



STAFF REPORT ACTION REQUIRED

Report Title

311 TECHNOLOGY SOLUTION AGREEMENT STATUS

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| Date: | April 13, 2010 |
| To: | Government Management Committee |
| From: | Deputy City Manager Sue Corke Deputy City Manager and Chief Financial Officer |
| Wards: | All Wards |
| Reference Number: | |

SUMMARY

The purpose of this report is to provide the current status of BearingPoint LP as a result of the Chapter 11 proceedings of its U.S. parent company, and to make recommendations to address the issues arising therefrom. The Agreement for Phases 1 and 2 of the 311 Technology Solution ("Solution) Project is dated March 28, 2008 (the "Agreement") and is expected to be completed on June 30, 2010.

RECOMMENDATIONS

The 311 Executive Sponsor Deputy City Manager and the Deputy City Manager and Chief Financial Officer recommend that:

1. Subject to the completion of Phase 2 of the 311 Technology Solution, City Council consent to the assignment of the Agreement having an Effective Date of March 28, 2008 between the City and BearingPoint LP for the acquisition and implementation of the 311 Technology Solution for the purpose of implementing the 311 Customer Service Strategy to Accenture Inc.
2. The Executive Sponsor, Sue Corke and the Chief Information Officer be authorized to negotiate and enter into a Support and Maintenance Agreement with Bearing Point LP for the 311 Technology Solution in a form satisfactory to the City Solicitor.

3. Subject to the successful execution of a Support and Maintenance Agreement with BearingPoint LP, City Council consent to the assignment of the Support and Maintenance Agreement to Accenture Inc.
4. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

There is no financial impact.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agree with the financial impact information.

DECISION HISTORY

At its meeting of September 26th and 27th, 2007 City Council approved the recommendation of General Government Committee Report GM7.12 and authorized the commencement of negotiations with BearingPoint LP with the goal, and ultimate result, of entering into the Agreement.

ISSUE BACKGROUND

On February 18, 2009, Bearing Point US and certain of its subsidiaries based in the United States filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). BearingPoint LP, the Canadian entity with which the City entered into the 311 Technology Solution Agreement, was *not* included in this filing and has not filed for bankruptcy or liquidation.

The Phases of the Project that form the scope of the Agreement (Phases 1 and 2) will be completed by BearingPoint LP on or about June 30, 2010.

Following its February 18 filing, BearingPoint US, in compliance with the US Bankruptcy Code and with the consent of the US Bankruptcy Court, reached agreement with its creditors to sell, or otherwise transfer for value, the majority of its global consulting businesses, including BearingPoint LP. Under such uncertain conditions, BearingPoint LP continued to provide the work efforts necessary to deliver the Solution to the City and Phase 1 of the 311 Contact Centre was successfully and officially launched to the public on September 24, 2009.

In the meantime, in compliance with the Bankruptcy Code and with the consent of the Bankruptcy Court, Bearing Point US reached agreement with its creditors to sell, or otherwise transfer for value, the majority of its global consulting businesses, including BearingPoint LP. In furtherance of this, in October 2009, BearingPoint LP and Accenture

Inc. came to an agreement whereby those BearingPoint LP resources, who worked on and gained in-depth knowledge of the City's 311 Project, are officially taken on by Accenture Inc. as employees. At the same time, Accenture Inc. became a sub-contractor to BearingPoint LP to supply the very same resources to continue the work on Phase 2 of the City's project without any interruption.

Subsequently, BearingPoint LP and Accenture Inc. wish to enter into an agreement to assign the Agreement from BearingPoint LP to Accenture Inc. The Agreement cannot be assigned without the written consent of City Council. BearingPoint has requested that the City consent to the proposed assignment of the Agreement to Accenture Inc. and to the entering into and then the assignment of a Support and Maintenance Agreement to Accenture Inc. Council approval for 5 years of support and maintenance, including the warranty period, was part of the approval for the Agreement itself. Staff originally intended to include the support and maintenance provisions in the main Agreement as a Schedule. However as a practical matter for ongoing sustainment, a separate agreement document is much less cumbersome as the bulk of the Agreement will no longer be of relevance.

No additional monies are required as the yearly support and maintenance funds are included in the 311 operating budget.

A chronology of these events and details of City staff's analysis is set out in Appendix A to this report.

COMMENTS

The City's objective is to:

- (a) Secure performance of warranty obligations under the Agreement and future support and maintenance for the 311 Technology Solution;
- (b) Ensure that the subject matter experts from BearingPoint LP continue to be available for these purposes;
- (c) Satisfy itself that the proposed assignee of the agreements meet the City's rigorous financial, experience and qualifications requirements.

