those to make sure that the questions are worded properly and aren't going to lead to what would be called bid repair, like, we're not trying to help them repair some compliance issue in their bid. That was part of their role.

They attended every meeting with bidders, so we wouldn't talk to or be allowed to talk to a bidder without them there. That was just a very clear rule, and that's always a rule; you're not supposed to do that because they can actually monitor that communication.

And after meetings, they would also guide us and coach us if they felt like, you know, we were being too leading or not leading. Like, they were kind of an advisor as well to the City to make sure that the process was fair. They were very -- in terms of historical precedent, they were very involved on this project.

LIZ MCLELLAN: And why did -- sorry, I interrupted you.

JOHN TRAIANOPOULOS: No, no. Just that they were very present.

LIZ MCLELLAN: And why do you think -- well, I guess you're saying relative to other projects, the Fairness Commissioner or that role was a bit more involved. And why do you think that -- I'm sorry, you have to say "yes" versus just nodding.

JOHN TRAIANOPOULOS: Yes.

LIZ MCLELLAN: Why do you think that was the case here?

JOHN TRAIANOPOULOS: I don't know exactly why. It was very clear that the City cared about a fair process and wanted to make sure that everything was above board. So I suspect that's why, but -- I think they were also called the Fairness Commissioner, which is different than the fairness monitor, so it was -- I'm not that familiar with exactly the difference, but I believe it's a higher sort of oversight role and standard.

LIZ MCLELLAN: Are you aware of the waiver process? And there is a waiver of failure to comply with some aspects of the Project

Agreement for bidders that the City could issue, I assume?

JOHN TRAIANOPOULOS: I'm not familiar with it, no.

LIZ MCLELLAN: So you didn't experience any discussions about issuing waivers for failure to comply?

JOHN TRAIANOPOULOS: You mean in terms of not complying with an RFP submission requirement?

LIZ MCLELLAN: Yes, not complying with a material requirement.

JOHN TRAIANOPOULOS: My layman's understanding is that the City had broad rights to issue a waiver of nonconformance, but I'm not familiar with the details of how it would work or where they would apply it.

LIZ MCLELLAN: Were there any waivers that were issued within the scope of work that you were doing?

JOHN TRAIANOPOULOS: No. We had three -- if I recall, we had three compliant submissions.

LIZ MCLELLAN: And were you told who you should contact in the event that you wanted to discuss the process or start the process for looking at a waiver to comply?

JOHN TRAIANOPOULOS: I don't recall.

LIZ MCLELLAN: Okay. In your opinion, was RTG the clear winner?

JOHN TRAIANOPOULOS: Yes.

LIZ MCLELLAN: And then why do you say that?

JOHN TRAIANOPOULOS: They got the highest score following the evaluation criteria and framework; highest score wins.

LIZ MCLELLAN: And in terms of their financial submission and your evaluation, do you recall anything standing out, or just summarily how did it compare to the other bidders?

JOHN TRAIANOPOULOS: So, the financial submission is heavily geared towards price. So they had the lowest price, which drives most of the results.

There were 50 points reserved for non-price elements within the financial, so 450 on price and 50 on quality of financing. But the price drives -- the price drove a lot of that, the financial results.

They scored -- if I recall, all three

bidders scored very close to each other. They were within a few -- on the quality of financing. The price is just an application of a formula, there isn't much -- there isn't anything subjective about it, it's just math, so you work out a score.

The quality of financing is the one that has a bit of evaluation subjectivity, or judgment, I should say.

And RTG, if I recall, scored very good. I think they were 42 and a half out of 50 -- I was just looking at this -- which is a very good score. The other bidders were, I think, 40, 42 and a half, all very close. So, nothing overtly material. There's always a couple issues or questions to raise, but we didn't flag anything material for the evaluation committee that wasn't normal course, you know, something to deal with in negotiations. So, no, very clean bids, compliant, good scores.

LIZ MCLELLAN: And you spoke about an area of subjectivity when you're looking at quality.

So what types of factors do you look at, in terms of scoring quality?

JOHN TRAIANOPOULOS: I prefer to restate it as judgment, judgment calls. Because there's a hundred points available, and evaluators, as human beings, can apply some professional judgment on what to give someone as a score within a range. We start at 60. So, if you get 60 percent, you pass. Below that, you fail, and that would be enough to disqualify somebody out of it.

So, within the remaining points, assuming that they're passing, there is some professional judgment around, you know, different financial submissions. So we look at things like the strength of the lenders, their experience doing these projects, the strength of the borrowers, so the equity investors and the parent companies underneath them. Have they done this before? Are they capable? Do we believe in their teams? Etcetera.

We also look at one aspect, if I recall back then, and I think we still have it, is, how much inflation risk they're taking. So there's a criteria around how much -- and inflation is a hot topic now, but how much of their payment is subject to escalation? That was a factor as well. It's a small factor but it's one thing that comes to mind that could differentiate you a little bit between your competitors. This is all in the evaluation framework.

I think we talk about stability of financing structure; we talk about achievability, robustness of getting to close, our confidence in actually getting to financial close. The lending commitment is evaluated and scored, and that's informed largely by, again, the strength of the contractors.

Redundancy in the financing: If one bank were to draw up an order of commitment, is there someone else who could step in? You know, two lenders is better than one. For an example, that you might have redundancy if somebody pulls out, for whatever reason, you have another one there to pick up the pieces.

These are all the things that are in the evaluation criteria that we would have followed to give a score.

LIZ MCLELLAN: You spoke about 50 sort of free points that you could assign.

JOHN TRAIANOPOULOS: No. There's 50 points. So the way it works is, there's 500 points for financial, 450 points are price, 50 points are quality of financial proposal.

LIZ MCLELLAN: Okay.

JOHN TRAIANOPOULOS: Within the 50 points, if you score less than 30 out of 50, or 60 percent, you fail.

LIZ MCLELLAN: Okay.

JOHN TRAIANOPOULOS: And if you fail, we would recommend to not proceed with that proponent, despite what the price is. And so that's rare, but that can happen, and it's there as sort of a fail-safe to say -- if, for example, they don't have financing committed yet, that would be a problem, because we're then taking a flyer to hopefully get it between now and financial close. We don't do that, typically, right?

So we wouldn't fail somebody unless it was fairly serious.

LIZ MCLELLAN: Were you involved at all in the selection of the vehicle provider?

JOHN TRAIANOPOULOS: No.

LIZ MCLELLAN: Were you involved at all or familiar with the white paper process?

JOHN TRAIANOPOULOS: On vehicles or...?

LIZ MCLELLAN: Yes, on vehicles, yeah. Or if that was applicable to any other areas. But I know that the white paper process was used for the vehicles.

JOHN TRAIANOPOULOS: Yes. I recall there being a process to solicit input and feedback from the market on how they might want to structure their vehicle procurements. But I wasn't the author of that process or -- I wouldn't be the best person to speak about vehicles.

LIZ MCLELLAN: Like, what do you just generally recall about that?

JOHN TRAIANOPOULOS: I recall there being some debates around whether the City procures the vehicles or Project Co procures the vehicle, and if Project Co procured the vehicles, do you do it upfront so there's a preselected list? Or do you do it and allow it to happen later in the RFP process with the actual full submission?

