

REPORT NO.13 of the
FAMILY AQUATIC STEERING COMMITTEE
of its meeting held
January 30, 2012

Present:
Councillor Drew Dilkens, Chair
Councillor Ed Sleiman
Councillor Ron Jones
Councillor Hilary Payne
Councillor Fulvio Valentinis

Your Committee submits the following recommendation:

Moved by Councillor Valentinis, seconded by Councillor Jones,
That the following purchasing protocol **BE RECEIVED** with respect to the procurement of all fit-up servicing works for the Facility:

1. All fit-up works with respect to the Facility, being any works which are in addition to the fixed contract price of \$60,512,300 (the "Works"), will be assigned to EllisDon Corporation/DeAngelis Construction Inc. in Joint Venture (the "Contractor"), subject to the following conditions:
 - a. Subject to clause 1(d) herein, for each contract related to the Works, the Contractor must register a Request for Quote, in a form satisfactory to the Manager of Purchasing & Risk Management or designate, with the Windsor Construction Association;
 - b. Subject to clause 1(d) herein, for each contract related to the Works, the Contractor must obtain at least three (3) quotes and shall accept the quote which is lowest in price while meeting all specifications of the related Request for Quote;
 - c. The Contractor will charge 5% for the administration of any fit-up assigned;
 - d. The City of Windsor, (the "City") shall retain the following rights with respect to the Works:
 - i. The City shall have the right to be present at the opening of all quotes received in relation to all contracts let with respect to the Works;
 - ii. The City shall have the right to request and review all quotes received for all contracts let with respect to the Works;
 - iii. The City shall have the right to perform, directly or indirectly, any portion of the Works it deems fit; and

- iv. The City shall retain the right to require that any portion of the section 15 of the City's Purchasing By-law 400-2004. In this circumstance, the City shall be responsible for to conduct the tender.

Carried.

Clerk's Note:

The report of the Manager of Purchasing & Risk Management dated January 30, 2012 entitled "Purchasing Matters - Family Aquatic Complex (t "F "lity)" is **attached.**

il

COMMITTEE COORDINATOR

NOTIFICATION		
Members of the Family Aquatics Complex Steering Committee (including resource personnel)		



**THE CORPORATION OF THE CITY OF WINDSOR
CITY SOLICITOR- Legal Services Division**

MISSION STATEMENT:

"The City of Windsor, with the involvement of its citizens, will deliver effective and responsive municipal services, and will mobilize innovative community partnerships"

Author's Name: Shelby Askin Hager	Date Heard : 30 January 2012
Author's Phone: 519.255.6100 (6280)	Classification #:
Author's E-mail: shager@city.windsor.on.ca	

To: Members of the Steering Committee - Family Aquatic Complex

Subject: Purchasing Matters - Family Aquatic Complex (the "Facility")

1. RECOMMENDATION: City Wide: Ward(s): ___

) THAT the following purchasing protocol **BE APPROVED** with respect to the procurement of all fit-up and site servicing works for the Facility:

1. All fit-up works with respect to the Facility, being any works which are in addition to the fixed contract price of \$60,512.300 (the "Works"), will be assigned to EllisDon Corporation/DeAngelis Construction Inc. in Joint Venture (the "Contractor"), subject to the following conditions:
 - a. Subject to clause I(d) herein, for each ontract related to the Works, the Contractor must register a Request for Quote, in a form satisfactory to the Manager of Purchasing & Risk Management or designate, with the Windsor Construction Association;
 - b. Subject to clause I(d) herein, for each contract related to the Works, the Contractor inust obtain at least three (3) quotes and shall accept the quote which is lowest in price while meeting all specifications of the related Request for Quote;
 - c. The Contractor will charge 5% for the administration of any fit-up assigned;
 - d. The City of Windsor, (the "City") shall retain the following rights with respect to the Works:
 1. The City shall have the right to be present at the opening of all quotes received in relation to all contracts let with respect to the Works;

shall have the right to request and review all quotes received
for all contracts let with respect to the Works;

- iii. The City shall have the right to perform, directly or indirectly, any portion of the Works it deems fit; and
- iv. The City shall retain the right to require that any portion of the Works to be subject to a full request for tender process as set out in section 15 of the City's Purchasing By-law 400-2004. In this circumstance, the City shall be responsible for to conduct the tender.

EXECUTIVE SUMMARY:

N/A

2. BACKGROUND:

On December 15, 2011 by Council Resolution 302/11, Council approved the award of RFP 114-11 to the Contractor at a fixed price of 60,512,300 and an overall project budget net of non-corporate recoveries of \$62,622,300. Included in this budget is an allowance of \$2,900,000 for contingencies as well as \$4,500,000 for fit up and site servicing costs.

The project is proceeding on an extremely tight timeline. During the construction of the WFCU Centre, it became apparent that the exigencies of the project made it difficult to conduct a full tender for all elements of the project within the City's sphere of responsibility. In response to this issue, the City adopted a protocol to transfer competitive purchasing responsibility to the project's contractor which satisfied both the City's Purchasing Bylaw- as well as the timing requirements of the project. The protocol is recommended for use in the present project as timeline issues are the greatest risk facing the project.

