



**Special Council  
June 11, 2009**

## **PICTON WASTEWATER TREATMENT PLANT PROJECT PROCUREMENT PROCESS**

### **Recommendation:**

**THAT the report of the Director of Water and Wastewater Services regarding the procurement project process for the Picton Wastewater Treatment Plant dated June 11, 2009, be received.**

### **Background/Purpose:**

The Picton Wastewater Treatment Plant (PWWTP) was identified for replacement as early as 2002 with the formal process commenced in 2004. A number of factors delayed the project to the point today that it is poised to proceed, with basically the same approach as was originally contemplated. A summary of the history of this process is provided.

2004-2006  
Environmental Assessment  
Evaluation of Alternate Technologies

### **Environmental Assessment (EA) Process**

May 2006 a bylaw to enter into an agreement with COMRIF for \$10.3M funding for the forthcoming project was passed by Council.

A Class Environmental Assessment process was carried out under Schedule C of the Municipal Engineers Association's Class Environmental Assessment Process (MEA June 2000).

The process identified the following problem statement:

"The existing Picton WWTP is almost 60 years old, and is reaching the end of it's service life and function in being able to continue to provide reliable wastewater treatment capacity. In addition, the plant does not provide adequate capacity for existing peak flows, and does not provide a level of treatment adequate to meet the Bay of Quinte Remedial Action Plan (RAP) objectives.

In addition, additional wastewater treatment capacity will be required for projected growth in the Picton-Hallowell urban service area for septage from rural areas of PEC.

The existing Picton WWTP has constraints that make the expansion difficult including:

The plant is operating at close to its rated capacity, making it difficult to upgrade existing components while maintaining treatment operations.  
The site is physically constrained by topographical, land use and natural features.”

#### EA Study Process

The Class Environmental Assessment study was led by a Technical Steering Committee (TSC) comprised of Council, staff and the public with assistance of a consulting engineering firm, KMK. The Technical Steering Committee first met in July 2004.

The Environmental Study Report (ESR) concluded a planning and technical process that over the period July 2004 to November 2006 evaluated a number of potential solutions to location and process with respect to a broad range of criteria and impacts.

During the Class Environmental Assessment study the Technical Steering Committee met thirteen (13) times, at which members of the public attended, and held five (5) Public Information Centres in the community to regularly review and receive feedback on the assessment study and its evaluation process.

#### Alternative Technology Evaluation

In response to comments received by the public requesting Council and the Steering Committee to evaluate alternate modern and “greener” treatment technologies, the Steering Committee established a Sub-committee called the Feasibility Study of Greenhouse Based Sewage Treatment Technologies Sub-Committee. This Committee examined alternative technologies including the Living Machine, as developed by Dr. Todd and natural wetlands as utilized in Brighton. Dr. Todd was brought to the County to present his concept but he recognized that it was not suitable for such a large plant. The consultant, KMK, also did not recommend alternative technology as it was not suitable for this project.

October 2006 the EA was completed and the 30 day notice commenced. Totten Sims Hubicki (TSH) retained as consulting engineers to develop design of the PWWTP.

#### Part 2 Order (Bump-up Request)

On November 10, 2006, a bump-up request, being a request for a more detailed study into a business case for alternate technology and design/build/operation approaches as used in the west, was received from a member of the public. This delayed the approval process and necessitated several meetings and discussions with the requester, our consulting firm KMK, the municipal solicitor, staff and the Mayor.

2007  
Property Acquisition  
Design and tender development

### Western Canada Visit-1

In August in response to the bump-up request, members of the sub-committee and staff travelled to Okotoks, Alberta to view what was suggested by the CCPEC to be a similar project using Biological Nutrient Removal and a DBFO approach. It was determined that the two projects were dissimilar enough that comparisons were of little value.

### Part 2 Request- Meeting with Minister of Environment

In August Mayor Leo Finnegan and CEO Richard Shannon met with the Minister of the Environment to discuss the Part 2 Order (bump request).