So I think that was one of the many debates that the team had was when and how do you shortlist who can give the vehicles.

It was more of a technically-led element to it. I was aware of it from being on the project team, but I wouldn't have had -- I don't have a strong view on it.

LIZ MCLELLAN: Other than the Fairness Commissioner's role, what other steps were taken to ensure fair procurement?

JOHN TRAIANOPOULOS: I'm not sure exactly what -- how to answer that. We try to always follow best practice. We, at IO, pride ourselves on not being biased at all.

There's also a governance structure in place that's also helpful so the -- for example, the evaluation results are approved by evaluation committee and then other committees, so I guess we have a lot of eyes on the process. But I'm not sure exactly what else to say about that.

We're clearly barred from talking to bidders off line, that's a very clear policy and procedure that's regular practice, so there's always that. I'm not sure if there's anything else I can really -- I'm struggling a bit with that question.

SARIT BATNER: I don't want to interrupt your flow. At some convenient point can we take a short break?

LIZ MCLELLAN: I just have two more questions and I was going to say let's break.

So, did anyone raise any concerns about fairness in the procurement process?

JOHN TRAIANOPOULOS: Not that I'm aware

of.

LIZ MCLELLAN: And was there a procedure in place that you were aware of that would be followed if a concern was raised?

JOHN TRAIANOPOULOS: Not that -- I don't know.

LIZ MCLELLAN: Okay. Are you familiar with the IOCIP, and what that role is?

JOHN TRAIANOPOULOS: IOCI -- say that again.

LIZ MCLELLAN: IOCIP.

JOHN TRAIANOPOULOS: Infrastructure Ontario Construction Insurance Program?

LIZ MCLELLAN: Yes. So what's involved with that program?

JOHN TRAIANOPOULOS: That is a generic program for construction insurance that IO uses on its projects. I'm not the most familiar with it. That's typically our legal team runs that program and manages our insurance advisor, Aon, on that. But it's generally meant to be a standard insurance program that allows brokers and underwriters to place insurance for construction on a portfolio basis, on a program basis. That's my understanding of it. It's been a while since I've read the insurance documents.

LIZ MCLELLAN: Subject to Ms. McGrann having any further questions, if it works for you, Mr. Traianopoulos, and the reporter, we'll take a break before I get to my next set of questions.

JOHN TRAIANOPOULOS: Sure, yeah.

KATE MCGRANN: Let's break. Would ten minutes be sufficient for everybody?

Okay, so it's 3:29, we'll come back at 3:40.

JOHN TRAIANOPOULOS: Okay.

-- RECESS TAKEN AT 3:29 P.M. --

-- UPON RESUMING AT 3:40 P.M. --

LIZ MCLELLAN: So, Mr. Traianopoulos, I want to ask you a bit about the geotechnical risk transfer aspect of the project.

So, what did this involve? What did the geotechnical risk transfer involve?

JOHN TRAIANOPOULOS: I'm probably the least technical person on this call, so let me just preface that first.

My understanding is "geotechnical risk" refers largely to soil and subsurface conditions that could manifest themselves into material risks, especially in a tunnel and tunneling projects, anything kind of underground.

The risk debate was around who should take what risk and what quantum of risk. And the City and IO and numerous advisors kind of had a role to advise them on what to do on geotech. That's my very non-technical understanding of how geotech works.

LIZ MCLELLAN: Do you recall any commentary from the bidders on this aspect of the Project Agreement?

JOHN TRAIANOPOULOS: Yes. It was a hot topic, and the procurement bidders would have had views on, yeah, that's fair.

LIZ MCLELLAN: And what do you recall from those comments?

JOHN TRAIANOPOULOS: I recall a desire to at least explore, if not for the City to take more -- more of the geotech risk, or at least to share in it in some form.

So, I recall the project team being tasked with looking at options that are out there that could deal with this, to make it biddable and financeable.

LIZ MCLELLAN: And how were the bidders' comments integrated in the geotechnical risk provisions, from what you recall?

JOHN TRAIANOPOULOS: I recall there being a series of different options that bidders can take, in respect of geotech risk, and this is going to be probably at a higher level, but they could either take the geotech risk and take site condition risks as-is.

They could ask the City to take it and have -- there was still some reliance, if I recall, on some of the geotech data that the City gathered -- I could be wrong on this -- but the City would take the bulk of the geotechnical risk or there could be a risk-sharing regime between the City and Project Co, and that would necessitate and require geotech baseline report to form a set of standards and assumptions around those geotech conditions.

So there were -- I recall, again, I believe there were three options contemplated, three streams of options contemplated.

LIZ MCLELLAN: And do you recall the impact on a bidder's selection of the option and how it impacted their scoring? Versus taking on the most risk?

JOHN TRAIANOPOULOS: Right, yeah.

There was a -- we called it a net present value, which is a price adjustment. So, to the extent you take on the geotech risk, as a bidder or as a proponent, you would get a corresponding net present value credit to recognize that risk transfer. I believe it was $80 million in the bid evaluation.

And you would also get an increase to your affordability cap -- it would be to the affordability cap as the gate if you took on the geotech risk which was a -- you know, a signal that the City wanted to transfer the geotech risk because it was worth something to them.

LIZ MCLELLAN: And had IO ever been involved in this approach before, on a project, the transfer of geotechnical risk?

JOHN TRAIANOPOULOS: Not that I'm aware of.

LIZ MCLELLAN: Has IO taken this approach since, on any projects?

JOHN TRAIANOPOULOS: Do you mean the scoring approach or do you mean transferring site condition geotech risk?

LIZ MCLELLAN: The transfer.

JOHN TRAIANOPOULOS: I don't know. I

think I can say -- I think the reason the geotech risk was so critical is because it was on a many-year project. I think in our social projects, there is some transfer of geotech risk that would be more normal. It's the fact that it was over many kilometres, which --

LIZ MCLELLAN: Right, go ahead.

JOHN TRAIANOPOULOS: Which is -- one of the differences between social and civil potentially is you're less able to transfer -- or it's harder to transfer any sort of site condition risk, environmental, whether geotechnical, environmental, etcetera, when it involves several kilometres versus a dedicated site. That's somewhat obvious but... yeah.

LIZ MCLELLAN: And what's the difference when you're looking at, you know, several hundred feet versus several kilometres?

JOHN TRAIANOPOULOS: The ability to sample all of it. The ability to actually do the investigations needed on a smaller site. It would be theoretically easier to do that. You know, short of sampling the entire city, or the entire line, there's always going to be that interpretation of what might be between data points. So, this is, again, my layman's understanding, but if you drill in and do certain geotech investigations and samples, there's sort of an interpretation of what happens between two data points that you have to make, and the longer -- the more kilometres involved, the more potential for gaps.

LIZ MCLELLAN: Were there discussions about the impact on the project if the geotechnical risk materialized and the private partner had to bear that risk?

JOHN TRAIANOPOULOS: Discussions within the City and the project team, or with the bidders?

LIZ MCLELLAN: Within the project team and then also, I guess, with the bidders too. But first within the project team.

