



STAFF REPORT ACTION REQUIRED

Contract Award: Request for Quotation 6035-11-3030 for the Provision of Contingency Final Disposal Capacity within Ontario

Date:	May 18, 2011
To:	Public Works and Infrastructure Committee
From:	Acting Deputy City Manager Director, Purchasing and Materials Management Division
Wards:	All
Reference Number:	P:/2011/swms/May/005PW

SUMMARY

The purpose of this report is to advise on the results of the Request for Quotation (RFQ) 6035-11-3030 for the provision of Contingency Final Disposal Capacity within Ontario for five years in the event that the City of Toronto cannot dispose of its waste at its own landfill or wishes to re-direct limited quantities of waste, and to request award of contracts to the three recommended bidders from the date of award for a period of five (5) years with the option to renew the contracts for an additional five (5) year period. In conjunction with the award of these contracts, this report also requests that Council delegate to the Acting Deputy City Manager the authority to:

- at his discretion, utilize up to 50,000 tonnes per year of each disposal contractor's annual available tonnage in order of the lowest price first to extend the life of the Green Lane Landfill or for other operational reasons;
- at his discretion, allow disposal services for the contingency disposal contractors at the same rates as those contractors charge to the City; and
- negotiate an amendment to the City's contract with its current waste transportation contractor in order to provide for haulage of waste to the recommended disposal contractors' sites when necessary.

RECOMMENDATIONS

The Acting Deputy City Manager and the Director of Purchasing and Materials Management Division recommend that City Council:

1. Award a contract to each of the three bidders who responded to the Request for Quotation (RFQ) 6035-11-3030 for the Provision of Contingency Final Disposal in the event the City of Toronto cannot dispose of its waste at its own landfill or the City wishes to re-direct limited quantities of waste as follows:
 - a. Lafleche Environmental Inc. up to 75,000 tonnes annually and up to a total of 375,000 tonnes over a five (5) year period at a total contract value of \$19,515,150.65 net of HST;
 - b. Integrated Municipal Services Inc. up to 50,000 tonnes annually and up to a total of 250,000 tonnes over a five (5) year period at a total contract value of \$14,831,514.46 net of HST;
 - c. Waste Management of Canada Corporation up to 200,000 tonnes annually and up to a total of 1,000,000 tonnes over a five (5) year period at a total contract value of \$58,646,930.58 net of HST.
2. Subject to the adoption of Recommendation (1) and provided the Acting Deputy City Manager is satisfied with the contractors as continuing providers of Contingency Disposal Services under the same terms and conditions, request the Acting Deputy City Manager to report back to Council on the extension of the contracts to each vendor for the additional five (5) year period.
3. Subject to the adoption of Recommendation (1), delegate to the Acting Deputy City Manager, authority to:
 - a. utilize up to 50,000 tonnes per year of available annual disposal capacity at each of the disposal contractor's facilities at the sole discretion of the Acting Deputy City Manager, in order to extend the life of the Green Lane Landfill or for other operational reasons; and
 - b. allow disposal services for Lafleche Environmental Inc., Integrated Municipal Services Inc., and Waste Management of Canada Corporation at their request, at the rates these disposal contractors have agreed to charge the City, to the extent that this reciprocal service is operationally acceptable.
4. subject to the adoption of Recommendation (1) , delegate to the Acting Deputy City Manager, authority to amend the City's contract with its current waste transportation contractor, Verspeeten Cartage Ltd., in order to provide any haulage of waste that may be required for the duration of the contract, at the direction of the Acting

Deputy City Manager, to the disposal contractors' facilities at rates negotiated under the present contract terms and conditions by the Acting Deputy City Manager and consistent with the haulage specifications in the existing contract and otherwise on terms and conditions satisfactory to the Acting Deputy City Manager and in a form satisfactory to the City Solicitor. Although these contingency transportation services may never be required, in the worst case scenario of disposing of 325,000 tonnes per year, the additional transportation charges may be increased by an annual maximum amount of \$2.6 million.

