

that will be indexed based upon independent third party data from Engineering News Record for (Toronto, Ontario) as follows: 0% of the Construction Cost Index (CCI); 30% of the Material Cost Index (MCI); and 70% of the Building Cost Index (BCI).;

- Corresponding to the best technical guarantee for energy recovery, Covanta provided the highest annual revenues, primarily from electricity sales (based upon an assumed 8 cents per kilowatt hour (kWh)). Electricity revenues remain the highest with and without consideration of future district heating requirements; and,
- Sensitivity analysis performed on the Covanta financial submission demonstrated that the Covanta proposal would remain the lowest cost proposal under each sensitivity scenario investigated as defined within the RFP documentation.

Although not considered as part of the formal RFP evaluation, the Covanta submission did fall within the scope of the May 2008 Durham Business Case evaluation (Report 2008-J-13) conducted by Deloitte & Touche LLP. The Covanta proposal was within the Business Case scope despite:

- Significant changes which have occurred in the economic and capital market environment; and
- The requirement for proponents to bid to a Project Agreement developed during the procurement process, which included final provisions not known or considered at the time that the Business Case was developed. Most notably, these include the securities and guarantees that will protect the Region from risk during the design, construction and operation of the facility, and which are designed to work with other defined terms and conditions, to ensure a well maintained facility considered 'industry standard' at the end of the 20-year operating term (plus each of the two, five-year optional renewal periods).

Covanta's submission includes a commitment to:

- A Total Annual Operating Fee of \$14.67 million (Canadian dollars at February 19, 2009), and excluding consideration of revenues from electricity or ferrous and non-ferrous recoveries;
- An electricity production guarantee of 767 kilowatt hours per tonne of waste (kWh/T), and a guarantee of 90% facility availability;
- A Construction Price of \$235.76 million (Canadian dollars at February 19, 2009);

The Covanta electricity production and availability guarantees noted above result in approximately a minimum of \$8.59 million (Cdn \$) in annual electricity revenues to the project, assuming a fixed power purchase price of 8 cents per kWh/T. Any increase in waste throughput beyond 140,000 tpy will increase annual power production.

Proponents have committed to their submitted costs, subject to adjustments as defined through the RFP documentation, and including inflationary adjustments set through the competitive bidding process. Any future potential scope changes beyond the

proponent's control, either resulting from future decisions of the Regions, and/or the Province through on-going approvals processes, could impact costs.

A subsequent project approvals report, anticipated to be submitted to Committee and Regional Council in June 2009 will include detailed costs and financial implications, upon finalization of the Phase II Project Agreement, and including any implications resulting from the on-going EA and/or other approvals processes.

Covanta confirmed if selected as the Preferred Proponent, it would negotiate in good faith with the Regions to finalize and execute a contract substantially in the form of the final draft Project Agreement. Staff do not anticipate any changes to operating performance requirements.

This report recommends moving to Phase I of the Project Agreement.

The Phase I Early Works Agreement was set up as a stand-alone agreement, which means if subsequent project approvals are not granted by the Province and/or the Regions, the preferred proponent will be paid for the architectural renderings and Early Works charges as provided.

It should also be noted however that the Regions are responsible for the obligations and costs of Early Works immediately upon the award of the Early Works Agreement, even if the project does not proceed beyond the Early Works stage to Phase II of the Project Agreement.

The Phase I Early Works component as recommended will result in the following costs which can be financed from the currently approved Solid Waste Management Business Plans and Budget through Federal Gas Tax funds as approved in the 2009 Business Plans and Budget with a cost sharing arrangement with York Region:

- Up to \$290,000 for Covanta to complete Enhanced Architectural Conceptual Design options (including development and provision of three architectural concepts for the facility for consideration by Regional and Clarington Councils);
- Up to \$567,750 for Covanta to complete other Early Works tasks including:
 - Completion of the Environmental Assessment documentation;
 - Designs, submissions and attainment of Environmental Protection Act (EPA) and Ontario Water Resources Act (OWRA) approvals and permits;
 - Municipal and other approvals and building permit support; and,
 - Final negotiation of Certificates of Approval with the Ministry of the Environment.
- Up to \$800,000 for technical consultant HDR Inc. in support of Early Works tasks and continued project technical oversight and advice;

- Up to \$1,200,000 for Genivar/Jacques Whitford to move from Phase II to Phase III of the Environmental Assessment process, including EA and EPA site and technology specific studies and documentation.

5.0 NEXT STEPS

Following Regional Council approval of the Preferred Proponent, the Regions will enter into Phase 1 of the Project Agreement with Covanta, the Early Works Agreement, which will undertake works including, but not be limited to:

- Completion of the Environmental Assessment documentation;
- Designs, submissions and attainment of Environmental Protection Act (EPA) and Ontario Water Resources Act (OWRA) approvals and permits;
- Municipal and other approvals and building permit support; and,
- Final negotiation of Certificates of Approval with the Ministry of the Environment.

In the event that the EA or the facility permitting process is not successfully concluded, then notice to proceed under the Project Agreement will not be given by the Regions.

Subject to approval of the recommendations herein, staff will proceed to negotiate the final terms and conditions of the Project Agreement with Covanta for the design, build and operation of a Regionally owned facility on the preferred site Clarington 01.

The timing of the initial Council approval of the Preferred Vendor and the inception of Early Works is critical to the timely completion of the Environmental Assessment process. Without successful completion of the Environmental Assessment process, Environmental Protection Act approvals can not be completed and the timing of the overall project may be significantly delayed.

Subject to the recommendations herein, Procurement and Legal Services will negotiate the final terms and conditions of the Project Agreement with Covanta as the Preferred Proponent. Following a successful negotiation process, staff will make a recommendation to Regional Council at the end of June 2009 as part of a detailed report as noted above.

In the event that the Regions and the Preferred Proponent are unable to come to agreement on the final terms and conditions of the Project Agreement, leaving the Regions to believe that further efforts are unlikely to be useful, then the RFP allows the Regions to break off the process with the Preferred Proponent and commence the process of finalizing the Project Agreement with one or more of the next ranked proponents. If necessary, the Regions may refine any of the terms and conditions of the RFP, re-issue some or all of it to selected proponents and request a revised proposal from said proponents.

Upon completion of the Early Works Phase, resulting in Certificates of Approval, the project will enter into the second phase and the Regions will be in a position to provide