

CITY OF HAMILTON

***PUBLIC WORKS DEPARTMENT
Operations and Waste Management Division***

TO: Chair and Members Public Works Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: June 18, 2012	
SUBJECT/REPORT NO: Contract Extension Negotiations with Hotz Environmental Services Inc. - 2013 to 2016 (PW12053) - (City Wide)	
SUBMITTED BY: E. (Beth) Goodger Acting General Manager Public Works Department	PREPARED BY: Emil Prpic (905) 546-2424, Extension 4203
SIGNATURE:	

RECOMMENDATION

- (a) That Contract T-025-07 between Hotz Environmental Services Inc. and the City of Hamilton for the operation of the City of Hamilton's Municipal Hazardous and Special Waste depots and for the transportation and disposal of Municipal Hazardous and Special Waste be amended:
- (i) to extend the term by two years to April 2, 2015 and to add the option for the City to extend the term for one additional year to April 2, 2016;
 - (ii) to include an annual escalation factor to be applied to the compensation to Hotz Environmental Services Inc., based on the published Statistics Canada Consumer Price Index for Ontario (all items), and further, to apply said annual escalation factor to the compensation since the commencement of the original term (i.e. March 31, 2008), solely to determine the compensation at the commencement of the extended term;
 - (iii) to increase the rate per unit for the transportation and processing of flammable organics by 64%;
 - (iv) to decrease the rate per unit for the transportation and processing of all florescent tubes by 30%;
 - (v) to include a clause which requires the parties to negotiate adjustments or improvements to the work, and to corresponding changes to compensation, when there is a change of laws which impact operational processes and

procedures, including any changes to the Waste Diversion Ontario (WDO) Municipal Hazardous and Special Waste Program by WDO, Stewardship Ontario, or the Province of Ontario;

- (b) That the Mayor and City Clerk be authorized and directed to execute all necessary documents to implement subsection (a) with content acceptable to the General Manager of Public Works and in a form acceptable to the City Solicitor.

EXECUTIVE SUMMARY

On March 8, 2012, the Solid Waste Management Master Plan (SWMMP) Steering Committee received an update from staff on the current status of the Municipal Hazardous and Special Waste (MHSW) program and the uncertainty of where the program is heading in Ontario given the indecision and lack of direction from Waste Diversion Ontario and Stewardship Ontario.

Presently, MHSW services for the City of Hamilton (City) are provided under contract by Hotz Environmental Services Inc. (Hotz) who operates the City's MHSW depots at the Community Recycling Centres. Hotz also hauls and disposes or recycles all of the materials except for waste paint. The contract with Hotz expires on April 2, 2013.

As a consequence of the current uncertainty in Stewardship Ontario's MHSW program, the SWMMP Steering Committee passed a motion on March 8, 2012 "That the City extend the current contract with Hotz Environmental Services for up to three (3) years". The minutes of the March 8, 2012 SWMMP Steering Committee meeting were received at the Public Works Committee of April 16, 2012 and at the City Council meeting of April 25, 2012, thereby authorizing staff to enter into negotiations with Hotz to extend the contract beyond the current expiration date.

Staff have concluded negotiations with Hotz and recommend that Contract T-025-07 between the City and Hotz be extended for a period of two years beyond the current expiration date of April 2, 2013 to April 2, 2015 and to allow one further option for the City to extend the term for one year to April 2, 2016.

In addition to the contract term, four key items have been negotiated as part of the contract extension between the City and Hotz:

- An annual Consumer Price Index (CPI) adjustment factor shall be included as part of the contract extension. The current contract does not have this condition and as a result, Hotz has not received an increase to their rates for the term of the current contract (5 years). It has also been negotiated that the compensation at the commencement of the extended term will be determined by applying the CPI adjustment factor to the original compensation, on an annual basis since the commencement of the original term, namely March 31, 2008 (but there will be no retroactive payment for the original term);
- An increase to the rate per unit for the transportation and processing of flammable organics to better reflect the current market. This represents an overall increase to the contract estimated to be approximately \$108,000;

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- A decrease to the rate per unit for the transportation and processing of all florescent tubes to better reflect the current market. This represents an overall decrease to the contract estimated to be approximately \$29,000; and
- An additional clause will be added to the contract which is related to Stewardship Ontario's MHSW program that will allow contractual flexibility should the MHSW program be changed by Stewardship Ontario, Waste Diversion Ontario or the Province of Ontario.

As a result of the negotiations, the gross MHSW budget will increase due to the addition of the CPI adjustment and the rate changes noted above, however it is anticipated that the funding received from Stewardship Ontario's Municipal Depot, Transportation and Processing Incentive Program (MDT&PIP) will offset any increases to the negotiated extended contract and, therefore, there will be no net increase to the 2013 operating budget.

