

**THE REGIONAL MUNICIPALITY OF NIAGARA
PROCEEDINGS OF SPECIAL COUNCIL
OPEN SESSION**

**CL 18-2020
Thursday, September 24, 2020
Council Chamber/Video Conference
Niagara Region Headquarters, Campbell West
1815 Sir Isaac Brock Way, Thorold, ON**

Council Members Present in the Council Chamber:	Bradley (Regional Chair), Insinna
Council Members Present via Video Conference:	Bellows, Butters, Bylsma, Chiocchio, Darte, Diodati, Disero, Easton, Edgar, Fertich, Foster, Gale, Gibson, Greenwood, Heit, Huson, Ip, Nicholson, Redekop, Rigby, Sendzik, Steele, Ugulini, Villella, Whalen, Witteveen, Zalepa
Absent/Regrets:	Campion, Jordan, Junkin
Staff Present in the Council Chamber:	D. Barnhart, Executive Officer to the Regional Chair, D. Gibbs, Director, Legal & Court Services, T. Harrison, Commissioner/Treasurer, Corporate Services, M. Lewis, Technology Support Analyst, F. Meffe, Director, Human Resources, B. Menage, Director, Procurement & Strategic Acquisitions, A.-M. Norio, Regional Clerk, R. Tripp, Acting Chief Administrative Officer, B. Zvaniga, Interim Commissioner, Public Works
Staff Present via Video Conference:	D. Johnson, Associate Director, Wastewater Operations, Maintenance & Laboratory Services, A. Jugley, Commissioner, Community Services, R. Mostacci, Commissioner, Planning & Development Services, C. Ogunniyi, Diversity, Equity & Inclusion Program Manager, J. Tonellato, Director, Water & Wastewater Services
Others Present via Video Conference:	D. Ross, Third Party Biosolids and Residual Solids Subject Matter Expert, CH2M Hill Canada Limited (Jacobs), K. Scott, Fairness Commissioner, Optimus SBR

1. CALL TO ORDER

Regional Chair Bradley called the meeting to order at 4:02 p.m.

2. **ADOPTION OF AGENDA**

Moved by Councillor Steele
Seconded by Councillor Edgar

That Council Agenda CL 18-2020, **BE ADOPTED.**

Carried

3. **DISCLOSURES OF PECUNIARY INTEREST**

There were no disclosures of pecuniary interest.

4. **REPORTS FOR CONSIDERATION**

4.1 **PW 33-2020**

Award of Request For Proposal 2020-RFP-60 Liquid Biosolids and Residuals Management Program

Moved by Councillor Edgar
Seconded by Councillor Huson

That Report PW 33-2020, dated September 24, 2020, respecting Award of Request For Proposal 2020-RFP-60 Liquid Biosolids and Residuals Management Program, **BE RECEIVED** and the following recommendations **BE APPROVED:**

1. That Contract 2020-RFP-60 Liquid Biosolids and Residuals Management Program **BE AWARDED** to 2386246 Ontario Inc. (Thomas Nutrient Solutions), based on year one pricing of \$5,043,651.22 (including 13% HST) for a four (4) year (plus 3 month period remaining 2020) initial term, with two (2) optional, one (1) year extension terms, and;

1.1 The term of the contract is summarized as follows:

Initial Term:

Year 1: Oct 1, 2020 – Dec 31 2021 (15 month period)
Year 2: Jan 1, 2022 – Dec 31, 2022
Year 3: Jan 1, 2023 – Dec 31, 2023
Year 4: Jan 1, 2024 – Dec 31, 2024

Optional Extensions:

Year 1: Jan 1, 2025 – Dec 31, 2025
Year 2: Jan 1, 2026 – Dec 31, 2026

2. That the Regional Chair and Regional Clerk **BE AUTHORIZED** to execute the Contract and any required documents related thereto in a form satisfactory to the Director of Legal and Court Services.

