Minutes – Executive Policy Committee – May 7, 2019

REPORTS

Item No. 4 Extension of Single Source Contract with Paybyphone Technologies Inc. for Supply of a Mobile Application to Enhance Payment Processing

EXECUTIVE POLICY COMMITTEE DECISION:

The Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service, that the single source negotiations with, and award of contract extension to, PayByPhone Technologies Inc. for the supply of a mobile application to enhance the payment process at parking facilities and metered parking stalls owned and/or managed by the Winnipeg Parking Authority for the period of August 1, 2018 to July 31, 2019 (the "Contract"), be received as information.

DECISION MAKING HISTORY:

Moved by Councillor Allard,

That the recommendation of the Winnipeg Public Service be concurred in.

Carried

ADMINISTRATIVE REPORT

Title: EXTENSION OF SINGLE SOURCE CONTRACT WITH PAYBYPHONE TECHNOLOGIES INC. FOR SUPPLY OF A MOBILE APPLICATION TO ENHANCE PAYMENT PROCESSING

Critical Path: Executive Policy Committee

AUTHORIZATION

Author	Department Head	CFO	CAO
D. Olson	Randy Topolniski COO, WPA	P. Olafson, Acting CFO	D. McNeil

EXECUTIVE SUMMARY

On July 21, 2017, the Chief Financial Officer approved a single source negotiation with, and awarded a Contract to PayByPhone for the period of August 1, 2017 to July 31, 2018. The PayByPhone Technologies Inc. (PayByPhone) contract provides mobile payment technology services for paid parking at parking facilities and metered parking stalls owned and/or managed by the Winnipeg Parking Authority (WPA).

The contract with PayByPhone had an automatic renewal clause which required notice of termination 90 days prior to the end of the contract term. Notice was inadvertently not provided for the contract period of August 1, 2018 to July 31, 2019 and therefore the contract automatically renewed. The WPA did not seek single source approval prior to the automatic renewal of the contract term. On a go forward basis, the Public Service will ensure that any new procurement contracts entered into by the City do not provide for automatic renewals, unless otherwise approved by Executive Policy Committee. This will prevent similar situations from occurring in the future.

The Public Service has provided 90 days' notice to PayByPhone and subsequently has issued a Request for Proposal. The successful proponent will begin providing mobile payment technology services on August 1, 2019, following the expiration of the Contract.

The subject matter of this Report is not compliant with the Materials Management Policy or the applicable Trade Agreement(s). Further details are included in the History section.

RECOMMENDATIONS

1. That the single source negotiations with, and award of contract extension to PayByPhone Technologies Inc. for the supply of a mobile application to enhance the payment process at parking facilities and metered parking stalls owned and/or managed by the Winnipeg Parking Authority for the period of August 1, 2018 to July 31, 2019 (the "Contract"), be received as information.

REASON FOR THE REPORT

As this single source is not permitted under the Materials Management Policy, and as the total value of the procurement exceeds the applicable thresholds of the *New West Partnership Agreement* ("NWPTA"), which incorporates the requirements of the *Canadian Free Trade Agreement* ("CFTA") and the *Comprehensive Economic and Trade Agreement* ("CETA", collectively the "Trade Agreements"), and as the Trade Agreements do not contain a provision that would permit this single source, approval by the Executive Policy Committee ("EPC") was required pursuant to B8.1.1(b) of the Materials Management Policy.

IMPLICATIONS OF THE RECOMMENDATIONS

There is a financial impact of the recommendation which is included in the Financial Impact Statement. There are sufficient funds in the Winnipeg Parking Authority 2018 and 2019 Operating Budget for this contract.

HISTORY/DISCUSSION

The WPA offers a mobile payment technology service that allows customers to purchase paid parking services via their mobile devices. This report informs EPC of the remedial action taken by the WPA in response to its inadvertent extension of the contract with PayByPhone.