Since the implementation of the MDT&PIP by Stewardship Ontario, municipalities who have issued a Request for Tenders (RFT) for the transportation and processing of Phase 2 & 3 MHSW have experienced an increase in pricing compared to previous contracts for similar work. It is believed the pricing increase for Phase 2 & 3 is a result of service providers attempting to offset the low incentive rates being paid to them by Stewardship Ontario for the transport and processing of Phase 1. Additionally, it has resulted in a shortage of service providers.

By extending the current contract, the City will have stable pricing for the next two to three years, will avoid having to potentially pay higher rates and will maintain current service levels. The extension will also enable the MHSW Program and market to stabilize, removing uncertainty and risk resulting in better pricing for the next contract.

Alternatives for Consideration - See Page 7

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: There will be no net increase to the 2013 operating budget as a result of a contract extension as gross increases to the operating contract will be offset by any anticipated funding provided by Stewardship Ontario under the MDT&PIP. Any unanticipated increase will be absorbed within the Operations & Waste Management budget.

Staffing: The implementation of the recommendations of this report will not affect staffing levels.

Legal: Pending approval from Council, an amending agreement will be prepared by Legal Services and executed by the City and Hotz.

HISTORICAL BACKGROUND

As the successful bidder in each competitive procurement process issued by the former Regional Municipality of Hamilton-Wentworth and the City of Hamilton, Hotz has been

the City's MHSW service provider since the program was first introduced in 1991. In 2007, the City, in partnership with the Regional Municipality of Halton (Halton), issued a RFT for the supply of MHSW services. Hotz was the successful bidder and in March 31, 2008, the City entered into a three (3) year contract with one option to renew the contract for a two year period. The current contract will expire on April 2, 2013.

Under the terms of the contract, Hotz operates and receives all acceptable MHSW at the City's three MHSW depots located at the Dundas, Kenora and Mountain Community Recycling Centres (CRCs). In addition, Hotz is responsible for the transportation and processing of all MHSW accepted at the CRCs except for paints, which are processed separately under the MDT&PIP.

On March 8, 2012, the SWMMP Steering Committee received an update from staff on the status of the Hotz contract and on the current uncertainty of the MHSW program in Ontario. Specifically, the issues with the current MHSW program are centred on Stewardship Ontario's MDT&PIP.

On January 1, 2012, Stewardship Ontario implemented the MDT&PIP. The MDT&PIP is an incentive-based program where Stewardship Ontario directly pays transporters and processors of approved Phase 1 materials. Under the MDT&PIP the City no longer pays for the transportation and processing of Phase 1 material. Under these programs the City receives funding for the collection of:

- Paints, coatings and their containers
- Pressurized Containers (Non-refillable and refillable)
- Single-use dry cell batteries

Also covered under the Phase1 program are antifreeze, antifreeze containers, oil containers and oil filters.

The current issues and uncertainty with the MDT&PIP are centred on the following items:

- transport and processing service providers claim that the incentive rates are insufficient to cover their costs;
- the number of transportation and processing service providers is lacking; and
- delayed payment of invoices by Stewardship Ontario to municipalities.

As a result of the uncertainty, the SWMMP Steering Committee passed a motion "That the City extend the current contract with Hotz for up to three (3) years". The minutes of the March 8, 2012 SWMMP Steering Committee meeting were received at the Public Works Committee of April 16, 2012 and at the City Council meeting of April 25, 2012, and accordingly, staff entered into negotiations with Hotz to extend the contract beyond the current expiration date.

By the end of April, 2012, were able to negotiate a two year extension with the option to extend the contract term for one additional year, which would then expire on April 2, 2016, on the terms and conditions set out in this report.

POLICY IMPLICATIONS

The recommendations in this report are guided by the Public Works Business Plan “Innovative Now”, the Solid Waste Management Master Plan (SWWMP) and the City’s Purchasing Policy.

Innovative Now - Public Works Business Plan

- Communities: Services our communities connect with and trust

Waste management services and improvements recommended in this report contribute to the Public Works Department’s leadership on “greening” and stewardship in providing residents with appropriate services

- Finances: Providing financial management for the long haul

The implementation of programs that have no net negative impact on the budget represents sound and efficient financial management

- Processes: Business processes are defined and aligned

Waste diversion programs that are cost neutral or cost savings align with the Business Plan

Solid Waste Management Master Plan (SWMMP)

The implementation of the recommendations in this report provides opportunities to achieve cost effectiveness and efficiencies in the City’s waste diversion programs.

Recommendation #15: *“The City of Hamilton should enter any Public-Private partnership with caution. If pursued, the City should ensure it retains sufficient control and financial protection, to allow the City to continue to deliver the service should the private partner be unable or unwilling to fulfil its obligations”.* The contractual arrangements with the private sector will provide protection to the City against risk associated with non-performance by the contractor.

Purchasing Policy

The negotiation with Hotz was conducted in accordance with the procedures outlined in Purchasing Policy 4.11.

RELEVANT CONSULTATION

Legal Services, Financial Services and the Solid Waste Management Master Plan Steering Committee were consulted for input during the preparation of this report.

