

TORONTO STAFF REPORT

June 7, 2000

To: Works Committee

From: Barry H. Gutteridge, Commissioner, Works and Emergency Services

Subject: Toronto Integrated Solid Waste Resource Management ("TIRM") Process
Top-Qualified Proposals for Proven Disposal Capacity
Due Diligence Reviews

Purpose:

The purpose of this report is to provide a summary of the due diligence review of the top-qualified proposals in TIRM Category 2, Proven Disposal Capacity.

Financial Implications and Impact Statement:

There are no direct financial impacts arising from this report.

Recommendations:

It is recommended that this report be received for information.

Background:

At its meeting of February 29, and March 1, and 2, 2000, City Council adopted a recommendation to authorize the Commissioner of Works and Emergency Services to proceed to conduct the necessary due diligence reviews of the disposal sites identified in the proposals of the top-qualified Respondents (TIRM Category 2, Proven Disposal Capacity) and to conduct negotiations with the top-qualified Respondents (Works Report No. 5, Clause No. 1). Another report also listed on the Works Committee Agenda of June 14, 2000, contains recommendations stemming from contract negotiations. This report provides a summary of the due diligence program and its findings.

The five Respondents and their respective facilities that underwent due diligence review are as follows:

Table 1

Respondent	Primary Site*	Contingency Sites**
Essex Windsor Solid Waste Authority	Essex Windsor Landfill Site, Essex County, Ontario.	Carleton Farms Landfill Site, Wayne County, Michigan
Green Lane Environmental	Green Lane Landfill Site, Elgin County, Ontario	Carleton Farms Landfill Site, Wayne County, Michigan
Onyx Inc.	Arbor Hills Landfill Site, Washtenaw County, Michigan	American Ref-fuel, Niagara Falls, New York (energy from waste facility, with ash disposal at Niagara Recycling Inc. landfill, Niagara Falls, New York) Carbon Limestone Landfill Site, Mahoning County, Ohio Sauk Hills Landfill Site, Wayne County, Michigan
Rail Cycle North	Adams Mine Landfill Site, Kirkland Lake, Ontario	Woodland Meadows-Van Buren Landfill Site, Wayne County, Michigan Pine Tree Acres Landfill Site, Macomb County, Michigan
Republic Services (Canada) Ltd.	Carleton Farms Landfill Site, Wayne County, Michigan	Brent Run Landfill Site, Genesee County, Michigan

* All primary sites are currently operating landfills, with the exception of the Adams Mine Landfill Site, which is approved but is not currently constructed.

** The contingency sites listed have been identified by the Respondents through clarification of their proposals during the course of the due diligence and contract negotiation process.

The technical/environmental due diligence review of the proposed primary disposal facilities of the top-qualified Respondents and associated contingency sites was conducted by Earth Tech Canada Inc. ("Earth Tech"), in association with MacViro Consultants Inc. ("MacViro"). A financial review, related to the Respondent's commercial and corporate status has been carried out by Toronto's Finance Department.

Purpose, Scope and Methodology

The purpose of the TIRM Stage 4 Overall Due Diligence Review was to evaluate the Respondents' capabilities to deliver the proposed waste haul and disposal services as offered in the Respondents' RFP submissions, and to identify circumstances that have the potential to:

- a) create liability or other concerns for Toronto including the transport or treatment of its waste;
- b) affect a Respondent's ability to fulfill the obligations of a contract with Toronto, including the ability of a Respondent to fulfill the performance claims made in the Respondent's technical and price proposals; or
- c) generate public controversy (following the initiation of services) for Toronto and Council.

The scope of the review undertaken by Earth Tech and MacViro included the following:

1. An examination of the licensing and regulatory process to which facilities are subject;
2. An assessment of the compliance of the facilities with the major regulatory requirements;
3. A review of the nature, terms, and conditions of any agreements between the site owners and the host municipalities and counties;
4. A comprehensive tour of the landfill sites (including on-site visits by Solid Waste Management Division Operations Staff);
5. Meetings with appropriate technical personnel responsible for the design and operation of the facilities;

6. A review of relevant reports, files, and drawings pertaining to the site; and
7. An assessment of the Respondents' environmental management system capabilities.

In conjunction with reviewing Respondents' facilities, due diligence reviews were conducted of Respondents' proposed waste haulage systems. These reviews considered transportation service providers' facilities, their environmental systems capabilities and transportation safety records. The following transportation service providers were reviewed: CN Railway, Ontario Northland Railway and Miller Trucking (associated with Rail Cycle North), CP Railway and Wilson Logistics (associated with Republic) and six other trucking companies (associated with one or more of the Respondents).

Comments:

Our project consultants, based on their technical/environmental review, have found that all of the Respondents and associated facilities are currently in compliance with the major regulatory requirements of their host jurisdictions. In addition, the Respondents substantially follow current and recognized industry practices (i.e. technically competent design and monitored operations).

However, they have found matters pertaining to the Respondents' facilities and manner of operations that they recommend be addressed through contract negotiations as an element of further protecting Toronto's interests. While many sites have an environmental management system, our consultants recommend that each site ensure that a complete system is in place, as verified by the City (through the Commissioner of Works and Emergency Services), before waste is delivered to the site. Many sites also have specific management issues to be addressed through final contract negotiations. All of the recommended measures are above and beyond the regulatory requirements of the jurisdictions in which the facilities are located.

In general terms, our consultants have identified the following key findings and associated remedies.

