

To: York Region Rapid Transit Corporation Board of Directors
From: Mary-Frances Turner, President
Subject: **Design Build Agreement for Highway 7 (H3) Rapid Transit Project**

Recommendations

It is recommended that:

1. Subject to York Consortium 2002's successful completion of the cost confidence process in respect of the design and construction of the Highway 7 (H3) rapidway (Markham to Richmond Hill) rapid transit project (the "H3 Project"), and subject to Metrolinx's written notice to the Corporation that it approves the award of the contract to York Consortium 2002,
 - (a) The President be authorized to award the contract to York Consortium 2002; and
 - (b) The Corporation be authorized, if requested by Metrolinx, to enter into the Design Build Agreement for the H3 Project.
2. The Chief Executive Officer and the President be authorized to execute the said Agreement on behalf of the Corporation in the form approved by Metrolinx, subject to the prior review of the Corporation's Solicitor.
3. If York Consortium 2002 is not awarded the contract pursuant to the cost confidence process for the H3 Project, the President be authorized to issue a request for proposals for the design build agreement for the H3 Project, subject to Metrolinx's approval as to the procurement process and determine if York Consortium 2002 will be permitted to submit a proposal in response to the request for proposals.

Purpose

The purpose of this report is to:

- Have the authority to award the Design Build Agreement for the H3 Project if York Consortium 2002 is successful in the cost confidence process.
- Authorize the Corporation to enter into the Design Build Agreement for the H3 Project, if required by Metrolinx.
- If required, authorize the President of the Corporation to issue a request for proposals for the design build agreement for the H3 Project.

Background

- As a condition of the funding from the Provincial government under the MoveOntario 2020 Funding Program, Metrolinx must approve the procurement methodology or procurement process in respect of the vivaNext rapid transit projects.
- Pursuant to Metrolinx's approval, the Region and the Corporation entered into the vivaNext Procurement Agreement dated as of the 10th day of March, 2010 with the members of York Consortium 2002 which Agreement sets forth the procurement process with respect to the delivery of the H3 Project. The process is set out in Schedule "A" to that Agreement and is referred to as the Amended Cost Confidence Process ("cost confidence process").
- On March 10, 2010 the parties commenced the cost confidence process for the H3 Project with the objective of determining a guaranteed maximum price for the H3 Project.
- On April 23, 2009, the Region was given the authority to enter into the Design Build Agreement for the H3 Project (Report 5(4) of the Rapid Transit Public/Private Partnership Steering Committee passed by Regional Council on April 23, 2009).

Analysis

Corporation requires authority to enter into Design Build Agreement for H3 Project

- The vivaNext Procurement Agreement contemplates any of the Region, the Corporation and Metrolinx entering into the Design Build Agreement for the H3 Project, in the event that York Consortium 2002 is awarded the contract for this work.
- It is contemplated that the cost confidence process will be finalized by the summer of 2010 and should York Consortium 2002 be successful under that process, the award to them should occur immediately thereafter.
- Since it has not yet been determined by Metrolinx who will enter into the Design Build Agreement, it is necessary to authorize the Corporation to enter into the Agreement if so required by Metrolinx.

Corporation's right to issue request for proposals if York Consortium 2002 is not awarded the contract

- Under the vivaNext Procurement Agreement the Corporation has the right to issue, if York Consortium 2002 is not awarded the work, a request for proposals (RFP) for the work based upon the scope of work.
- Furthermore, the Corporation (with the assistance of Metrolinx) has the right to determine whether or not York Consortium 2002 will be permitted to submit a proposal in response to the RFP.
- Should York Consortium 2002 not be awarded the Design Build Agreement for the H3 Project, the Corporation would immediately issue a request for proposals. This would be done in conjunction with McCormick Rankin, as Owner's Engineer to the Corporation and the Region, and/or in conjunction with the Region's Supplies and Services and Metrolinx.

Financial

- The H3 Project will be funded under the Provincial MoveOntario 2020 funding envelope for the York Region vivaNext projects.

For more information on this report, please contact Janis Vanderburgh, Senior Counsel, York Region Rapid Transit Corporation at 905-886-6767, Ext. 1045.

Mary-Frances Turner
President

May 21, 2010

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