

Union Station Revitalization Master Contract for Construction

Date:	May 3, 2010
To:	Government Management Committee
From:	Chief Corporate Officer
Wards:	Ward 28
Reference Number:	P:\2010\Internal Services\Fac\Gm10009 – (AFS 11971)

SUMMARY

This report seeks Council approval of two items contained in the draft Master Contract and Phase Agreements between the General Contractor/Construction Manager, Vanbots, a division of Carillion Construction Inc., and the City. Approval of these items is necessary to finalize these agreements and have them signed as expeditiously as possible, so that substantial work can commence on the project.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. City Council authorize a limitation on the Contractor's liability to the City under the Master Contract and Phase Agreements to the cumulative amount of all contract sums under all Phase Agreements, including the Limited Notice to Proceed, plus any insurance proceeds.
2. City Council authorize the inclusion of a reciprocal interest rate provision in the Master Contract, for overdue amounts payable by the City or the Contractor, utilizing simple interest at the Prime Rate plus two (2) per cent.

FINANCIAL IMPACT

There are no anticipated financial impacts resulting from the adoption of this report.

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

DECISION HISTORY

Union Station Revitalization Award of Contracts: - By the adoption of Government Management Committee Report No. 26, Item GM26.32 at its meeting of November 30, December 1, 2, 4 and 7, 2009, Council authorized the award of the contract for General Contractor/Construction Manager to Vanbots, a division of Carillion Construction Inc.

Policy on Limiting Vendor Liability for Procurements of Specialty Goods and Services for Toronto Water, Solid Waste Management Services and Technical Services (All Wards): - By the adoption of Government Management Committee Report No. 7, Item GM7.11 at its meeting of September 26 and 27, 2007, Council authorized a limitation on vendor liability for certain specialized procurements for a number of City divisions.

ISSUE BACKGROUND

Council, by the adoption of GM26.32, authorized entering into an agreement ("Master Contract" and "Phase Agreements") with Vanbots, a division of Carillion Construction Inc., for the revitalization of Union Station. As part of the procurement process, the City attached to the Request for Proposals a draft agreement, prepared by outside construction legal counsel in consultation with City staff, which set out the agreement which the selected contractor is required to sign. The draft agreement contained certain items which are standard for construction industry projects of this size and nature, but which differ from the City's normal contract terms and conditions.

These provisions were noted in the draft agreement as requiring Council approval. In order to finalize the Master Contract and the subsequent Phase Agreements, it is necessary to obtain Council approval of these terms.

COMMENTS

Limitation on Liability

There is a provision in the draft Master Contract which limits the Contractor's liability to the City to the cumulative amount of all contract sums of all Phase Agreements plus any insurance proceeds. Based on the current expected value of \$450 million for the construction contract and the General Liability insurance coverage of \$200 million in place for the project, the Contractor's potential liability is quite significant under this proposed agreement. As noted in the policy approved by Council in 2007 with respect to Specialty Goods and Services for Toronto Water, Solid Waste Management and Technical Services, in certain highly specialized or complex projects, it is not possible to get unlimited liability from vendors and as such Council has delegated to the appropriate Division Head the authority to make such limitations on liabilities and indemnities for these contracts. Staff have been advised by our outside construction legal counsel, Osler, Hoskin & Harcourt, LLP, that limitations on liability for this type of contract and project are standard in the industry and it is unlikely that any contractor capable of completing

this complex project would sign a contract with unlimited liability. Furthermore, staff have also been advised by representatives of Vanbots, that Vanbots is precluded by corporate policies of the parent corporation from providing unlimited liability under contract agreements.

Payment of Interest on Overdue Accounts

There is a provision in the draft Master Contract which provides that the City will pay the Contractor, or the Contractor will pay the City, interest (at the Prime Rate plus 2%) when payments for goods supplied or services provided or other accounts payable, are not paid by the due date. The Prime Rate is defined as the prime rate of interest announced from time to time by the Bank of Montreal or any successor Canadian chartered bank designated by the City. The due date for Contractor's invoices is 25 days past the date when the agreed upon invoice is submitted for payment. Failure to pay the invoice within 14 days following the due date gives the Contractor, with the requisite notice to the City, the right to stop work until the payment is made. Consideration must be given to the costs which the City might face in agreeing to pay this interest to the Contractor on overdue accounts should payment not be processed within the timeframes stipulated. Current City policy/practice is to include a provision of a penalty of 1.25% per month for outstanding accounts due to the City and include no provisions for payment of interest for any amounts outstanding payable by the City. Outside construction legal counsel has advised that this type of more equitable reciprocal interest payment clause is an industry standard.

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SIGNATURE

Bruce Bowes, P. Eng
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