STAFF REPORT
ACTION REQUIRED

Consent to Assignment of Contract 13FS-08WP - Highland Creek Treatment Plant - Biosolids Treatment Upgrades

Date: April 30, 2014
To: Public Works & Infrastructure Committee
From: Executive Director, Engineering & Construction Services
Wards: Ward 44 – (Scarborough East)
Reference Number: P:\2014\Cluster B\TEC\PW14025 (AFS #19249)

SUMMARY

This report seeks to assign existing Contract 13FS-08WP for the Highland Creek Treatment Plant – Biosolids Treatment Upgrades from Bennett Contracting Millgrove Limited to Bennett Mechanical Installations (2001) Limited. Both companies are affiliates in the Bennett Group of Companies.

RECOMMENDATIONS

The Executive Director of Engineering & Construction Services recommends that City Council:


2. Authorize the Executive Director of Engineering & Construction Services to negotiate and execute a contractual agreement to give effect to Recommendation 1 on such terms and conditions satisfactory to the Executive Director, Engineering & Construction Services and in a form acceptable to the City Solicitor.

Financial Impact
The recommendations in this report have no financial impacts on the City.
DECISION HISTORY
Bennett Contracting Millgrove Limited was prequalified as a General Contractor on May 7, 2013 through Request to Prequalify No. 3907-13-7051 for the purpose of bidding on Contract 13FS-08WP for the Highland Creek Treatment Plant – Biosolids Treatment Upgrades.

The Public Works and Infrastructure Committee awarded the above noted contract to the prequalified contractor Bennett Contracting Millgrove Limited on November 20, 2013 for Tender Call 248-2013, Contract 13FS-08WP for the Highland Creek Treatment Plant – Biosolids Treatment Upgrades. A copy of the Public Works and Infrastructure Committee approval can be found at: http://www.toronto.ca/legdocs/mmis/2013/pw/bgrd/backgroundfile-63451.pdf

ISSUE BACKGROUND
Legal counsel for Bennett Contracting Millgrove Limited requested the City's consent to assign Contract 13FS-08WP to Bennett Mechanical Installations (2001) Limited by letter transmitted via email dated January 28, 2014, as it is the intention of the parent company to "wind-up" Bennett Contracting Millgrove Limited. A copy of the letter is presented in Attachment 1.

Bennett Contracting Millgrove Limited (BCM) and Bennett Mechanical Installations (2001) Limited (BMI) are affiliates in the Bennett Group of Companies. According to the letter from Bennett Contracting Millgrove Limited's legal counsel: "BCM and BMI are virtually interchangeable and enjoy common ownership, management, key personnel, shop facilities, and bonding capabilities", and operate from one facility.

Bennett Contracting Millgrove Limited has historically bid the majority of its projects as the General Contractor, and was prequalified to bid on the above noted project. However, due to the parent company's recently announced intent to rebrand and rationalize its operations, Bennett Group of Companies advised City staff that it is seeking to complete and/or re-assign all projects under the Bennett Contracting Millgrove Limited banner as expeditiously as possible.

Contract 13FS-08WP stipulates that the contractor may not assign the contract without the written consent of the City.

COMMENTS
Contract 13FS-08WP commenced on February 3, 2014, with a stated duration of 140 calendar weeks, which will result in an anticipated completion date of October 10, 2016.

It is recommended that Contract 13FS-08WP for the Highland Creek Treatment Plant – Biosolids Treatment Upgrades be assigned from Bennett Contracting Millgrove Limited (BCM) to Bennett Mechanical Installations (2001) Limited (BMI) as this is seen to be purely an administrative adjustment to the contract. Both affiliates have performed contracts for the City for many years, and have a solid reputation for good performance.
If the recommendations to this report are adopted, Engineering & Construction Services will work with Legal Services to negotiate and execute an agreement wherein:

- BCM would assign the agreement to BMI;
- The City would consent to the assignment; and,
- BMI would agree to complete the contract in accordance with all of the terms and conditions of the contract. BMI would be subject to all of the same requirements and policies of the City for construction contracts.

Legal Services and Purchasing & Materials Management Division were consulted during preparation of this report.

