Minutes – Executive Policy Committee – October 21, 2013

AUDIT COMMITTEE

Minute No. 508 Report to Winnipeg City Council - New Fire Paramedic Stations Construction Project

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee, in its capacity as the Audit Committee, concurred in the recommendations outlined in the Fire Paramedic Stations Construction Project Review dated October 2013, and recommended to Council that the following be implemented immediately:

1. The City needs to examine the basis under which they allow single source contracting. We believe that Council needs to consider at what threshold single source negotiation decisions are brought to their attention. Council also should consider the contract award delegation limits as it relates to single source contracts.

2. Currently City procurement policies allow for proponents to propose substitutes for City RFP specifications during the procurement process. We concur that proponents should be encouraged to offer suggestions or substitutes to be considered by the City. We however, suggest that the City change its current approach of not informing other proponents during the bidding process, of the City's acceptance of a substitute. A truly open and transparent process requires such.

3. Shindico was provided information not available to other proponents in respect to both RFP's. Prior to issuance of a RFP, MM should obtain the details of all discussions that have taken place with proponents from the user departments in order to develop a strategy to inform all proponents of information that may not be known and not disclosed in the RFP. Such action is required to ensure all proponents are bidding from a level playing field.

4. The competitive nature of the original RFP was considerably limited by the City's desire to try and identify properties to be used for construction of new stations. We recommend that the City, via the Planning, Property and Development Department, conduct a detailed assessment of City owned properties potentially available and/or conduct land only acquisitions in advance of similar future RFP's. The use of design/build or build only RFP's rather than ones that include the provision of land will create a more competitive environment that should help ensure good value to the City.

5. Project management of real estate construction projects and the lead in all real estate transactions should reside with the Planning, Property and Development Department. If capacity constraints exist, a plan to address such needs should be developed.

6. We are concerned that certain policies such as the establishment of a Major Capital Steering Committee and delegations established by Council, including the authority to enter into contracts above $10 million can be by passed if a project is split into a number of smaller contracts. Council should make a clear statement to the Public Service in respect to their expectations in this regard.

7. Clear policies must be established which document expected disclosure to Council, when transactions have not occurred in a manner that is established by City Policies. For example, disclosure to Council should be required when the following situations occur: the commencement of construction in advance of contract award, splitting of contracts due to lack of approved funding, real estate transactions not having been led by the Planning, Property and Development Department, and Legal agreements not having been approved by Legal Services.

8. The Planning, Property and Development Department needs to develop, for Council approval, a policy regarding land exchange transactions that will speak to the timing and basis under which land valuations are to be done and the means under which any value gaps determined are to be dealt with.

9. Legal Services should establish clear policies regarding:
   - Land acquisition agreements;
   - Construction contracts related to land acquisition; and
   - Authorities to be sought for LOI or similar documents

10. We do not believe that Legal Services acted in a manner to sufficiently protect the interests of the City. Additionally we believe at least part of this was caused by the reporting structure at the City. The Legal Services “gatekeeper” function would be enhanced if Legal Services reported to City Council rather than the City Administration, via the Chief Administrative Officer. This is the structure in place for at least one major city in Canada.

11. Prior to issuing building permits on City projects, the Planning, Property and Development Department should be required to obtain from MM signed statements that appropriately awarded contracts are in place and from Legal Services that all ownership rights in the subject property are unconditionally held by the City.

12. We recommend that City policies regarding real estate transactions, including the declaration of surplus properties, be clarified as to identify at what stage of a proposed transaction Council Approval is to be sought.

13. Corporate Finance should determine a standardized protocol for the challenging of capital budget submissions and project reporting.

14. Corporate Finance should develop a means under which non cash transactions, such as a land exchange, are captured so that the true costs of projects can be reported against the approved capital budget.

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

DECISION MAKING HISTORY:

Moved by Councillor Fielding,

That the recommendations outlined in the Fire Paramedic Stations Construction Project Review dated October 2013 be implemented immediately and forwarded to Council.

