Minute No. 303
Report - Standing Policy Committee on Infrastructure Renewal and Public Works - March 10, 2009

Item No. 1 **Award of Contract for the Supply and Delivery of Oxygen to the North End Water Pollution Control Centre**
eFile GL-9

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works and adopted the following:

1. That an extension to an existing contract be awarded to Praxair Canada Inc. for the supply and delivery of oxygen to the North End Water Pollution Control Centre (NEWPCC) in the estimated amount of $9,000,000.00 plus GST and MRST as applicable.

2. That notwithstanding Section 00800, clause 21 Indemnity and GC 7.14 Indemnity of the Contract dated July 15, 1982; the contract shall state that the Contractor shall indemnify the City against indirect and consequential damages up to a maximum of $3,000,000.00.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

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DECISION MAKING HISTORY:

Moved by Councillor Clement,

That the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 19, 2009, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On March 10, 2009, the Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the recommendation and submitted the matter to the Executive Policy Committee and Council.

Re: AWARD OF CONTRACT FOR THE SUPPLY AND DELIVERY OF OXYGEN TO THE NEWPCC BID SOLICITATION NO. 848-2008

FOR SUBMISSION TO: THE STANDING POLICY COMMITTEE ON INFRASTRUCTURE RENEWAL AND PUBLIC WORKS

ORIGINAL REPORT SIGNED BY: Barry D. MacBride, P. Eng.
Director of the Water and Waste Department

REPORT DATE: January 28, 2009

RECOMMENDATION(S):

1) That an extension to an existing contract be awarded to Praxair Canada Inc. for the supply and delivery of oxygen to the North End Water Pollution Control Centre (NEWPCC) in the estimated amount of $9,000,000.00 plus GST and MRST as applicable.

2) That notwithstanding Section 00800, clause 21 Indemnity and GC 7.14 Indemnity of the Contract dated July 15, 1982, the contract shall state that the Contractor shall indemnify the City against indirect and consequential damages up to a maximum of $3,000,000.00

Report Summary

KEY ISSUES: To award an extension to an existing contract for the supply of oxygen to the NEWPCC in the estimated amount of $9,000,000.00 plus GST and MRST as applicable.

IMPLICATIONS OF THE RECOMMENDATION(S):

General Implications

	None
	For the organization overall and/or for other departments
	For the community and/or organizations external to the City of Winnipeg
x	Involves a multi-year contract

Comment: The term of this contract would be from January 1, 2010 to December 31, 2014 with a further extension subject to agreement by both parties.

Policy Implications

x	No
	Yes

Comment(s):

Regulatory Implications

x	None
	Eliminates or reduces regulatory impact
	Proposes regulatory impact

Comment(s):

Environmental Implications

x	No
	Yes

Comment(s):

Human Resources Implications

x	No
	Yes

Comment(s):

Financial Implications

x	Within approved current and/or capital budget
	Current and/or capital budget adjustment required

Comment: Funds for the supply of oxygen to the NEWPCC are included every year in the annual Current Budget

REPORT

REASON FOR THE REPORT:

The award of a multi-year contract must be authorized by Council in accordance with Section B8.2.3 of the City of Winnipeg Materials Management Policy, which states that the appropriate Standing Committee shall forward a recommendation to Council including where appropriate, a recommendation for funding the difference between the budgetary provision and the monetary consideration to be paid by the City pursuant to the proposed contract.

HISTORY:

Funds for the Supply of Chemicals are included in the annual Current Budget identified as Sewage Disposal System – Interception and Treatment Regional Account Distribution No. 444-533020-201108 class 999.

In 1982 the City of Winnipeg entered into an agreement with Catalytic Enterprises for the supply and delivery of oxygen for the treatment of sewage at the NEWPCC. The term of the contract was from July 15, 1982 to December 31, 1999 and included the construction of an oxygen generating facility at the NEWPCC that was owned and operated by the Contractor.

