Agenda – Council – July 19, 2018

Report – Executive Policy Committee – July 11, 2018

Item No. 9 Request for Approval of Single Source Negotiations, Award of Contract to provide Legal Services and Over-Expenditure Authorization

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 11, 2018, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That the single source negotiations with, and award of contract to Marr Finlayson Pollock LLP for legal services related to a civil litigation matter dealing with the recovery of damages for deficiencies related to the design and construction of the Winnipeg Police Services Headquarters ("Legal Services") be approved in the estimated amount of up to $250,000.00 plus GST and MRST, and that the City enter into, execute and deliver a contract and such other agreements as determined necessary by the Director of Legal Services and City Solicitor to implement the intent of the foregoing (the "Ancillary Agreements") with same.

2. That authority by delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the contract for Legal Services with Marr Finlayson Pollock LLP in the estimated amount of up to $250,000 plus GST and MRST and the Ancillary Agreements in accordance with this report and such other terms and conditions deemed necessary by the Director of Legal Services and City Solicitor to protect the interests of the City.

3. That approval be given to the Legal Services Department to over-expend its 2018 adopted operating budget by $270,000 (the estimated contract amount of up to $250,000 plus MRST of $20,000) for external legal services through an additional appropriation (budget amendment).

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

Report – Executive Policy Committee – July 11, 2018

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 11, 2018, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: REQUEST FOR APPROVAL OF SINGLE SOURCE NEGOTIATIONS, AWARD OF CONTRACT TO PROVIDE LEGAL SERVICES AND OVER-EXPENDITURE AUTHORIZATION

Critical Path: Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
K. Boryskavich	K. Boryskavich	P. Olafson, acting for M. Ruta	D. McNeil

EXECUTIVE SUMMARY

The City of Winnipeg engages external legal consultants on an as-required basis when: (i) specialized expertise is required; (ii) additional legal resources beyond the scope of the Legal Services Department are required; or (iii) the Legal Services Department is in a position of conflict.

The Public Service is requesting approval of single source negotiation and award of contract for legal services with respect to a civil litigation matter: recovery of damages for deficiencies related to the design and construction of the Winnipeg Police Service Headquarters. A fee estimate has been obtained in the amount of up to $425,000 plus GST and MRST for all external legal services required to take this matter through to the conclusion of trial. At this time, the Public Service seeks approval for a total estimated amount of up to $250,000 plus GST and MRST and will seek further contract extension and budget approvals as required as this matter progresses through the court process.

As there are insufficient funds in an approved budget to award the Contract, a request of Council to approve a $270,000 over-expenditure of the Legal Services Department's 2018 operating budget is required through an additional appropriation (budget amendment).

The recommendations of this report are compliant with the Materials Management Policy and the applicable trade agreements.

RECOMMENDATIONS

1. That Council approve the single source negotiations with, and award of contract to Marr Finlayson Pollock LLP for legal services related to a civil litigation matter dealing with the recovery of damages for deficiencies related to the design and construction of the Winnipeg Police Services Headquarters ("Legal Services") in the estimated amount of up to $250,000.00 plus GST and MRST, and that the City enter into, execute and deliver a contract and such other agreements as determined necessary by the City Solicitor /

Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements") with same.

2. That authority by delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the contract for Legal Services with Marr Finlayson Pollock LLP in the estimated amount of up to $250,000 plus GST and MRST and the Ancillary Agreements in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.

3. That approval is given to the Legal Services Department to over-expend its 2018 adopted operating budget by $270,000 (the estimated contract amount of up to $250,000 plus MRST of $20,000) for external legal services through an additional appropriation (budget amendment).

4. That the proper officers of the City do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

As the total amount to be paid by the City for the proposed Consultant Service single source contract is estimated to exceed $35,000, and the consultant services are not related to a capital project included in the capital budget, authorization for the single source negotiation is required from the Executive Policy Committee pursuant to Administrative Standard FM-002.

As there are insufficient funds in an approved budget to award the Contract, a request of Council to approve a $270,000 over-expenditure of the Legal Services Department's 2018 operating budget is required through an additional appropriation (budget amendment).

IMPLICATIONS OF THE RECOMMENDATIONS

- Marr Finlayson Pollock LLP will be awarded a contract for legal services in the amount of up to $250,000 plus MRST of $20,000.
- The Legal Services Department's 2018 operating budget will be increased by $270,000.

