Minutes – Council – May 30, 2024

Minute No. 313
Report – Standing Policy Committee on Water, Waste and Environment – May 6, 2024

Item No. 1 **Single Source Negotiation and Award of Contract for the Lease of Liquid Oxygen Storage Equipment and Supply and Delivery of Liquid Oxygen Materials Management Reference No. 202-2024**

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Community Services and adopted the following:

1. That a Single Source Negotiation be approved and that the City award, enter into, execute and deliver a contract with Air Liquide Canada Inc. for the Lease of Liquid Oxygen Storage Equipment and Supply and Delivery of Liquid Oxygen to the WTP for the period of July 21, 2024, to December 31, 2028, for an estimated total cost of $1,927,574.68, GST and MRST extra as applicable, and such other agreements as determined necessary by the City Solicitor / Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

2. That authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Lease of Liquid Oxygen Storage Equipment and Supply and Delivery of Liquid Oxygen to the WTP and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.

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

Report – Standing Policy Committee on Water, Waste and Environment – May 6, 2024

DECISION MAKING HISTORY:

Moved by Councillor Duncan,

That the recommendation of the Standing Policy Committee on Community Services be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 22, 2024, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Water, Waste and Environment and submitted the matter to Council.

David Grant submitted a communication with respect to the matter.

STANDING COMMITTEE RECOMMENDATION:

On May 6, 2024, the Standing Policy Committee on Water, Waste and Environment concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

David Grant submitted a communication with respect to the matter.

ADMINISTRATIVE REPORT

Title: SINGLE SOURCE NEGOTIATION AND AWARD OF CONTRACT FOR THE LEASE OF LIQUID OXYGEN STORAGE EQUIPMENT AND SUPPLY AND DELIVERY OF LIQUID OXYGEN
MATERIALS MANAGEMENT REFERENCE NO. 202-2024

Critical Path: Standing Policy Committee on Water, Waste and Environment – Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Szmon, P. Eng., Manager of Water Services	T. W. Shanks, M. Eng., P. Eng. Director, Water and Waste	C. Kloepfer	M. Jack

EXECUTIVE SUMMARY

This report seeks approval to negotiate and award a contract to Air Liquide Canada Inc. The contract involves leasing liquid oxygen storage equipment and supplying liquid oxygen to Winnipeg's Drinking Water Treatment Plant (WTP). The contract would be from July 21, 2024, to December 31, 2028.

The WTP uses ozone for water treatment. Ozone is made onsite using ozone generators and liquid oxygen. Air Liquide Canada Inc. currently supplies liquid oxygen and leases storage equipment to the City under the initial contract (Bid Opportunity No. 921-2007). Two supplemental agreements extended the original contract, with the current one expiring on July 20, 2024.

Challenges to not entering into the recommended contract include:

- Getting a new contract would mean designing and building a new liquid oxygen storage system at the WTP.
- If the Public Service tendered a new contract, Air Liquide Canada Inc. would need to remove their existing storage system.
- The process for a new system would take about a year.
- During this time, the WTP wouldn't have ozone treatment.

Negotiating a new supplemental agreement with Air Liquide Canada Inc. avoids future lease costs. The proposed agreement reduces the equipment lease price from $8,000.00 to $6,000.00 per month, saving $24,000.00 annually. Air Liquide Canada Inc. will also maintain the current 2023 oxygen price throughout 2024, if a new supplemental agreement is approved.

The recommendations of this report are compliant with the Materials Management Policy and applicable trade agreements. Further details are provided in the History/Discussion section.

RECOMMENDATIONS

1. That Council approve a Single Source Negotiation and that the City award, enter into, execute and deliver a contract with Air Liquide Canada Inc. for the Lease of Liquid Oxygen Storage Equipment and Supply and Delivery of Liquid Oxygen to the WTP for the period of July 21, 2024, to December 31, 2028, for an estimated total cost of $1,927,574.68, GST and MRST extra as applicable, and such other agreements as determined necessary by the City Solicitor / Director of Legal Services to implement the intent of the foregoing (the “Ancillary Agreements”).

2. That authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Lease of Liquid Oxygen Storage Equipment and Supply and Delivery of Liquid Oxygen to the WTP and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.