### EA Final Notice

On September 14<sup>th</sup> the Ministry of the Environment denied the bump-up request and upheld the approval of the ESR.

The study completion Final Notice was published in October of 2007. Council endorsed the ESR and supported the Champlain's Lookout property as the preferred site and the property was purchased by the County for the new wastewater treatment plant.

### Project Design

The municipality established the Design and Evaluation Sub-Committee comprised of Councilors and public representatives to oversee the project design for new plant underway.

### Final Design & Construction Cost Estimate

In October 2007, a Public Meeting was held to present the design that would be tendered. In December 2007, Council accepted a recommendation from TSH to proceed to tender based on its assurance that the established budget of \$23M identified in October would still be adequate.

2008  
Tender process and rejection of tenders  
DBO/DBFO Contract Specialist retained  
Initiation of DBO/DBFO process

### Tender Process

The municipality, through TSH, completes the design and tender process, prequalified proponents and issued tenders.

Tenders received in March 2008 with lowest tender at \$30,000,000 approximately \$7 M over estimated budget. All tenders were rejected by Council. The following factors contributed to the high over-budget cost: increased construction costs due to the delays from the bump-up request, tendering at the peak of the construction season, and under-estimates by TSH.

### Other Options

The PWWTP Sub-Committee was established to examine other options for the construction of the plant. The Sub-committee evaluated the DBO/DBFO options as well as the option of retendering. Consultants JL Richards were retained to offer technical and peer level advice on

the original TSH design and the option to retender. JL Richards recommended a revised plant layout, and optimized configuration, with an estimated construction cost of \$26M.

The Concerned Citizens of Prince Edward County (CCPEC) strongly advocated for consideration of alternate technologies and contract delivery approaches.

The Sub-Committee met 5 times April 2008 to June 2008 and included a member of CCPEC.

The Sub-committee recommended that the County proceed with both a DBO or DBFO process and a reassessment and re-design of the tendered treatment facility as parallel projects, subject to confirmation that existing COMRIF funding would still be available and preliminary estimates of potential savings, satisfactory to Council being obtained. The recommendation included that Operations be restricted to the new PWWTP only.

Council sought and received an extension of deadline for COMRIF funding to October 2010.

#### PWWTP Project Committee

The PWWTP Project Committee was developed to proceed with the parallel approaches, both a DBO or DBFO process and a re-tendering. The Project Committee met 9 times from July 2008 to April 2009. It also examined Design-Build-Operate and Design-Build-Operate/Finance approaches used in other parts of Canada.

#### Western Canada Visit-2

Selected members of Project Committee and staff travel to a conference in Alberta and met with several western municipalities using the DBO/DBFO process to view/gather information.

#### J Huggett Retained

CPEC recommended that Council retain Jonathon Huggett, a consultant from BC specializing in alternative delivery approaches, to work with the Project Committee to develop a Design-Build-Operate-Finance option.

Because the DBO/DBFO model was relatively unknown in Ontario, especially in wastewater projects, Huggett was retained as a consultant to participate as a resource and advisor to Project Committee. Mr. Huggett attended most meetings of the Project Committee and authored project documents with input from the Committee.

#### REI for DBO/DBFO issued

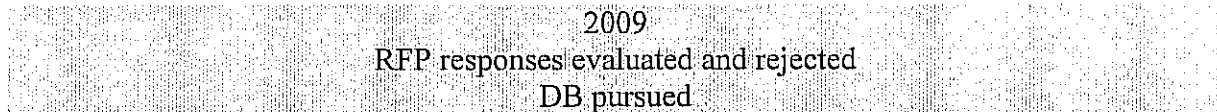
Requests for Expressions of Interest were developed for a DBO/DBFO contract. Seven proponents were evaluated. Five were selected for interviews and 3 identified as preferred proponents, to bid on Request for Proposal.

