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The Regional Municipality of Durham Report

To: Committee of the Whole
From: Acting Commissioner of Works, Commissioner of Corporate Services and
Commissioner of Finance
Report: #2022-COW-22
Date: June 22, 2022

Subject:

Negotiated Request for Proposal Results for the Design, Build, Operate and Maintain Contract for a Mixed Waste Pre-sort and Anaerobic Digestion Facility

Recommendation:

That the Committee of the Whole recommends to Regional Council:

- A) That Regional Council cancel the Region's Mixed Waste Pre-sort and Anaerobic Digestion Facility ("AD Project") procurement process at this juncture in accordance with the requirements of the Negotiated Request for Proposal, NRFP 1080-2021 ("NRFP").
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Report:

1. Purpose

- 1.1 The purpose of this report is to inform Regional Council on the outcome of the NRFP process for the AD Project and provides details on the next steps.

2. Background

- 2.1 In June 2018, Regional Council approved a Mixed Waste Pre-sort and Anaerobic Digestion (AD) facility as the preferred technologies for the Region's long-term organics management strategy (Report # 2018-COW-146).

Council Direction on the Service Delivery Model and AD Technology

- 2.2 In June 2019 (Report #2019-COW-17), Regional Council directed staff to proceed with the Mixed Waste Pre-sort facility and AD facility utilizing wet anaerobic digestion under a design, build, operate and maintain (“DBOM”) service delivery approach. This decision was made after a careful assessment of the advantages and disadvantages, as articulated by GHD Limited and Ernst and Young Orenda Corporate Finance Inc, of proceeding with a DBOM service delivery model compared to a private sector service contract.

Council Direction on the Exploration of a Joint Venture/Partnership

- 2.3 In June 2018 (Report #2018-COW-146), Regional Council directed staff to explore and issue a non-binding Expression of Interest (“EOI”) to solicit interest in a joint venture to procure, finance, and share net costs arising from the AD Project. Epcor Commercial Services Inc. (“Epcor”) was the chosen respondent through the EOI process and Regional Council authorized staff to commence negotiations with Epcor to establish a joint venture/partnership with the Region on the AD Project (Report #2019-COW-22). Unfortunately, the parties reached an impasse in negotiations on some of the key joint venture terms, as outlined in 2020-COW-20, and Regional Council authorized a settlement to terminate the relationship with Epcor and proceed with the AD Project as a sole public owner.

Council Direction on Siting

- 2.4 In September 2019 (Report #2019-COW-22), Regional staff, in consultation with GHD, developed siting criteria for the AD Project. In March 2020, GHD released the draft Siting Report to the public for discussion and consultation. In the comparative site analysis, six (6) sites were considered using the siting criteria, which included assessing environmental impacts, transportation considerations, site infrastructure, synergies with regional infrastructure and avoiding demolition/remediation costs to prepare the site.
- 2.5 In light of this analysis and comprehensive public consultation, Regional Council approved the South Clarington site as the recommended development site for the AD Project (Report #2020-COW-20).

Regional Council Direction on Procurement Process

- 2.6 In June 2019 (Report #2019-COW-17), Regional Council directed staff to proceed with procurement of the AD Project through a two-step Request for Prequalification (“RFPQ”) and Negotiated Request for Proposal (“NRFP”) process.
- 2.7 On June 23, 2021, staff (Report #2021-COW-14) informed Council of the outcome of the RFPQ (RFPQ-1062-2020) for the AD Project and Council authorized staff to proceed with the issuance of the NRFP for the AD Project to the top three qualified respondents. These respondents were:
- a. Durham Renewable Resources Group (“DRRG”): Maple Reinders PPP Ltd., AIM Group Capital Ltd., and EllisDon Capital Inc.
 - b. Durham Recovery Solutions (“DRS”): Sacyr Environmental USA LLC and Anaergia
 - c. Durham Organics Processing Partners (“DOPP”): Alberici Constructors Inc. and Acciona
- 2.8 These three respondents met the minimum 70 percent scoring requirement, underwent reference checks, evaluation of financial conditions and capacity and reference facility verification prior to recommendation to Regional Council for proceeding. Details of the evaluation were provided in Report #2021-COW-14.

