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## **MEMORANDUM**

CAO 22-2020

**Subject:** Liquid Biosolids and Residuals Management Program

**Date:** November 19, 2020

**To:** Regional Council

**From:** Ron Tripp, P.Eng., Acting Chief Administrative Officer

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This memo is to provide relevant facts to Regional Council regarding the Liquid Biosolids and Residuals Management Program to inform Council's consideration of Item 8.1.4 CL-C 106-2020 (A letter from B. Matson, City Clerk, City of Niagara Falls, dated October 30, 2020, respecting the tender process- Liquid Biosolids and Residuals Management Program) and Item 11.2 (Councillor Gale's motion regarding Liquid Biosolids Procurement Process) on the agenda.

### **Description of Program and Scope of Contracted Service**

The Liquid Biosolids and Residuals Management service includes the essential daily transport of approximately 35 tanker trailer loads (1500 cubic metres) of material from the Niagara Region Wastewater Treatment facilities to the biosolids storage and processing facility. This service cannot be interrupted by more than a few days without severe consequences; therefore business continuity is critical.

Biosolids are the nutrient-rich organic materials (residuals) resulting from the treatment of domestic sewage. The Liquid Biosolids and Residuals Management contract includes the following components:

- Implementation of a biosolids land application program, compliant with the Nutrient Management Act and regulations, for 50% of Niagara Region's annual generated biosolids.
- Management, operation and maintenance of the Garner Road Biosolids Storage and Dewatering Facility (GRBSDF), including management of supernatant operation, biosolids transfers, lagoon mixing and general grounds keeping.
- Transportation of biosolids from wastewater treatment plants and residuals from water treatment plants to the GRBSDF.
- Transportation of wastewater biosolids and water treatment plant residuals between Niagara Region Facilities.
- Emergency response and after hours transportation services.

### **Request for Pre-Qualification 2019-RFPQ-232 posted August 7, 2019**

Staff issued the RFPQ with the intention of inviting bids from interested vendors with the requisite qualifications to provide all necessary services in a planned competitive tender, which would be issued (to pre-qualified bidders) later in 2019. Of the eight vendors who downloaded the documents, Niagara Region received three submissions from Wessuc Inc, Revolution Environmental Solutions, and Thomas Nutrients/2386246 Ontario Inc. An RFPQ is a non-binding process; neither the municipality, nor the successful respondents are bound to any future procurement process.

As previously reported on February 11, 2020, in PWC-C 9-2020, Niagara Region cancelled the RFPQ process prior to completion because it was likely to have resulted in the prequalification of only one vendor. This would not have provided for a competitive tender of qualified bidders, which was the stated objective of the RFPQ.

A notification sent to all vendors on October 4 included an error, which indicated that they did not meet the requirements of the pre-qualification; this was corrected in a subsequent communication sent on October 25 noting that the process was cancelled.

Because the RFPQ process was cancelled prior to completion, a debriefing of the three proponents was not required as the intention of this process is to provide feedback to unsuccessful vendors for the purposes of future procurements. In accordance with Council direction, Staff did conduct a debrief with each vendor on February 19, 2020.

### **Request for Proposals 2020-RFP-60**

At its meeting on September 24, 2020, Council had before it report PW 33-2020 Award of Request For Proposal 2020-RFP-60 Liquid Biosolids and Residuals Management Program.

The report was a result of the January 14, 2020, Public Works Committee direction that staff to initiate a Request for Proposal (RFP) process respecting the loading, haulage/transportation, lagoon management and land application of liquid biosolids and residual solids generated from Niagara Region water and wastewater treatment facilities.

An RFP process is distinct from a Request for Tender process. In a Request for Tender, the award is made to the lowest price compliant bid received whereas an RFP process is based on scoring of established evaluation criteria whereby award is to the

proponent with highest score (based on both technical criteria and price; as opposed to price alone).

At its meeting on February 11, 2020, staff were directed to engage a subject matter expert to provide input on the technical requirements of the RFP; and to employ a Fairness Advisor to oversee the RFP process. The Fairness Advisor was actively engaged in the entire procurement process and certified that it was fair, open and transparent.

In 2020-RFP-60, the proponents' response to the technical requirements represents 70% of the evaluation and 30% of the scoring is prorated to the prices of those proposals, which achieved at least 70% of the available technical points (49/70). This evaluation methodology was clearly outlined within the RFP documents. The RFP award was based upon the highest scoring proposal including both the technical and price components. It is possible for a proposal to pass the technical threshold, be the lowest price and not be the highest scoring. The intent of this methodology is to provide a greater price allowance for a technically superior quality proposal.