#### Approval of RFP for DBO/DBFO

An RFP was issued in December 2008, closed on February 20, 2009. Based on the advice of Huggett, the Committee recommended, and Council endorsed, that a revised tender process not be undertaken, that an RFP be developed for a DBO/DBFO process, that JL Richards be

retained to provide technical assistance in evaluation of proposals including research into the impact of the changes in technology to the EA process.

Huggett was instrumental in the development of the REI and RFP.



#### RFP Evaluation Team

Three responses to the RFP were reviewed by an Evaluation Team consisting of Commissioner, Director of Wastewater, Project Manager, Solicitor, JL Richards (Technical advisor), Mayor and two councilors. The Team analyzed, evaluated and interviewed proponents with one being disqualified and remaining two be rejected due to high costs. Huggett attended proponent interviews but was not present for the evaluation of the RFP submissions, although was consulted via telephone.

#### Other Options

Staff were directed to explore options available within the RFP process taking into consideration the COMRIF completion deadline of October 2010.

#### Design Build Approach

Council accepted the recommendation that a Design-Build contract (County finance and County operate) be developed with Maple Reinders Constructors Ltd., one of the Design-Build-Operate RFP teams rejected for high costs but with the least risk, for the Design/Build and Commissioning of the new Picton Wastewater Treatment Plant in the amount not to exceed \$24,924,350.

May 11<sup>th</sup>, a public information session was held displaying the final design to be constructed with eleven members of the public attending. No comments were recorded, all discussion items raised informally had previously been dealt with.

#### **Analysis/Comment:**

The decision to embark on a procurement process for replacement of the PWWTP, using a design/build/finance/operate procurement process, came after a lengthy process for a traditional design/bid/build approach failed due to high costs and loss of confidence in TSH, the incumbent design consultant. The following are the main elements behind the decision. It is detailed as well in the chronology of events, outlined above.

1. The original tender process had resulted in bids that were significantly over budget.
2. There was interest in the community to search for alternate and more affordable solutions. Council was responsive to this interest to ensure that all viewpoints were taken into consideration.

3. Similar projects in BC and Alberta have demonstrated that significant cost savings may be possible through a DBO/DBFO procurement process. However, staff investigations/visits revealed that “significant savings” was often a measure of reassessed / optimized designs compared to original estimates with much more work and less re-use of existing infrastructure.
4. The advice of consultant, Jonathon Huggett, who was experienced in similar projects in BC and Alberta, indicated that the DBO/DBFO approach be appropriate for this project and there would be significant interest in initiating the first project of this kind in Ontario.
5. The request for expression of interest (RFI), developed with the assistance of Huggett, showed that a number of companies were interested in the alternate procurement process and were confident of providing a better value solution.

#### Key Factors:

There were key factors that influenced the procurement process. These were:

1. The Canada Ontario Rural Infrastructure Fund (COMRIF) grant funding of \$10 million which required that all construction must be completed by October 2010.
2. The approved Environmental Assessment (EA) required by the Ministry of Environment (MOE) and Ministry confirmation that any major change to the design of the plant would require a revised EA process. The approved EA had taken some considerable time to achieve largely due to a community objection, and so there was a justifiable concern that any delay in revising the EA could jeopardize the COMRIF grant funding.
3. As part of the alternate service delivery, Council was encouraged to consider inclusion of the operations within the scope of the RFP to attract interest from bidders with proven DBO/DBFO experience. A decision was made to restrict the operations portion of the contract to the Picton Wastewater Treatment Plant only and not all six water and wastewater systems.
4. In addition to these factors, the County also specified flow criteria, which was established based on growth projections, and effluent criteria based on EA report, and MOE requirements.

