

Date: 2022-03-28

Subject: **New Transit Facility – Request to Begin Procurement for design and contract administration services and construction management services for the new Transit Facility located at 10192 Highway 50, Brampton**

Contact: **Samantha Walker, Project Manager, Building Design and Construction, Public Works & Engineering, 416-806-0345
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Report Number: Public Works & Engineering-2022-302

Recommendations:

1. That the report from Samantha Walker, Project Manager, Building Design & Construction, Public Works and Engineering, dated March 28, 2022, re: **New Transit Facility – Request to Begin Procurement for design and contract administration services and construction management services for the new Transit Facility located at 10192 Highway 50, Brampton**, be received;
2. That the Purchasing Agent be authorized to commence a Limited Tendering procurement to WSP Canada Inc. to provide design and contract administration services for a new Transit Facility; and
3. That the Purchasing Agent be authorized to commence the procurement of a Construction Manager to provide construction management services for a new Transit Facility.

Overview:

- **In a Closed Session report to the Committee of Council on February 16, 2022, staff advised Council of the cancelled design-build RFP due to Proponents' feedback on the Affordability Threshold ranges exceeding the approved project budget, the current market volatility and risk, and the current extraordinarily high level of commercial construction price inflation and supply chain issues.**
- **Staff advised Council that following a review of alternate project delivery options, a Request to Begin Procurement would be brought forward to Council and outline the revised approach.**

- **This Request to Begin Procurement report recommends proceeding with a Limited Tendering procurement to WSP Canada Inc. as per the justifications outlined in this report and in conformance with the Purchasing By-law.**
- **WSP's original scope of work was to complete Owner's advisory and technical engineering services including the development of detailed conceptual designs, performance specifications, contract development and procurement support, project management, programming, contract administration, and cost estimating exercises. A Limited Tendering procurement for WSP's services would include the completion of the design services advancing currently completed detailed concepts into a full set of design drawings and specifications and in consultation with a Construction Manager.**
- **Staff are seeking authorization to conduct the procurement to retain the services of a Construction Manager. The contract award would be conducted in two stages whereas the Construction Manager provides pre-construction services and consultation during the design phase followed by the construction phase.**
- **Staff are seeking opportunities for additional funding support to help with the significant cost escalation since the initial ICIP funding application in 2019.**
- **The procurement to retain Construction Management services for this project will continue to be monitored by an external third - party Fairness Monitor.**

Background:

A Request to Begin Procurement report submitted to the Committee of Council in June 2019 was to retain services for the design and construction of the new Transit facility project.

The City retained the services of external legal counsel, Blakes, in July 2019 to develop the Request for Proposal ("**RFP**"), Project Agreement, and provided guidance on the evaluation and negotiation process to retain consultation services on a design-build project delivery method.

City staff issued the RFP for Owner's advisory and technical engineering services in October 2019; these services included project management, programming, the development of detailed conceptual designs, performance specifications, contract

development and procurement support, contract administration, and cost estimating exercises.

This RFP procurement included an evaluation of the consultant's experience, skill, and resources including architects and engineering sub-consultants and knowledge to develop the design-build project related documents. The evaluation process was based on the highest score including a weight factor applied to the proposal fee.

Following the evaluation of submissions, Proponent presentations, and successful negotiations the City awarded the contract to WSP Canada Inc. ("**WSP**") in May 2020.

As part of WSP's original services and concurrent with the development of the design concepts and the specifications, WSP assisted on the preparation and evaluation of the Request for Prequalification ("**RFPQ**") and the RFP to hire a design-build contractor. The RFPQ was completed in March 2021, with three pre-qualified Proponents; subsequently the RFP was released to the Proponents in June 2021.

In a Closed Session report to the Committee of Council on February 16, 2022, staff advised that the design-build RFP was cancelled following a detailed analysis and primarily due to costing exercises performed in consultation with Proponents. Costing exercises indicated that the Affordability Threshold ranges significantly exceeded the available budget. As noted in the report, costs at this time were reflecting the current market volatility and risk, along with extraordinarily high level of commercial construction price inflation and supply chain issues.

Current Situation:

The decision to change the project delivery method is to minimize overall project funding risk and align cost certainty with the decision-making process, while continuing to progress the design as a strategy to control project costs, minimize overall schedule delays, and open the facility as quickly as possible. This approach will also allow for the time needed to seek additional funds, if necessary.

The new Transit Facility is needed to support the future growth of Brampton, staff have reviewed options to advance the project and mitigate risk to the project cost and schedule. As part of the change in approach, staff are proposing a non-competitive Limited Tendering option in conformance with the Purchasing By-law to WSP to complete the design of the new Transit facility. Concurrently, staff will also begin a competitive procurement to retain the services of a Construction Manager for consultation services through the design phase and completion of the construction phase.