Carried

David M. Sanders submitted a communication dated October 21, 2013 with respect to the Report to City Council – New Fire Paramedic Stations Construction Report.

In September 2012, Mayor Sam Katz accepted the recommendation of the City Auditor to retain external resources to complete a comprehensive review of the new fire-paramedic stations construction project.

The Request for Qualifications process required that individuals or team members selected to perform the engagement must not otherwise operate, practice, or reside within the Province of Manitoba or be involved with the City, or acting as a consultant or sub-consultant to the City with respect to the Fire Paramedic Stations Construction Project to strengthen actual and perceived independence.

A Request for Proposal was issued to qualified proponents. On November 15, 2012, an award of contract was made to Ernst & Young LLP who conducted an independent objective review of the Project and the processes followed to construct the four new Fire Paramedic Stations for the City of Winnipeg. The major areas of the review included the following:

(a) Capital Project Oversight
(b) Capital Budget Processes
(c) Procurement
(d) Project Management
(e) Land Acquisition, Sales, and Disposal
(f) Legal Analysis pertaining to real estate transactions
(g) Municipal By-laws, Policy and Process review
(h) Real Estate Valuation
(i) Decision Making and Process analysis and review

Report Summary

In summary the Ernst & Young review found:

- The project was not well managed by a number of parties within the City.
- Oversight and appropriate due diligence were lacking for a project such as this.
- The project was assigned to an individual who did not have the appropriate expertise nor the resources within his department to manage it.
- Certain City policies were not followed and/or the interpretation of the policies may not have met the expectations of Council including the splitting of contracts to avoid Council budget approval and award authority.
- The project will be completed at a cost which exceeds the originally approved budget by at least $3.0 million.
- All contracts for the project were awarded on a non-competitive basis to one firm. The two competitive processes conducted did not result in the award of a contract.
- A decision was made to begin construction of Taylor Station # 12 in advance of the City having an agreement in place to acquire the land. This decision effectively bound the City to some form of transaction to obtain ownership of the Taylor land.
- The construction of Portage Station was awarded based on two contracts. One contract for the foundation and one for the completion of the building. The commencement of the construction of Portage Station # 11 with a foundation only contract, effectively bound the City to the construction of a station with the size and resulting cost that was not within the Council approved budget.

The Ernst & Young report included 14 recommendations regarding the City's policies, processes and organizational structure. Highlights of the recommendations include:

- City Council should examine the basis under which they allow single source contracting evaluating the threshold where single source negotiation decisions should be brought to their attention. Council also should consider the contract award delegation limits as it relates to single source contracts and the expected disclosure to Council when transactions have not occurred in a manner established by City policies.

- City Council should also consider revising the organizational structure so that Legal Services would report to City Council rather than City Administration.
- The Public Service should develop, for Council approval, policies regarding land exchange transactions, constructions contracts related to land acquisition and authorities to be sought for Letter of Intent or similar agreements. The policy regarding the declaration of surplus property should also be clarified as to when Council approval is to be sought.
- The City's procurement processes should be reviewed to determine the acceptability of substitutions and developing a strategy to ensure all proponents have access to the same information.
- The Public Service should also update internal processes regarding capital budget submissions and develop a means to account for non-cash transactions when reporting total project costs. Further, prior to issuing building permits on City projects, controls should be implemented to ensure all ownership rights in the subject property are unconditionally held by the City.

Policy

The report is submitted in accordance with the City Organization By-law 7100/97 section 4.19(c)(ii) that the Audit Committee will "Receive and review such Special Studies and forward such Reports, either in full, or in summary, to Council."

Recommendation:
That the Executive Policy Committee, in its capacity as the Audit Committee, recommend to Council that the Fire Paramedic Stations Construction Project Review dated October 2013, be received as information.

Attachment - Fire Paramedic Stations Construction Project Review Final Report



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