

Delegated Authority to Purchase or Lease Surplus School Board Properties

Date:	October 29, 2009
To:	Government Management Committee
From:	Deputy City Manager and Chief Financial Officer
Wards:	All
Reference Number:	P:\2009\Internal Services\F&re\Gm09097F&re – (AFS 10523)

SUMMARY

To delegate approving and signing powers in real estate matters involving the purchase or lease of surplus school board properties.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer recommends that:

1. City Council delegate to the Deputy City Manager and Chief Financial Officer authority to approve and submit, on behalf of the City of Toronto, binding offers to acquire, by way of purchase or lease, school board properties that have been declared surplus under the Education Act if the funding is included in the current year's Approved Capital Budget or is available in uncommitted reserve/reserve funds (i.e. where the acquisition satisfies the eligibility requirements of the reserve/reserve funds), the total compensation payable by the City does not exceed \$10 million, and where the general conditions set out in Appendix "A" have been met.
2. City Council delegate to the Deputy City Manager and Chief Financial Officer authority to negotiate with the school board regarding the terms of the offer that has been submitted and, if such negotiations are successful, to authorize a lease or agreement of purchase and sale on terms that comply with the conditions of Recommendation 1.

3. City Council delegate to the Deputy City Manager and Chief Financial Officer authority to withdraw the City's Offer if negotiations with the school board are unsuccessful.
4. City Council determine not to delegate to City staff authority to submit the City to binding arbitration in order to establish the compensation payable to a school board pursuant to the terms of the Education Act.
5. City Council direct that local Councillors be consulted regarding the purchase or lease of surplus school properties falling within their wards.
6. Each of the Chief Corporate Officer and the Director of Real Estate Services be authorized severally to execute the offers, agreements and other relevant documents to give effect to the transaction on behalf of the City.
7. The City Solicitor be authorized to complete the transactions provided for in the agreements on behalf of the City, including making payment of any necessary expenses, amending the closing and other dates to such earlier or later date(s), and amending or waiving the terms and conditions, as she may from time to time consider reasonable.
8. City Council authorize the City Solicitor to submit any bills required to implement the foregoing, including all necessary amendments to City of Toronto Municipal Code Chapter 27, Council Procedures, and other chapters in the Municipal Code and other by-laws, generally in accordance with the report recommendations and subject to any necessary technical adjustments.

FINANCIAL IMPACT

There is no financial impact as a result of this report. It is a pre-condition to the exercise of any delegated authority that all required funding be available in an approved budget or the acquisition is identified in the Division's service plan with funding available from appropriate sources.

DECISION HISTORY

City Council at its meeting on July 29, 30 and 31, 1998 adopted Clause No. 1 as amended of Report No. 11 of the Corporate Services Committee, authorizing the processes to be used for the acquisition and disposal of real property, including the delegation of approving authority in real property matters in accordance with Appendix A-1 of that report, which allowed for, among other things, a delegated authority to approve acquisitions of property if funded in an approved budget and the purchase price is \$500,000 or less.

ISSUE BACKGROUND

Pursuant to the provisions of *Ontario Regulation 444/98* made under the *Education Act, R.S.O. 1990*, properties declared surplus by the Toronto District School Board (TDSB) or Toronto Catholic District School Board (TCDSB) are circulated to other school boards, educational and government institutions to see if there is any interest in purchasing and/or leasing the subject property before they can be listed on the open market. Under *Ontario Regulation 444/98* interested parties must present the school board with an offer, at fair market value, within 90 days of the property being circulated for disposal.

Under *Ontario Regulation 444/98* there is a “pecking order” of who has first right to make an offer for the property. Several educational institutions (TDSB, TCDSB, French School Board, French Separate School Board, Universities & Colleges and independent schools funded by the Ministry of Education) have priority over the City to these properties if they submit an offer. Further, even if the City is the only party to submit an offer to the board that does not guarantee that the board will sell the property to the City. The board may elect not to continue with the sale of the property and therefore not to negotiate with the City. If the board does elect to negotiate the City’s offer, then the Education Act only provides that the school board and the City shall have an opportunity to negotiate price for a further period of thirty days and, if no agreement has been reached during that period, the City can either withdraw its offer, or request binding arbitration to determine the purchase price. The City cannot force a board to continue with a sale at the price that has been determined by the City.

