
Subject: Managed Competition and Fair Wage Considerations for Waste Collection Contract

Report to: Public Works Committee

Report date: Tuesday, March 19, 2019

Recommendations

1. That Regional Council **NOT APPROVE** Waste Management staff proceeding with the request for a managed competition bid process (i.e. in-house bid) for Niagara Region's next garbage, recycling and organics collection contract (Collection Contract) primarily due to timing constraints;
2. That Regional Council **ENDORSE** inclusion of a living wage clause in the Collection Contract Request for Proposal (RFP); and
3. That Report PW 22-2019 and Council's resolutions **BE CIRCULATED** to the Local Area Municipalities (LAMs), for their information.

Key Facts

- The purpose of this report is to seek Council's approval to proceed with inclusion of a living wage clause in the Collection Contract, to partially mitigate the risks associated with private collection contracts in lieu of Niagara Region submitting an in-house bid to provide collection services in response to the Collection Contract RFP.
- Structuring the Collection Contract RFP to ensure that at least two (2) proponents are successful, by dividing the region into three (3) collection areas and limiting a successful proponent to receipt of two (2) collection areas, will further alleviate pressure on a single contractor and ensure contingency in the event of future contract performance issues.
- As a result of presentations to each of the 12 LAM Committees or Councils on proposed base collection options and enhanced collection services for the next Collection Contract RFP, as referenced in PW 20-2019, and to ensure good performance by successful proponents for the next Collection Contract RFP, three municipalities have submitted Council Resolutions directing Niagara Region to consider including in-house waste collection services for the next Collection Contract: (i) City of Thorold at Council meeting of January 15, 2019; (ii) City of St. Catharines at Council meeting of February 11, 2019; and (iii) Town of Fort Erie at Council meeting of February 11, 2019.
- For the first seven (7) years of the current Collection Contract, for a very competitive price, residents did not experience a significant number of performance issues.

- Waste Management staff lack the experience to prepare an in-house bid without external consultant assistance, and procurement processes when acquiring resources such as collection vehicles will introduce a delay in the Collection Contract RFP process that cannot be accommodated due to the start date for the next Collection Contract.
- Report PWC-C 8-2019 provides further information on estimated costing for in-house collection and timing for the next RFP
- Niagara Region's Waste Management staff consulted with staff from the Legal Services Administration and the Procurement and Strategic Acquisitions divisions of Enterprise Resource Management Services (ERMS) department and from the Social Assistance and Employment Opportunities (SAEO) division of Community Services.

Financial Considerations

Costs of Managed Competition

There are costs associated with implementing a managed competition process that would allow Niagara Region to submit an in-house bid. There is a cost to hire a Fairness Monitor for the duration of the RFP process (starting as soon as staff begin drafting the RFP and continuing through to award of the Collection Contract). For reference, Niagara Region hired a Fairness Monitor for a previous project at a cost of approximately \$20,000. Additional details about the importance of a Fairness Monitor are included in the Analysis section. There is also the cost for Niagara Region to hire an independent consultant to prepare the cost accounting and technical submission for the in-house bid in response to the Collection Contract RFP, which staff estimate would exceed \$60,000, for the technical submission alone. One staff person from Niagara Region would oversee the consultant and participate in the bid process, further incurring cost for salary.

Costs are associated with a successful in-house bid. High level costs associated with implementation of an in-house collection team are outlined in confidential memo PWC-C 8-2019. At minimum, capital and operating costs would include: yard/maintenance building; waste collection vehicles and associated maintenance, fuel, tires and insurance; Collection Supervisor vehicles and associated maintenance, fuel, tires and insurance; labour costs for Collection Supervisor, drivers and loaders, mechanics for regular and on-road service, and administration support staff; and general equipment such as uniforms, personal protective equipment (PPE) and spill kits.

There may be some minor cost offsets with a successful in-house bid through government exemptions from the requirements of securing a bond and letter of credit. There may also be some savings, for example, for the cost of vehicles where government organizations can secure a better rate. Private companies may view this as an unfair advantage.

