

REGIONAL MUNICIPALITY OF OTTAWA-CARLETON
MUNICIPALITÉ RÉGIONALE D'OTTAWA-CARLETON

REPORT
RAPPORT

Our File/N/Réf.
Your File/V/Réf.

DATE 13 February 1997

TO/DEST. Chair and Members of
Corporate Services and Economic Development Committee

FROM/EXP. Committee Co-ordinator

SUBJECT/OBJET **THREE-YEAR BIOSOLIDS HAULING AND BENEFICIAL USE
PROGRAMME - CONTRACT NO. CS-7800**

DEPARTMENTAL RECOMMENDATION

That the Corporate Services and Economic Development Committee consider the Environment and Transportation Commissioner's report on the above subject to be issued separately.

BACKGROUND

On 4 Feb 97, the Corporate Services and Economic Development Committee considered a report entitled "Three-Year Biosolids Hauling and Beneficial Use Programme - Contract Nos.: CS-7800 and CS-7801". During deliberations, Committee approved the following motion with regard to the appointment for Contract No. CS-7800: "That Recommendation No. 1 be referred to staff with direction to complete an interview with de Kemp & Associates for the Biosolids Beneficial Land Application Program." Staff confirmed they would complete the interview and report back to Committee at the following meeting of 18 Feb 97. Committee subsequently approved Recommendation No. 2 of the report.

Due to the short time period to conduct this interview with de Kemp & Associates, analysis results and prepare the staff report, it was not possible to meet the agenda printing deadline. It is anticipated the report will be distributed to Councillors prior to the meeting on 18 Feb 1997.

The draft minute extract for the 4 Feb 97 meeting is attached for your information.

Approved by
Cheryle Watson
Attach.

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THREE-YEAR BIOSOLIDS HAULING AND BENEFICIAL USE
PROGRAMME - CONTRACT NOS.: CS-7800 AND CS-7801
- Environment and Transportation Commissioner's report dated 18 Dec 96

Mr. Philip de Kemp, President, de Kemp & Associates Ltd. Mr. de Kemp stated his company was one of the applicants for the Beneficial Use Portion of the Biosolids Programme. In speaking to the staff report and their Request for Proposal (RFP), Mr. de Kemp pointed out the following:

1. de Kemp & Associates had the second lowest overall bid item @ \$19.60 per wet tonne for the land application/public communications side of the contract;
2. Terratec Environmental, @ \$21.60 per wet tonne, was the third highest of the seven requests received for the land application;
3. Proposal for hauling from Terratec Environmental was @ \$3.15 per wet tonne which is less than half of the staff estimate in the staff report; and
4. A six month contract completed by Terratec Environmental for the Region was at a contract bid rate of \$19.80 versus the staff recommendation of \$21.60.

Mr. de Kemp requested Committee not accept the staff recommendation to obtain both the hauling and land application contract for the following reasons:

1. Committee must first ensure that all provisions of the Region's RFP had been complied with. de Kemp & Associates, along with other firms, were not granted the mandatory interview which was part of the evaluation process. Mr. de Kemp reported that only two of the seven applicants, both combined bids, received an interview, therefore, not complying with the RFP Guidelines.
2. Contract Review Form - Item No. 14 stated the bids were not to be qualified by any restrictive statements, however, staff were recommending a very restrictive, qualified and cross-subsidized bid.
3. Terratec Environmental did not successfully fulfil their obligation for the 96 season. They delivered on only 60% of the contract which was 11,000 tonnes rather than the 18,000 tonnes originally contracted to take. Mr. de Kemp questioned Terratec's ability to deliver a higher tonnage under the subject contract.

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4. Cost, Performance and Ability to Deliver - Mr. de Kemp pointed out both were rated equally on the evaluation system for the RFP.

In closing, Mr. de Kemp requested the Committee to exercise their right and obligation as outlined in the RFP. He requested the Terratec Hauling bid component of \$3.15 per tonne, as a separate contract item, be combined with the de Kemp & Associates \$19.60 per tonne proposal for land application and communications. Mr. de Kemp stated the Region must act in all fairness and must maintain the integrity of the tender process in order to ensure a fair, transparent, creditable selection process.

