Agenda - Executive Policy Committee - July 19, 2006

Report - Standing Policy Committee on Infrastructure Renewal and Public Works - July 11, 2006

Item No. 1A **Award of Contract for the Collection of Recyclables from Apartments**
File WT-1.3

Neil Fast, District Manager, Waste Management of Canada Corporation submitted communication dated July 14, 2006, in opposition to the recommendation from the Standing Policy Committee on Infrastructure Renewal and Public Works regarding the award of contract for the collection of recyclables from apartments.

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Executive Policy Committee Meeting July 19, 2006
Contract for Collection of Recyclables from Apartments
Bid Opportunity No. 68-2006
Submission by Waste Management Inc.

On July 11, 2006, the Standing Policy Committee on Infrastructure Renewal and Public Works considered and endorsed an Administrative Recommendation with respect to the above-referenced Bid Opportunity. The Executive Policy Committee will be considering the matter at its meeting on July 19, 2006.

Waste Management of Canada Corporation has serious concerns with respect to the manner in which the Administrative Recommendation would have the City deal with the bids.

Four bids were submitted, including bids by BFI Canada and Waste Manangement. The Bid Opportunity requests bids for the contract as a whole (Alternative 1) and bids for one or both of two sections of work (Alternative 2). There were certain mathematical errors in BFI's bid, which were corrected in accordance with the terms of the Bid Opportunity.

With BFI's mathematical errors corrected, BFI had the lowest bid for Section A (Cart Collection) and Waste Management had the lowest bid for Section B (Front-End Collection). Awarding the contracts on that basis would result in an annual cost to the City of $590,287, a sum significantly lower than the lowest bid under Alternative 1.

We understand that BFI then asked to withdraw its Alternative 2 bids on the basis that it had made mistakes in its bid. The Administrative recommendation was to allow BFI to do so and to accept BFI's Alternative 1 bid at an annual cost of $673,142 ($82,855 over the cost of awarding Section A to BFI and Section B to Waste Management).

The Bid Opportunity does not allow for the withdrawal of a bid after the submission deadline. In fact, the Bid Opportunity states that in the event a bidder withdraws a bid after the submission deadline, the bidder shall be "liable for such damages as are imposed upon the Bidder by law and subject to such sanctions as the Chief Administrative Officer considers appropriate in the circumstances".

Nor is there anything in the Bid Opportunity contemplating the withdrawal of a portion of a bid at any time (let alone after the submission deadline).

Allowing BFI to withdraw a portion of its bid clearly gives BFI an unfair advantage at the expense of the other bidders and is fundamentally inconsistent with the principles, which govern the tender process and the terms of the Bid Opportunity. Simply put, the City is not entitled to allow BFI to withdraw its bid, let alone selectively withdraw portions of its bid.

The Administrative Recommendation Report indicates that the reason BFI ought to be allowed to withdraw its bid is that there was an error "apparent on the face of the bid". However, there is nothing in the Bid Opportunity authorizing the withdrawal of a bid or any portion of a bid on that basis. To the contrary, provision B14.4.1 sets out the manner in which certain discrepancies will

be resolved, thereby allowing for the correction of mathematical errors (which errors are apparent on the face of the bid).

Further, assuming that there was an error in BFI's bid, it is not clear "on the face of the bid" whether the error was in Alternative 1 or Alternative 2. The supposed error (leaving aside BFI's mathematical errors in both Alternatives) was that the unit prices for two items were reversed as between Alternative 1 and Alternative 2. However, there is no basis "on the face of the bid" to determine whether the supposed error was made in Alternative 1 or in Alternative 2. In other words, there is no basis on which to choose Alternative 1 and reject Alternative 2. If the supposed errors in BFI's bid render it incapable of acceptance, the City must reject the entire bid.

In summary, the options open to the City are to reject BFI's bid in its entirety or consider the bids on the basis that BFI's Alternative 2 bid is amendable to acceptance. If the second option is chosen the only reasonable result is to award Section A to BFI and Section B to WMI.

The City of Winnipeg has a long and sound history of awarding and managing private sector contracts. As a matter of sound public policy, the administration should review their recommended course of action and consider our suggestions. We believe that this is a fairly routine policy issue and should be able to be dealt with quickly and fairly for all involved in the process, not just Waste Management.

Respectfully submitted,

Neil Fast
District Manager
Waste Management of Canada Corp.