

Redevelopment of St. Lawrence Market North – Emergency Non-Competitive Contract and Purchase Order Amendment for Contract Administration Services

Date: June 17, 2024

To: General Government Committee

From: Executive Director, Corporate Real Estate Management and Chief Purchasing Officer

Wards: 13 - Toronto Centre

SUMMARY

The purpose of this report is to provide an update on the status of the City of Toronto's St. Lawrence Market North Redevelopment project (the "Project") and advise City Council, pursuant to Chapter 195 of the Toronto Municipal Code (Purchasing By-law, Section 195-7.4), of a non-competitive contract with the General Contractor, The Buttcon Limited / The Atlas Joint Venture ("BA-JV"), for the non-exclusive supply of construction services both already completed and still required to attain substantial completion, occupancy, and operational readiness of the St. Lawrence Market North Redevelopment, for a total value of \$9,335,692 net of all applicable taxes and charges (\$9,500,000 net of Harmonized Sales Tax Recoveries). These additional costs were primarily driven by unforeseen cost escalations from the COVID-19 pandemic, client-driven changes including the incorporation of updated workplace modernization standards, evolving information and technology requirements around the delivery of court services, security and police radio system infrastructure, and errors and omissions from the Prime Architect.

In consultation with the Purchasing and Materials Management Division ("PMMD"), the non-competitive contract was issued on the basis of emergency in order to meet immediate legislated payment requirements and avoid further Project delays that would have resulted in additional Project costs. Reporting back to City Council is required in accordance with Municipal Code Chapter 195, Purchasing, Article 7, Section 195-7.4(B) where a non-competitive contract over \$500,000 is entered into on an emergency basis.

This report also requests that City Council grant authority to amend Purchase Order Number 6034062 issued to Adamson Associates Architects (“AAA”) for an additional amount of \$40,000 net of all taxes and charges, revising the current purchase order value from \$6,951,199 to \$6,991,199 net of all taxes and charges (\$7,114,244, net of Harmonized Sales Tax recoveries), for ongoing contract administration services and expertise. The requested amendment will restore sufficient value to the contract to ensure that contract administration services are available for the duration of the Project.

Approval of the purchase order amendment for continued contract administration services will allow construction to continue, with the Project expected to be completed and the facility ready for tenant fit-up in September 2024.

RECOMMENDATIONS

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

1. City Council, in accordance with Section 71-11.1C of the City of Toronto Municipal Code Chapter 71 (Financial Control By-law), grant authority to amend Purchase Order Number 6034062 issued to Adamson Associates Architects by an additional amount of \$40,000, net of all taxes and charges, revising the current purchase order value from \$6,951,199 to \$6,991,199 net of all taxes and charges (\$7,114,244 net of Harmonized Sales Tax recoveries), for ongoing contract administration services and expertise for the duration of the St. Lawrence Market North Redevelopment project.

FINANCIAL IMPACT

The total non-competitive contract identified in this report is \$9,335,692 net of applicable taxes and charges (\$9,500,000 net of Harmonized Sales Tax recoveries).

Approval is also being sought for the amendment of Adamson Associates Architects' Purchase Order Number 6034062 for \$40,000 net of all taxes and charges, requiring an amendment to the current purchase order value from \$6,951,199 to \$6,991,199 net of all taxes and charges (\$7,114,244, net of Harmonized Sales Tax recoveries), for ongoing contract administration services and expertise for the duration of the Project. The amendment value will be funded from the Corporate Real Estate Management Division's Cost Centre CCA193-01 in 2024.

Total Project Budget

The current approved total project budget for the St. Lawrence Market North Redevelopment project is \$118,821,000.

Due to the factors that are driving the need for the non-competitive contract and the contract amendment noted above, the revised total forecasted Project cost is \$128,021,000, or \$9,200,000 over the current approved total Project budget. Table 1 below details the updated cost estimates compared to the current budget, and identifies the incremental funding required to complete the Project.

Table 1: St. Lawrence Market North Redevelopment – Updated Project Cost (net of Harmonized Sales Tax)

| | Cost Estimate |
|---|----------------------|
| Life to date actuals (as of April 30, 2024) | \$110,734,000 |
| Remaining forecasted costs to complete the Project | \$17,287,000 |
| Total revised forecasted Project cost | \$128,021,000 |
| Current approved Project budget | \$118,821,000 |
| Incremental funding required to complete the Project | \$9,200,000 |

To address the Project cost increase of \$9,200,000, a budget adjustment will be brought to City Council through the Capital Variance Report for the Four Months Ended April 30, 2024 that will be before Council at the same time as this staff report at the July 24 to 26, 2024 meeting. The budget adjustment will increase the project budget for the St. Lawrence Market North Redevelopment project by \$9,200,000 reallocating debt funding from existing projects within the Corporate Real Estate Management and Chief Information Security Office Divisions' 2024-2033 Capital Plans.

