

Award of Request for Tender Ariba Document No. 3275897747 to Buttcon Limited for the Indian Residential School Survivors Restoration of Identity Project on Nathan Phillips Square

Date: April 14, 2022

To: General Government and Licencing Committee

From: Executive Director, Corporate Real Estate Management; and the Chief Procurement Officer

Wards: Ward 10, Spadina - Fort York

SUMMARY

The purpose of this report is to request authority for City Council to award a contract to Buttcon Limited, in the amount of \$21,998,903, inclusive of allowances and contingencies, and net of all applicable taxes and charges (\$22,386,084 net of Harmonized Sales Tax recoveries). Buttcon Limited was the successful proponent of Request for Tender Ariba Document Number 3275897747, issued for the supply of all materials, equipment, labour, and required supervision for the construction of the Indian Residential School Survivors Restoration of Identity Project and Legacy Sculpture (the "Project") on Nathan Phillips Square.

The Project is a key piece of Indigenous place keeping for the City, and is integral to truth, justice and reconciliation as it creates and nurtures space, in process and policy, for ceremony, teaching and community. It also strengthens Indigenous connections with lands and waters, and builds cultural competency and capacity for land-based Indigenous engagement.

The Project design consists of a turtle sculpture surrounded by a teaching, learning, sharing and healing space, called the Spirit Garden. The turtle sculpture represents Turtle Island, also referred to as Mother Earth, and will identify the names of the 17 residential schools that once operated in Ontario. The design of the Spirit Garden revolves around the turtle sculpture and will include elements representing First Nations, Inuit and Metis cultures, including a teaching lodge, amphitheatre, a Three Sisters teaching garden, a voyageur canoe and an Inuksuk. The Spirit Garden will also incorporate the White Pine, or Tree of Peace, a key element to the Kuswenta, also known as the Two Row Wampum, which lays the foundation for all relations.

RECOMMENDATIONS

The Executive Director, Corporate Real Estate Management and the Chief Procurement Officer recommend that:

1. General Government and Licensing Committee, in accordance with Section 195-8.4 of Toronto Municipal Code Chapter 195 (Purchasing By-Law) authorize the Executive Director, Corporate Real Estate Management to award Request for Tender Ariba Document Number 3275897747 to Buttcon Limited, for the supply of all materials, equipment, labour, and required supervision for the construction of the Nathan Phillips Square Indian Residential School Survivors Restoration of Identity Project, in the amount of \$21,998,903 net of all applicable taxes and charges (\$22,386,084 net of Harmonized Sales Tax recoveries).

FINANCIAL IMPACT

The total amount of the award for Request for Tender Ariba Document Number 3275897747 for the Project is \$21,998,903 net of all applicable taxes and \$24,858,761 including all applicable taxes. The Total Cost to the City is \$22,386,084 net of Harmonized Sales Tax recoveries.

Funding is available in 2022 and 2023 under the 2022-2031 Council Approved Capital Budget and Plan for Corporate Real Estate Management under WBS CCA257-01 (IRSS Legacy Project - SOGR).

Funding for the remaining years will be made available through a combination of budget reallocations and moving planned estimates to committed budget from within the 2022-2031 Council Approved Capital Budget and Plan for Corporate Real Estate Management at the next variance report.

The cash flows under Corporate Real Estate Management will be amended as part of the next budget submission to match the spending rate of the awarded construction contract as summarized in Table 1 below.

Table 1: Financial Impact Summary of Recommended Contract (net of Harmonized Sales Tax Recoveries):

Work Breakdown Structure Element	2022	2023	2024	2025	Total
IRSS Legacy Project - CCA257-01	\$5,000,000	\$10,000,000	\$862,000		\$15,862,000
Funding reallocated from other SOGR			\$4,500,000		\$4,500,000

projects (CCA247-22)					
Increase in Committed Budget			\$1,024,084	\$1,000,000	\$2,024,084
Total	\$5,000,000	\$10,000,000	\$6,386,084	\$1,000,000	\$22,386,084

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

DECISION HISTORY

At its meeting of April 6, 2021, City Council adopted item EX31.1, "Actions to Advance Truth and Justice for Indigenous People in the City of Toronto: Reconciliation Action Plan 2022-2032," adopting the Reconciliation Action Plan 2022-2032, and directing City staff to work towards the City's implementation of Strategic Actions in the Reconciliation Action Plan, including supporting Indigenous place keeping.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.EX31.1>

