

TORONTO STAFF REPORT

January 12, 2005

To: Policy and Finance Committee

From: City Solicitor
Chief Financial Officer and Treasurer

Subject: Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry
Revised Budget Estimate

Purpose:

To provide an updated budget estimate for the Toronto Computer Leasing Inquiry ("TCLI") and the Toronto External Contracts Inquiry ("TECI").

Financial Implications and Impact Statement:

Council has previously approved a 2002/2003 preliminary budget estimate of \$15.0 million for the Inquiries and funds have been set aside in the non-program expenditures budget (Computer Leasing and External Contracts Inquiry) to finance the Inquiries. In May 2004, the City Solicitor updated the estimated costs to be in the range of \$17.2 million over 2004/2005. As at December 31, 2004, actual costs expended on the Inquiries total about \$15.3 million.

This report advises that the revised budget estimate for the Inquiries is \$19.2 million based on a projected completion in 2005. As a result, additional funding in the amount of \$4.2 million must be budgeted for in 2005. Based on the anticipated approval of the 2005 budget by late February 2005, it is projected that existing approvals (inclusive of the interim levy by-law for 2005) will be sufficient to fund the forecasted costs over the next two months. The City Solicitor and the Chief Financial Officer and Treasurer will monitor expenses and will report to Council with any substantial changes to the estimated budget.

Recommendations :

It is recommended that:

- (1) Council approve the revised budget estimate of \$19,179,447 and additional funding of \$4.2 million for costs related to TCLI and TECI by an increase to the 2005 non-program, Computer Leasing and External Contracts Inquiry budget;
- (2) staff monitor the revised budget estimates set out in this report and report back with any substantial changes to the estimated budget set out herein; and
- (3) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background :

City Council established a public inquiry pursuant to Section 100 of the *Municipal Act* (now section 274 of the *Municipal Act, 2001*), at its meeting held on February 13, 14 and 15, 2002, which is now known as the Toronto Computer Leasing Inquiry ("TCLI"). City Council established a second public inquiry, now know as the Toronto External Contracts Inquiry ("TECI"), at its meeting held on October 1, 2 and 3, 2002.

At its meeting held on September 22, 23, 24 and 25, 2003, by adopting Clause 73 or Report No. 9 of the Policy and Finance Committee, City Council approved an estimate of \$15,470,300 for costs relating to or associated with TCLI and TECI.

At its meeting held on January 27, 28 and 29, 2004, Council considered Notice of Motion J(3) and authorized an increase in the estimated cost of the City's outside counsel from \$3,250,000 to \$3,440,000.

At its meeting held on May 18, 19 and 20, 2004, City Council considered Notice of Motion J(40) together with my May 18, 2004 report and directed that the City Solicitor advise Commission Counsel that it wishes TECI to proceed. At that time, it was estimated that the cost of TCLI without TECI would be \$14,160,000 and that if TECI proceeded, the estimated cost of both Inquiries would be in the range of \$17,230,000. We have now received a revised budget from Commissioner Bellamy and considered other costs related to TECI which require Council's consideration.

Commissioner Bellamy has now concluded hearings on TCLI and the City's outside counsel assisted by City lawyers are preparing final submissions. The public hearing on TECI commenced on October 18, 2004, and the hearing is expected to continue for approximately 70 days.

Comments:

The Commission's Revised Budget is attached as Schedule A and assumes 70 hearing days for TECI, 8 days of oral submissions for TCLI and 4 days for oral submissions for TECI for a total of 82 days. The budget assumes that the Commissioner's report will be issued by September 2005. The Commission advises that the increase in total costs from the original budget of \$9.9 million is primarily due to a delay resulting from references of matters by parties to Divisional Court and awaiting Council's decision of May 18, 19 and 20, 2004 with respect to the continuation of TECI. In addition, it was necessary for the Commission to retain outside counsel for the Divisional Court matters. Ongoing operational costs continued during the delays and more than anticipated accounting and forensic work was required related to the materials and evidence produced at the Inquiry hearings. The Commission now estimates a total budget of \$11,392,000 for both Inquiries.

