
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).

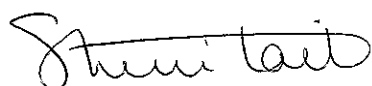
The previous liquidated damages structure was \$1,000 for the first occurrence, \$2,000 for the second occurrence and \$5,000 for the third and subsequent occurrences regardless of the type of default.

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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Appendix A – Update on Key Contract Deliverables

1) Hours of Collection

Emterra has experienced difficulties completing collection as per the Contract requirements (by 5 p.m.).

In February, Niagara Region approved a request by Emterra to extend the daily end time from 5 p.m. to 6:30 p.m. while Emterra acquired additional vehicle and personnel resources. This temporary extension expired on March 18, 2018.

Niagara Region agreed to extend the hours of collection to 6 p.m. on August 21, 2018 for the remainder of the contract outside of dedicated leaf and yard waste and to 7 p.m. during dedicated leaf and yard waste collection which ran from October 29 to November 23 in the fall of 2018. The table below summarizes the collection end times as reported by Emterra.

Table 1 – Reported End Times

Timeframe	Collection End Time	Number of Days (and Percent of Days) Collection Completed On or Before End Time
March 19 to August 21, 2018	5 p.m.	7 (6%)
August 22 to October 26, 2018	6 p.m.	8 (17%)
October 29 to November 23, 2018	7 p.m.	8 (40%)
November 26 to November 30, 2018	6 p.m.	0 (0%)

Despite extending the hours of collection as noted above, Emterra still experienced difficulties completing collection on time.

In 2017, based on GPS records, Emterra was only able to complete collection by 5 p.m. on 14 days out of 259 days (5%).

2) Customer Relations/Service (Missed and Incomplete Collections)

a) Missed Collections

The table below summarizes the number of incidents of missed collection that were reported to the Niagara Region's Waste Info-Line. This does not include all calls

received directly by Emterra, as they have not been consistently tracking this information.

Table 2 – Missed Collections Reported to the Region’s Waste Info-Line

Timeframe	Number of Incidents 2017	Number of Incidents 2018
August 22 to November 30	1,071	1,567
January 1 to November 30	2,107	3,554

Niagara Region also continues to receive complaints from residents that material are consistently being missed from their particular address over the course of a number of weeks despite Niagara Region’s repetitive correspondence with Emterra on the issue.

Some examples include three set out service addresses missed five (5) times (33%) between August 22 to November 30, 2018. One of these addresses has been missed 14 times (6%) in 2018.

b) Incomplete Routes

Emterra has also not been able to consistently finish daily collection (i.e. entire or partial routes). Table 3 outlines the number of times Emterra was not able to finish daily collections.

Table 3 – Incomplete Routes

Timeframe	Number of Days	Percentage of Days
August 22 to November 30, 2018	35	48%
January 1 to November 30, 2018	76 (includes a winter storm on March 2, 2018).	32%
January 1 to December 31, 2017	23	9%

Of the 35 occasion between August 22 and November 30, 2018, 12 were during dedicated leaf and yard waste collection which occurred from October 29 the November 23, 2018. Although there was approximately a 140% increase in leaf and yard waste tonnages over 2017, Emterra had difficulties deploying daily the 12 dedicated trucks they committed for leaf and yard waste collection. A third party contractor Emterra indicated they secured to assist with five (5) trucks was only able to provide one truck and not on a consistent basis. In addition, Emterra was unable to put out all their owned or rental trucks due to internal resource shortage.

3) Contractor's Personnel

As per the Contract, Emterra is to ensure that at all times, at least 80% of their work force undertaking the work under this Contract shall be full time employees of the Contractor.

Table 4 summarizes the percentage of full-time staff as provided by Emterra including those previously reported to PWC on July 17 (PW 32-2018) and September 4, 2018 (PW 31-2018).

Table 4 – Percentage of Full-Time Employees as Reported by Emterra

Month Reported	Percentage of Full-Time Employees
November 2018	72%
August 2018	77%
June 2018	84%

The Region also calculates the daily average based on daily line-ups provided by Emterra. The daily average in the third quarter of this year was approximately 71% which is up from 70% between June 20 and August 13, 2018.