Limited Tendering

In accordance with the Purchasing By-law, a non-competitive Procurement exception includes the option to conduct a Limited Tendering process with justification based on the following:

Purchasing By-Law 19-2018, Schedule C Limited Tendering:

3. *For additional goods or services from the original Vendor that were not included in the initial Procurement, if a change of Vendor for such additional goods or services;*
 - a. *Cannot be made for economic or technical reasons; and*
 - b. *Would cause significant inconvenience or substantial duplication of costs for the City.*

WSP, retained through a competitive RFP process, has engaged with the City on the new Transit facility project since May 2020. In consultation with internal and external legal, staff are proposing to conduct a Limited Tendering procurement to WSP to complete the design of the new Transit facility.

WSP's original scope of work to provide Owner's advisory and technical engineering services on this project included the development of detailed conceptual designs, performance specifications, contract development and procurement support, project management, programming, contract administration, and cost estimating exercises on a design-build project. A Limited Tendering procurement for WSP's services would include the completion of the design services advancing currently completed detailed concepts into a full set of design drawings and specifications and in consultation with a Construction Manager.

A Limited Tendering procurement to WSP is the lowest risk approach relative to conducting a Public Procurement. A fair process cannot be conducted and include WSP; WSP has had approximately two years of involvement on the project and engagement with City staff would provide them with an overwhelming advantage over other firms. In addition to the services already performed, WSP has had access to inside information that is not available and cannot be made available to others therefore the unfair advantage cannot be equated.

Should the Limited Tendering procurement to WSP not be approved and a competitive procurement conducted, there would be a significant duplication of effort including the re-issuing of services already performed by WSP, which will increase project costs. In addition, through a Limited Tendering procurement it is anticipated a time saving of approximately 6 to 9 months considering the duplicated effort in engaging the City through the pre-design and preliminary design process and the required purchasing timelines under a competitive RFP procurement.

Construction Management Project Delivery Method

In the February 2022 report to Council, City staff outlined the two project delivery methodologies including the Design Bid Build ("**DBB**") and the Construction Management

At Risk (“**CMAR**”) approach. Following review and analysis of these options, staff decided that the most efficient approach by which to deliver the construction phase of the project is through a Construction Management delivery method.

The Construction Management method takes a collaborative team approach to the design and construction processes from the outset of the project. This approach merges the Owner’s team, the design consultant’s team, and the Construction Manager’s team into a project team whose common objective is to deliver the project in a way that meets the Owner’s time, budget, and quality objectives. Due to current market volatility, there is a significant benefit of a Construction Manager’s participation and feedback throughout the design phase relative to schedule, material availability, industry issues such as material availability, freight and associated costs and schedule impacts.

To secure the services of a Construction Manager, staff will conduct a two-stage competitive RFP process and select the Construction Manager based on experience, capacity, and cost.

As part of the first stage the Construction Manager is retained early in the design process; this ensures that the Construction Manager’s knowledge, skills and experience can be used to full advantage during the design phase. For the construction stage, the Construction Manager procures all the resources needed collaboratively and transparently.

The actual total cost of the project is accumulated competitively and openly, and when the project is complete, the Owner pays the accumulated cost plus the Construction Manager’s fee, which was previously agreed to and is structured within a Guaranteed Maximum Price/cost sharing program that is established using the completed 90% construction document submission.

The Construction Manager competitively tenders the construction packages. These packages reflect project cost, risk, and inflation in-line with market conditions at that time.

The Construction Manager provides a professional standard that is open, transparent, and fair when competitively tendering the construction packages. This tender process will be conducted in conjunction with and according to the standards of the City’s Purchasing Department. Contract award for the construction phase will follow Council approval of the 2024 Capital Budget request.

The following provides key highlights to this approach:

Construction Management At Risk Delivery Method (CCDC – 5B)

- The Construction Manager provides valuable advice and assistance to the Owner and consultant throughout the design process.
- A primary objective of the project team, particularly in the pre-construction phase of the project, is to achieve efficiencies with respect to time, budget and constructability.

- Due to current market volatility, there is a significant benefit of a Construction Manager’s participation and feedback throughout the design phase relative to schedule, material availability, industry issues such as material availability, freight and associated costs and schedule impacts.
- Construction Manager oversees the competitive bidding process for construction pricing throughout the construction phase reflecting market conditions at that time
- A Guaranteed Maximum Price (“**GMP**”) sets the ‘not to exceed’ threshold and a cost sharing program is implemented if the project comes under the GMP
- On a DBB project, the project contingency is often allocated to protect the project from the risks of claims, delays, and other gaps or unknowns that are common with the DBB project delivery method. On a CMAR project, the designer and the CM work collaboratively to find and mitigate gaps in drawings and specifications. This creates an informed project contingency compared with the lump sum allocation approach used under the DBB project delivery method. Under the CMAR the project contingency is usually reserved for project scope clarifications/ enhancements that the Owner may decide to make during the design or construction phases.

The Limited Tendering and CMAR delivery method will allow the design to be advanced before definitive budget commitments on construction (the majority of costs for this project) are needed and requested. This should reduce design risk and move competitive construction pricing to a point when the current level of market volatility, risk, and inflation associated with the pandemic may have lessened. It also allows staff time to seek federal and provincial funding relief for pandemic related cost increases, if available. Any additional required funding will be incorporated into the 2024 Capital budget request.

