



**STAFF REPORT  
ACTION REQUIRED**

**Contract Award for Tender Call 209-2013  
Humber Treatment Plant  
Odour Control and Process Upgrades**

<b>Date:</b>	November 4, 2013
<b>To:</b>	Public Works & Infrastructure Committee
<b>From:</b>	Executive Director, Engineering & Construction Services Director, Purchasing and Materials Management Division
<b>Wards:</b>	Ward 5 – Etobicoke Lakeshore
<b>Reference Number:</b>	P:\2013\Cluster B\TEC\PW13047 (AFS#17933)

**SUMMARY**

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The purpose of this report is to advise of the results of Tender Call 209-2013, Odour Control and Process Upgrades at the Humber Treatment Plant, in accordance with specifications as required by Engineering & Construction Services and request the authority to award a contract to WCC Construction Canada, ULC, in the amount of \$51,894,000 net of HST (\$52,807,334.40 net of HST recoveries).

This report also summarizes the material written objection received from Bondfield Construction Company Limited, the second lowest compliant bidder in relation to the award to WCC Construction Canada, ULC ("WCC").

**RECOMMENDATIONS**

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**The Executive Director of Engineering & Construction Services and Director of Purchasing & Materials Management recommend that:**

- 1) City Council grant authority to award Contract 13FS-15WP, Tender Call 209-2013 for Odour Control and Process Upgrades at the Humber Treatment Plant to WCC Construction Canada, ULC, in the amount of \$51,894,000 net of HST (\$52,807,334.40 net of HST recoveries) having submitted the lowest compliant bid and meeting the specifications in conformance with the Tender requirements.

## FINANCIAL IMPACT

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The total amount to award Contract 13FS-15WP, Odour Control and Process Upgrades identified in this report is \$58,640,220.00 including HST and all applicable charges (\$51,894,000 net of HST and all applicable charges). The cost to the City, net of HST recoveries, is \$52,807,334.40. The engineering estimate for this project was \$65,000,000.00, including HST and all applicable charges.

Funding is available in Toronto Water's 2013 Approved Capital Budget and 2014-2022 Capital Plan for the Humber Treatment Plant Odour Control Implementation Project, as summarized in the following table (net of HST recoveries):

Acct #	2014	2015	2016	2017	Total
CWW050-01	\$10,000,000	\$20,000,000	\$20,000,000	\$2,807,334.40	\$52,807,334.40

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

## BACKGROUND

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Tender Call 209-2013 was issued by the Purchasing & Materials Management Division (PMMD) and was advertised on the City's Internet Website on July 9, 2013.

The closing date for submissions was September 17, 2013 at noon, local time. The Purchasing & Materials Management Division, at its Public Opening held on September 17, 2013, opened the following tender submissions:

Bidders	Price Complete Including HST
Torbear Contracting Inc.	\$51,950,226.76 <sup>1,2</sup>
Bennett Contracting Millgrove Ltd.	\$52,251,200.00 <sup>1</sup>
WCC Construction Canada, ULC	\$58,640,220.00
Bondfield Construction Company Limited	\$58,922,720.00 <sup>2</sup>
Alberici Constructors, Ltd.	\$59,934,967.22 <sup>2</sup>
APLUS General Contractors Corp.	\$60,232,390.00 <sup>1</sup>
Kenaidan Contracting Ltd.	\$62,116,100.00

<sup>1</sup> This tender was declared informal as the submission did not meet mandatory qualification

<sup>2</sup> Tender Price corrected for mathematical errors. PMMD has verified that the mathematical errors were corrected.

## COMMENTS

The tender documents submitted for Tender Call 209-2013, Contract No. 13FS-15WP, Humber Treatment Plant Odour Control and Process Upgrades by the recommended bidder have been reviewed by the Executive Director, Engineering & Construction Services and have been found to be in conformance with the Tender requirements.

Engineering & Construction Services staff have compared the bids to the estimated cost and found the price of the recommended bidder to be lower than the engineering estimate of \$65,000,000.00.