JOHN TRAIANOPOULOS: Yes. Again, it was something that was top of mind for bidders and the City. It was an important risk to talk about, an important commercial risk. So there were many discussions around what to do about it.

If I recall, there were options papers around this as well, so -- I don't know if that's what you're getting at, but it was definitely talked about a lot.

LIZ MCLELLAN: And was there discussion about the implications on the partnership, should that risk be borne out or materialize?

JOHN TRAIANOPOULOS: I don't recall anything, in terms of the context of a partnership. I would characterize it more as whether or not this was something that was even biddable, in terms of pricing against it, and whether or not the lenders would finance into something with this level of risk. We simply, at the time, weren't sure, because we hadn't -- at least for IO, we hadn't done an LRT at all, and had a geotech risk this potentially -- this big potentially. So we didn't know for sure what would happen.

So we sought advice on this. At least from my team, we didn't know, so we sought advice from BMO, for example, to see what they knew about this issue.

LIZ MCLELLAN: What did BMO advise?

JOHN TRAIANOPOULOS: BMO was more in the camp of minimum sharing in the risk in some way. Their experience in the United States -- the Port of Miami tunnel, I think, was one of their projects -- was suggesting that this isn't something the City should necessarily transfer to

Project Co entirely. So they did raise that and they did give that opinion for consideration.

LIZ MCLELLAN: And did BMO provide that advice to the City directly or was that through -- was BMO an advisor to IO, and then IO communicated that to the City?

JOHN TRAIANOPOULOS: I would say it's more the latter. It was -- we managed the relationship with BMO, so we would have taken their input and packaged it up.

LIZ MCLELLAN: And what did the City say when IO provided that advice from BMO?

JOHN TRAIANOPOULOS: I don't recall exactly what they said on that, whether that was a meeting or a call on the spot. But there was definitely a preference within the City to transfer as much geotech risk as possible and to see if the market will bear it.

I think a sound conclusion is an $80 million price adjustment speaks volumes. It's a lot of money, $80 million in present value terms. So, putting that value on it, at least to me, signals a strong desire to get it transferred as much as possible.

LIZ MCLELLAN: And who was IO having

most of those discussions with about the transfer of the geotechnical risk?

JOHN TRAIANOPOULOS: I can't -- I'm having a hard time recalling people's names, but the technical advisor would have been involved in that discussion, the commercial advisors on the project with the City. Brian Guest would have been involved in that kind of conversation. And then the project teams, so Bruce Beaton, the project manager at the time; Rob Pattison, the VP at the time would have been involved in that; and then senior City staff, again, John Jensen, the same sort of leadership. It rose to the City leadership as an issue to talk about.

LIZ MCLELLAN: Was there any period -- was there a period of time where it looked like the City was at least considering not transferring 100 percent of the risk?

JOHN TRAIANOPOULOS: I think I would characterize it the City was open to what the market would bear. And the ultimate recommendation of having these three streams or three options the bidders can choose from was: We simply don't know exactly what every bidder's risk appetite is, so let's put out an option to see what they do, and reward those who take more of the risk, through financial points.

If that was -- I think that was -- the truth of the matter was we -- let me say it this way: When you got comments in from bidders, you don't always know exactly, like, how hard they want to push on something, or how much is a preference versus a "must have." And sometimes you have to make that judgment call. So, I think the regime was to put money against it, and put real dollars and real chances of winning against it, to see how real, you know -- for example, if a bidder said, "I can't bid this," well, then, just give him an option not to. Right? They can just get the $0 adjustment and lose the 80 and that's that; they would still technically be compliant.

LIZ MCLELLAN: I guess --

JOHN TRAIANOPOULOS: Yeah, it was a way to sort of -- this is in my impression -- a way of sort of seeing how far this can get pushed.

LIZ MCLELLAN: Right. And the bidders would have obviously had in mind that should they not accept that risk or choose one of the options where there's not a transfer of 100 percent, it would have impacted their scoring?

JOHN TRAIANOPOULOS: Of course, yes. That was the calculation they had to do.

KATE MCGRANN: One quick follow-up question. What was the basis for BMO's advice that the geotech risk shouldn't be transferred entirely?

JOHN TRAIANOPOULOS: BMO is a lender, an active lender, and lenders tend to be conservative, which, I guess, is a good thing in Canada. So, I think they were reacting to commentary they were hearing in the capital markets from other lenders, and even from their own views of what they would want to do as a bank.

So I think they had real honest concerns about this. And their job was to help make sure the project was biddable and bankable, just like all of us. So it was informed by their sense of where the market is on tunneling risk and geotech risk.

KATE MCGRANN: You mentioned the Port of Miami tunnel was a precedent project that they had looked at. How did that play into their advice?

JOHN TRAIANOPOULOS: I believe they were advisors on the Port of Miami tunnel. If not advisors, they were involved -- I believe they were advisors to one of the bid teams. I could be wrong there, but they had a role, so they would have understood that document.

Port of Miami tunnel, if I recall, had a geotechnical baseline report, so I suspect their advice was informed by success there, in looking at that regime and seeing if we can do it here.

KATE MCGRANN: And do you know if their concerns were driven entirely by whether the risk could be made to be biddable and bankable?

SARIT BATNER: May I interject for a moment? They wrote a memo on the basis for their advice. So, I mean, John can try and remember and he can give you his best recollection, but at the end of the day, there is a memo on their advice given at the time that's in the production. So -- I don't know, like, we can find it and undertake to flag it for you, if you can't find it readily, but I...

KATE MCGRANN: That would be great. The memo may not capture all of the advice of the discussions that were had around this. So I'm just trying to find whether there was -- if there was anything in addition to whether this was biddable and bankable that was discussed with BMO about the risk.

SARIT BATNER: Do you remember sitting here today, without the memo in front of him, I guess.

My only point is I just wasn't aware if you knew there was a memo. If you are aware there's a memo, that's great, that's fine. If you weren't, I just wanted to point you to it.

KATE MCGRANN: No, that's helpful. And any time you're aware of a document that you think is relevant to questions, it's always helpful that you point it out and it's appreciated.

JOHN TRAIANOPOULOS: Did you want me to answer the question?

KATE MCGRANN: If you remember anything else that was discussed, other than whether it was biddable and bankable with BMO, yes, please.

JOHN TRAIANOPOULOS: The other aspect is, even if it's biddable and bankable, it may not be of value, right? If I were to price in a trillion dollars and take the risk, that's not exactly a good outcome either.

So BMO, I would expect, would have always been mindful of whether it's efficient to transfer the risk or not.

KATE MCGRANN: And were there any disputes as between -- disputes, disagreements, debates, between the advice that IO was providing and the advice being provided by other advisors?

JOHN TRAIANOPOULOS: I recall IO -- let me -- I'll speak for myself and, again, I'm clearly not a geotechnical expert, but I had tremendous faith and confidence in BMO as a capital markets advisor. So I was more in the camp of doing some sharing. We were fearful of not getting competitive bids on this aspect. If I recall, the City was more aggressive in wanting to transfer it. So I think hence the compromised position of having these three prices and three options to address it.