Implementation Points

The per-tonne tipping fees and provisional fee (contractor cost associated with services rendered outside normal business operating hours) for the awarded tonnage option will apply during the first year of the term. For each additional year of the agreement, the per-tonne tipping fees and provisional fee will be adjusted to reflect 100% of the percentage change in the All Item Index of Consumer Price Index (CPI) for Toronto or any replacement Index.

Financial Impact

The total maximum potential value of the three contract awards over five (5) years is estimated to be \$94,630,282.92 net of HST recoveries. Table 1 provides the annual contract value breakdown for each of the three bidders based on the per tonne cost for Contingency Capacity disposal and the maximum capacity available to the City on an annual basis as stipulated in each of the three bidders' submitted quotes. Contract values also include an estimated number of 100 Extended Hours per year at the Provisional Fee for Extended Hours stipulated in each of the three bidders' submitted quotes. Contract values have been inflated by 2.0% per year after Year 1 to reflect the estimated annual CPI change.

Table 1: Total Maximum Potential Contract Value over Five (5) Years (Amounts in \$000s).

Contractor	Five (5) Year Contract Term					Total
	Year 1	Year 2	Year 3	Year 4	Year 5	
Lafleche Environmental Inc.						
Maximum Estimated Contract Value	\$3,750	\$3,825	\$3,902	\$3,980	\$4,059	\$19,515
HST (non-recoverable)	\$66	\$67	\$69	\$70	\$71	\$343
Sub-Total	\$3,816	\$3,892	\$3,970	\$4,050	\$4,131	\$19,859
Integrated Municipal Services Inc.						
Maximum Estimated Contract Value	\$2,850	\$2,907	\$2,965	\$3,024	\$3,085	\$14,832
HST (non-recoverable)	\$50	\$51	\$52	\$53	\$54	\$261
Sub-Total	\$2,900	\$2,958	\$3,017	\$3,078	\$3,139	\$15,093
Waste Management of Canada Corp.						
Maximum Estimated Contract Value	\$11,270	\$11,495	\$11,725	\$11,959	\$12,198	\$58,647
HST (non-recoverable)	\$198	\$202	\$206	\$210	\$215	\$1,032
Sub-Total	\$11,468	\$11,697	\$11,931	\$12,170	\$12,413	\$59,679
Estimated Grand Total (net of HST recoveries)	\$18,184	\$18,548	\$18,919	\$19,297	\$19,683	\$94,630

A five (5) year optional extension, if required, is currently estimated to be a maximum value of \$104,479,478.78 net of HST recoveries. As a result the total maximum potential

contract value of the three contract awards over a full ten (10) year term is estimated to be \$199,109,761.70 net of HST recoveries.

For 2011, funding of \$4.918 million is currently available in Solid Waste Management Services Operating Budget in Cost Centre SW0901, Cost Element 4403. As this is a contract for contingency waste disposal, Solid Waste Management will adjust the award date so that there will not be any funding shortfall in 2011. Future years' funding will be requested in subsequent annual Solid Waste Management Services Operating Budget submissions, subject to budget approval, for the required portions of the contract period under the same Cost Centre/Cost Element.

In the event that Solid Waste Management Services will need to seek contingency final disposal capacity from any one or all of the three bidders, contingency disposal costs will be at least partially off-set by cost savings resulting from the diversion of waste intended for final disposal at the Green Lane Landfill. The partial off-set would be the difference between the City's total cost for disposal at Green Lane (disposal, operating, and haulage costs) versus what each contingency contractor charges. As shown in Table 2, if the full tonnage of 325,000 tonnes of waste disposal contingency was utilized in year 1, Green Lane savings of \$22.9 million would partially offset the total estimated contingency disposal cost of \$27.2 million (including estimated haulage costs) resulting in a net potential cost of \$4.4 million in year 1. Over the five year term of the contract, the resulting total net potential cost is estimated to be \$22.7 million.

Table 2: Net Potential Cost over Five Years (Amounts in \$000s).

