



**CITY OF HAMILTON**  
**PUBLIC WORKS DEPARTMENT**  
**Hamilton Water Division**

<b>TO:</b>	Mayor and Members General Issues Committee
<b>COMMITTEE DATE:</b>	January 18, 2017
<b>SUBJECT/REPORT NO:</b>	Biosolids Management Project – PPP Canada Funding (PW11098e) - (City Wide) (Outstanding Business List Item)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Dan Chauvin (905) 546-2424, Extension 5988 Brian Decaire (905) 546-2424, Extension 4709 Carla Ippolito (905) 546-2424, Extension 2448
<b>SUBMITTED BY:</b>	Dan McKinnon General Manager Public Works Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That Harbour City Solutions be approved as the Preferred Proponent for contract C11-03-16 Biosolids Management Project;
- (b) That the General Manager of Public Works be authorized and directed to negotiate with Harbour City Solutions the Biosolids Management Project DBFOM Project Agreement and any ancillary documents required to give effect thereto in a form satisfactory to the General Manager of Finance & Corporate Services and the City Solicitor;
- (c) That the General Manager of Public Works be authorized and directed to negotiate with PPP Canada Incorporated ('PPP Canada') the Financial Agreement ('FA') and any ancillary documents required to give effect thereto in a form satisfactory to the General Manager of Finance & Corporate Services and the City Solicitor;
- (d) That the Mayor and City Clerk be authorized and directed to execute the Financial Agreement with PPP Canada including any ancillary documents required to give effect thereto in a form satisfactory to the General Manager of Public Works, the General Manager of Finance & Corporate Services and the City Solicitor;

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- (e) That subject to recommendations (b) and (c) being satisfied, the Mayor and City Clerk be authorized and directed to award and execute C-11-03-16 Biosolids Management Project including the DBFOM Project Agreement and any ancillary documents required to give effect thereto with Harbour City Solutions in a form satisfactory to the General Manager of Public Works, the General Manager of Finance & Corporate Services and the City Solicitor;
- (f) That subject to recommendation (e) being satisfied, the General Manager of Public Works be authorized and directed to deliver and perform C-11-03-16 Biosolids Management Project including the DBFOM Project Agreement and any ancillary documents required to give effect thereto with Harbour City Solutions;
- (g) That payments be made in accordance with contract C11-03-16 Biosolids Management Project from the Water, Wastewater and Storm Rate Budget as follows:
  - (i) The required Substantial Completion Payment be made to Harbour City Solutions in accordance with the Project Agreement, and that funds be directed from Capital Project ID 5160966910 WWTP Biosolids Management Facility;
  - (ii) Any favourable balance resulting from the Substantial Completion Payment in Capital Project ID 5160966910 WWTP Biosolids Management Facility be rededicated and approved as project contingency towards the construction phase of the Project;
  - (iii) PPP Canada's funding contribution be deposited in Capital Project ID 5160966910 WWTP Biosolids Management Facility;
  - (iv) The monthly capital payment during the Operations and Maintenance term be funded from Capital Project ID 5160966910 WWTP Biosolids Management Facility as per the terms of the Project Agreement;
  - (v) The monthly operating payment during the Operations and Maintenance term be funded from operating account 55952-510310 as per the term of the contract;
- (h) That Council receive the Fairness Monitor Report as per Appendix C which certifies that the Request for Proposal procurement process for the Biosolids Management Project (the 'RFP') undertaken by the City that resulted in the selection of the proposed Preferred Proponent was completed in an open and fair manner with no concerns raised that impaired the process;
- (i) That the Outstanding Business List item related to 'Biosolids Management Project - PPP Canada Funding' be identified as complete and removed from the list.

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*OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.*

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## **EXECUTIVE SUMMARY**

The Biosolids Management Project (the 'Project') is a Public-Private-Partnership arrangement supported through funding from PPP Canada for the design, build, finance, operate and maintenance ('DBFOM') of a biosolids treatment facility and long term management of the City's biosolids for a 30 year term.

In Report PW11098c/FCS11112c of February 14, 2014, Council approved the Project to proceed to the procurement phase. Each of the recommendations from Report PW11098c/FCS11112c has been completed including the associated Request for Proposal process. As directed through recommendation (b)(v), the General Manager of Public Works is to present the results of the Request for Proposals to Council prior to any award.