The recommendation to award to the successful proponent 2020-RFP-60 was ultimately made through Report PW 33-2020. Appendix 2 of Report PW 33-2020 described this process in greater detail and has been attached to this memorandum as Appendix B for ease of reference.

As requested by Council, the table below provides the details of the technical scoring and the final relative ranking of the bidders whose proposals met the submission requirements and achieved the mandatory minimum technical score. The second and third place bidders relative final rankings demonstrate that higher technical scores are counter-balanced by lower bid prices.

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Bidder	Overall Technical Score (rounded to nearest %)	FINAL RANKING (after considering bid price)
2386246 Ontario Inc (Thomas Nutrients)	80%	1
Wessuc Inc.	72%	2
Revolution Environmental (Terrapure)	76%	3

**Clarification Specifically Related to Councillor Gales' Motion**

**1. Prior contract with TNS (2017-2019) and proposed extension**

- a. Prior contract was the result of Council approval in 2017
- b. Prior contract included an opportunity for the parties to renew the agreement for an additional term of 1 to 3 years upon mutually agreeable terms subject to Council approval
- c. Staff Jan 2020 report recommending an extension for Council's approval was not improper
- d. This was previously addressed in memo PWC-C 9-2020 submitted to PWC Feb 11, 2020 [https://niagararegion.escribemeetings.com/Public%20Works%20Committee\\_Feb11\\_2020/eSCRIBE%20Documents/eSCRIBE%20Attachments/PWC-C%209-2020.pdf](https://niagararegion.escribemeetings.com/Public%20Works%20Committee_Feb11_2020/eSCRIBE%20Documents/eSCRIBE%20Attachments/PWC-C%209-2020.pdf)

**2. RFPQ (cancellation and communication to vendors)**

- a. RFPQ issued in 2019 was a separate and non-binding procurement process
- b. RFPQ was formally cancelled and communicated to all vendors Oct 25
- c. There was a previous communication issued to vendors Oct 4 in error indicating that they did not meet the requirements of the prequalification; but this was corrected in the Oct 25 notice.
- d. This was previously addressed in memo PWC-C 9-2020 submitted to PWC Feb 11, 2020 [https://niagararegion.escribemeetings.com/Public%20Works%20Committee\\_Feb11\\_2020/eSCRIBE%20Documents/eSCRIBE%20Attachments/PWC-C%209-2020.pdf](https://niagararegion.escribemeetings.com/Public%20Works%20Committee_Feb11_2020/eSCRIBE%20Documents/eSCRIBE%20Attachments/PWC-C%209-2020.pdf)

### **3. Whistleblower investigation**

- a. The whistleblower investigation is an ongoing confidential process therefore there should be no public comment by any party on it in order to preserve the integrity the investigation and public confidence in that process
- b. Council have been kept apprised of status/progress of investigation including process and anticipated timeframes
- c. The Region did not terminate the initial external investigation firm. CAO memo to Council on Aug 4 confirmed that the initial firm was engaged, and shortly after finalizing their interviews with the whistleblowers, advised that having obtained a better sense of the scope and nature of the allegations, it became very apparent to them that a large majority of the allegations fell outside their scope of practice
  - i. As a result, they advised it did not seem efficient nor clear due process for different external investigators to make findings regarding the same facts and so they recommended the second firm which were provided all of the information gathered by the initial firm, including the whistleblowers were contacted and approved the release their respective information to the second firm.
- d. It would be inappropriate to act on unproven allegations in a complaint or provide an “interim” report on findings; the policy requires a complete investigation be undertaken, following which Council will receive a report
- e. Link to the policy:  
<http://collaboration.rmon.pri/Region/policy/Corporate%20Policy%20and%200Procedures/Whistleblower%20Policy.pdf>
  - i. section 1.2, page 2 : No individual shall obstruct or interfere with the investigation
  - ii. section 1.5 page 4: All Niagara Region employees and officials aware of or participating in an investigation of wrongdoing shall treat all information received confidentially....Any information obtained during any investigation will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident, or is otherwise required by law.

### **4. Biosolids RFP**

- a. Why an RFP?
  - i. On January 14, 2020, Council expressly directed Staff to undertake an RFP process for the biosolids program
- b. Difference between RFP and RFT