Councillor Gale provided comments on Report PW 33-2020 that he requested be attached to the minutes (attached as CL-C 101-2020) and introduced information concerning the current whistleblower investigation. Councillor Redekop rose on a point of order indicating that the whistleblower investigation was not pertinent to the motion before Council.

The Regional Chair ruled that discussion of the current whistleblower investigation was not germane to the matter before Council.

Councillor Gale challenged the ruling of the Chair and as a result the following motion was considered to determine whether the ruling of the Chair would be upheld.

Moved by Councillor Gale
Seconded by Councillor Darté

That the ruling of the Chair **BE SUSTAINED** that discussion of the current whistleblower investigation is not germane to the matter currently before Council.

Recorded Vote:

Yes (16): Disero, Easton, Edgar, Foster, Greenwood, Heit, Huson, Insinna, Ip, Redekop, Rigby, Sendzik, Steele, Ugulini, Witteveen, Zalepa.

No (11): Butters, Bylsma, Chiocchio, Darté, Diodati, Fertich, Gale, Gibson, Nicholson, Villella, Whalen.

Carried

Information was requested respecting the whistleblower investigation in relation to the RFP process, specifically whether those named in the whistleblower complaint participated in the RFP process. Staff advised that the whistleblower investigation as it related to the RFP would need to be discussed in closed session as these items relate to personal matters about identifiable individuals and legal advice that would be subject to solicitor-client privilege; therefore it was:

Moved by Councillor Gibson
Seconded by Councillor Steele

That Council **DO NOW MOVE** into closed session for the purposes of receiving information of a confidential nature respecting:

A Matter concerning Personal Matters about identifiable individuals under s. 239(2) of the Municipal Act, 2001- Whistleblower Policy Complaints; and

A Matter of Legal Advice that is Subject to Solicitor-client privilege under s. 239(2) of the Municipal Act, 2001 - Award of Request For Proposal 2020-RFP-60 Liquid Biosolids and Residuals Management Program.

Carried

Council resolved into closed session at 4:42 p.m.

Council reconvened in open session at 6:33 p.m. with the following individuals in attendance:

Council Members Present in the Council Chamber:	Bradley (Regional Chair), Insinna
Council Members Present via Video Conference:	Bellows, Butters, Bylsma, Chiocchio, Darté, Diodati, Disero, Easton, Edgar, Fertich, Foster, Gale, Gibson, Greenwood, Heit, Huson, Ip, Nicholson, Redekop, Rigby, Sendzik, Steele, Ugolini, Villella, Whalen, Witteveen, Zalepa
Absent/Regrets:	Campion, Jordan, Junkin
Staff Present in the Council Chamber:	D. Gibbs, Director, Legal & Court Services, T. Harrison, Commissioner/Treasurer, Corporate Services, M. Lewis, Technology Support Analyst, F. Meffe, Director, Human Resources, B. Menage, Director, Procurement & Strategic Acquisitions, A.-M. Norio, Regional Clerk, R. Tripp, Acting Chief Administrative Officer, B. Zvaniga, Interim Commissioner, Public Works
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Others Present via Video Conference:	D. Ross, Third Party Biosolids and Residual Solids Subject Matter Expert, CH2M Hill Canada Limited (Jacobs), K. Scott, Fairness Commissioner, Optimus SBR

Moved by Councillor Foster
Seconded by Councillor Easton

That the Legal Advice that is Subject to Solicitor-client privilege under s. 239(2) of the Municipal Act, 2001 respecting Award of Request For Proposal 2020-RFP-60 Liquid Biosolids and Residuals Management Program and the information respecting A Matter concerning Personal Matters about identifiable individuals under s. 239(2) of the Municipal Act, 2001- Whistleblower Policy Complaints, **BE RECEIVED**.

Carried

Moved by Councillor Darté
Seconded by Councillor Gale

That the Award of Request For Proposal 2020-RFP-60 Liquid Biosolids and Residuals Management Program **BE DEFERRED** for 60 days.

