



STAFF REPORT ACTION REQUIRED

Executing Purchases of Goods and/or Service Contracts for the Chief Corporate Officer Organization

Date:	December 12, 2013
To:	Government Management Committee
From:	City Solicitor and Chief Corporate Officer
Wards:	All
Reference Number:	P:\2013\Internal Services\Fac\Gm13016Fac (AFS 18677)

SUMMARY

The purpose of this report is to recommend changes and streamline the process for the preparation and approval "as to form" for formal agreements for purchase of goods and/or services. Providing the authority to the Chief Corporate Officer Organization to utilize an existing process already in place with Engineering and Construction Services ("ECS") will streamline the process, simplify financial controls and expedite the delivery of capital projects.

RECOMMENDATIONS

The City Solicitor and Chief Corporate Officer recommend that:

1. City Council authorize the Chief Corporate Officer to prepare and "approve as to form" all standard form contracts for the purchase of goods and services by the Chief Corporate Officer Organization (CCOO) that have been awarded by tender process, prior to the execution of such agreements by appropriate City officials, utilizing such standard processes and standard form documents as approved by the Director, Purchasing and Materials Management and the City Solicitor.
2. The Chief Corporate Officer be authorized to delegate these functions and authority to her staff as necessary.

FINANCIAL IMPACT

There is no financial impact beyond what has already been approved in the current year's budget.

ISSUE BACKGROUND

City Council, in 2001, considered a report from the Commissioner of Works and Emergency Services (WES) and City Solicitor concerning the length of time it takes the City to execute contracts after they have been awarded through the tender or quotation process. Consequently, Council granted authorization for WES to prepare and execute construction contracts utilizing processes and documents as approved by the Director, Purchasing and Materials Management and the Legal Services Division.

On January 31, 2006 City Council adopted (Report No. 1, Clause 15, Administration Committee) - Agreement Execution Process For Goods and/or Services. This procedure set out the criteria and guidelines for determining whether a formal agreement is required and provided specific authority for the execution of certain agreements. Subsequently, Technical Services (now ECS- Engineering and Construction Services and formerly WES) retained their authority to continue to prepare and "approve as to form" contracts using the new standard template protocols.

Existing Contract Execution Process for Chief Corporate Officer Organization:

The CCOO purchases goods and services by a competitive tender process which may result in a formal written contractual agreement.

The written agreement is currently prepared in consultation with and "approved as to form" by Legal Services in accordance with the procedure on Formal Agreements. CCOO staff confirms in writing to Legal Services that the agreement accurately reflects the business requirements as stated in the tender document and Legal Services confirms that the necessary authority exists and prepares and finalizes the execution of the standard form agreement. Legal Services also prepares and obtains the required bonds or other security, ensures that the required insurance is in place, and ensures that other matters, such as WSIB clearances, are obtained from the Contractor as required under the call documents. Under this process, Legal Services staff approve all agreements by placing an "Approved as to Form" stamp on the agreement and filling in an "authority" stamp on the signing page.

Given the current volume of workload in Legal Services and the CCOO, it is estimated that the time to complete the execution of a standard form contract is approximately five to seven weeks once the bid has been awarded. Therefore, it is the view of both the CCO and City Solicitor that, as with the current arrangement for Engineering and Construction Services, the length of time required to prepare and execute contract documents after the contract has been awarded will be significantly reduced if the role currently undertaken by Legal Services is instead delegated to the CCO. This is expected to increase

efficiency and eliminate adverse impacts on budgets and funding for capital projects across the City caused by delays in the contracts process.

Existing Contract Execution Process for Engineering and Construction Services

In 2006, ECS retained their authority to continue to prepare and "approve as to form" contracts using the new standard template protocols. Using well-designed standard agreement contract template under the approval of City's PMMD and Legal Services Division, they continue to prepare and approve the use of standard agreements for recurring types of services. This authority allows non-legal personnel to perform these functions without increasing the risk to the City. This previous transfer of authority to ECS has positively reduced the time to complete capital projects and simplified financial controls, on average, by five (5) weeks.

Streamlining the Process:

Given the success of ECS in streamlining the process and successfully reducing the time to complete capital projects, CCOO and Legal Services are of the view, that given staff resources, the most efficient means of ensuring quicker turnaround of the preparation and execution of CCOO contracts is to decentralize the function for those contracts which are routine and template driven (based on standard form agreements prepared by Legal Services) to the Chief Corporate Officer Organization.

This would entail CCOO staff reviewing the tender call documents, preparing the standard form contracts and approving them "as to form" before the City's approved signing officer(s) executes the agreements. "Approving as to form" is merely an approval by specific responsible individuals that the document has been prepared under City authority as is properly reflective of that authority. The content of the contract documents are typically already determined by the tender documents issued by the CCOO with preparation comprising such matters (aside from checking authorities) as the preparation and receipt of the standard form bonds, insurance certificates, WSIB certificates, etc. required by the call documents.

The transfer of this function from Legal Services to CCO for CCOO agreements would, in our view, streamline the process leading to execution by eliminating the physical delivery of documentation and the time taken for communication to and from Legal Services and CCOO. In addition, the transfer would make the staff who are accountable for building the Capital Program more responsible for all the steps needed to allow the program to be built. This practice, which was in place in the former City of Toronto since 1995 and is currently used by Engineering and Construction Services, will expedite execution of contracts and should ensure that capital works are constructed as soon as possible following contract award. Legal Services would remain available to answer questions and assist with specific legal issues as required.

This transfer of function would apply to the majority of awarded standard form contracts. For more complex or non- standard contracts, including those arising from a Request for Proposals process, the CCOO would continue to use Legal Services to finalize contracts. There will be a period of training of CCOO staff by Legal Services on the procedures that need to be undertaken in ensuring proper execution of Contract documents and the receipt of proper bonds and insurance. Once staff are trained using the new process, the process will be audited to ensure compliance.

In addition, Legal Services and CCOO will work together to see if the contract documentation itself can effectively be streamlined given the standardization of the contract and the General Conditions approved by City Council in 2012.

Conclusion:

In order to reduce delays in contract execution, it is being recommended that the function of preparing and arranging for execution of standard form CCOO contracts arising from tender or quotation calls be transferred from Legal Services to the CCO. The CCO, the Director of PMMD and the City Solicitor will work together to finalize standard instructions for the preparation and execution of standard form contracts and to train staff within CCOO to provide a transition of function as soon as possible.

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SIGNATURE

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