



Town of Newmarket
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Non-Competitive Acquisition to Hach Sales and Service Canada for Hach Branded Equipment, Supplies, Parts and Services

Staff Report to Council

Report Number: 2022-43

Department(s): Public Works Services, Procurement Services

Author(s): Rob Gillis and Tracy Assis

Meeting Date: June 20, 2022

Recommendations

1. That the report entitled non-competitive acquisition to Hach Sales and Service Canada for Hach branded equipment, supplies, parts and services for the Towns water testing program, dated June 20th 2022 be received; and,
2. That a non-competitive contract with HACH Sales and Service Canada Limited for the acquisition of HACH branded instrumentation, chemistry equipment, supplies, parts, maintenance and repairs for a period of up to five (5) years in the approximate amount of up to \$400,000.00 (approximately \$80,000.00 annually) plus applicable taxes, be approved; and,
3. That a blanket purchase order to Hach Sales and Service Canada Limited be generated in the approximate annual amount of \$80,000.00, plus applicable taxes, for a five (5) year period, with confirmation of approved funding; and
4. That should Staff anticipate that the total anticipated value of the acquisition in the approximate amount of up to \$400,000.00, plus applicable taxes, during the five (5) year period be surpassed, that the CAO be delegated authority to approve the blanket purchase order amendment, with confirmation from Finance as to approved funding; and

Non-Competitive Acquisition to Hach Sales and Service Canada Limited for Hach Branded Equipment, Supplies, Parts and Services

5. That staff continue to monitor and assess the Town's needs and any market changes that would otherwise suggest a competitive procurement process would be advantageous to the Town; and

6. That the Director of Public Works be authorized to execute any agreements as necessary; and

7. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Purpose

The purpose of this report is to seek Council's approval in accordance with Schedule D, Table 5 of the Town's Procurement By-Law 2014-27 which defines the delegated authority for the approval of single / sole source acquisitions over \$100,000.00, to non-competitively engage HACH Sales and Service Canada Limited for the acquisition of [HACH](#) branded instrumentation and chemistry equipment, supplies, parts, maintenance and repairs for the equipment used for the Town's water testing program for a period of up to five (5) years (the "Term") in the approximate annual amount of \$80,000.00 (up to \$400,000.00 over the Term), plus applicable taxes

Background

Water Quality and monitoring instrumentation and equipment used to ensure safe and reliable drinking water is delivered to our resident and customers

The Town of Newmarket is responsible for providing water and wastewater services to the Town's residents and businesses. The Water/Wastewater Services division of Public Works Services makes every reasonable effort to maintain and operate water and wastewater systems in full compliance with legislation and regulations, including but not limited to the *Safe Drinking Water Act, 2002*, *Environmental Protection Act*, *Clean Water Act, 2006*, and the *Ontario Water Resources Act*. In addition, all water operations and maintenance activities must meet the requirements of The Town's Drinking Water Quality Management Standard (DWQMS) and associated licences and permits issued by the Ministry of the Environment, Conservation and Parks (MECP); which are themselves considered to be regulatory requirements.

The Town of Newmarket's enhanced water quality monitoring program routinely samples for a multitude of regulated standards

Highly specialized testing equipment is required to monitor and control the Town's drinking water system to ensure performance limits are met at all times and to meet stringent regulatory requirements. These field tests include chlorine residual monitoring and other enhanced sampling such as iron, ammonia and nitrates among others which Non-Competitive Acquisition to Hach Sales and Service Canada Limited for Hach Branded Equipment, Supplies, Parts and Services

all have regulatory limits set out within O. Reg. 169/03: Ontario Drinking Water Quality Standards.

Critical testing equipment must be maintained to meet regulatory requirements to ensure the Town's drinking water system is operating in compliance with these respective requirements.

Town of Newmarket's History with Hach Sales and Services Canada Limited

Hach Sales and Services Canada Limited (and its parent company HACH Limited), hereinafter referred to as "Hach" is considered an Industry leader, being one of only a few industry vendors capable of providing high quality, accurate and simple laboratory supplies, equipment and parts. Hach has been providing water and wastewater analysis products and services for over 60 years while supporting water conservation, environmental profile improvements and regulatory compliance. Hach's analytical instruments and reagents are used to test the quality of water in a variety of industries and markets around the globe. They provide total solutions for water analysis to environmental and industrial markets. Hach Sales and Service Canada Limited's Quality Management System is based on the ISO 9001:2015 and ISO 14001:2015 Series Quality System Standards.

