

## **Selection of Real Estate Brokerages for the Sale of Smaller Properties**

<b>Date:</b>	September 4, 2009
<b>To:</b>	Government Management Committee
<b>From:</b>	Chief Corporate Officer Director of Purchasing and Materials Management
<b>Wards:</b>	All
<b>Reference Number:</b>	P:/2009/Internal Services/pmmd/gm09024pmmd (AFS #10234)

### **SUMMARY**

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The purpose of this report is to obtain authority for the continued use of the current process to select and engage real estate brokerages for the sale of smaller properties valued at less than \$1,000,000.00, in respect of which the Chief Corporate Officer or his designate has determined that the focused market expertise of brokerages with local experience in the neighbourhood is important (“Smaller Properties”).

### **RECOMMENDATIONS**

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**The Chief Corporate Officer and the Director of Purchasing and Materials Management recommend that City Council:**

1. Authorize the Chief Corporate Officer or his designate to select qualified Brokerages to list and market Smaller Properties valued at less than \$1 million, to negotiate a commission fee reflective of market rates and to enter into listing agreements with the selected Brokerages in accordance with the process and criteria listed in Appendix “A” of this report.
2. Authorize the Chief Corporate Officer or his designate to execute the listing agreements with the selected Brokerage.

## **Financial Impact**

There is no financial impact resulting from the adoption of the recommendations contained within the report.

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

## **DECISION HISTORY**

By its adoption of Clause No. 1 of Report No.11 of the Corporate Services Committee, at its meeting on July 29, 30 and 31, 1998 (the “Original Authority”), City Council authorized, among other matters, the then Commissioner of Corporate Services to select local Brokerages active in residential listings for the marketing and sale of Smaller Properties and to negotiate commission fees for services from real estate brokerages

<http://www.toronto.ca/legdocs/1998/agendas/council/cc/cc980729/cs11rpt/cl001.htm>

Clause No. 21(k) of Report No. 16 of the Administration Committee was received for information by City Council at its meeting of November 6, 7, and 8, 2001.

<http://www.toronto.ca/legdocs/2001/agendas/council/cc011106/adm16rpt/cl021.pdf>

For a copy of the report, refer to Appendix “C”.

Clause No. 36(f) of Report No. 5 of the Administration Committee was received for information by City Council at its meeting of June 24, 25 and 26, 2003.

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030624/adm5rpt/cl036.pdf>

<http://www.toronto.ca/legdocs/2003/agendas/committees/adm/adm030603/it028.pdf>

## **ISSUE BACKGROUND**

The use of Brokerages to list and market surplus properties allows staff to manage the sale of a large portfolio of properties simultaneously. The primary advantage of listing with Brokerages is access to the Canadian Real Estate Associations Multiple Listing Service (“MLS”).

When dealing with smaller properties, familiarity with the local market is particularly important. The City is divided into 35 MLS districts, as shown in Appendix “B”. In accordance with the Original Authority, local Brokerages in each of those districts, as selected by the Chief Corporate Officer or his designate, have been retained for the listing and marketing of Smaller Properties. While the City’s procurement policies, approved by Council after the approval of the Original Authority, require a broad competitive process for the selection of service providers, it is appropriate, in this case, to continue to take advantage of the efficiencies and economies that this selection process makes possible.

## COMMENTS

The Brokerage selection process outlined in Appendix “A” has worked well and helps to ensure a fair, open and transparent distribution of listing and marketing assignments among qualified local Brokerages for the marketing of Smaller Properties.

## CONTACT

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## SIGNATURE

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Bruce Bowes, P. Eng.  
Chief Corporate Officer

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Lou Pagano, P. Eng.  
Director, Purchasing and  
Materials Management

