



REPORT FOR ACTION

Consent to Assignment of Contract 15TW-DO-18DCS for On Demand Water Service Replacement for Various Locations in Toronto, East York and Scarborough Districts and 17TW-DC-311OCS for Installation of New Residential Water and Sewer Connections and associated Works within the Toronto East York District

Date: August 29, 2017

To: Public Works and Infrastructure Committee

From: Lou Di Gironimo, General Manager of Toronto Water

Wards: All Wards

SUMMARY

This report recommends that City Council consent to the assignment of the agreements between the City of Toronto (the "City") and Utility Force Inc. ("UFI") for On Demand Water Service Replacement for Various Locations in Toronto, East York and Scarborough Districts and for Installation of New Residential Water and Sewer Connections and associated Works within the Toronto East York District (the "Subject Agreements") to Utility Force Construction Inc. ("UFCI") and that authority be delegated to the General Manager of Toronto Water to negotiate and execute any agreements necessary to give effect thereto and to protect the City's interests.

RECOMMENDATIONS

The General Manager of Toronto Water recommends that:

1. City Council consent to the assignment of Contract 15TW-DO-18DCS for On Demand Water Service Replacement for Various Locations in Toronto, East York and Scarborough Districts and Contract 17TW-DC-311OCS for Installation of New Residential Water and Sewer Connections and associated Works within the Toronto East York District" (the "Subject Agreements"), from Utility Force Inc. ("UFI") to Utility Force Construction Inc. ("UFCI") subject to satisfaction of the following conditions:

(a) the Subject Agreements shall be assumed by UFCI;

(b) to the extent that there are any other agreements between the City and UFI (the "Other Agreements"), the General Manager, Toronto Water, in consultation with the City Solicitor, shall be wholly satisfied that the City's rights, remedies and interests are and will be protected, and without limitation, that UFI's obligations under the Other Agreements (performance, warranty or otherwise) will be fulfilled; and

(c) UFI and UFCI shall enter into assignment and assumption agreement(s) on such terms and conditions the General Manager, Toronto Water may consider appropriate to protect the City's interests, including, without limitation, any financial security and any assumption of UFI's existing warranty and/or indemnity obligations, and in a form satisfactory to the City Solicitor.

2. City Council authorize the General Manager, Toronto Water on behalf of the City to negotiate, enter into and execute any agreements with UFI and/or UFCI that the City Solicitor may determine necessary to give effect to Recommendation 1, and as may be necessary to protect the City's interest to the satisfaction of the General Manager, Toronto Water, on such terms as may be required by the General Manager, Toronto Water and in a form satisfactory to the City Solicitor.

FINANCIAL IMPACT

No financial impact is anticipated from the adoption of the recommendations in this report. The assignment of the Subject Agreements from UFI to UFCI will have no impact on the cost of the work. The assignment to UFCI will have no impact on the pricing terms and conditions in effect pursuant to the Subject Agreements. Funds to cover the cost of the work provided in 2017 under Contract 15TW-DO-18DCS for On Demand Water Service Replacement for Various Locations in Toronto, East York and Scarborough Districts is included in Toronto Water 2017 Capital Budget in Account No. CPW544-03-110 (Water Service Replacement). Funds to cover the cost of work under Contract 17TW-DC-311OCS for Installation of New Residential Water and Sewer Connections and associated Works within the Toronto East York District are included in Toronto Water 2017 Capital Budget in Account No. CPW600-02 (Site Servicing). Should the City choose to exercise its option to renew Contract 17TW-DC-311OCS for the additional one (1) year option period, funding for the additional option year has been included in the 2017 Capital Budget.

DECISION HISTORY

The Bid Committee awarded Tender Call No. 261-2015, Contract 15TW-DO-18DCS for On Demand Water Service Replacements for Various Locations - Toronto East York and Scarborough Districts to UFI at its meeting on October 28, 2015. A copy of the Bid Committee decision can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.BD54.2>

The Bid Award Panel awarded Tender Call No. 61-2017, Contract 17TW-DC-311DCS for Installation of New Residential Water and Sewer Connections and Associated Works within the Toronto East York District at its meeting on April 12, 2017. A copy of the Bid Award Panel decision can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.BA17.8>

COMMENTS

UFI currently provides residential water and sewer service replacement and installation services to the City pursuant to the following Subject Agreements:

1) Contract No. 15TW-DO-18DCS is for replacement for substandard water services in Toronto East York and Scarborough Districts. This agreement was awarded in 2015 and the City exercised its option to renew the agreement for an additional one (1) year period in 2016. The completion date for this agreement is December 31, 2017.

2) Contract No. 17TW-DC-311OCS is for installation of new water and sewer service connections for newly constructed residential properties within the Toronto East York Districts. This agreement was awarded in 2017 and has an option to renew for one (1) additional year. The completion date for this agreement is April 30, 2018, unless the option to renew is exercised.

