Minutes – Executive Policy Committee – September 17, 2024

Report – Standing Policy Committee on Water, Waste and Environment – September 9, 2024

Item No. 4 Single Source Negotiation and Award of Contract for the Supply of Liquid Oxygen to the North End Sewage Treatment Plant (NEWPCC) – Purchasing Reference No. 154-2024

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Water, Waste and Environment and submitted the following to Council:

1. That a single source negotiation be approved, and that the City award, enter into, execute and deliver a contract to Linde Canada Inc. for the supply of liquid oxygen to the NEWPCC, including all associated property lease agreements, for the period of January 1, 2025 to December 31, 2029, for an estimated total cost of $12,740,000.00, 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 the Chief Administrative Officer be delegated the authority to negotiate and approve the terms and conditions of the Contract for the supply of liquid oxygen to the NEWPCC 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, for the period of January 1, 2025 to December 31, 2029, with the option of three (3) mutually agreed upon two (2) year extensions, with Linde Canada Inc.

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 – September 9, 2024

DECISION MAKING HISTORY:

Moved by Councillor Duncan,

That the recommendation of the Standing Policy Committee on Water, Waste and Environment be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On September 9, 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 in opposition to the matter.

ADMINISTRATIVE REPORT

Title: Single Source Negotiation and Award of Contract for the Supply of Liquid Oxygen to the North End Sewage Treatment Plant (NEWPCC)
Purchasing Reference No. 154-2024

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

AUTHORIZATION

Author	Department Head	CFO	CAO
C. W. Carroll, Manager of Wastewater Services	Tim W. Shanks, M. Eng., P. Eng., Director of Water and Waste Department	T. Graham	

EXECUTIVE SUMMARY

This report seeks approval to negotiate and award a contract to Linde Canada Inc. for the supply of liquid oxygen to the North End Sewage Treatment Plant (NEWPCC) for the period of January 1, 2025 to December 31, 2029, the option of three (3) mutually agreed upon two (2) year extensions.

The NEWPCC uses liquid oxygen for the wastewater treatment process. Linde Canada Inc. currently supplies liquid oxygen to the NEWPCC under Materials Management Reference No. 380-2018, which Council approved on July 18, 2019 and expires on December 31, 2024.

Three options were reviewed in order to meet the Environment Act License requirements for maintaining a dedicated liquid oxygen supply at NEWPCC. Of the three options, it is recommended to award a contract with the existing contractor as this was determined the most viable option. Details regarding the three options are in the History/Discussion section.

This contract would be financed from proposed annual Current Budgets. The recommendations of this report are compliant with the Purchasing 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 to Linde Canada Inc. for the supply of liquid oxygen to the NEWPCC, including all associated property lease agreements, for the period of January 1, 2025 to December 31, 2029, for an estimated total cost of $12,740,000.00, 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 the Chief Administrative Officer be delegated the authority to negotiate and approve the terms and conditions of the Contract for the supply of liquid oxygen to the NEWPCC 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, for the period of January 1, 2025 to December 31, 2029, with the option of three (3) mutually agreed upon two (2) year extensions, with Linde Canada Inc.

3. That the Proper Officers of the City 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 Linde 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 Purchasing 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 is for the period from January 1, 2025, to December 31, 2029, with the option of three (3) mutually agreed upon two (2) year extensions.

An absolute commitment for the labour and maintenance of the liquid oxygen generation facility is necessary to supply liquid oxygen “as required” for the NEWPCC operation.

Funding for this contract would be made available from each year’s annual Current Budget – Sewage Disposal System – Interception and Treatment Regional – Account Distribution No. 444 533020 201108 999 (NEWPCC).

This budget is not yet approved by Council for the year 2025 and beyond, but it is anticipated that the above budget will provide adequate funding for the supply of liquid oxygen to the NEWPCC.

HISTORY / DISCUSSION

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

In 1982, the City of Winnipeg entered into an agreement with Catalytic Enterprises for the supply and delivery of liquid 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 a liquid 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 of Canada Ltd.

On April 15, 1997, Air Products' proposal included the supply and delivery of liquid oxygen to the South End Sewage Treatment Plant (SEWPCC) at a cost of $100 per tonne for hauling, with no charge for the product, and provision of a larger storage tanks at no cost to the City. The SEWPCC uses liquid oxygen as a backup to the onsite liquid oxygen production equipment.

On May 21, 1997, the contract for the supply and delivery of liquid oxygen to the NEWPCC was extended and the SEWPCC liquid oxygen requirements were added to the agreement. It was extended to December 31, 2009.

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

On March 25, 2009, Council approved the award of the contract to Praxair Canada Inc. in the estimated amount of $9,000,000.00 for the period of January 1, 2010, to December 31, 2014.

On July 16, 2014, Council approved the single source negotiation and award of contract to Praxair Canada Inc. in the estimated amount of $10,325,000.00 for the period of January 1, 2015, to December 31, 2019.

On July 18, 2019, Council approved the single source negotiation and award of contract to Praxair Canada Inc. in the estimated amount of $11,600,000.00 for the period of January 1, 2020, to December 31, 2024.

On March 1, 2021, Praxair Canada Inc. changed its name to Linde Canada Inc.