ANALYSIS / RATIONALE FOR RECOMMENDATION

Staff recommend extending the contract with Hotz on the terms and conditions listed in this report. With the implementation of Stewardship Ontario’s MHSW program and

MDT&PIP, there is uncertainty within the MHSW industry on the direction in which the overall MHSW program is heading in Ontario.

A central issue to the current Stewardship Ontario MHSW program instability is incentive rates that are being paid to service providers. Transport and processing service providers of MDT&PIP materials have claimed that the incentive rate that Stewardship Ontario is paying for these services is insufficient to cover their costs. In order to offset the low incentive rates on MDT&PIP materials transport and processing service providers are increasing their rates for Phase 2 & 3 materials (these materials are anything that is not a Phase 1 MHSW material). A number of municipalities that have issued RFTs have experienced a significant increase in transporting and processing rates for Phase 2 & 3 MHSW. By extending the City's current contract with Hotz, the City will continue to have stable pricing for the next several years and will avoid having to potentially pay higher rates for Phase 2 and 3 materials.

It is further recommended to extend the current Hotz contract due to the lack of service providers to transport and process material designated under the MDT&PIP. As mentioned previously, many transport and processing service providers are of the opinion that the incentive rate is low and have elected to not participate in the MDT&PIP. This has resulted in a shortage of service providers especially material processors. Extending the contract with Hotz will ensure that current service levels provided to City residents at MHSW depots will be maintained and not compromised by Stewardship Ontario's MDT&PIP.

Contract T-025-07 was developed in partnership with Halton. City staff have been advised by Halton staff that they share many of the same concerns regarding the current state of Stewardship Ontario's MHSW program and will be seeking Halton Council approval to extend their contract with Hotz on the same terms and conditions recommended in this report.

During negotiations it was agreed by the City and Hotz that an annual escalation factor based on the published Statistics Canada Consumer Price Index for Ontario (all items) will be included as part of the recommended extension. The current contract does not have an escalation provision and, as a result, Hotz has not received a rate increase since 2008. Furthermore, it was agreed that the transportation and processing rates for flammable organics and florescent tubes would be adjusted to better reflect the current market rates.

The current Hotz contract is a result of a competitive procurement process that was issued in partnership by the City and Halton in 2007. Through the RFT process the City benefited from the economies of scale of issuing a joint RFT between the two municipalities. The RFT resulted in the City receiving favourable rates for the five (5) year term of the contract, which resulted in a savings of \$1.0M to the City over the previous contract.

By extending the current contract, the City will continue to benefit from the lower rates, however, as part of the negotiations Hotz requested that CPI for the term of the current

and next contract term be included in the new contract to ensure fair market rates during the term of the contract extension.

The inclusion of the escalation factor and rate adjustment for flammable organics and florescent tubes will result in a net contractual price increase of approximately \$79,000. However, it is estimated that the reduction in the 2013 operating budget resulting from the implementation of the MDT&PIP will offset the increase to the negotiated extended contract and therefore there will be no net increase to the 2013 operating budget. Since this material is funded directly by Stewardship Ontario to the transporters and processors, the City can remove Phase 1 costs from the 2013 operating budget.

Over the last year Stewardship Ontario has continuously changed the MHSW program which has led to uncertainty within the MHSW industry. In order to minimize the impact of any changes it was agreed during negotiations that a clause would be added to the contract which will allow contractual flexibility should the MHSW program be altered by Stewardship Ontario, Waste Diversion Ontario or the Province.

The remaining terms and conditions of the current contract will remain unchanged.

ALTERNATIVES FOR CONSIDERATION

In the event that Council elects not to approve the recommendations in this report, there remains one option to be considered. The City would be required to issue a RFT for the operation of the MHSW depots and the transportation and processing of collected Phase 2 and 3 MHSW.

The potential risks of issuing a RFT include:

Financial - there could be a price increase for the transportation and processing of Phase 2 & 3 MHSW. This increase may not be offset by the funding provided under the MDT&PIP therefore resulting in a budget pressure for the 2013 operating budget. Additionally, the City would be unable to realize any economies of scale savings by issuing a joint tender with the Regional Municipality of Halton.

Service Levels - due to the current uncertainty it is possible that the City receives limited or no bids for the issued RFT. This could leave the City with no service provider to collect, transport and process MHSW resulting in a reduction in service to the residents of Hamilton.

Timing - the decision to issue an RFT would need to be done quickly. Although the contract expires on April 2, 2013, a sufficient amount of time is required to develop and issue a RFT, evaluate bids and award the contract. Additionally, if the pricing received through the RFT process is greater than anticipated the City may re-issue the RFT, which would take time.

CORPORATE STRATEGIC PLAN

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Financial Sustainability

- ◆ Financially Sustainable City by 2020
- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

Environmental Stewardship

- ◆ Reduced impact of City activities on the environment
- ◆ Aspiring to the highest environmental standards

APPENDICES / SCHEDULES

None