Awarding a contract to an in-house team could potentially be more cost effective, and even if a municipality does not save as much as anticipated, this may still be the preferred option, which is the case for Ottawa. According to an article in the [Ottawa Citizen](#) from June 19, 2018, Ottawa has experienced deficits in regards to budget from their in-house teams. The East Ottawa zone has had annual operating deficits in three (3) of the five (5) years, with a cumulative deficit of about \$1.1 million. Additionally, the Downtown Zone, which was sole sourced, has had operating deficits in all but one (1) year between 2013 and 2017, with a cumulative total in that time of roughly \$1.6 million. Reasons for the deficits include cost overruns on increased expenses for labour, fleet and fuel; expiring warranties on an aging fleet; and a labour arbitration that forced the City to use full-time collection workers for overtime work, rather than calling on sub-contractors and casual labourers. Despite operating deficits, Ottawa is content with the results of the in-house teams because the costs are still lower than the next closest private bid (the actual cost difference is not included in the article). The Downtown Zone was sole-sourced, so there is no way to compare costs as it was never put to tender.

Costs of a Living Wage Clause

There are costs for including a living wage clause in the Collection Contract. Living wage for Niagara Region is calculated by the Niagara Poverty Reduction Network using the National Living Wage Framework (included as Appendix 1). As of November 2018 the living wage for Niagara was \$17.99. Considering only the drivers and loaders, for whom there is a wage difference, Niagara Region staff estimate salary costs could result in an annual increase of at least \$320,000 (loaders only) to \$750,000 (loaders and increasing pay rate for drivers proportionately) over current costs. This cost would continue to rise over time as the living wage rate is recalculated annually in November. Costs would likely be further escalated when other staff (e.g. customer service representatives) are included in the calculation. Upon award of the Collection Contract, the living wage will need to be recalculated by the Ontario Living Wage Network as the hourly wage could be less than the defined living wage per hour at the start of the Contract (2021) depending on the presence of and distribution of employee and employer paid health benefits of the contractor.

Niagara Region staff would need to ensure that the Collection Contract reflects the requirement of the successful proponents to pay a living wage for their employees working on this Collection Contract, and to ensure the appropriate gap between drivers and loaders is maintained throughout the length of the contract. One option is to structure the RFP such that proponents are awarded points based on wage structure to ensure fair compensation to all employees. Alternatively, Niagara Region could become a Fair Wage Employer, but this would have wide reaching implications on the Corporation, as it applies to full-time, part-time, and all externally (third party) contracted staff that provide service on a regular basis, and not just contracted collection staff. This analysis is outside the scope of this report. Additional details about living wage and Fair Wage Employers are included in the Analysis section.

Analysis

Niagara Region Waste Management Services staff were asked to investigate the managed competition process as a result of Council resolutions from the Town of Fort Erie, the City of St. Catharines, and the City of Thorold following presentations about the results of the stakeholder consultation sessions for the proposed services for the next collection contract (PW 20-2019). The resolutions suggest in-house service might alleviate issues related to service delivery from the private sector, and as such, these Councils have requested that Niagara Region identify the benefits and cost savings (if any) of bringing collection in-house. Managed competition promotes an environment of competition, in which an in-house bid is submitted alongside submissions from the private sector.

Traditionally, municipal public services, such as waste management, have been provided by an in-house team. For several decades now, these services have been removed from public control to the private sector, in search of reduced costs and increased efficiencies. Research completed by the [Canadian Centre for Policy Alternatives](#) has shown that waste collection by both the public and private sectors can be hit and miss, so municipalities are increasingly adopting a type of service delivery that does not depend solely on either an in-house team or the private sector. Waste Management staff researched three (3) comparator municipalities who utilize a mixed waste collection system, comprised of both an in-house team and a private contractor: the City of Hamilton, the City of Ottawa, and the City of Toronto. For Waste Management purposes, comparator municipalities are defined as those within Ontario and with a population of 300,000 or more. Staff are unaware of any other comparator municipalities utilizing this type of system for waste collection services.

Waste Management staff also consulted with staff from Legal Services Administration, Procurement and Strategic Acquisitions, and SAEO.

The benefits and challenges of managed competition are described in detail in the Financial section above and in the Analysis below, and key items are summarized in Table One.

Table One: Benefits and Challenges of In-House Collection

Benefits	Challenges
Competitive pricing is obtained on private sector work as a result of the bidding process	A significant capital investment would be required for vehicle-related costs, plus any additional infrastructure costs. Capital financing has not been determined and would require further review of the Region's capital financing strategy.

