TORONTO

REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Auditor General's Observations on the Quantity of Product Realized from the City's Single Stream Recyclable Material (Blue Bin) Program

Date: October 12, 2017
To: Audit Committee
From: Auditor General
Wards: All

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation or potential litigation that affects the City or one of its agencies or corporations.

SUMMARY

The Auditor General was contacted and requested to review a potential shortfall in material recovered through its Single Stream Recyclable Material (Blue Bin) Program to assess the circumstances under which any shortfall of materials took place.

The Auditor General has now completed her review of this issue. The Auditor General's report is included as Confidential Attachment 1 to this report. No evidence of fraudulent activity was identified.

RECOMMENDATIONS

The Auditor General recommends that:

1. City Council request the General Manager, Solid Waste Management Services, to provide sufficient information in offers to purchase the City's processed recyclable products to ensure neither the incumbent purchaser nor the operator of the Material Recovery Facility have an advantage over other potential purchasers.

2. City Council request the General Manager, Solid Waste Management Services, to rotate City staff assigned to the Material Recovery Facility to the extent feasible.

3. City Council request the General Manager, Solid Waste Management Services, to reinforce with City staff assigned to the Material Recovery Facility that they are to bring any issues or concerns about the Material Recovery Facility or the contracted operator/owner of the Facility to their managers.

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4. City Council request the General Manager, Solid Waste Management Services, enhance oversight at the Material Recovery Facility by:

a. Reviewing month-end inventories of recycled product
b. Periodically reconciling, by weight, the City material sorted at the facility and shipped to City purchasers.

5. City Council direct that Confidential Attachment 1 remain confidential in its entirety as it deals with information about litigation or potential litigation that affects the City or one of its agencies or corporations.

FINANCIAL IMPACT

There is no financial impact from the adoption of recommendations in this report.

DECISION HISTORY

At its meeting of April 26, 27 and 28, 2017, City Council approved a dispute settlement between Canada Fibers Ltd. (CFL) and the City substantially in accordance with the Minutes of Settlement found in Appendix A to Confidential Attachment 1 to the report (March 29, 2017) from the City Solicitor, the General Manager, Solid Waste Management Services, the Chief Purchasing Officer and Director of Purchasing and Materials Management and the Deputy City Manager and Chief Financial Officer.

The City Council decision regarding the dispute settlement can be found at:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PW20.4

At its meeting on June 10, 11 and 12, 2015, City Council adopted Item PW5.4 - Authority to Negotiate and Enter into Agreements for Waste Diversion Processing Capacity, Initiatives and Funding. City Council granted authority to the General Manager, Solid Waste Management Services to negotiate and enter into amending agreements for waste diversion processing capacity, initiatives and funding.

The City Council decision can be found at:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PW5.4

At its meeting on June 10, 11, 12, and 13, 2014, City Council adopted Item PW31.20 - Contract Award: Request for Proposal No. 9150-14-3007 for Single Stream Recyclable Materials Processing Contract. City Council granted authority to the Acting General Manager, Solid Waste Management Services, to negotiate and enter into an agreement with Canada Fibers Ltd. for processing services of up to 120,000 tonnes per year of Single Stream Recyclable Materials, starting on November 15, 2014, for seven (7) years plus two (2) option years.

The City Council decision can be found at:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PW31.20

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At its meeting on July 12, 13 and 14, 2011, City Council adopted Item PW5.8 - Contract Award: Request for Proposal 9150-11-3066 for Single Stream Recyclable Materials Processing Contract. City Council granted authority to authorize the Acting General Manager, Solid Waste Management Services, to negotiate and enter into an agreement with Canada Fibers Ltd. for processing services of up to 140,000 tonnes per year of Single Stream Recyclable Materials for a period of seven (7) years plus two (2) option years.

The City Council decision can be found at:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.PW5.8

BACKGROUND INFORMATION

As part of its waste management system, the City manages a Blue Bin recycling program. The program accepts a variety of printed-paper and packaging products to meet Provincial Regulations and support the City's efforts to drive waste diversion from landfills.

Recyclables collected through the Blue Bin program are sent to a Material Recovery Facility operated by Canada Fibers Ltd. under contract with the City. The material is processed into different product categories to maximize both its potential for re-use and its value as a saleable product. The City has entered into various agreements with third parties to generate revenue from the sale of processed Blue Bin recyclables.

COMMENTS

The Auditor General's report entitled "Auditor General's Observations on the Quantity of Product Realized from the City's Single Stream Recyclable Material (Blue Bin) Program" is attached as Confidential Attachment 1. Allegations were made that there was a shortfall of material from the Blue Bin program as a result of deliberate diversion of materials. Our investigation found no evidence of fraudulent activity. Our investigation did identify opportunities to enhance controls as outlined in our recommendations.