At its meeting of June 8, 2021, City Council adopted item MM34.42, "City of Toronto's actions to Advance Truth, Reconciliation and Justice - by Councillor Mike Layton, seconded by Mayor John Tory," requesting the Federal and Provincial Governments to help provide capital funding for the construction of the Indian Residential School Survivors Restoration of Identity Project. Council also directed City staff to report back on what further actions are needed to advance truth, reconciliation and justice, and whether additional resources and funding are required to further the City of Toronto's work on reconciliation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.MM34.42>

At its meeting of April 7, 2021, City Council adopted item MM31.24, "Authorize the Receipt of Funds and Allocation of Section 37 Funds towards the Nathan Phillips Square Indian Residential School Survivors Restoration of Identity Project - by Councillor Mike Layton, seconded by Councillor Joe Cressy," directing City staff to receive \$4,000,000 in funds from Toronto Council Fire Native Cultural Centre and \$2,000,000 of Section 37 funds for use towards the Nathan Phillips Square Indian Residential School Survivors Restoration of Identity Project.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.MM31.24>

At its meeting of February 19, 2020, City Council adopted item EX13.2, "2020 Capital and Operating Budgets - Economic Development and Culture items 194 and 195," directing the General Manager, Economic Development and Culture in consultation with the Manager, Indigenous Affairs Office, City Councillors and Toronto Council Fire Native Cultural Centre, to report back to City Council no later than April 2020 with a plan to facilitate completion of the Indian Residential School Survivors Legacy Structure project and if required, the need for an adjustment to the Economic Development and Culture Capital and Operating Budgets, to facilitate the completion of the Indian Residential School Survivors Legacy Structure Project in Nathan Phillips Square.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX13.2>

At its meeting of July 23, 2018, City Council adopted item GM29.20, "The Indian Residential School Survivors Legacy Structure," approving an increase of \$250,000 gross and \$0 net to the 2018 Approved Operating Budget of the Economic Development and Culture Division. City Council also directed City staff to include for consideration in its 2019 Operating Budget submission a request for \$250,000 to fund costs related to planning, consultation and programming for the Indian Residential School Survivors Legacy Project and submit costs related to the installation of the Project for consideration as part of the 2019 budget process.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.GM29.20>

At its meeting of April 3, 2018, the Government Management Committee adopted item GM26.13, "The Indian Residential School Survivors Legacy Structure," directing City staff to report prior to the end of the current Council term with an update on the Indian Residential School Survivors Legacy Structure project.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.GM26.13>

At its meeting of November 7, 2017, City Council adopted item EX28.16, "Legacy Restoration Project Update - Toronto Council Fire Native Cultural Centre," directing City staff to support the implementation of Call to Action 82 by working with Toronto Council Fire Native Cultural Centre to determine the feasibility of the project and report back to City Council in the first quarter of 2018.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX28.16>

At its meeting of May 3, 2016, City Council adopted item EX14.1, "Fulfilling Calls to Action from Truth and Reconciliation Commission Report," accepting the April 1, 2016 report from the City Manager outlining the eight Calls to Action that City staff, in consultation with the Aboriginal Affairs Committee, had identified for implementation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX14.1>

At its meeting of December 9, 2015, City Council adopted item EX10.16, "Truth and Reconciliation Commission of Canada Recommendations," endorsing all calls to action in the Truth and Reconciliation Commission of Canada: Calls to Action, and directed City staff to develop concrete actions to fully implement all calls to action that explicitly recognise the role of municipalities.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX10.16>

COMMENTS

Project Background

Action 82 of the Truth and Reconciliation Commission's Final Report calls for provincial governments, in collaboration with survivors and their organizations, to commission a highly-visible, publicly accessible residential schools monument in each capital city to commemorate the victims and survivors of Canada's residential schools. In 2016, City Council directed City Staff to work in partnership with the Province of Ontario and local Indigenous communities to implement Action 82.

Since 2016, the Province of Ontario, through the Indigenous Affairs Ontario, worked with Indigenous partners and residential school survivors across the province to establish an Indian Residential School Survivors Restoration of Identity Project and Legacy Sculpture (the "Project") in Toronto. At the request of the Province, Toronto Council Fire Native Cultural Centre led the process for the Project, and has been provided with a \$1.5 million grant from Indigenous Affairs Ontario to commission the fabrication of the legacy sculpture. In addition, funding for the Project is made possible through multiple sources, including \$878,998 from Toronto Council Fire Native Cultural Centre, \$3,121,002 from the Federal Government, \$2 million from Section 37 funds, and \$18,950,000 from the City of Toronto.