3. DISCUSSION:

The contract with the Contractor is a fixed-price design-build of the Facility, but it does not include fit-up. Site servicing issues are also not included in the contract but have been largely addressed by Council Resolution M186/2011.

Much of the finishing work has been established in the OSR forming part of the contract. However, it is difficult to anticipate the practical situations that may arise as construction proceeds and fit up and servicing issues surface. Depending on how those issues unfold, conducting a tender in accordance with the Purchasing Bylaw may be impractical or may hinder progress on the Facility. The Purchasing Bylaw imposes the following requirements:

- a) Any contract with a value of \$2,500.00 or less could be single sourced;
- b) For any contract with a value of between \$2,501.00 and \$50,000.00, a minimum of three quotes would have to be solicited; and

∞ Z;ij·ivJ·in i; i&1.66ihJ·rftfuling

prc,ce:ss accordance with the Purchasing By-law: "il {r·ti!ff;::\

While following the process for contracts **th a**, value of \$50,000.00 **f i s s II** not be difficult, it may not be operationally or financially practical to tender all the fit-up work with a value of over \$50,000.00; The impracticalities stem from several sources such

Scheduling of the work and coordination of resources: it is imperative that the Contractor have the flexibility to move quickly in attaining pricing and coordinating resources, a flexibility which is often not afforded by the formal tendering process; and

- b) While it is unfortunate, it is economic reality that the tendering process does not always result in the best price for the City. This reality stems from the fact that sub-contractors will often offer lower prices to a Contractor in order to secure work than would be offered to the City in a formal tendering process.

However, the Purchasing By-law does allow for some flexibility in the purchasing process with respect to the requirement for tendering as section **15(1)** specifically states that:

A Request for Tender shall be used for purchases exceeding \$50,000 *where all of the following criteria apply:*

- (a) Two or more sources are considered capable of supplying the requirement,
- (b) The requirement is adequately defined to permit the evaluation of Tenders against clearly defined criteria,
- (c) The market conditions are such that Tenders can be submitted on a common pricing basis, and
- (d) **Best Value for the City can be achieved by an Award selection made on the basis of the lowest Bid that meets Specification.** (emphasis added)

As stated above, in the view of administration, on this project best value may not always be achieved by selecting the low bidder through a tendering process as there may be considerations with respect to co-ordination of workers and timely scheduling of the works. In such circumstances, all four pre-conditions for conducting a formal tender, as set out in the by-law, would not be met and it would not be necessary to proceed in this manner.

Further flexibility can be found in the Purchasing By-law in section 5(4) which states that:

No provision of this by-law precludes the CAO/City Manager, General Manager, Department Head or the Manager of Purchasing and Risk Management from recommending an Award to Council where:

- (a) *In the opinion of the CAO/City Manager, General Manager and/or Department Head, it is in the best interest of the City of Windsor to do so, or*
- (b) It is a matter of purchasing procedure and in the opinion of the Manager of Purchasing and Risk Management; it is in the best interest of the City of Windsor to do so.

(emphasis added)

As was learned with the WFCU centre, for reasons of the practical and timely coordination and scheduling of the works, and because it is an economic reality that the Contractor can often get a

lower P11 fee from what the City can in a formal tendering process, conducting a tender process, for every contract related to the fit-up works with a value of \$50,000.00 will not always bill, the essential rests of the City with respect to the construction of the Facility.

It is noted that this assignment would result in additional work not contracted for by the Contractor; accordingly a 5% fee will be assessed in respect of assigned works. For this reason the City has retained its right to handle any tender or quoting it may choose if time permits. It is expected that the nearly all of the site servicing costs will be addressed by the City in accordance with the Purchasing Bylaw.

During the WFCU Centre construction, the City developed a process in compliance with the Purchasing Bylaw to-facilitate the completion of fit up and servicing work. That same process is being recommended for use in the construction of the Facility, with the endorsement of the Contractor, as follows:

1. Components of the fit-up works with respect to the Facility, being the works which are in addition to the fixed contract price of \$60,512,300.00 (the "Works"), will be assigned to the Contractor, subject to the following conditions:
 - a) Subject to clause 1(d) herein, for each contract related to the Works, the Contractor must register a Request for Quote, in a form satisfactory to the Manager of Purchasing & Risk Management or designate, with the Windsor Construction Association;
 - b) Subject to clause 1(d-) herein, for each contract related to the Works, the Contractor must obtain at least three (3) quotes and shall accept the quote which is lowest in price while meeting all specifications of the related Request for Quote;
 - c) The Contractor will charge 5% for the administration of any fit-up assigned;
 - d) The City shall retain the following rights with respect to the Works:
 - i. The City shall have the right to be present at the opening of all quotes received in relation all contracts let with respect to the Works;
 - ii. The City shall have the right to request and review all quotes received for all contracts let with respect to the Works;
 - iii. The City shall have the right to perform, directly or indirectly, any portion of the Works it deems fit using its own, in-house, labour and resources; and
 - iv. The City shall retain the right to require that any portion of the Works to be subject to a full request for tender process as set out in section 15 of the City's Purchasing By-law 400-2004. In this circumstance, the City shall be responsible for to conduct the tender.

This process will ensure that the Windsor Construction Association will have notice of all contracts being let with respect to the fit-up works and that the construction sector will have a