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

REASON FOR THE REPORT

As the total conditional amount to be paid by the City pursuant to the contract to Air Liquide Canada Inc. affects yearly budgets not yet approved by Council, Council approval is required. As per Section 288(2) of the City of Winnipeg Charter and in accordance with Section B8.2.2 of the City of Winnipeg Materials Management Policy, Council has the authority to authorize expenditures before operating or capital budget of a fiscal year is adopted.

Council has the authority to approve single source negotiations.

IMPLICATIONS OF THE RECOMMENDATIONS

The duration of this contract for the Lease of Liquid Oxygen Storage Equipment and Supply and Delivery of Liquid Oxygen to the WTP is from July 21, 2024, to December 31, 2028.

The Lease of Liquid Oxygen Storage Equipment is an absolute commitment for the duration of the contract; the Supply and Delivery of Liquid Oxygen is on an “as required” basis.

Funding for this Contract will be made available from each year’s annual Current Budget – Water Treatment – Chemicals – Account Distribution number 443 533020 201218 999.

HISTORY/DISCUSSION

The work of this contract consists of the Lease of Oxygen Storage Equipment and Supply and Delivery of Liquid Oxygen. Liquid oxygen is required to generate ozone used in the water

treatment process at the WTP. Ozone removes taste and odours and improves filtration of organic particles and materials that can create disinfection by-products.

The lease of oxygen storage equipment is a commitment for the duration of the contract. The supply of liquid oxygen is on an “as required” basis with no absolute commitment.

The original Bid Opportunity for this work was No. 135-2007. Bids were received from Air Liquide Canada Inc. and Praxair Canada Inc. and were both deemed non-responsive. Bid Opportunity No. 135-2007 was not awarded.

On February 13, 2009, the Director of Water and Waste (Director) approved the award of contract through single source negotiation (Bid Opportunity No. 921-2007) to Air Liquide Canada Inc. from July 21, 2009, to July 20, 2014, in the amount of $1,831,018.50, GST and MRST extra as applicable. Subsequently, two Supplemental Agreements extending the original contract have been approved.

The first extension of the contract for the period of July 21, 2014, to July 20, 2019, was approved by the Director on February 21, 2014. The costs remained the same for this period.

The second extension was through Materials Management Reference No. 87-2019 and was awarded to Air Liquide Canada Inc. by single source negotiation for the period of July 21, 2019, to July 20, 2024, in the amount of $2,000,000. The contract extension was approved by Council on April 25, 2019. Council also recommended that the Winnipeg Public Service report back to the Standing Policy Committee on Water and Waste, Riverbank Management and the Environment in 2020 with respect to procurement of future contracts.

In 2020, AECOM Canada Ltd. (AECOM) was hired to assess the procurement of future contracts. They recommended the City continue leasing the existing oxygen equipment and pursue another single source negotiation contract in 2024. This was the most cost-effective option and prevented a disruption to ozone treatment. The AECOM recommendations were presented to the Standing Policy Committee on Water and Waste, Riverbank Management and the Environment on December 1, 2020.

On January 11, 2024, an e-mail was sent from the Contract Administrator to Air Liquide Canada Inc. to begin negotiations for a potential third contract extension. Air Liquide Canada Inc. submitted a letter on January 29, 2024, confirming their interest in a third contract extension and summarized pricing for a new term, if approved by Council. Pricing and term changes would be as follows:

- Monthly Facility Charge will be reduced from $8,000.00 to $6,000.00 per month;
- Air Liquide will maintain the 2023 oxygen price of $0.8301/cubic metre throughout 2024;
- Oxygen price increases after one year are as per the indexed formula in the existing supplemental agreement;
- Contract term will be from July 21, 2024, to December 31, 2028.

Single source procurement for the Lease of Liquid Oxygen Storage Equipment and Supply and Delivery of Liquid Oxygen is within the applicable trade agreements, quoted below.

Article 513.1 of the Canadian Free Trade Agreement 2023 (CFTA) states:

"Subject to paragraphs 2 and 3, and provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of any other Party or protects its own suppliers, a procuring entity may use limited tendering in the following circumstances:

… (b) if the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

…

(v) to ensure compatibility with existing goods, or to maintain specialized goods that must be maintained by the manufacturer of those goods or its representative;

…

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement, if a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;"

Article 19 12-1.c of the Comprehensive Economic and Trade Agreement (CETA) states:

"Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 19.6 through 19.8, paragraphs 7 through 11 of Article 19.9, and Articles 19.10, 19.11, 19.13 and 19.14 under any of the following circumstances:

…

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement if a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity".