Project Timeline:

Description	Target Dates
Council Approval – Request to Begin Procurement Report	April 2022
PO – Consulting Design Services (WSP)	July 2022
PO – Construction Management (design phase)	October 2022
90% Construction Drawings / Guaranteed Maximum Price	October 2023
Council Approval – 2024 Capital Budget Request	Q1 2024
PO – Construction Management (construction phase)	Q1 2024
Construction Start Date	Q1 - Q2 2024
Substantial Completion Anticipated	Q4 2026

Electrification Update:

The funding and execution of work related to the electrification of the new Transit facility continues to be of primary importance. Securing the external funding, estimated in 2021 dollars at approximately \$150M, is required in order to undertake this electrification work. This funding has been applied for consideration under the newly established \$2.75B Federal Zero Emission Transit Fund (“**ZETF**”). City staff are in discussion with INFC regarding this application.

There are also several other key electrification initiatives underway, for which a combination of funding and financing (Canada Infrastructure Bank) is being sought. These additional initiatives were submitted to Infrastructure Canada in December 2021, and are summarized below:

- The purchase of up to 450 zero emission buses (“**ZEBs**”). This includes a combination of funding (requested through ZETF) and financing (pending execution of the necessary Agreements for the credit facility with Canada Infrastructure Bank).
- Electrification retrofits required for existing transit facilities (both Sandalwood and Clark) to support the transition to a ZEB fleet
- On-street charging infrastructure required to support ZEBs

Corporate Implications:

Legal Comments:

Legal Services will continue to provide support for this Project along with external legal support provided by Blakes, Cassels & Graydon LLP (“**Blakes**”).

Purchasing Comments:

Design and Contract Administration Services – Limited Tender

An invitation to bid will be sent to WSP to provide a submission and start a negotiation process. Upon successful conclusion, purchase approval will be obtained in accordance with the Purchasing By-law.

Construction Management Services

A public Procurement Process will be conducted and Proposal submissions shall be evaluated in accordance with the published evaluation process within the procurement document. Purchase approval shall be obtained in accordance with the Purchasing By-law.

All communication with Bidders involved in the procurements must occur formally, through the contact person identified in the procurement documents.

Financial Implications:

Given the significant volatility and uncertainty in the current market conditions, as demonstrated by the Proponent feedback received on this project, staff have cancelled the existing RFP process in favour of alternative delivery methods that will align cost certainty with the decision-making process and reduce overall financing risk.

The project is proceeding with a new Request to Begin Procurement and through a different project delivery model. Funding is in place to proceed with this project as per Table 3 below.

Table 3: Capital Project Financial Status Update:

Project	Funding Approved	Commitments To-Date	Expenditures To-Date	Funding Remaining
DESIGN 194880-002	15,000,000	2,216,986	3,800,016	8,982,999
CONSTRUCTION 194880-003	174,780,000	-	9,616	174,770,384
TOTALS	189,780,000	2,216,986	3,809,632	183,753,382

As the new project delivery model progresses, staff will obtain cost certainty related to this project, continue funding advocacy with other levels of government and report back to Council with any future financial implications.

Term of Council Priorities:

This report supports the Term of Council Priorities and the 2040 Vision.

Brampton is a Green City: the new Transit facility will contribute to a sustainable transit fleet through future electrification and contribute to the goals established through the City’s Climate Emergency Declaration. Brampton Transit continues to champion environmental innovation through participation in the CUTRIC Pan-Canadian Battery Electric Bus Demonstration and Integration Trial, which is, to date, the largest global deployment of fully interoperable zero tailpipe emission battery electric buses and high-powered electric chargers from multiple manufacturers.

Brampton is a Safe & Healthy City: the new facility will allow for increased public transit operations in Brampton, which reduces the reliance on automobiles and can contribute to improved road safety and reduced carbon emissions.

Brampton is a Well-Run City: the new Transit facility encourages increasing the use of public transit. This can yield cost savings by minimizing the need to expand road infrastructure through encouraging denser land uses and reducing automobile traffic. Locating the new facility in northeast Brampton also improves bus route efficiency by reducing deadheading for existing bus routes, which is non-revenue vehicle time when a bus is returning to a facility.

Conclusion:

Staff are recommending to proceed with a Limited Tendering procurement to WSP for the completion of the design and specifications for the new Transit facility and to perform contract administration services during the construction phase.

Conducting a Limited Tendering procurement will avoid duplicated effort, costs, and save a significant amount of time relative to an alternate procurement approach.

This Request to Begin Procurement report also seeks authorization to begin the procurement to retain services of a Construction Manager.

Staff will return to Council as part of the 2024 Capital budget request to seek any required additional funds to complete the project.

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Attachments: Appendix 1 - Confidential Appendix provided to Council as part of the Closed Session Agenda for the April 6, 2022 Council meeting, under the following Open Session meeting exception:

(k) A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.