The Deputy City Manager and General Manager, Solid Waste Management Services, have been consulted on this report and agree with all the recommendations.

CONTACT

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SIGNATURE

Beverly Romeo-Beehler
Auditor General

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ATTACHMENT

Confidential Attachment 1 - Auditor General's Observations on the Quantity of Product Realized from the City's Single Stream Recyclable Material (Blue Bin) Program

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TORONTO Item

Tracking Status

- City Council adopted this item on April 26, 2017 without amendments and without debate.
- This item was considered by the Public Works and Infrastructure Committee on April 12, 2017 and adopted without amendment. It will be considered by City Council on April 26, 2017.

City Council consideration on April 26, 2017

PW20.4	ACTION	Adopted on Consent		Ward:All

Result of Negotiations with Canada Fibers Limited and Amendments to Contracts No. 47017448 and No. 47018726 for Single Stream Recyclable Materials Processing Services and Request to enter into a Contract for Auditor Oversight Services

City Council Decision

City Council on April 26, 27 and 28, 2017, adopted the following:

1. City Council adopt the confidential recommendations in Confidential Attachment 1 to the report (March 29, 2017) from the City Solicitor, the General Manager, Solid Waste Management Services, the Chief Purchasing Officer and Director of Purchasing and Materials Management and the Deputy City Manager and Chief Financial Officer.

2. City Council authorize the public release of the confidential recommendations in Confidential Attachment 1 to the report (March 29, 2017) from the City Solicitor, the General Manager, Solid Waste Management Services, the Chief Purchasing Officer and Director of Purchasing and Materials Management and the Deputy City Manager and Chief Financial Officer.

3. City Council direct that the balance of Confidential Attachment 1 to the report (March 29, 2017) from the City Solicitor, the General Manager, Solid Waste Management Services, the Chief Purchasing Officer and Director of Purchasing and Materials Management and the Deputy City Manager and Chief Financial Officer, remain confidential as it relates to litigation or potential litigation and it contains advice or communications that are subject to solicitor-client privilege.

4. City Council authorize the appropriate City staff to execute any documentation necessary to implement City Council's decision.

The following confidential recommendations contained in Confidential Attachment 1 to the report (March 29, 2017) from the City Solicitor, the General Manager, Solid Waste Management Services, the Chief Purchasing Officer and Director of Purchasing and Materials Management and the Deputy City Manager and Chief Financial Officer were adopted by City Council and are now public:

1. City Council approve a settlement of the disputes between Canada Fibers Ltd. (CFL) and the City substantially in accordance with the Minutes of Settlement found in Appendix A to Confidential Attachment 1 to the report (March 29, 2017) from the City Solicitor, the General Manager, Solid Waste Management Services, the Chief Purchasing Officer and Director of Purchasing and Materials Management and the Deputy City Manager and Chief Financial Officer.

2. City Council authorize a net zero amendment of the 2017 Operating Budget for Solid Waste Management Services in order to accommodate the proposed contract amendments by reducing the 2017 contribution to the Waste Management Reserve Fund and increasing the 2017 expenditure budget for contracted services by $7.016 million.

3. City Council, in accordance with Section 71-11.1 C of the City of Toronto Municipal Code Chapter 71 (Financial Control By-law), amend Contract No. 47017448 with Canada Fibers Ltd. for Single Stream Recyclable Materials (Blue Bin Recyclables) Processing Services, awarded under Request for Proposal (RFP) 9150-11-3066 by an additional amount of $49,335,445 (net of HST recoveries, including two (2) option years), revising the contract value from $185,159,000 (net of HST recoveries, including all option years) to $234,494,445 (net of HST recoveries, including two (2) option years).

4. City Council, in accordance with Section 71-11.1 C of the City of Toronto Municipal Code Chapter 71 (Financial Control By-law), amend Contract No. 47018726 with Canada Fibers Ltd. for Single Stream Recyclable Materials (Blue Bin Recyclables) Processing Services, awarded under Request for Proposal (RFP) 9150-14-3007 by an additional amount of $48,443,624 (net of HST recoveries, including two (2) option years), revising the contract value from $167,514,000 (net of HST recoveries, including two (2) option years) to $215,957,624 (net of HST recoveries, including two (2) option years).

5. City Council authorize the General Manager, Solid Waste Management Services to enter into an agreement with 2cg Inc. (or another independent auditor acceptable to both parties) for auditor oversight services not to exceed $1,272,000 (net of HST recoveries) for a period not to go beyond December 31, 2023.