Funding Sources

The total revised funding sources for the St. Lawrence Market North Redevelopment project, after the pending budget adjustment, are outlined in Table 2 below.

Table 2: St. Lawrence Market North Redevelopment Funding Sources – After Budget Adjustment (net of Harmonized Sales Tax)

| Funding Source | Amount |
|--|---------------|
| Recoverable debt | \$39,700,000 |
| Contribution from Toronto Parking Authority for underground garage | \$14,000,000 |
| Capital Financing Reserve | \$15,000,000 |
| Courts Services Stabilization Reserve | \$6,900,000 |
| Development Charges | \$5,000,000 |

| Funding Source | Amount |
|--------------------------|----------------------|
| Section 37, 42, 45 Funds | \$3,000,000 |
| Debt Funding* | \$44,421,000 |
| Total | \$128,021,000 |

*Includes \$9,200,000 in additional debt funding to be added pending the Council approval of the Capital Variance Report for the Four Months Ended April 30, 2024

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

DECISION HISTORY

The current St. Lawrence Market North initiative has been ongoing since 2002 to maximize the site's full potential and improve the St. Lawrence Market complex. At its meeting on July 30, 31 and August 1, 2002, City Council approved, in principle, the concept of redeveloping the St. Lawrence Market North Building and directed City staff to study redevelopment options.

<http://www.toronto.ca/legdocs/2002/agendas/council/cc020730/adm10rpt/cl014.pdf>

At its meeting on June 24, 25 and 26, 2003 City Council established the St. Lawrence Market North Working Committee to determine planning and design guidelines for the redevelopment, as well as consultations with various stakeholders.

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030624/adm5rpt/cl024.pdf>

At its meeting on October 26, 27 and 28, 2004, City Council adopted development parameters for St. Lawrence Market North and endorsed a strategic vision statement for the St. Lawrence Market complex.

<http://www.toronto.ca/legdocs/2004/agendas/council/cc041026/adm8rpt/cl007.pdf>

At its meeting on June 27, 28, 29 2006, City Council directed City staff to investigate several technical matters with the redevelopment, including parking access/accommodations and Court Services as a primary tenant.

<http://www.toronto.ca/legdocs/2006/agendas/committees/adm/adm060606/it020.pdf>

At its meeting on September 25, 26, 27 2006, City Council directed City staff to provide a business plan for the redevelopment of the North Market building.

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/adm6rpt/cl022.pdf>

At its meeting on December 10, 2008, City Council endorsed the strategy to redevelop the St. Lawrence Market North property with a multi-story building, including a ground floor Market Hall, Court Services' court rooms and administrative offices, and a

250-space below grade parking garage. The decision also authorized an international design competition to select an architect for the redevelopment.

<http://www.toronto.ca/legdocs/mmis/2008/bu/bgrd/backgroundfile-17440.pdf>

At its meeting on July 6, 7, 8, 2010, City Council endorsed the winning design from the international St. Lawrence Market North Design Competition and authorized City staff to enter into an agreement with the successful proponent for the provision of architectural services for the new St. Lawrence Market North Building.

<http://www.toronto.ca/legdocs/mmis/2010/ex/bgrd/backgroundfile-31365.pdf>

At its meeting on July 16, 17, 18 and 19, 2013, City Council adopted a revised financing plan, including additional funding of \$15.293 million, and directed staff to proceed with the Design Development and Bid Document stages for the new St. Lawrence Market North Building.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.GM23.6>

At its meeting on February 3 and 4, 2016, City Council directed staff to proceed with Phase 2, Demolition of the existing North Market Building at 92 Front Street, of the Redevelopment of St. Lawrence Market North project, including demolition of the existing building and archaeological assessment of the site in advance of new construction.

