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YORK REGION TRANSIT GTA FARE SYSTEM PROCUREMENT AGREEMENT

The Transportation and Works Committee recommends the adoption of the recommendations contained in the following report, February 24, 2005, from the Commissioner of Transportation and Works and the Regional Solicitor:

1. RECOMMENDATIONS

It is recommended that:

1. The Region enter into an agreement with the Province of Ontario, as represented by the Ministry of Transportation of Ontario (MTO), GO Transit, The Toronto Transit Commission (“TTC”), and participating municipalities for the procurement of the equipment for the Greater Toronto Area Fare System (GTA Fare System).
2. Regional Council authorize the MTO to act as agent on its behalf with respect to facilitating the procurement of the system components in accordance with the terms of the procurement agreement.
3. Staff be directed to report back to Committee and Regional Council with the results of the procurement process to enable Council to determine whether the Region will proceed with its participation.
4. Staff be directed to report back to Committee and Regional Council for approval of the terms of the operating agreement with the Province of Ontario.
5. A by-law be prepared for presentation to Regional Council to authorize the Regional Chair and Clerk to execute the procurement agreement, and to appoint the Transit Systems Manager to the Steering Committee and the General Manager of Transit to the Executive Committee.
6. Regional Council authorize the abovementioned Steering Committee and Executive Committee members and their respective alternate members to each execute a confidentiality agreement in respect of confidential information pertaining to the GTA Fare System, subject to the prior review of Legal Services.

2. PURPOSE

The purpose of this report is to seek authorization from Committee and Regional Council to enter into an agreement for the procurement of the components of the GTA Fare System project, while retaining the right to withdraw from the project.

3. BACKGROUND

At its meeting on December 16, 2004, Regional Council received a comprehensive report on the progress of the GTA Fare System project. As part of that report staff advised on the status of negotiations with MTO, GO Transit, the TTC and participating municipalities with respect to the procurement agreement. At that time, there were substantive issues that remained to be resolved, including the right of individual participants to withdraw from the project, without penalty, after the issuance of the Request for Proposals.

The legal subcommittee has continued to meet to discuss outstanding concerns. Representation on that committee included staff from MTO, the Toronto Transit Commission, the Cities of Burlington, Mississauga and Hamilton and the Town of Oakville. Consensus has now been reached on outstanding items and the final draft of the agreement is to be presented to each participant's respective Council or Board for approval.

Following finalization of the agreement, it is anticipated that the Request for Proposals will be issued in May, 2005 and the deadline for submission of proposals will be August, 2005.

4. ANALYSIS AND OPTIONS

The following is a summary of the key provisions of the agreement.

4.1 MTO as Agent

Under the agreement, MTO is appointed agent on behalf of each of the participants to procure the GTA Fare System, including issuing the Request for Proposals and entering into the ultimate contract with the vendor.

Decisions will be made through a committee structure with an appointee to each committee from each of the participants. Each participant has been requested to enact a by-law to confirm the appointment of a member to each committee with authority to vote on behalf of the participants.

4.2 Steering Committee

The role of the Steering Committee is to provide overall management and advice, to monitor progress and to ensure the procurement is carried out in accordance with an implementation schedule to be approved by the Executive Committee.

Each participant in the program is represented by one member on the Steering Committee. An alternate may also be nominated in case the member is unable to attend. It is recommended that Regional Council appoint the Transit Management Systems

Manager to the Steering Committee with authority to appoint an alternate from time to time if unable to attend.

A quorum consists of at least 60% of members and decisions require approval of at least 60% of the members present. Policy decisions to be considered by the Steering Committee include approval of the evaluation process for the RFP, recommendations on the preferred proponent and recommendations on budget issues. Generally the Steering Committee is an advisory committee and ultimate decision-making resides with the Executive Committee.

The Steering Committee is also empowered to approve the communication plan.