This Biosolids Management Project – PPP Canada Funding (PW11098e) report (the 'Report') summarizes the procurement process for Request for Proposal C-11-03-16 for the Project, identifies a Preferred Proponent and makes a recommendation for award including the execution of the funding agreement with PPP Canada and all other associated recommendations.

Proceeding with the recommendations within this Report allows the City to leverage a federal funding initiative and complete a long and complex procurement process to move from a logistically challenging biosolids management program, to a long-term sustainable biosolids management strategy. This solution services the community for a period of at least 30 years, at a lower cost than the City's budget established for the Project ('Project Affordability Threshold') while transferring significant risk to the private sector.

### **Alternatives for Consideration – See Page 8**

## **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** City funds required for this contract is based on a DBFOM structure that will govern the Project through construction and the 30 year operating term (the "DBFOM Project Agreement"). An Affordability Price was defined in the RFP to meet the Project Affordability Threshold. The Affordability Price of the recommended Preferred Proponent is \$106.5 Million net present value ('NPV'), and is lower than the established Project Affordability Threshold. Therefore the required City funds are within the City's budget allotments for both capital and operating costs. By approving the recommendations of this Report, Council is directing staff to negotiate, award, execute, deliver and perform the DBFOM Project Agreement with Harbour City Solutions (the proposed Preferred Proponent). A summary of the financial requirements associated with this award is detailed in Appendix A. Funds required for the first 10-years (2017 to 2026) of the DFBOM Project Agreement are identified in the 2017 Water, Wastewater and Storm Rate Capital Budget Project ID 5160966910 WWTP Biosolids Management Facility and in the annual operating budget account 55952-510310.

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As part of the approval of the recommendations in this Report, Council is also committing to monthly payments for the full 30-year operating term of the DBFOM Project Agreement composed of a fixed capital repayment component, and an operating and maintenance payment, and provides direction to staff to commit the required budget in future Water, Wastewater and Storm Rate Budgets.

Under the structure of the DBFOM Project Agreement, no payments will be made to the proposed Preferred Proponent until the Project reaches Substantial Completion (the “Substantial Completion Payment”) which is estimated to be achieved in 2019. The City is responsible to make payment to the proponent at the time of substantial completion an amount equalling 50% of eligible costs. This amount is expected to be approximately \$26 Million of which the City of Hamilton and PPP Canada will have to provide relatively equal amounts (approximately \$13 Million each). The final amount of PPP Canada’s contribution is subject to confirmation of all eligible capital costs, and will be provided to the City by PPP Canada as per the terms of the PPP Canada Financial Agreement.

As per Report PW11098d/FCS11112d Council had approved up to \$20 million for the City’s portion of the Substantial Completion Payment which was subsequently approved as part of the 2017 Water and Wastewater Storm Rate capital budget under Project ID 5160966910 WWTP Biosolids Management Facility. In comparing the City’s contribution for the proposed Preferred Proponents Substantial Completion Payment to the approved budget, a favourable balance is identified which is recommended to be rededicated and approved as project contingency towards the construction phase of the Project. This contingency is a place holder for any unforeseen expenses relating to approved change orders or revised scope of work during construction.

**Staffing:** N/A

**Legal:** The recommendations of this Report arise in the context of a complex procurement process modelled after Canadian Public-Private-Partnership industry standards and best practices. This procurement process differs from the City’s standard practice and necessitates a higher level of negotiations to be undertaken with the Preferred Proponent prior to the DBFOM Project Agreement being awarded and executed. There are risks that may materialize and restrict or negate the City’s ability to negotiate an acceptable DBFOM Project Agreement, including:

- Loss of commercially confidential information or negotiating leverage;
- Change in market forces that materially impact financing costs or amount to an excusable event;
- Default of the procurement obligations by the Preferred Proponent; and
- Failure to successfully negotiate the Financial Agreement with PPP Canada.

By approving the recommendations of this Report, Council will be confirming the Preferred Proponent and directing staff to negotiate, execute, award, deliver and perform the DBFOM Project Agreement and ancillary documents. Should risk

materialize that impedes the ability to finalize negotiations, staff will return to Council for direction.

