Minute No. 238
Report - Standing Policy Committee on Protection and Community Services – February 1, 2008

Item No. 1 **Amendment to Performance Security Requirement - Contract Award - Supply, Installation and Operation of a Photo Enforcement Program File GL-9**

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and adopted the following:

1. That the Contract with ACS Public Sector Solutions Inc. for RFP 646-2006 be amended to provide that the performance bond may be an annual renewable performance bond if the Contractor also provides the City with $100,000.00 as security that may be used in the event of non-renewal of the performance bond.

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

Report - Standing Policy Committee on Protection and Community Services - February 1, 2008

DECISION MAKING HISTORY:

Moved by Councillor Steeves,

That the recommendation of the Standing Policy Committee on Protection and Community Services be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 13, 2008, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On February 1, 2008, the Standing Policy Committee on Protection and Community Services concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

RE: Amendment to Performance Security Requirement – Contract Award RFP 646-2006 - Supply, Installation And Operation Of A Photo Enforcement Program

FOR SUBMISSION TO: Standing Policy Committee on Protection and Community Services

ORIGINAL REPORT SIGNED BY: Chief of Police Keith McCaskill

REPORT DATE: January 24, 2008

RECOMMENDATION:

1. That the Contract with ACS Public Sector Solutions Inc. for RFP 646-2006 be amended to provide that the performance bond may be an annual renewable performance bond if the Contractor also provides the City with $100,000 as security that may be used in the event of non-renewal of the performance bond.
2. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report Summary

Key Issues:

- The original performance security requirement was consistent with many of the current contracts in place for provision of various goods and services to the City of Winnipeg. These standard terms were employed in the development of RFP 646-2006.
- This clause in the new RFP has resulted in an increase in the performance security requirement of 2500% relative to the previous contract with ACS for similar work. ($100,000.00 compared to $2,507,550.50)
- ACS advises that they accept the increase in the bond amount, however, their broker cannot secure a sixty month term bond for this amount, for this type of program; and must renew it annually.
- ACS is prepared to deposit $100,000.00 to the City to be used in the event of non-renewal of the performance security. The performance security will be renewed annually in the amount of $2,507,550.50 (50% of the annual contract price).

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): There is no (negligible) financial impact.

Report

REASON FOR THE REPORT:

Council has the authority to approve an amendment to the contract where they were the award authority.

HISTORY:

On October 24, 2007 a report titled "Award of Contract for Supply, Installation and Operation of a Photo Enforcement Program, Bid Opportunities Numbers 208-2006 (RFQ) and 646-2006 (RFP)" was approved by City Council. The RFP requires performance security for the full term of the contract (60 months) in the amount of 50% of the annual Contract Price. Subsequent to the award, the winning contractor, ACS, advised that due to bond market issues beyond their control, their broker is unable to secure the 60 month $2,507,550.50 performance bond as required by Clause D10 of RFP 646-2006.

DISCUSSION:

The performance security requirement of RFP 646-2006 is consistent with many of the current contracts in place for provision of various goods and services to the City of Winnipeg. These standard terms were employed in the development of RFP 646-2006. This clause has resulted in an increase to the performance security requirement of 2500% relative to the previous contract with ACS for similar work. In the previous contract ACS was required to provide performance security in the amount of $100.000.00.

The contract provides that the performance security may be provided as a performance bond, a letter of credit or a certified cheque or bank draft. ACS has provided an annual renewable performance bond in the amount of $2,507,550.50. ACS advises that they understand that the performance security requirement is consistent with most current contracts the City of Winnipeg has with its vendors but their broker cannot provide a five year term and must renew this bond annually. Long term 5 year performance bonds are not commonly issued by sureties. ACS is prepared to deposit $100,000.00 to the City to be used in the event of non-renewal of the performance security. If there is no event of non-renewal, they have requested interest at 2.5% per annum compounded annually, to be credited at the end of the contract. The Manager of Materials has advised that long term 5 year performance bonds are not commonly issued by sureties. Non performance risk is minimal as ACS has a proven performance history with the City of Winnipeg and similar markets throughout North America.

It is therefore recommended that Clause D10.1 (a) of RFP 646-2006 be amended to read:

"It is therefore recommended that the Contract with ACS for RFP 646-2006 be amended to permit the Contractor to provide as performance security an annual renewable performance bond of a company registered to conduct the business of surety in Manitoba in the amount of fifty percent (50%) of the annual Contract Price, in substantially the same format as Form H1 and satisfactory to the City Solicitor, plus a certified cheque in the amount of $100,000 which cheque will be deposited by the City and used only in the event that the existing performance bond cannot be renewed or replaced by other satisfactory performance security in the same amount. If there is no event of non-renewal, at the expiry of the Contract, the $100,000 will be credited back to the Contractor together with interest at 2.5% per annum compounded annually. The certified cheque for $100,000 is to be due and payable on or before the execution of the contract."

Financial Impact Statement

Date: January 18, 2008

Project Name: 646-2006 Photo Enforcement **First Year of Program** **2008**

	2006	2007	2008	2009	2010
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	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts		-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: There is a negligible financial impact to the City of Winnipeg.

Ron Smolik , Jan 18,2008

Manager of Finance

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Legal Services Division, Internal Services Department
Materials Management Branch, Corporate Finance Department
Corporate Finance Department

External Consultation With:

THIS REPORT SUBMITTED BY:

Department Winnipeg Police Service
Division Central Traffic Unit
Branch
Prepared by: S/Sgt. Gary Shewchuk,

File No.