TORONTO

REPORT FOR ACTION

Amendments to Retainer Agreement Purchase Order 6035311 with Osler, Hoskin & Harcourt LLP for Legal Services Related to Pension and Benefits Issues

Date: May 6, 2022
To: General Government & Licensing Committee
From: Controller, City Solicitor and Chief Procurement Officer
Wards: All

SUMMARY

The law firm of Osler, Hoskin & Harcourt LLP (Osler) was retained in 2012 by the City to provide legal advice and support with the merger of City-sponsored legacy pension plans with the Ontario Municipal Employee's Retirement System (OMERS).

A small number of isolated individual surplus distribution issues remain outstanding, where Osler's guidance is still required, as well as the transition to City administration of the Police Retirement Compensation Arrangement (RCA). By letter dated March 14, 2022 from the City Solicitor, the time for completion was extended to December 31, 2022. The current retainer stands at $1,200,000.

An additional $75,000 on top of the current retainer amount should be sufficient to complete the outstanding matters by the end of 2022.

Osler's longstanding involvement in this multi-year process and their effective guidance on the numerous unanticipated complexities arising over time, suggests that it would not be prudent and would cause delay and additional cost to the City to go to market to retain a new firm which would not have the history and familiarity with this nearly-completed matter.

RECOMMENDATIONS

The Controller, City Solicitor, and the Chief Procurement Officer recommend that:

1. The General Government and Licensing Committee, in accordance with Section 71-11.1C of the City of Toronto Municipal Code Chapter 71 (Finance Control By-Law) authorize the City Solicitor to increase the value of the retainer with Osler, Hoskin &

Harcourt LLP on Purchase Order 6035311 by an additional $75,000, from $1,200,000 to $1,275,000, net of all applicable taxes and charges and extend the term validity date to December 31.

FINANCIAL IMPACT

This report is seeking approval to increase the funding commitment for the extension of the Retainer Agreement with Osler, Hoskin & Harcourt LLP by $75,000, funded from the Employee Retiree Benefit Reserve Fund, with $0 net impact to the 2022 Operating Budget. In order to complete the regulatory processes associated with post-merger tasks.

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

DECISION HISTORY

A 2011 report to the Executive Committee summarized the outcome of a preliminary analysis of options with respect to the possible provision by the Ontario Municipal Employees Retirement System of investment management and/or pension administration services for the City's five pre-OMERS pension plans or, alternatively, outright merger. The report recommended that staff be authorized to enter into discussions with OMERS and other appropriate parties regarding the terms of a potential merger of those plans with the OMERS primary plan; to evaluate the option of winding-up the City's plans; and to report back accordingly.

The following is the link to the Council decision:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX11.10

A 2017 report to the Government Management Committee recommended that the term of the 2012 Purchase Order be extended to April 1, 2020.

The following is the link to the Council decision:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.GM20.5

A 2018 report to the Government Management Committee recommended a further increase to the 2012 Purchase Order.

The following is the link to the decision:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.GM29.8

A 2020 report to the General Government and Licensing Committee recommended an additional increase to the 2012 Purchase Order:

The following is the link to the decision:

http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.GL15.11

COMMENTS

It is necessary to further amend the retainer agreement with Osler, Hoskin & Harcourt LLP by increasing its dollar limit by $75,000 to accord with the possible maximum fees chargeable by that firm between now and the completion of this multi-year project, estimated by December 31, 2022.

In the fall of 2011, after being instructed by the then Director, Pensions, Payroll and Employee Benefits, to arrange for the provision of specialized pension and benefits legal services in connection with anticipated discussions with OMERS for the merger of the five City-sponsored pension plans, the City Solicitor circulated an Invitation for Proposals for such services and entered into a retainer agreement with the successful proponent, Osler, on April 2, 2012, pursuant to Purchase Order number 6035311, for a period of 5 years terminating on April 1, 2017, in the amount of $150,000,to provide preliminary analysis and aid in the merger discussions with OMERS.

