

Follow up to AU8.6 - Procurement of Arboricultural Services

Date: March 30, 2021

To: City Council

From: City Manager and Chief Procurement Officer

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report involves the security of property belonging to the City of Toronto and the attachment contains information related to ongoing negotiations of negotiable Request for Proposal (nRFP) No. 2305234907 for the Provision of Arboricultural Services to be carried on by or on behalf of the City of Toronto.

SUMMARY

As part of Audit Committee's consideration of AU8.6 - Getting to the Root of the Issues: A Follow-Up to the 2019 Tree Maintenance Services Audit, Audit Committee directed the City Manager, in consultation with the Chief Procurement Officer to report on:

- a. an update on the current procurement process and how the City Council decision on Item 2019.AU2.4 headed "Review of Urban Forestry - Ensuring Value for Money for Tree Maintenance Services" and the recommendations on Item 2021.AU8.6 headed "Getting to the Root of the Issues: A Follow-Up to the 2019 Tree Maintenance Services Audit" have been incorporated into the process;
- b. how to improve future arborist services contracts through stronger performance management and results-based outcomes, additional flexibility in assigning work, and optimizing a variety of size, scope, geographic distribution, and pricing structures as a means to attract and increase new competition and new smaller vendors who may offer selected services; and
- c. the method, advantage, and feasibility of completing a new Request for Proposal to award the newly-designed forestry contracts for the period beginning July 1, 2022.

This report responds to that direction.

RECOMMENDATIONS

The City Manager and the Chief Procurement Officer recommends that:

1. City Council authorize the public release of Confidential Attachment 1 following the award of nRFP No. 2305234907 for the Provision of Arboricultural Services at the discretion of the Chief Procurement Officer and the City Solicitor.

FINANCIAL IMPACT

There are no financial implications from the recommendations of this report.

The Chief Financial Officer has reviewed this report and agrees with the financial implications as identified in the Financial Impact Section.

DECISION HISTORY

In February 2021, Audit Committee adopted AU8.6 - Getting to the Root of the Issues: A Follow-Up to the 2019 Tree Maintenance Services Audit and provided direction to the City Manager, in consultation with the Chief Procurement Officer to report directly to the April 6 and 7, 2021 Council session.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.AU8.6>

At the September 2020 meeting, City Council adopted IE15.6, which authorized the General Manager, Parks, Forestry and Recreation to enter into non-competitive bridge contracts for 6 months (January 1, 2021 to June 30, 2021) with the three existing Arboricultural Service vendors.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.IE15.6>

On July 28, 2020, City Council adopted IE14.8 - Ensuring Value for Money for Tree Maintenance Services - Update and Legal Advice, which amongst other things, requested that the Auditor General report further on the matter, resulting in AU8.6.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.IE14.8>

City Council, on May 14 and 15, 2019 adopted, as amended, AU2.4 - Review of Urban Forestry - Ensuring Value for Money for Tree Maintenance Services, which contained a number of recommendations for Parks, Forestry and Recreation to address issues and concerns raised by the Auditor General with respect to Tree Maintenance Services contracts.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.AU2.4>

COMMENTS

Background

Parks, Forestry and Recreation (PFR), working with Purchasing and Materials Management Division (PMMD), issued a negotiable Request for Proposal (nRFP) for Arboricultural Services in March 2020 in order to replace contracts set to expire on December 31, 2020 and to create enhanced contracts to respond to the recommendations from AU2.4 - Review of Urban Forestry - Ensuring Value for Money for Tree Maintenance Services. The nRFP closed in May, 2020 and received six proposals. Staff began the process of evaluating the proposals received at that time and had proceeded to the negotiation stage with the Proponents that had submitted to the nRFP.

Subsequently, City Council adopted IE14.8 - Ensuring Value for Money for Tree Maintenance Services - Update and Legal Advice, a report from PFR and Legal Services. As part of that report, City Council requested the Auditor General to report further on Tree Maintenance Services. Based on that direction, PFR and PMMD decided to pause the negotiations until the further report of the Auditor General could be considered. At that point, PFR and PMMD reported to Infrastructure and Environment Committee (IEC) and requested authority to enter into a 6 month bridge contract with the existing Arboricultural Services vendors in order to consider the Auditor General's further report and to ensure continuity of essential arboricultural services including tree pruning and maintenance until such time that the 2021 contracts could be awarded.

