



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**Authority to Negotiate and Enter into Agreements for
Waste Diversion Processing Capacity, Initiatives
and Funding**

Date:	April 22, 2015
To:	Public Works and Infrastructure Committee
From:	General Manager, Solid Waste Management Services Director, Purchasing and Materials Management Division
Wards:	All
Reason for Confidential Information:	This report involves the security of property belonging to the City or one of its agencies, boards, and commissions.
Reference Number:	P:\2015\Cluster B\SWM\May\007PW (AFS20712)

SUMMARY

The purpose of this report is to request authority to negotiate amendments to existing agreements or enter into new agreements to ensure business continuity for the City's solid waste management system. Examples include contingency waste processing capacity, waste diversion feasibility initiatives, and external funding for waste diversion operations. Providing the requested authority to the General Manager of Solid Waste Management Services will ensure that the City has sufficient available processing capacity to maintain waste diversion programs, support the expansion and/or implementation of new waste diversion initiatives and ensure eligible funding is received.

RECOMMENDATIONS

The General Manager, Solid Waste Management Services and the Director, Purchasing and Materials Management Division, recommend that:

1. City Council extend the existing authority of the General Manager, Solid Waste Management Services (the "General Manager") to negotiate and enter into amending agreements with the City's current Source Separated Organics (SSO)

- and Single Stream Recyclable Material (SSRM) processing contractors and/or negotiate and enter into agreements with other SSO and SSRM processing contractors as required to meet the City's SSO (including SSO digestate) and SSRM processing needs for terms up to December 31, 2020 on terms and conditions satisfactory to the General Manager, Deputy City Manager and Chief Financial Officer and in a form satisfactory to the City Solicitor, provided that the prices do not exceed the fees identified in Attachment 1 – Confidential Information.
2. City Council authorize the General Manager to negotiate and enter into amending agreements with the City's current processing contractors for Leaf & Yard Waste (L&YW), Durable Goods, Household Hazardous Waste (HHW), Electronic Waste (E-Waste) and other recyclable products and enter into agreements with other processing contractors capable of managing the above waste streams as required to meet the City's processing needs for terms up to December 31, 2020 on terms and conditions satisfactory to the General Manager, Deputy City Manager and Chief Financial Officer and in a form satisfactory to the City Solicitor, provided that the prices do not exceed the amounts identified in Attachment 1 – Confidential Information.
 3. City Council authorize the General Manager to negotiate and enter into agreements with contractors to support waste diversion initiatives to test the feasibility of implementing new diversion initiatives for terms up to one (1) year on the terms and conditions satisfactory to the General Manager, Deputy City Manager and Chief Financial Officer and in a form satisfactory to the City Solicitor, provided that the total cost does not exceed the upper limit identified in Attachment 1 – Confidential Information.
 4. City Council authorize the General Manager to negotiate and enter into any and all agreements and amending agreements necessary to initiate, continue and/or enhance arrangements for the receipt of external funding for waste diversion operations with respect to waste products and waste streams indicated in Chapters 841, 844 and 846 of the Code, including all schedules thereto, each such agreement being for a term of years not to surpass December 31, 2020 on terms and conditions satisfactory to the General Manager, Deputy City Manager and Chief Financial Officer and in a form satisfactory to the City Solicitor.

Financial Impact

Recommendations in this report do not result in any financial commitments in the current operating year. Appropriate funding for the City's waste diversion programs will be included in every annual operating budget submission for Solid Waste Management Services. The specific limits of any financial impact resulting from exercising the recommended authorities are discussed in Attachment 1 – Confidential Pricing Information. These limits are based on past experience and staff observation of market variability.

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

DECISION HISTORY

At its meeting held on September 25, 26 and 27, 2006 City Council considered Report No. 6 (“Planning Study for an Expanded SSO Processing System Status Report”), Clause 5 of the Works Committee and authorized the General Manager to negotiate and enter into agreements with current and new SSO processors for terms of three to five years subject to acceptable pricing.

