



Inside infrastructure

You are the in-house corporate counsel at Build-It, a well-known Ontario company that specializes in designing and building all types of infrastructure throughout Canada. A couple of weeks ago, Build-It received a request for proposal, an RFP, from a large Ontario municipality. The RFP relates to a significant rapid transit system infrastructure project that the municipality wishes to undertake with the private sector as a public-private partnership. The rapid transit system and stations would be on land the municipality already owns and would continue to own. The municipality would own all of the rapid transit vehicles. Build-It is very interested in this infrastructure project and would like to form a consortium and submit a proposal in response to the RFP. Since the project involves planning, designing, constructing, financing, operating, and maintaining the rapid transit system, Build-It proposes that the consortium also include a specialist in planning and environmental assessment, a potential lender, and a company that specializes in the operation, maintenance, and repair of rapid transit systems.

- 1** In addition to the RFP, which one or more of the following acronyms might you see in a procurement process for an infrastructure project like this?
 - a) RFEI
 - b) RFQ
 - c) BAFO

- 2** The proposed structure of the rapid transit project is a privatization.
 - a) True
 - b) False

- 3** You have been asked whether the structure of this P3 transaction would be a “DBFOM.” What is your response?
 - a) Yes
 - b) No

- 4** An appendix to the RFP is a design-build contract. It requires that the private-sector company or consortium undertaking the design-build work disclose the hourly rates of the design builder’s employees who will be working on the rapid transit project. Build-It does not like to disclose the hourly rates of its various team members because it does not want its competitors to have this information if it becomes public. A senior executive of your company has asked you whether you can be certain that such confidential information will not be publicly disclosed if the company signs a design-build contract with the municipality. What is your answer?
 - a) Yes
 - b) No

QUIZ ANSWERS

1 ALL THREE

An RFEI is a request for expressions of interest. The public sector sometimes issues an RFEI to see which companies might be interested in the proposed project.

An RFQ is a request for qualifications. The public sector requests companies wishing to participate in the project to submit a description of similar projects they have completed and their qualifications. The public sector then chooses which responding parties should receive the subsequent RFP.

A BAFO is a best and final offer. After the RFP evaluation process, the municipality might ask two or three leading proponents to submit a "best and final offer."

2 FALSE

In a privatization, the private-sector company or consortium will own the infrastructure asset. In a typical public-private partnership, a P3 transaction, the private-sector party or consortium will design and build the infrastructure and operate and maintain it, but the public sector will own it. In certain types of P3 transactions, ownership of the infrastructure asset could be transferred by the public sector to the private sector at the inception of the contract and then revert back to the public sector at the expiry or earlier termination of the P3 contract. In this project, the municipality is looking to the private sector to design and build the rapid transit system and then operate, maintain, and repair it. Since the municipality will continue to own the system and the vehicles, this is a P3 and not a privatization.

3 YES

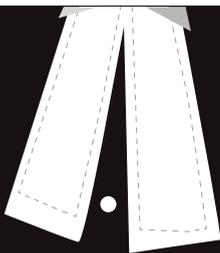
A DBFOM is a design-build-finance-operate-maintain arrangement. Here, the municipality is looking to a private-sector company or consortium to design and build the project, finance the project, and then operate and maintain it. Where there is not a finance component to the P3 arrangement, the appropriate acronym would be a DBOM. Where there is no operation and maintenance component, the appropriate acronym would be DBF.

4 NO

The municipality is subject to the Ontario Municipal Freedom of Information and Protection of Privacy Act. Although the design-build contract might very well contain a provision that both parties will not disclose confidential information, such as hourly rates, the provision will say that this is subject to the provisions of MFIPPA. If there is a request for disclosure of some or all of the contract under the act, there is no guarantee that the requested information or the full contract will not have to be disclosed. The process to be followed and the issues that will need to be addressed when such a request is made are governed by MFIPPA. This is much different from a case in which a contract is entered into between two private-sector parties.

YOUR RANKING?

- **One or less correct:** *might be time to brush up*
- **Two or Three correct:** *not bad, but some further work needed*
- **Four correct:** *impressive*



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