



**REPORT TO CORE AREA WASTEWATER TREATMENT PROGRAM COMMISSION  
MEETING OF FRIDAY, AUGUST 23, 2013**

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**SUBJECT    PROCUREMENT ADVISORS' FEE AUTHORIZATIONS**

**ISSUE**

To provide a status update on the current fee authorizations for Legal and Financial/Business advisory services and request fee authorization for services associated with the procurement both the McLoughlin Wastewater Treatment Plant Design Build Finance (DBF) the Biosolids Energy Centre Design Build Finance Operate (DBFO) contracts.

**BACKGROUND**

The Core Area Wastewater Treatment Program Commission (the Commission) approved the appointment of various procurement advisors for the Core Area Wastewater Treatment Program (the Program) in April 2013, along with their fee proposal for the McLoughlin Point Wastewater Treatment Plant (WTP), based on a qualifications based selection process. This approval included Bull Houser Tupper with Hawkins, Delafield & Wood (BHT) as Legal Advisors and KPMG as Financial/Business Advisors.

Prior to the establishment of the Commission, the Capital Regional District (CRD) Board approved the appointment of Partnerships British Columbia (PBC) as procurement advisors in December 2012 for the McLoughlin Request for Qualifications (RFQ) and the selection of the Request for Proposals (RFP) shortlist.

Although BHT and KPMG have been appointed to provide services for the Program, work plans and associated fee estimates need to be authorized on a sequential bases for various requested tasks as they are scheduled and the scope is better defined.

The PMO will submit a report in September with a recommendation on the appointment of a procurement advisor.

**Advisory Fees Update for McLoughlin Point Wastewater Treatment Plant:**

The work plans and fee appropriations are reviewed regularly and as the RFP for the McLoughlin Point WTP has been issued, the remaining work plan and fee estimates have been reviewed to ensure alignment with program needs and that adequate funds are authorized. The table below provides a summary of the current status.

<b>Advisor</b>	<b>Current Commitment</b>	<b>Cost to RFP Issue</b>	<b>Forecast to Complete</b>	<b>Estimated Final Cost</b>	<b>Variance Commitment</b>
Partnerships BC	711,300	554,000	0	554,000	(157,300)
Bull, Houser & Tupper	950,000	725,000	600,000	1,325,000	375,000
KPMG	244,000	227,000	73,000	300,000	56,000
Miller Thompson (Fairness)	120,000	12,500	107,500	120,000	-
Boughton Law Corporation (COI)	25,000	2,000	23,000	25,000	-
Aon Reed Stenhouse	250,000	100,000	150,000	250,000	-
<b>Program Total</b>	<b>2,300,300</b>	<b>1,620,500</b>	<b>953,500</b>	<b>2,574,000</b>	<b>273,700</b>

PBC has completed the services within the authorized fee proposal.

BHT will likely exceed the initial authorization. The actual costs to RFP issue were greater than originally anticipated by approximately \$275,000 and although the level of effort required to complete the McLoughlin RFP process will greatly depend on the results of the first series of collaborative meetings, based on past experience BHT is forecasting an increase of approximately \$100,000 to what was included in the original fee request for these services.

The complexity of the issues and need to rework existing PBC documents was underestimated. The DBF documents for the McLoughlin Point WTP are among the first of their kind in BC and Canada and in particular the link to a following DBFO contract. A great deal of effort was required by the team to ensure robustness and close co-ordination with the DBFO contract going forward will be required. The level of effort required in reviewing all project risks and exploring various options and scenarios concerning the overall performance and in particular the operating component during the two year performance period was underestimated. An example includes the change to the original assumption that Proponents would assume the risk for operating costs. During the course of the development of the RFP, it was determined that CRD would take full responsibility for operating costs and as such, required a greater level of comfort on the reasonableness of the operating costs. Also, the original concept of having the proponent manage CRD operating staff proved to be fraught with risk and was eventually excluded from the contract after significant effort had been expended. Therefore, more hours were spent working with our technical advisors in developing the operating costs (power, labour, chemical). This affected the level of effort of all advisors.

KPMG require additional authorization to complete the services for the McLoughlin Point WTP procurement process. The procurement team investigated a variety of different performance security and payment mechanism options requiring additional work in development, financial modelling and presentations. There was also an extensive amount of time expended on the financial review of the RFQ documents. They underestimated the number of anticipated submissions and the fact that there were four sets of financial documents (based on how proponents formed their teams) with each team submission. KPMG anticipated five submissions each with two sets of financials and were required to review seven submissions each with four sets of financials. In addition unbudgeted financial analysis were undertaken to finalize project security (holdback, letter of credit etc.)

