
Subject: Capital Variance Request and Status Update for Contract 2015-T-109
(RN 15-09) Welland WWTP, Phase 1

Report to: Public Works Committee

Report date: September 8, 2020

Recommendations

1. That the gross budget for the Welland Wastewater Treatment Plant, Phase I Upgrades **BE INCREASED** by \$551,531 and that the increase **BE FUNDED** from the Capital Variance – Wastewater Project; and
2. That the Purchase Order 0000006182 for Cole Engineering Group to provide services for Contract and Administration and Inspection (CA&I) for the Welland WWTP Upgrades **BE INCREASED** by \$414,163 (including 1.76% non-recoverable HST).

Key Facts

- The purpose of this report is to provide an update to the Committee on the project progress and to request approval to increase the project budget and the Purchase Order for Contract Administration and Inspection Services provided by Cole Engineering Group (Cole). As indicated in the previous report (July 14, 2020, PW 32-2020), the Region had agreed to a contract extension to August 17, 2018.
- The Region is now in litigation with the contractor, Varcon Construction Corporation (Varcon) and Region's internal legal counsel and external legal counsel (Gowling WLG) have been involved with the matter since October, 2019.
- Region staff put Varcon on Notice of Default on February 12, 2020. The period to correct default has been extended 4 times since then with a current deadline being September 1, 2020. Internal and external legal are in discussions with Varcon's legal counsel pressing for resolution of Varcon's default and advising PW staff.
- A revised construction schedule was submitted by Varcon on August 5, 2020, indicating a new completion date of January 21, 2021. This schedule is currently under review by Cole and the Region.
- Due to this further delay, Cole is required to spend additional time and effort to provide Contract Administration and Inspection Services. After discussions with internal and external Legal, PW staff recommends lengthening Cole's services contract to align with Varcon's latest revised construction schedule.

Financial Considerations

As a result of delays and extensions with the construction contract, an additional \$551,531 (including 1.76% non-recoverable HST) has been forecasted for the Welland Wastewater Treatment Plant Phase I Upgrades construction project. Of the amount above, \$414,163 relates to contract administration and inspection services required in order to accommodate the schedule extension to February 28, 2021 (estimated final completion). In addition, \$137,368 is requested to cover increased internal staff costs for the remainder of the project and a contingency for any unforeseen expenditures that may be incurred.

The total project expenditures and revenues to date are shown in the Total Estimated Project Cost Summary in Appendix 2. As outlined in the chart, there is an overall approved budget of \$21,821,204. To date, the total cost including commitments of the project is \$21,676,135. Forecasted costs to complete the project total \$696,600 for a total revised project cost of \$22,372,735. This leaves a shortfall of \$551,531, therefore a budget increase in the amount of the shortfall is being requested. The amount of \$551,531 will be funded from the Wastewater Capital Variance Project. The balance of the Wastewater Capital Variance Project is \$5,448,844 as of August 13, 2020.

The Region has been assessing Liquidated Damages at approximately \$44,000 per month (\$2,000/working day). As of July 15, 2020, Varcon has been assessed \$958,000 in liquidated damages.

Analysis

A construction progress update was provided in the previous report (PW 32-2020, July 14, 2020). Notwithstanding the many ongoing challenges with scheduling, construction sequencing, subcontractor liens and working with the contractor in an attempt to improve cooperation with their subcontractors, construction progress continues to move ahead at a slow rate.

Niagara Region's staff continue to be involved in the inspection and coordination of work and engaging with internal and external Legal regarding the ongoing litigation.

Region staff continue to provide Varcon a clear message that poor quality coordination, scheduling and workmanship will not be accepted.

A progress update is provided below.

Construction Progress to date:

1. Lift Station: Wet Well Side - 74% complete; Dry Well Side - 30% complete
2. Administration Building - 98% complete
3. Screen Building and Grit System - 94% complete
4. Primary tanks and Gallery - 75% complete
5. Secondary Building and Final Clarifier - 94% complete
6. Aeration Tanks - 95% complete
7. Chemical Storage Facility - 95% complete
8. Chlorine Building - 95% complete
9. Maintenance Building - 90% complete
10. Digester Building – 90% Complete
11. Electrical Substation - 98% complete
12. Civil Works - 90% complete

Even though the construction is progressing, Varcon have not met their schedule obligations of the August 17, 2018 completion date. Progress is currently being tracked against their most recently submitted schedule which is still being reviewed by Region and Cole staff for validity.

As previously indicated, Varcon has, and is being, assessed Liquidated Damages, as stipulated in the contract, for every working day since August 17, 2018.

Water and Wastewater Engineering staff have been providing a significantly higher than normal amount of resources throughout the project in order to manage the contract. Corporate Services is also providing a significant amount time on additional contract / project payments as well as lien claims. Legal Services are also fully engaged as a result of the construction liens and claims filed and are investing significant time, effort and resources on this project.

Cole have been providing Contract Administration and Inspection Services for the project since construction began and are integral to the Region's effort to move forward on the project.

Cole's familiarity with the project since commencement and the stakeholders involved to date will allow them to provide these services without having to expend additional time acquiring the knowledge of 4 years of construction progress. Cole is very familiar with the criticality and associated risks of this overall project. As the design engineer, Cole is also best suited to provide services during all of the start-up and commissioning tasks approaching on the project.

The extension of Cole's existing contract would be classified pursuant to the Procurement by-law as a single source addition, however the nature and complexity of Cole's continued CA&I services required on the ongoing capital project meet two of the requirements for single source purchases as defined in the Region's Procurement By-law, namely:

- (i) Compatibility of a Purchase with existing equipment, product standards, facilities or service is a paramount consideration;
- (ii) An absence of competition for technical reasons and the Goods and/or Services can only be supplied by a particular Supplier;

In order to maintain efficiency, reduce risks and possible costs, and given the existing delay to the project and active litigation, staff recommends proceeding with Cole to continue providing CA&I services for the remainder of construction and that Purchase Order 0000006182 be increased accordingly.

Alternatives Reviewed

Do Nothing – this alternative does not address the need for continued and consistent contract administration and inspection services as well as the other related costs (internal and external) required to bring the upgrades of the plant to completion.

Procure further CA&I services competitively – this alternative would (if not awarded to Cole) result in a lack of continuity of project team which is necessary to support project completion and ongoing litigation. Another entity would not have the background knowledge to be able to effectively manage the remainder of the project, provide the needed information for the litigation process and make informed recommendations related to the work.

Relationship to Council Strategic Priorities

This recommendation is related to the Fostering Growth strategic priority since the planned upgrades will ensure reliable infrastructure to support growth and economic development within the Niagara Region.

Other Pertinent Reports

Confidential CSD 29-2020 Update regarding NOTL WWTP, NOTL SPS and Welland WWTP Upgrades

PW 32-2020, Welland WWTP Update

PW 11-2019, February 19, 2019, Budget Increase Request

PW 06-2018, February 20, 2018, Budget Increase Request

Confidential PW 17-2017, March 21, 2017, A Matter of Litigation or Potential Litigation, Including Matters Before Administrative Tribunals, Affecting the Municipality – Contract No. 2015-T-109 (RN 15-09) Welland WWTP Phase I Upgrades – Project Status Report
PW 35-2017, September 5, 2017, Welland Wastewater Treatment Plant, Phase I Upgrades

PW 56-2015, October 13, 2015, Award of Contract 2015-T-109 (RN 15-09) Welland Wastewater Treatment Plant Upgrades, in the City of Welland

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Appendices

Appendix 1	Key Map
Appendix 2	Total Estimated Project Cost