The Auditor General reported to the February 2021 Audit Committee with AU8.6 - Getting to the Root of the Issues: A Follow-Up to the 2019 Tree Maintenance Services Audit. AU8.6 contained additional recommendations to help PFR improve the arboricultural services. As part of that report, Audit Committee directed the City Manager, in consultation with the Chief Procurement Officer to report directly to the April 6 and 7, 2021 Council session on:

- a. an update on the current procurement process and how the City Council decision on Item 2019.AU2.4 headed "Review of Urban Forestry - Ensuring Value for Money for Tree Maintenance Services" and the recommendations on Item 2021.AU8.6 headed "Getting to the Root of the Issues: A Follow-Up to the 2019 Tree Maintenance Services Audit" have been incorporated into the process;
- b. how to improve future arborist services contracts through stronger performance management and results-based outcomes, additional flexibility in assigning work, and optimizing a variety of size, scope, geographic distribution, and pricing structures as a means to attract and increase new competition and new smaller vendors who may offer selected services; and
- c. the method, advantage, and feasibility of completing a new Request for Proposal to award the newly-designed forestry contracts for the period beginning July 1, 2022.

Completing the current nRFP and putting the new contracts in place as soon as the existing bridge contracts expire will enable PFR to respond to the Auditor General's recommendations by providing PFR with a more robust contract to manage the suppliers of arboricultural services as soon as possible. Further, this approach will provide PFR with additional information about future improvements to contracts moving forward. Once the new contracts are in place, PFR can deploy the additional contract management processes that also respond to the recommendations from the Auditor General. The balance of this report speaks to the request from the Audit Committee.

A. Update on the current Procurement Process for Arboricultural Services

As noted above, PMMD and PFR issued an nRFP to market in March 2020, which closed in May 2020.

Prior to the issuance of the current nRFP and to support its development, PFR and PMMD conducted market soundings with seven suppliers in the industry to identify ways to improve delivery under the contracts and to increase the number of bids received. The market sounding helped inform:

- the length of contract that would help the companies retain their workforce;
- that unit rate pricing was seen as being more effective but that for some work, unit rate pricing may be difficult and so a hybrid of unit rates and hourly rates may work; and
- contracts based on geographical locations and discrete types of activities may be more attractive to increase the number of bids.

Based on that feedback, the nRFP was designed such that suppliers could bid on all of the work or on specific types of services or in specific geographical locations. For example Newly Planted Tree Maintenance, which is a pro-active program, was broken into four areas of the city, covering specific wards and was unit priced based, whereas reactive work remained as hourly rate based and other activities included a combination of unit rate and hourly rate price schedules. The current mix is approximately 90% hourly rate based work and 10% unit priced based work.

The result was a doubling in the number of Proponent submissions from an average of three to six for this nRFP. Staff are now completing the negotiations with the Proponents and plan to award the contracts in April so that the new contracts can be in place for July 1, 2021.

Staff are of the view that the current nRFP will help to address the recommendations in AU2.4 and in AU8.6. This is in connection with the work PFR is doing to improve their contract management practices for this contract that also help to address the recommendations in the two audit reports. The improved contract resulting from the nRFP includes:

- A new pricing structure around some maintenance activities, (such as proactive maintenance, stumping, newly planting trees) which made bidding more accessible to additional vendors in the marketplace;

- Introduction of unit rate pricing for some maintenance activities which will reduce paying for supportive and non-productive time, including minimum productivity requirements;
- Full access to live GPS systems for further oversight;
- Clarified roles and responsibilities outlining expectations of suppliers; and
- Several qualitative factors, such as quality control plans, innovative/value-added services and risk mitigation strategies, were included in the scoring evaluation of bids.

Attachment 1 sets out the specific recommendations from AU8.6 that have been incorporated into the existing nRFP to form part of the overall contract. Confidential Attachment 1 discusses other matters being negotiated through the nRFP process that are intended to also improve the contracts.

While Attachment 1 and the Confidential Attachment speak to items that are addressed in part in the nRFP, the majority of the recommendations from AU2.4 and AU6.8 focus on how PFR should manage the contracts and their own workforce. The nRFP and associated contracts set up the framework for the proper oversight and contract management that will help PFR ensure that the contracts are providing best value to the City, however it is PFR's approach to contract management that is key to address the Auditor General's recommendations in the end.

B. How to Improve Future Arboricultural Services Contracts

To further improve the services in future contracts, PFR and PMMD will continue to conduct market sounding in advance of the procurement to solicit feedback on how best to approach the market.