On April 13, 1983 Catalytic Enterprises changed its name to Stearns Catalytic Ltd.

On April 1, 1987 Stearns Catalytic Ltd changed its name to Air Products Canada Ltd.

On May 21, 1997 the contract for the supply and delivery of oxygen to the NEWPCC was extended to December 31, 2009.

On May 1, 2003 the contract for the supply and delivery of oxygen was assigned to Praxair Canada Inc.

On December 8, 2008 the Acting Chief Administrative Officer concurred in the recommendation from the Director of Water and Waste that the Water and Waste Department be authorized to negotiate, without solicitation of competitive offers, an extension to the existing contract with Praxair Canada Inc. for the supply and delivery of oxygen to the North End Water Pollution Control Centre (NEWPCC) for the period from January 1, 2010 to December 31, 2014. The estimated value of the resultant contract, if approved, would be $9,000,000.00 plus GST and MRST as applicable.

DISCUSSION:

The work of this contract consists of the supply and delivery of oxygen for the wastewater treatment process at the NEWPCC through a public/private agreement. The original contract included the construction of a private oxygen production facility by the Contractor on land leased from the City of Winnipeg. The facility remains the property of the Contractor.

The contract for the supply of oxygen expires on December 31, 2009 and another supply contract is required to supply oxygen for another five to seven years, depending on the timing of the changes made to the sewage treatment process due to regulatory requirements. The NEWPCC Environment Act License requires the current activated sludge process to be upgraded to a Biological Nutrient Removal process.

The new process may not require the supply of oxygen as part of the treatment process. The new process is a major undertaking and is required to be in place by December 31, 2014. Due to the uncertainty of the future oxygen requirements, the Water and Waste Department has negotiated an extension to the existing contract with Praxair Canada Inc., for a five year term with an approximate value of $9,000,000.00, from January 1, 2010 to December 31, 2014, with a further extension possible subject to agreement by both parties.

As part of the negotiations, Notwithstanding Section 00800 Clause 21 Indemnity and GC 7.14 Indemnity of the Contract dated July 15, 1982, the contract shall state that the Contractor shall indemnify the City against indirect and consequential damages up to a maximum of $3,000,000.00. The existing contract includes an indemnity clause for direct, indirect and consequential damages that are unlimited. The rationale for the $3,000,000.00 limitation for indirect and consequential damages is that it is consistent with current industry practice and reasonable in the circumstances.

In the opinion of the Engineering staff of this Department the proposed Contractor has the necessary skills and resources to satisfactorily complete all of the work.

FINANCIAL IMPACT:

The following financial impact statement for this project has been prepared in accordance with the recommendation adopted by Council on December 13, 2000.

Financial Impact Statement

Date: January 16, 2009

Project Name: **First Year of Program 2010**

AWARD OF CONTRACT FOR THE SUPPLY AND DELIVERY OF OXYGEN TO THE NEWPCC
BID SOLICITATION NO. 848-2008

	2010	2011	2012	2013	2014
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 1,926,000	$ 1,926,000	$ 1,926,000	$ 1,926,000	$ 1,926,000
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 1,926,000	$ 1,926,000	$ 1,926,000	$ 1,926,000	$ 1,926,000
Less: Existing Budget Amounts	1,926,000	1,926,000	1,926,000	1,926,000	1,926,000
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Funds for the Supply of Chemicals are included in the annual Current Budget identified as Sewage Disposal System – Interception and Treatment Regional Account Distribution No. 444-533020-201108 class 999.

"Original signed by D. Capp, C.G.A."

Darlene Capp, CGA
Acting Manager of Finance and Administration

je
12-Dec-08

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Legal Services Division, (as to legal issues)

Materials Management Branch

External Consultation With: N/A

THIS REPORT SUBMITTED BY:

Water and Waste Department
Engineering Division
Prepared by: John Elias C.E.T.
Processed by: Tamara Siemens
Fax No. 986-3745
File No. S-763

Attachment

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