

TORONTO STAFF REPORT

January 17, 2003

To: Policy and Finance Committee

From: Chief Administrative Officer
and City Solicitor

Subject: Revised Preliminary Budgets for the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry

Purpose:

To advise the Policy and Finance Committee and City Council of the revised preliminary budgets of the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry and to provide information on the costs incurred to date relating to the inquiries.

Financial Implications and Impact Statement:

Revised Preliminary Budget Estimates

(a)	Revised Budget for Inquiry	\$12,000,000
(b)	Revised Estimate of additional KPMG retainer	\$ 30,000
(c)	Revised Estimate of Costs for City's outside counsel at public inquiries	\$ 2,250,000
(d)	Estimate of Costs for Funding to certain individuals with standing and current City employees or councillors	<u>\$1,250,000</u>
(e)	Estimated total cost	\$15,530,000

If the hearing time for the Inquiries extends beyond that estimated in this report, the Budget will also exceed that set out in this report.

The Chief Financial Officer and Treasurer has reviewed these financial implications and advises that \$6.0 million had been set aside in a Computer Leasing Liability account in 2001/2002 to finance the preliminary estimated cost of the Inquiry(s).

The revised additional estimate of \$9,530,000 for 2003 has not been included in the tabled City 2003 Operating Budget. Thus, the additional funding must be included in the revised 2003 Non-Program budget resulting in a further 2003 Budget pressure.

Recommendations:

It is recommended that:

1. Council approve an estimated budget of \$15,530,000 for costs relating to or associated with the public inquiries, as set out in this report, to be funded from the Computer Leasing Liability account (\$6.0 million) and an increase in the 2003 Non-Program operating budget of \$9,530,000;
2. Staff monitor the budget estimates set out in this report and report back with any substantial changes to the estimated budget set out herein; and
3. The appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

City Council, at its meeting held on February 13, 14 and 15, 2002 established the terms of reference for the public inquiry pursuant to Section 100 of the *Municipal Act*, known as the Toronto Computer Leasing Inquiry ("TCLI").

The report dated June 10, 2002 from the City Solicitor and Chief Administrative Officer commented on the preliminary budget for the TCLI and attached as Appendix "A" the preliminary budget submitted by the Inquiry. That budget was for the sum of \$1,960,000.00, and was based on an estimated 40-day hearing. The report also estimated the costs for the City's outside counsel to be \$500,000. - \$750,000. At that time the total estimate for the TCLI was approximately \$4 Million.

At its meeting on October 1 - 3, 2002, City Council decided to extend the terms of reference of the TCLI by establishing a second public inquiry known as the Toronto External Contracts Inquiry or TECI. The report before Council indicated the additional costs for the second inquiry could be in the range of \$3 - 4 Million. It is anticipated that the hearing portion for the TECI will immediately follow the hearing portion of the TCLI and that the Commissioner will present one report dealing with both inquiries.

Comments

Status of the TCLI and TECI

As City Council is aware, there was a delay in the start of the hearing while an OPP investigation was carried out.

As of January 15, 2003, there have been 20 hearing days with only six witnesses giving evidence at the TCLI. It is anticipated that at least another 45 witnesses will be called at the TCLI. Based on the progress to date, the hearing portion will be much longer than the initial estimate of 40 hearing days. Some of the possible reasons for the extra time being taken for the hearing are:

- (i) there are more parties who have sought standing at the Inquiry and have retained counsel. For example, subsequent to our last report, Jim Andrew, Jeff Lyons, Dash Domi, Dell Computers and Ball Hsu have all sought standing and obtained counsel. Some witnesses have also retained counsel;
- (ii) credibility issues have arisen over numerous documents and events, which is adding to the length of examinations and has resulted in the need for additional witnesses;
- (iii) certain documents which were unknown to us at the time of the initial time estimates have added to the length of examinations.

Based on the current rate of progress, it is estimated that the TCLI could last an additional 20 weeks or 80 hearing days. Our preliminary estimate is that the TECI may last 20 weeks or 80 hearing days. The TECI estimate is preliminary because all of the documents have not yet been received from all of the parties, reviewed or analysed. In addition, interviews with all individuals having information relevant to TECI have not yet been held by Commission Counsel. At this rate, the hearing portion for both inquiries could run for most of 2003.

Costs Incurred to Date

Below is a list of the costs incurred to date relating to KPMG's initial review and the costs incurred on the inquiries. In a separate companion report we have provided an update on the costs incurred by the City in the MFP litigation.