Over the next two years, PFR will evaluate the management of the contracts awarded under the current nRFP process. The advantages and disadvantages of unit rate contracts versus hourly rate contracts will be evaluated with a goal of increasing the amount of work done on a unit rate basis. In addition, the functionality of services awarded by geographical areas will be evaluated.

This information will help inform the future market soundings to determine the best course of action moving forward. In addition, PFR will have gained experience with the requirements to effectively manage the new contracts and whether PFR is able to handle breaking the work up into smaller contracts while still being able to effectively manage a higher number of contracts.

Additional items that may be considered in future procurements and discussed in future market soundings include:

- Considering additional ways to include past performance scores into future procurement evaluations;
- Continue to review contract terms to ensure that, to the extent that it is commercially reasonable, they are not cost-prohibitive for smaller suppliers, in particular; and
- Limiting the amount of work any one supplier can be awarded out of the next procurement in order to have more suppliers be awarded work.

C. Feasibility of completing a new Request for Proposals to award contracts to start July 1, 2022

Staff considered the feasibility of effectively pursuing a one year contract now, in order to be able to issue new contracts by July 1, 2020 but based on the following reasons set out below, staff are proceeding with the nRFP as was originally issued, subject to the points as noted in the Appendix and the Confidential Attachment. The reasons are as follows:

- If the City were to reduce the contract term to one year, it would risk losing enough interested Proponents to be able to award the nRFP and may have to issue a new RFP which would delay the commencement of the new contract. The City would then have to consider negotiating an extension to the existing bridge contracts or risk not having arboricultural services for a period of time.
- The current hybrid approach (some services be done under an hourly rate basis and other services be done under a unit price basis) was in part to gather evidence on the productivity of each model and will assist in creating benchmarks, service levels and productivity expectations for the future. Urban Forestry will rely on the new Enterprise Work Management System (EWMS) to collect data to analyze trends and productivity. The arboricultural services sector does not have current benchmarks for how long tree maintenance services should take, and the City is using this opportunity to help create these benchmarks. It is to the City's benefit to be able to collect this data as soon as possible. If EWMS is not in place, PFR will use existing processes to ensure that as much data as possible be manually collected and reviewed to inform future nRFPs.
- In addition, having the term of the contract run for at least two (2) years allows PFR staff to understand how effective the new contract provisions are and what other changes may be necessary to ensure that future contracts are robust. With only a one (1) year contract, there would only be effectively 5 months of experience upon which to evaluate the benefits of the unit rate approach before we would have to draft the new nRFP, which may then result in missing some key changes.

Conclusion

The existing nRFP that is currently in negotiation makes significant improvements on the contract for Arboricultural Services, is reflective of information learned at the market sounding to make the nRFP more accessible and interesting to the industry and supports PFR in addressing the Auditor General's concerns and recommendations by providing a framework for PFR's improved contract management approach.

To make further improvements, PFR and PMMD need time with the new contracts in place to monitor and test if the new structure is indeed more cost effective and efficient to manage. Further, PFR needs time and the Enterprise Work Management System (EWMS) in place to collect data and review trends and key performance indicators (KPIs). Staff believe that a 2 year contract is the minimum amount of time to do this and will take the lessons learned from managing this new contract to continue to make improvements to future procurements for arboricultural services and will engage the market place through market sounding for additional improvements.

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SIGNATURE

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ATTACHMENTS

Attachment 1 - AU8.6 Recommendations supported in the Current Procurement
Process
Confidential Attachment 1 -

Attachment 1 - AU8.6 Recommendations Supported in the Current Procurement Process

The following table highlights recommendations from AU8.6 that have been incorporated into the nRFP in order to support PFR's ability to respond to the recommendation. As noted in the report, the nRFP and resulting contracts provide the framework to PFR to be able to more effectively manage the contracts and to support PFR in how they address the recommendations from the Auditor General.