I can't recall if there was necessarily a large formal disagreement, or an escalation, but, speaking for myself, I was more sympathetic to BMO's advice or leaning more towards that way. But, again, I don't feel qualified to really be giving much geotech advice, to be honest.

KATE MCGRANN: Yeah. And we're certainly not asking you to do that, just asking about what you recall.

JOHN TRAIANOPOULOS: Right.

KATE MCGRANN: Any steps had to be

taken on the question of the geotech risk transfer beyond is there something that needed to be escalated up, in terms of people working at IO or people working at the City?

JOHN TRAIANOPOULOS: Yes. I do recall now that, with the geotech decision in issue, did get up to the City Manager, if I recall correctly, it's for an ultimate executive decision on what to do.

KATE MCGRANN: And do you recall the reason for that?

JOHN TRAIANOPOULOS: I don't. I don't.

KATE MCGRANN: Did IO seek advice on this from anybody other than BMO?

JOHN TRAIANOPOULOS: Did IO seek advice? I don't recall. I recall there was a geotech advisor, I think it was Golder, who was on the project in some form. I don't think they were retained by IO. But there was a more specialist firm involved in helping to advise, I believe.

KATE MCGRANN: Okay. But as far as IO going for advice, just to BMO?

JOHN TRAIANOPOULOS: That's all I'm aware of. Project delivery may have other information, but that's all I'm aware of.

KATE MCGRANN: Thanks very much.
JOHN TRAIANOPOULOS: Yup.
LIZ MCLELLAN: Did IO look at how the partnership relationship may play out between RTG and the City as the relationship progressed over the course of the project?
JOHN TRAIANOPOULOS: Do you mean the contractual relationship between RTG and the City?
LIZ MCLELLAN: Yeah, the contractual relationship, in terms of adhering to the Project Agreement, and then just generally, too, in terms of the different provisions that were in the Project Agreement and how that might impact the relationship.
JOHN TRAIANOPOULOS: I don't know.
LIZ MCLELLAN: And was IO aware of or involved in any disputes between the City and RTG?
JOHN TRAIANOPOULOS: I am not aware of anything, but I -- I'm not aware of anything. You use the word "disputes." I am aware IO was involved in looking at the sinkhole issue in construction. I'm just not sure if that went to a formal dispute or not, I can't recall that, but that's the one topic I just recall IO being involved in helping to figure out what to do about

that.

LIZ MCLELLAN: Do you recall the nature of IO's involvement?

JOHN TRAIANOPOULOS: No.

LIZ MCLELLAN: I ask just because part of the -- a clause in the Memorandum of Understanding is that IO is involved in disputes between the City and Project Co.

So, there wasn't any general process, in terms of involving IO when there was a dispute between the City and RTG?

JOHN TRAIANOPOULOS: There may have been. If I can suggest, our project delivery team would probably be better versed in answering that question. I don't know.

LIZ MCLELLAN: Were you involved in providing any advice to the City on -- did the City ever consult you about any issues that came up, in terms of the performance of the Project Agreement terms, at RTG?

JOHN TRAIANOPOULOS: Again, I think I said it earlier, I recall being loosely involved in the sinkhole issue and the interpretation and the provisions around what might be involved if that's a compensation event.

I recall just some -- the details are fuzzy, but I recall being looped into that, so to speak. So that was one area.

That's the only one I can remember right now.

LIZ MCLELLAN: And what was the nature of your advice that was sought on that issue?

JOHN TRAIANOPOULOS: I don't think I gave -- I don't recall giving any -- much formal advice. I think it was more around, if it's decided that this is, in fact, a compensation event, what does that mean in terms of a potential payment on the lending side. So is it more of a factual kind of consultation of what that might be. I don't -- I wouldn't be qualified to give advice on sinkhole and what -- an interpretation of whether or not that's a compensation event.

LIZ MCLELLAN: Did you get the general impression -- like, let's use that example -- that the City was adhering very closely to the Project Agreement more so than you had seen in other similar projects?

JOHN TRAIANOPOULOS: I wouldn't know or have an opinion about that.

LIZ MCLELLAN: Okay. So, we

understand -- and you might correct -- the mechanism and how this worked. But I understand that the City was involved in assuming RTG's debt, and then the debt being reissued by the City, and so the City basically stepping into the role of the lender. So it was sort of a debt swap.

Were you involved in this situation, or do you have any recollection of this event?

JOHN TRAIANOPOULOS: I was not directly involved in the debt swap that you mention. Early on, when there was discussions around what to do about system extension, I was involved in some brainstorming of ideas of what's possible. But when it got to the debt swap, I'm aware about it -- I'm aware of it, but mostly through just verbal conversations with the members of the Ottawa team who worked on it.

LIZ MCLELLAN: So what was your involvement like when -- so, first of all, why was this required? Why were you involved in discussions about Stage 2, and why was this solution required?

JOHN TRAIANOPOULOS: Okay. This might be a longwinded answer, so let me try.

So, Stage 2 -- so, Rob Pattison and

myself, still at IO during the stage, did the start of Stage 2. So we had a relationship with the City, and the City engaged us to start thinking about the expansion and how to help structure it.

So, again, in my capacity, I was there to help provide advice on how to look at the lending and how to get lender consent. So, we knew all along that you can't -- you need lender's consent to expand a system of this magnitude. It's just in those terms.

So I was involved in two ways that I can recall. One were some early market soundings on how to extend the line and what model to choose. So, the City undertook an engagement to do market soundings to get input on that, just to see who's interested, who might bid, what conditions they need to bid, etcetera.

And then the second one on the lending piece was to help brainstorm ideas of what -- of how to get to the consent that we would need in an expansion, if we were to assume that RTG would have an active role in that expansion, mainly the maintenance scope.

There was a pretty clear preference, commercially, to try to get a maintenance deal done with RTG because it's one system and ideally you have one maintainer for one system, for very good reasons, and if that maintenance scope were to expand, the lender would have to sign off on that. So I was helping trying to figure out a path to get there.

LIZ MCLELLAN: And was there any financial implication from seeking consent from the lender to amend the Project Agreement to keep RTG on in Stage 2?

JOHN TRAIANOPOULOS: Yes, there is. So, the lenders, when they structure their debt, they structure it for a given scope and size of project. If that project grows, including the maintenance scope of that project grows, there's an expectation or just a fact of life, so to speak, in a P3 that the lenders will want to make sure that they're no better -- that they're no worse off from a risk perspective.

So the direct -- cutting to the chase, the direct line there would be, we were expecting, if we wanted to expand the maintenance scope, there would have to be a corresponding injection of equity from Project Co to absorb some of that risk that's being transferred now on to the lenders.

I don't believe that it was -- all these rules and the -- or any formulas of any kinds were in any of the credit documents, but it's a well-understood principle in P3 that the bigger the scope, the more risk, the more equity should go with that.

So we were contemplating how much could that be? What does it look like? And then, if the City didn't have an appetite for that extra cost, what else can you do as other options?

LIZ MCLELLAN: What was the estimated amount for the equity infusion that would have been required?

JOHN TRAIANOPOULOS: I actually don't recall the number, sorry.

LIZ MCLELLAN: And do you recall the process of coming to an estimate?