All advisors have performed well in the development of McLoughlin Point WTP documents and have gained significant background information relevant to the next procurement package.

**Advisory Fees for Biosolids Energy Centre (BEC):**

Work on the preparation of the procurement documents for the BEC including the Request RFQ, the RFP and draft Project Agreement and the indicative design must commence immediately to maintain schedule and planned integration with the McLoughlin Point WTP procurement.

Much of the work can proceed without having the site finalized, however, as a portion of the work is site specific, there is a risk of re-work, additional costs and overall schedule delay should the site not be finalized in the immediate future. This risk is considered low at this stage and it is recommended that work commence.

The PMO requested a work plan and fee estimate from both BHT and KPMG for work associated with the preparation of the procurement documents and involvement with the procurement process on the BEC. The levels of effort and fees estimates are based on the experience gained on the services provided to date. The details are provided as Appendix A and B respectively.

The fee estimate for Legal Advisory services is in the range of \$1,350,000 to 1,500,000 plus PST.

The fee estimate for the Financial/Business Advisory services is estimated at \$500,000.

**ALTERNATIVES**

1. That the Core Area Wastewater Treatment Program Commission approve:
  - a) An increase in fees of \$375,000 for Bull Houser & Tupper with Hawkins, Delafield & Wood to complete the McLoughlin Point Wastewater Treatment Plant procurement process to financial close;
  - b) \$1,500,000 for Bull Houser & Tupper with Hawkins, Delafield & Wood for legal advisory services for procurement of the Biosolids Energy Centred to financial close;
  - c) An increase in fees of \$56,000 for KPMG to complete the McLoughlin Point Wastewater Treatment Plant procurement to financial close;
  - d) \$500,000 for KPMG for financial/business advisory services for procurement of the Biosolids Energy Centre procurement to financial close.
2. Initiate a new request for qualifications for legal and financial/business advisors for the Biosolids Energy Centre Procurement.

**IMPLICATIONS**

Financial

Alternative 1: The Core Area Wastewater Treatment Program budget includes task codes and budgets for this scope of work, and includes the necessary funds to complete the proposed scope of work by the legal and financial/business advisors. The necessary funds are included in the CRD 2013 annual budget authorization.

This commitment does not impact the Program Contingency.

Alternative 2: Initiating a second RFQ for the BEC will result in a delay in the procurement schedule and may result in a loss of efficiency if a different advisors were selected as new advisors would have to become familiar with both the McLoughlin and BEC procurement requirements.

**RECOMMENDATION**

That the Core Area Wastewater Treatment Program Commission approve:

- b) An increase in fees of \$375,000 for Bull Houser & Tupper with Hawkins, Delafield & Wood to complete the McLoughlin Point Wastewater Treatment Plant procurement process to financial close;
- c) \$1,500,000 for Bull Houser & Tupper with Hawkins, Delafield & Wood for legal advisory services for procurement of the Biosolids Energy Centred to financial close;
- d) An increase in fees of \$56,000 for KPMG to complete the McLoughlin Point Wastewater Treatment Plant procurement to financial close; and
- e) \$500,000 for KPMG for financial/business advisory services for procurement of the Biosolids Energy Centre procurement to financial close.

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David N Walker  
Program Manager  
Core Area Wastewater Treatment Program

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J. A. (Jack) Hull, P.Eng. MBA  
Interim Program Director  
Core Area Wastewater Treatment Program  
Concurrence

DW:hr

Attachments:  
Appendix A: BHT Work Plan and Fee Estimate  
Appendix B: KPMG Work Plan and Fee Estimate

## MEMORANDUM

TO: Core Area Wastewater Treatment Program  
Attn: Tony Brcic and Dave Walker

FROM: Greg Lewis

COPY: Eric Peterson, Hawkins Delafield & Wood LLP

DATE: August 14, 2013

RE: Biosolids Energy Centre – Work Plan and Fee Estimate

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As requested, this memorandum sets out a work plan and fee estimate for the Biosolids Energy Centre Project (the “Project”), which is part of the Core Area Wastewater Treatment Program.

