
DATE: May 31, 2012

REPORT TITLE: **RECOVERY OF GOODS AND SERVICES TAX (GST) FOR WASTE DISPOSAL SERVICES PROVIDED BY REPUBLIC SERVICES OF CANADA, INC.**

FROM: Patrick O'Connor, Regional Solicitor

RECOMMENDATION

That the Minutes of Settlement between Republic Services of Canada, Inc. and Her Majesty the Queen, and Fee Contribution Agreement between the Regional Municipality of Peel and Republic Services of Canada, Inc., both as described in the report of the Regional Solicitor dated May 31, 2012, titled "Recovery of Goods and Services Tax (GST) for Waste Disposal Services Provided by Republic Services of Canada, Inc.", be approved;

And further, that the Regional Solicitor be authorized to execute both documents on behalf of the Regional Corporation.

REPORT HIGHLIGHTS

- Peel Region together with the City of Toronto and York Region formerly contracted with Republic Services of Canada, Inc. for waste disposal services.
- During the period from February 1, 2003 to December 31, 2006, Peel Region overpaid Goods and Services Tax (GST) due to an erroneous assessment by the Federal Minister of Revenue.
- After a lengthy appeal at the Tax Court of Canada, a proposed settlement has been reached.
- Under the terms of the settlement, the Regional Municipality of Peel would be reimbursed in the amount of \$69,724.85, plus interest, representing 100 per cent of the overpayment, net of costs.

DISCUSSION

1. Background

From July 1, 2002 to June 30, 2007, Republic Services of Canada, Inc. ("Republic") was under contract with Peel Region for the disposal of Peel's solid waste at a landfill facility in Michigan. Peel Region, York Region and the City of Toronto (collectively the "Municipalities") had all contracted with Republic for similar services during this same time period.

May 31, 2012

RECOVERY OF GST FOR WASTE DISPOSAL SERVICES PROVIDED BY REPUBLIC SERVICES OF CANADA, INC.

At the commencement of the contract term, both Peel Region and Republic were of the opinion that GST was not exigible with respect to the waste disposal services. As such, Republic did not collect, and Peel Region did not pay GST with respect to the services, and neither party remitted GST to the Minister of National Revenue (the "Minister").

In 2005, the Minister formulated the opinion that GST was due and payable with respect to the waste disposal services, and communicated its intention to assess Republic for its failure to collect GST from the Municipalities during the period from February 1, 2003 and December 31, 2006.

Subsequently, Republic appealed to the Tax Court of Canada on the basis that the GST assessment was in error. The law firm of Fasken Martineau DuMoulin LLP was retained by Republic to pursue the appeal. In the interim however, Republic invoiced Peel Region, and Peel Region paid to Republic, \$128,571.47 representing unpaid GST and penalties assessed by the Minister.

After a lengthy appeal period, from December 2005 to May 2012, a proposed settlement was reached that would result in a reassessment of the GST for the relevant period of time, and a cancellation of accrued interest and penalties against Republic. If executed in its present form, the proposed Minutes of Settlement would result in the discontinuance of the appeal and the return of funds previously assessed to the Municipalities in error, plus interest, in the amount of \$553,888.09. It has been determined that of that amount, Peel Region would be credited with \$126,123.15, plus interest. The \$2,448.32 difference between this amount and the amount invoiced to and paid by Peel is attributable to professional fees accrued and charged by Fasken Martineau DuMoulin LLP at the time of their invoice.

Republic has requested a contribution from each of the Municipalities on account of the substantial professional fees incurred by Republic to secure the reassessment and the reimbursement of funds. The total legal fee invoiced by Fasken Martineau DuMoulin LLP in connection with the appeal is \$217,000.00, plus HST. Republic has requested that Peel Region contribute 23 per cent of the total legal fee in accord with the proportion of the total amount recovered under the terms of the proposed Minutes of Settlement. This would represent an amount of \$49,910.00 plus HST in the amount of \$6,488.30, for a total contribution of \$56,398.30. Further to their request, Republic has provided Peel Region with a proposed Fee Contribution Agreement to formalize their request for a contribution towards the legal fees.

As a term of the proposed Minutes of Settlement, Peel Region agrees that any and all claims it may have in connection with the issues are fully satisfied, that the matter is concluded and Peel Region would be barred from any future claims respecting the subject matter.

2. Proposed Direction

Upon Regional Council's approval, the Regional Solicitor will execute the documents on behalf of the Regional Corporation and forward them to Fasken Martineau DuMoulin LLP, upon which the settlement funds will be distributed to Peel Region and the other Municipalities.

May 31, 2012

MA-B1 -3-

RECOVERY OF GST FOR WASTE DISPOSAL SERVICES PROVIDED BY REPUBLIC SERVICES OF CANADA, INC.

FINANCIAL IMPLICATIONS

If approved, the Minutes of Settlement provide that Peel Region will receive funds in the amount of \$69,724.85, plus interest, net of costs, as Peel Region's share of the total amount recovered. Funds recovered by Peel Region will be credited to the appropriate waste management account.



Patrick O'Connor
Regional Solicitor

Approved for Submission:



D. Szwarc, Chief Administrative Officer

For further information regarding this report, please contact Robert Maciver at extension 4367 or via email at robert.maciver@peelregion.ca

Authored By: Robert Maciver

c. Legislative Services

14282