Minute No. 75
Report – Standing Policy Committee on Protection, Community Services and Parks – November 23, 2018

Item No. 5 Single Source Negotiations and Award of Contract Extension – Active Network Ltd.

COUNCIL DECISION:

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

1. That the single-source negotiations with, and award of contract extension to, The Active Network Ltd. for the collection of all credit and debit payments processed through the Active hosted software from November 2, 2018 to November 1, 2021 in the estimated amount of $1,476,750 plus applicable GST and MRST, be received as information.

2. That the authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of such other agreements and/or amendments deemed necessary by the City Solicitor/Director of Legal Services, in accordance with this report and such terms and conditions as may be deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

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

Report – Standing Policy Committee on Protection, Community Services and Parks – November 23, 2018

DECISION MAKING HISTORY:

Moved by Councillor Rollins,

That the recommendation of the Standing Policy Committee on Protection, Community Services and Parks be adopted.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 5, 2018, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection, Community Services and Parks and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On November 23, 2018, the Standing Policy Committee on Protection, Community Services and Parks concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: **Single Source Negotiations and Award of Contract Extension for the Collection of Credit and Debit Card Payments Processed through the Active Network Ltd. hosted Software for the period of November 2, 2018 to November 1, 2021, Debit Pin Pads, and ongoing maintenance and support (to be received as information – Materials Management No. 764-2014)**

Critical Path: **Standing Policy Committee on Protection, Community Services and Parks – Executive Policy Committee – Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
C. Caron	C. Fernandes	M. Ruta	D. McNeil

EXECUTIVE SUMMARY

In 2005, the City of Winnipeg awarded a contract for the Provision of Business Application Software to Class Software Solutions Ltd. as a result of RFP 440-2004.

In October 2014, the Chief Financial Officer approved the migration to The Active Network Ltd. (Active), the vendor's replacement application.

In December 2015, the Community Services Department contracted Active for its recreation registration and point of sale software (i.e. Leisure Guide registration software). Active became responsible for collecting, on behalf of the City, all credit and debit card payments processed through this hosted software.

The contract with Active automatically renews every three (3) years and requires written notice of termination twelve (12) months prior to end the contract term. The initial three-year term ends on November 2, 2018, and notice of intention to terminate was required by November 2, 2017. This notice was not provided, and the contract has now automatically renewed for an additional three-year term, from November 2, 2018 to November 1, 2021. Community Services did not seek single source approval prior to the automatic renewal of the contract term.

The projected average annual payments collected by Active from November 2, 2018 to November 2, 2021 will approximate $43.9 million or $14,638,000/year. These payments collected by Active are remitted to the City, net of the hosted software service fees ("Service Charges"), which were set out in a schedule to the original contract.

This report provides information regarding the single-source negotiation for Service Charges for recreation software estimated to be in the amount of $1,476,750 for the contract term of November 2, 2018 to November 2, 2021, which exceeds the delegated authority for the contract.

To accommodate its business needs, Community Services has also purchased an additional 15 payment pin pads, not included in the original contract, at an annual cost of $7,245 plus applicable taxes; these costs are included in the service fee projections.

The Public Service will be reviewing the next agreement (2021 to 2024) and providing recommendations for Council's consideration prior to November 2020 to ensure the procurement is consistent with the Materials Management Policy, Administrative Standard FM-002, and the 12 month notice period to the Vendor.

The Recommendation(s) of this Report are not compliant with the Materials Management Policy, but are compliant with the applicable Trade Agreements. Further details are provided in the History/Discussion section.

RECOMMENDATIONS

1. That the single-source negotiations with, and award of contract extension to, The Active Network Ltd. for the collection of all credit and debit payments processed through the Active hosted software from November 2, 2018 to November 1, 2021 in the estimated amount of $1,476,750 plus applicable GST and MRST, be received as information.

2. That the authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of such other agreements and/or amendments deemed necessary by the City Solicitor/Director of Legal Services, in accordance with this report and such terms and conditions as may be deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

3. That the proper officers of the City be authorized to do all things necessary to implement the foregoing.

REASON FOR THE REPORT

Pursuant to Administrative Standard FM-002, Council approval is required for any single source negotiation which exceeds $1 million and commits the City to future budgets.

IMPLICATIONS OF THE RECOMMENDATIONS

There is sufficient budget available within the Community Service Department's Council adopted 2018 operating budget for the 2018 expenditure with projected fees for January 1, 2019 to the end of the contract term November 2, 2021 forming part of the department's 2019-2021 preliminary budget.

HISTORY/DISCUSSION

There are two distinct components of this agreement to be received as information:

(a) The Hosted Software, which is funded via Service Charges on the payments remitted to the City by The Active Network Ltd.; and
(b) The pin pad subscription, which is paid for separately and subject to annual fees.