#### Risk

The need to avoid major changes to the approved EA restricted any change of location or any change of process that would negatively impact the environment. On the advice of Huggett, the RFP clearly identified the constraints and allowed for consideration of risk:

##### Section 2.2.1.1

“The County is prepared to consider alternate proven technologies provided that the County, at its sole discretion, can satisfy itself that the risks related to any required modification to the

Environmental Assessment and the Certificate of Approval are manageable and that its COMRIF funding will not be in jeopardy.”

The 20 year NPV assessment proposed for the evaluation addresses not only the costs of designing constructing and operating the plant but also the cost to the County of any risks that are not assumed by the proponent.

To transfer the risk in accordance with Hugget’s advice, in section 4.3 of the RFP, the County stated that:

“The County recognizes that a complete redo of the Environmental Assessment may put grant funding in jeopardy and could unacceptably delay the Project. The County is prepared to consider changes to the EA providing the risks related to timing and public consultation can be appropriately managed. Those changes are expected to result from one or other or both of two possible issues: the process technology, and/or the siting of the replacement plant. The Successful Proponent would be expected to assume the risks and responsibilities for amending the EA on behalf of the County to meet the requirements of its proposal, and a more minor amendment dealing with any changes in technology or a more major amendment dealing with changing the site. Please note the County would prefer in its evaluation Proposals which do not involve a major amendment to the EA or changing the site from that approved by the EA.”

The potential loss of the \$10 million in grant funding from COMRIF was the most significant risk associated with the RFP. The COMRIF extension approval was unequivocal in stating that all construction must be complete by October 2010 which was verified by Ministry officials at the provincial and federal level. The County could not entertain proposals that would put the completion date in jeopardy unless the proponent was willing to make up the loss in grant funding. Huggett, who had knowledge of the political process in BC and Alberta, but not in Ontario, advised that the transfer of risk to the proponents would protect the municipality and should be manageable by the proponents, based on western practices.

Last but not least was the very considerable risk of failure of the existing ailing treatment plant, the majority of the structure of which is 60 years old, and which has no equipment redundancy. Whenever risk is identified then the consequences of the risk must be addressed; failure of the plant would be a disaster for Picton and the County’s tourist industry, not to mention the huge impact it would have on the residents. Every delay in replacing the plant increases the possibility of equipment/facility failure.

### Cost of Operations

At the time of RFP preparation it was known that the same extent of innovation and creativity possible on some of the Western Canada projects might not be possible for the County where real issues and constraints related to reopening the EA process and/or risking COMRIF funding were key.

Huggett proposed that a long-term view showed that the cost of operations would be greater than the capital costs and therefore an opportunity existed for savings by including “Operation” as part of the RFP. In fact, staffing costs for the operation of the plant put forward by all three proponents were all higher than the equivalent County operated plant. The County’s efficient workforce and operations were in place and supported by existing County administration. In addition County staff works on an as required basis at the PWWTP location and remainder of their time at the five other municipal water and wastewater systems. An outside operator would require dedicated staff and supervision, in addition to offsite administration costs.

### Conclusions

Although it was anticipated that the apparent cost savings achieved in Alberta and BC with this type of project could be duplicated in Ontario, that proved to be unrealistic given the differing physical circumstances and critical factors involved. Council held its accountability to the users of this system at large, should any of the risks occur –failure of the existing plant, high long term operating costs and loss of COMRIF funding as paramount. The possibility, be it ever so slight, that millions of dollars could be saved by alternate service delivery was attractive, and after many meetings, much discussion, trips to the west, and expert guidance Council proceeded with a Design Build Operate Finance option in the belief that real savings were possible.

Many persons worked very hard to try and find a solution for the replacement of the PWWTP, and all possible avenues for project delivery were thoroughly and conscientiously addressed. In spite of the time, detail and effort spent in developing the process and documents, the RFP process failed to provide a solution deemed to be acceptable .