The City Council Decision can be viewed at:

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/wks6rpt/cl005.pdf>

At its meeting held on July 15, 16 and 17, 2008 City Council adopted Report No. PW17.3 (“Municipal Hazardous or Special Waste Funding from Waste Diversion Ontario/ Stewardship Ontario”) of the Public Works and Infrastructure Committee. This report recommended that the General Manager be authorized to negotiate and enter into agreements with Stewardship Ontario in order to receive funding from the MHSW Program Plan.

The City Council Decision can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.PW17.3>

At its meeting held on August 5 and 6, 2009 City Council adopted Report No. EX33.35 (“Amendments to Solid Waste Management Services Diversion Contracts”) of the Executive Committee and authorized the General Manager to negotiate and enter into agreements with current and new SSO and SSRM processors for terms up to December 31, 2015 subject to acceptable pricing.

The City Council Decision can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.EX33.35>

At its meeting held on October 26 and 27, 2009 City Council adopted Report No. PW27.4 (“Ontario Tire Stewardship and Ontario Electronic Stewardship Agreements”) of the Public Works and Infrastructure Committee. This report recommended that the General Manager be authorized to negotiate and enter into Collector and Hauler agreements with Ontario Tire Stewardship and Collection Site Operator agreements with Ontario Electronic Stewardship in order to receive funding from the Used Tires Program Plan and the Waste Electrical and Electronic Equipment Program Plan.

The City Council Decision can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.PW27.4>

ISSUE BACKGROUND

Agreements for Processing Capacity

The Solid Waste Management Services Division (the “Division”) is responsible for managing approximately one million tonnes of waste per year. All waste is managed in accordance with waste management legislation, waste diversion program plans as per the Waste Diversion Act, 2002 and the specific Environmental Compliance Approvals (ECAs) issued by the Ministry of the Environment and Climate Change (MOECC) governing the City’s transfer stations, HHW Depots, Durable Goods Processing Facility (DGPF) and waste management events. The Division regularly secures processing capacity from multiple contractors in accordance with the City’s Purchasing By-Law and Policies. Despite this, securing sufficient processing capacity can be challenging when unforeseen events or uncontrollable circumstances result in tonnages increasing beyond current capacity and/or when contractors encounter challenges inherent in the industry. Any inability to process or market materials can have a negative impact on the City’s collection and waste diversion programs and the public’s confidence in these programs and may conflict with the requirement to move materials in accordance with ECAs.

The Division’s ability to respond effectively and aggressively to secure alternate or additional processing capacity is essential to ensure compliance with the legislation that governs waste management activities and to ensure the success and maintenance of the City’s waste management programs.

While processing contractors may be able to offer short term emergency capacity, on demand, without impacting their ECAs, any capacity beyond this must be negotiated for longer terms. Processing contractors are governed by daily and annual tonnage limits set by their ECAs and are hesitant to commit the maximum capacity approved in their ECA without longer term commitments. The time required to undertake a full procurement process may result in any available capacity being aggressively sought and secured by other competing municipalities or industry.

The impact of a processing disruption or emergency event has historically resulted in the need to secure medium term agreements (six months to one year) to resolve immediate needs and, depending on the state of the industry, the need to commit to longer terms (multiple years) to secure reliable future processing capacity while the industry re-establishes itself. Any long term failure requires the General Manager to have the ability to immediately and aggressively negotiate with contractors to offer long term, attractive commitments and enter into legal agreements quickly before processing capacity is secured by other municipalities or industry.

The processing capacity issue was previously recognized by City Council in 2006 and 2009, authorizing the General Manager to negotiate and enter into agreements with processing contractors for Source Separated Organics, Source Separated Organics digestate and Single Stream Recyclable Material as required to meet the City’s processing needs. These agreements were authorized for terms up to five years in length

provided that the prices did not exceed an approved upper limit. This authority has permitted immediate negotiation authority and the purchasing capability in emergency situations which has been essential in ensuring the seamless operation of the City's Blue Bin Recycling Program and Green Bin Organics Program. Agreements were negotiated to secure processing services for SSO to deal with a provincial wide shortage of SSO processing capacity that enabled the City to continue to expand the Green Bin Organics Program even when a Provincial processing deficit for SSO existed. In addition, the City owned Dufferin Organics Processing Facility operating agreement was extended to manage processing capacity shortfalls and delays when commissioning the new City owned Disco Organics Processing Facility. Various agreements with SSRM processors have been effectively negotiated to manage greater than usual seasonal peaks, emergencies and unplanned facility "down" time.