The services provided by UFI pursuant to the Subject Agreements are performed on an on-demand basis and are driven by customer requests. Replacements of substandard water services are performed in other areas of the City by a different contractor under one (1) other contract with the City. Installations of new water and sewer services are performed in other areas of the City by various other contractors pursuant to four (4) other contracts with the City.

Under the Subject Agreements, UFI cannot assign any right or obligation arising from the Subject Agreements without the prior written consent of the City, and that consent cannot be unreasonably withheld.

On June 26, 2017, UFI wrote to the City to formally request the City's consent to assign the Subject Agreements to Utility Force Construction Inc. ("UFCI"), as UFI has agreed to sell its business, including substantially all of the assets of UFI to UFCI. UFCI is a new unrelated corporation which is wholly owned by Capital Infrastructure Group Inc. ("Capital"). While UFCI, as a new corporate entity, has no prior history with the City, Capital currently has in excess of \$42M worth of contracts with the City for trenchless rehabilitation of sewage systems including but not limited to trenchless lining of sewers from maintenance hole to maintenance hole; partial rehabilitation of sections within a sewer; full and partial rehabilitation of drain connections as well as the full open cut replacement of drains as required; and the full rehabilitation and/or replacement of

maintenance holes. Toronto Water has a good working relationship with Capital who has delivered projects for Toronto Water for many years.

UFI and UFCI have confirmed the following regarding the proposed purchase of UFI by UFCI:

1. Two of the principals and active managers of UFI will be hired by UFCI and will be in charge of the day-to-day operations of UFCI.
2. UFCI will hire all of the employees of UFI;
3. UFCI will be governed by the same union contracts as UFI;
4. UFCI will be purchasing substantially all of the assets of UFI including, without limitation, all of the machinery, equipment, inventory, material agreements, phone numbers, fax numbers, customer lists, supplier lists and goodwill of UFI;
5. UFCI will be leasing the same property currently used by UFI as its principal place of business;
6. UFCI will maintain all pricing terms and conditions in effect as per the Subject Agreements between the City and UFI; and
7. UFCI will obtain new Performance Bonds; WSIB Clearance Certificates; new statutory declarations and new Insurance Certificates in accordance with the requirements of the Subject Agreements.

As UFCI is a newly incorporated company, no credit information is available through the standard means of a Dun & Bradstreet credit report. Notwithstanding the above, if the recommendations to this report are adopted, the assignment and assumption agreement(s) will require, without limitation, the provision of financial security, to the satisfaction of the General Manager, Toronto Water, in order to protect the City's interests.

Accordingly, Toronto Water is satisfied that the assignment of the Subject Agreements to UFCI should not pose any operational issues. Toronto Water has been satisfied with UFI's performance to date under the Subject Agreements and the experience, qualifications and resources of the current management and field operations of UFI. As a result of its operational assessment, Toronto Water believes that, following the sale of UFI's assets and the transfer of its employees to UFCI, UFCI will have the operational capability, resources and expertise to assume the rights and obligations of UFI under the Subject Agreements.

In addition to the Subject Agreements, UFI has a number of other agreements with the City where the warranty period has not yet expired. These agreements (the "Other Agreements") are roster assignments in accordance with REOI 3907-12-7101 and 3907-15-7106 for general sewer and water main construction and related activities; new Industrial/Commercial/Institutional (ICI) water and sewer service connections; and associated works:

RFQ No.	Description
DCS004-2015	Frozen Water Service Replacements - Group D - Toronto Easy York and Scarborough Districts
TE045-2015	Service Connections
TE025-2016	Service Connections
TE027-2016	Service Connections
TE046-2016	Service Connections
NY025-2016	Service Connections
NY020-2016	Service Connections
NY023-2016	Service Connections
EY023-2016	Service Connections
SC028-2016	Service Connections
EY033-2016	Service Connections
TE023-2016	Service Connections
TE088-2016	Service Connections
TE082-2016	Service Connections
DCS005-2015	Trinity Street Storm Sewer Replacement

As UFI has not proposed to assign its rights and obligations under the Other Agreements to UFCI, Toronto Water recommends that if City Council consents to the assignment of the Subject Agreements to UFCI, such consent be conditional on the General Manager, Toronto Water, in consultation with the City Solicitor, being wholly satisfied that the City's rights, remedies and interests are and will be protected, and without limitation, that UFI's obligations under the Other Agreements (performance, warranty or otherwise) will be fulfilled.

For these reasons, it is recommended that City Council consent to the proposed assignments, subject to the conditions as set out in this report.

Legal Services and Corporate Finance were consulted in the preparation of this report.

CONTACT

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SIGNATURE

Lou Di Gironimo
General Manager, Toronto Water

Consent to Assignment of Contracts for on Demand Water Service Replacement and Installation of New Residential Water and Sewer Connections