KPMG - Costs for Initial Retainer	\$407,320.98
Costs Relating to Support for Inquiry	\$16,821.79
Paliare Roland (to the end of December 2002)	\$781,801.66
Platinum Legal Inc. - Software and Training Costs	\$8,570.50
Inquiry Commission Costs (to the end of December, 2002)	\$1,759,759.60
Miscellaneous Costs, i.e. Office Supplies, Locks, IDC, copying	\$2,659.87
TOTAL	<hr/> \$2,976,934.40

Revised Inquiry Budget

On January 8, 2003 the City Solicitor received a revised interim budget estimate from the Inquiry for the TCLI and TECI, which is attached as Appendix "A". This revised interim budget was prepared based on certain assumptions, which are set out in the document. The latest estimated budget is at \$5,906,250.00. However, we note that it is based on the assumption provided in the original staff report to Audit Committee early in 2002 that there will be 40 days of hearing required for the TCLI. The Inquiry has communicated to the City Solicitor that the latest estimated budget will be significantly exceeded as the number of hearing days will be much greater than originally assumed. We note that the City of Waterloo's Inquiry will likely extend to 70 hearing days, more than three times the original estimate of 20 hearing days. Accordingly, we have provided a rough revised estimate of \$12 Million for the two inquiries for the Commission.

Council should be aware, however, that this estimated budget will increase if the hearing takes longer than estimated above, if the number of parties represented by legal counsel increases and if there continues to be issues of witness credibility. We will continue to monitor expenses and will report to Council in the event that substantial changes to the estimated budget are anticipated.

KPMG Retainer

KPMG was retained to undertake a review of various matters relating to the lease transactions. KPMG completed their assignment and has been paid for that retainer. On occasion KPMG has had to provide some assistance relating to the Inquiry, such as providing material and information to the Inquiry or to the City and its counsel to assist in connection with the Inquiry. In the report dated June 10, 2002 we estimated that the cost for this work would be \$15,000.00. KPMG has now billed the City in total \$16,821.79. It is estimated that an additional \$15,000.00 may be billed by KPMG for any work they are asked to do relating to the Inquiry in the future.

City's Outside Counsel

As set out above, City Council instructed the City Solicitor and the Chief Administrative Officer to retain outside legal counsel to represent the City at the Inquiry. In the report of June 10, 2002, it was estimated that the budget for outside counsel for the TCLI would be \$500,000.00 to \$750,000.00. It is now clear that the actual costs will be far greater than the estimated amount. Based on the anticipated length of the Inquiries and the increased complexity of issues arising at the Inquiries, we estimate that the future costs for outside counsel will be approximately an additional \$1.5 Million for a total of approximately \$2.25 Million. We have met with our outside solicitors to discuss possible ways to try and limit their costs and the overall costs of the inquiries. Efforts will be made where it is possible and appropriate to do so.

Costs for Individuals with Standing and Current Employees

At its meeting of October 29, 30 and 31, 2002, Council considered a report from the City Solicitor with respect to funding for parties with standing and approved funding for two individuals with standing on terms set out in that report. It was estimated that the total funding could be in the range of \$400,000 based on a 40 day hearing.

At its meeting of December 3, 4 and 5, 2002, Council approved the Notice of Motion moved by Councillor Miller and seconded by Councillor Johnston and adopted the joint report of the Chief Administrative Officer and the City Solicitor with respect to additional funding for legal representation for current City employees. It was estimated that those costs could be in the range of \$450,000.

We are recommending in a separate report that funding be available for legal representation for a member of Council. In addition we are aware that other individuals may request funding for legal representation from the City. On receipt of any such request, we will prepare a report for Council's consideration of the matter.

While \$850,000 has been approved by Council for this purpose, in view of the expanded length of the hearing, \$1,250,000 has been estimated for this purpose. This figure may also increase if the length of the hearing increases and if further individuals seek financial assistance from the City.

2003 Budget and Financing

Based on preliminary estimates provided above, \$6.0 million was set aside in the Computer Leasing Liability account financed from 2001 operating surplus funds. Given the projected additional costs of \$9,530,000, the 2003 Non-Program budget must be increased to finance these costs.

The CFO & Treasurer will review funding options inclusive of any available 2002 surplus funds to minimize the 2003 operating budget impact.

Conclusions:

Unfortunately, we have little, if any, control over the length of hearing time being required for the Inquiries and the nature of the issues now being raised. The budget presented in this report for Council's consideration takes into account a hearing that is significantly longer than originally anticipated. It is still possible that the costs may exceed this estimate if the hearing takes even longer than set out in this report, if further investigative work is required by Commission Counsel as a result of issues not currently foreseen or if more individuals seek and are granted standing and participate at the hearing. The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial implications and impact statement.

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Chief Administrative Officer

City Solicitor

List of Attachments:

“Appendix “A” - Revised Interim Budget Estimate