In addition to this, HACH is the direct manufacturer and distributor of HACH branded equipment, thus eliminating parts mark-ups that would otherwise be applied if the Town were to standardize with a supplier who is not the direct manufacturer and distributor of the required water testing equipment and supplies.

To date, the Town has historically invested in acquiring Hach water testing equipment, parts and laboratory supplies to ensure regulatory compliance for water and wastewater systems and consistency of the data collected and the information reported. The Town currently owns twenty seven (27) Hach branded monitoring and testing devices. All replacement parts and maintenance must be HACH branded parts to avoid nulling equipment warranties. The regular maintenance and repairs to the equipment the Town already owns must be done by authorized HACH representatives for the same reasons.

Hach has provided a sole source letter to verify that Hach is the sole manufacturer and distributor of Hach branded water testing instrumentation and chemistry equipment, parts and supplies. In addition to this, Hach has also provided a sole source letter to confirm that all Hach replacement parts must be Hach branded as the use of non-Hach supplied parts will result in voiding the instrument's warranty. In the same sole source letter, Hach states that any maintenance or repairs to Hach water testing equipment must be carried out by Hach Trained and authorized representatives.

Based on historical spend, the Town forecasts that costs for the deliverables are approximately \$70,817.80 annually as demonstrated in the following table.

Non-Competitive Acquisition to Hach Sales and Service Canada Limited for Hach Branded Equipment, Supplies, Parts and Services

| Item Details | Cost per Year (\$) | 5 Year Cost (\$) |
|-------------------------|--------------------|---------------------|
| Equipment | \$16,441.80 | \$82,208.98 |
| Reagents and Standards | \$35,476.00 | \$177,380.00 |
| Maintenance and Repairs | \$18,900.00 | \$94,500.00 |
| Total | \$70,817.80 | \$354,088.98 |

To permit for unforeseen additional needs, a contingency amount of about \$9,182.22 per year is also requested and within the approved water operating budget, GL# 42421.4255, with an annual budget of \$100,000.00, resulting in an approximate anticipated spend of \$80,000.00 annually and \$400,000.00 over the five (5) year period of the agreement with Hach Sales and Service Canada.

Region of York's Non-Competitive Approval to Directly Engage Hach Sales and Services Canada Limited

In their May 12th 2020 COW Meeting, the Region of York sought approval to engage Hach Sales and Service Canada Limited non-competitively for the same reasons described in this report as can be verified in the following link:

[Committee of the Whole - Week 1 - March 12, 2020 \(escribemeetings.com\)](https://www.escribemeetings.com/committees/region-of-york/committees/committee-of-the-whole/2020-03-12)

Approval was granted by the Region of York's Regional Council on April 2nd 2020 for a direct purchase of laboratory supplies, equipment and parts, including repair and replacement of critical laboratory and instrumentation equipment, from Hach Sales and Service Canada Limited, pursuant to the provisions of the Purchasing Bylaw, for a term of five years commencing May 1, 2020 and ending April 30, 2025, at an upset limit cost of \$2,666,800 excluding HST as can be verified in the following link:

[THE REGIONAL MUNICIPALITY OF YORK \(escribemeetings.com\)](https://www.escribemeetings.com/region-of-york/region-of-york-municipality).

Discussion

The Town of Newmarket requires reliable and consistent access to high quality laboratory supplies, equipment, parts and maintenance to support the regulatory operation of the Drinking Water Distribution System

If approved, a non-competitive acquisition to Hach Sales and Service Canada Limited for HACH branded instrumentation and chemistry equipment, supplies, parts, maintenance and repairs will:

Non-Competitive Acquisition to Hach Sales and Service Canada Limited for Hach Branded Equipment, Supplies, Parts and Services