Given the court-approved arrangement of BearingPoint US to divest itself of its global consulting businesses, including BearingPoint LP, it is necessary for the City enter into arrangements to ensure these objectives are achieved. The proposed assignments will do this.

The only other possible alternative for the City would be to itself assume BearingPoint LP's continuing obligations. This is strongly not advised as the City does not currently have the in-house expertise to take over from the BearingPoint LP (now Accenture Inc.)

subject matter experts. In addition, such an action could void the warranties currently in place.

It is expected that the proposed course of action will ensure seamless continuation of warranty, support and maintenance for the 311Technology solution.

CONTACT

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SIGNATURE

Sue Corke, 3-1-1 Executive Sponsor
Deputy City Manager

Cam Weldon,
Deputy City Manager and Chief Financial
Officer

ATTACHMENTS

Appendix A, Chronology

APPENDIX A

Services Agreement between City of Toronto and BearingPoint LP for the Provision of the 311 Technology Solution and Assignment to Accenture Inc.

- Agreement Executed March 28, 2008 (the "Agreement");
- Phase One Hard Launch occurred September 24, 2009;
- Phase Two Hard Launch anticipated June 30, 2010;
- End of Agreement Deliverables.

A. General Information

1. Bearing Point LP is a limited partnership formed under the Ontario Limited Partnerships Act. Its ultimate parent company is BearingPoint, Inc., the Delaware, US corporation (BearingPoint US).
2. On February 18, 2009, BearingPoint US and certain of its subsidiaries based in the United States filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). BearingPoint LP, the Canadian entity with which the City entered into the 311 Technology Solution Agreement, was *not* included in this filing and has not filed for bankruptcy or liquidation.
3. Following its February 18 filing, BearingPoint US, in compliance with the Bankruptcy Code and with the consent of the Bankruptcy Court, reached agreement with its creditors to sell, or otherwise transfer for value, the majority of its global consulting businesses, including BearingPoint LP.

B. The Agreement

1. In the spring of 2009, BearingPoint US and BearingPoint LP (collectively "BearingPoint") sought proposals from qualified service providers operating in Canada. Accenture Inc. (the Ontario corporation) submitted its bid late in May and the bid was deemed to provide a reasonable basis for discussions. BearingPoint LP and Accenture Inc. commenced negotiations.
2. The City and BearingPoint LP are currently negotiating the provisions of the Support and Maintenance Agreement for the 311 Solution.
3. During this time, the City required assurances of continuity of services and availability of BearingPoint LP staff currently working on the project (subject matter experts). Accenture Inc. and BearingPoint LP entered into a Subcontractor Agreement

whereby BearingPoint LP employees who accepted offers of employment from Accenture Inc. became Accenture Inc. employees who were then immediately subcontracted back to BearingPoint LP. This satisfied the City's concerns about continuity and the future availability of the expertise required to assume the responsibilities of support and maintenance of the Solution.

4. BearingPoint US continues to sell its operations and wind up its business operations, both within the United States and elsewhere. Once BearingPoint LP has assigned its various contractual obligations, including the Agreement and the Support and Maintenance Agreement, it is likely that it will be liquidated in compliance with all applicable laws, rules and regulations.

5. The Agreement provides that BearingPoint LP cannot assign the Agreement without the consent of the Council of the City of Toronto.

C. The Assignment to Accenture Inc.

1. Subject to Council approval, at some point it is expected that BearingPoint LP will want to assign the Agreement and the Support and Maintenance Agreement to Accenture Inc. This is expected to occur after the Phase 2 Hard Launch.

2. The intended result of the assignments is for Accenture Inc. to assume responsibility for the balance of the warranty period remaining under the Agreement (ending in September 2010) and for the ongoing obligations under the Support and Maintenance Agreement commencing thereafter so that continual services are available to support the 311 operation.

3. In accordance with best practices, City staff has performed their due diligence with respect to Accenture Inc. Staff has:

- (a) Subjected Accenture Inc. to the same rigorous financial, experience and qualifications requirements that were set out in the original Request for Proposals;
- (b) Satisfied themselves that Accenture Inc. meets all these requirements.
- (c) Ensured that each assignment is such that no changes are made to the terms and conditions of the original Agreement.

4. In a March 2010 vendor rating report, Gartner Research, a highly regarded independent industry expert research organization, rated the market service offerings from Accenture Inc. in IT Consulting as "Strong Positive" and in System Integration as "Positive". These are the services that would be provided by Accenture, Inc. as a result of the assignments.