

# **Amendment to Purchase Order No. 6042663 WSN Construction Inc. and Purchase Order No. 6041832 GHD Ltd. for Contracted Construction and Professional Engineering Services at the Expanded Dufferin Organics Processing Facility**

**Date:** August 30, 2021

**To:** Infrastructure & Environment Committee

**From:** General Manager, Solid Waste Management Services & Chief Procurement Officer, Purchasing & Materials Management Division

**Wards:** All

## **SUMMARY**

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The purpose of this report is to request approval to amend Purchase Order No. 6042663 for WSN Construction Inc. ("WSN") in the sum of \$4,825,000 net of all taxes and charges (\$4,909,902 net of HST recoveries), including an extension of the term to December 31, 2021. Due to unanticipated delays in the commissioning of the expanded Dufferin Organics Processing Facility, a contract amendment is needed to fund the cost of processing additional tonnes of organic material under the capially funded Design-Build Contract as opposed to the Operating Budget. The cost to process the organic material was originally budgeted against the Operating Budget following the anticipated Substantial Completion date. With the cost of organics processing being charged to Capital and not Operating, the overall net impact to Solid Waste Management Services (SWMS) with this contract amendment is \$0.

In addition, this report requests approval to amend Purchase Order 6041832, for GHD Ltd., in the sum of \$200,000 net of all taxes and charges (\$203,520 net of HST recoveries), including an extension of the term to December 31, 2023. The amendment is being requested for additional Professional Engineering Services, including contract administration, deficiency oversight including inspection, and post warranty support, for the expanded Dufferin Organics Processing Facility.

## RECOMMENDATIONS

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The General Manager, Solid Waste Management Services, and the Chief Procurement Officer recommend that:

1. The Infrastructure and Environment Committee, in accordance with Section 71-11.1.C of the City of Toronto Municipal Code Chapter 71 (Financial Control), approve:

a. Amendment to Purchase Order No. 6042663 with WSN Construction Ltd. as a result of Request for Proposal No. 9117-14-3049 by an additional amount of \$4,825,000 excluding taxes and charges (\$4,909,902 net of HST recovery), increasing the current purchase order value from \$70,560,142 net of all taxes and charges (\$71,802,000 net of HST recovery) to \$75,385,142 net of all taxes and charges (\$76,711,920 net of HST recovery); and extend the Purchase Order from June 1, 2019 to December 31, 2021.

b. Amendment to Purchase Order No. 6041832 with GHD Ltd. as a result of Request for Proposal No. 9117-13-3073 by an additional amount of \$200,000 excluding taxes and charges (\$203,519 net of HST recovery), increasing the current purchase order value from \$2,300,758 net of all taxes and charges (\$2,341,251 net of HST recovery) to \$2,500,758 net of all taxes and charges (\$2,544,771 net of HST recovery); and extend the Purchase Order from December 31, 2022 to December 31, 2023.

## FINANCIAL IMPACT

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The amendment to Purchase Order No. 6042663 for an additional amount of \$4,825,000 excluding taxes and charges, (\$4,909,920 net of HST recoveries), increases the current value of Purchase Order No. 6042663 from \$70,560,142 net of all taxes and charges (\$71,802,000 net of HST recovery) to \$75,385,142 net of all taxes and charges (\$76,711,920 net of HST recoveries). With the cost of organics processing being charged to capital and not operating the overall net impact to solid waste management services with this contract amendment is \$0.

The amendment to Purchase Order No. 6041832 for an additional amount of \$200,000 excluding taxes and charges (\$203,519 net of HST recovery), increasing the current purchase order value from \$2,300,758 net of all taxes and charges (\$2,341,251 net of HST recovery) to \$2,500,758 net of all taxes and charges (\$2,544,771 net of HST recovery)

Funding is included in the Solid Waste Management Services 2021 Approved Capital Budget and 2022-2030 Approved Capital Plan, as summarized in Table 1 below.

Table 1: Financial Impact Summary

WBS Element	SAP Description	2021 Funding Requirement (net of HST recoveries)
CSW009-01-01	Dufferin OPF Facility	\$4,909,920
CSW009-01-02	Dufferin OPF Facility-Consultant	\$203,520
Total		\$5,113,440

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact.