JOHN TRAIANOPOULOS: Yes. The way the formula would work, or the modelling would work, on this would be to try to replicate the financial model of the first bid, of the RTG numbers. So it's not quite dollar-for-dollar, but if you were to sit -- theoretically double the maintenance scope and double the lifecycle costs, one could expect in the order of double the equity to deal with that extra increase.

It's very lender-specific, though, and it had to be something that would be negotiated, could be negotiated, with the lenders. So we never -- I never got far enough to have -- or I never had a direct line or meeting with the lender to talk about this, that I recall at least. So I can't even say for certainty if there is a number that we came to that was the number. But if we're talking about order of magnitude, or how one would approach it, you'd size the equity more or less in line as a ratio between maintenance, lifecycle and equity in the first two, and you'd be in that same ballpark, give or take.

LIZ MCLELLAN: So -- sorry about that.

JOHN TRAIANOPOULOS: Yeah, just to size the equity, there's a whole calculation that I won't get into, but that's the general premise of the idea.

LIZ MCLELLAN: If you could, high level, describe the calculation, that would be great.

JOHN TRAIANOPOULOS: Okay. So lenders and rating agencies solve for what's called resiliencies. And resiliencies is defined as a percentage increase to the maintenance payments -- the maintenance and lifecycle payments, sorry -- that Project Co -- sorry -- that the equity has to be able to absorb, in case of a replacement scenario.

So, using an example, let's just say you have, you know, $100 of maintenance costs, and a resilience fee test says I want to be able to absorb 20 percent resiliency. What that means is that, in the event of a default or a replacement contractor, the lenders want assurances that somebody can withstand a price of 120. They would take the 100 and say, "I want to make sure that somebody can absorb -- who's not me -- can absorb a price increase to pay for it." So they'll size the equity to make sure there's enough in there so that equity is incented to pay the overrun and not walk away. So, if the cost went to 120, 130, 140, there's a point where equity would say it's not worth it, I'll just lose my equity, walk away, and that's it.

So the lenders want to make sure that they don't do that and there's enough buffer in there to absorb those shocks. So, if you increase your maintenance costs, it then follows that your equity cheques should be bigger to absorb those overruns in the event that Maintenance Co now goes into default. Because this is short of a Project Co default, but if Maintenance Co goes into default, then it's equity's problem to solve and fix and cure. And the lenders want to make sure that they're incented to do that, with enough money at risk to go in and step in and do that.

So there's a bit of this resiliency test that's done typically by rating agencies and lenders together, when they structure in how much equity to put in.

This is not necessarily a firm requirement. It's just a practice that is normal in the P3 space.

LIZ MCLELLAN: So is it like a built-in contingency?

JOHN TRAIANOPOULOS: It's like a -- exactly. It's like a built-in buffer, contingency, to deal with maintenance costs, shocks and increases.

It has become more formulaic over the years, so this is now a very clear rating requirement and a very clear test that we're all aware of.

When Ottawa was procured, it may not have been as crystalized in a credit agreement or any terms, but it's practice, right?

So, it's something that we assumed that these lenders would require in order to get the consent.

In addition, there also could be a consent fee, which is just a fee charged by lenders to review this, do due diligence, and that fee is often something that's negotiated.

LIZ MCLELLAN: So what was the resolution for the City, in terms of needing to amend Stage 2? Sorry, needing to amend the Project Agreement for Stage 2, and in terms of the debt swap? What did you understand to have happened?

JOHN TRAIANOPOULOS: I've never seen the paper on this, like the actual agreement, so I don't know exactly what happened.

My understanding is that the City did a debt swap and took the RTG lenders, the long-term lenders, off risk in doing that.

There was no -- as far as I know, there was no additional equity that went in -- and this is just from what I know from verbal conversations, so I just wanted to preface that, like, I don't --

I've never actually seen the agreement.

So, no new equity went in, and the portion of the capital payment that is attributed to lenders is now paid through this debt swap mechanic or vehicle by the City directly.

So, the City -- you're right, as you said, the City has become the lender, in a way. The existing lenders that were there are, I believe -- and this could be wrong, but are paid through this debt swap mechanic somehow. I just don't know exactly the details.

KATE MCGRANN: Approximately when did your involvement in exploring options on this begin?

JOHN TRAIANOPOULOS: I was looking at -- in and around 2016, I believe.

KATE MCGRANN: And what other options were considered?

JOHN TRAIANOPOULOS: We had one idea, we called it a "reserve concept," so it wasn't equity, but it was this concept where the City puts in money as a reserve or a contingency fund that acts like equity, so if, you know, in the event of a default, the City would either have to cash inject itself or pay for some of these -- pay to cure some of these costs.

So, it was -- I think we called it the City reserve or the project reserve fund, or something like that. That was one idea.

The other idea was to pay the equity and go with that. I think those are the two I recall, but the reserve one was something that came from us, from IO, as an idea.

KATE MCGRANN: Did IO provide the City with a view on the debt swap option, of whether it was the way to go or not?

JOHN TRAIANOPOULOS: No. Sorry, I thought of one more, if that's okay.

KATE MCGRANN: No, please.

JOHN TRAIANOPOULOS: There was -- another option was something a bit more complicated, where the City would effectively acquire the equity of RTG and then, in the second procurement, so in the next procurement, we tender that out as one project.

So that was sort of similar to a convenience -- termination for convenience, but it differed in the way that it's the City keeping the whole structure in place but basically buying out RTG and then flipping it to the next procurement.

That was something that was talked about as well and debated for a bit. A lot of this was just that kind of brainstorming, like, what can we do about this?

Sorry, I missed your second -- I might have missed your last question.

KATE MCGRANN: Did IO provide the City with advice on whether to proceed with the debt swap as the preferred option?

JOHN TRAIANOPOULOS: No. The only thing I can recall is that, you know, we did say, and we did talk about an option where, if you can't get consent, and if lenders were being unreasonable, then there's another option of simply retiring the debt.

So, whether you do a debt swap or call the bonds, they're close to -- they're similar things; just the timing of cash flows and how you do it is a bit different. So there was always the option of you can just retire the debt and pay what's called a "Senior Debt Makewhole." That's always there, so you could force that to happen. But that would be -- all these options take the risk off the lenders, so they're not ideal.

You know, when you expand the system,

it's going to cost more money in financing because you do need that equity cheque to support it.

KATE MCGRANN: I'm trying to understand the extent to which you were involved in the decision that the City ultimately made. You explained that you were involved in brainstorming. Did you remain involved in the discussion through to the City's final decision?

JOHN TRAIANOPOULOS: No, I did not.

KATE MCGRANN: How did IO's involvement in this particular discussion end?

JOHN TRAIANOPOULOS: We rolled off of Stage 2 involvement. I was -- I recall being told by, at the time, Ehren Cory who was our -- I think at the time head of transaction structuring, and he just said we're not going to be working on Ottawa anymore, and it sort of ended there. So that was the end of that.

KATE MCGRANN: And what was the status of the discussions about the debt swap and other potential options, when you were told that IO's involvement with Ottawa would end?

