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**Re: Item PW 27.5
Request for Quotation No. 6033-09-3077 for Waste Transportation/Haulage Services
from the City of Toronto Transfer Stations to the Green Lane Landfill Site (the "RFQ")**

I am providing this briefing note to summarize the legal issue with respect to this matter.

- The RFQ indicates that it is the City's intent to award a contract to the bidder that meets the City's specifications and provides the lowest grand total cost as shown in the price schedule.
- The RFQ required bidders to specify the number of tonnes per load that they proposed to transport, and then calculate the total general transport fee on the basis of the number of tonnes per load that they specified. In order to complete the price schedule that they must submit with their bids, bidders were required to:
 - state the "estimate quantity of loads for 2011". The quantity or number of loads is calculated by dividing the estimated tonnes of waste specified by the City by the minimum tonnes per load specified by the bidder.
 - state a "general transport price per load". The price per load is based on the minimum tonnes per load specified by the bidder.
 - state the "total general transport fee". The total general transport fee is calculated by multiplying the estimated quantity of loads by the general transport price per load.
- On the price schedule it submitted, as the basis for the estimated number of loads and the general transport price per load they would charge, ECL specified a minimum number of tonnes that was greater than the number of tonnes that they could legally carry on Ontario highways. A load of the weight specified by ECL would cause their tractor trailers to exceed the maximum allowable weight on the road as defined by the Ontario Ministry of Transportation (MTO) in the Highway Traffic Act.
- In order to accurately determine the total general transport fee that ECL would charge, the price schedule it submitted would have to be changed to reflect the lower minimum number of tonnes per load that ECL could legally transport.

- ECL in effect is now asking the City to amend the price schedule **after the closing deadline** and **after the public opening of the bids**, and to calculate ECL's total general transport fee as if ECL had proposed to transport the lower minimum number of tonnes per load that they can legally transport.
- It is a basic rule of competitive procurement that bidders cannot be allowed to make changes to their bids after the closing deadline.
- The City's RFQ document clearly states that "No unilateral adjustments by Bidders to submitted Quotations will be permitted". Allowing a change that has an impact on pricing is strictly prohibited under the law of competitive procurement.
- To allow ECL to make the change to its price schedule would be contrary to the laws of competitive procurement, the City's own policies, procedures and practices and the terms of the City's own RFQ document. It would place the City at risk of legal action by other bidders, expose the City to a significant risk of legal liability and would undermine the integrity of the City's purchasing practices.