

Report to >Committee Name<

To: Chair and Members
Civic Works Committee
From: Kelly Scherr, P.Eng., MBA, FEC
Deputy City Manager, Environment & Infrastructure
Subject: RFP-2022-279 Public Utility Locate Service Contract Award –
Irregular Result
Date: January 31, 2023

Recommendation

That, on the recommendation of the Deputy City Manager, Environment & Infrastructure, the following actions **BE TAKEN** with respect to Request for Proposal RFP-2022-279 for Public Utility Locate Service:

- (a) The bid submitted by GTel Engineering of \$4,534,124.85 (excluding HST), to provide public utility locate services for two (2) years as the initial term, and three (3) optional terms of one (1) year each, **BE ACCEPTED** in accordance with the Procurement of Goods and Services Policy, it being noted that the bid submitted by GTel Engineering was the only bid that met the technical criteria and the City's specifications and requirements;
- (b) Civic Administration **BE AUTHORIZED** to undertake all administrative acts that are necessary in connection with this purchase;
- (c) Approval herein **BE CONDITIONAL** upon the Corporation entering into a formal contract relating to the subject matter of this approval; and
- (d) The Mayor and City Clerk **BE AUTHORIZED** to execute any contract, statement, or other documents, if required, to give effect to these recommendations.

Executive Summary

As the owner of underground infrastructure, the City is required to provide utility locates for anyone planning an excavation in accordance with the *Ontario Underground Infrastructure Notification System Act, 2012, as amended*. The City's current utility locates services contract expires February 28, 2023 and needs to be replaced with a new, updated contract that reflects new legislative requirements. This report recommends contract approval resulting from RFP 2022-279 for the provision of public utility locate services on behalf of the City.

Linkage to the Corporate Strategic Plan

The following report supports the Strategic Plan through the strategic focus area of "Building a Sustainable City" by efficiently managing water, wastewater and transportation infrastructure while supporting utility locates for both public and private construction activities across the City.

Analysis

1.0 Background Information

1.1 Previous Reports Related to this Matter

- Civic Works Committee – January 7, 2020 – Request for Proposal 19-57 Utility Locate Service Contract Award
- Civic Works Committee – October 4, 2022 – Dedicated Locator Model Agreement

1.2 Ontario Underground Infrastructure Notification System (One Call Act)

The *Ontario Underground Infrastructure Notification System Act, 2012, as amended* governs the notification process and establishes timelines for the provision of utility locates for underground services in Ontario. All owners of underground infrastructure including municipalities and private utilities such as Enbridge, Bell Canada and Rogers Communications are mandatory members of Ontario One Call. In Ontario, anyone who “breaks ground” must first call Ontario One Call for utility locates. Under the normal notification process Ontario One Call notifies the affected members of the planned excavation enabling them to provide utility locates to protect to their underground infrastructure from being damaged and prevent injury to workers.

1.3 Context

As the owner of underground infrastructure, the City is required to provide utility locates for anyone planning an excavation in accordance with the *One Call Act*. For efficiency reasons, the City has contracted utility locate services for over 15 years.

The City’s current 3-year utility locate services contract held by G-Tel expires February 28, 2023. Although there is an option to extend the contract, changes effected by new legislation necessitate the development of a new contract to reflect current legislation and address observed industry pressures.

Expiry of the current contract, the new legislation requirements, and the need to ensure the provision of this critical public services made it necessary to bring an updated competitive bid to market via RFP 2022-271. The intent is to hire a private utility locate service provider that can satisfy the City’s legislated requirements for the next two years during which time the City intends to reassess the future delivery models for utility locate services.

Bill 93: Getting Ontario Connected Act 2022

The *Getting Ontario Connected Act, 2022* received Royal Assent on April 14, 2022. Among other things, the Act amends the *One Call Act* to address immediate pressure points in the utility locate delivery system.

The legislative changes provide Ontario One Call with authority to issue administrative penalties against non-compliant members in the industry for specified contraventions. A new regulation outlining the details of the administrative penalty regime has yet to be finalized, however the legislation is in full force and effect.

2.0 Discussion and Considerations

2.1 Current Locate Service Provider Contract

The City’s current Public Utility Locate Services contract is based on the requirements of the *One Call Act* prior to being amended by Bill 93 *Getting Ontario Connected Act, 2022* in April 2022. Prior to being amended, the legislation required the owner of underground infrastructure to complete standard utility locates within 5 business days of receiving notice from Ontario One Call on a “best efforts” basis or on a schedule agreed upon by the utility owner and the excavator. The City’s current contract reflected this requirement but also included a cap which required all standard locates to be completed within 10-business days of notice being received from Ontario One Call.

London has a long history of contracting utility locate services to the private sector and has generally experienced acceptable levels of service. Over the past five years or so, municipalities across the province have been seeing a decline in service levels and Ontario One Call compliance, particularly during the busy construction season.

In spite of industry efforts to improve performance, the pandemic led to an unprecedented labour market shortage in the utility locate services industry. As a result, utility locate completion times shot up across the province. Last year, nearly 30% of the approximately 7 million tickets processed annually by Ontario One Call were more than 15 days late.

