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Region of Peel
Working for you

REPORT
General Committee

DATE: May 26, 2010

REPORT TITLE: **LAND ACQUISITION FOR PUBLIC WORKS CAPITAL PROJECTS REAL PROPERTY ACQUISITION SERVICES - DOCUMENT NUMBER 2010-015P**

FROM: David Szwarc, Chief Administrative Officer
Dan Labrecque, Commissioner of Public Works

RECOMMENDATION

That the contract (Document Number 2010-015P) for the supply of Real Property Acquisition Services be awarded to First ranked, Rueter Scargall Bennett LLP, and Second ranked Aird & Berlis LLP, in the respective estimated amounts of $740,200 and $760,350 (exclusive of applicable taxes), in accordance with the Purchasing By-law 63-2008;

And further, that staff be authorized to retain land acquisition services from the successful Vendor(s) for approved capital projects in accordance with the RFP Document Number 2010-015P in the amounts provided within the respective project budgets for land acquisition services as may be established from time to time;

And further, that instructions and authority to execute, sign, serve, deliver and register any notices, communications or documents of any kind reasonably necessary to carry out the land acquisition services under RFP Document Number 2010-015P be delegated to the successful Vendors to the full extent that such instructions and authority to staff of the Regional corporation in similar circumstances; provided that any and all approvals that would be required from Regional Council in accordance with any statute and the by-laws, policies and procedures of The Regional Municipality of Peel be first obtained.

REPORT HIGHLIGHTS

- Public Works capital works program is significant and will continue to demand high levels of support from internal service providers including Real Estate, Legal Services and Purchasing.
- Delays in securing land can delay the tendering of projects for construction which can have significant impact, particularly if the construction season is missed.
- Staff are of the view that it is necessary to maintain a competent in-house staff team, but that outsourcing is also an important component of service delivery to meet demand.
- An outsourcing approach has been developed that requires one Vendor to be fully accountable to arrange, provide, coordinate and manage all professional services required and conduct the acquisition process from the 70 per cent detailed design stage to acquisition of all lands necessary for a defined project.
- Staff propose that one project be assigned to the highest ranked vendor.
- Staff propose to assign subsequent projects as permitted under the RFP, depending on need and the evaluation of the services delivered.

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DISCUSSION

1. Background

On October 9, 2008, following consideration of a report from the Commissioners of Environment Transportation Planning Services (ETPS) and Employee and Business Services (EBS), Regional Council passed the following resolution:

That Council approve the hiring of five additional staff in Real Estate and one additional staff in Purchasing Services, with three being on a contract basis, to enable the completion of approved capital projects in Environment, Transportation and Planning Services;

And further, that staff report back with additional options for consideration.

Approved 2008-1140

The report indicated a significant volume of land acquisitions was required for the Public Works capital program. Land acquisition services are provided through the Real Estate Section of the Real Property Asset Management Division of the EBS Department and the Legal and Risk Management Division of the Corporate Services Department. Real Estate staff work very closely with Public Works staff through the planning and design phases of capital projects so that property needs can be identified early and the acquisition process can proceed in a timely manner.

During the Council discussion prior to the passing of the above quoted resolution, staff advised that additional options to provide the resources necessary to meet the land acquisitions needs would be considered. This report is intended to fulfill the request for a further report in the second part of the resolution. Its focus is on land acquisition. The impact of the capital program on the Purchasing Division related to the volume of Requests for Proposals and Tenders for consulting and construction work is not included in this report.

On November 19, 2009, Regional Council received a Capital Works Up-date Report from the Commissioner of Public Works highlighting specific areas of focus for 2009 and beyond. As of August 31, 2009 Public Works existing capital works program had 739 active projects with a budget value of approximately $2.0 billion. Public Works capital works program is significant and will continue to demand high levels of support from internal service providers including Real Estate, Legal Services and Purchasing. Delays in securing land can delay the tendering of projects for construction which can have significant impact, particularly if the construction season is missed.

2. Findings

The resources required for land acquisition include a range of professional services, not all of which are needed for each acquisition but may be required. They include: real estate appraisal services, land negotiation services, business loss evaluation, environmental testing, land use planning, and legal services. Some of these services are provided by in-house staff and some are outsourced. When demand for these services increases, the Region can either increase staff or increase outsourced services or a combination of both.

There are pros and cons with both solutions. Increases in staff are not always appropriate where volume of work can fluctuate potentially requiring layoffs when volume decreases. The time it takes to recruit, hire and train new staff does not lend itself to nimble responses to increased demand. It is often difficult to obtain staff with the required skills and experience. This is made more difficult when only contract positions are offered which are not attractive to more skilled candidates.

On the other hand, outsourcing has its challenges. Outsourced services generally cost more in terms of unit rates. As well, the way in which outsourcing is traditionally done does not shift accountability for the services from staff. Many of the professional services required are retained separately. This causes staff to invest a significant amount of time and resources coordinating, administering, managing and checking the work of external contractors. This approach can add significant costs and reduce the capacity of staff to meet workload.

Staff are of the view that it is necessary to maintain a competent in-house staff team, but that outsourcing is also an important component of service delivery to meet demand. However, if outsourcing is going to work more efficiently and effectively a new approach is required to reduce the management costs of outsourcing.

A project team was established that included staff from Public Works (Water, Wastewater, and Roads), EBS (Real Estate and Purchasing Services), and Corporate Services (Legal and Risk Management Services). The project team reviewed the existing Capital Works Protocol which defines the roles and responsibilities of staff and documented the Region's current in-house process for real property acquisitions services. Staff determined that an outsourcing model was possible that:

- creates greater accountability on the part of external vendors,
- reduces contract administration costs, and
- imposes sufficient controls and evaluation to assess outcomes and performance or to discontinue services if necessary.

