

To: York Region Rapid Transit Corporation Board of Directors
From: Mary-Frances Turner, President
Subject: Design Build Award and Agreement for the D1 Main Rapid Transit Project
Ref: YORK-#3361044-v2

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 Davis Drive (D1) rapidway (from Yonge Street to Highway 404, Newmarket) rapid transit project (the "D1 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 D1 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 D1 Project, the President be authorized to issue a request for proposals for the design and construction of the D1 Project, subject to Metrolinx's approval as to the procurement process, including a determination of whether 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:

- Authorize the President to award the contract for the design and construction of the D1 Project to York Consortium 2002, if York Consortium 2002 is successful in the cost confidence process, and provided that Metrolinx has approved the award.
- Authorize the Corporation to enter into the design build agreement for the D1 Project, if required by Metrolinx.
- If required, authorize the President of the Corporation to issue a request for proposals for the design and construction of the D1 Project.

Background

- On December 2nd, 2010, the Region, the Corporation and York Consortium 2002 commenced the cost confidence process for the D1 Project and, from that date, have participated in weekly workshops with the objective of determining a guaranteed maximum price for the design and construction of this Project.
- Pursuant to the cost confidence process, York Consortium 2002 ("YC2002") has the right of first opportunity to submit a proposed guaranteed maximum price ("GMP") for the D1 Project.
- On May 19th, 2011, YC2002 and the Independent Cost Estimator ("ICE") will submit to the Corporation their proposed and estimated GMP submissions, respectively, for the D1 Project.
- Provided that the proposed GMP submitted by YC2002 is not greater than 10% higher than the estimated GMP submitted by the ICE, the process entails further meetings for the parties to reconcile to an agreed GMP. There is also the opportunity for the parties to convene a hearing before the established 4 member expert panel to provide its input on any issues that the parties have been unable to resolve themselves.
- A companion report will be brought to Regional Council at its June 23, 2011 Council meeting, to seek authority for the Region to enter into the design build agreement for the D1 Project.
- The D1 Project is one of the vivaNext rapid transit projects that are the subject matter of, and are funded under, the Master Agreement among Metrolinx, the Region and the Corporation, recently finalized and executed in April 2011.

Analysis

Corporation requires authority to award and enter into Design Build Agreement for D1 Project, should Metrolinx require that it do so

- In accordance with the current timelines under the cost confidence process, it may be as early as May 19, 2011, or as late as the end of July 2011, to reach agreement on a GMP for the D1 Project and to award the Project.
- In respect of vivaNext projects currently underway (e.g. the Highway 7 (H3) and Davis Drive (D1) Early Works rapid transit projects), the parties to the design build agreement have been Metrolinx and the Region, collectively, as the First Party, and Kiewit-EllisDon, a Partnership, as the Second Party. However, Metrolinx has the right to require that the Corporation execute the design build agreement.

Metrolinx Board must approve the award of any contract over \$10 million

- Under the Master Agreement with Metrolinx, any award of a contract over \$10,000,000 requires the approval of the Metrolinx Board of Directors.
- The next meeting of the Metrolinx Board of Directors is scheduled for June 23, 2011. There is no meeting scheduled during the month of May 2011.

Corporation's right to issue request for proposals if YC2002 is not awarded the contract

- Under the vivaNext Procurement Agreement the Corporation has the right to issue, if YC2002 is not awarded the work in respect of a vivaNext rapid transit project, a request for proposals (RFP) for the work based upon the scope of work.
- Furthermore, the Corporation (with Metrolinx's agreement) has the right to determine whether or not YC2002 will be permitted to submit a proposal in response to an RFP process.
- Should YC2002 not be awarded the design build agreement for the D1 Project, the Corporation would immediately issue a request for proposals. This would be done in conjunction with McCormick Rankin Corporation, as Owner's Engineer to the Corporation and the Region, and in conjunction with the Region's Supplies and Services and Metrolinx.

Financial

- The D1 Project is one of the vivaNext projects funded under the Master Agreement among Metrolinx, the Corporation and the Region.

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

April 29, 2011

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