When the initial TSH tender and design was reviewed and optimized by JL Richards, they determined that reasonable and achievable improvements would reduce capital costs to an affordable level. There was an opportunity at that point to explore Design Build, but with the “carrot” of even lowering the capital costs below the original TSH cost estimate if an alternative delivery solution comprising DBO/DBFO was adopted, then DB was passed over.

After concluding the DBFO, staff in fact did explore the Design Build route and with a solid effort from the County’s solicitor, staff and the builder, an acceptable conclusion was endorsed by Council.

In hindsight, the critical analysis and realistic result reached in the Design Build solution could even have occurred during the DBFO process if the course of action shifted at that time. The focus on achieving “significant savings” outcomes and opportunities was by this time, influenced by the presence of a specialist consultant on the project committee, who reinforced the opportunities of large cost reductions.

This report is as accurate an overview of the unconventional process that has now arrived at what hopefully appears to be a solid, and relatively risk-free, technically sound solution that

safeguards the COMRIF funding, the environment and remains faithful to the findings of the ESR and the demands of the EA.

Jonathon Huggett has presented his own report, attached, and his perspective of the process. The County solicitor was a key resource to this process, and participated in all Project Committee meetings either in person or by teleconference and advised in the evaluation process and the final recommendation for the Design Build solution. His comments on Huggett's report are also attached.

**Strategic Plan Implications:**

N/A

**Financial Implications:**

N/A

**Policy Implications:**

N/A

**Summary:**


**This report has been prepared for information only on the overall Picton Wastewater Treatment Plant Replacement Process.**

**Attachments:**

1. Report of Jonathon Huggett
2. Report of Harold VanWinssen, Templeman Menninga

**Submitted by: Matt Tracey Director of Water and Wastewater Services**

**CAO Approval:**

 8/June/09



## Picton Wastewater Treatment Plant

### Report on Design/Build/Finance/Operate Procurement Process

## Introduction

The County of Prince Edward embarked upon on a procurement process for replacement of the Picton wastewater treatment plant using a design/build/finance/operate procurement process.

The decision to use this process was based upon a number of factors as follows:

1. The original traditional stipulated sum tender process had resulted in bids that were deemed to be unaffordable
2. There was significant pressure in the community to search for alternate and more affordable solutions
3. Investigations by staff and some Council members regarding similar projects in BC and Alberta showed that significant cost savings were possible through a design build finance operate procurement process
4. The request for qualifications process showed that a number of companies were interested in the alternate procurement process and were confident of providing a better value solution.

The County has requested the preparation of this report to provide an explanation as to why the alternate delivery process proved to be unsuccessful.

## Background

At the end of the RFP process the County determined that none of the proposal submitted were acceptable and therefore rejected all three proposals. Subsequently the County has moved to negotiate a design build contract with Maple Reinders.

At the outset of the alternate delivery procurement process it was established that there were two key factors that had an overriding influence on any procurement process. These were:

1. The COMRIF grant funding of \$10 million which required that all construction must be completed by October 2010.
2. The approved Environmental Assessment required by the Ministry of Environment which was interpreted by the County that any major change to the design of the plant would require a revised EA process. The approved Environmental Assessment had taken some considerable time to achieve largely due to a community objection, and so there was a concern that any delay in revising the EA might jeopardize the COMRIF grant funding.

## Limitations of the Alternative Delivery Procurement Process

Alternative procurement delivery, to be successful, requires the owner to provide the minimum possible constraints in the delivery of the project. The owner ideally simply specifies the required outcome; in the case of Picton this would be a plant meeting the required effluent criteria with the required hydraulic capacity.

### Impacts of the Environmental Approval

The County imposed a number of significant restrictions on the procurement process, including an implied (if not actually stated) prohibition on major changes to the approved Environmental Assessment. In effect this resulted in the inability of proponents to use the existing wastewater treatment plant site and any of its existing components in the new plant. The only option available regarding siting was therefore to use the County's new site located some distance from, and at a higher elevation than the existing plant.