Recorded Vote:

Yes (8): Bellows, Chiocchio, Darté, Diodati, Fertich, Gale, Heit, Nicholson.

No (19): Butters, Bylsma, Easton, Edgar, Foster, Gibson, Greenwood, Huson, Insinna, Ip, Redekop, Rigby, Sendzik, Steele, Ugulini, Villella, Whalen, Witteveen, Zalepa.

Defeated

The Regional Chair called the vote on the recommendation contained in Report PW 33-2020 as follows:

That Report PW 33-2020, dated September 24, 2020, respecting Award of Request For Proposal 2020-RFP-60 Liquid Biosolids and Residuals Management Program, **BE RECEIVED** and the following recommendations **BE APPROVED**:

1. That Contract 2020-RFP-60 Liquid Biosolids and Residuals Management Program **BE AWARDED** to 2386246 Ontario Inc. (Thomas Nutrient Solutions), based on year one pricing of \$5,043,651.22 (including 13% HST) for a four (4) year (plus 3 month period remaining 2020) initial term, with two (2) optional, one (1) year extension terms, and;

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Optional Extensions:

Year 1: Jan 1, 2025 – Dec 31, 2025

Year 2: Jan 1, 2026 – Dec 31, 2026

2. That the Regional Chair and Regional Clerk **BE AUTHORIZED** to execute the Contract and any required documents related thereto in a form satisfactory to the Director of Legal and Court Services.

Recorded Vote:

Yes (18): Butters, Bylsma, Easton, Edgar, Foster, Gibson, Greenwood, Heit, Huson, Insinna, Ip, Redekop, Rigby, Sendzik, Steele, Ugulini, Witteveen, Zalepa.

No (9): Bellows, Chiocchio, Darte, Diodati, Fertich, Gale, Nicholson, Villella, Whalen.

Carried

The meeting recessed at 6:56 p.m.

The meeting resumed at 6:57 p.m.

Councillor Information Request(s):

That the Procurement By-law be reviewed by the Procurement Advisory Committee. Councillor Huson.

5. CLOSED SESSION

Diversity and Inclusion

Due to time constraints, Council did not resolve into closed session for An Education or Training Session held under s.239(3.1) of the Municipal Act, 2001 - Diversity and Inclusion.

7. **BY-LAWS**

7.1 **Bill 2020-70**

Moved by Councillor Rigby
Seconded by Councillor Gibson

That Bill 2020-70 being a by-law to adopt, ratify and confirm the actions of Regional Council at its special meeting held on September 24, 2020, **BE NOW READ** and **DO PASS**.

Carried

8. **ADJOURNMENT**

There being no further business, the meeting adjourned at 7:03 p.m.

Jim Bradley
Regional Chair

Ann-Marie Norio
Regional Clerk

**COMMENTS SUBMITTED BY COUNCILLOR GALE RESPECTING
BISOLIDS TENDER**

Mr. Chair, I have some comments, and thereafter I have some questions for staff.

My first comment is that I have reviewed the Request For Proposal issued by the Region. In the RFP, Section 3.6.1 states that Council may:

- ☐ Cancel this RFP at any stage;
- ☐ Cancel this RFP at any stage and issue a new RFP; or
- ☐ Accept any proposal in whole or in part; or reject any or all proposals.

And these reserved rights are in addition to any other expressed rights or any other rights that may be implied in the circumstances.

So, we as Council may accept any proposal in whole or in part. Now, could there be legal issues, of course, but we are talking about saving taxpayers millions of dollars. Let me explain.

I want to remind Council that one of the bidders signed a formal letter that was submitted to the January 14, 2020 Public Works Committee stating that the staff report was “misleading” and claims “substantial cost and procurement issues”.

Now we know why they would write this letter.

First, under sole sourcing, we received a staff report in January that provided the 2021 estimated costs for the biosolids contract at \$4,752,955.02. Without factoring the GST rebate, this represented a 12.5 % increase (or \$526,400) over the actual 2019 costs as reported today.