JOHN TRAIANOPOULOS: I would characterize it still as exploring options in a brainstorming category. I don't think at the time any firm, really firm, recommendations or structures were being put in place. And that happened after we were not on the project anymore.

KATE MCGRANN: Approximately when did this take place?

JOHN TRAIANOPOULOS: I don't recall the date, I'm sorry.

KATE MCGRANN: Any help with the date at all?

JOHN TRAIANOPOULOS: I'd have to go back and check through e-mail records. I don't know if anyone else has that handy.

KATE MCGRANN: You said that your involvement in Stage 2 stopped. Did your involvement in all aspects of Ottawa's LRT stop at that point?

JOHN TRAIANOPOULOS: I believe so.

KATE MCGRANN: Prior to the end of your involvement, did you provide the City with any views, opinions or advice on the change in risk profile of the project if the lenders' skin in the game is effectively removed?

JOHN TRAIANOPOULOS: I recall a memo of some sort on the reserve concept, where we talk a little bit about what happens when you take back some of these risks. So I would say, yes, there was some notation around the pros and cons of these options, and the con being, if you somehow retire, take out, swap or do anything with the debt, you are effectively taking back some of that performance risk. And that's a fair statement.

KATE MCGRANN: With respect to the memo, do you know if the memo was delivered to the City?

JOHN TRAIANOPOULOS: I believe it was. I'm not 100 percent sure, I apologize.

KATE MCGRANN: Is that something that you could go away -- this is a question for your counsel: Is that something you could go away, look at and let us know?

U/T SARIT BATNER: We can certainly go away and look at letting you know if we can figure that out. And if we can figure it out, we'll advise you. I don't know the answer, as to whether we can figure that out, but we'll take a look.

KATE MCGRANN: And if you do find the memo, would you please send it over to us? If we've already got it, would you also identify it in the productions?

U/T SARIT BATNER: We will do that or we

will tell you why we're not doing that, one or the other, but I would expect it's already in the productions.

KATE MCGRANN: With respect to the cons, can you just explain, in a little bit more detail, what the cons of removing the senior lenders from the equation is on a project like this; or on this project, in particular?

JOHN TRAIANOPOULOS: Sure. So, the main one is, again, going back to those -- that default scenario, by removing the lenders -- by taking the lenders sort of off risk, you lose that cash that was at risk, the capital that's unamortized, hasn't been paid back yet, serves as a means to deal with replacement costs and rectification costs in a replacement or default scenario. So that money is no longer in the skin of the game from a cash point of view. So that's a con.

In addition, lenders, they have advisors and they have an oversight role throughout the 30-year term. You know, if their payment is more or less guaranteed, then they lose any incentive to fulfil that role and that function; that's another con for sure.

Those are two big ones. So any more than that, you've just -- you know, you've lost that due diligence and that skin-in-the-game concept that the model's sort of predicated on, and you're relying solely on the remaining equity, and the security package. If I understand the debt swap correctly, the City does have access to the security package that was posted in favour of the lenders, so they do have that, but the cash is no longer at risk.

KATE MCGRANN: Is there any concern that if the lenders are no longer at risk, there will be a loss of a moderating influence on the partnership that may operate to the benefit of the project overall?

JOHN TRAIANOPOULOS: Yes. I mean, it's a third party, right? Like, the -- so, the actions of a third party, in my view, could contribute to that, just having someone else watching the details, getting reports on progress, on issues, the monitoring function; I think that's a fair statement.

KATE MCGRANN: Is that something that was discussed at all in this brainstorming that you've explained?

JOHN TRAIANOPOULOS: Yes. I recall a meeting with the City and Brian where we talked about all the pros and cons of different options, and for sure the absence of the third party debt and oversight would have been talked about. I think I can say that with confidence.

KATE MCGRANN: When you say "Brian," who are you referring to?

JOHN TRAIANOPOULOS: Sorry, Brian Guest, as an advisor to the City.

KATE MCGRANN: Do you know if any notes or records were taken of that meeting?

JOHN TRAIANOPOULOS: I don't. I don't recall.

KATE MCGRANN: And what do you recall about the discussion of what we've just been talking about at that meeting?

JOHN TRAIANOPOULOS: I recall conversations about different options, including the equity buy-out option. I recall a kind of a brainstorming meeting, where we talked about, you know, what is the City's appetite? You know, what's informing these decisions or these recommendations?

I recall, you know, some reluctance or

some -- not reluctance; some constraints that were real around the City being able to pay additional equity as an option potentially for 30 more years, as being a real constraint in figuring out what to do.

So, I think one of the reasons why we brainstormed was, you know, absent having unlimited budget, or a big budget, to deal with the extension, we had to -- we were tasked with looking at other options that could work.

KATE MCGRANN: If you recall anything beyond what you've explained, what do you recall the discussion being around the loss of the lenders' risk in the options that are being considered, and the impact that may have on the project?

JOHN TRAIANOPOULOS: I think there was consensus that it's a real -- it's a real downside of any option that takes out debt. There was the risk -- an entire procurement around having a DBFM, so I think everyone agreed that that's something that's a con in any of these options that take them off risk. There was broad consensus around that point.

KATE MCGRANN: From everybody involved

in the discussion?

JOHN TRAIANOPOULOS: I believe so. I think it would be hard to refute that taking on project debt, paying a premium for it for 30 years, and then undoing it is a con in some ways.

As we said earlier, P3 debt is more expensive than what the City, in our case the Province, can borrow at. So you're paying a premium for something. If you undo the risk transfer that comes with that something, if you believe in it, then that's, for sure to me, a con.

KATE MCGRANN: Were you involved in any discussions around the potential additional information or leverage that the City would gain through stepping into the shoes of the lender?

JOHN TRAIANOPOULOS: Information, in terms of, like, access to reports and things like that?

KATE MCGRANN: That's a good example, yes.

JOHN TRAIANOPOULOS: Yes. When I learned about this, and talked to -- so I talked to Brian -- I talked to Brian Guest about this in other conversations, because he's an active advisor on Metrolinx projects, for example. That was something that he did -- that came up, that he communicated as a benefit. So I'm aware of that, you know, the assignment of all the rights, security, and reporting that lenders get, that the City didn't get, would have been a benefit they saw.

KATE MCGRANN: Did you or anybody at IO have any concerns about the impact that may have on the partnership agreement created by the arrangements that were put in place at the outset of the project?

JOHN TRAIANOPOULOS: No. Again, I think it's fair to say that we weren't -- as this got more and more detailed and the structuring happened, we weren't as involved. So the answer to that is, no, I'm not aware of anything there.

KATE MCGRANN: Okay. And during the time that you were involved in the brainstorming, were there any concerns about the potential impact that the change in relationships, change in dynamics, may have on the project as it was put out together at the outset?

JOHN TRAIANOPOULOS: Nothing specific on a relationship point of view that I can recall.

KATE MCGRANN: Change in dynamics,

change in power balance, anything like that?

JOHN TRAIANOPOULOS: Not that I recall, no.

KATE MCGRANN: Thank you.

LIZ MCLELLAN: So, are you aware of the liquidated damages clause in the Project Agreement that requires that failure by RTG to a Project Co to meet or achieve the RSA date result in RTG being liable to pay liquidated damages to the City?