The terms of the DBFOM Project Agreement provide for the transfer of several near-term market risk factors (e.g. environmental change in law) to the Preferred Proponent, Harbour City Solutions. It was advisable that the City share these risk factors over the later term of the DBFOM Project Agreement to avoid the risk of RFP proponents inflating bid cost associated with this uncertainty. The risk transfer under the DBFOM Project Agreement is in-line with the value-for-money business case and provides for a greater risk transfer than the City's current biosolids management strategy while ensuring all associated infrastructure remain City owned throughout.

### **HISTORICAL BACKGROUND**

The recommendations contained within this Report have City wide implications.

The Report titled Biosolids Management Project – Public Private Partnerships (PPP) Canada Funding Business Plan Approval (PW11098a/FCS11112a) was presented to the General Issues Committee on May 11, 2012, for which the recommendations were as follows:

- (a) That the General Manager, Public Works be authorized and directed to submit the Business Case attached as Appendix A to Report PW11098a/FCS11112a to Public-Private Partnerships (PPP) Canada requesting funding approval for either the Enhanced Treatment and/or Thermal Reduction alternatives for the City's long-term Biosolids Management Solution (the Business Case);
- (b) That staff report back to Council with an update subsequent to receiving a response from PPP Canada, and prior to proceeding with Phase 2 of the approved Workplan, attached as Appendix B.

As directed through Report PW11098a/FCS11112a, staff formally submitted the Business Case to PPP Canada as an application for funding towards the Project. On December 18, 2013, PPP Canada formally accepted the City's Business Case for the Project, and conditionally committed financial support identified as the lesser of: (a) 25% of the Eligible Cost of the Project, and (b) \$22.9 million.

As directed through PW11098c/FCS11112c, a Conditional Financial Agreement ('CFA') was executed with PPP Canada which then formalized the funding commitment, allowing the Project to proceed to the procurement phase. In addition, and through direction provided in the same Report, Transaction Advisors ('TA') were retained with a scope of work which includes but is not limited to Legal, Financial and Engineering services to prepare all required contract documents and support through the procurement process. The TA assignment was awarded to Deloitte as the Prime Consultant with Blakes as the Legal sub-consultant and CH2M Hill as the Technical sub-consultant. In addition, a Fairness Monitor was retained separately to oversee the entire procurement process as an independent third party and which was awarded to P1 Consulting.

Highlights of the procurement phase are summarized as follows;

- Market sounding completed through a formal Request for an Expression of Interest;
- Procurement and award of Transaction Advisors completed September 23, 2014;
- Procurement and award of the Fairness Monitor completed February 17, 2015;
- Request for Pre-Qualifications – Issued April 30, 2015, Closed December 18, 2015 identifying the three (3) pre-qualified proponents (the ‘Proponents’);
- RFP issued to the three Proponents February 4, 2016 which included the draft DBFOM Project Agreement;
- Seven confidential commercial meetings (‘CCMs’) were held with each of the Proponents from March 2016 to September 2016 to obtain their comments on the RFP and DBFOM Project Agreement;
- Council was consulted in June 22, 2016 through an In-Camera Report PW11098d/FCS11112d, resulting in staff receiving direction to amend terms within the RFP and Project Agreement to address concerns raised by Proponents through the CCM process;
- Technical submissions closed October 7, 2016;
- Financial submission closed November 15, 2016;
- Three Technical submissions were received, evaluated and deemed compliant;
- Three Financial submissions were received, evaluated and deemed compliant;
- The results of the RFP proposal evaluation process and approval were obtained from the City’s Evaluation Steering Committee on November 28, 2016;
- Fairness Monitor Report received December 6, 2016, certifying that the principles of fairness, openness and transparency were maintained throughout the procurement process;
- Approval of the overall evaluation process and the recommended Preferred Proponent was obtained from PPP Canada December 9, 2016.

This Report recommends Council proceed with award to the identified Preferred Proponent, Harbour City Solutions (‘HCS’), including all associated recommendations.

The recommendations from this Report will assist in meeting the Public Works key goal from the Innovate Now Business Plan process to be recognized as the centre of environmental and innovative excellence in Canada as this will be one of the first, and the largest municipal water and wastewater PPP Canada funded projects in Ontario.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The proposed recommendations made in this Report comply with all City Policies in particular By-law 16-070, the Procurement Policy.