Benefits	Challenges
Less need for contract management, including consequences for failure to provide prescribed services	Higher wage and benefit costs (offset with inclusion of living wage clause)
Control and flexibility to make changes in service levels	Personnel/labour management required (e.g. potential for collective bargaining agreement restrictions)
A municipality's lower cost of borrowing, and the fact that municipalities do not pay taxes and insurance in the same manner as private sector companies do, may result in lower collection costs	Lack of in-house expertise at Niagara Region requires that an external consultant assist with the bid response, introducing timing and cost implications

Timing Implications of Managed Competition

Timing of release for the Collection Contract RFP is a concern for Waste Management staff, who are working to minimize performance issues that residents are currently experiencing with the contractor. It is imperative that the Collection Contract RFP be issued in time to allow the successful proponents to adequately prepare for collection start date, which requires at minimum: detailed analysis of routes; acquisition of vehicles; hiring of staff; set up of administration; locating and potentially acquiring, building or modifying facilities; and a number of other tasks.

Waste Management staff lack the in-house experience to prepare a bid without external support and require that a consultant assist with development of any bid. Hiring a consultant takes time that would delay the submission of an in-house bid and it would be difficult to submit a response within the required time-frame for the Collection Contract RFP. The current contract is set to end in March of 2021 and as such, the RFP process must continue along the current schedule, which does not allow for a delay to be introduced through managed competition. Waste Management staff suggest exploring the option of managed competition for subsequent Collection Contract RFP's, when there is adequate time to prepare. The importance of timing for issuance of the next Collection Contract RFP is further outlined in PWC-C 8-2019.

There is a risk that a successful in-house bid team would not be ready for the March 2021 start date, depending on the award date. For example, in discussion with staff at the City of Toronto, who are in the process of procuring new collection vehicles, it was noted that the general timeline to acquire new vehicles of 12 months has been extended to 18 months. Although the Niagara Region might source the vehicles from a different supplier, the potential for the extended time an in-house team might require should be noted. Of course, private companies bidding on the Collection Contract RFP might also have the same limitations, but, they may also have resources unavailable to Niagara Region. For example, they may have vehicles that can be deployed from other

contracts, or they may purchase vehicles at a larger volume resulting in different agreements with vehicle providers.

Waste Management staff were advised that one alternative to competing with an in-house bid is to have staff complete a business case evaluation to determine the costs for an in-house bid and structure the RFP such that Niagara Region has the right to remove an area from consideration (i.e. Niagara Region can award to an internal team regardless of bids, in the event that staff are not satisfied after the evaluation of submissions). This process could identify whether cost savings are potentially available and mitigate against tender results that exceed expectations of staff. Waste Management staff do not recommend this direction as the RFP has already been designed with three (3) defined collection areas, to be awarded to a minimum of two (2) proponents. Secondly, benchmarking reports for costs that are prepared annually with data available for comparator municipalities provide Niagara Region staff a method of determining fair market value for services although that information doesn't provide direct protection against tender bids that are priced in a manner inconsistent with the expectations of staff. Preparation of a business case, while not subject to all the timing constraints of a competitive internal bid, remain subject to timing, resource and cost pressures. On balance, Waste Management staff believe the benefits of preparing the business case don't outweigh the direct costs, staff time and risk of delay due to time an in-house team may require to prepare for collection.

Risk Implications of Managed Competition

An integral aspect of the managed competition process is that there is an 'ethical wall' separating the RFP project team from the in-house bid team, in which the RFP development and bid are not discussed with members outside of the respective teams. The separation ensures that there are no unfair advantages and/or disadvantages given to the in-house team. The 'ethical' wall is developed and maintained by a Fairness Monitor. Based on discussion with the City of Ottawa, the Fairness Monitor is to be retained during the initiation phase, prior to the start of drafting the RFP. While not a prescriptive legal obligation that the Fairness Monitor appointment precede any work on the RFP, failure to do so could result in an allegation of unfairness in the process. Waste Management Services began drafting the RFP in early December of 2018 and, due to the size of the division, many staff have already been involved in the process. In addition to the cost, past Regional experience with hiring a Fairness Monitor has shown a lead time requirement of at least three to four months (unless single sourced), which would impact the timing for release of the Collection Contract RFP, the importance of which is highlighted above.

In addition to hiring a Fairness Monitor, Niagara Region would need to immediately designate a staff person, who has not yet participated in any part of the RFP preparation process, and who would work with an independent consultant, at a cost to Niagara Region, to prepare the in-house bid in response to the RFP. As noted above,

the independent consultant would need to be retained and that could involve a lead time potentially greater than needed for hiring a Fairness Monitor.