- Ensure critical testing equipment already acquired by the Town from HACH will be maintained, tested and calibrated by Hach authorized technical staff to meet the Town's regulatory requirements;
- Ensure the Town's certified operators have industry recognized testing equipment to monitor water quality within the Town's drinking water system;
- Compliment corporate asset management principles by ensuring the continued standardizing of water monitoring equipment and service requirements;
- Streamline the acquisition and repair of monitoring and testing devices, which will increase operational efficiency due to a reduction in time being spent on re-occurring procurement initiatives;
- Ensure regulatory compliance, consistent service delivery, continuity and compatibility, resulting in sustained compliance;
- Reduce potential capital and operating costs with having to consider a full equipment overhaul if awarding a contract to another supplier, and associated training to staff, ;
- Align the Town and provide redundancy with the Region of York and other neighboring municipalities who utilize the same equipment to carry out their own water quality monitoring and testing programs;
- Ensures seamless management of the Town's internal sampling and monitoring programs to staff as a result of the high degree of knowledge and proficiency gained over the years using the HACH branded monitoring equipment. As such, the Town is fully capable of providing the necessary internal training to both current and new staff alike in order to continue to provide the high level of service to our resident and customers.

A Contract with Hach Sales and Services Canada Provides for Best Value to the Town

Approval of a non-competitive acquisition to Hach for the acquisition of Hach branded water testing equipment, parts, supplies, repairs and maintenance, for a period of five (5) years, represents the best value to the Town as Hach is the direct manufacturer and distributor of the equipment, parts, supplies and related services the Town acquires, eliminating parts mark-ups if the Town were to secure a contract with a supplier who may not be a direct manufacturer and distributor of water testing equipment.

Non-Competitive Acquisition to Hach Sales and Service Canada Limited for Hach Branded Equipment, Supplies, Parts and Services

Relatedly, if the Town were to award a competitively acquired contract to another supplier, the Town may need to determine whether or it would maintain both product lines, how it would manage two suppliers and how the Town would manage any potential inconsistencies between the data collected and reported between the two product lines.

Similarly, the Town may want to consider and overhaul to the existing equipment instead which has not yet reached end of life, increasing capital and operating costs to the Town.

Supporting Non-Competitive Provisions in the Towns Procurement By-Law 2014-27 and applicable trade treaty's

This request for approval to non-competitively acquire HACH branded instrumentation and chemistry equipment, supplies, parts, maintenance and repairs for the Town's Water Testing program for a period of up to five years is supported by the following Procurement By-Law 2014-27 and trade treaty provisions as follows:

(1) Procurement By-Law 2014-27 – Section 13.5 Sole Source, sub-sections (i), and (iii)

A Sole Source purchase may be conducted for the procurement for goods, service(s) or construction of any contract value without the competitive Bid process, when any of the following circumstances apply:

- i. May be based on proprietary technology.
- iii. A Supplier's unique capability.

(2) Procurement By-Law 2014-27 – Section 13.5 Single Source, sub-sections (i), (iii) and (v)

Single Source purchasing may be conducted for the procurement for goods, service(s) or construction of any contract value without the competitive Bid process, when any of the following circumstances apply:

- i. For reasons of standardization, warranty, function or service, such as: technical qualifications;
- iii. Where compatibility with an existing product, equipment, facility or service is a paramount consideration;
- v. Where the contractor possesses the unique and singularly available capability to meet the requirements, such as, skills related to and/or existing knowledge of the nature of the service;

Non-Competitive Acquisition to Hach Sales and Service Canada Limited for Hach Branded Equipment, Supplies, Parts and Services

(3) The public procurement provisions of the [Canada Free Trade Agreement \(CFTA\)](#): Article 513: Limited Tendering, Section 1, sub-section (b), (ii), (iii), (iv) and (v):

1. Subject to paragraphs 2 and 3, and provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of any other Party or protects its own suppliers, a procuring entity may use limited tendering in the following circumstances:

(b) if the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

(ii) the protection of patents, copyrights, or other exclusive rights;

(iii) due to an absence of competition for technical reasons;

(iv) the supply of goods or services is controlled by a supplier that is a statutory monopoly;

(v) to ensure compatibility with existing goods, or to maintain specialized goods that must be maintained by the manufacturer of those goods or its representative;

Conclusion

It is recommended that the Town of Newmarket enter into a non-competitive agreement with Hach Sales and Service Canada Limited to acquire Hach branded instrumentation and chemistry equipment, supplies, parts, maintenance and repairs for a period of up to five (5) years in the approximate amount of \$400,000.00 (approximately \$80,000.00 annually) plus applicable taxes.