## **RELEVANT CONSULTATION**

Staff from the Corporate Services Department as well as Legal Services is part of the Project Team and assisted in developing this Report and associated Recommendations. The following are the associated Division, Sections consulted;

- City Manager's Office, Legal Services
- Financial Planning and Policy, Administration
- Financial Services, Procurement
- Financial Service , Risk Management

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The analysis and rationale to proceed with the recommendations made in this Report is in-line with the identified City's Strategic Plan as follows:

- The Project is compliant with the approved Biosolids Master Plan, meeting the City's environmental, social and economic needs;
- Considering this DBFOM Project Agreement is a form of Public-Private Partnership, it allows the City to capitalize on the financial contribution from PPP Canada, to the lesser of: (a) 25% of the Eligible Cost of the Project, and (b) \$22.9 million;
- Considering the recommended Preferred Proponent's Contract Price of \$106.5 million net present value ('NPV') is below the City's established Project Affordability Threshold of \$111 million NPV (\$109 million excluding HST), the City is assured it has leveraged a more sustainable biosolids management solution for the same estimated cost of land application over a 30 year timeframe;
- Considering the Project transfers risk to the private sector that is anchored by requiring investment of private capital over the long term (30 years) assures the City of long-term cost certainty. Payment is subject to compliance with performance requirements outlined in the DBFOM Project Agreement;
- Proceeding with the recommendations allows the City to complete a long and complex procurement process to move from a logistically challenging biosolids management program to a long-term sustainable biosolids management strategy that services the community for a period of at least 30 years, at similar cost when compared to current practice of Land Application while transferring significant risk to the private sector;

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- Proceeding with the Recommendations allows the City to select a long-term biosolids management strategy through an innovative open-market procurement process modelled after Canadian Public-Private-Partnership industry standards and best practices. This procurement process accounts for a more holistic life-cycle costing strategy over that of a traditional lowest capital price approach and also allowed all key decision variables to be considered simultaneously, leveraging the creativity and capacity of the private sector to enable new technology and strategies that are reliable while minimizing risk to the City;
- Proceeding with the Recommendations allows staff to enhance consultation with external government funding agencies thereby positioning the City to secure the existing funding, as well as improving our position to successfully pursue future PPP Canada funding opportunities;
- Provides improved budgeting by eliminating long term financing of large capital infrastructure and provides for stable annual payments;
- Additional highlights of the DBFOM Project Agreement including overall benefits to the City are outlined in Appendix B.

#### **ALTERNATIVES FOR CONSIDERATION**

As an alternative, Council may choose to not proceed with award of the DBFOM Project Agreement in which case the following must be considered;

- (a) City would be required to maintain current practice of land application of biosolids including associated risk for which current service contract expires as early as December 15, 2018, or as late as December 15, 2020. Re-tendering the service contract would be required with a term that would allow the City sufficient time to update the Biosolids Master Plan and implement the associated recommendations.
- (b) Not awarding would mean the City would not receive the return on investment made to date estimated at \$3.0M for consulting services related to this procurement process;
- (c) Not awarding the contract would require the City to pay a Break Fee of \$221,300 to each compliant proposal totalling \$663,900 (exclusive of HST).
- (d) Not awarding the contract would result in the loss of the PPP Canada contribution (to the lesser of: (a) 25% of the Eligible Cost of the Project, and (b) \$22.9 million)
- (e) Considering the high profile this Project had with PPP Canada and throughout the industry, not awarding where the City has received a compliant and affordable bid could impact the City's image as a good place to do business.



## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Community Engagement & Participation**

*Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.*

### **Economic Prosperity and Growth**

*Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.*

### **Healthy and Safe Communities**

*Hamilton is a safe and supportive city where people are active, healthy, and have a high quality of life.*

### **Clean and Green**

*Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.*

### **Built Environment and Infrastructure**

*Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.*

### **Our People and Performance**

*Hamiltonians have a high level of trust and confidence in their City government.*

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix A - Summary of Financial Requirement - Biosolids Management Project - PPP Canada Funding (PW11098e) - (City Wide)

Appendix B - Highlights of DBFOM Project Agreement - Biosolids Management Project - PPP Canada Funding (PW11098e) - (City Wide)

Appendix C - Fairness Monitor Report - Biosolids Management Project – PPP Canada Funding (PW11098e) - (City Wide)