The commencement and ultimate completion of the Project will be a key piece of Indigenous place keeping, a City Council supported action that was adopted in the City's Reconciliation Action Plan (R.A.P.). One of the 28 actions in the R.A.P. is to support Indigenous place keeping, which is integral to truth, justice and reconciliation as it creates and nurtures space, in process and policy, for ceremony, teaching and community. It also strengthens Indigenous connections with lands and waters, and builds cultural competency and capacity for land-based Indigenous engagement.

Project Significance

The Project consists of a turtle sculpture and a teaching, learning, sharing and healing space, called the Spirit Garden; both will be a permanent feature on Nathan Phillips Square. The six foot tall turtle sculpture represents Turtle Island, also referred to as Mother Earth. The turtle, climbing over a boulder inside a water feature, is elevated on a platform and will identify the names of the 17 residential schools that once operated in Ontario. The design of the Spirit Garden revolves around the turtle sculpture and will include elements representing First Nations, Inuit and Metis cultures, including a teaching lodge, amphitheatre, a Three Sisters teaching garden, a voyageur canoe and an Inuksuk. The Spirit Garden will also incorporate the White Pine, or Tree of Peace, a key element to the Kuswenta, also known as the Two Row Wampum, which lays the foundation for all relations. The landscaping of the Spirit Garden and its strategic merging of Indigenous art and features, will provide a peaceful, contemplative space for the public to help advance truth and reconciliation between Indigenous and non-Indigenous peoples in Toronto.

Further, the Indigenous Affairs Office, the Economic Development and Culture Division and Toronto Council Fire Native Cultural Centre are working to develop a governance framework and programming vision for the Spirit Garden, and will provide an update to Council in 2023.

State of Good Repair Work

During the planning stages of the Project, the City chose to coordinate state of good repair work required at the Project site that also accommodated the Project's design requirements and completion including:

1. Re-surfacing along the Osgoode vehicular laneway from the East entrance of Osgoode Hall to Queen Street and the Toronto Parking Authority Queen Street parking garage entrance;
2. Replacement of the waterproofing membrane above the Toronto Parking Authority suspended parking garage roof slab;
3. Security equipment enhancements including the installation of a Hostile Vehicle Barrier at the Queen Street entrance to the Osgoode vehicular laneway;
4. Site services work;
5. Mechanical and electrical room and infrastructure upgrades; and
6. Lighting enhancements.

The state of good repair work was included in the procurement for the design and construction of the Project.

Procurement for Design and Construction of the Project

In 2017, City staff engaged Toronto Council Fire Native Cultural Centre on the Project to determine its feasibility. Following this engagement, City staff, in collaboration with Toronto Council Fire Native Culture Centre, prepared a feasibility study to develop the Project budget and a conceptual design, and worked to secure funding for the Project via the City's budget process. City Council approved funding for the Project in 2019, and City staff issued Request for Proposal Number 3727-19-7017, and awarded it to Gow Hastings Architects Inc. for design and contract administration services in that same year. The design was completed by May, 2021 and the Tender was ready to be issued by June, 2021.

Issue, Cancelling and Re-issue of the Request for Tender

A Request for Tender Ariba Document Number 3021394668 was first issued on June 11, 2021 and closed on July 29, 2021. The pre-tender construction cost estimate, by a third party cost consultant was \$11,195,000 net of all applicable taxes, cash allowances and contingency amounts. At the time of closing, Purchasing and Materials Management Division received and opened two (2) bids, following the evaluation process. As the lowest bid was found non-compliant and the second lowest bid exceeded the available project budget and therefore, City staff recommended to cancel the Request for Tender.

City staff undertook a comprehensive value engineering exercise and simultaneously tried to find additional funding sources internally within the City, in addition to fundraising undertaken by Toronto Council Fire Native Cultural Centre, and seeking funding through Federal and Provincial partners. The pre-tender construction cost estimate by a third party cost consultant was \$14,118,000 net of all applicable taxes, cash allowances and contingency amounts.

On December 13, 2021, Request for Tender Ariba Document Number 3275897747 was posted and closed on February 2, 2022. During the tender period, five (5) addenda were issued. At the time of closing, Purchasing and Materials Management Division received and opened three (3) bids, outlined in Table 2.

Table 2: Summary of Bids received for Request for Tender Ariba Document Number 3275897747

Supplier Name	Bid Price (including cash allowance and excluding HST)
Corebuild Construction Ltd.	\$14,244,000*
Buttcon Limited	\$18,398,903
BDA Inc.	\$19,921,700

* Supplier was found non-compliant with mandatory requirements.