Recommendation	How nRFP supports addressing the recommendation
<p>8. City Council request the General Manager, Parks, Forestry and Recreation to improve City and contracted tree maintenance crew productivity, outputs, and outcomes by planning, assigning, and monitoring work to:</p> <p>a. maximize the amount of time spent actively working on tree maintenance activities (i.e., pruning, removal, stumping, fill and seed, etc.);</p> <p>b. reduce the time spent on supporting activities (i.e., time spent at the yard, dumping, driving, etc.); and</p> <p>c. minimize non-productive time (i.e., time waiting for parked vehicles to be moved, idle time, unreported breaks, etc.).</p>	<p>Price basis for Services</p> <p>The nRFP contains services done on an hourly rate basis and services done on a unit rate basis.</p> <p>The services done on a unit rate basis (newly plated tree maintenance, stumping fill & seed in specific wards and area street tree maintenance) are designed to incentivize the maximum amount of time spent actively working on tree maintenance activities and minimizing other down time.</p> <p>For hourly rate services, a number of sections of the nRFP address this including indicating the working hours, that additional working hours can only be worked if approved in advance and that payment for the services will only occur once the entire team arrives.</p> <p>The nRFP contains service level agreements (SLAs) for Hourly rates to address operational deficiencies. Suppliers are required to correct any operational deficiency at supplier's cost. The current SLAs will help the UF team to manage suppliers day to day operations combined with GPS tracking reports and internal process and procedures.</p> <p>PFR as part of contract management will need to manage how the services are being performed to ensure the suppliers are meeting the requirements.</p> <p>Towing</p> <p>The nRFP sets out specific guidelines on how towing is to be dealt with and these guidelines were updated based on the results from the Audit and will form part of the agreement with the Suppliers. PFR will be monitoring the use of towing to ensure that the suppliers are following the process properly.</p>

Recommendation	How nRFP supports addressing the recommendation
<p>9. City Council direct that, to support the effective analysis and monitoring of productivity, Urban Forestry Forepersons or Supervisors must verify that crews accurately record information (including locations, activities, and times) on their daily logs and review the logs for productivity and completeness on a sample basis; the sample should include at least one daily log per crew within every two-week period; and, where issues are noted on a selected daily log, additional logs should be reviewed and, where necessary, daily logs and invoices should be adjusted in accordance with the contract.</p>	<p>The nRFP requires GPS reports for the duration of the contract and for the records retention period after the contract expires. PFR will need to monitor and review the reports to ensure that the work is being performed in accordance with the contract requirements.</p>

Recommendation	How nRFP supports addressing the recommendation
<p>12. City Council request the General Manager, Parks, Forestry and Recreation to:</p> <ul style="list-style-type: none"> a. obtain precise route information (in accordance with contracts), which includes specific geo-location (latitude and longitude) at frequent (minute-by-minute) intervals and not just fixed addresses associated with tree locations; b. investigate any discrepancy between the reported geo-location and GPS geo-location exceeding an acceptable threshold no greater than 25 metres; any challenge to the GPS accuracy should be supported by GPS service providers' direct confirmation to the City that the data recorded by their GPS device is faulty; and explanations and supporting evidence for discrepancies should be properly documented; c. request crews to submit geo-tagged photos of each tree, showing the tree before and after work has been completed; and Urban Forestry staff should review these photos when signing off on crews' daily logs; and d. update Urban Forestry tree maintenance records with current geo-tagged photos of trees submitted by tree maintenance crews. 	<p>The nRFP requires GPS reports for the duration of the contract and for the records retention period after the contract expires. PFR will need to monitor and review the reports to ensure that the work is being performed in accordance with the contract requirements.</p>

Recommendation	How nRFP supports addressing the recommendation
<p>14. City Council request the General Manager, Parks, Forestry and Recreation to:</p> <p>a. analyze why certain crews report parked vehicles at a higher frequency or longer duration than other crews and implement measures to reduce related downtime;</p> <p>b. request crews to submit geo-tagged photos of the location of parked vehicles obstructing work at the time these obstructions occur; and Urban Forestry Forepersons should reconcile reported parked car time to the submitted evidence of the obstruction when they review and sign off on daily logs; and</p> <p>c. expedite how the Division will minimize downtime related to parked vehicles obstructing work from proceeding, temporarily directing, until this issue can be properly addressed, tree maintenance crews to carry on to the next tree location if they cannot gain access and then return when parking enforcement and towing can be arranged; and Urban Forestry management should monitor whether there is any improvement to operational efficiency when taking this action.</p>	<p>The City will further update the Towing Guidelines to include geo-tagged photos of the parked vehicles prior to the commencement of the contract. PFR as part of contract management will review the reports related to crews that have higher frequency of parked cars, ensuring that there is proper evidence of such obstruction and work with the supplier to reduce any downtime including moving onto the next tree location.</p>