3. Proposed Direction

This outsourcing approach requires one Vendor to be fully accountable to arrange, provide, coordinate and manage all professional services required and conduct the acquisition process from the 70 per cent detailed design stage to acquisition of all lands necessary for a defined project. This will include as many final settlements of compensation as reasonably possible. This approach works best for large linear projects with many properties. The Vendor would be assigned one of these projects.

The Vendor will adhere to the same administrative processes and protocols as staff currently do, including preparation of reports to General Committee and Regional Council and attending to answer questions. The Vendor would also respond to inquiries from members of Council and work closely with Public Works project managers and the Region's design consultants. In short, the Vendor would follow the same process as staff and be accountable for the outcomes.

The Vendor's performance will be closely monitored by staff, but staff would not be required to devote the significant resources necessary to coordinate and oversee the work of all the professional services providers. The Vendor will be responsible for the acquisition of all properties within designated timelines, budget, and with as many consensual agreements as

possible, utilizing the most cost effective approach. Expropriation proceedings may be taken in accordance with Regional practice provided all approvals from Regional Council are obtained.

Once the acquisition of a parcel of land is approved according to Regional process, the legal counsel assigned by the Vendor will have authority to execute all necessary documents to close the transaction.

To control costs the Vendor must provide an acquisition strategy and budget for the assigned project with fixed lump sum pricing for specific phases of the work (e.g. appraisal, negotiation and transaction closings) based on rates established by RFP. Hourly rates may be charged for matters that can not be fixed (e.g. appearance at a Hearing of Necessity or changes in design requirements after a certain point in negotiations). There will be no increase in unit pricing and/or charges by the Vendor for duration of the contract. Since the acquisition process can result in final settlements following construction when impacts on properties are known, the contract term can be up to five years. However, costs are not incurred when no active work on the acquisition strategy is occurring.

A set of "Real Property Acquisition Principles" were developed in consultation with Legal, Real Estate and Public Works staff to document issues associated with fair acquisition practices and compensation concerns. These principles identify the Region's unique practices during the appraisal, negotiation, legal and transaction closings. The principles "guide" as opposed to impose standards, and they focus on outcomes to ensure the Vendor is fully responsible. It is imperative that the Vendor apply a consistent methodology in conducting all real property acquisition services. This will minimize conflict between property owners and the Region and will maintain the reputation of the Region.

The evaluation of the Vendor's performance is a critical requirement to ensure trust and confidence in the process. The Vendor will follow a process similar to in-house staff for consistency, measurement purposes, accountability and transparency. The Vendor will be allowed as much flexibility as possible while adhering to the Region's principles. Monthly status reports will be provided by the Vendor that will provide detailed updates on negotiations and budget for each individual property and the overall project.

The Vendor will provide a final report and settlement recommendations where compensation has not been finalized. Staff will ensure that the Region's property requirements have been achieved prior to construction and will review settlements of claims and will follow up on any outstanding items after receipt of the Vendor's final report.

4. Purchasing Process

To implement this outsourcing model, the Purchasing Division conducted a multi-stage procurement process. First, a Request for Expression of Interest (RFEI) Document 2009-391I was issued on June 10, 2009 to determine Vendor availability and readiness of the market. Fourteen interested Vendors responded. Responses came in from lawyers, real estate consultants and project management firms who were prepared to put together a consortium of professionals as a project team.

Based on the findings from the Request for Expression of Interest, a Request for Proposal Document 2010-015P was issued on March 3, 2010 to select Vendors to be fully accountable for the real property acquisition services for one large scale, multi-owner, linear

capital works road project. The Document was publicly advertised in the Toronto Star, the Globe and Mail, NRU Publishing, Ontario Reports and the Region of Peel website and was sent to the fourteen vendors by invitation that responded to the RFEI document. The Document closed on April 14, 2010 with five submissions received. Upon initial review of all submissions for compliance requirements, three compliant submissions proceeded to the evaluation phase.

The evaluation was conducted in a single phase by reviewing technical proficiency and price concurrently. The submissions were evaluated by an evaluation committee comprised of staff from Real Estate, Legal Services, Public Works, and Corporate Finance. The criteria for evaluation included Vendor profile and qualifications, references, project team member's experience, understanding of the requirement and a strategy for land acquisition and pricing.

The summary of the rankings is as follows:

Vendor Name	Location	Overall Ranking
Rueter Scargall Bennett LLP	Toronto, ON	1
Aird & Berlis LLP	Toronto, ON	2
Dell Management Solutions Inc.	Toronto, ON	3

Staff propose that one project be assigned to the highest ranked vendor. Although only one project is being assigned at this time, the RFP provides that subsequent projects may be assigned to the first ranked Vendor and the second ranked Vendor. Staff propose to assign subsequent projects as permitted under the RFP, depending on need and the evaluation of the services delivered.

FINANCIAL IMPLICATIONS

Funding for land acquisition services is contained within the approved capital budget for each project. The land acquisition costs are based on the best estimates at the time the capital budget is approved. Sometimes, design requirements can cause variances in project budgets, however, variances can be managed over the larger capital budget portfolio. It is to be noted that, whether or not land acquisition services are outsourced or provided by staff, the cost is attributed to the capital budget and not the current or operating budget.

CONCLUSION

Public Works capital works program is significant and will continue to demand high levels of support from internal service providers including Real Estate, Legal Services and Purchasing. Delays in securing land can delay the tendering of projects for construction which can have significant impact, particularly if the construction season is missed. Staff are of the view that it is necessary to maintain a competent in-house staff team, but that outsourcing is also an important component of service delivery to meet demand. An outsourcing approach has been developed that requires one Vendor to be fully accountable to arrange, provide, coordinate and manage all professional services required and conduct the acquisition process from the 70 per

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