The daily average of full-time employees working has been around 69% since January 1, 2018 based on information provided by Emterra. Niagara Region started tracking this information in August 2017 and between August 2017 and December 2017, the daily average of full-time employees working was around 61%.

Emterra has indicated they are holding job fairs to hire additional staff to meet the required 80% full time employee requirement.

4) Maintenance of Equipment

To address maintenance issues, Emterra provided an initial refurbishment plan to Niagara Region in September 2017. A revised refurbishment plan was submitted to Niagara Region in October 2017, which noted that all necessary vehicle refurbishments would be completed by January 2018. Due to the extent of the repairs and maintenance required on some vehicles, Emterra is still working towards completion of the refurbishment plan. Emterra has committed to completing the refurbishment of three (3) trucks per month and all drivetrain work prior to the start of the fall dedicated leaf and yard waste collection which started on October 29, 2018. All scheduled drivetrain work has been completed.

Based on a review of the most recent refurbishment plan submitted by Emterra, 41 trucks have at least one (1) repair listed as either "to be expedited" or "to be complete".

5. Event of Default

Niagara Region has issued \$770,000, in liquidated damages since the beginning of the contract for failure to comply with the Contract terms and conditions. \$585,000 have been issued since Jan 1, 2018 to November 30th of which \$134,000 were issued between August 14 to November 30, 2018.

Appendix B – Chart of Liquidated Damages Amounts

Item #	Default	Liquidated Damage
1	GPS not functioning	\$50.00 per day per vehicle
2	Failure to submit required reports as required by 9 am each business day	\$50.00 per day
3	Non-completion of a map Failure to report an incomplete map	\$300.00 per map per commodity \$350 per map
4	Late completion of service	\$200.00 per map per commodity
5	Mixing waste streams in load or collecting unacceptable waste	\$250.00 per load
6	Failure to clean up spillage	\$50.00 per occurrence per day beyond the date of occurrence
7	Failure to report spill	\$50.00 per occurrence
8	Failure to report claims of damage or incidents as is required by the Region	\$50.00 per occurrence per day beyond 24 hours
9	Failure to resolve claims, damages or incidents as required	\$25 per day per occurrence beyond 72 hours
10	Improper placement of containers	\$150.00 per vehicle per day
11	Improper tagging of containers	\$150.00 per vehicle per day
12	Failure to submit completed tote run sheets by 9 am each business day	\$50.00 per day
13	Collection on wrong side of road	\$100.00 per vehicle
14	Over the limit collection	\$150.00 per vehicle per reported incident
15	Non-supply of dedicated service vehicle for each of White Goods and Parks collection	\$50.00 per dedicated service per day
16	Incompletion of set out service	\$25.00 per per occurrence per address

Item #	Default	Liquidated Damage
17	Failure to collect street litter receptacles	\$10 per container
18	Exceedence of compaction ratios	\$50 per truck per occurrence
19	Failure to resolve issues within timeframe	\$50 per occurrence
20	Failure to provide FTE/Temp Ratio (80/20)	\$50 per percentage point difference per quarter
21	Violations with site procedures & policies	\$100 per truck per occurrence
22	Failure to dispose at designated facilities	\$250 per vehicle
23	Repeated missed collections	\$50 per address missed greater than 3 times within a calendar year
24	Failure to provide interim on-road dedicated supervisory staff	\$25 per collection day beyond one week grace period
25	Failure to fill a vacant permanent supervisor role within 2 months of position becoming vacant	\$50 per collection day beyond 2 month period
26	Failure to meet spare ratio	\$100 per occurrence (per day)
27	Failure to collect within DBAs during the specified collection times	\$100 per occurrence
28	Collection before 7 am	\$100 per occurrence
29	Collecting from new developments without permission from the Region	\$100 per occurrence
30	Collection on private property without approval from the Region	\$50 per occurrence
31	Failure to decal new trucks or rentals with Region logo prior to servicing routes	\$25 per truck per day
32	Failure to return to an impassable obstruction before end of day on collection day	\$50 per occurrence