This acquisition is supported by the non-competitive provisions of the Town's Procurement By-Law and trade treaties as Hach Branded products are only manufactured and distributed by Hach Sales and Service Canada Limited and ensures compatibility with the Town's existing water testing equipment and interoperability with the Region of York's water testing as well.

Hach Sales and Service Canada Limited provides the most cost-effective pricing and availability to the Town as the direct manufacturer and distributor of their branded products and equipment, enabling continuous operation and maintenance of assets more efficiently, supporting achievement of compliance requirements, and minimizing potential service disruptions.

Business Plan and Strategic Plan Linkages

Newmarket's vision of a community "Well Beyond the Ordinary" is one that provides efficient, effective and environmentally sound services to an appropriate level that achieves Council and/or Provincially mandated services levels, which meet public health

Non-Competitive Acquisition to Hach Sales and Service Canada Limited for Hach Branded Equipment, Supplies, Parts and Services

and safety requirements and enhances quality of life while ensuring that system capital assets retain their value and are managed and funded according to sustainable, lifecycle based principles and practices. In addition, Newmarket's procurement practices align with Council's 2018-2022 Strategic Priority of Long-term Financial Sustainability.

Consultation

Staff from Public Works and Procurement Services have been consulted on this report.

Human Resource Considerations

No additional staff resources are required.

Budget Impact

Funding for the ongoing required water testing equipment, supplies, parts, maintenance and repairs continue to be charged to the water operating budget, GL# 42421.4255, with an annual budget of \$100,000.00

Attachments

Attachment # 1- Procurement By-Law 2014-27, Non-Competitive (Single / Sole Source) Acquisitions Schedule D, Table 5

Approval

Rob Gillis, Manager, Water/Waste Water, Public Works Services

Mark Agnoletto, Director, Public Works Services

Peter Noehammer, Commissioner, Development and Infrastructure Services

Tracy Assis, Manager, Procurement Services

Karen Reynar, Director, Legal and Procurement Services

Esther Armchuk, Commissioner, Corporate Services

Contact

Rob Gillis, Manager, Water/Waste Water, Public Works Services



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Attachment # 1 – Procurement By-Law 2014-27, Council Delegated Authority for Non-Competitive (Single / Sole Source) Acquisitions over \$100,000.00, Schedule D, Table 5

SCHEDULE "D" THRESHOLDS cont'd

| Estimated Procurement Value (Dollar) Threshold Applicable taxes are extra | METHOD OF PROCUREMENT | ADVERTISING | Reporting | Authority | Contract Agreement Requirements And Parties responsible for Contract Execution |
|--|-----------------------|--------------------------|--------------|--|---|
| TABLE 5. SOLE OR SINGLE SOURCE PURCHASES | | | | | |
| Up to \$10,000.00 | Not applicable | Advertising not required | Director | Director and in consultation with the Manager, Procurement Services. A JD Edwards Single /Sole Source Purchase Order is generated by the Procurement Services Department or P-Card to \$ 99,999.99 including taxes. | No Agreement Required |
| \$10,000.01 to \$25,000.00 | Not applicable | Advertising not required | Commissioner | Commissioner in consultation with the Manager, Procurement Services. A JD Edwards Single /Sole Source Purchase Order is generated by the Procurement Services Department or P-Card to \$ 99,999.99 including taxes. | No Agreement Required |
| \$25,000.01 to \$99,999.99 | Not applicable | Advertising not required | C.A.O. | C.A.O. in consultation with the Manager, Procurement Services. A JD Edwards Single /Sole Source Purchase Order is generated by the Procurement Services Department or P-Card to \$ 99,999.99 including taxes. | Agreement optional Director and Manager, Procurement Services. |
| \$ 100,000.00 and over | Not applicable | Advertising not required | Council | Council A JD Edwards Single /Sole Source Purchase Order is generated by the Procurement Services Department or P-Card to \$ 99,999.99 including taxes. | Agreement optional Director and Manager, Procurement Services. |

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