JOHN TRAIANOPOULOS: I recall a single liquidated damage for being late. I can't remember the amount, but it does sound familiar, yes.

LIZ MCLELLAN: And is this a standard clause that's included in all project agreements?

JOHN TRAIANOPOULOS: No, it's not standard.

LIZ MCLELLAN: And does IO typically recommend the use of liquidated damages to incentivize project companies? Or is that a recommended course?

JOHN TRAIANOPOULOS: I think it has been more recently, so I'm going to answer this, it's a bit grey in my own memory. I think historically, like back in -- you know, in the earlier years, we didn't have a lateness liquidated damage.

My understanding right now of what we do is we have an indemnity for not reaching substantial completion on time, and then we've quantified kind of a daily charge of what we would collect against. So I think it's become more standard to quantify and inform proponents of what this is going to cost if you're late, but the one-time material damage for being late is not as common.

LIZ MCLELLAN: And why wasn't this type of provision as common back when the Project Agreement was entered into? Or why wasn't this a recommended course at that time?

JOHN TRAIANOPOULOS: I think the difference with Ottawa LRT, or just transit projects, is that being late has real material financial consequences for the owner in this case, so the City. They would have had to mobilize their operators, they would have had to train their operators and have people there, so there's a pretty big financial consequence of doing so. Unlike in the social project where, yes, it's unfortunate if a hospital or a courthouse or a jail is late; it doesn't have the same sort of order of magnitude cost impact of a transit system being delayed.

I think that was -- if I recall, it was the main driver of doing something around having an LD for completion, because the City had real operational costs to itself for that date being breached.

LIZ MCLELLAN: Were you surprised when you saw the liquidated damages provision and became aware of it, because it wasn't common at the time?

JOHN TRAIANOPOULOS: No. I wouldn't say I was surprised. I think we could understand why there would be an LD. I don't recall, really, the amount. I just remember -- for some reason, one million is in my head, and so is five. So, I don't know if you know the amount, but...

LIZ MCLELLAN: Did IO recommend that City take this route?

JOHN TRAIANOPOULOS: I can't recall if we recommended it or didn't.

LIZ MCLELLAN: And what's the impact on the proponent through the use of a liquidated damages clause?

JOHN TRAIANOPOULOS: Well, it's another cost that may or may not materialize. So, depending on the bidder and their risk appetite, some would theoretically price this in, or part of it in, and some would be more aggressive and assume they'll be on time and not price it in. Just like any contingency in the contract, it comes down to a personal -- it comes down to risk tolerance in their own pricing mechanics.

LIZ MCLELLAN: And then what's the practical implication that when the project is actually underway and there's a delay event and the Project Co incurs having to pay these liquidated damages? What are the risks?

JOHN TRAIANOPOULOS: Well, it depends if the LD moves with the delay event or not. So, if it's written such that the delay event is recognized and schedule substantial completion shifts, then I would assume the LD wouldn't apply.

If the LD applies no matter what, then that would be, at least in my view, a harder risk to take because there's often delay events on projects.

LIZ MCLELLAN: And are you aware of the different payments between the City and the lender, in terms of liquidated damages from RTG or how those mechanisms work?

JOHN TRAIANOPOULOS: Not at all, no.

LIZ MCLELLAN: Are you aware of the City's response to RTG's request regarding reducing the amount of liquidated damages paid by OLRT-C to RTG to give some relief to the subcontractors?

JOHN TRAIANOPOULOS: Not aware of that at all.

LIZ MCLELLAN: So IO was not consulted on that?

JOHN TRAIANOPOULOS: No.

LIZ MCLELLAN: Okay.

JOHN TRAIANOPOULOS: Not that I know of, not that I recall.

LIZ MCLELLAN: Okay. And I think we talked a little bit about this before, but are you aware of what led to the City's decision to discontinue their relationship with IO?

JOHN TRAIANOPOULOS: No. I'm not -- I'm not really aware of exactly what happened there. I don't know if this is -- I'm not aware, no. I don't know exactly what happened.

I think, if I had to -- I don't want to disrespect anybody, but my sense is that IO didn't necessarily have a firm role and the City could also procure Stage 2 without IO, so it wasn't necessarily a must have. I don't know exactly what happened, as to why we were working with them and then not.

LIZ MCLELLAN: And I think you spoke to this as well, but how was this decision or the end of the engagement with the City communicated to you?

JOHN TRAIANOPOULOS: I recall just a phone call from Ehren Cory, just saying that we're no longer going to be working on the Ottawa LRT. And he was the head of my division, so that's -- that was that for me.

And then, similarly, Rob Pattison and I, who worked on the first one, it was similar communication from him to me. It was consistent with what Ehren told me.

LIZ MCLELLAN: And obviously IO's engagement was different on this role, in terms of an advisor capacity, but did IO have to advise the Province that the engagement had ended?

JOHN TRAIANOPOULOS: I don't know.

LIZ MCLELLAN: Okay. Can I ask for just a 3-minute break, until 4:40, just to his clear up a few things, and then we'll get going again at 4:40?

JOHN TRAIANOPOULOS: Okay.

LIZ MCLELLAN: Thank you.

-- RECESS TAKEN AT 4:37 P.M. --

-- UPON RESUMING AT 4:40 P.M. --

LIZ MCLELLAN: We can go back on the record.

What major changes have occurred as a result of IO's engagement on the LRT, in terms of approach?

JOHN TRAIANOPOULOS: Approach in a procurement, or...?

LIZ MCLELLAN: Procurement, engagement with, you know, any company that's looking to enter into a P3 that's similar to this project; like, what has informed IO's approach generally as an advisor?

JOHN TRAIANOPOULOS: Oh, as an advisor. I think one of the things that we're advising, for example, on another city project here in Toronto, one of the lessons learned, or maybe not -- just good practice is to just really clarify our role, authority, governance, etcetera, so there's continuous improvement around ensuring that when we're not a signing authority or an agent, that, you know, there's very clear roles and responsibilities around these advisory mandates.

LIZ MCLELLAN: And what changes were there to the Project Agreement templates that you had going in and then coming out of the project?

JOHN TRAIANOPOULOS: Okay. So, one, from the project financing perspective is we do have some more clear language, I would say, on how to deal with system expansions.

So one lesson learned was to, you know, in respect of lender consent, for example, that we talked about, is to get a bit more prescriptive and formulaic about how this will actually work.

So the Hurontario LRT is a good example where we have a system extension scheduled to the Project Agreement, where we outline the conditions and principles around what a negotiated extension would be with lenders, that has a knock-on effect, then, of -- since it's in the Project Agreement, it forced lenders to write their credit terms with this mind, so that the consent is -- we call it "hardwired consent." So, as long as these conditions are met, they can't really say, "No," which is a benefit for all of us who want to expand the system in the future for other projects. It's a bit of a lesson learned, I think.

LIZ MCLELLAN: So the debt swap situation changed to -- sorry, resulted in a change to the Project Agreement to maybe avoid the situation of the owner of the project entering into the shoes of the lender?

