



IN CAMERA

ADMINISTRATIVE REPORT

Report Date: November 18, 2008  
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Meeting Date: November 25, 2008

TO: Vancouver City Council  
FROM: General Manager of Engineering Services  
SUBJECT: Special Authorities Required to Respond to Current Recyclable Materials  
Commodity Market Situation

**IN CAMERA RATIONALE**

This report is recommended for consideration by Council in the In Camera agenda as it relates to Section 165.2(1) of the *Vancouver Charter*:

(k) negotiations and related discussions respecting the proposed provision of an activity, work or facility that are at their preliminary stages that, in the view of the Council, could reasonably be expected to harm the interests of the city if they were held in public.

**RECOMMENDATION**

- A. *THAT, subject to the conditions set out in Recommendations C to G, Council authorize such legal and contractual steps as are considered reasonably necessary by the General Manager of Engineering Services in order to provide continuous recycling of the City's recyclable materials (and thereby prevent them from being disposed), including such steps, without limitation, as the re-negotiation and written amendment of existing contracts, termination and replacement of existing contracts with new short-term contracts (not to exceed 9 months) by mutual consent, termination and enforcement of existing or replacement contracts where appropriate, and issuance of notices of intent to contract, invitations to tender, or requests for proposal, and the awarding of contracts for same (on the basis of best value to the City) for terms not to exceed 2 years with the option to renew.*
- B. *THAT, subject to the conditions set out in Recommendations C to G, the General Manager of Engineering Services be provided with the authority to sole source a contract for consulting services related to market analysis of the recycling commodities market with a value not to exceed \$100,000.*

- C. *THAT, all such legal and contractual documents be on terms and conditions satisfactory to the General Manager of Engineering Services, Director of Finance, and Director of Legal Services.*
- D. *THAT, upon such approval by the General Manager of Engineering Services, Director of Finance, and Director of Legal Services, the Director of Legal Services be authorized to sign on behalf of the City all such legal and contractual documents as are necessary to implement Recommendations A, B and C.*
- E. *THAT no legal rights or obligations will be created by the adoption of these Recommendations or at any time after such adoption unless and until the applicable legal or contractual document and any other required legal documentation has been executed and delivered by the Director of Legal Services.*
- F. *THAT, upon the execution of any amendment, replacement, or new contract, and in any event within 6 months from the date of this Report, the General Manager of Engineering Services report back publicly to Council on the amendments, replacements, and new contracts, as applicable, entered into pursuant Recommendations A - E above summarizing the steps taken to ensure that the City's open, accountable and competitive procurement process was maintained to the extent possible in the extenuating circumstances imposed on the City by the sudden downturn in the global recyclable commodities markets.*
- G. *THAT the source of funding for any of the costs associated with the implementation of these Recommendations be the Solid Waste Utility.*

### **COUNCIL POLICY**

Contracts for goods and services exceeding \$300,000 and for consulting services exceeding \$30,000 require Council Authorization. Contracts are to be awarded based on best overall value for the City.

### **PURPOSE**

The purpose of this report is to obtain Council authority for staff to negotiate changes to the terms and conditions of the City's contracts for the collection, processing and marketing of recyclable materials, or to terminate any of those contracts by mutual consent, in order to respond quickly to a developing situation involving a rapid decline in global recycling commodity markets, as well as to take any other business decisions, legal steps, or procurement initiatives deemed advisable or necessary by staff to ensure the continuity of City collection services and the maximization of revenues and minimization of costs, for the City's recyclable solid waste.

### **BACKGROUND**

Recycling materials are collected through the City's residential recycling material programs (serving detached homes and multi-family properties), and drop-off depots located at the Vancouver South Transfer Station and the Vancouver Landfill. Collected materials are sold under contract to private processing and marketing (P&M) contractors following a public

invitation to tender and award by Council based on best value. Net revenue generated from the sale of recyclable material partially offsets Solid Waste Utility costs. Program savings are passed on to residents and users of the City's recycling depot facilities.