Inquiry Budget Status and Financial Implications

The September 2003 estimated budget approved by Council consisted of the following components:

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|---|--------------|
| Inquiries (TCLI & TECI) including contingency | \$ 9,940,300 |
| Additional KPMG retainer | \$ 30,000 |
| City's Outside Counsel | \$ 3,250,000 |
| Funding for Individuals with standing and Current and former employees | \$ 2,250,000 |
| Total | \$15,470,300 |

City Council at its meeting held on January 27, 28 and 29, 2004 approved an increase in the estimated budget amount for the City's outside counsel to \$3,440,000 from \$3,250,000 approved in September 2003. This increase in the amount of \$190,000, increased the total Council approved budget to \$15,660,300.

As of December 31, 2004, actual costs expended by the City are as follows:

| | |
|--|--------------|
| Inquiries cost for 2002 | \$ 1,921,016 |
| Inquiries cost for 2003 | \$ 4,565,200 |
| Inquiries cost for 2004 | \$ 2,983,719 |
| Additional KPMG retainer | \$ 22,447 |
| City's Outside Counsel | \$ 4,116,351 |
| Funding for Certain Individuals with Standing and Current and Former City Employees | \$ 1,688,730 |
| Miscellaneous Expenses (printing, software etc.) | \$ 13,362 |
| Total | \$15,310,825 |

The current revised budget is as follows:

| | |
|--|------------------|
| Inquiries Cost | \$11,392,000 |
| Additional KPMG retainer | \$ 22,447 |
| City Outside Counsel | \$ 4,750,000 |
| Funding for Certain Individuals with Standing and Current and Former City Employees | \$ 3,000,000 |
| Miscellaneous Expenses | \$ 15,000 |
| Total | \$19,179,447 |

There are many reasons for the increase in the budget estimate. There have been significant issues of witness credibility, significant resources were required to investigate and document events such as then Councillor Jakobek's trip to a hockey game in Philadelphia and the cash transactions of Dash Domi and the Jakobek family. There have been delays due to Judicial Review Applications made by Jeff Lyons, Tom Jakobek and Deborah Morrish which required the Commission to retain outside counsel. As Council has been previously advised on numerous occasions, the City has little, if any, control over the length of the hearing time required and the nature of the issues raised. It is still possible that our current estimate may be exceeded depending on the actual length of the hearing and if new issues arise which are not currently foreseen. It does appear that TECI is on schedule and we are not aware of any reasons at this time for it taking any longer than projected.

Conclusions :

The Commission has now provided us with its revised budget for TCLI and TECI which is attached for Council's consideration. The City's outside counsel has also provided us with her best estimate of her costs to the end of the Inquiries. The costs of funding for individuals with standing and current and former employees has been estimated. The total costs are estimated at \$19.2 million.

The Chief Financial Officer and Treasurer advises that the necessary funding should continue through a further adjustment to the 2005 non-program budget for Council consideration as part of the 2005 budget process.

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City Solicitor

Chief Financial Officer and Treasurer

List of Attachments:

Commission Budget dated October 18, 2004

BUDGET WORKSHEET

TORONTO COMPUTER LEASING INQUIRY / TORONTO EXTERNAL CONTRACTS INQUIRY

| | |
|--------------------------|---|
| 2002 | \$1,760,000 |
| 2003 | \$4,600,000 |
| 2004 (Jan to Sept) | \$2,600,000 |
| 2004 (Oct to Dec) & 2005 | <u>\$2,432,000 (see attached details)</u> |
| TOTAL | \$11,392,000 |

Notes:

- budget for last quarter of 2004 and calendar year 2005 is based on assumption of 70 hearing days for TECI, 8 days of oral submissions for TCLI and 4 days for oral submissions for TECI
- budget assumes Report will be issued by September 2005
- increase in total cost from March 2003 estimate of \$9.9 million is primarily due to a delay to the schedule of hearing days resulting from references of matters by parties to Divisional Court and awaiting City Council's response of May 18, 2004 to the Commissioner's letter of December 30, 2003 concerning whether TECI should proceed. It was necessary for the Commission to retain outside Counsel for those Divisional Court matters. Ongoing operational costs continued during those delays. More than anticipated accounting and forensic work was also required related to the materials and evidence produced at the Inquiry hearings.