## ATTACHMENTS

Appendix “A” – Selection Process and Criteria

Appendix “B” – MLS Districts

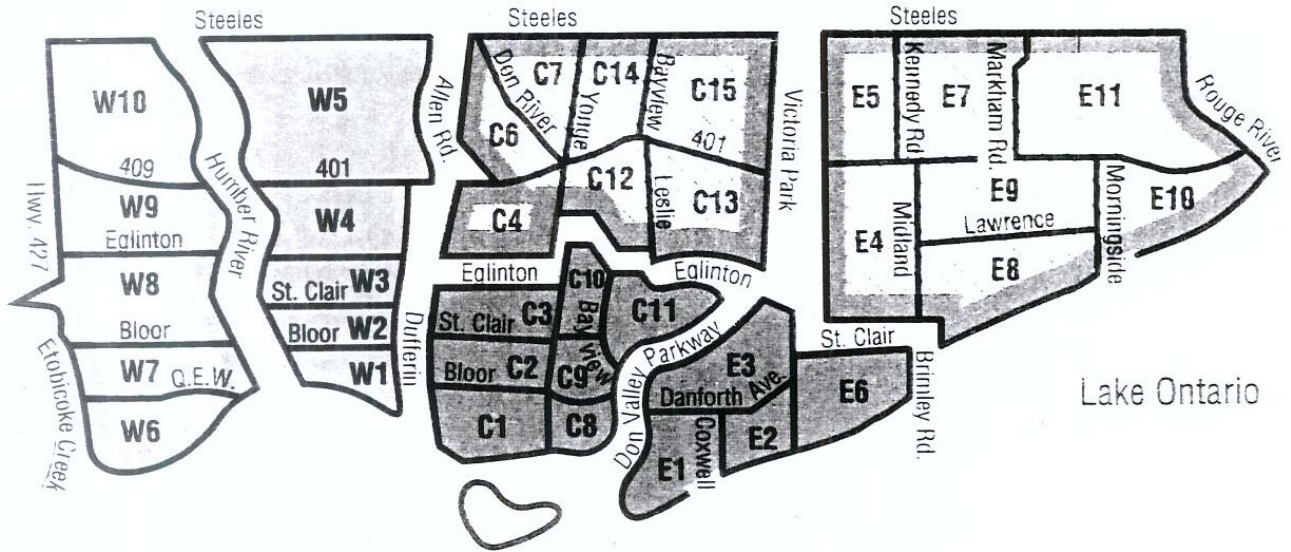
Appendix “C” – Copy of Administration Committee Report No. 16 dated October 9, 2001

**APPENDIX “A”**  
**Selection Process and Criteria for the Selection of Real Estate Brokerages for the Sale of Smaller Properties**

The process and criteria for the selection of real estate brokerages (“Brokerages”) for the sale of smaller properties valued at less than \$1,000,000.00, in respect of which the Chief Corporate Officer or his designate has determined that the focused market expertise of Brokerages with local experience in the neighbourhood is important (“Smaller Properties”) is as follows:

1. Facilities and Real Estate staff review the Toronto Real Estate Board (“TREB”) listing of Brokerages to identify Brokerages with offices in the Multiple Listing Services (“MLS”) district in which the property to be listed for sale is located. If there are no eligible Brokerages within the relevant MLS district (based on the criteria below in item 2), Brokerages in adjacent MLS districts are considered. A preliminary list of eligible Brokerages is prepared.
2. Staff confirm that all of the Brokerages on the preliminary list are registered under the Real Estate and Business Brokers Act, 2002 (“REBBA”). For properties located in the City of Toronto, the Brokerage must be a member in good standing of TREB. For properties located outside of the City of Toronto, the Brokerages must be members in good standing of their local real estate board. In addition, all Brokerages must have access to MLS and their offices must be readily accessible to the general public and salespersons from other Brokerages. City staff must be satisfied that the Brokerages have sufficient staff to provide full service.
3. On the basis of the criteria listed above, a short list of qualified local Brokerages from which a selection will be made is established.
4. In order to ensure a fair distribution of listing and marketing assignments in the relevant MLS district, the final selection of the successful Brokerage is made on a random lottery basis from the short list of qualified Brokerages.
5. Once a Brokerage has been selected, a listing agreement, including a commission fee reflective of market rates, will be negotiated.
6. If negotiations with the selected Brokerage do not result in a signed listing agreement, the selection process will be repeated.
7. Once a Brokerage has listed a property in an MLS district, the selected Brokerage will not be considered for another listing in that MLS district for a period of one year. If all Brokerages within an MLS district have listed a property within a one year period, Brokerages in adjacent MLS districts will be considered.