The County did reserve to itself certain discretions in the RFP such as:

#### Section 2.2.1.1

*"The County is prepared to consider alternate proven technologies provided that the County, at its sole discretion, can satisfy itself that the risks related to any required modification to the Environmental Assessment and the Certificate of Approval are manageable and that its COMRIF funding will not be in jeopardy."*

In effect this clause basically constrained any proposal to one that only required minor changes to the EA, in other words the project must be located on the County's new site, must use similar technology and cannot make use of any components of the existing plant.

### Hydraulic Capacity

The County specified the required hydraulic capacity of the plant. One proponent proposed a plant that did not meet that capacity, but the proponent justified its decision based on historical data. It is understood that the County is reconsidering the required hydraulic capacity, but the issue is clearly one that should have been discussed more fully at the RFP stage as it is clear it has significant financial consequences and the justification of the chosen hydraulic capacity was a judgement call rather than an exact science.

### Achieving Value for Money

The demonstration of value for money requires not only consideration of the costs of designing constructing and operating the plant but also an assessment of the value of any risk that has been transferred.

Regarding the design and construction of the plant it was clear that proponents felt that the RFP did not provide sufficient opportunity for innovative design because of the specified requirements regarding the EA process which meant that use of the existing site and some components of the existing infrastructure was not possible. One proponent did propose membrane technology.

Staffing costs for the operation of the plant were all higher than the County operated plant largely because the County has the ability to utilize staff on a part time basis and utilize the rest of their time on other work not related to the wastewater treatment plant.

## COMRIF Grant Funding

It is understandable that the County would be concerned about any potential loss of the \$10 million in grant funding from COMRIF. The COMRIF approval did state that all construction must be complete by October 2010. Further it is understood that discussions with middle management in the administering Ministry indicated that there could be no guarantee of any extension of the funding agreement beyond that date. Experience in BC and Alberta has shown that there is considerable flexibility in the conditions surrounding grant funding providing a solid case can be made that this would be in the public interest. In addition it is frequently necessary for this public interest case to be made at senior management or elected official level for it to be successful. While we have not had experience in negotiating such changes in Ontario it would be difficult to understand why Ontario would be less flexible than BC and Alberta. However the County made a decision that, because it did not have any indication that the date for grant funding could be extended, it would not entertain proposals that would put the completion date in jeopardy unless the proponent was willing to make up the loss in grant funding. That understandably is a risk that no proponent would be prepared to take.

## EA Approval Process

In section 4.3 of the RFP, the County stated that:

*"The County recognizes that a complete redo of the Environmental Assessment may put grant funding in jeopardy and could unacceptably delay the Project. The County is prepared to consider changes to the EA providing the risks related to timing and public consultation can be appropriately managed. Those changes are expected to result from one or other or both of two possible issues: the process technology, and/or the siting of the replacement plant. The Successful Proponent would be expected to assume the risks and responsibilities for amending the EA on behalf of the County to meet the requirements of its proposal, and a more minor amendment dealing with any changes in technology or a more major*

*amendment dealing with changing the site. Please note the County would prefer in its evaluation Proposals which do not involve a major amendment to the EA or changing the site from that approved by the EA."*

The effect of this clause was to place all of the risk related to a major amendment to the EA with the proponent. Not only would this have a significant cost in its own right but it would also potentially jeopardize the COMRIF funding. Based on that two of the three proponents determined that the only solution available to them was to propose new construction on the site dealt with in the EA process. In other words there was little or no opportunity for innovation and creativity.

## **Conclusions**

The design/build/finance/operate procurement process has produced significant cost savings in Alberta and BC. There is no reason why the same should not have occurred in Ontario with the Picton WWTP replacement.

The main reasons why this did not occur were the apparent rigidity surrounding the conditions, and specifically the timing, of the COMRIF funding. This mean't that if a major change to the EA was required, for example changing the site or technology, then the County took the view that its COMRIF funding would be jeopardized. While the County were prepared to consider opening the EA process, they stated they would only do so if the Proponent would bear all of the financial risk. That is an unrealistic expectation given the value of the contract and the potential liability that would be incurred.