The City currently has five contracts for the processing and marketing of recyclable materials. Four of those contracts are for materials collected at the depots, representing a combined total of approximately 7,700 tonnes of glass, plastic, paper, cardboard and metal per year. The fifth contract is for materials collected through the curbside residential recycling program provided to detached and multi-family residences. That contract represents an annual combined total of about 33,000 tonnes of newsprint, mixed paper and mixed containers. [REDACTED]

The current P&M contracts are each structured in one of two ways based on the type of recycling material: The first type (Floating Market Value Contract) is structured such that a contractor's monthly payment to the City for recyclables is based on published market indicators for the material plus an adjustor (to cover the contractor's costs and profit). The second type (Fixed Price Contract) is a fixed price per tonne for materials where there is not a suitable monthly published market indicator. At the time of submitting their tender, each contractor offers an adjustor price (if bidding on a Floating Market Value Contract) or a fixed price per tonne (if bidding on a Fixed Price Contract), and those prices remain constant for the term of the contract. For recyclable materials collected at the depots, costs associated with container rental and transfer is charged separately or is included in the contractor's adjustor prices or fixed prices, as applicable.

The term of the contracts for the depot materials is two years with the option of two one-year extensions by mutual agreement. The existing depot contracts either expire completely on May 31, 2009 (the end of the full four years) or on May 31, 2009 at the end of the first two year term. The contract for the processing and marketing of recyclables from the single and multi-family recycling collection programs expired on June 30, 2007. Since that time it has been extended on a month-to-month basis to accommodate operational changes planned for the recycling materials receiving yard.

Two of our P&M contracts that involve the depot materials have been structured such that the contractor makes payments to the City as per the agreed-upon rates for certain materials, based on the current depressed commodity market. For the materials there are indicators that the market is depressed and the contractor's price is set at a level that is higher than the current market price. This is a result of the current depressed condition for a protracted period.

The current poor market condition is attributed to the global economic situation and specifically a result of a large and rapid reduction in the demand for recyclable materials, combined with an oversupply of some recyclable material product on the markets. It is our understanding that these conditions have led to market instability, large and sudden reductions in commodity prices, and an increase in the level of quality demanded by purchasers of recyclable materials. As a result of these factors, our P&M contractors are finding that:

- for the Floating Market Value Contracts where a published market value is used to calculate payment to the City, the market value indicators are lagging well above the actual price the contractors can obtain for the sale of the materials; and

- for the Fixed Price Contracts where a fixed price is used to calculate payment, the originally agreed to fixed values are now well above the actual price the contractors can obtain for the sale of the materials.

[REDACTED]

**DISCUSSION**

Recent downturns in global markets have resulted in the demand for recycling commodities dropping by as much as 50 percent in the last month, and the price that can be obtained for most recyclables to plummet by more than 80 percent. Literature is characterising this situation as unprecedented. At this time, the situation for mixed coloured glass, metals, mixed coloured plastics, and mixed paper including cardboard is the most serious. In contrast the commodity value of clear glass (flint), types 1 and 2 plastic, and newsprint has not dropped as sharply since local demand is still relatively stable. However, the extent and duration of this situation remains unclear. It is clear that the current market conditions are impacting the ability of our P&M contractors to continue operating within the existing terms and conditions of their contracts with the City.

Accordingly, there is an urgent need for staff to concurrently verify P&M contractors' information, test the market for possible short-term alternatives, while at the same time discuss and negotiate possible short-term solutions to the situation with the existing P&M contractors, including contract amendments and/or short term replacement contracts or short-term new contracts with alternative suppliers (if available) so that the City can continue to serve the public's recycling demands to the fullest extent possible during this period of economic instability and decline.

[REDACTED]

[REDACTED]

The City's ability to divert waste from disposal via recycling is dependent on buoyant commodity markets and the processing and marketing services of private contractors. There are indications that the collapse of the recycling commodities markets is global in scale. The number of recycling contractors serving municipalities in the region is limited and there is indication that they have all been impacted by the current economic downturn.

