



City Council, City of Winnipeg
C/o Office of the City Clerk
510 Main Street
Winnipeg, Manitoba
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[Signed in original to City Clerk's Office]

December 11, 2012

RE: Sole-Sourced Contracts

Dear Councillors:

I would like to call your attention to an unusual pattern of contract awards at City Hall. To be clear, I have no evidence that any of the firms named below have in any way compromised or manipulated City rules. However, there may be cause to believe that city officials inappropriately managed contract awards to the firms mentioned, and may have violated basic procurement policies in the process.

1. Rules re: bidding out capital project consultant contracts

On May 12, 2010, City Council was informed of the Public Service's new FM-002 policy, which stated that effective January 1, 2011, the Chief Administrative Officer and/or other senior managers would be required to solicit competitive bids –

- a) where the estimated value of the consultant service relating to capital projects included in the capital budget exceeds \$100,000 in total, including all phases of any given project... unless otherwise authorized by Executive Policy Committee.

Reports filed as late as December 5, 2012 confirm that this rule is still in force. Yet two contracts awarded in the last 18 months to a single firm do not conform to this standard. I describe these contracts and a related sole-sourced contract below.

2. First “Direct Assignment” [sole-sourced] contract to Dunmore Corporation

On December 3, 2012, the Standing Policy Committee on Finance received the report entitled “**Winnipeg Police Headquarters Redevelopment Project – Financial Status Report No. 1 for the period ending September 30, 2012.**” For brevity, I will refer to this report as the *Police HQ Status Report* below.

Page 5 of the *Police HQ Status Report* notes that a “Dunmore Corporation” was paid \$262,580.67 in fees as of September 30, 2012, for a contract that began on June 1, 2011.

The contract is described as a “direct assignment.” This seems to be an administrative euphemism for a sole-sourced contract, as there is no public record of a competition, nor any record of EPC or Council approval. Over the period covered by the report, Dunmore earned an average of \$16,411.29 per month on this contract alone.*

Dunmore Corporation was incorporated in 1995, and it is presently listed as an “Investment and/or Holding Company” in provincial records. The company’s sole shareholder, director and officer is Dr. Ossama AbouZeid, a construction industry veteran best known as the former project manager for the Bombers Stadium project. I could find no record of his firm ever previously bidding on or receiving a city contract. Online databases list Dunmore’s address at a Westdale P.O. box, or at 2245 McGillivray Blvd. in Winnipeg, with no unit number. Caspian Construction Inc, and G + G Interiors share this address on McGillivray, and the site was once listed as the address for Central Canadian Structures Ltd. (of which AbouZeid was once President).

A recent City Hall press release stated that the Police HQ is scheduled to open in the second quarter of 2014, while the *Police HQ Status Report* suggests that the opening is scheduled for the “Summer of 2014.” If Dunmore’s average monthly payments on this contract continue at a similar rate through to completion, the total value of this one sole-sourced contract award could range from \$540,000 to \$590,000.

* Note that Dunmore is not listed in the annual consultant assignment report for 2011. Since capital program sole-sourced consultant assignments paying over \$100,000 in any fiscal year must be listed in that report, it is reasonable to assume that Dunmore’s fees remained at or below this average throughout 2011. For the record, at that rate, six months of fees at that average rate would have generated \$98,467.74 in payments to Dunmore that year.

As an aside, Page 7 of the *Police HQ Status Report* notes that the report was “Prepared by Ossama AbouZeid – Project Director,” alongside two other co-authors. It is unusual to see a contractor-vendor cited as the author of a public service report, since this effectively means the vendor is performing the Public Service’s oversight over the performance of his own contract.

3. Cost overrun of 75% on a sole-sourced contract recommended by Dunmore

It may be useful to compare the procedures City Hall followed to hire Dunmore to the procedures used to sole-source to another firm on the same project.

On December 7, 2011, Executive Policy Committee received and endorsed a Public Service report entitled **Single Source Negotiations for Professional Engineering Services - Winnipeg Police Headquarters (Canada Post) Project**. For brevity, I will refer to this as the *Engineering Contract Report* below. That report recommended that EPC sole-source a contract to the firm Adjeleian Allen Rubeli Limited.

Adjeleian Allen Rubeli is a consulting engineering company, based in Ottawa. By all accounts, it is a widely-respected firm in the structural engineering sector. While the Public Service portrayed this sole-source award as an “emergency,” nevertheless, they still forwarded it for political approval. In the *Engineering Contract Report*’s own words:

Because the single source award exceeds \$100,000 and relates to a capital budget, the report is being forwarded for EPC approval on the basis of delegations required under Administrative Standard FM-002.

The firm was contracted to

... assist the Project Director with management and control of many aspects of the [Police HQ] Project through completion of the Project, to achieve the objectives of the Project - on time and within budget.

How was the firm selected? Apparently, it was “recommended by the Project Director as having the necessary experience and resources to complete the work of the contract.”

The *Engineering Contract Report* authorizes the contract “for a fee not to exceed \$2,600,000.” However, Adjeleian Allen Rubeli Ltd. has since received fees far in excess

of that original award. The total value of contracts and fees reported on Page 5 of the *Police HQ Status Report* to Adjeleian Allen Rubeli Ltd. to September 30 is \$4,550,000.

The *Police HQ Status Report* specifies that these additional fees include an overexpenditure of \$1.8 million and a separate overexpenditure of \$150,000, all beyond the \$2.6 million originally authorized. This represents a total overrun of exactly 75% over the “not to exceed” fee estimate in just ten months. The contract is listed as “ongoing,” so additional overruns may have been incurred since September 30th.