Given the challenging structure of Reg. 444/98, it has been the prior practice of City staff, as well as other public agencies affected by the Education Act, to submit informal expressions of interest or conditional offers to a board within the ninety day period in response to a surplus declaration under the Education Act. The treatment such offers have received from school boards has varied from case to case. Some submissions have been rejected as not being offers that comply with the Education Act and others have formed the basis for a negotiated purchase or lease. However, in a letter dated August 5th, 2009 from the CEO of the Toronto Land Corporation (TLC) which is the real estate arm of the TDSB, the CEO states TDSB will no longer consider expressions of interest with regard to properties declared surplus (see Appendix “B”). Any interested parties must now present the TLC with a firm offer to purchase or lease within the 90 day circulation period prescribed by *Ontario Regulation 444/98* in order for it to be considered by the TDSB. This mirrors the practice that has more recently been applied by the TCDSB as well.

COMMENTS

From the time the City receives notice of surplus properties circulated by the school boards, several steps must be taken before a firm offer to purchase or lease could be

presented back to the board. Detailed steps and associated time lines are outlined in Appendix “C”.

By providing delegated authority to the DCM/CFO to submit a binding offer to purchase or lease surplus school properties as recommended in this report, the City will be able to respond to surplus declarations in the manner now required by TDSB and TCDSB in cases where funding is included in the current year’s Approved Capital Budget or is available in uncommitted reserve/reserve funds (i.e. where the acquisition satisfies the eligibility requirements of the reserve/reserve fund).

The submission of a binding offer within the 90 day period will not guarantee the City’s acquisition of the property, but City staff will be able to act on that opportunity should the relevant school board be willing to negotiate with the City. If the board in question does not wish to negotiate with the City, or the parties are unable to agree on the purchase price within the thirty day negotiation period set out in Reg. 444/98, then the authority granted herein would require City staff to withdraw the City’s offer rather than requesting binding arbitration to determine the purchase price. Staff is not requesting authority to submit the City to binding arbitration under the Education Act as such arbitration could result in a financial obligation that exceeds the financial limits of the available budget and the authority granted in this report.

CONTACT

Joe Casali, Director of Real Estate Services, Tel: (416) 392-7202, Fax: (416) 392-1880,
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SIGNATURE

Cam Weldon
Deputy City Manager and Chief Financial Officer

ATTACHMENTS

Appendix “A” – General Conditions
Appendix “B” - Letter dated August 5, 2009 from CEO, TLC
Appendix “C” - Process to report to Council

Appendix “A General Conditions

- (a) Exercise of delegated authority is subject to all applicable Council policies, statutes or other applicable law.
- (b) Authority to approve financial commitments/expenditures is subject to all amounts being available in an approved current budget, or is available in uncommitted reserve/reserve funds, where the acquisition satisfies the eligibility requirements of the reserve/reserve funds.
- (c) Property interests are to be based on appraised value.
- (d) Authority to acquire property is conditional upon provision being made for bringing the property into compliance with applicable MOE or other requirements such that it will be fit for its intended municipal purpose.
- (e) Total compensation means the aggregate of all types of payments, including land value, estimated clean-up costs, third party claims, etc, but exclusive of any applicable taxes and registration costs.
- (f) Total compensation in leases where the City is the tenant includes the value of any tenant improvements to be paid by the City.
- (g) Where options/renewals are included in leases, if the renewal rent is to be determined at a date later than the original approval date, total compensation is to be calculated as though all options are exercised, estimating the renewal rent based on the highest rent payable in the first term of the lease.
- (h) Authority in leasing matters includes authority to approve renewals/extensions within the parameters of the delegated authority.
- (i) Authority for amendments within the parameters of the delegated authority, the cumulative total of which may not exceed the delegated financial limit, is included.
- (j) Authority for all documents necessary to implement the authority, on terms and conditions satisfactory to the Chief Corporate Officer, in consultation with the relevant operating Division(s), is included.