The current authority expires December 31, 2015. Continued authority to aggressively seek additional and alternate processing capacity is required to ensure the stability and performance of the Blue Bin Recycling Program and Green Bin Organics Program.

Further, this authority would benefit other material streams based on the Division's experience reacting to operational challenges that require an immediate response to ensure compliance with legislation and waste diversion program performance. These materials include L&YW, Durable Goods, various recyclable products, HHW and E-Waste.

Funding Agreements for Current and Future Diversion Initiatives (including, but not limited to, Municipal Hazardous Special Waste and Waste Electrical and Electronic Equipment Program Plans)

Over the years, the City has received external funding for waste diversion operations for the various waste products and waste streams indicated in Chapters 841, 844 and 846 of the Code. Current City waste diversion operations include: accepting HHW and E-Waste at its depots, at Community Environment Day events, and through the Toxic Taxi collection program, the blue box services for recycled waste, and the source-separated organics program. The Provincial funding streams for some of these programs have been reduced or discontinued, forcing the City to look elsewhere for external funding. This report seeks authority to enable the City to take advantage of such opportunities more easily.

COMMENTS

Processing Capacity

To ensure processing capacity redundancy and to manage seasonal generation, competitive calls are structured with clauses for guaranteed and additional tonnage, allowing for increased tonnage in peak seasons, and are often awarded to multiple contractors. Despite this, extreme events have occurred and will likely continue to occur, resulting in unplanned and immediate insufficient processing capacity. A critical change

in the industry or spike in tonnage may result in multiple entities (i.e. municipalities or industry) competing for processing capacity that can result in further failure and/or the need to send material to the landfill.

Extending Existing Authority

The City is now in a unique situation whereby all SSRM processing capacity is provided by two contracts at one facility and over half the SSO processing capacity is dealt with at the Disco Organics Processing Facility. While these operations are providing the City with processing stability and enhanced diversion opportunities, it does come with an inherent risk of failure. Failure at either site, longer than a few days, can have significant impact to the City's Blue Bin Recycling Program and Green Bin Organics Program.

The previous authority granted by Council to enter into agreements has ensured continued processing capacity for SSRM, SSO and SSO digestate over the past five years when processing facilities experienced short and long term failures or when tonnages generated by residents increased beyond the City's contracted capacity. Staff request this existing authority be extended for another 5 years until December 31, 2020 and that the pricing be updated to reflect current market rates as identified in Attachment 1 – Confidential Information.

New Authority for Additional Waste Material Streams

Stable processing capacity exists for L&YW and is routinely secured. In the past, additional processing capacity and services for L&YW were secured as a result of extreme weather events or invasive species. Extreme weather events result in peaks which are challenging and sometimes not possible to accommodate within the capacity of existing L&YW processing and grinding contracts. Ministerial Orders issued due to the presence of invasive species such as the Asian Long Horned Beetle result in operations changing immediately to comply with quarantine zones, transfer, grinding and inspection requirements. The ability to secure additional L&YW processing or grinding capacity under existing agreements or secure new agreements would facilitate an immediate response to such uncontrollable events.

Solid Waste Management Services established the Durable Goods Processing Facility in 2008 that permitted the City to provide new diversion opportunities for mattresses, bulky mixed plastics and ceramics among other materials. Securing processing capacity for these materials has been challenging for the Division as processing capacity and markets are still developing. Certain recyclable products for which the Division is responsible for marketing present similar challenges and some are traditionally problematic due to the following: a limited number of contractors offering processing services, the ongoing development of markets, and unpredictable market fluctuations and pronounced revenue swings causing processors to fail financially. Should one contractor fail, options to find alternate processing capacity are extremely limited. Often there are only one or two options available or in a worst case scenario, no capacity is available and staff turn to industry to assist with rebuilding markets.