## DECISION HISTORY

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On September 30, 2015 City Council adopted PW7.10, "Contract Award - Request for Proposals No. 9117-14-3049 Design, Build, Operate and Maintain the expanded Dufferin Organics Processing Facility" with amendments.

City Council Decision document can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PW7.10>

At its meeting on July 10, 2013, the Bid Committee adopted "Request for Proposal No. 9117-13-3073 for Professional Engineering Services for the Expansion of the Dufferin Organics Processing Facility (Ward 8)".

The Bid Committee Decision document can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.BD132.4>

## COMMENTS

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### WSN Construction

Due to delays experienced during the commissioning phase of the project, WSN Construction processed additional organic material incurring additional costs above \$500,000. In accordance with Chapter 71 (Financial Control), Infrastructure and Environment Committee approval is required for the Purchase Order amendment. The overall financial impact of the amendment is effectively zero, as the cost to process these tonnes would have been covered under the 3-year Operate Maintain agreement with WSN Construction within the Solid Waste Management Services' Operating Budget.

As a result of the delays, the contemplated Purchase Order Amendments in this report are part of a comprehensive Change Order negotiated with WSN Construction, in consultation with Legal Services, which had the overall goal of resolving all outstanding matters to avoid a dispute. Staff were unable to bring forth a report until such time the negotiations to get to substantial completion, and financial impacts of such negotiations were realized. During this period, WSN Construction continued to accept and process organics thereby keeping the facility operational during the negotiations.

The original Substantial Completion date for the project was September 2018, which was further extended to November 2018, and then again to April 2019 as a result of construction delays. Substantial Completion was not achieved in April 2019. WSN Construction commenced the Performance Acceptance Test on September 28, 2020 and concluded on October 11, 2020. During the Performance Acceptance Test period, WSN Construction demonstrated the facility had a processing capacity equivalent to the required 55,000 tonnes of organics per year, but failed to meet all of the key performance parameters, which resulted in an overall "fail" delaying Substantial Completion. WSN Construction requested that the City enter into discussions to facilitate the closure of the Design, Build and Commission agreement and allow the transition to the Operate and Maintain agreement. These discussions took place between November 2020 and July 2021, with input from Solid Waste Management Services' Contract Administrator, GHD Ltd., City Legal and Solid Waste Management Services staff.

During the period between October 12th, 2020 and July 9th 2021, WSN Construction continued to accept and process organics, thereby keeping the facility operational, and processed 39,918.37 tonnes. Additional funds, estimated at \$4,825,000 net of all taxes and charges, are required under the Design-Build contract to pay for the tonnes processed during the commissioning period.

### **GHD Ltd.**

On July 10, 2013 Bid Committee adopted without amendment the Award of Request for Proposal No. 9117-13-3073 to Conestoga-Rovers & Associates, (presently known as GHD Ltd.) for Engineering and Consulting Services for Expansion of the Dufferin Organics Processing Facility.

Purchase Order No. 6041832 has been amended four (4) times to date and requires a fifth amendment, estimated at \$200,000 net of all taxes and charges, for the additional services, including on-going contract administration, deficiency oversight and inspection, and post warranty support into 2023.

GHD has been involved with the project since 2013 and has established special knowledge, skill, expertise and experience with respect to the project and is therefore uniquely positioned to work closely with the City and the Contractor to bring this project to completion. GHD has confirmed that they are in agreement with the proposed extension and that the increase in the Purchase Order value would be under the same terms and conditions of the existing agreement.

In accordance with Chapter 71 (Financial Control), Infrastructure and Environment Committee approval is required for the Purchase Order amendment.

In summary, the above Purchase Order Amendments are part of a comprehensive Change Order negotiated with WSN Construction, in consultation with Legal Services, which had the overall goal of resolving all outstanding matters to avoid a dispute. Proceeding with Infrastructure & Environment Committee's approval of the Purchase Order Amendments is a far preferable alternative to any legal dispute or breach of contract.

## **CONTACT**

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## **SIGNATURE**

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