

In accordance with the notice and submission deadline requirements of Sections 18.1 (a) and 11.3, respectively, of Niagara Region's Procedural By-law, the Regional Clerk received from Councillor Gale a motion to be brought forward for consideration at the November 19, 2020 Council meeting respecting the Liquid Biosolids Procurement Process.

Whereas the bio-solids program, a multi-million-dollar, multi-year-service contract was subject to the Region's Procurement By-law;

Whereas the procurement was abruptly cancelled;

Whereas in January 2020, staff recommended a non-competitive, sole source contract regarding the bio-solids program, be awarded to Thomas Nutrients;

Whereas Council received a delegation from Terrapure Environmental in January 2020, that alleged the staff procurement process related to the bio-solids program was "faulty and unfair", that the report contained inaccurate information, and that Council was being "misled" by staff;

Whereas on April 6, 2020 the Acting CAO and 4 Councillors, under the Council initiated Whistleblower Policy, actually received two whistleblower complaints in regards to issues within the Water and Wastewater division, which included the bio-solids program;

Whereas the Whistleblower Policy complaint requires that complaints be investigated expeditiously, and the current investigation has been delayed;

Whereas, due to the investigation delays, Council was made aware of the delay on July 30, 2020, and were assured by staff that the investigation would be initiated;

Whereas the whistleblower complaint investigation was further delayed, as senior management initially hired a labour law firm, and then terminated the firm, and hired an another investigative firm;

Whereas Council unanimously rejected the recommended sole source contract to Thomas Nutrients, and directed staff to conduct a competitive process for the multi-year, multi-dollar bio-solids program;

Whereas, even though the whistleblower complaint investigation was not complete, staff proceeded to recommend the awarding the bio-solids program to Thomas Nutrients;

Whereas the award to Thomas Nutrients, via a competitive process, was approximately \$2 million (over 5 years) less than the initial recommended sole source contract back in January;

Whereas the staff report that recommended the contract be awarded to Thomas Nutrients, did not contain the results (points and costs of each applicant) of the competitive process;

Whereas the Procurement By-law permits the results of the procurement process to be made public, that applications become property of the corporation, and applicants agree to have the results published;

Whereas, a local media report disclosed that the second place bidder was approximately \$900,000 per year lower in costs than the Thomas Nutrients bid, representing approximately \$4.5 million (over 5 years) of the contract;

Whereas the global pandemic has placed a financial strain on municipalities and families across Niagara, and every taxed dollar spent by Niagara should be reviewed;

Whereas Council received public advice from staff that the bio-solids contract should be awarded to the incumbent vendor or face the possibility of lawsuits;

Whereas the procurement process included a Fairness Commissioner, however the Fairness Commissioner was not involved in the scoring evaluation completed by staff;

Whereas a local media report has revealed that one of the unsuccessful applicants has challenged the procurement process, and the corporation may have to defend this challenge at additional costs;

NOW THEREFORE BE IT RESOLVED:

1. That staff **BE DIRECTED** to:

- a) Provide an interim report of the current status and preliminary results of the whistleblower complaint investigation, and that a representative from the initial law firm, and a representative from the current investigation firm, attend the Council meeting to answer any Council questions;
- b) Provide a public report to Council listing the procurement results (actual scores and prices), from the bio-solids procurement process, and a confidential appendix with the actual scoring sheets completed by staff; and
- c) Retain an external legal firm to provide Council advice on the legal aspects of the current contract and the current challenge of one of the vendors;

2. That this direction to staff **BE COMPLETED** by the next Council meeting.