HISTORY/DISCUSSION

LEGAL

The City engages external legal consultants on an as-required basis when: (i) specialized expertise is required; (ii) additional legal resources beyond the scope of the Legal Services Department are required; or (iii) the Legal Services Department is in a position of conflict.

The Public Service is seeking to retain Marr Finlayson Pollock LLP as external counsel with respect to a civil litigation matter: recovery of damages for deficiencies related to the design and construction of the Winnipeg Police Service Headquarters (the "Deficiencies Claim").

With respect to the Deficiencies Claim, the Legal Services Department engaged Marr Finlayson Pollock LLP pursuant to its departmental authority of up to $35,000 to prepare and file the City's Statement of Claim and commence document collection. To date, this $35,000 threshold has not been reached. The City's Statement of Claim was filed on May 16, 2018 and one of the defendants (Caspian Projects Inc.) has filed a Statement of Defence and Counterclaim. The other defendant in the matter (Adjeleian Allen Rubeli Limited) has not yet filed its Statement of Defence.

Marr Finlayson Pollock LLP is a relatively new law firm; however, the City has previously utilized the services of founding partner Michael Finlayson on civil litigation matters. In this instance, it is proposed to engage Marr Finlayson Pollock LLP as additional resources beyond the scope of the Legal Services Department are required. A fee estimate has been obtained in the amount of up to $425,000 plus GST and MRST for all external legal services required to take this matter through to the conclusion of trial. This report seeks approval for a total estimated amount of up to $250,000 plus GST and MRST at this time; the Public Service will seek further contract extension and budget approvals as required as this matter progresses through the court process.

As this is a Consultant contract, the Manager of Materials has waived the requirement for performance security.

A public bid solicitation is not required pursuant to the *Canadian Free Trade Agreement* (2017) ("CFTA") (formerly the *Agreement on Internal Trade*), as the proposed procurement is one of services that may, under applicable law, only be provided by licensed lawyers. The proposed procurement is therefore exempt from the public bid solicitation requirements of the CFTA by virtue of CFTA Article 504.11(h)(iii). A similar exception is provided by Annex 19-5.2 of the *Comprehensive Economic and Free Trade Agreement* (2016) ("CETA"). The Recommendation of this Report complies with B4.1 (f) of the Materials Management Policy, which deals with compatibility.

FINANCIAL

The recommendations in this report include a request for authorization of a $270,000 over-expenditure of the Legal Services Department's ("the Department") 2018 operating budget through an additional appropriation (budget amendment). However, the term of the proposed contract will span several years. As such, subject to Council approval of the over-expenditure, the Department will submit a request at 2018 year-end to transfer any unspent portion of the $270,000 to the Commitment Reserve Fund. Subject to approval of this request, the Department will charge future years' expenditures related to the proposed contract to the Commitment Reserve Fund.

At the Standing Policy Committee of Finance meeting of June 5, 2018, the *Financial Status Report and Forecast to March 31, 2018* report received as information reported a projected deficit of $12.1 million for the tax-supported budget (General Revenue Fund). The report indicates that the projected deficit will decrease over the remainder of the year based on financial improvements typically realized from that forecasted for March 31. As a last resort, the Financial Stabilization Reserve could be drawn on to cover any remaining shortfall. The current balance of the Financial Stabilization reserve is $15 million higher than the Council mandated minimum balance.

FINANCIAL IMPACT

Financial Impact Statement

Date: June 29, 2018

Project Name:

First Year of Program **2018**

REQUEST FOR APPROVAL OF SINGLE SOURCE NEGOTIATIONS, AWARD OF CONTRACT TO PROVIDE LEGAL SERVICES AND OVER-EXPENDITURE AUTHORIZATION

	2018	2019	2020	2021	2022
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	$ 270,000	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 270,000	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ 270,000	$ -	$ -	$ -	$ -

Additional Comments:

Direct Costs in 2018 include the award value of $250,000, the estimated fees to be incurred over the term of the proposed contract, plus MRST at 8% for total estimated costs of $270,000. Actual charges may differ from the estimate.

"Original signed by"
Tanis Yanchishyn
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

This Report has been prepared in consultation with:

Corporate Finance
Materials Management
Legal Services Department (as to legal issues)

OURWINNIPEG POLICY ALIGNMENT

n/a

SUBMITTED BY

Department: Legal Services Department
Division: n/a
Prepared by: K. Boryskavich
Date: June 29, 2018