Cost Item	Five (5) Year Contract Term					Total
	Year 1	Year 2	Year 3	Year 4	Year 5	
Total Contingency Haulage Costs (net of HST Recoveries)	\$9,028	\$9,208	\$9,392	\$9,580	\$9,772	\$46,980
Total Contingency Disposal Costs (net of HST Recoveries)	\$18,184	\$18,548	\$18,919	\$19,297	\$19,683	\$94,630
Total Contingency Haulage and Disposal Costs (net of HST Recoveries)	\$27,212	\$27,756	\$28,311	\$28,877	\$29,455	\$141,610
Total Green Lane Haulage and Disposal Cost Avoidance	-\$22,854	-\$23,311	-\$23,777	-\$24,253	-\$24,738	-\$118,933
Net Potential Disposal Cost (net of HST Recoveries)	\$4,358	\$4,445	\$4,534	\$4,624	\$4,717	\$22,677

Total net potential costs are based on an assumed worst case scenario which is the disposal of a maximum of 325,000 tonnes per year at the Contingency Capacity Tipping Fee per Tonne (the most expensive rate) offered by each of the three bidders. Haulage costs to the contingency sites are based on the bid rates from Verspeeten Cartage Ltd. as provided in the 2009 Haulage RFQ, adjusted for distance and load turn-around time.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

Under the previous Agreement between the City of Toronto and Republic Services Inc., Republic Services of Canada Inc., Republic Services of Michigan I, LLC, doing business as Carleton Farms, and Republic Transportation Services of Canada, Inc., Solid Waste Management Services has always had an alternate disposal site available for backup contingency capacity. Prior to 2009, the alternate disposal site was Brent Run Landfill in Genesee County Michigan. Prior to December 31, 2010, the alternate disposal site was the Sauk Trail Hills Landfill located in Wayne County Michigan. Refer to the Staff Report dated May 20, 2009 titled Amendment to Waste Transport and Disposal Agreement with Republic Inc. to the June 3, 2009 Public Works and Infrastructure Committee Decision Document, Item #PW25.10 on the following document link:

<http://app.toronto.ca/tmmis/viewPublishedReport.do?function=getDecisionDocumentReport&meetingId=2482>

The agreement between the City of Toronto and Republic Services Inc., Republic Services of Canada Inc., Republic Services of Michigan I, LLC, doing business as Carleton Farms, and Republic Transportation Services of Canada, Inc. ended on December 31, 2010, and since that time Solid Waste Management Services has not had access to the Sauk Trail Hills Landfill.

At its meeting on October 26 and 27, 2009, City Council authorized the General Manager of Solid Waste Management Services to enter into a contract for Waste Transportation/Haulage Services from the City of Toronto's Transfer Stations to the Green Lane Landfill, for a period of seven (7) years beginning January 1, 2011, with three (3) additional one year options with Verspeeten Cartage Ltd. Refer to Item PW27.5 on the following document link:

<http://app.toronto.ca/tmmis/viewPublishedReport.do?function=getCouncilDecisionDocumentReport&meetingId=2209>

ISSUE BACKGROUND

In order to protect the City and to be consistent with past practise where the previous contractor was obligated to provide back-up disposal capacity in the event of a force majeure, City staff is seeking to provide for any future unforeseen service disruptions or operational challenges beyond the control of Solid Waste Management Services by seeking contingency disposal capacity within Ontario. In addition, the City may, for operational reasons, need to take small amounts of waste to locations other than the Green Lane Landfill, so flexibility to cover this situation was also sought.

COMMENTS

Procurement Process and Results

Request for Quotation (RFQ) 6035-11-3030 for the Provision of Contingency Final Disposal within Ontario was published and made available for download by the Purchasing and Materials Management Division on February 28, 2011 on the City's Internet Website. In addition, the RFQ asked bidders to express any interest in having the City provide

reciprocal contingency disposal capacity, at the same rates submitted as a result of this RFQ, should the City find it operationally acceptable to provide that capacity.

Five (5) firms downloaded the document. The Purchasing and Materials Management Division at its Public Opening held on March 21, 2011, opened the three (3) bids received for the Provision of Contingency Final Disposal Capacity within Ontario.