Because the Regulations under the *Pension Benefits Act* allowing for mergers of public-sector pension plans did not come into effect until November, 2015, the services of Osler were required beyond the initial expiry date of the Purchase Order and so Council authority was subsequently obtained extending that date to April 1, 2020. As well, to accommodate the growing scope of the legal services, the maximum amount under the Purchase Order was increased to $450,000. The retainer agreement was amended accordingly.

In 2018, to better reflect actual costs of this increasingly complex matter, the retainer amount was increased to $900,000. This allowed for Osler's representation in negotiations involving surplus sharing agreements for three of the four pension committees, as well as navigating through the complicated merger and asset transfer regulations.

The next stage after the successful merger of four City-sponsored pension plans with OMERS in January 2020, was to deal with wind-up and termination of the plans, including surplus distribution. As this type of a pension merger from a single employer pension plan, such as the City-sponsored pension plans to a jointly sponsored pension, such as OMERS, was a relatively new process, City staff, along with the actuaries of the plans and representatives from Osler, met with members of Financial Services Regulatory Authority of Ontario (FSRA) to fully understand and ensure that the appropriate regulatory measures were adhered to.

From December 2020 to the present, with Osler's continued guidance and direction, the City successfully filed all the relevant documents with Financial Services Regulatory Authority of Ontario (FSRA) and ultimately received approval to distribute the remaining surplus. As part of the negotiated settlements, the City distributed over $117 million to

4,000+ eligible members, with approximately $107 million of surplus being received by the City.

In 2020, the anticipated term of the retainer was lengthened to December 31, 2020. In 2021, the term was lengthened to March 31, 2021, and an additional $300,000 was authorized, for a total retainer of $1,200,000.

A small number of isolated individual surplus distribution issues remained outstanding, as well as the transition to City administration of the Police Retirement Compensation Arrangement (RCA). These outstanding items have resulted in a continued need for the specialized legal services provided by Osler.

Osler continues to provide legal advice and day-to-day guidance to assist City staff in dealing with post-merger issues, and with the committees/boards which are the administrators of the City pension plans. In preparing their advice, Osler has gathered all the necessary historical documents and done extensive research that has taken significant time and effort.

More recently, Osler has been instrumental in significantly guiding the City and the plan actuaries through the complicated post-merger transactions involving surplus withdrawal applications, wind-up reports, member communications, various regulatory filings, and the complicated administration of the Police Benefit Fund, Retirement Compensation Agreement (RCA) benefit that the City will have to administer as provincial regulations restricted the transfer of this benefit to OMERS.

It is critical that the City continue to receive legal advice from a law firm that has had previous experience in pension plan mergers and is fully familiar with the City's pension plans in order to ensure that matters proceed in the best interests of the pensioners and the City. It would not be prudent to go out to market to retain a new law firm whose personnel will require significant time and expense to familiarize themselves with all of the historical by-laws governing these pension plans as well as all of the steps taken to date to accomplish these mergers and bring matters nearly to a close.

The work that has been completed by Osler to date has resulted in expenditures that are slightly below the current $1,200,000 Purchase Order limit. It is advisable to increase that limit now by a further $75,000, which is expected to provide sufficient resources to complete these mergers under all but the most complex scenarios.

Legal Services has reviewed the hourly rates fees currently being charged by Osler, and has confirmed that they are consistent with the blended rates charged in previous years, with appropriate increases after allowing for inflation. These blended rates provide savings to the City compared to regular billings without blending of counsel rates.

CONTACT

Hatem Belhi, Director, Pension, Payroll & Employee Benefits
Phone: 416-397-4143, e-mail: Hatem.Belhi@toronto.ca

Justin Lau, Manager, Purchasing Client Services, Corporate Services and Finance & Treasury Services, Purchasing & Materials Management Division
Phone: 416-392-7316, email: Justin.Lau@toronto.ca

Zoya Trofimenko, Solicitor, Legal Services
Phone: 416-397-4417, email: Zoya.Trofimenko@toronto.ca

SIGNATURE

Andrew Flynn
Controller

Wendy Walberg
City Solicitor

Mike Pacholok
Chief Procurement Officer