On July 15, 2022, the supply and delivery of liquid oxygen to the SEWPCC is no longer required as a result of the SEWPCC upgrade and expansion project.

The contract for the supply of liquid oxygen expires on December 31, 2024, and another supply contract is required for the upcoming years until the NEWPCC BNR capital upgrade is completed.

The NEWPCC will not be able to meet existing Environment Act Licences without a dedicated liquid oxygen supply source. The following options were considered to secure the supply of liquid oxygen.

1. Purchasing bulk liquid oxygen from the open market and trucking it to the NEWPCC.
2. Removing the existing liquid oxygen plant and reconstructing a new facility onsite.
3. Negotiate and award a contract with the existing contractor.

Option 1 is not preferred because there is no local supply available; the large quantity used at NEWPCC presents logistical difficulties; and the cost to purchase bulk liquid oxygen and deliver

it to the NEWPCC would be greater than the supply price proposed by Linde Canada Inc. due to increased transportation cost.

Option 2 is not preferred because it is not practical to construct a new facility onsite and recover the capital investment before the new NEWPCC upgrades are complete. Tendering and awarding a new contract requires the successful bidder to design and build a new liquid oxygen storage system at the NEWPCC. Linde Canada Inc. owns the current liquid oxygen production facility at the NEWPCC. If this contract were to be tendered, Linde Canada Inc. would be required to remove their existing liquid oxygen production facility once the current supplemental agreement expires.

The process to tender, design and build a new liquid oxygen production facility would take approximately two to three years. If single source award of the proposed supplemental agreement is not approved, NEWPCC would be without liquid oxygen from the time the current contract expires until a new liquid oxygen production facility is completed.

Option 3 is the preferred choice and the rates proposed by Linde Canada Inc. are favourable compared to other available options.

The new agreement would be under the same terms and conditions except following changes;

- Increase of monthly facility charge by $20,000.00 a month;
- Reduction of liquidated damage to match to the revised monthly facility charge;
- Removal of SEWPCC delivery clauses, which are no longer required.

The upgraded NEWPCC will not require the supply of liquid oxygen as part of the new treatment process. The NEWPCC Upgrade is a major undertaking and the timing for completion of various stages is uncertain.

Due to the uncertainty of the future liquid oxygen requirements, the Public Service is recommending to negotiate and award a contract with the existing contractor Linde Canada Inc., for a five year term, with an approximate value of $12,740,000.00, from January 1, 2025, to December 31, 2029, with the option of three mutually agreed upon two year extensions. A further extension, if required, would be subject to mutual agreement by both parties, and require Council approval.

Pre-tender Estimate $12,740,000.00, GST and MRST extra as applicable

This single source procurement 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".

There are two major liquid oxygen suppliers in Canada; Air Liquide Canada Inc. and Linde Canada Inc. Water Services is currently in a five-year single source negotiation contract for the supply and delivery of oxygen to the Water Treatment Plant with Air Liquide Canada Inc., Linde 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 Contractor has the necessary experience and resources to perform all of the work in accordance with the requirements of the contract. The Contractor has satisfactorily carried out previous works of a similar nature.

FINANCIAL IMPACT

Financial Impact Statement

Date: July 15, 2024

Project Name:

First Year of Program **2025**

SINGLE SOURCE NEGOTIATION AND AWARD OF CONTRACT FOR THE SUPPLY OF LIQUID OXYGEN TO THE NEWPCC

PURCHASING REFERENCE NO. 154-2024

	2025	2026	2027	2028	2029
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	$ 2,548,000	$ 2,548,000	$ 2,548,000	$ 2,548,000	$ 2,548,000
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 2,548,000	$ 2,548,000	$ 2,548,000	$ 2,548,000	$ 2,548,000
Less: Existing Budget Amounts	2,548,000	2,548,000	2,548,000	2,548,000	2,548,000
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: The duration of this contract is for the period from January 1, 2025 to December 31, 2029, with the option of three (3) mutually agreed upon two (2) year extensions. An absolute commitment for the labour and maintenance of the liquid oxygen generation facility is necessary to supply liquid oxygen "as required" for the NEWPCC operation. Funding for this contract would be made available from each year's annual Current Budget – Sewage Disposal System – Interception and Treatment Regional – Account Distribution No. 444 533020 201108 999 (NEWPCC). Subject to annual price adjustments as per the existing Supplemental Agreement.

Lucy Szkwarek, CPA, CGA

Lucy Szkwarek, CPA, CGA
Manager of Finance and Administration

bah
10-Jul-24

CONSULTATION

In preparing this report there was consultation with:

- Legal Services Department (as to legal issues)
- Corporate Finance Department, Purchasing Division

OURWINNIPEG POLICY ALIGNMENT

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

Policy 2.24 Low-impact Ecosystem Management – prioritize sustainable, integrated plant, pollinator and pest management, that achieves humane, safe, low-carbon, and low-chemical solutions to support the health of local ecosystems.

Objective: Protect and value ecosystems as essential components to quality of life through improving the quality of wastewater output into the environment.

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: Wastewater Services
Prepared by: Jong Hyuk Hwang, Senior Project Engineer
Date: July 16, 2024
File No.: S-763