<http://www.toronto.ca/legdocs/mmis/2016/gm/bgrd/backgroundfile-86763.pdf>

At its meeting on September 25, 2017, Government Management Committee received a report for information to provide information on the additional project funding required for the North St. Lawrence Market project for design and construction services to accommodate the inclusion of a section of the 1831 central drain archaeological resource found on the site for public viewing and interpretation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.GM22.13>

At its meeting of February 12, 2018, City Council approved the 2018 Capital Budget and 2018-2027 Capital Plan for the construction of the new St. Lawrence Market North Building, including an increase to the total project cost from \$91.5 million to \$102.3 million, requiring additional debt funding and an increase to Facilities, Real Estate, and Environment & Energy's (FREEE) 2018 – 2027 Capital Budget and Plan for new St. Lawrence Market North Building in the amount of \$10.9 million.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX31.2>

At its meeting on February 20, 2018, Government Management Committee granted authority to award Tender Call No.85-2017, for the construction of the new St. Lawrence Market North Building, to Bondfield Construction Company Limited.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.GM25.11>

At its meeting on May 14, 2019, City Council approved an amendment to the Approved FREEE 2019-2028 Capital Budget and Plan by increasing the total project cost of the St. Lawrence Market North Redevelopment by \$13.959 million, for a total project budget

of \$116.302 million. These additional costs were due to the re-tendering of construction services and were required to award Tender Call No. 319-2018 to the recommended bidder, The Buttcon Limited / The Atlas Corporation Joint Venture and amend Purchase Order Number 6034062 issued to Adamson Associates Architects for ongoing contract administration services and expertise.

<https://secure.toronto.ca/council/agenda-item.do?item=2019.GL4.7>

At its meeting of February 18, 2021, City Council approved the 2021 Capital and Operating Budgets, which included a request for \$2.5 million for the St. Lawrence Market North Redevelopment project, increasing the total project budget from \$116.302 million to \$118.820 million, to allow for the modernization of the facility, based on preliminary estimates of what was required to accommodate the program standards.

<https://secure.toronto.ca/council/agenda-item.do?item=2021.EX21.2>

COMMENTS

Background

The St. Lawrence Market North Redevelopment project (the “Project”) is scheduled to achieve substantial completion by September 2024. The design for the new North Market Building was endorsed by City Council in 2010 following an international design competition. Construction commenced in Fall 2019, after significant delays related to archeological assessments and the re-issuance of the tender for the General Contractor.

The Project forms part of a broader St. Lawrence Market precinct plan, which encompasses other initiatives including the revitalization of Market Square Park and the development of a new operating model for the South Market, St. Lawrence Hall and other properties in the complex.

St. Lawrence Market North will be a major tourist destination that showcases artifacts from Toronto's history and features one of the world's top-ranked farmers markets. The City is investing in this historic landmark so that the building is suitable for market and non-market uses. In addition, St. Lawrence Market North will consolidate and house the City's Court Services' downtown operations along with Provincial courts, other administrative functions and offer increased parking capacity in the precinct.

Emergency Non-Competitive Procurement for the General Contractor

To expedite completion of the Project, and mitigate impacts to the Project schedule, a number of changes to the General Contractor, The Buttcon Limited / The Atlas Joint Venture (BA-JV), scope of services were required. These approved changes by the Architect of record resulted in work in excess of the current approved contract value (Purchase Order Number 6048942). At the beginning of June 2024, a balance of \$347,237 (net of all taxes and charges) was left available to pay future progress draws under Purchase Order Number 6048942. The value of the immediate subsequent invoice was expected to be higher than the remaining balance of the purchase order. In

consultation with PMMD, it was determined that an emergency non-competitive contract was the appropriate procurement tool that would allow the City to meet its immediate legislated payment obligations, while mitigating the threat of a stoppage in work and legal action from BA-JV, the risk of an estimated two-month Project delay and associated delay costs. More specifically, an emergency non-competitive contract was required to mitigate several urgent risks:

1. Indefinite Project delay risk: the emergency non-competitive contract allowed staff to process immediate invoices to avoid BA-JV exercising their right to terminate their contract and delay the Project indefinitely. An indefinite delay could result in the City expending an additional estimated \$4,500,000 to \$7,500,000 to complete the Project.
2. Delayed Project completion cost risk: the absence of an emergency non-competitive contract for the full amount of \$9,500,000 (net of Harmonized Sales Tax recoveries), could result in a delay of approximately two months to the Project's estimated completion (from September 30, 2024 to November 30, 2024). The estimated financial loss to the City could range approximately \$450,000 to \$1,000,000.
3. Staff relocation risk: Court Services' existing commercial lease at 30 Adelaide Street East for administrative staff to be relocated to St. Lawrence Market North is set to expire on December 31, 2024. The lease is subject to a provision that allows the landlord to terminate the lease in advance of that date if a minimum of two months' notice is provided.