The issue around COMRIF funding could have been dealt with by discussing flexibility of the conditions with senior management or elected officials at the administering Ministry. While reopening the EA process also carried significant delay risks the previous EA objections were raised by one individual and were related to the choice of a specific technology and its cost. A community consultation might have given an indication as to whether major changes to the EA were likely acceptable, given the potential cost savings that might result.

Jonathan R Huggett P.Eng

27 April 2009

27 April 2009

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**MEMORANDUM**

To: Evaluation Committee  
Picton Wastewater Treatment Plant

And to: Council, County of Prince Edward

From: Harold Van Winssen

Date: June 5, 2009

Re: Picton Wastewater Treatment Plant Procurement Project  
Process/Our File No.

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Given my involvement with the process, I have been asked to comment on the report from Mr. Huggett dated April 27, 2009 relating to the Design-Build/Finance/Operate Procurement Process.

**Overview**

Mr. Huggett's response with respect to the failure of the process to deliver any significant savings appears to place the blame on the County and certain decisions made by the County, including restrictions on reopening the environmental assessment process, restrictions on risking the COMRIF funding, the specific requirements of the EA relating to the hydraulic capacity and the placing of too much risk with the proponent relating to amendments to the EA and loss of COMRIF funding.

Mr. Huggett is an expert in and has been involved in a number of projects using the Design/Build/Finance/Operate Procurement Process in both Alberta and British Columbia. The County hired him at the request of CCPEC for his specific expertise in these types of proposals.

Mr. Huggett was intimately involved in the creation of the process, prepared the initial drafts of both the Request for Expression of Interest and the Request for Proposal and was involved throughout in the discussions of the various risk factors, including discussions both internally and with proponents of all of the items listed as reasons why the process was not successful which were included in the RFP.

Clearly, in his role, Mr. Huggett could have advised the County that it was not appropriate to include these provisions in the manner they were included in the RFP process.

### **Impacts of the Environmental Approval**

The County, through the RFP process designed with input from Mr. Huggett, included in particular, Section 3.5.15 of the RFP, identified the potential changes to the environmental approval as a risk, the County was only prepared to accept the responsibility for under certain circumstances and with certain limits.

Basically there are three types of proposals dealt with. The first is a proposal that requires no formal amendment to the EA process. The second is a change which required a more minor amendment to the EA process. In this case, the County was willing to assume responsibility and liability in part and limit the risk of the proponent to a maximum of \$1 million. This provision was included after discussions with the various proponents.

The last category is a major change to the EA process. A major change to the EA process involves a public consulting and approval process. There is then the possibility of "bump-up" requests for further consideration and further appeals.

It should be noted that there is an existing order instituted by the Ministry of Environment against the County requiring it to construct a new plant.

A reuse of the existing site, when the neighbours had been told that the site was not to be reused, especially a reuse which would involve moving part of the plant closer to the neighbours' properties, so not only would the plant still be there, still emitting noise and odours, it would actually be closer to the neighbours' properties, runs a significant chance that there would be public objections from these various neighbours to this change.

Mr. Huggett was involved in the drafting of this provision, the discussion of the risk and never to the writer's recollection indicated that it was his recommendation that this provision not be included in the RFP.

Much of the plant is very old and only certain portions of the plant can be reused.

### **Hydraulic Capacity**

An amendment to the Certificate of Approval for the facility would be required to amend the hydraulic capacity.