In July 2007, the Chief Operating Officer of the WPA requested concurrence from Materials Management to approve single source negotiations and award of contract to PayByPhone (then known as Verrus Inc.). At that time, Materials Management performed a market sounding to confirm that there appeared to be no other service providers for this type of service. The WPA was also advised that should the agency become aware of other vendors, an RFP would need to be issued.

On July 21 2017 , the Chief Financial Officer approved single source negotiations with, and awarded the Contract to, PayByPhone in the total estimated amount of $102,755.33 (MRST included, GST extra, as applicable) for the period of August 1, 2017 to July 31, 2018 (Materials Management No. 607-2017). In 2017 other vendors could supply the same service. However, PayByPhone had provided the service since 2007, making it familiar to the general public. Therefore it was awarded as a single source contract for compatibility reasons pursuant to B4.1(f) of the Materials Management Policy, with direction from Materials Management to prepare an RFP for the following year.

In 2018, before the automatic renewal of the Contract was realized, the City issued RFP 308-2018 to procure mobile payment services through the competitive bid process. Bidding closed with six proposals received. The City was therefore obligated to award RFP 308-2018 to the proponent who submitted the most advantageous proposal, pursuant to the Trade Agreements. However, it was discovered that RFP 308-2018 had mistakenly included a mandatory requirement for the successful proponent to undertake work which the City was actually required to complete with City forces, pursuant to collective agreement obligations. The incumbent, PayByPhone, knew that the work had previously been completed by City forces, and

accordingly responded to the mandatory requirement in the negative. Had the RFP proceeded to award, PayByPhone would have been declared non-responsive as a result. Bidders were prejudiced by this error because they had incorporated the cost of performing unnecessary work into their proposal prices, thus skewing results.

In light of the above, non-award of RFP 308-2018 was deemed to be the best course of action. The non-award of RFP 308-2018 was approved by the CFO on August 16, 2018, pursuant to the authority delegated to him under B8.1(g) of the Policy.

To mitigate any potential prejudice to the proponents, a new, corrected RFP was proposed for release in early 2019. RFP 331-2019 was released in March 2019 with an anticipated closing late April 2019. The successful proponent of RFP 331-2019 will begin providing mobile payment technology services on August 1, 2019, following the expiration of the Contract. The City has provided PayByPhone with written notice of the City's intent to terminate the Contract.

The Contract Administrator has identified that PayByPhone has the necessary experience and resources to perform all the work in accordance with the requirements of the Contract.

The Contract was subject to the *Canadian Free Trade Agreement* ("**CFTA**"), as was the inadvertent extension. The CFTA does not appear to contain a provision that would have permitted the extension, and there is a risk that a complaint could be brought against the City pursuant to the CFTA as a result of this extension. However, the City has undertaken mitigating action to alleviate any prejudice to the proponents, and has made steps to prevent a reoccurrence. In light of the above, in the opinion of the Public Service the risk of a complaint being brought against the City pursuant to the CFTA is moderately low.

FINANCIAL IMPACT

Financial Impact Statement

Date: March 15, 2019

Project Name:

First Year of Program **2018**

Extension of Single Source Contract with to PayByPhone Technologies Inc. for supply of a wireless application to enhance payment processing

	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	$ 87,692	$ 122,768	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 87,692	$ 122,768	$ -	$ -	$ -
Less: Existing Budget Amounts	87,692	122,768	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: The amount above represents direct costs to WPA of $194,870.70 + $15,589.66 (MRST) = $210,460.36 ($87,692 + $122,768). The contract is for the period from August 1, 2018 to July 31, 2019. Funding was approved in the Winnipeg Parking Authority 2018 and 2019 Operating Budget.

original signed by

Eva Solis, CGA, CPA
A/Manager of Finance
Winnipeg Parking Authority

CONSULTATION

This Report has been prepared in consultation with:

Legal Services Department (as to legal issues)

OURWINNIPEG POLICY ALIGNMENT

SUBMITTED BY

Department: Winnipeg Parking Authority
Division: Operations
Prepared by: D. Olson
Date: March 22, 2019
File No: WPA-026-2018; BID SOLICITATION NO: 768-2018/158-2019