SUBJECT: Bus Bench Furniture Program Agreement Renewal (PW08005) - (City Wide)

RECOMMENDATION:

(a) That the Agreement for the provision, installation, maintenance and removal of bus bench furniture between the City of Hamilton and Hamilton Bench Advertising Limited be renewed for the period October 11, 2007, to October 31, 2009, and include the proposed changes as set out in Table A of Report PW08005;

(b) That the Mayor and City Clerk be authorized to execute the Agreement in a form satisfactory to the City Solicitor.

EXECUTIVE SUMMARY:

The City’s bus bench program is currently delivered through a ten (10) year agreement with Hamilton Bench Advertising Limited (“HBA”), and consists of the provision, placement, maintenance and removal of bench furniture (most with built in litter containers) at approximately three hundred (300) bus stop locations across Hamilton, Stoney Creek, Ancaster and Dundas. This street furniture is solely managed by HBA at no direct cost to the City. In addition to managing the infrastructure itself, HBA remits to the City a portion of advertising revenue that it collects based on a formula set out in the agreement, resulting in approximately $21,000 annual revenues to the City.
The ten (10) year agreement took effect on October 10, 1997 and expired on October 10, 2007 containing no renewal provision. Where no renewal provision exists and the agreement is expired, the renewal can only be approved by Council.

Based on the positive outcomes from a 2007 agreement compliance review, the need to ensure continued program delivery for transit customers (seating and litter containers), and the time required by staff to consider the bus bench program in the context of greater revenue generating opportunities, possibly in a broader program, a two (2) year renewal of the existing agreement (slightly modified) is recommended and is set out in Table A of this report. The changes being proposed, while not comprehensive, are advantageous to the City, are appropriate for a short term renewal, and are agreeable to HBA.

**BACKGROUND:**

The information/recommendation contained within this report has city wide implications. The City’s bus bench program is currently delivered through an agreement with Hamilton Bench Advertising Limited (“HBA”), formerly, and consists of the provision, placement, maintenance and removal of bench furniture (most with built in litter containers) at approximately three hundred (300) bus stop locations across Hamilton, Stoney Creek, Ancaster and Dundas. This street furniture is completely managed by HBA at no direct cost to the City.

The principal directors and officers of HBA are also known to the City under their new operating company called The Bench Press Ltd. o/a Creative Outdoor Advertising (“COA”). HBA and COA are Ontario corporations in good standing. The obvious relationship between HBA and COA are that they share the same registered head office and the principals of the corporations are the same. HBA uses the Business Name of COA on its bench furniture, as this is the name they use on their company wide service in other municipalities. Creative Outdoor Advertising is business name registered under the *Business Names Act* (Ontario).

In future Request for Proposals or Request for Tenders, if any, HBA will not submit a proposal or bid under its current name, but rather under COA to reflect the shift to the new operating corporation.

HBA makes its money through this program by securing advertising for the furniture and collecting the revenue directly. Advertising restrictions apply and are set out in the agreement. A portion of the advertising revenue collected by HBA is remitted to the City calculated in the agreement as “an annual fee of the greater of $70.00 per advertising face per bench per year or 5% of the advertising revenue per year”. Based on the current inventory of three hundred (300) sites, this results in $21,000 revenue to the City per annum.

In 2007, and as a result of customer complaints with respect to overflowing litter containers at a number of bus bench locations, the Operations & Maintenance Division undertook a complete agreement review. City staff met with staff from Hamilton Bench Advertising Limited to review agreement terms, to identify and resolve any compliance deficiencies, as well as to initiate corrective action on the immediate litter container issue. Subsequent to that meeting, staff also undertook a financial review to ensure revenues received from HBA since 2001 were in keeping with the advertising revenue...
formula in the agreement, and that processes were in place to ensure continued revenue validation. All items have been addressed to the satisfaction of City staff.

The ten (10) year agreement took effect on October 10, 1997 and expired on October 10, 2007, containing no renewal provision. Where no renewal provision exists and the agreement is expired, the renewal can only be approved by Council.

**ANALYSIS/RATIONALE:**

Based on the positive outcomes from the agreement compliance review, the need to ensure continued program delivery (seating and litter containers) for transit customers, and the time required by staff to consider the bus bench program in the context of greater revenue generating opportunities, possibly in a broader program, a two (2) year renewal of the existing agreement (slightly modified) is recommended. The intent of the modified agreement is to address only “quick hit” improvement opportunities appropriate to a short term renewal, without completely re-opening all of the terms of the agreement.

The major provisions of the existing agreement and proposed agreement, as well as the rationale for the changes are set out below. The changes being proposed, while not comprehensive, are advantageous to the City, are appropriate for a short term renewal, and are agreeable to COA.