The City is aware that no single bidder has sufficient landfill capacity for all of the City's waste, currently estimated at 793,270 tonnes for 2011. The City is also aware that no single disposal facility located in Ontario has the capacity to dispose of all of the City's solid waste. Having regard for the limited available capacity, the City structured the RFQ to award contract(s) to one or more Bidder(s) based on their landfill capacity to receive waste from the City and providing the lowest overall cost. Although, the combined contingency disposal capacity of the three (3) bidders may not be sufficient for all of the City's waste, contracts with the bidders will allow for disposal of at least part of the City's annual waste, and may be sufficient on a daily basis for short-term contingency requirements.

The following is the summary of bids received for Request for Quotation (RFQ) 6035-11-3030:

Bidder	Bid Details (exclusive of all Taxes)	
	Item	Cost or Quantity
Lafleche Environmental Inc. Facility: 17125 Lafleche Road, Moose Creek, Ontario	Annual capacity available to the City	75,000 Tonnes
	Provision Fee for Extended Hours	Not available
	*Contingency Capacity Tipping Fee per Tonne	\$50.00
	*Re-directed Waste Tipping Fee per Tonne	\$50.00
Integrated Municipal Services Inc. Facilities: 2800 Thorold Townline Road, Niagara Falls, and 3081 Taylor Road, Niagara Falls, Ontario	Annual capacity available to the City	50,000 Tonnes
	Provision Fee for Extended Hours	\$1,000.00 per Hour
	*Contingency Capacity Tipping Fee per Tonne	\$55.00
	*Re-directed Waste Tipping Fee per Tonne	\$44.00
Waste Management of Canada Corp. Facilities: 4052 Oil Heritage Road, Petrolia Ontario, and 8039 Zion Line, Watford, Ontario	Annual capacity available to the City	200,000 Tonnes
	Provision Fee for Extended Hours	\$695.00 per Hour
	*Contingency Capacity Tipping Fee per Tonne	\$56.00
	*Re-directed Waste Tipping Fee per Tonne	\$39.50

* "Re-directed waste" means waste that the City directs to the contractor(s) disposal site rather than to Green Lane Landfill

*Contingency Disposal Capacity" means waste that the City must re-direct due to closure of Green Lane Landfill or any other disposal interruption

* Tipping Fee: means price per tonne paid by the City to the Contractor(s) for both the Contingency Waste and/or for the Re-directed Waste.

The Quotation documentation submitted by the recommended bidders has been reviewed by the Director, of Solid Waste Management Services and found to be in conformity with the Request for Quotation requirements.

Solid Waste Management Services staff compared the costs submitted from each bidder and found the prices of the recommended bidders to be reasonable and within the range of prices Solid Waste Management Services currently charges clients for the disposal of waste at the Green Lane Landfill.

The Fair Wage Office has reported that the recommended firms have indicated that they have reviewed and understand the Fair Wage Policy and Labour Trades requirements and have agreed to comply fully.

Ontario as Geographical Limitation

Comprehensive Environmental Response, Compensation and Liability Act (Superfund)

Although the City of Toronto may be geographically closer to potential contingency final disposal sites located in the United States, the *Comprehensive Environmental Response, Compensation and Liability Act* (“CERCLA”), commonly known as “Superfund”, authorizes the United States Environmental Protection Agency (“USEPA”) to compel persons responsible for the disposal of hazardous substances to perform clean-up action to address releases or threatened releases of such substances. USEPA also may perform the necessary response action itself and seek reimbursement from responsible parties. Responsible parties are generally the owners of the site, the site operators and “arrangers” (often referred to as the waste “generators”) for the disposal of the waste. Because municipal solid waste is considered to contain at least a small amount of “hazardous substances”, arranging for disposal of such municipal solid waste could at least generally fall under the definition of “arranger liability”.