**APPENDIX "B"**  
MLS Districts



APPENDIX “C”

 **TORONTO** STAFF REPORT

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October 9, 2001

To: Administration Committee

From: Commissioner of Corporate Services

Subject: Process for Marketing and Sale of Surplus City-Owned Property  
(All Wards)

Purpose:

To advise on the process utilized for the marketing and sale of surplus City-owned property.

Financial Implications and Impact Statement:

None at this time.

Recommendations:

It is recommended that this report be received for information.

Background:

To meet various objectives set by Council respecting the disposition of City-owned properties, a number of initiatives were implemented. A Property Management Committee, which consists of senior staff, was established to review requests for the use of potentially surplus properties for other corporate purposes or, alternatively, for the sale of those properties on the open market. A staff working group, the Technical Working Committee, carefully reviews and resolves issues prior to a potentially surplus property being considered by the Property Management Committee. A Disposal Unit in Facilities and Real Estate Services was also established to expedite the sale of properties declared by Council to be surplus to the City’s requirements.

With the creation of the amalgamated City of Toronto, policies for real estate disposal and offer approval used by various former municipalities were reviewed to eliminate inconsistencies with respect to the methodology, procedure and documentation used by staff. A uniform real estate property disposal programme has now been developed. Real Estate staff in consultation with Legal staff have standardized various documents.

By its adoption of Clause No. 10 of Corporate Services Committee Report No. 4 on April 13, 14 & 15, 1999, City Council authorized the utilization of a roster of real estate brokers to market industrial, commercial, institutional and substantial residential properties for the City of Toronto. This report recognized that listing City properties for sale with a real estate broker realizes savings in staff time and resources, provides specialized services, provides far superior marketing programmes and provides access to client network. Outsourcing a portion of the sale process to brokers has also allowed staff to manage the sale of numerous properties simultaneously and to maximize exposure for its surplus properties. Authority was also delegated to the Commissioner of Corporate Services to remove any one or more of the prequalified brokers from the roster where, in her sole discretion, she deems it appropriate to do so.

City Council, at its meeting held on March 6, 7 and 8, 2001, requested the Commissioner of Corporate Services to submit a report to the Administration Committee commenting on the proposed process to be followed when multiple offers are received on City-owned properties declared surplus.

Comments:

In responding to the request for a report on multiple offer situations, it was felt that it would be more productive to expand the scope of the report to encompass most situations arising in the disposal process.

“Process for the Marketing and Sale of Surplus City-Owned Property”, attached as Appendix “A”, sets out the practices utilized by Real Estate staff in the sale of City-owned property, including the role of the broker and the process followed when dealing with multiple offers. The procedures as outlined reflects current practices, which have evolved as a result of experience with the municipal sales process. Such process has worked well and lends significant credibility to the openness and transparency of the City’s real estate sales practice.

Conclusions:

Following the steps as set out in Appendix “A” respecting the marketing and disposal of surplus property ensures an open and transparent process and contributes to the continued success of the City’s real property disposal programme.

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Doug Stewart  
Director of Real Estate Services

M. Joan Anderton  
Commissioner of Corporate Services

## **APPENDIX “A”**

### **PROCESS FOR THE MARKETING AND SALE OF SURPLUS CITY-OWNED PROPERTY**

- (1) Industrial, commercial, institutional and substantial residential properties are listed with one of the Brokers selected from the Council approved Roster. “Ordinary” residential and miscellaneous vacant or small parcel properties are listed with a randomly selected local Broker having a full service office.
- (2) While the marketing of City-owned properties is predominantly conducted utilizing Brokers, in order to achieve certain City objectives in connection with the disposal of any particular City asset, certain alternative marketing options are used from time to time, e.g. Request for Proposals or a sale to an existing tenant, abutting owner, etc..
- (3) The City’s Broker is instructed to co-operate with all Brokers and that no “exclusive listings” will be permitted. The Broker markets the City’s property using various methods, including the use of the Multiple Listing Service of the Toronto Real Estate Board.
- (4) Brokers are required to provide a Letter of Opinion of Value prior to execution of the Listing Agreement.
- (5) Brokers retained by the City of Toronto are required to execute a Listing Agreement which incorporates by reference a set of “Instructions to Listing Broker” to be followed when acting in the capacity as the City’s agent. In addition, the Listing Agreement requires the Broker to provide to each potential purchaser the standardized “Instructions to Prospective Purchasers” document as drafted by City staff.
- (6) The list price is based on an appraisal report prepared by or commissioned by staff together with the Broker’s Opinion of Value. From time to time, a property is listed for sale without a list price.
- (7) Brokerage commission fees are negotiated on the basis that the approved fee reflects the estimated selling price for the subject property as well as the services anticipated to be provided by a Broker. The payment of brokerage fees based on a percentage of the selling price provides brokers with an incentive to secure in the first instance, the highest offers available.
- (8) Brokers retained by the City may assign a property to a particular agent within the Brokerage firm. However, that agent is not permitted to submit any Offers to Purchase on behalf of prospective purchasers or to represent a prospective purchaser. That agent is permitted to receive offers prepared by other agents