### WORK PLAN

The following is an outline of the legal work we foresee being necessary for the Project:

#### RFQ PREPARATION, ISSUANCE AND EVALUATION

- > Reviewing and commenting on draft RFQ
- > Advising regarding commercial and other issues that should be considered prior to RFQ issuance to ensure RFQ includes all required information for participants to consider at this stage
- > advising regarding relationship review matters
- > advising regarding evaluation issues
- > assisting in preparation of correspondence with respondents, including correspondence advising of the results of the RFQ evaluation

### PREPARATION AND ISSUANCE OF RFP AND DRAFT PROJECT AGREEMENT (“PA”)

- > Preparing draft PA and all schedules for release with the RFP, including:
  - initial review of each element of the PA
  - receiving, discussing and incorporating comments from the Project team
  - identifying areas where further consideration and input is necessary
  - coordinating input from the various content providers and specialists, including PMO, Stantec, Partnerships BC, KPMG and Brown & Caldwell
  - ensuring consistent drafting and minimizing redundancy
- > Reviewing and revising RFP, including evaluation methodology and Proposal Requirements
- > advising regarding commercial issues that have arisen in other biosolids and similar projects
- > participating in discussions and decisions regarding interface issues between CRD conveyance systems and wastewater treatment plant and reflecting those decisions in the RFP and draft PA

### PROPOSAL PHASE – FROM RFP ISSUANCE TO PROPOSAL SUBMISSION

- > reviewing and advising on Proponent enquiries
- > reviewing and advising on Proponent comments on draft PA
- > attending Collaborative Meetings at which commercial matters are discussed (but not technical meetings unless requested)
- > preparing revised drafts of the PA, including final draft for issuance one month before submission deadline
- > advising regarding relationship review matters

### PROPOSAL EVALUATION

- > advising regarding relationship review matters
- > advising regarding evaluation process and issues
- > reviewing and commenting on evaluation report
- > assisting in preparation of correspondence with respondents, including correspondence advising of the results of the RFP evaluation



### CLOSING PHASE

- > identifying tasks required to close, including final amendments to the PA
- > working with preferred proponent's legal counsel to confirm closing requirements, closing agenda and closing process
- > working with PMO, Stantec, Partnerships BC and KPMG to finalize financial close arrangements, including rate setting if applicable
- > conducting due diligence review of, and commenting on as appropriate, Project Co's subcontract and financing documents
- > preparing closing documents
- > attending to closing
- > preparing closing report, including digital document book



**ESTIMATED FEES**

**RATE TABLE**

The hourly rates for 2013 and 2014 for the lawyers we propose to assign to the Project are set out below:

Lawyer	2013	2014

When other than the lawyers listed above are needed to assist with the Project, their hourly rate will be discounted 10% from our regular hourly rates.

**COST PROJECTION**

Based on our experience, what we know about the Project at this point, and the assumptions set out below, we estimate that legal fees (Bull Housser and Hawkins) for the Project (not including disbursements and taxes) are likely to be between \$1,350,000 and \$1,500,000, broken down by phases as follows:





Phase	Estimated Fees
Pre-RFP phase, including RFQ preparation and release, RFQ evaluation and preparation of RFP and Project Agreement	\$800,000 - \$850,000
RFP phase, including bi-lateral process and revising drafts of the Project Agreement	\$250,000 - \$300,000
Proposal evaluation phase	\$100,000 - \$125,000
Preferred Proponent phase, including finalization of Project Agreement and achieving Financial Close	\$200,000 - \$225,000

Our fee estimate is based on the following assumptions:

- > the procurement documents and Project Agreement (including Schedules) will be based on the Partnerships BC DBFM precedent and the work done on the McLoughlin Point documents;
- > the specifications will be well drafted by design and other professionals and legal review and revision time will not exceed 150 hours;
- > the consortium selected as Preferred Proponent will be led by a team experienced in the British Columbia infrastructure/P3 market and will be prepared to accept the structure of the Project and the general risk allocations set out in the draft Project Agreement;
- > the lenders to the Preferred Proponent will be familiar with practices in the British Columbia infrastructure/P3 market and the risk allocation set out in the draft Project Agreement;
- > our role with respect to the technical bi-laterals will be limited to a legal-monitoring function and we will not be required to attend all related meetings; and
- > the RFP will be issued in March, 2014 and closing with the preferred proponent will occur in December, 2014.