The ability to secure processing capacity for Durable Goods and various recyclable products will ensure continuity of processing services and help processing capacity and markets develop.

Contractors managing the City's HHW have been reliable but due to the nature of the material and the inherent environmental, health and safety risks, equivalent authority is sought. For both HHW and E-Waste, the Division relies on provincially mandated programs established through the Waste Diversion Act, 2002. These programs are beneficial and ensure consistent funding in a prescribed and predictable manner. Nonetheless, if a contractor fails and all or a portion of the materials under a program plan are left without a contract, the Division must continue to manage the material and secure alternate processing capacity immediately while other municipalities may be competing for the same processing capacity.

To ensure the continued success of the City's waste diversion programs and compliance with waste management legislation, the Division is requesting that authority be granted to amend existing, enter into new and negotiate agreements for the following materials streams: L&YW, Durable Goods, various recyclable products, HHW and E-Waste. Pricing would be negotiated and not exceed the amounts outlined in Attachment 1 – Confidential Information.

Support for New Waste Diversion Initiatives

The Division is continually researching and seeking new diversion initiatives. There is no mechanism currently in the City's Purchasing By-Law and Policies that permits the Division to be able to supply a material stream to a vendor as a one-time market development initiative to test the feasibility and sustainability of a processing technology. The Division is seeking authority to enter into and negotiate agreements with contractors to support the development of waste diversion initiatives which in turn would facilitate the expansion of the City's waste diversion programs. Terms would be for no longer than one year and each agreement would not exceed the amounts identified in Attachment 1 – Confidential Information.

Authority to Enter into Funding Agreements for Current and New Waste Diversion Initiatives (including, but not limited, to MHSW and Waste Electrical and Electronic Equipment Program Plans)

Although the City pays to provide waste diversion services, the City has been able to offset a significant portion of those incurred costs from the Province through product stewardship programs such as the Consolidated Municipal Hazardous Special Waste (MSHW) Program Plan introduced in 2009 and the Blue Box Program introduced in 2004.

On July 14, 2014, the Province advised municipalities that it would be cancelling part of the MSHW Program Plan that covers the following materials:

- Rechargeable batteries
- Portable fire extinguishers
- Fluorescent light bulbs and tubes
- Mercury containing devices (thermometers, thermostats, barometers, or other measuring devices that contain mercury)
- Sharps and syringes
- Pharmaceuticals

As a result of these changes, individual product stewardship funding agreements are now being developed for each material. Until a more comprehensive Ontario-wide funding arrangement is adopted through new pending waste diversion legislation, the only opportunity for the City to continue to receive external funding for the diversion services listed above is to enter into various separate agreements with product stewardship organizations that represent different groups of manufacturers. Over the next few years, other changes could occur to existing product stewardship waste diversion funding or new opportunities could arise for external funding for other diversion programs that the City currently operates pursuant to Chapters 841, 844 and 846 of the Code or may come to operate. For the City to be in a strong position to take advantage of these external funding opportunities resulting from product stewardship agreements, the General Manager is requesting delegated authority to enter into these agreements without having to seek authority for each opportunity. The staff recommendation requires that such agreements be in a form acceptable to the City Solicitor.

Conclusions

The authority requested in this report is necessary to ensure business continuity including securing processing capacity in response to uncontrollable events; to receive eligible funding to offset waste diversion program costs; and to further support the development of new waste diversion initiatives.

Pricing will be based on the existing or most recent waste management contract, be reflective of current market rates and will not exceed the amounts or upper limits outlined in Attachment 1 – Confidential Information. Terms and conditions of any agreement resulting from the recommendations in this report will be to the satisfaction of the General Manager and in a form satisfactory to the City Solicitor.

CONTACT

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SIGNATURE

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ATTACHMENTS

Attachment 1: Confidential Information re: Authority to Negotiate and Enter into Agreements for Waste Diversion Processing Capacity, Initiatives and Funding