4.3 Executive Committee

The Executive Committee is the higher level committee and will provide overall leadership and direction to the procurement process. Each participant is represented by one appointee on the committee with provision for an alternate. The following are decisions that will require the unanimous consent of all Executive Committee members present:

- Approval of the procurement documents and any amendments.
- Approval of the budget and any amendments.
- Approval of the contract with the vendor and any amendments to the contract.
- Approval of an implementation schedule and payment schedule.
- Resolution of issues brought forward by the Steering Committee.

It is recommended that Regional Council appoint the General Manager of Transit to the Executive Committee with authority to appoint an alternate from time to time if unable to attend.

4.4 Procurement Process

The agreement includes a schedule which sets out the procurement guidelines that are to be followed. The MTO will take the lead role and the process will be conducted in accordance with provincial procurement guidelines.

MTO will develop the specifications and prepare the RFP documents, including the pro forma contract, distribute the RFP to the qualified bidders and administer the RFP process. The Ministry will use the services of an independent fairness commissioner to ensure that appropriate procedures and evaluation criteria are applied throughout.

The ultimate decision on an award will be made by the Executive Committee. Following contract award, it will be MTO's responsibility to make timely payments to the vendor and to establish payment schedules for assessments made against each participant.

4.5 Funding

The agreement commits the MTO to fund 100% of the capital cost for the central system and one-third of the capital cost for the acquisition of the municipal systems, which include on-board equipment, and software to administer fare cards. The Region will be required to fund two-thirds of the capital cost of its own system and 100% of the operating cost, including any centrally managed services. The methodology for assessing individual payments is to be developed and approved by the Executive Committee. The Region will acquire title to any assets in proportion to the amount contributed.

Participants will be required to establish a capital cost threshold and an operating cost threshold. These amounts will be critical in determining whether a participant has the right to withdraw from the process when the results of the Request for Proposals are known.

4.6 Withdrawal Rights

Participants will be permitted to withdraw from participation in the procurement process without costs or penalty in the following four circumstances:

- Prior to the issuance of the RFP.
- After the issuance of the RFP and before the contract is entered into if the recommended purchase price of the equipment is higher than the capital cost threshold which has been established by the Region.
- After the issuance of the RFP and before the contract is entered into if the operating costs are higher than the operating costs threshold which has been established by the Region.
- After the issuance of the RFP if Regional Council fails to approve the terms of the operating agreement.

The terms of the operating contract have yet to be developed. Accordingly, staff will report back after the proposals have been received and before award of the contract to seek further direction and approval.

4.7 Confidentiality Agreements

To maintain the security and integrity of the cost estimates pertaining to the GTA Fare System and the procurement process, the Steering Committee and Executive Committee members and their respective alternate members will each be required to sign a confidentiality agreement, the form and content of which has been reviewed by the legal subcommittee. Under that agreement, any sums of cost estimates that can reasonably be manipulated to arrive at the unit cost(s) for the GTA Fare System components must be only disclosed in a private session before Regional Council.

5. FINANCIAL IMPLICATIONS

The execution of the procurement agreement will require Regional Council to establish the cost thresholds for both the procurement of the system and the operating costs, which thresholds are subject to the confidentiality agreement as previously discussed. These amounts will provide a basis for the decision as to whether to proceed ultimately with the procurement process.

In the December, 2004 report to Transit Committee on this matter, and the corresponding Council resolution relating thereto, Council confirmed its commitment to allocate up to \$2.8 million in the 2006 through 2008 capital budgets for the Region's share of the GTA fare system. There are no capital funding requirements for 2005.

6. LOCAL MUNICIPAL IMPACT

There is no direct local municipal impact associated with this report.

7. CONCLUSION

A final draft of the GTA Fare System procurement agreement has now been prepared by the legal subcommittee with input from all participants. Each participant is currently reporting to its respective Board or Council for approval. It is anticipated that the final agreement will be executed by the end of March in order for the procurement process to proceed. Staff will report back on the results of the RFP process for further direction and approval in accordance with this report.

The Senior Management Group has reviewed this report.