Under the competitive process, today we received a staff report that provided the 2021 estimated costs at \$4,449,039.80. Without factoring the GST rebate, this represents a 5% increase over the actual 2019 costs as reported today.

Thus, if you compare sole sourcing versus competitive procurement, the Region will save approximately \$303,915 in 2021. And if you add a 1.5% CPI over 4 years, these savings equate to approximately \$1,243,287.80.

To my colleagues, this is why we need to take action and review these multi-million-dollar, sole sourcing, contracts. As evident today, by going through the competitive process, we saved taxpayers over \$1.2 million.

**COMMENTS SUBMITTED BY COUNCILLOR GALE RESPECTING
BISOLIDS TENDER**

Imagine what we could have saved taxpayers if we put the Niagara Recycling contract in a competitive procurement process.

Second, related to this contract, the question we must ask ourselves, could we save the taxpayers even more?

As best practice, when we receive the results of a procurement process, we typically receive in the public domain the actual name of the bidders and the price they submitted.

For example, in Public Works report PW 1-2020, the awarding of the Grimsby water storage contract, we received a summary of the bidders. For this water storage contract, the bidders ranged from the lowest bid of approximately \$17.8 million to the highest bid of approximately \$20.5 million. We awarded the contract to the lowest bidder. And this contract had greater technical aspects than the biosolids contract.

In another example, in Public Works report PW 27-2020, the awarding of the DeCew Falls Water Treatment Plant Upgrades contract, we received a summary of the bidders. For this plant upgrade contract, the bidders ranged from the lowest bid of approximately \$10.5 million to the highest bid of approximately \$10.7 million. We awarded the contract to the lowest bidder. And this contract had greater technical aspects than the biosolids contract.

In this contentious biosolids report, we don't receive a summary of the 3 bidders that qualified past the technological stage. My question is to the Director of Procurement, why did the report, in which you signed, did not include the name of the 3 bidders and a summary of prices?

How can we make a decision, of a multi-year, multi-million-dollar contract, when we don't know the 3 actual costs? This is absurd.

Well, in fact, I received an unsolicited email from one of the bidders this morning, a different bidder from the one who signed the letter back in January. This second bidder wrote "We see that Thomas has been awarded the tender...our price was nearly \$1 million less than Thomas". I respectfully responded, "I am not allowed to talk to you right now" and I strongly urged him to watch this afternoons Special Council meeting.

What I want to know, is who was the lowest bid in price, and what was the amount?

**COMMENTS SUBMITTED BY COUNCILLOR GALE RESPECTING
BISOLIDS TENDER**

These delays are unacceptable.

Back to this report, the procurement process identified that 4 regional staff participated in the evaluation process. My question is to the Director of Procurement, were any of the 4 staff who participated in the evaluation process named in the whistleblowers' complaints?

How can we award a multi-year, multi-million-dollar contract, when staff are implicated in alleged inappropriate behavior? This is absurd.

Good, can you tell me who were the 4 evaluators.

Councillors, I am appalled by the sequence of events.

- ☐ Uncompleted whistleblower complaints.
- ☐ Last minute staff reports and Special Council meetings.
- ☐ No detailed information on who are the bidders are and what were their prices.
- ☐ No information on the lowest price.
- ☐ Bidders who are telling Councillors that we have been misled.
- ☐ And, \$1.2 million in savings because we unanimously refused the staff recommendation to proceed with a sole source contract.

I will be voting against this staff recommendation.

I ask my colleagues to reject this absurd sequence of events. Most of you ran on a campaign of greater transparency and accountability.

And when we turn down this staff recommendation, let's save taxpayers dollars even more and proceed to award the contract to the lowest bidder, whoever it may be. If you meet the technical requirements, you can do the job.

And don't be baited by the threat of lawsuits. It is our right to choose any proposal we receive.

In these unprecedented times, we need to find every dollar to support taxpayers.