Given the above noted risks, an emergency non-competitive contract, as defined in Chapter 195 of the Municipal Code (NCP Exemption 01), valued at \$9,335,692 net of applicable taxes and charges (\$9,500,000 net of Harmonized Sales Tax recoveries), to the Buttcon-Limited / The Atlas Corporation Joint Venture (BA-JV) was approved on June 6, 2024 for construction services both already completed and still required to attain substantial completion, occupancy, and operational readiness of St. Lawrence Market North Redevelopment.

Project Budget Impacts

Construction on the Project began in Fall 2019 and has spanned the COVID-19 pandemic and a significant period of inflationary pressures that have impacted the construction industry. During this time period, construction material costs escalated by approximately 60%(industry-wide) resulting in disruptions to the supply chain. Due to these factors, the Project's completion date is now estimated September 2024 (original completion date of June 2022) and a Project budget increase is required as identified in the Financial Impact section. Despite the market volatility, the budgetary funding request represents an approximate 10% Project cost increase and is the only request for a budget increase over the construction phase of the Project.

These additional costs were driven by unforeseen cost escalations from the COVID-19 pandemic, client-driven changes including the incorporation of updated workplace modernization standards, evolving information and technology requirements by court services around the delivery of court services, security and police radio system infrastructure, and design coordination from the Prime Architect. These requirement changes for the Project were verified and approved by the Architect of record following industry standards for process contract administration and compliance, and are detailed in Table 3 below. Any future third party claims by the General Contractor and/or the Prime Architect will be reconciled post-completion of the Project.

Table 3: Breakdown of Major Changes to St. Lawrence Market North Redevelopment's Construction Contract for BA-JV

| Category | Description | Cost | % of total cost | % of total changes |
|------------------------|---|-------------|-----------------|--------------------|
| Design Coordination | <ul style="list-style-type: none"> - There have been significant errors and omissions in the design, with the bulk of costs coming from changes to the architectural (30%), mechanical (30%), and electrical (25%) design packages | \$8,247,000 | 55.6 | 73.9 |
| Program Driven Changes | <ul style="list-style-type: none"> - Incorporation of hybrid approach to workplace standards was not included in the base budget; - Court's transition to remote proceedings to meet needs of post-COVID-19-pandemic environment; and - Revisions to police radio and security standards | \$4,345,000 | 29.3 | 9.7 |

| Category | Description | Cost | % of total cost | % of total changes |
|---|--|---------------------|------------------------|---------------------------|
| Unforeseen site conditions | <ul style="list-style-type: none"> - Underground obstructions encountered during excavation activities including undocumented underground services and utilities; - Contaminated soils management; and - Modifications to existing St. Lawrence Hall to accommodate bridge link | \$2,244,000 | 15.1 | 16.4 |
| Subtotal (approved and anticipated changes) | | \$14,836,000 | 100% | 100% |
| Less: Contingencies | | (\$5,336,000) | | |
| Total | | \$9,500,000 | | |

Purchase Order Amendment for AAA

As part of the above changes, the Contract Administrator (AAA) has been required to make adjustments to the base building design to accommodate workplace modernization program requirements, updates to the delivery of court services remote proceedings, and the incorporation of police radio infrastructure requirements among other changes, resulting in additional service requests amounting to \$40,000 net of all taxes and charges, requiring an amendment to the current purchase order value from \$6,951,199 to \$6,991,199 net of all taxes and charges (\$7,114,244, net of Harmonized Sales Tax recoveries), for ongoing contract administration services and expertise for the duration of the Project.

Next Steps

CREM staff continue to work with PMMD and Legal Services to bring the contract and Project back in compliance, ensure the City meets its obligation under the terms of the contract, specifically its payment obligations, ensure necessary funding and contract value is available to manage and bring the Project to completion, and ensure existing controls are followed, enhanced and reinforced.

Market conditions and cost escalations related to legitimate changes for the St. Lawrence Market North Redevelopment project have continued to present financial

pressures requiring additional funds to achieve occupancy, substantial completion, and operational readiness for those tenants that will be operating in the building. The emergency non-competitive contract issued and the approval of the requested budget amendment and amendment to the Contract Administrator's (AAA) purchase order will allow the Project to continue without delay. In the coming months, a plan will be put into place, targeting the move-in of tenants in a phased manner from October through December 2024. Once complete, the new St. Lawrence Market North will transform the historical site into a modern public space that will service both residents and visitors alike.

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