The restricted time available for a retained consultant and designated staff person to prepare an alternate bid, combined with the lack of an existing policy framework and internal staff's lack of direct experience in undertaking such a project creates a material risk that the resulting internal bid, if successful, fails to adequately estimate costs and timelines needed for implementation.

Policy Implications of Managed Competition

Under the Resource Recovery and Circular Economy Act, 2016 (RRCEA), the Province is shifting to a producer responsibility framework for products and packaging, making producers and brand holders accountable for recovering resources and reducing waste associated with products. The Waste Diversion Transition Act, 2016, allows for the products and packaging managed under existing waste diversion programs to be transitioned to the new producer responsibility framework. More recently, the Province has released a "Made in Ontario Environment Plan" that further indicates the Province's support for movement to producer responsibility framework. Due to the uncertain role of municipalities under the new legislation, it is recommended that Niagara Region minimize investment of capital in the collection of recyclables at this time. An in-house bid by Niagara Region should only reflect collection of garbage and organics.

To allow an in-house bid, per the Niagara Region's Purchasing By-Law, Regional Council must first approve a format for the development and submission of the in-house bid. Regional Council has not provided formal direction for the development of a managed competition policy, but discussion did occur at previous Public Works committee meetings regarding an in-house bid. The City of Ottawa has developed an internal policy for managed competition and ideally, Niagara Region should follow suit, prior to submission of any in-house bid for the Collection Contract, to avoid the potential for the perception of an unfair advantage to an in-house team.

Performance Mitigation Measures

Good and consistent service for residents can be acquired through means other than in-house service. When designing the RFP, for purposes of collection service, the region would be divided into three (3) areas. Any successful proponent will be awarded a maximum of two (2) of these areas, ensuring that at least two (2) independent contractors will service Niagara residents. This eliminates the burden on one company to complete collection for the entire region.

Current Contract provisions are being reviewed and will be revised in the new RFP to ensure Niagara Region can retain alternative service providers in a more timely manner if the successful proponents are not meeting their contract obligations. For example,

currently Niagara Region must provide six (6) business hour notice to Emterra before the Region can retain another service provider to perform work not completed by Emterra.

Bids from private contractors may result in cost reductions, however, this may be at the expense of employee wages. By including a clause for living wage that requires the successful proponents to pay their employees working on this Contract the Ontario Living Wage, it is anticipated that the collection contractors may see less employee turnover and lower levels of absenteeism, both of which could contribute to improved service for residents. Additionally, this will mitigate the need for an in-house team, in which the municipality would pay a fair wage. A living wage is defined as “the hourly wage a worker needs to earn to cover their basic expenses and participate in their community” (Ontario Living Wage Network). Living Wage Employers are “responsible employers who care about their employees and the community. They recognize that paying a living wage constitutes a critical investment in the long-term prosperity of the economy by fostering a dedicated, skilled and healthy workforce” (Ontario Living Wage Network). As previously noted, Niagara Region could structure the RFP to require that successful proponents pay their employees working on this Collection Contract the living wage, rather than obtaining the formal designation of a Living Wage Employer. As documented in the Financial section of this report, it is important to identify that living wage does have a financial impact on collection, with respect to increased wages over the current costs. The City of Toronto has a Fair Wage Office and Policy (included as Appendix 2) and the City of Hamilton also has a policy (included as Appendix 3) applied to construction contracts valued at over \$500,000.

Finally, it should be noted that for the first seven (7) years of the current Collection Contract, for a very competitive price, residents did not experience a significant number of performance issues. Rather than in-house service, there are other mechanisms, described above, that will help mitigate performance issues.

Alternatives Reviewed

Alternatives to an in-house bid, and the associated benefits and challenges of each option, are discussed in detail above. As itemized in the Recommendations, it is suggested that two of these alternatives be applied: (i) Inclusion of a living wage clause in the Collection Contract RFP; and (ii) Structuring the Collection Contract RFP to ensure that two (2) proponents are successful, by dividing the region into three (3) collection areas and limiting a successful proponent to receipt of two (2) collection areas.

Relationship to Council Strategic Priorities

The recommendation to include a living wage clause in the Collection Contract supports Council's Strategic Priority of Doing Business Differently, promoting the values that foster economic prosperity in Niagara.

Other Pertinent Reports

- PW 20-2019 Base and Enhanced Services for Next Collection Contract
- PWC-C 8-2019

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Appendices

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