The balance of Confidential Attachment 1 to the report (March 29, 2017) from the City Solicitor, the General Manager, Solid Waste Management Services, the Chief Purchasing Officer and Director of Purchasing and Materials Management and the Deputy City Manager and Chief Financial Officer remains confidential as it relates to litigation or potential litigation and it contains advice or communications that are subject to solicitor-client privilege.

Confidential Attachment - Litigation or potential litigation that affects the City, and advice or communications that are subject to solicitor-client privilege.

Background Information (Committee)

(March 29, 2017) Report from the City Solicitor, General Manager, Solid Waste Management Services, Chief Purchasing Officer, the Director of Purchasing and Materials Management and the Deputy City Manager and Chief Financial Officer on Result of Negotiations with Canada Fibers Limited and Amendments to Contracts No. 47017448 and No. 47018726 for Single Stream Recyclable Materials Processing Services and Request to enter into a Contract for Auditor Oversight Services
(http://www.toronto.ca/legdocs/mmis/2017/pw/bgrd/backgroundfile-102430.pdf)
Confidential Attachment 1 - Recommended Amendments to Contracts No. 47017448 And No. 47018726 for Blue Bin Recyclables Processing and Request to enter into a Contract for Auditor Oversight Services

Public Works and Infrastructure Committee consideration on April 12, 2017

PW20.4	ACTION	Adopted		Ward:All

Result of Negotiations with Canada Fibers Limited and Amendments to Contracts No. 47017448 and No. 47018726 for Single Stream Recyclable Materials Processing Services and Request to enter into a Contract for Auditor Oversight Services

Confidential Attachment - Litigation or potential litigation that affects the City, and advice or communications that are subject to solicitor-client privilege.

Committee Recommendations

The Public Works and Infrastructure Committee recommends that:

1. City Council adopt the confidential recommendations in Confidential Attachment 1 to the report (March 29, 2017) from the City Solicitor, the General Manager, Solid Waste Management Services, the Chief Purchasing Officer and Director of Purchasing and Materials Management and the Deputy City Manager and Chief Financial Officer.

2. City Council authorize the public release of the confidential recommendations, if adopted, in Confidential Attachment 1 to the report (March 29, 2017) from the City Solicitor, the General Manager, Solid Waste Management Services, the Chief Purchasing Officer and Director of Purchasing and Materials Management and the Deputy City Manager and Chief Financial Officer.

3. City Council direct that the balance of Confidential Attachment 1 to the report (March 29, 2017) from the City Solicitor, the General Manager, Solid Waste Management Services, the Chief Purchasing Officer and Director of Purchasing and Materials Management and the Deputy City Manager and Chief Financial Officer, remain confidential as it relates to litigation or potential litigation and contains advice or communications that are subject to solicitor-client privilege.

4. City Council authorize the appropriate City staff to execute any documentation necessary to implement the recommendations set out in the report (March 29, 2017) from the City Solicitor, the General Manager, Solid Waste Management Services, the Chief Purchasing Officer and Director of Purchasing and Materials Management and the Deputy City Manager and Chief Financial Officer.

Origin

(March 29, 2017) Report from the City Solicitor, General Manager, Solid Waste Management Services, Chief Purchasing Officer, the Director of Purchasing and Materials Management and the Deputy City Manager and Chief Financial Officer

Summary

The purpose of this report is to provide information and make recommendations about negotiations between Canada Fibers Limited and the City of Toronto with respect to litigation or potential litigation related to Contracts No. 47017448 and No. 47018726, which are set out in the Confidential Attachment 1.

Background Information

(March 29, 2017) Report from the City Solicitor, General Manager, Solid Waste Management Services, Chief Purchasing Officer, the Director of Purchasing and Materials Management and the Deputy City Manager and Chief Financial Officer on Result of Negotiations with Canada Fibers Limited and Amendments to Contracts No. 47017448 and No. 47018726 for Single Stream Recyclable Materials Processing Services and Request to enter into a Contract for Auditor Oversight Services
(http://www.toronto.ca/legdocs/mmis/2017/pw/bgrd/backgroundfile-102430.pdf)
Confidential Attachment 1 - Recommended Amendments to Contracts No. 47017448 And No. 47018726 for Blue Bin Recyclables Processing and Request to enter into a Contract for Auditor Oversight Services

Motions

Motion to Adopt Item moved by Councillor Chin Lee ***(Carried)***

Source: Toronto City Clerk at www.toronto.ca/council