within the same Brokerage firm, other brokers or by a prospective purchaser's solicitor. In certain sale situations, the Brokerage firm may be advised that they cannot represent a prospective purchaser whatsoever.

- (9) Brokers are required to inform purchasers that any Offers are required to be prepared on the City's standard form unless specifically directed otherwise by staff.
- (10) Brokers are instructed to keep a written record of all showings and inspections and to provide staff with a weekly report. Brokers are instructed not to reveal information as to the number of offers submitted or expected to be submitted.
- (11) Except in specific circumstances as may be determined by staff, a deposit of 10% by certified cheque or bank draft is required.
- (12) Unconditional offers are encouraged since, once Council approval is secured, it is more probable that unconditional offers will close and the revenue from the sale will actually be realized.
- (13) A specified deadline time and date to receive offers is set by staff and the Broker is required to provide this information to potential purchasers. The time and date of each submission is recorded. A sequential list of offers received is compiled by the Broker and provided to staff.
- (14) Offers are opened in the presence of at least two staff. Unless it is felt that the Broker's advice will add value to the review process, the Broker is not privy to this process. No information as to the offer price(s) or the terms and conditions of any submitted offer(s) is provided to the Broker, any offeror or third party prior to publication of the appropriate Committee or Council agenda.
- (15) Where offer(s) are received, and in staff's opinion, the highest or only offer meets all the stipulated terms and conditions, is reasonably representative of market value and is materially higher than the next best offer, a report recommending acceptance of such offer may be submitted to the appropriate Committee and Council.
- (16) Where offer(s) received are, in staff's opinion, reasonably representative of market value but contain conditions which staff are not prepared to recommend for acceptance or where offer(s) received (whether with or without conditions) are, in staff's opinion, within a narrow range of values, then staff may provide all offerors with a further opportunity to submit their highest and best replacement offer by a newly stipulated deadline.
- (17) If either no offer(s) are received or, where offer(s) are received but staff is not prepared to recommend any for acceptance because staff's opinion is that the offer(s) either are materially less than market value or contain onerous conditions,

then staff may return offers received, if any, and either suspend the sale process or re-list the property with a new deadline time and date and the Broker will re-run the listing with the new stipulated information. If so, all prospective purchasers who had previously received the “Instructions to Prospective Purchasers” package will be so advised.

- (18) Offers submitted subsequent to a stipulated deadline, whether before or after publication of the Committee agenda or before or after consideration of a report by Committee, are not considered unless a new deadline is subsequently set as provided for above. If a late offer is submitted, it is returned unopened, except where no return address has been stipulated or it has been sent by fax.
- (19) The City has no obligation or duty to accept the highest, “best” or any offer and may, in its sole and absolute discretion, accept or reject any or all offer(s).
- (20) The purpose of such procedures is to ensure an open and transparent process for the sale of City property. If and when necessary, staff exercises discretion to accept or otherwise deal with minor technical variations from this process where, in the opinion of the Commissioner, the result does not diminish the openness or transparency of the process.
- (21) Where, in the opinion of the Commissioner of Corporate Services, specific political direction on any particular transaction should be sought at any stage of the process otherwise provided for herein (including, but not limited to, substantially varying the procedures outlined herein or granting exceptions thereto), the appropriate report will be submitted by staff.