With regard to price submission for hauling, Chair Clark inquired on the applicable land that was certified under the programme and the question of distance. Mr. de Kemp reported they did not have access to the list of certified sites, however, noted the current contractor had.

Councillor van den Ham referenced the RFP from de Kemp & Associates and the statement that the guaranteed minimum tonnage could be increased significantly but would be discussed during the oral presentation / interview. Mr. de Kemp stated he could only include in the RFP what he believed he could guarantee. However, he stated he expected to receive an interview and planned to review that option further at that time. Mr. de Kemp pointed out the RFP was explicit in that the selection of the operator would be based on the proposal submission and an interview. Mr. de Kemp suggested if that was not the case, there should have been a qualifier stating only a shortlist of contractors would receive interviews.

Councillor Hunter reviewed the processes involved in the programme. Mr. de Kemp reviewed their proposal and emphasized the success of the entire programme was dependent on public education, awareness and acceptability of the public and farming community.

In response to a question from Councillor Hunter, Mr. de Kemp reviewed a pilot project the company participated in to evaluate different methods of storage, as it was not possible to spread the biosolids year round. Mr. de Kemp reported they had patented an on-site plastic bagging operation that was odour free and air tight. As a result, a test trial was conducted in conjunction with the Region in July 1996, however, an evaluation report was yet to be received. Mr. de Kemp stated this sealed storage, as improved through the test, was part of the proposal under the subject contract. Mr. de Kemp confirmed to date there was no other method of storage used in North America.

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N. Schepers, Director, Water Environment Protection Division, reviewed the objectives of the programme and noted they derived from the Biosolids Management Plan. She indicated the industry requested the opportunity to put forward creative solutions, and suggested not buying into a long term solution in terms of a fixed storage facility. In addition, they suggested a longer term contract so they could be innovative and come forward with proposals with a longer period of time to enable them to recoup the investment made. Ms. Schepers stated the RFP was structured around those requests and allowed for flexibility. She emphasized the bottom line objective was to have the overall program cost as low as possible. In addition, Ms. Schepers pointed out it was a RFP which allowed for creativity and innovation, unlike a tender.

In reference to Annex B of the Regional Solicitor's report dated 3 Feb 97, Ms. Schepers reviewed the summary of proposals received for the hauling component, the land application component, and a combination of the land application and hauling. Ms. Schepers continued to review the total annual cost of the program based on the proposals submitted and provided rationale for the staff recommendation. In summary, Ms. Schepers reiterated the objectives of the program and stated the need to maximum land application, however, at the same time wanted creativity and innovation. Ms. Schepers acknowledged Mr. de Kemp's comments regarding the administrative issues regarding clarity, however, pointed out they were not issues of any significance that would take away from the integrity of the process or the recommendation.

Councillor Stewart inquired if staff had the option to "cherry pick" among the bids and if the recommendation was not a qualified bid. Ms. Schepers explained it was spelled out in the documents because they encouraged and allowed individuals to choose to bid for hauling or land application or both, however, that staff reserved the right to choose. For example, Ms. Schepers stated they chose to combine the de Kemp & Associates proposal for land application with the lowest price hauler, R.W. Tomlinson. She further explained that if that represented the lowest overall price, staff would have had the right to chose as both were clearly stand alone proposals, one for the hauling and one for the land application component.

G. Cantello, Solicitor, explained it was not open for acceptance to recommend the Terratec Environmental bid for hauling @ \$3.15 alone as it was not offered as a stand alone bid, but was offered as part of their combined bid.

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Councillor van den Ham inquired how the previous contracts for the 1996 programme were structured and if they were similar. Ms. Schepers confirmed it was not a similar RFP process, but for land application only. She stated the programme had evolved and the RFP process used for the 97 programme allowed for the flexibility and was based on the comments heard from the industry.

