

# TORONTO TRANSIT COMMISSION REPORT NO.

**MEETING DATE:** September 30, 2010

**REPORT TITLE:** NOTICE OF AWARD - PROCUREMENT AUTHORIZATION –  
LEGAL SERVICES

## **ACTION ITEM**

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### **RECOMMENDATION**

It is recommended that the Commission receive the notice of award of Chair Giambrone, Vice-Chair Mihevc and Chief General Manager authorizing:

1. the award of a contract to Torys LLP in the upset limit amount of \$700,000 on the basis of sole source to provide legal services to assist in drafting the commercial terms and conditions for the Request for Proposal for Open Standards – Based Fare Payment System; and
2. this report be forwarded to City Council through the Executive Committee, seeking confirmation of funding under the GTA Farecard Project.

### **FUNDING**

While funds of \$140 million were included under Program 5.2 Integrated Ticketing System – GTA Farecard Project (as outlined on pages 1171-1173) in the TTC 2010-2014 Capital Program as approved by City Council on December 8, 2009, this funding was subject to completion of a satisfactory business case under the Canada Strategic Infrastructure Fund Contribution Agreement. No funds were included in the GTA Farecard Project for any scope related to open payments.

At its meeting on June 2, 2010, the Commission approved \$1.3 million for contract work related to open payments and at its meeting on July 6, 7, and 8, 2010, City Council confirmed that the \$1.3 million could be funded under the GTA Farecard Project for the TTC's Automatic Fare Collection – Open Payments System.

This report will be forwarded to the City Executive Committee to seek confirmation of funding under the GTA Farecard Project.

### **BACKGROUND**

At its meeting of July 14, 2010 the Commission approved the revisions and updates to the Authorization for Expenditures and Other Commitments Policy, effective August 1, 2010,

**NOTICE OF AWARD - PROCUREMENT  
AUTHORIZATION - AUTOMATIC FARE COLLECTION –  
OPEN PAYMENTS**

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which states that *'The Commission delegates authority to the Chair, Vice-Chair and the Chief General Manager to authorize items that would normally be authorized by the Commission when the approval is required before the next Commission meeting. If the Chair and/or Vice-Chair are not available, authority would be deemed to be delegated to any two (2) Commissioners and the Chief General Manager.'* These authorizations are to be followed up by a notice of award Commission report that is to be submitted to the next scheduled Commission meeting for information.

At its meeting on June 2, 2010, the Commission approved the award of a contract to The KMA Group, LLC (KMA Group) to assist staff in developing a business case for open payments fare system, and to work with staff to solicit and evaluate proposals from prospective partners for an open payments fare system in order to award a contract by November 2010.

In August 2010, a Request for Pre-Qualification (RFPO) for an Open Standards-Based Fare Payment System was issued. Pre-qualified proponents will be determined following the evaluation of the submissions to the RFPO. The pre-qualified proponents will participate in a Structured Multi-Phase Bid Process (SMPBP). The SMPBP is a process in which the technical and commercial requirements are discussed with all pre-qualified proponents to finalize requirements prior to a formal request for proposal.

At its meeting of July 14, 2010 the Commission approved the revisions and updates to the Authorization for Expenditures and Other Commitments Policy, effective August 1, 2010, which states that *'The Commission delegates authority to the Chair, Vice-Chair and the Chief General Manager to authorize items that would normally be authorized by the Commission when the approval is required before the next Commission meeting. If the Chair and/or Vice-Chair are not available, authority would be deemed to be delegated to any two (2) Commissioners and the Chief General Manager. These authorizations are to be followed up by a notice of award Commission report that is to be submitted to the next scheduled Commission meeting for information.'*

**DISCUSSION**

As a result of the review of the information provided by the KMA Group, staff identified that a significant amount of effort is required to prepare the commercial documentation for the SMPBP. Since the process is subject to an aggressive timeline and staff has limited experience in developing the commercial terms and conditions necessary for this type of requirement, it is recommended that the legal firm Torys LLP (Torys) be retained on a sole source basis to provide support.

The commercial terms and conditions are the critical component of the contract. The commercial terms and conditions must be drafted to ensure the minimization of any ongoing

risks to the TTC, to establish the terms for the complex business relationship that will result from which the pre-qualified proponents understand the risk, and on which the pre-qualified proponents submit a comprehensive bid.

Torys has demonstrated skills in strategic long-term technology transactions and extensive experience with the financial services industry. It has been involved in various comprehensive outsourcing transactions which included the development of new, leading-edge technology and the establishment of innovative strategic relationships. Torys is considered a recognized expert in this field and has the combination of skills and experience to assist in drafting the commercial terms and conditions necessary within the Commission approved timeline.

**JUSTIFICATION**

Based on the Commission approved timeline for the award of a contract for an Open Standards-Based Fare Payment System by November 2010, and in order not to delay the approved timeline, it is not possible to do a competitive procurement for legal services. As a result of its experience and expertise, Torys is able to complete the work.

As a result of the aggressive timeline, it is a justifiable urgency that the legal services of Torys be retained on a sole source basis to assist the Commission in the drafting and finalization of the commercial terms and conditions for the RFP for an Open Standards-Based Fare Payment System.

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September 30, 2010