Accordingly (and subject to the outcome of further market conditions verification, and testing of the market for alternative service providers, and the willingness of the existing P&M contractors to negotiate fairly and to provide open, accountable access to their financial records) the existing P&M contractors likely represent the best option for the City's short-term ability to move recyclable materials to market.

With Council's approval, staff will expeditiously seek out the necessary information to confirm the information received thus far from the existing P&M contractors and verify market conditions and the availability of alternative suppliers. Staff will also aggressively pursue principled and careful discussions with the existing contractors and determine in each case the best course of action or combination of actions that will protect the City's financial and operational interests, whether it be limited enforcement, aggressive enforcement, no enforcement, renegotiation, termination and replacement by mutual agreement or completely new short-term contracts with other contractors.

Negotiations may need to involve the development of a short-term pricing mechanism whereby the contractor provides the City with a real time market price (e.g. spot price) with details of the contractor's sale of the recyclables, to enable us to ensure we continue to receive best value. Where appropriate, the City may engage specialized consulting assistance to carry out independent market and alternative supply chain research and analysis of existing contractors' financial records (with their consent), the rapidly changing commodities markets, and other relevant factors.

[REDACTED]

**ALTERNATIVES/OPTIONS**

[REDACTED]

Further, the alternative of temporarily discontinuing recycling materials collection services from homes, apartments and drop-off depots until such times as contract problems can be resolved is not recommended. Doing so may cause customer confusion reducing the quality of marketable commodities and longer term demand destruction.

### **FINANCIAL IMPLICATIONS**

The 2009 budget for recycling revenues is as follows:

Depot materials collected at Vancouver South Transfer Station	\$ 535,000
Depot materials collected at Vancouver Landfill	\$ 374,000
Residential recycling materials program materials	\$ 1,900,000

Annual fluctuations in recycling program revenues and costs are managed within the Solid Waste Utility. Cost savings or overruns in a given year are reflected in following year's utility rates. The extent of the financial implications resulting from renegotiated or new recycling materials processing and markets contracts are unknown and will be reported to Council at a future date.

The source of funding for any of the costs associated with implementation of the Recommendations in this report will be the Solid Waste Utility.

### **ENVIRONMENTAL IMPLICATIONS**

The current recycling commodity conditions may result in a situation that is considered unsustainable. For example, until market demand returns we may reach a point where the net costs associated with moving recycling materials to market, or stockpiling materials with no certainty that they will in fact get recycled, exceed net benefits and are prohibitive. If the current situation deteriorates to that extent and if no other viable options are available, the City Engineer may not have any alternative other than to temporarily store or dispose recyclables on a short-term basis until market demand returns. If that severe situation occurs Council will be notified quickly and staff will implement a public communications strategy with the principle object of maintaining the public's confidence in City waste management and recycling services.

Since this current situation is not specific to Vancouver, regional sustainable solutions and short-term contingency options are being investigated. A preliminary meeting is scheduled involving staff from the City, the Provincial Ministry of the Environment, Metro Vancouver, the Recycling Council of BC and a select number of recycling contractors for November 20th to discuss the current situation and to develop environmentally preferred options for dealing with this unusual situation.

### **CONCLUSION**

As a result of global economic conditions, market demand for recycling commodities has plummeted. As a consequence, the City's contractors for the collection, processing and marketing of recyclable materials are being put into default or are indicating that they will shortly be forced into default of the terms of their contracts with the City. Staff therefore recommend that Council authorize the General Manager of Engineering Services, Director of Finance, and Director of Legal Services to take such steps as are reasonably required to address this economic emergency including verifying market information, contractor information, and City's legal position, as well as (where appropriate) attempting to negotiate short-term amendments to the City's existing P&M contracts to equitably adjust the basis of payment and price, entering into replacement contracts, or entering into alternative short-term agreements with alternative contractors (in all cases utilizing the City's open, accountable, and competitive procurement processes wherever feasible) until such time as invitations to tender on new long-term contracts can be issued and awarded.

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