The scope of work under Contract No. 13FS-15WP, Odour Control and Process Upgrades, includes construction of two new biofilters to treat the odourous air from the headworks, grit removal and primary clarifier areas at the plant, which are the major sources of odours at the Humber Wastewater Treatment Plant. The treatment of odourous air at the Plant was part of a City initiative to reduce odours at the City's wastewater treatment plants and the treatment of odourous air is now an Ontario Ministry of the Environment requirement. The work at the Humber Treatment Plant includes replacement of two raw sewage screens, new screening conveying systems, improvements to the South Grit vortex separators and conversion of the North Grit removal system to provide for an automated grit removal process in lieu of the existing clam and bucket process and all of this work is to be performed with the plant in full operational mode.

The contract is very complex as the majority of the work will take place in existing operating facilities. In particular, the work will be undertaken concurrently within several areas which include the North Plant Grit Building and the South Plant Grit removal facilities together with the Headhouse raw sewage screening equipment. The plant must stay in operation to meet the Ministry of the Environment regulatory effluent requirements during construction. The installation and replacement of process equipment must be undertaken in phases requiring significant experience from the contractor. For these reasons, a qualification standard of demonstrated project experience of \$50 million was established as a base line for the bidders. The bidders must have successfully completed two projects of a minimum value of \$50 million in a municipal wastewater or water treatment facility located in North America, where 50% of the work in at least one of the projects must have been contained within an existing operating facility. This mandatory requirement is to reflect the challenging nature of this large scale project, within an existing facility.

The Fair Wage Office has reported that the recommended firm has indicated it has reviewed and understands the Fair Wage Policy and Labour Trades requirements and has agreed to comply fully.

## **Objection from Bondfield Construction Canada Company Limited**

PMMD received two letters from Bondfield Construction Company Limited ("Bondfield"), on September 24, 2013 and September 30, 2013 respectively. Both letters reminded PMMD of the mandatory requirement described above and indicated that the City is allowed to look behind a bid that appeared to be compliant on its face with respect to the mandatory requirements. Further, Bondfield pointed out that WCC was incorporated approximately two years ago and that WCC, in of itself, does not meet the two projects over \$50 million dollars mandatory requirement. The September 30, 2013 letter indicated that if the City failed to conduct an investigation into whether WCC met the requirements and planned to award to WCC, that Bondfield would take this matter to court for determination. On the advice of Legal Services, we are taking the prudent approach that these two letters form a material written objection to the award to WCC.

During the review of WCC's submission, ECS staff did note that the two projects listed by WCC met the \$50 million dollar mandatory requirement but the work appeared to be done by WCC's U.S. affiliates. Upon review with Legal Services, PMMD sent a clarification letter to WCC on October 3, 2013 requesting that WCC describe the corporate relationship between WCC and any other legal entity that performed the work described in the bid submission, including how that relationship demonstrates a transfer of relevant past experience to WCC (i.e. demonstrate the transfer or involvement of the same directing mind and resources from the U.S. affiliated entity) and respond to PMMD by October 8, 2013. WCC responded to the clarification letter, by the deadline, explaining that, as with most large international contractors, Walsh performs work using different contractual entities allowing it to perform work in different countries while sharing resources. In particular, the letter from WCC explained that WCC is a newly formed entity within The Walsh Group and WCC has inherited the experience of The Walsh Group through integration of key Walsh Group upper management and project management individuals into WCC's operations. Further, the two projects listed in the bid response were completed by U.S. companies within the Walsh Group and that the same staff team on both projects were available to work on the Humber Treatment Plant if they were awarded the contract.

The response from WCC was reviewed by Legal Services, who provided legal advice with respect to whether WCC's bid can be considered compliant. On the basis of the clarification letter and the advice from Legal Services, PMMD and ECS are recommending that WCC be awarded Contract 13FS-15WP, Tender Call 209-2013.

## **CONTACTS**

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## **SIGNATURES**

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