London was not immune to the industry challenges. In 2022, London implemented a trial dedicated locator model that redirects utility locate tickets for capital construction projects through an enhanced service stream with outside the current contract. Dedicated utility locate services came at a higher cost but help to avoid the greater cost risk associated with potential construction delays. However, while this helped buffer construction contracts from potential utility locate delays, 2022 utility locate completion times for standard tickets under the One Call System were very challenged during the spring peak with some improvement later in the season. It was clear the current utility locate services contract model needed to be revisited and the cost of maintaining Ontario One Call compliance was increasing rapidly.

2.2 Bill 93 – Getting Ontario Connected Act

In response to widespread and ongoing systemic utility locate delays, Industry Ontario through the Ministry of Government and Consumer Services introduced significant amendments to the *One Call Act*, by way of Bill 93 *Getting Ontario Connected Act 2022*.

The amending legislation retained the 5-business day utility locate completion requirement but removed the “on a best efforts” clause which provided some modest protection to infrastructure owners. More importantly, Bill 93 introduced administrative penalties for non-compliant infrastructure owner. The regulations outlining the implementation of this legislation by Ontario One Call are in the process of being finalized. The current draft regulations contain significant penalties for non-performance including a \$500 per utility locate ticket per day late penalty capped at \$10,000 per individual late ticket. This could result in significant risk to the City considering it receives approximately 30,000 utility locate ticket notifications annually.

2.3 Ontario One Call Act Compliance

The City must maintain compliance with the *One Call Act* and is required to continue to use Ontario One Call mandatory one-call services to utility owners in Ontario. The successful proponent will interface with Ontario One Call’s communication system and fully comply with all aspects of the *One Call Act* and associated regulations as updated by Bill 93 in 2022. As such, it was necessary to include indemnity language in the RFP to ensure the contractor is responsible for any administrative penalties incurred as a result of the contractor’s failure to adhere to the *One Call Act* and the forthcoming regulations and Ontario One Call policies.

A key provision of the RFP is the inclusion of full compliance protection that requires the utility locate service provider to fully satisfy the legislative requirements and protect the City from any potential fines or penalties resulting from non-compliant utility locate performance.

3.0 Financial Impact/Considerations

3.1 Procurement Process

Following public posting of Public Utility Locate RFP2022-279, three proposal submissions were received and evaluated by the Environment and Infrastructure Department which included a technical and cost component. Two of the three submissions did not meet the technical score required therefore the cost proposals were not considered for evaluation. At the end of the process, the proponent with the highest technical score, demonstrating their ability to fully meet with the City's requirements was GTel Engineering. The proposal submitted by GTel Engineering has been checked by staff to confirm no mathematical errors and the results of the tendering process indicate a competitive process.

The approximate annual cost of the service provided in this contract is \$4,534,124.85 (excluding HST). This is a fee for service unit rate contract and the estimate is based on 2021 utility locate volumes. The actual cost of the service will be based on future volume. The RFP bid submission represents a the maximum (or upset limit) value and the team will continue to work with the proponent to find consolidation efficiencies and savings in the service delivery.

As noted above, the previous contract was developed under a different regime and the current legislation has applied more stringent compliance requirements and introduced monetary penalties as well as the possibility of litigation. To reduce the City's liability exposure under the Act, it was necessary to transfer the risk of fines to service providers through the RFP process which significantly increased costs. At the same time, the industry experienced extreme pressures related to labour shortages. GTel Engineering's proposal committed to increasing their resources to meet the demand and mitigate the potential for penalties

These combined pressures resulted in a significant increase in the cost of these services compared to previous contract. However, given the current uncertain climate of the utility locate industry, the award of this two-year contract to GTel Engineering does represent good value for the City. The proposal from GTel Engineering recognizes the potential to incur penalty costs outlined by Bill 93 and has committed the increased resources necessary to improve current compliance metrics and mitigate financial liabilities. The new utility locate service rates reflect an enhanced level of service and significantly shortened utility locate timelines which will benefit homeowners, contractors, and project owners that all rely on utility locate services to support everything from property improvements to major construction projects.

3.1 Public Utility Locate Operational Funding

Funding for this service contract is provided through the Water Operations, Sewer Operations, Traffic Engineering (traffic signals and streetlights) operating budgets, and is subject to annual budget approval. The current annual operating budget for these services is \$1,118,843.00. Based on estimated volumes, the compliant low bid submitted by GTel Engineering exceeds the approved operational budgets of the contributing service areas.

As per Section 8.10 of the Procurement of Goods & Services Policy, the client Service Area, in conjunction with Purchasing and Supply, shall submit a report to Committee and City Council and receive their approval for the award of a competitive bid greater than \$100,000 if the value of the lowest compliant bid is in excess of the City Council approved budget including any contingency allowance.

The costs of these services will be accommodated within existing approved operating budgets for these service areas for 2023, it being noted that the budget for these services will be right-sized as part of the 2024-2027 Multi-Year Budget process. Any material budget pressures resulting from locate services will be reported through the City's semi-annual budget monitoring process.

Conclusion

The *Ontario Underground Infrastructure Notification System Act, 2022* obligates the City to provide utility locates of its buried infrastructure to anyone who "breaks ground", both to protect the City's infrastructure from being damaged during excavation and to support safe excavating. The City's current utility locates services contract expires February 28, 2023 and needs to be replaced with a new, updated contract that reflects new legislative requirements. Upon completion of a request for proposal procurement process with established service providers, civic administration recommends that the, G-Tel Engineering, be awarded the service contract.

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