CONTACT
Nancy Bonham, M.Eng., P.Eng.
Acting Director, Capital Works Delivery Engineering & Construction Services
Tel: 416-338-2851
e-mail: nbonham@toronto.ca

SIGNATURE

________________________________________
Executive Director
Engineering & Construction Services

ATTACHMENT
Attachment 1 – Letter from Legal Counsel for Bennett Contracting Millgrove Limited
Ms. Katrina Blom, Project Manager  
City of Toronto  
100 Queen Street West, 24th Floor  
East Tower, City Hall,  
Toronto, ON,  
M5H 2N2  
Email: kblom@toronto.ca

---Sent via email---

Dear Ms. Blom:

Re: Highland Creek Wastewater Treatment Plant–Biosolids Treatment Upgrades  
Contract No. 248-2013

We are writing, pursuant to general condition 1.4 of the above referenced contract (the “Contract”), to obtain the City of Toronto’s written consent allowing Bennett Contracting Millgrove Ltd to assign the Contract to Bennett Mechanical Installations (2001) Ltd.

By way of background, Bennett Contracting Millgrove Ltd. (“BCM”) and Bennett Mechanical Installations (2001) Ltd. (“BMI”) are affiliates in the Bennett Group of Companies. BCM and BMI are virtually interchangeable and enjoy common ownership; management; key personnel; shop facilities and bonding capabilities. In this regard, please see the attached letters dated January 27th and 28th, 2014, from Zurich Insurance and Simpson Wigle LAW LLP, respectively.

For no other reason, other than tradition, BCM has historically bid the majority of our projects as the “General Contractor”. However, for purposes of rebranding and rationalizing operations, it is our intention to wind-up BCM, hence, the reason for this request.
Thank you in advance for your assistance in this matter. If you require any further information and, or, have any questions, please do not hesitate to contact me at your earliest convenience.

Until then, I remain,

Yours truly,

Anthony Quinn
January 27, 2014

Allison Phillips  
Senior Corporate Buyer  
Purchasing Materials Management  
Professional Services Section  
City of Toronto  

RE: Assignment of Contract No. 248-2013  
Highland Creek Wastewater Treatment Plant – Biosolids Treatment Upgrades  
Bennett Group of Companies  

Dear Ms. Phillips:  

Zurich Insurance Company Ltd acts as surety for the Bennett Group of Companies and has done for almost 30 years.  

We consider the Bennett Group of Companies well financed, soundly managed, and their history of completed projects is most impressive. Zurich Insurance Company Ltd has provided The Bennett Group with Surety support on single project in excess of $75,000,000.00.  

The Bennett Group includes two main operating entities, Bennett Contracting Millgrove Ltd. and Bennett Mechanical Installations (2001) Ltd. The companies share common ownership, common management and all key personnel. Additionally, the Bennett Group shares shops and fabricating facilities. For surety bond purposes, and when considering the groups history of completed projects, Zurich regards the two operating corporations as interchangeable.  

With regard to the above captioned project, we would certainly consider favourably our support in the execution of the required Bid Bond, Performance Bond and Labour and Material Payment Bond in support of a contract for either Bennett Contracting Millgrove Ltd. or Bennett Mechanical Installations (2001) Ltd.  

This support however, would depend on underwriting factors at the time of tender. We also reserve the right to review the contract details and bond terms to satisfy ourselves that there are no conditions, which are detrimental to the contractor or the surety.  

100 King St. W., Suite 5500, P.O. Box 290, Toronto, ON M5X 1C9
We would be pleased to answer any other questions you may have about our experience with the Bennett Group. Please feel free to contact Doug Corby c/o Masters Insurance (Hamilton) Limited, 175 Longwood Road S., Suite 209A, Hamilton, Ontario, L8P 0A1 (905) 577-1190.

Zurich Insurance Company Ltd

JOHN LAWRIE, ATTORNEY-IN-FACT.

100 King St. W., Suite 5500, P.O. Box 290, Toronto, ON M5X 1C9
January 28, 2014

Senior Corporate Buyer
Purchasing and Materials Management
Professional Services Section
City of Toronto

Attention: Allison Phillips

Dear Madam:

RE: Bennett Group of Companies

RE: Assignment of Contract No. 248-2013
Highland Creek Wastewater Treatment Plant – Biosolids Treatment Upgrades

We are the lawyers for the Bennett Group of Companies.

We wish to confirm that Bennett Contracting Millgrove Ltd. and Bennett Mechanical Installations (2001) Ltd. are affiliates in the Bennett Group of Companies under common ownership. The Bennett Group of Companies utilizes common management and personnel operating from one facility.

If you require additional information with respect to the Bennett Group of Companies, please do not hesitate to contact the writer.

Yours very truly,

SimpsonWigle LAW LLP

[Signature]

James C. Brown

JCB/nm

*Professional Corporation  ** Member of the Ontario and New York Bar
Burlington Office: 390 Brant Street, Suite 501, Burlington, Ontario L7R 4R4 Tel: 905-639-1052 Fax: 905-333-3960