March 24, 2011

Delivered by Email: Stephanie Paparella@hamilton.ca

Chair and Members of the Audit, Finance and Administration Committee
City of Hamilton
Council Chambers, 2nd Floor
71 Main Street West,
Hamilton, ON L8P 4Y5

Dear Sirs,

Re: Capital Sewer Services Inc.
Presentation to Audit, Finance and Administration Committee

Background

Capital Sewer Services Inc is a company based in Hamilton. Capital employs approximately 100 people and does approximately $25 million in business annually.

It has a branch office in Winnipeg and operates throughout Ontario and Western Canada.

Capital is in the business of inspecting, cleaning, repairing and rehabilitating sewer pipes. It is one of the largest businesses of its kind in Canada.

Request for Proposals for City Contract No. C11-102-10

In December, 2010, Capital bid on City of Hamilton Contract C11-102-10 to clean, inspect and replace certain sewer lines. This is a three year contract worth approximately $15 million.

There were only two bidders on this project: Capital and its main competitor Insituform Technologies Ltd.

The bid structure was a two step process. The first step required bidders to submit a technical proposal that demonstrated that they were qualified to do this contract ("pre-qualification"). The second step requires bidders to submit a bid price for the scope of work. In order for the City to consider a bidder's cost proposal, a bidder is required to pre-qualify.
The pre-qualification process is measured by a point system. In order to pre-qualify, a bidder is required to meet a benchmark score of 80 points.

In this contract, the City awarded Capital a pre-qualification score of 77.5 points (2.5 points short of the benchmark score of 80 points). Thus, the City refused to pre-qualify Capital for this project.

The reason that the City gave Capital for not pre-qualifying is that Capital had failed to include a copy of its Health and Safety Manual in its technical proposal. The City valued the Health and Safety Manual at 10 points.

Despite what the City says, Capital is certain that it included a copy of its Health and Safety Manual in its technical proposal. In fact, in the text of its technical proposal, Capital twice refers to its Health and Safety Manual being enclosed with its bid package.

Even if Capital forgot to include its Health and Safety Manual in its technical proposal, Capital offered to provide one to the City. The City refused. The City has not provided justification for its refusal.

Ironically, the City already has multiple copies of Capital's Health and Safety Manual. The City has awarded Capital three separate contracts over the last five years. Capital provided the City with its Health and Safety Manual for all of these contracts. Capital is well known to the City employees who tender these contracts.

Furthermore, Capital has been awarded at least 25 contracts that are similar in size and scope to this project. Capital has successfully completed such contracts in Toronto, Vancouver, Winnipeg, London, Ottawa, Saskatoon, Chatham-Kent, Ministry of Transportation and others. There is absolutely no doubt that Capital is qualified to undertake and complete this project.

By refusing to pre-qualify Capital without any sound justification, the City has effectively reduced the competition for this project to zero. Considering the size and scope of this project, the City potentially stands to lose millions of dollars. This is not in the best interest of the City of Hamilton.

**Remedy Sought from Council**

Pursuant to sections 26 and 27 of the Instructions to Proponents, and section 2.2.2 of the Proposal Submission Information, the City possesses the discretion to address minor irregularities in bid proposals. This is, at most, a minor irregularity.
In accordance with section 4.18 of the Purchasing Policy By-Law, Capital has followed all necessary procedures to address this issue with the City. Up until this point, the City has refused to resolve this issue to the mutual satisfaction of both parties.

Accordingly, Capital respectfully requests that Council intervene and direct its staff to exercise reasonable discretion to accept a further copy of Capital's Health and Safety Manual so that Capital may be pre-qualified for this project.

Capital further requests that, while this matter is pending, the City refrain from awarding this contract.

Finally, Capital thanks this Committee for the opportunity to present its concerns and for considering its request.

Yours truly,

D'ARCY & DEACON LLP
Per:

R. IVAN HOLLOWAY
RIH/bb