
REPORT TITLE: External Legal Counsel for the Peel Renewable Natural Gas Centre Project, Document Number 2016-227N

**FROM: Andrew Farr, Acting Commissioner of Public Works
Patrick O'Connor, Regional Solicitor**

RECOMMENDATION

That the contract (Document 2016-227N) awarded to Aird and Berlis LLP be increased by \$600,000, for a new total commitment of \$1,440,000 (excluding applicable taxes), and be extended until the final execution of the project agreement for the Peel Renewable Natural Gas Centre Project, in accordance with Procurement By-law 30-2018, as amended;

And further, that the Commissioner of Public Works and the Director of Procurement, upon the advice of the Regional Solicitor, be authorized to approve further increases to the contract for external legal services provided by Aird and Berlis LLP that may be required prior to the final execution of the project agreement for the Peel Renewable Natural Gas Centre Project.

REPORT HIGHLIGHTS

- On June 9, 2016 the Region of Peel entered into a contract with Aird and Berlis LLP to provide legal advisory services to support the development and procurement of a contract to design, build, operate and maintain Peel's new anaerobic digestion facility, referred to as the Peel Renewable Natural Gas Centre Project.
- Procurement of the Peel Renewable Natural Gas Centre Project is active and has advanced to the final stages. The Request for Proposal is scheduled to close in late 2020 however the schedule may be extended due to the COVID-19 Pandemic.
- An increase is required to continue the legal work associated with developing the Peel Renewable Natural Gas Centre Project through to execution of the project agreement. An estimate of the remaining costs for the contract is \$600,000. Funds are available in Capital Project 16-6330.

DISCUSSION

1. Background

In 2015, Regional Council approved a plan to develop an anaerobic digestion facility to process all the material collected through the Region's Green Bin and other organics diversion programs. Since the new facility will produce renewable natural gas from the

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processed organics, the new facility is referred to as the Peel Renewable Natural Gas Centre.

In June of 2016, the Region awarded a contract to Aird and Berlis LLP to provide legal services for the Project. Aird and Berlis LLP was selected based on their experience with large infrastructure design-build-operate-maintain projects. The scope of the legal services to be provided by Aird and Berlis LLP includes creating draft and final versions of the Request for Proposal and the project agreement documents and providing legal support during the entire procurement process including proposal evaluation, contract award and final execution.

The original contract value was based on an estimate of the quantity of legal services made at the commencement of the Project. The estimate assumed that, with limited revision, the template Request for Proposal and project agreement documents available to the Region at the time would be adequate. Also, the estimate was based on a contract duration of 19 months which was the assumed timeline to procure and execute the project agreement.

In February 2018, the Region began the procurement for the design, build, operate and maintain of the Peel Renewable Natural Gas Centre for a period of 15 to 20 years (the 'Project'). The Project has an overall project budget of in excess of \$113 million. In January 2019, the Region prequalified four teams to respond to the Project Request for Proposal. The Project Request for Proposal was issued in September 2019, and the first of three rounds of commercially confidential meetings with the prequalified teams has been completed. The Request for Proposal is scheduled to close in late 2020 however the schedule may be extended due to the COVID-19 Pandemic.

2. Status of Legal Fees to Date

The legal services required to advance the Project into the final stages of procurement has exceeded original estimates due several factors, including:

- the change in Project site which occurred between the Request for Prequalification stage and the Request for Proposal stage;
- revising project agreement to remain consistent with the forms of agreements used by provincial agencies, such as Infrastructure Ontario, and which are revised periodically, in order to maintain a high level of interest in, and competition for, the Project;
- supporting staff in managing unanticipated and numerous requests from the prequalified teams to change their membership or technologies; and
- reviewing agreements for Project funding secured from the federal and provincial governments, and agreements with Enbridge related to the injection of renewable natural gas produced by the Project into the natural gas distribution system.

3. Proposed Direction

Aird and Berlis LLP have submitted a quotation for continued legal services supporting the Project. Staff has reviewed the quotation and find it to be consistent with the legal services required.

Staff therefore recommend increasing the overall contract value to provide the necessary legal support to complete the procurement process and to execute the final project agreement.

RISK CONSIDERATIONS

The Project procurement process is currently underway. Should Aird and Berlis LLP not continue as outside legal counsel, the risks include:

- delaying the completion of procurement beyond the end of 2020 as time will be required to engage new legal resources;
- transitional legal costs associated with the familiarization of a new legal team with the Project and its documentation;
- additional increases in the cost of Project legal services if the new legal resources recommend further revisions to documents or procurement processes or timelines; and
- proponents losing interest in competing for the Project if timelines are prolonged or confidence in the Region's ability to complete the procurement and execute a project agreement is reduced.

FINANCIAL IMPLICATIONS

There are sufficient funds available in the approved budget to carry out the report's direction.

For further information regarding this report, please contact Norman Lee, Director, Waste Management, norman.lee@peelregion.ca

Authored By: Brian van Opstal

Reviewed and/or approved in workflow by:

Department Commissioner, Division Director, Financial Support Unit and Legal Services.

Final approval is by the Chief Administrative Officer.



N. Polsinelli, Interim Chief Administrative Officer