Recommendation	How nRFP supports addressing the recommendation
<p>15. City Council request the General Manager, Parks, Forestry and Recreation to:</p> <p>a. ensure that Urban Forestry or vendor staff are pre-arranging all required hydro hold-offs, wherever possible, to minimize downtime spent waiting for a hold-off; and the time of pre-scheduled hold-off, the time when hold-off was actually received, and any time waiting should be clearly noted on daily logs; and</p> <p>b. ensure that any need for an emergency hold-off is reported to the Urban Forestry Foreperson and is noted on their daily log; and the time when the request for hold-off was called in, the time when hold-off was actually received, and any time waiting should be clearly noted on daily logs.</p>	<p>Hydro hold-off procedures have been created by PFR, incorporated into the nRFP and the recommendation will be managed through the contract management process, in particular monitoring to ensure the suppliers are pre-arranging all required hydro hold-offs, wherever possible.</p>

Recommendation	How nRFP supports addressing the recommendation
<p>17. City Council request the General Manager, Parks, Forestry and Recreation to:</p> <p>a. verify that vendors fulfill their contractual responsibilities for ensuring complete compliance with all regulations and provisions contained in, or issued under, the Occupational Health and Safety Act, the Arborist Industry Safe Work Practices, the Infrastructure Health and Safety Association (formerly the Electrical Utilities Safety Rules) Rule Book, the Highway Traffic Act, and any other applicable regulations, and any amendments to the foregoing acts and regulations and any new applicable acts or regulations enacted from time to time;</p> <p>b. ensure that non-compliance is properly documented as part of vendor contract performance management processes; and</p> <p>c. pursue measures up to, and including, contract termination for repeated non-compliance with safety provisions of tree maintenance contracts.</p>	<p>The nRFP requires that the suppliers must comply with the appropriate provisions from the various Health and Safety legislation as set out in the recommendation. PFR will be monitoring supplier compliance as part of contract management.</p>

Recommendation	How nRFP supports addressing the recommendation
<p>19. City Council request the General Manager, Parks, Forestry and Recreation to:</p> <p>a. obtain GPS routes travelled information that includes actual location coordinates (longitude and latitude) that are routinely captured by vendors' GPS systems every minute (or more frequent) and whenever there is a vehicle change (start, stop, change in direction, power take off on/off, etc.); and</p> <p>b. retain all GPS records needed to support invoiced amounts in accordance with the City's records retention policy.</p>	<p>The nRFP requires GPS reports for the duration of the contract and for the records retention period after the contract expires. PFR will need to monitor and review the reports to ensure that the work is being performed in accordance with the contracts.</p>
<p>20. City Council request the General Manager, Parks, Forestry and Recreation to:</p> <p>a. define expected outcomes for tree maintenance service delivery and include related performance measures directly within the contracts;</p> <p>b. specify actions and remedies for not meeting performance outcomes in the contracts; and</p> <p>c. consider contract terms that allow the City to base the assignment of tree maintenance work packages or hourly rate work based on how crews perform relative to other crews.</p>	<p>SLAs have been included to help address operational deficiencies and any deficiency is required to be corrected at supplier's cost. The current SLA's will help PFR to manage suppliers day to day operations combined with GPS tracking reports and internal process and procedures.</p> <p>To make further improvements, PFR and PMMD need time with the new 2021 contracts in place to monitor and test if the new structure is indeed more cost effective and efficient to manage. Further, PFR needs time and the Enterprise Work Order Management System in place to collect data and review trends and key performance indicators (KPIs). If EWMS is not in place in time, PFR will use existing processes to ensure data is properly collected.</p>

Recommendation	How nRFP supports addressing the recommendation
<p>22. City Council request the General Manager, Parks, Forestry and Recreation to ensure that contracts make clear the roles and responsibilities of City staff and the vendor for resolving problems that impact performance outcomes, including crew productivity.</p>	<p>The language in the nRFP sets out roles and responsibilities of the suppliers</p>
<p>23. City Council request the General Manager, Parks, Forestry and Recreation to require tree maintenance vendors' vehicles to clearly indicate in large font text, easily readable at a distance, identifying:</p> <ul style="list-style-type: none"> a. the vehicle is on contract to the City of Toronto; b. a unique vehicle identification number; and c. an appropriate contact telephone number for the City of Toronto in case of complaints. 	<p>The nRFP is clear that the City will be providing the Vendor(s) with magnetic signs for all vehicles working on the contract and that the signs must be attached only when the vehicle/crew are working pursuant to the City contract.</p>