**TABLE A**

**MAJOR PROVISIONS AND RATIONALE**

(Changes appropriate to a short term renewal)

<table>
<thead>
<tr>
<th>Existing Agreement</th>
<th>Proposed Agreement</th>
<th>Rationale for Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>City approves works and locations</td>
<td>Same</td>
<td>n/a</td>
</tr>
<tr>
<td>Maximum of 500 advertising faces and 500 non advertising faces</td>
<td>Same</td>
<td>n/a</td>
</tr>
<tr>
<td>Restrictions respecting commercial areas, obstructing operations or pedestrian traffic</td>
<td>Same</td>
<td>n/a</td>
</tr>
<tr>
<td>Maintenance standards and condition of works</td>
<td>Same</td>
<td>n/a</td>
</tr>
<tr>
<td>Timely and effective removal of garbage from litter containers</td>
<td>Same</td>
<td>n/a</td>
</tr>
<tr>
<td>Remedies available to City for non compliance</td>
<td>Same</td>
<td>n/a</td>
</tr>
<tr>
<td>Term - October 10, 1997 to October 10, 2007</td>
<td>Term - October 11, 2007 to October 31, 2009</td>
<td>Length proposed is to provide the time required by staff to consider the bus bench program in the context of greater revenue generating opportunities, possibly in a broader program</td>
</tr>
<tr>
<td>Termination notice with 30</td>
<td>Termination notice with 60 days</td>
<td>To provide an increased period</td>
</tr>
</tbody>
</table>
Existing Agreement | Proposed Agreement | Rationale for Change
---|---|---
days notice by either party coinciding with agreement expiry | notice by either party coinciding with agreement expiry | of time to react (appropriate in length to a short term agreement)
Revenue – annual fee of the greater of $70 per advertising face per bench per year or 5% of the advertising revenue per year | Revenue - annual fee of the greater of $110 per advertising face per bench per year or 7.5% of the advertising revenue per year | To attract additional estimated annual revenue of $12,000 to the City.
Revenue – annual remittance on January 1 | Revenue - monthly remittance by the 20th day for the previous month | To provide for greater cash flow and a more timely and accurate reconciliation of revenues given in year changes in bench inventory.
Indemnification and $5M insurance coverage | Various - i.e. proof of auto insurance to be supplied | Updated terms to reflect current language
Extension provision - none | Extension provision - unless termination notice is provided, automatic renewals in 60 day increments to a maximum of 6 renewals (12 months) | To include an extension provision missing from current agreement (appropriate in length to a short term agreement).

**ALTERNATIVES FOR CONSIDERATION:**

Outright agreement termination is an alternative but is not recommended due to reduced customer service to transit customers resulting from the removal of bus bench furniture, the negative impact on City operated ground litter pick up and container programs resulting from the removal of the furniture’s built in litter receptacles, and due to the annual loss of revenue in the approximate sum of $21,000.

Agreement renewal in its current form is an alternative but is also not recommended. The proposed agreement provisions are more advantageous to the City in all respects including receipt of additional revenues in the approximate sum of $12,000. Since the improvements are agreeable to HBA, the proposed agreement can be implemented quickly and efficiently.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial implications:

Under the proposed agreement, the City will receive estimated additional annual revenues in the sum of $12,000. Revenues are estimated based on a fluctuating bench inventory and are quoted in gross terms (indirect staff costs associated with agreement administration and time spent responding to litter container complaints are not deducted). Revenues are remitted by HBA to the Operations & Maintenance Division and deposited into account 46005-460005.

<table>
<thead>
<tr>
<th>Agreement Type</th>
<th>Basis of calculation</th>
<th>Gross Annual Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Agreement</td>
<td>300 benches x $70 per bench</td>
<td>$21,000</td>
</tr>
<tr>
<td>Proposed Agreement</td>
<td>300 benches x $110 per bench</td>
<td>$33,000</td>
</tr>
<tr>
<td>Added Revenue</td>
<td>300 benches x $40 per bench</td>
<td>$12,000</td>
</tr>
</tbody>
</table>

**Staffing Implications** - None
Legal Implications

Legal will provide assistance to Purchasing in the issuance and award of a RFT or RFP in 2008, as required. Legal will draft the necessary documents to implement the delivery of the service.

Purchasing Implications

Purchasing will provide assistance in the writing of specifications and issuance of tender or RFP specifications in 2008, as required, respecting a competitive bid process. Specifications are to be assessed and may emulate current program requirements or be drafted in the context of other potential revenue generating opportunities possibly in a broader program. A working group will be formed to assess program requirements to include representation from Operations & Maintenance, Transit, Clean City Strategy Committee, and BIAs.

Risk management implications

Proposed insurance and indemnification provisions are acceptable.

Operations & Maintenance (Roads section) implications

Continued provision of the bus bench litter receptacles under the agreement is supported as long as the containers are properly managed (i.e. not overflowing), and the units properly maintained.

Transit implications

Continued provision of bus bench furniture (seating and litter containers) for transit customers under the agreement is supported. To assist in program management, the Transit Division has engaged its bus drivers to call in litter and/or bench maintenance complaints to Transit dispatch for immediate reporting to HBA.

POLICIES AFFECTING PROPOSAL:

The recommendation complies with the Corporation’s Purchasing Policy and the objectives contained within the Public Works Strategic Plan that promote the establishment of “Mutually Beneficial Charters with External Customers”

RELEVANT CONSULTATION:

Legal Services, Purchasing, Risk Management, Operations & Maintenance Division (Road Operations & Maintenance Section), Transit Division, Hamilton Bench Advertising Limited (President).

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
A Great City in Which to Live - Providing Quality Community Services

Environmental Well-Being is enhanced. ☑ Yes ☐ No
A Great City in Which to Live - Putting Our Best Face Forward
Economic Well-Being is enhanced. ☑ Yes □ No
A City that Spends Wisely and Invests Strategically - Best Practices-Best Value

Does the option you are recommending create value across all three bottom lines? 
☑ Yes □ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? 
□ Yes ☑ No