JOHN TRAIANOPOULOS: I think it's fair to say that some of the Ottawa experience, and what we know about it and have heard about it, prompted us to do more, get more clear on system extensions, especially in respect of financing.

You know, and we recognize that transit systems by nature expand over time, different -- so we need to make sure that our project agreements are flexible to accommodate that and to at least be clear with the market upfront of what it means to expand the system and what it might cost us in those scenarios.

So, for example, Hurontario, as I mentioned, gets into a set of principles and formulas around equity sizing and things like that, to be clear of what we're going to -- what we intend to do.

LIZ MCLELLAN: And is that in an effort to stay away from -- or not stay away from, but prevent the discussion around even if the owner should step into the lenders' shoes, then, because it's already clearly in the Project Agreement what will happen?

JOHN TRAIANOPOULOS: It's to facilitate consent. So I characterize it as it's a clear path, eyes-wide-open path, to consent that's documented well in advance of even thinking about the expansion. So it's an enhancement from that point of view.

We don't -- we don't contemplate a debt swap when we first -- like, it's not something that's in our minds to place that debt in that and take it out later; that's not, in my view at least, the best practice. I wouldn't say it's necessarily a reaction to debt swap, but it's a lesson learned in transit generally, to make sure that the agreements just contemplate expansion. And it puts clarity on our side, too, what to expect from a budgeting point of view as well.

LIZ MCLELLAN: So is that situation, then, unusual to you? Like, that wasn't necessarily something that you'd seen happen before?

JOHN TRAIANOPOULOS: I have never seen a debt swap in a P3, at least within Ontario; I've never seen one, no.

LIZ MCLELLAN: And have you seen that happen since?

JOHN TRAIANOPOULOS: No.

LIZ MCLELLAN: Have you seen an industry move away from the complete transfer of risk to a private partner, following what happened on the LRT?

JOHN TRAIANOPOULOS: When you say "transfer of risk," there's many risks. So, in the Project Agreement, I would say that some of the LRT experience we're having now, projects that have recently either closed, some of the subways, which are not LRTs but are transit systems, I'd say it's fair to say there's a general market push to guard against some of the risk transfer that we desire. These are big, complicated projects. I think it's fair to say that the experiences between, you know, not just Ottawa but other cities in other jurisdictions have also had some transit delays and issues, is informing that view. So, between IO and Metrolinx, for example, we're mindful of that. It's not to say we don't want to keep transferring risks, and, you know, that is the model that, with the P3 and with financing comes the presumption of some risk transfer; otherwise we shouldn't do them.

But I think it's fair to say that some of the recent experiences between some of the harder projects is informing the market view. And they are a little less reluctant to take on some of the risks, say, today, than they were ten years ago; I think that's a fair statement, in my opinion.

LIZ MCLELLAN: Have you seen an industry move away from milestone payments and the use of milestone payments?

JOHN TRAIANOPOULOS: Somewhat. Milestone payments have been used at IO before. They tend to require the completion of an actual asset or something you can certify as tangible. So, they can work from that perspective, if you want to drive completion of that event or that building on a hospital, for example, if it's, say, two different towers. So we -- we still use what we call milestone payments, but we don't necessarily as much now tie them to specific completion events. But we always need to use some payments during construction in transit because the projects are just too big. You can't finance 5, 6, $7 billion in the capital markets; it's too big and too expensive.

So we're always going to have some element of payments during construction. Just how you structure them is moving more towards a -- like, a progress payment, earned value mechanic, in general, I'd say.

LIZ MCLELLAN: And do you think that's because of past projects and the results? Or do you think that's just a change in the industry generally?

JOHN TRAIANOPOULOS: I think it factors in a couple of things. One is, you know, administrative ease as well. Like, we try to now structure payments that flow through a regular process. So, for example, what we do at IO, what we call construction period payments, is the lenders flow in money at a certain ratio, we just piggyback off of their processes and match. So we did it more for administrative reasons.

I still think there is some merit in using milestone payments; again, if you care about those specific events and you want to drive some incentive to get to completion.

On the flipside, from a bidder's point of view, milestone payments introduce the pressure and the strain of having a payment conditional upon completing that event. So, from a risk point of view, from their side, I can see why they wouldn't like them as much because it introduces potentially more LDs. You know, as you're missing those events, you're not able to retire your debt with that payment, so you're at higher risk of having more LDs and more missed milestones.

So I could see them -- we take that feedback as well, right? If they get concerned about risk pricing and LDs, we would factor that in. That's one of the reasons why we moved more to an earned value mechanic, and you just kind of pay based on percentage completion. It's a bit more simpler to administer and easy to understand for them.

LIZ MCLELLAN: And I guess a bit more predictable, obviously?

JOHN TRAIANOPOULOS: I would say so. It's just based on pure progress. So it follows that if you're proceeding well, you're being paid according to your curve; if you're behind your curve, you're not being paid. It's that simple.

So I think there's, like, the percentage completion approach versus, you know, having a set number of events and trigger payments for those events. Again, I would say -- what I would personally recommend, if you have, you know, one or two milestones right now that are significant, that are trying to drive completion events -- so, a good example would be a two-tower hospital where you have two occupancy dates; that would be a good example of where we would still recommend the use of milestones.

But I think it's fair to say, since Ottawa, I don't think we've used the same approach since. And it doesn't mean, in my view, that it was necessarily wrong or anything, it's just there's other ways to do it that achieve similar objective of reducing financing costs. It's really just a tool to reduce financing costs; just how you get there can be different.

LIZ MCLELLAN: So, obviously, with the benefit of hindsight, do you think that there's anything that could have been done on the project differently, with respect to your area or just generally?

JOHN TRAIANOPOULOS: I think, with the benefit of hindsight, a bit more focus on system extension, like we've done, would be -- would have been beneficial, just to clarify exactly how it will work.

That's the one that comes to mind, because it is something that we developed in other projects, starting in Eglinton Crosstown.

So, in hindsight, if we could go back, I think we would develop a dedicated system extension regime and get some of the prewired consent that we get in other projects.

LIZ MCLELLAN: So, is there anything that we have not discussed today that you feel we should have touched on or that you wanted to cover?

JOHN TRAIANOPOULOS: No. There isn't, no.

LIZ MCLELLAN: So, part of the process is that we are asking witnesses to provide recommendations, if they have any, for the Commissioner's consideration.

Do you have any recommendations that you have that we should provide to the Commissioner or...

JOHN TRAIANOPOULOS: No, not really. I think you've covered most of the -- at least from my world, most of the points that were relevant to the procurement.

LIZ MCLELLAN: Well, thank you very much for your time today.

-- Concluded at 4:53 p.m.

REPORTER'S CERTIFICATE

I, JUDITH M. CAPUTO, RPR, CSR, CRR, Certified Shorthand Reporter, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth; at which time the interviewee was put under oath by me;

That the statements of the presenters and all comments made at the time of the meeting were recorded stenographically by me;

That the foregoing is a Certified Transcript of my shorthand notes so taken.

Dated this 12th day of May, 2022.

Judith M. Caputo, CSR, CRR

NEESONS, A VERITEXT COMPANY

PER: JUDITH M. CAPUTO, RPR, CSR, CRR

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