It should be noted for the record that the historical data as provided to all

proponents, all proponents had the ability to review that historical data, determine that average flows had decreased and therefore reviewed the potential for getting an amendment to the Certificate of Approval for changes in hydraulic capacity. It should be noted that each of the proponents had specific experts in the environmental assessment and approval process. The County did not unequivocally state that the proponents could not amend the hydraulic capacity. Obviously this would have an effect on the EA process, requiring an amendment to the Certificate of Approval which may be a risk that the proponents were not prepared to take on. At no time was it suggested that the County add something to the RFP saying that if the proponents wanted to propose on a different hydraulic capacity with a required amendment to the EA process and the Certificate of Approval, that this would be considered.

### **Achieving Value for Money**

Mr. Huggett makes the statement that it was clear the proponents felt the RFP did not provide sufficient opportunity for innovative design. At no time was any indication received from Mr. Huggett that he felt that there would be proposals which would be received which would not be economic and would not represent good value for money for the County.

### **Staffing Costs**

It was known that the County presently operated the facility in a very cost efficient manner and had the ability to utilize staffing in a way which would be difficult for the proponents to replicate. Mr. Huggett has experience in this area and presumably has seen a significant number of other proposals and their operating costs. If there were going to be real concerns about operating costs not being comparable to, or better value for money than the County's own operating costs, that is a concern that should have been raised early in the process and perhaps would have lead to the County not following a DBFO process at all, but only a design-build process. If it was clear that the operating costs would always be greater than that of the County, then why even consider the design-build operate process.

### **COMRIF Grant Funding**

Mr. Huggett indicates that the requirement to pass risk with respect to loss of COMRIF funding to the proponents is a major reason why the proposals were not delivering good value for money and the process not successful. Mr. Huggett drafted the initial RFP, was involved in the process whereby the initial RFP was amended to reduce the risk to the proponents, especially with respect to smaller EA changes and was involved in all of the discussions with respect to risk allocation between the proponents and the County.

An extension had already been received with respect to COMRIF. Not only did the County have discussions with the Ministry about extensions and had not been able to receive any assurances, but at least two of the bidders indicated that they had discussions with Ministry officials with respect to the COMRIF funding and were told that no guarantee could be given, that the COMRIF funding would be extended and not be lost.

At no time did any proponent provide any assurance that the COMRIF funding could be extended notwithstanding their significant experience with the COMRIF program, both in Ontario and in other provinces. Their unwillingness to accept the risk demonstrates the concern they had with respect to the risk of extension.

The County is being asked after the fact to take a very entrepreneurial risk, both with respect to the fact that the EA process could be amended and successfully and there would be no loss of COMRIF funding and an extension could be granted.

This is notwithstanding the fact that none of the experts were retained by any of the parties, nor the expert retained by the County, J. L. Richards Limited, could assure, or would be in a position to assure anyone that the EA process could be amended in any expeditious manner or indeed guarantee that any amendment would be successful of a major nature.

### **Conclusions – Huggett Report**

The risk with respect to the EA process, the loss of COMRIF funding, the operating costs and timing were known prior to the embarkation on the RFP process. If these were going to result in a process not being successful, perhaps Mr. Huggett's recommendations at the outset should have been not to proceed with the process without addressing these conditions in some way.

No one has yet produced anything where the Ministry is willing to guarantee extension of the COMRIF funding, yet the suggestion is now that the risk with respect to the extension of the COMRIF funding was to remain entirely with the County.

### **Conclusion**

Mr. Huggett was retained as an expert in this design, build, operate process.

There could have been a recommendation made by Mr. Huggett quite early in the process which stated that either the County take on the risk with respect to a potential loss of COMRIF funding, amendments to the EA process in order to open up the field so that it could get alternatives which could result in a lower price.

I understood that almost all of the proposals in Alberta and British Columbia involve substantial reuse of existing facilities, i.e., stretching out the life of existing facilities.

If there was no possibility of savings in the operating costs, why would a proposal for design, build, operate and with optional financing be the recommended procedure?

Passing all of the risks to the County does not seem to be an acceptable solution for public authority.

gh\cor\42588 Evaluation Committee June 5, 2009