
MEMORANDUM

PWC-C 1-2019

Subject: Emterra Collection Contract Update

Date: Tuesday, January 8, 2018

To: Public Works Committee

From: Sherri Tait, Acting Associate Director, Collection & Diversion Operations

This memorandum is to provide members of the Public Works Committee (PWC) an update on Emterra Environmental's (Emterra) performance and negotiations related to the Collection/Haulage of Garbage, Recyclables, Organic Waste and White Goods Contract 2009-RFP-44 (Contract) since last reported in the confidential report PW 31-2018 and presented to PWC on September 4, 2018.

Background

As a result of unsatisfactory service delivery provided by Emterra in 2017 and early 2018, and in particular, during the weeks following the Holiday break (December 26, 2017 to January 12, 2018), Emterra developed an Operations Enhancement Action Plan to achieve full compliance with the requirements of the Contract.

Staff met regularly with Emterra (and continue to do so) to review performance metrics and resources in place to meet the Contract terms. Despite these regular meetings and Emterra's Operations Enhancement Action Plan, Emterra still fell short during 2018 on meeting key deliverables, in particular those related to hours of collection and customer service/relations (missed collections). An update on Emterra performance related to key contract deliverables is found in Appendix A.

On July 17, 2018 PWC passed the following motion related to PW 32-2018:

- That staff **CONSIDER** all remedies to address default in accordance with the contract, including negotiation of the removal of portions of the work from the contract, to be tendered to an alternative service provider and provide a recommendation at the September 4, 2018 Public Works Committee meeting.

In response to the above noted-motion and the subsequent confidential report (PW 31-2018) to PWC on September 4, 2018, Emterra and Niagara Region met on several occasions and subsequently exchanged confidential correspondence.

Niagara Region and Emterra, through the negotiations, have been actively discussing potential solutions aimed at enabling Emterra to continue to fulfil its obligations pursuant to the Contract without default. It was concluded that specific amendments to the

Contract were required to assist Emterra in fulfilling all its responsibilities for the remaining term of the Contract.

Public Works Committee members were provided an update at the September 4, 2018 Public Works Committee via the confidential report PW 31-2018 on the negotiations. This report was received for information.

Niagara Region and Emterra have finalized amendments related to the removal of routes and Liquidated Damages, which are described below in more detail. Details of negotiations that are still being finalized are found in the confidential report PW 6-2019.

1. Removal of Routes

Niagara Region and Emterra have agreed that Emterra's deficiencies amount to a Tier Two Event of Default, which allows for the carving off of routes from Emterra. Niagara Region and Emterra have agreed to carve off routes in the Town of Lincoln and Township of West Lincoln in order to increase Emterra's available internal resources for use in areas where the majority of specific events of non-collection and/or late collection have occurred (i.e. urban areas of St. Catharines and Niagara Falls).

From August 1 to September 17, 2018, Emterra failed to provide regularly scheduled collection services to approximately 5,200 low density residential dwellings on an average day. There were additional delays outside of this time frame, including during the spring and fall dedicated leaf and yard waste collection. The routes removed represent approximately 3,000 low density residential dwellings per day and although less than the average not completed by Emterra, they were agreed upon as they are stand alone and are not in high urban areas, as requested by Emterra. This will ensure there is no cross-over between Emterra and the new service provider. Another consideration was the availability of used collection vehicles in the current marketplace. The Town of Lincoln and Township of West Lincoln are serviced by six (6) to eight (8) collection vehicles which staff felt a new service provider could secure or currently have within their existing fleet.

Niagara Region issued a Request for Tender for the curbside collection of garbage, recycling, organics and white goods for Lincoln and West Lincoln (excluding front-end garbage collection at approximately 11 properties in both municipalities). The tender closed on November 20, 2018 and was awarded to the lowest bidder, Canadian Waste Management Inc. at \$4,292,717.80 for the contract period of January 2, 2019 to March 7, 2021.

Staff will utilize a variety of methods to inform residents of the Town of Lincoln and Township of West Lincoln of the change in service provider.

2. Liquidated Damages

Amendments to the liquidated damages provisions of the original Contract were also agreed upon. Amendments are to focus liquidated damages on specific deficiencies and thereby increase Emterra's ability to identify and fund solutions (by the anticipated reduction in the aggregate liquidated damages as the level of service improves, notwithstanding the potential of certain continued events of default).

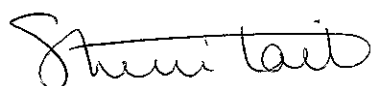
The previous liquidated damages structure was \$1,000 for the first occurrence, \$2,000 for the second occurrence and \$5,000 for the third and subsequent occurrences regardless of the type of default.

The updated liquidated damages are found in Appendix B and are based on the type of default.

Next Steps

At the time of this report being authored, Niagara Region continues to meet with Emterra on a regular basis to discuss operational details and performance. Negotiations and remaining amendments to the Contract are being finalized. Niagara Region will continue to enforce the Contract terms and conditions to ensure compliance.

Respectfully submitted and signed by



Sherri Tait
Associate Director, Collection & Diversion Operations

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