Report – Executive Policy Committee – January 17, 2007

Item No. 7 Claim Settlement relating to the contract for the Joint Utility Customer Information and Billing System
File GL-3

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 17, 2007, the Executive Policy Committee concurred in the administrative recommendation and submits the following to Council:

1. That the City Solicitor/Manager of Legal Services be authorized to effect settlement of a claim by the City of Winnipeg against SFG Technologies Inc., Cayenta Canada Inc., GE Capital Technology Services Inc., et al upon payment of $2.4 million, in accordance with terms that have been negotiated.

2. That the Proper Officers of the City do all things necessary to implement the intent of the foregoing.

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DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 17, 2007, the Executive Policy Committee concurred in the administrative recommendation and submitted the matter to Council.

RE: Recommended settlement of a claim by the City of Winnipeg relating to the contract for the Joint Utility Customer Information and Billing System (PD 95-175)

FOR SUBMISSION TO: Executive Policy Committee

ORIGINAL REPORT SIGNED BY: City Solicitor/Manager of Legal Services

REPORT DATE: January 5, 2007

RECOMMENDATION:

That Council approve, and authorize the City Solicitor/Manager of Legal Services to effect, settlement of a claim by the City of Winnipeg against SFG Technologies Inc., Cayenta Canada Inc., GE Capital Technology Services Inc., et al upon payment of $2.4 million, in accordance with terms that have been negotiated.

Report Summary

Key Issues:

- In March 2002, the City terminated its contract with Cayenta Canada Inc. (formerly SFG Technologies Inc.) for breach.
- E. William (Bill) Olson, Q.C. of Thompson Dorfman Sweatman LLP was retained as external counsel to provide advice regarding the City's ability to recover monies from the contractor and its guarantor, GE Capital Technology Services Inc., and to issue a Statement of Claim and, if necessary, proceed to litigation.
- A Statement of Claim was filed in the Court of Queen's Bench on November 10, 2006.
- Settlement of the City's claim upon payment of $2.4 million has been negotiated, subject to Council's approval.
- Settlement for the negotiated amount will result in recovery of $500,000 more than the amount of the performance guarantee which was provided under the contract. The settlement is recommended as being in the City's best interest and avoids the costs and uncertainty of litigation.
- Under the terms of the Asset Purchase Agreement with Manitoba Hydro related to the sale of Winnipeg Hydro, the City will be required to share the amount of the settlement equally with Manitoba Hydro.

Implications of the Recommendation(s):

General Implications

(X) None

( ) For the organization overall and/or for other departments

( ) For the community and/or organizations external to the City

( ) Involves a multi-year contract

Comment(s):

Policy Implications

(X) No

( ) Yes

Comment(s):

Regulatory Implications

(X) None

( ) Eliminates or reduces regulatory impact

( ) Proposes regulatory impact

Comment(s):

Environmental Implications

(X) No

( ) Yes

Comment(s):

Human Resources Implications

(X) No

( ) Yes

Comment(s):

Financial Implications

(X) Within approved current and/or capital budget

( ) Current and/or capital budget adjustment required

Comment(s):

Report

REASON FOR THE REPORT:

Council approval is required to settle claims brought by the City in excess of $250,000.00.

HISTORY:

On February 6, 1996 the Standing Policy Committee on Public Works approved the award of a contract for implementing a new customer information and billing system to SFG Technologies Inc. (now Cayenta Canada Inc.) This new system was scheduled to replace the existing billing systems in January 1998.

Periodic briefings were provided to the Audit committee concerning the performance of the contract.

On March 8, 2002, in response to four years of delays and errors in the billing software system, and the conclusion that in the best interests of the City the project should be abandoned, the Chief Financial Officer sent a letter to the contractor, SFG Technologies Inc. (now Cayenta Canada Inc.), citing the contract breaches and exercising the City's right to terminate the contract for non-performance and providing notice of the City's intention to look to the performance guarantee and Cayenta for damages.

In January 2004, the CAO authorized the engagement of E. William (Bill) Olson, Q.C. of Thompson Dorfman Sweatman LLP as external counsel to provide preliminary advice regarding the City's ability to recover monies from the contractor and its guarantor, GE Capital Technology Services Inc.

Following a series of unsuccessful discussions and negotiations, in March, 2006, the Mayor and Chair of the Standing Policy Committee authorized the City Solicitor/Manager of Legal Services to instruct Thompson Dorfman Sweatman LLP to proceed to litigate the claim. A Statement of Claim was filed in the Court of Queen's Bench on November 10, 2006.

DISCUSSION:

The contract that was awarded to SFG Technologies provided that it was to deliver a utility customer information and billing system for which the City would pay $2,591,540., including PST and travel and excluding GST. The contract provided that the City would pay maintenance fees for the system for a period of 20 years.

GE Capital Technology Services Inc. provided performance security in accordance with the contract with liability not to exceed $1,913,170.

The City's Statement of Claim seeks damages for monies expended in relation to the contract including monies paid to SFG under the Contract, costs of hardware and software acquired from third parties for the Program, consulting fees, and internal staffing costs. Those amounts were quantified at $5.9 million. The Statement of Claim also seeks damages for the costs that it will incur to purchase a new utility customer information and billing system from another provider.

If the matter were to proceed to litigation, it is anticipated that the Defendants will take the position that they did meet the requirements of the contract, and will bring a counter claim against the city for lost profits under the maintenance agreement.

The recommended settlement takes into account the cost of proceeding to litigation, as well as a probability analysis of potential court awards.

Pursuant to the terms of the Asset Purchase Agreement with Manitoba Hydro, related to the sale of Winnipeg Hydro, the City could, at its sole option, terminate the contract and seek recovery from the defendants, with any recovery to be shared equally between the City and Manitoba Hydro.

Financial Impact Statement

Date: January 8, 2007

Project Name:
Cayenta Settlement

First Year of Program 2007

	2007	2008	2009	2010	2011
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 1,191,790	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	2,400,000	-	-	-	-
Net Cost/(Benefit)	$ (1,208,210)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (1,208,210)	$ -	$ -	$ -	$ -

Additional Comments: The settlement proceeds, net of the external legal fees incurred by the City, will be shared equally with Manitoba Hydro. The City's share of the proceeds, $1,208,210 will be split 50/50 between the water and sewer utility.

original signed by
Manager of Finance & Administration

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Water and Waste Department

External Consultation With:

n/a

THIS REPORT SUBMITTED BY:

Department: Corporate Services
Division: Legal Services
Prepared by: Ursula Goeres
File No.