Table 2

Key Findings	Remedies
All existing facilities are in substantial compliance with the major regulatory requirements.	Maintain ongoing knowledge of the service providers' operational and environmental performance (through regular reporting to Toronto).
Respondents' facilities are complex engineered systems including transport, waste filling, leachate	Recommend environmental management system (EMS) in place and operating prior to delivery of waste.

Key Findings	Remedies
collection/treatment, gas management, and groundwater, surface water and air quality monitoring.	
Facilities will require “perpetual” care.	Require post closure care for facilities and ensure that a fully funded and technically suitable assurance plan is in place.
Environmental impairment liability may be associated with past activities/existing sites.	Ensure outstanding environmental and regulatory issues satisfactorily addressed prior to the delivery of waste to any facility.
Toronto as a generator, has potential liability under U.S. “Superfund” legislation.	<p>Ensure appropriate corporate indemnification provided.</p> <p>Recommend environmental management system (EMS) in place and operating prior to delivery of waste.</p> <p>Maintain ongoing knowledge of the service providers’ operational and environmental performance and respond promptly to any potential problems.</p>
Possibility of border closure exists (e.g. introduction of U.S. “flow control” legislation).	Backup capacity in multiple jurisdictions recommended.

Financial Review:

This section presents a summary of Finance staff’s review and assessment of the respondents historical financial performance. For the purpose of this review, the Respondents included respective parent corporations which would be expected to be contracting parties for indemnity obligations. The objective of this review, conducted as part of the City’s due diligence process, was to evaluate, to the extent possible, the financial soundness of the five final proponents and to identify any obvious financial deficiencies in order to minimize the financial risks to the City should any of these firms be engaged in a long term contract.

Due to the confidential nature of the bidding and selection process, only publicly available information was used. The sources included the annual reports of the proponents, US Securities and Exchange filings, publicly available reports from Securities analysts, and news archives. Dun & Bradstreet, a credit agency which is

under contract with the City, was contacted and requested to provide existing credit reports where appropriate, on the proponents and their sub-contractors. This service is provided in confidence.

Financial statements report an organization's financial position at a point in time as well as its financial operations over some past period. Past performance over time is used by analysts to project future performance. However, past performance is no guarantee of future performance. Financial statement analysis also allows for the comparison of a firm's performance to that of other firms in the same industry. The income statement, the balance sheet, and the statement of changes in financial position give an accounting picture of the firms operations and financial position. From these statements, financial ratios may be derived that provide a variety of measures for such things as profitability, investment utilization, liquidity and solvency, and growth. By comparing these measures over time, trends may be identified and used to forecast future performance and a comparison can be made to that of others in the industry or with industry norms.

A review and assessment by Finance staff indicates that all of the proponents are currently solvent and appear to have adequate financial resources to fulfill the financial obligations of their respective proposals. For the publicly traded proponents or their parent companies, the credit rating agencies (Standard & Poor's and Moody's) appear to corroborate the company's ability to meet their shorter-term financial obligations and, in the absence of adverse changes in the business environment, their longer-term financial obligations. It is further noted that, as an additional financial assurance, each of the proponents have agreed to provide a letter of credit from a chartered bank and a performance bond from a surety company equivalent to the estimated annual value of its proposed service contract, as required of all proponents under the Request for Proposals.

It is important to note that the solid waste collection and disposal industry business environment has been changing rapidly in recent years. The most significant has been a trend towards consolidation, wherein the larger solid waste companies have pursued acquisitions and integration in the collection, transfer and disposal process to increase their efficiency, cost structure and flexibility to further their competitive advantage. According to industry data, three companies now generate almost half of the estimated \$37 billion in revenues within the overall solid waste industry in the U.S. These are: Waste Management Inc. (35%); Allied Waste Services Inc. (8.9%), and Republic Services Inc (4.9%).

Consolidation in the industry has progressed to the point that the U.S. Justice Department is involved to ensure anti-trust and competition laws are not broken, and that an oligopoly does not dominate in the market. Recently, Browning-Ferris Industries (BFI) was ordered by the U.S. Justice Department to divest itself of its Arbor Hills Landfill as part of its Merger with Allied Waste Industries Inc. in order to prevent a concentration of market power in the Detroit area. In Canada, the Competition Act has also been applied in cases where potential mergers are expected to prevent or significantly reduce competition in a substantial part of the market. In 1997, a consent order from the Competition Tribunal directed Canadian Waste Services (CSW), a

subsidiary of Waste Management Inc., to divest portions of the waste collection businesses it had acquired from Laidlaw Inc. More recently, the Tribunal has directed CWS to divest the Ridge Landfill facility it had acquired through its purchase of BFI's Canadian assets. Given the business environment, it is probable that the corporate structure of many of the solid waste companies will change in the near-term.

Environmental liability is also a significant risk factor for all firms in this industry. While each of the proponents have disclosed and account for known liabilities, a great deal of uncertainty with regards to long term environmental liabilities is acknowledged. Furthermore, the US Superfund legislation extends liability for waste disposal sites jointly and severally to generators of such waste, and as such, any proposal that involves the transportation and disposal of wastes to a US disposal site presents additional environmental liability risks to the City. Therefore, site selection and compliance monitoring are important issues that must still be considered in determining overall risk, which is being reported on concurrently by the City's technical/environmental consultants.

Conclusions:

Our project consultants have advised, following the completion of the due diligence review, that the Respondents investigated are capable of delivering the waste haul and disposal services offered in their submissions to Toronto. They did not identify any technical or scientific issues, which would be a basis for precluding Toronto from entering into contracts with the Respondents for service provision.

Specific matters related to each proposal are contained in Appendix A and will be addressed, as applicable, through final contract negotiations.

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