Tendering and awarding a new contract requires the successful bidder to design and build a new liquid oxygen storage system at the WTP. Air Liquide Canada Inc. owns the current liquid oxygen system at the WTP. If this contract were to be tendered, Air Liquide Canada Inc. would be required to remove their existing liquid oxygen storage system once the current supplemental agreement expires.

The process to tender, design and build a new liquid oxygen system would take approximately one year. If single source award of the proposed supplemental agreement is not approved, the WTP would be without ozone treatment from the time the current contract expires until a new liquid oxygen skid is completed. In future, the recommendation to proceed with a tender for a new liquid oxygen system will be made when determined to be financially and operationally advantageous to the City. A future tender will allow enough time to install a new system before the existing system is removed, to prevent disrupting ozone treatment.

There are two major oxygen suppliers in Canada, Air Liquide Canada Inc. and Linde Canada (formerly Praxair Canada). Wastewater Services is currently in a five-year single source negotiation contract for the Supply and Delivery of Oxygen to the NEWPCC and SEWPCC with Linde Canada, Air Liquide Canada Inc.'s direct competitor in the Canadian market. As such, the City is not favouring specific suppliers.

The Public Service is satisfied that the recommended Contractor has the necessary experience and resources to perform the work of the contract and has satisfactorily performed the work since the beginning of the contract in accordance with the requirements of the Contract.

FINANCIAL IMPACT

Financial Impact Statement

Date: March 1, 2024

Project Name: **First Year of Program** **2024**

SINGLE SOURCE NEGOTIATION AND AWARD OF CONTRACT FOR THE LEASE OF LIQUID OXYGEN STORAGE EQUIPMENT AND SUPPLY AND DELIVERY OF LIQUID OXYGEN MATERIALS MANAGEMENT REFERENCE NO. 202-2024

	2024	2025	2026	2027	2028
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	$ 227,575	$ 425,000	$ 425,000	$ 425,000	$ 425,000
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 227,575	$ 425,000	$ 425,000	$ 425,000	$ 425,000
Less: Existing Budget Amounts	227,575	425,000	425,000	425,000	425,000
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: The duration of this contract is for the period from July 21, 2024 to December 31, 2028. The Lease of Liquid Oxygen Storage Equipment is an absolute commitment for the duration of the contract; the Supply and Delivery of Liquid Oxygen is on an "as required" basis.
Funding for this contract will be made available from each year's annual Current Budget – Water Treatment - Chemicals – Account Distribution No. 443 533020 201218 999. Subject to annual price adjustments as per the existing Supplemental Agreement.

Lucy Szkwarek, CPA, CGA

bah
23-Feb-24

Lucy Szkwarek, CPA, CGA
Manager of Finance and Administration

CONSULTATION

In preparing this report there was consultation with:

- Legal Services Department (as to legal issues)

OURWINNIPEG POLICY ALIGNMENT

This report is in accordance with the OurWinnipeg 2045 policies through:

2.18 Potable Water Conservation - Provide a safe, reliable and sustainable supply of potable water, by ensuring responsible consumption and conservation of resources, while respecting Indigenous land based practices, Indigenous rights and acknowledging that the source of the city's water comes from Shoal Lake on Treaty Three Territory

Objective: Protect and value ecosystems as essential components to life.

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Consideration was given as to whether this report connects to the Winnipeg Climate Action Plan (WCAP), and its Goals and Objectives. It was determined that the WCAP is not applicable to this specific report.

WINNIPEG POVERTY REDUCTION STRATEGY ALIGNMENT

Consideration was given as to whether this report connects to the Winnipeg Poverty Reduction Strategy (WPRS) and its Goals and Objectives. It was determined that the WPRS is not applicable to this specific report.

SUBMITTED BY

Department: Water and Waste
Division: Water Services
Prepared by: Matthew Harrison, P. Eng.
Date: March 1, 2024
File No.: W-532