In response to a question from Councillor McGarry, Mr. Cantello restated the Region was not in the position to accept the Terratec Environmental hauling bid of \$3.15 per tonne alone. The Councillor referenced the interview process and inquired if the RFP was not clear in this area. Ms. Schepers explained staff followed the normal procedure to evaluating the proposals based on RFP criteria and to determine which had the lowest overall cost. She explained the lowest bid from Daniel Beauchesne Chaux Agricole Ltee. received an interview to clarify questions on their proposal and it was deemed they lacked an effective and detailed public relations plan. To continue, Ms. Schepers explained the next bid of Terratec Environmental was invited to an interview at which time staff were satisfied they meet all RFP requirements and provided a quality proposal that was at the lowest overall price. Ms. Schepers noted the RFP stated the recommendation would be based on an interview, however, acknowledged the second reference to an interview could be clarified and would be in future documents.

Speaking to the accusation of betrayal of confidence, Ms. Schepers explained the circumstance where the contractor requested all material be kept in confidence and, therefore, confirmed the information was treated with strict confidence. However, once the subject matter received a legal patent, it was clearly public knowledge and it was expected that information could be shared freely. Chair Clark inquired if the process information was deemed to be confidential. Mr. Cantello explained it would depend on how the information was presented.

In response to a question from Councillor Hunter, Mr. Cantello stated the issue of confidentiality did not have any bearing on the award of the contract itself or the pricing of the proposals.

Councillor Hunter expressed concern with staff not interviewing de Kemp & Associates, the second capable bid. Ms. Schepers reported the proposal from Terratec Environmental also showed innovation and addressed all the environmental and technical issues of the proposal. From that, she stated staff followed procedure and held the interview to confirm the recommended proposal. Councillor Hunter inquired why the innovative storage proposal used by de Kemp & Associates did not merit an interview as it would

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allow for more biosolids to be disposed through land application. Ms. Schepers reported the Terratec Environmental proposal showed using more material than de Kemp & Associates and was also proposing to temporarily store on site. In closing, Councillor Hunter believed it was a mistake to not interview de Kemp & Associates.

Speaking to the cost of the programme and the quota set out, Ms. Schepers reported that Terratec Environmental proposal had a built-in incentive to maximize the land application and if they were unable to meet the quota due to seasonal or other issues, the overall program price would decrease.

Councillor Hill referenced problems associated with past tenders and the process. The Councillor reiterated concerns why de Kemp & Associates did not receive an interview and expressed concern with the other serious allegations.

Councillor Bellemare referenced the public relations and communications and inquired why this was part of the contract. Ms. Schepers indicated the Region was originally responsible for that component of the programme, however, it was decided to include it as a requirement of the land applier. As a result, she noted it was successful, cost-effective, and a survey showed satisfaction with those involved. Ms. Schepers confirmed part of the proposal involved a detailed public relations plan, which was a key element of the program's success. Councillor Bellemare inquired if it was specified as being a minimal requirement that the public relations component be offered in both official languages. Ms. Schepers confirmed it was not presented as a minimal requirement in the RFP, however, stated all public relations, promotion and advertising did follow Council policy of the French Languages Services Committee and was offered in both official languages.

Mr. Cantello stated the staff recommendation represented bids that complimented each other taking into consideration elements of the program such as the capacity of certified sites, etc. Mr. Cantello stated it was not "cherry picking" in that the full bid was being accepted as proposed by Terratec Environmental.

Ms. Schepers indicated that when innovation and creativity was requested in proposals, the results are less clear than tenders and must be evaluated differently. However, she emphasized if the industry was not given the chance, opportunities were missed for both parties.

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Councillor Hume inquired on the consequences if Committee elected to award the landfill to Laidlaw, land application to de Kemp & Associates and hauling to Terratec Environmental. Mr. Cantello restated it was not possible to award the \$3.15 bid from Terratec Environmental alone as it was part of a combined bid and not open to acceptance alone.

Councillor Stewart inquired on the comment the de Kemp & Associates bid was irregular. Ms. Schepers explained that during the initial evaluation when the bids were opened, bonding was not supplied. However, it was never understood by the evaluation committee or staff that it was irregular. Subsequently, she explained a verbal request was received by de Kemp & Associates to change the bonding requirements which was accommodated and an addendum was issued during the bidding process. Ms. Schepers emphasized there was never an understanding that the bid was irregular.