- i. Tender award is to lowest price compliant bidder; whereas RFP is based on scoring of established evaluation criteria whereby award is to the compliant proponent with highest score.
  - ii. Council specifically directed staff to conduct an RFP and therefore, cost was not the sole determinant of award.
  - iii. An independent subject matter expert was engaged at Council direction to support the procurement process, including providing input on the technical requirements of the RFP that represented 70% of the evaluation.
- c. Reporting Results to Council
  - i. Not all awards require Council approval (only those identified in section 24 of the Procurement By-law).
  - ii. For awards which are reported to Council, the reporting practices at the Region differ based on whether it is an RFP or a tender.
  - iii. In the case of a tender (where the only determinant of award is cost), Council is provided the pricing for all compliant bidders. In the case of an RFP, Council is provided only the pricing for the highest scoring proponent.
  - iv. Best practice in municipal procurement include the clear separation of political and administrative functions in the municipality's procurement operations; Council's role in awarding an RFP is to ensure the value of the financial commitment is in accordance with approved budget and that process was conducted in accordance with established governing rules (i.e. recommended supplier is the top-ranked proponent based on the evaluation criteria, scoring methodology and selection process established in the RFP; which is confirmed based on the staff report).
  - v. The Region (in the RFP) reserved the right to make public *the names* of any and all proponents, but also provided that the disclosure of information received in proposals would be subject to MFIPPA and recognized that proponents may identify some information as confidential.
  - vi. At November Procurement Advisory Committee (PAC) meeting, the committee requested a report to provide a summary of what other municipalities provide to their Council relating to RFP results.
- d. Role of Fairness Commissioner (FC)
  - i. FC retained at Council direction to provide independent oversight of procurement process
  - ii. FC role is to ensure fairness and transparency of process for all participants (all proponents and the Region)

- iii. One of areas of focus of the FC is to ensure bias for or against any proponent does not exist and that proponents are considered and evaluated based on their submissions only (not incidents outside of the procurement process).
- iv. FC was engaged from the outset and was fully involved in the entire procurement process, including evaluation of submissions. Related to the evaluation in their report the FC stated “In the final evaluation discussions, the evaluators demonstrated that they had been diligent in their responsibilities, that they were able to support their individual evaluation assessments and that they held no bias for or against any Respondent.”
- v. FC issued a written report certifying that the principles of openness, fairness, consistency and transparency were properly established and maintained throughout the entire procurement process

#### **5. Cost differential/savings**

- a. References have been made at both Regional Council and the City of Niagara Falls Council meeting to cost savings that could have been realized if Council did not accept the recommendation determined by the RFP process, or conversely, the cost increase that would have been experienced had Council accepted Staff’s recommendation through Report PW 3-2020. Without further detail or explanation, Staff can only speculate that these references are based on projections / estimates of variable factors included in both the previous and current contract terms. It also appears as though some of the financial references include cost projections for extension years that have yet to be considered or approved by Council.
- b. Staff can confirm that a financial comparison of the PW 3-2020 recommendation and the PW 33-2020 recommendation is not straight forward due to a number of factors. The analysis and discussion included in Appendix A to this memorandum was developed in order to provide Council with appropriate and accurate context regarding the annual expenditure impacts associated with each of the recommendations. As is evident in Appendix A, the calculation is quite dependent on variable factors such as annual quantity of materials handled, the price of diesel fuel and an annual CPI adjustment. An analysis of 2020 was not included as COVID-19 profoundly impacted these same variables. The analysis of

2021 and 2022 is based on what we currently understand to be the impact of COVID-19.

- c. Council has requested a Value for Money review of the Biosolids program for 2021. Due to the factors described above, this review will clarify actual savings over the life of the program.

### **Other Pertinent Reports**

PW 12-2017, February 21, 2017 – Niagara Region Liquid Biosolids Management Program Contract Renewals

PW 3-2020, January 14, 2020 – Niagara Region Liquid Biosolids Management Program Renewal of Contract Agreement with Thomas Nutrient Solutions

PWC-C 9-2020, February 11, 2020 – Niagara Region Liquid Biosolids Management Program Renewal of Contract Agreement with Thomas Nutrient Solutions – Additional Information re: Procurement Process

PWC-C 10-2020, March 10, 2020 – Procurement Progress Report Liquid Biosolids and Residual Management

PWC-C 12-2020, May 12, 2020 – Procurement Progress Report Liquid Bio Solids and Residual Management

PWC-C 18-2020, June 16, 2020 – Procurement Progress Report Liquid Bio Solids and Residual Management

CSD 52-2020, Closed Session, July 30, 2020 – Advice that is Subject to Solicitor-client privilege under s. 239(2) of the Municipal Act, 2001 - 2020-RFP-60 Liquid Biosolids and Residuals Management Program Procurement

PW 33-2020, September 24, 2020 – Award of Request For Proposal 2020-RFP-60 Liquid Biosolids and Residuals Management Program



Respectfully submitted and signed by

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Ron Tripp, P. Eng.  
Acting, Chief Administrative Officer

## **Appendices**

Appendix A Biosolids Contract Price Analysis – November 2020

Appendix B PW 33-2020 Appendix 2 Overview of Procurement Process for Liquid  
Biosolids and Residuals Management Program 2020-RFP-60