Liability under CERCLA is strict, meaning that it is imposed without regard to fault. The fact that the City would not be involved in the management of any disposal sites located anywhere in the United States, and would not be responsible for any of the environmental damage that may result from a leaking site, does not provide any defence. Conducting due diligence reviews of sites within the United States prior to entering into an agreement for the provision of contingency final disposal capacity, while useful from a practical risk management standpoint, would not provide a defence should a site become a Superfund site (one governed by CERCLA).

Using disposal sites located in Ontario avoids any potential future Superfund liabilities.

Michigan Agreement

In an exchange of letters between Ontario’s Environment Minister, and Michigan Senators Debbie Stabenow and Carl Levin in August 2006, an agreement was made to stop cross-border shipments of municipally-managed waste to Michigan.

On August 26, 2006 City of Toronto Mayor David Miller committed to a strategy of continuing to reduce waste shipments to Michigan over four years and the goal to stop waste shipments to Michigan by the end of 2010. The City of Toronto fulfilled this commitment on December 30, 2010 when the last shipment of waste was delivered to Republic Service Landfill in Michigan. As a result of this commitment the RFQ was not extended to landfills located in Michigan.

Contingency final disposal sites located in other provinces were also not sought since the distances would make transportation costs prohibitive and expose the City of Toronto to regulations outside of the Province of Ontario.

Operational Impact

It is necessary to enter into contracts with all of the bidders because no single bidder has sufficient capacity for the City's waste (currently estimated at 793,270 tonnes for 2011). In fact, the combined contingency disposal capacity of the three bidders may not be sufficient for the City's contingency disposal needs. Nevertheless, contracts with the compliant bidders will provide for disposal of at least part of the City's waste and the existence of these contracts will establish that the City has attempted to plan for uncontrollable circumstances.

Although the need for disposal capacity in the event of an emergency is the primary reason for proceeding with contracts with disposal contractors, the RFQ also provided the City opportunity to re-direct up to an additional 50,000 tonnes per year (within the total amount available from each contractor) to the contingency disposal site for its own operational needs. This would allow the Acting Deputy City Manager to utilize up to 50,000 tonnes of final disposal capacity at each disposal contractor's facility in order to prolong the life of the Green Lane Landfill or for other operational reasons.

The RFQ stipulated that there is no minimum tonnage guarantee. Consequently, if the City has no need or does not find it operationally advantageous to use any of the available disposal capacity in a given year, it is not obligated to do so.

Haulage Impact

The City has a contract with Verspeeten Cartage Ltd. to haul all of the City's waste to the Green Lane Landfill. In the event that any of the waste is diverted to another waste disposal facility, transportation should be provided by the current contractor in keeping with the present contract terms and conditions which provides the present contractor with assurances that City of Toronto waste will be available to them for transportation purposes. It is not in the City's best interest to seek an alternative transportation service provider as these contingency transportation services may never need to be provided. In this case if an alternate service provider were to be sought, a stand-by charge for the transportation equipment and labour fleet would need to be paid on a monthly basis to ensure that both equipment and the associated labour were available at anytime, on a moments notice, should a contingency situation arise.

The existing prices paid to Verspeeten are dependent on distance from the City's transfer stations to the Green Lane Landfill, so prices for waste facilities at other locations in the province will need to be negotiated in accordance with the same pricing structure in place for the current haulage contract. Authority is therefore sought for the Acting Deputy City Manager to negotiate these prices in the context of the existing agreement. If the Verspeeten contract ends earlier than the contingency disposal agreements, any new transportation contract will provide for haulage to these disposal facilities as well as to the Green Lane Landfill.

Reciprocal Contingency Disposal Services

The RFQ provided that the contingency disposal capacity provider could request reciprocal contingency disposal services at the rates provided in the agreement with the particular contractor and the City could provide that capacity to the extent that it is operationally acceptable. There is no regulatory impediment to the provision of this service, since the Green Lane Landfill certificate of approval does not restrict acceptance of municipal solid waste and industrial, commercial and institutional solid waste. This report seeks delegated authority for the Acting Deputy City Manager to determine whether reciprocal disposal capacity should be provided to contractors and to charge the same rates as the contractors charge to the City.

CONTACT

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