Councillor Hill did not accept the rationale provided and stated Committee had the right and responsibility to the taxpayer to obtain the best price. She expressed concern with the lack of clarity in the documents.

Moved by B. Hill

That the Terratec Environmental Ltd. be appointed to undertake the hauling portion of the 3 Year Biosolids Program, and that de Kemp and Associates be awarded the Beneficial Use Program.

RULED OUT OF ORDER

Chair Clark reviewed from the tender document the statement outlining the three types of proposals to be accepted. He reiterated the combined proposal could not be split. The Chair reviewed the first three proposals on Table 1: Total Annual Cost of Program and explained the staff recommendation was the overall lowest cost to the Corporation. Speaking to the interview process, Chair Clark agreed the document left the reader with an understanding there would be an interview and required further clarification. In closing, Chair Clark expressed concern with the willingness to criticize staff and pointed out to accept the proposal offered by de Kemp & Associates was going to cost the municipality an additional \$60,000 per year.

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Councillor Loney commented the RFP process was beneficial to use, however, must be used carefully. With regard to the interview process, he acknowledged it could be interpreted either way, required clarification and suggested that in the future all serious bidders be interviewed. Speaking to the process, Councillor Loney believed the issues did not change the end result and the most cost effective proposal was being recommended. The Councillor moved the staff recommendation.

Councillor van den Ham agreed there was a learning curve with the process which required improvement, however, believed the approach and search for innovation left the window open for interpretation. The Councillor complimented all proposals and suggested the de Kemp & Associates proposal should have been given an interview to give the opportunity to demonstrate additional value to his written proposal. Councillor van den Ham expressed some discomfort with supporting the staff recommendation because of the perceptions, but was not sure of an alternative. Chair Clark stated the alternative was the combination of de Kemp & Associates/R.W. Tomlinson/Laidlaw bid for a total annual cost of \$1,001,968.

Councillor McGarry moved a motion for the above alternative and stated the consequence was an additional \$60,000. However, he believed the process was unintentionally not followed. The Councillor expressed concern there was no interview and believed better information would have been discovered should an interview been held. In closing, Councillor McGarry stated the Corporation was open to criticism of cross-subsidization. *(Motion superseded by Hunter motion that was later approved by Committee.)*

Councillor Hunter reiterated his concern that staff did not go far enough and interview de Kemp & Associates to establish the competence of the contractor when their price was so close on a per tonne basis on the hauling and landfill application combined. The Councillor suggested de Kemp & Associates were not given a fair chance considering the resources they put into their bid proposal. Councillor Hunter moved a motion that an interview be held with de Kemp & Associates and staff report back to Committee.

Councillor Hunter inquired on the implications and what would be done in the interim should his motion be successful and the process was delayed. Ms. Schepers stated a temporary agreement for hauling had been entered into as the previous hauling contract expired. However, any delay would place the 1997 land application programme in jeopardy as the timing was critical due to associated restrictions. Ms. Schepers confirmed there was an interim contract for disposal through landfill cover which could be continued. With regard to reporting back to Committee, Ms. Schepers believed the interview could be held and report back to Committee in time for the next meeting, that being two weeks.

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In response to a question from Councillor Stewart on timing, Mr. Cantello stated there may be a need for the proposals to be extended. Ms. Schepers noted if the proposals were to expire, the contractors had the right to withdraw their proposals as it could put the program in jeopardy. Councillor Hunter did not believe the contractors would risk the loss of the contract and would agree to the extension.

Councillor Hill reminded Committee the land application component of the programme was carried out in her Ward among others. She reported that in the past she had received complaints on the service provided.

Moved by G. Hunter

That Recommendation No. 1 be referred to staff with direction to complete an interview with de Kemp & Associates for the Biosolids Beneficial Land Application Program.

CARRIED
(Unanimously)

The Committee agreed to consider Recommendation No. 2 and immediately forward it to Council to avoid delay in that regard.

Moved by A. Loney

That the Corporate Services and Economic Development Committee and Council approve:

- 2. The appointment of Laidlaw Waste Systems, Carp, Contract No. CS-7801, to undertake a three year contract to divert and reuse biosolids as landfill cover material for a total provision of \$969,89 4.**

CARRIED as amended