As authorization for the 2018 Award of Contract was not obtained, the contract expenditures are provided for information only. The contract states there are automatic renewals for three (3) year terms until either party gives written notice to terminate the Hosted Software no less than twelve (12) months prior to the end of the Initial Term or Renewal Term. Community Services should have sought single-source approval prior to November 2, 2017 for the contract term of November 2, 2018 to November 2, 2021.

In 2004, the City of Winnipeg issued RFP 440-2004 (Contract for the Provision of Business Application Software – Recreation Program Registration, Facility and Amenities Booking and Membership Management System). In March 2005, the City of Winnipeg issued the Letter of Intent to The Active Network Ltd., provider of the Class software, as the successful (and only) respondent to RFP 440-2004.

In October 2014, the Community Services Department recommended to the Chief Financial Officer that the City migrate to Active, the vendor's replacement application. As Active had intimate knowledge of the City's environment from the existing eleven year business relationship, the Community Services Department further recommended that the Chief Financial Officer approve the single-source negotiation and award for the supply and implementation of the latest version of the Class Recreation Application Software (ACTIVE Net) to The Active Network Ltd.

On October 21, 2014, the Chief Financial Officer approved the single-source negotiation and award for the supply and implementation of the latest version of the Class Recreation Application Software (ActiveNet) to The Active Network Ltd., for an amount not to exceed $113,943 CDN (GST extra where applicable), pursuant to B4.1 (f) of the Materials Management Policy where the compatibility of a purchase with existing facilities, equipment or services is the paramount consideration.

On December 24, 2014, the contract was signed between The City of Winnipeg and The Active Network Ltd. for a total contract price of $100,050 plus applicable taxes. The contract included a service total of $87,975 and the first year annual subscription for 25 debit pin pads in the amount of $12,075.

The contract states that the Go-Live date of November 2, 2015, is the effective date of the agreement, and remains in full force for a period of three (3) years from the Go-Live Date of the Hosted Software (the "Initial Term"), with automatic renewals for three (3) year terms (each a "Renewal Term") thereafter until either party gives written notice to terminate the Hosted Software no less than twelve (12) months prior to the end of the Initial Term or Renewal Term.

To accommodate its business needs, Community Services has purchased an additional fifteen (15) payment pin pads not included in the original contract, at an annual cost of $7,245 plus applicable taxes.

Had single source approval been sought, this procurement would have complied with B4.1(f) of the Materials Management Policy which permits single sourcing when the "compatibility of a supply with existing property or services is the paramount consideration." This procurement is subject to the Canadian Free Trade Agreement ("CFTA") and the Comprehensive Economic and Trade Agreement ("CETA"). Article 513(1)(b)(v) of the CFTA permits single sourcing to ensure compatibility with and maintenance of specialized goods that must be maintained by the original supplied. There is an equivalent exception in Article 19.12(1)(b) of CETA.

It is the opinion of the Department that the proposed contractor has the skills and resources to satisfactorily complete the Work.

FINANCIAL IMPACT

Financial Impact Statement **Date:** August 23, 2018

Project Name: **First Year of Program** **2018**

Single Source Negotiations and Award of Contract Extension for the Collection of Credit and Debit Card Payments Processed through the Active Network Ltd. hosted Software for the period of November 2, 2018 to November 1, 2021, Debit Pin Pads, and ongoing maintenance and support (to be received as information – Materials Management No. 764-2014)

	2018	2019	2020	2021	2022
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 73,790	$ 468,711	$ 496,283	$ 437,966	
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 73,790	$ 468,711	$ 496,283	$ 437,966	$ -
Less: Existing Budget Amounts	73,790	468,711	496,283	437,966	
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Direct costs are for annual service fees and pin pad rental for the three (3) year contract November 2, 2018 to November 2, 2021 assuming :i) total receipts increase annually by 2% representing annual fees and charges increases; and ii) Active Net annual services fees are increased 4.1% annually, the average five year rate increase (2014-2018). There is sufficient budget available within the Community Service Department's Council adopted 2018 operating budget for the 2018 expenditure with projected service fees January 1, 2019 to the end of the contract term November 2, 2021 forming part of the department's 2019-2021 preliminary budget.

Original signed by K. Lemoine
Kelly Lemoine, CPA, CA
Manager, Finance and Administrative Services
Community Services Department

CONSULTATION

In preparing this report there was concurrence with:

Materials Management
Legal Services (as to Legal terms)

OURWINNIPEG POLICY ALIGNMENT

N/A

SUBMITTED BY

Department: Community Services Department
Division: Information Services
Prepared by: Cheryl Caron
Date: August 24, 2018
File No.:

Attachments:

IS Expenditure