- (k) Staff positions and Committee names referred to in this delegation include successors from time to time.

- (l) Documents are to be in a form satisfactory to the City Solicitor (including indemnity and insurance provisions).

- (m) Where approving power has been delegated to Staff, the Chief Corporate Officer, in consultation with the applicable Deputy City Manager or the City Manager, may determine that such matter is of such special interest that same should be returned to the Government Management Committee and Council for consideration and determination.

Appendix "B"



Shirley Hoy, Chief Executive Officer
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A subsidiary corporation of the TDSB



Memorandum

To: Recipients of Regulation 444/98 Proposals

From: Shirley Hoy, CEO

Date: August 5, 2009

Re: **Education Act R.S.O. 1990, as amended and Regulation 444/98, as amended, (the "Regulation") made pursuant thereto;**

As you are aware, the requirements of Regulation 444/98 Part II-Other Disposition, Section 6 is as follows:

"A body to which a board issued a proposal under Section 3 or 4 or to which a proposal was referred under Section 3 or 4 may make an offer to the board in response to the proposal".

In practice, over the past few years, some public partners have only indicated Expressions of Interest, not firm Offers to Purchase or Offers to Lease. As a result, there have been significant delays in securing final agreements of Purchase & Sale.

Because revenues are urgently required for the Toronto District School Board ("TDSB") capital repairs program, please be advised that effective immediately that if you intend to acquire any TDSB property that has been declared surplus pursuant to the Regulation, you must submit a firm Offer to Purchase or Offer to Lease, as the case may be, to TDSB in accordance with Section 6 of the Regulation.

TDSB will no longer consider Expression of Interest with regard to properties declared surplus.

If you have any questions, please call Donna Jondreau, Manager, Real Estate at 416-393-0632 or me at 416-393-0575.

Thank you.

Appendix “C”

- Surplus properties sent out by School Board, received by City and circulated to ABCD’s by Real Estate Services (**10 days**).
- Interested Divisions advise Real Estate Services and identify Council authority for purchase or leasing and source of approved capital budget line (**21 days**). If no capital budget line exists for the purchase or lease, then a funding source is identified but will require approval by Budget Committee and Executive Committee.
- Real Estate Services advises the School Board of interest in subject property.
- Real Estate Services commissions an external appraisal to determine the market value of the property – this takes approximately 3-4 wks to complete (**21 days**).
- Once the appraisal is received then Real Estate Services can begin negotiations with the School Board (**10 days**).
- Once a negotiated price is agreed to by both parties along with all other terms and conditions, a staff report is prepared by Real Estate Services recommending the purchase or lease (**20 days**).
- The staff report is reviewed and provided input by the Client Division, Finance and Legal before being finalized for signature.
- The staff report seeks Council authority to purchase or lease the subject property substantially on the terms outlined in the report. The CCO and Director of Real Estate are authorized to execute on behalf of the City the Agreement of Purchase and Sale or Lease
- The report goes to Government Management Committee (GMC) for consideration.
- If a capital budget line already existed for the purchase or lease (which is usually the exception vs. the norm) the report goes directly from GMC to Council for consideration (**14 days**).
- However, if no capital budget line exists for the purchase or lease, then once the report has been considered by GMC, it goes to Budget Committee for consideration and then to Executive Committee prior to going to Council. Depending on scheduling of meetings, these extra two steps can add almost two months to the process (**40 days**).
- Once the report is approved by Council, the School Boards have generally accepted this as being a firm Offer to Purchase or Lease.

*above estimates of required days based on calendar days

*GMC directly to Council, approximately 96 days

*GMC to Budget to Admin to Council, approximately 142 days