We trust this is the information you require. Please let us know if you have any comments or questions.

**Capital Region District  
McLoughlin DBF**

**Summary**

**Billings to Date**

February 2013 - March 2013	30,542.03
April 2013	31,012.98
May 2013	79,920.00
June 2013	73,847.25
July 2013 (to be issued)	14,580.64
<b>Total Billings to date</b>	<b>229,902.90</b>

**Budget**

Budget to December 31, 2013	
Fees	43,470.00
Expenses	4,200.00
Budget to Financial Close (March 2014)	
Fees	22,654.20
Expenses	2,700.00
<b>Total Budget</b>	<b>73,024.20</b>

<b>TOTAL</b>	<b>302,927.10</b>
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Budget to December 31, 2013	Webster	Lan	Shi	Bullen	Andrews	Cameron	Total
Rate							
1 Project Management (including weekly meetings)							
2 Collaborative Meetings (Prep, Attendance, Follow-up)							
3 Supporting Financial Analysis							
4 Quantified Evaluation Criteria Review							
5 RFP Evaluation							
8 Commercial and Financial Close							
<b>Total</b>							
Rates							
Total Fees	-	7,200	4,320	13,050	18,900	-	43,470
Contingency - 0%							-
<b>Total Estimated Fees with Contingency</b>							<b>43,470</b>

Estimated # of trips		1	1	3	4		
Cost per trip	350	1000	400	400	400		
<b>Total estimated expenses</b>	-	1,000	400	1,200	1,600	-	4,200

Budget post December 31, 2013	Webster	Lan	Shi	Bullen	Andrews	Cameron	Total
Rate							
1 Project Management (including weekly meetings)							
2 Collaborative Meetings (Prep, Attendance, Follow-up)							
3 Supporting Financial Analysis							
4 Quantified Evaluation Criteria Review							
5 RFP Evaluation							
8 Commercial and Financial Close							
<b>Total</b>							
Rates							
Total Fees	-	3,672	-	5,029	10,282	3,672	22,654
Contingency - 0%							-
<b>Total Estimated Fees with Contingency</b>							<b>22,654</b>

Estimated # of trips		1	1	1	1		
Cost per trip	350	1500	400	400	400		
<b>Total estimated expenses</b>	-	1,500	400	400	400	-	2,700

**Capital Region District  
Biosolids DBFO**

**Summary of Budget**

To December 31, 2013			
Fees	208,890		
Expenses	7,000	215,890	
Post December 31, 2013			
Fees	275,949		
Expenses	7,800	283,749	
<b>TOTAL</b>			<b>499,639</b>

To December 31, 2013	Webster	Lan	Lipson	Andrews	Cameron/P erret	Total
Rate						
1 Project Management (including weekly meetings)						
2 Biosolids Kick-off Workshop						
3 Support for development of principles/policies						
5 Input/Documentation for Staff Reports						
4 Analysis for Commission						
6 Financial Model Development						
7 RFQ Document Input and Review						
8 RFQ Evaluation						
9 RFP Document Input and Review (Commercial Terms)						
10 Collaborative Sessions						
11 RFP Evaluation						
12 Financial Close						
Total						
Rates						
Total Fees	9,000	48,600	27,000	105,300	-	189,900
Contingency - 10%						18,990
Total Estimated Fees with Contingency						208,890

Estimated # of trips		3		5	0	
Cost per trip	350	1500	1500	500	400	
Total estimated expenses	-	4,500	-	2,500	-	7,000

Post December 31, 2013	Webster	Lan	Lipson	Andrews	Cameron/P erret	Total
Rate						
1 Project Management (including weekly meetings)						
2 Biosolids Kick-off Workshop						
3 Support for development of principles/policies						
4 Input/Documentation for Staff Reports						
5 Analysis for Commission						
6 Financial Model Development						
7 RFQ Document Input and Review						
8 RFQ Evaluation						
9 RFP Document Input and Review (Commercial Terms)						
10 Collaborative Sessions						
11 RFP Evaluation						
12 Financial Close						
Total						
Rates						
Total Fees	9,180	83,354	20,196	113,832	24,300	250,862
Contingency - 10%						25,086
Total Estimated Fees with Contingency						275,949

Estimated # of trips		3		5	2	
Cost per trip	350	1500	1500	500	400	
Total estimated expenses	-	4,500	-	2,500	800	7,800