Pre-Award Bid Dispute

As noted above, Corebuild Construction Ltd. was declared non-compliant for not meeting the mandatory experience requirements as set out in the Request for Tender. Specifically, Corebuild Construction Ltd. identified that it was relying on project experience that had been obtained by Bondfield Construction Ltd. After Corebuild Construction Ltd. was declared non-compliant, it submitted a pre-award bid dispute that was reviewed by the Chief Procurement Officer in consultation with the City Solicitor. The dispute centred on whether Corebuild Construction Ltd. and Bondfield Construction Ltd., were affiliated. After reviewing the material provided by Corebuild Construction Ltd., the Chief Procurement Officer maintained the non-compliance. Corebuild Construction Ltd., in accordance with the Pre-Award and Post-Award Bid Dispute process, is entitled to file a Post-Award Bid Dispute.

Increasing Construction Costs Resulting from the COVID-19 Pandemic

The Project cost estimate, did not take into consideration the increasing costs of construction materials since the COVID-19 pandemic began, as this event could not be foreseen. Data from the Building Construction Price Indexes from Statistics Canada predicts that the prices of construction materials in Toronto for both residential and non-residential buildings are expected to escalate into the foreseeable future. Since the third quarter of 2020, the building construction price index has risen by 13%, and by 25% since 2017.

Increases to construction costs are a widespread issue impacting other capital projects in Corporate Real Estate Management as well as those in other City Divisions, CreateTO, and across the country. A report provided by a third party construction consulting firm recommends that costs excluding COVID-19 cost impacts should add 15 per cent to 20 per cent due to general COVID-19 restrictions, supply chain issues, and

other factors.¹ City staff reviewed the lowest compliant bid against those received only six (6) months earlier for the same scope of work and confirmed that there is almost a 20 per cent increase in costs.

To account for the increase in market prices, Corporate Real Estate Management has included an additional 20 per cent COVID-19 escalation allowance of \$2,823,600 to the pre-tender construction cost estimate of \$14,118,000, revising it to be \$16,941,600 net of all taxes, cash allowances and contingencies.

The lowest compliant bid of \$17,998,903 net of all taxes, excluding cash allowances and contingencies, was 6.2 per cent above the new pre-tender estimate.² As finding cost savings to lower the recommended award amount would involve some re-design to Project and scale back commitments made by the City towards the Project, Corporate Real Estate Management recommends awarding the contract at this time to deliver this highly-anticipated Indigenous place keeping project for the City of Toronto.

The breakdown of the recommended award amount to Buttcon Limited is \$21,998,903 net of all applicable taxes (\$22,386,084 net of Harmonized Sales Tax recoveries), consisting of the amounts in Table 3.

Table 3: Recommended contract award amount to Buttcon Limited

Line Items	Amount
Bid Amount (net of taxes)	\$17,998,903
Cash Allowance	\$400,000
Contingency	\$3,600,000
Total (net of all applicable taxes)	\$21,998,903

The Fair Wage Office has reported that the recommended Proponent understands the Fair Wage Policy and Labour Trades requirements and has agreed to comply fully.

Social Procurement Program

The recommended Proponent has agreed to participate in the City of Toronto's Social Procurement Program. As part of the program, the recommended Proponent is to develop or provide an adopted supplier diversity policy that outlines the means to improve supplier diversity and implement and maintain a Workforce Development Strategy in conformance with the Tender Call requirements.

¹ While it is difficult to predict the exact timing of when prices will stabilize from the pandemic, based on recent published articles and expert opinion from third party construction consultants, market prices may never return to the pre-pandemic market price.

² Submitted by Buttcon Limited.

The tender requires the contractor to work with City staff to implement a Workforce Development Plan, which requires the Contractor to implement the following Workforce Development strategies:

- a) Opportunities for Employment during Construction - The contractor shall ensure, either directly or through Subcontractors, a minimum of three (3) Candidates who are performing construction trades with the attempt to focus on Indigenous trades and crafts people;
- b) Use of Diverse Suppliers in the Supply Chain - The Contractor shall provide a minimum of three (3) subcontracting opportunities for the duration of the Agreement, with the attempt to focus on Indigenous Diverse Suppliers, for required goods and services; and,
- c) Other Employment-Related Activities - The Contractor shall participate in a minimum of two (2) Owner-endorsed employment-related activities that target Indigenous communities for the duration of the Agreement.

Conclusion

Aligned with the recently adopted R.A.P, the Project is a key piece of Indigenous place keeping for the City and represents another step forward in the City's work to advance truth and reconciliation.

CONTACT

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SIGNATURE

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Indian Residential Schools Survivors Restoration of Identity Project