Note that the *Police HQ Status Report* does not explain why one overexpenditure was distinguished from the other, but it does provide specific dates for each overage. The \$1.8 million overrun was incurred on April 25, 2012. The \$150,000 overrun was incurred on June 8, 2012. While one of these dates corresponds with a Council or Committee meeting date (Council, on April 25th) there are no related items listed on that agenda. In short, there is no explanation for who authorized these overruns.

4) Contract award of \$110,000 to Dunmore on East Yard Project

On December 3, 2012, the Standing Policy Committee on Finance received the report entitled “**Consolidated Public Works Department & WFMA East Yard Complex - Financial Status Report.**”

On Page 5 of this update, Dunmore Consulting is again cited as a vendor for this project. In this case, there is no specific explanation of the services provided. Dunmore Corporation is listed as receiving a contract award of award of \$110,000, with no information on the total payments made to date. As there is no recent record of Dunmore ever bidding for or receiving an awarded contract on the Materials Management site, it is reasonable to assume that this contract was sole-sourced.

In this case, all specified contracts in the report match the budgeted total, so there is no reason to presume Dunmore’s fees will exceed \$110,000 for the moment. However, the \$110,000 fee still exceeds the \$100,000 bid threshold specified in FM-002.

Questions

To repeat: there is no evidence of any wrongdoing so far in this matter aside from

- (i) Two cases in which the Public Service seems to have violated its own FM-002 policy governing procurement and competitive contracting; and
- (ii) Overruns on the engineering contract, in disregard of Council's endorsement of the contract conditional on fees "not to exceed \$2,600,000."

However, given the sums involved with capital projects and the size of the City's so-called "infrastructure deficit," policies must be stringently observed, since they exist to protect taxpayers from the high risk of potential uncertainty, waste or even corruption. With these risks in mind, I would encourage councillors to be more aggressive in their due diligence on construction management in general. I would also encourage Council to insist on direct, immediate answers to several questions in this particular case.

My own questions would include the following:

POLICE HQ

- The Police HQ is one of the largest capital projects in civic history. While it is clear from media reports that Dr. AbouZeid is experienced in the construction sector, how was Dunmore prequalified and selected for this particular project, by whom, and why? As an "Investment and/or Holding Company," is Dunmore bonded or insured to manage a project of this magnitude?
- Even if city officials initially underestimated Dunmore's fees, why did the Public Service not seek approval or notify Council once it was clear that those fees would far exceed the \$100,000 bid threshold on the Police HQ project?
- Since it is Dunmore's responsibility as a project management firm to represent the City's interests with project contractors, and since Caspian's GMP contract was only signed on November 18, 2011 – 6 months after Dunmore was hired - what is Dunmore's exact relationship with Caspian Construction, and why are they co-located at the same address?

- Since Dunmore is not listed as a vendor in the 2011 Consulting Assignment report, can the Public Service confirm that fees paid to it for the Police HQ project did not exceed the \$100,000 threshold for mandatory reporting?
- Based on the existing agreement, what is the potential future liability for fees payable to Dunmore in future for the Police HQ project, and for what services? Who negotiated Dunmore's fees, and how were those fees established? How do those fees compare to fees awarded at market rates for similar work?
- Why did the Public Service not consider tendering a contract of this nature, given the breadth of experience available in the private sector for this work and the potential for significant savings over the life of the project?
- Why did the Public Service believe it was appropriate to select a firm and recommend that Council award it a multi-million dollar sole-sourced contract based on the recommendation of another sole-sourced vendor?
- On what basis did Dunmore recommend a \$2.6 million fee for structural engineering work? Was there any oversight over this recommendation, or any external consultation to cross-check this inadequate estimate? How were the overruns on the Adjeleian Allen Rubeli Ltd contract offset in the project budget?
- Why is there no record of Council notification or a request for approval for the 75% overrun in fees for Adjeleian Allen Rubeli Ltd, especially given the authorizing report's commitment to fees "not to exceed \$2,600,000"?
- Who authorized the overexpenditures to Adjeleian Allen Rubeli Ltd? Have there been additional overexpenditures since September 30? Is there the potential for more overruns on this one fee given the fact that the contract is "ongoing"?

(Note: while these contract overexpenditures may be within budget for the project as a whole, keeping to "guaranteed maximum price" for the Police HQ will likely mean that these costs must be covered with offsetting reductions in the scope or changes to the quality of the finished project).

EAST YARD PROJECT

- Given the requirements of FM-002, why did the Public Service award a \$110,000 contract to Dunmore for the East Yard without tender or any recorded EPC approval?

GENERAL ISSUES ARISING FROM THESE CONTRACTS

- Are there other untendered contract awards to Dunmore by the City of Winnipeg or other city agencies that have not yet been reported at this time?
- Why is the Public Service permitted to describe some sole sourced contracts in its reports as “direct assignments,” rather than as the “sole-sourced on delegated authority” contracts that they actually seem to be?
- If project management and construction advisory services are needed on multiple projects, why has the Public Service chosen contract vendors to perform this work? After all, a few years ago, the Public Service had a permanent position (Manager of Capital Projects) in the CAO’s office that performed similar duties for several departments at a modest cost, and with a much lower risk that commercial conflicts would distort the advice received.

I hope councillors will consider asking senior officials to provide immediate answers to these questions soon, as the answers may be pertinent to several important issues on Council’s agenda in the coming months.

Yours sincerely,

[Signed in original]

Brian F. Kelcey

Cc: City Auditor’s Department
Board of Directors, Winnipeg Convention Centre
Association of Consulting Engineering Companies of Manitoba
Selected local media organizations