3. NRFP Process

- 3.1 Given the magnitude and complexity of the AD Project, the RFPQ and NRFP processes were subject to rigorous due diligence rules and followed the best industry practices used by major provincial and federal infrastructure project agencies across Canada. This was critical to ensure compliance with any funding opportunities that were or could become available. This process included anti-lobbying protocols, standardized and confidential communications with respondents and oversight by a Council approved fairness monitor, P1 Consulting Services, and the Region’s other external consultants, Deloitte LLP, WeirFoulds LLP and GHD.
- 3.2 The NRFP was issued to the three respondents on August 9, 2021. Included in the NRFP was a draft copy of the Project Agreement, which was informed by the DYEC precedent, drafted and refined by external legal counsel, WeirFoulds LLP, in consultation with the Region’s technical and financial consultants and Regional staff. As per the terms of the NRFP, the Project Agreement was further refined and revised in consultation with the respondents during the commercially

confidential meetings (“CCM”) that commenced in October 2021 and concluded in January 2022.

4. NRFP Evaluation

- 4.1 Two of the three respondents submitted proposals to the AD Project: DRRG and DRS. Given the complexity of the AD Project, the respondents requested an extension to the proposal submission deadlines, which was endorsed by the Region’s fairness monitor, P1 Consulting Services. As such, the technical submissions closed on April 28, 2022, and the financial submissions closed on May 26, 2022. The technical evaluation team consisted of Regional staff, with GHD providing subject matter expertise where necessary, and the financial evaluation team consisted of Regional staff and Deloitte LLP.
- 4.2 The evaluation criteria for the NRFP took into consideration the entire scope of the AD Project, including the Project Agreement and its Appendices. The scoring matrix established minimum thresholds for various criteria. If a respondent failed to meet any one of these thresholds, they would not proceed in the evaluation process. Both respondents met all minimum thresholds noted herein.
- 4.3 Respondents were evaluated in the following areas:

Rated Criteria Category	Weighting (points)	Minimum Threshold
Mandatory Financial Requirements (see Appendix D, D-4 for details)	Pass/Fail	N/A
1.0 Proposed Development Plan Evaluation Criteria	10	N/A
2.0 Proposed Design Evaluation Criteria	30	N/A
3.0 Proposed Operations Evaluation Criteria	30	N/A
Technical Subtotal	70	42

Proposal Price (see Appendix C, Pricing Form for details)	30	N/A
Total	100	N/A

Technical Evaluation Requirements and Results

4.4 The NRFP identified the following technical criteria for the evaluation of the proposals:

- a. Project Management and Risk;
- b. Work Plan, Breakdown, Structure, Schedule;
- c. Overall Facility, Site and Process Design;
- d. Mixed Waste Processing Facility;
- e. Anaerobic Digestion Facility;
- f. Operation Plans;
- g. Hand Back Requirement and Lifecycle Schedule;
- h. Quality Assurance.

4.5 The review of the technical submissions was conducted independently by three members of the technical project team based on the validation of the respondent's ability to meet the criteria as outlined in the NRFP document. Following established purchasing protocols, the evaluation team met with representatives of the Finance Department – Purchasing Division (“Purchasing”) and the Fairness Monitor and discussed their respective insights while reaching consensus with respect to the scoring of each criterion.

4.6 It was determined that both respondents provided sound technical proposals in alignment with the Region's mandate and overall objectives.

Financial Evaluation Requirements and Results

4.7 The NRFP identified the following Mandatory Financial Requirements for evaluation of Financial Proposals (on pass/fail):

- a. Pricing Spreadsheets;
- b. Financial Model;
- c. Financial Model Audit Letter;
- d. Letter from Chief Financial Officer (“CFO”) or other authorized officer on the final financial approach;

- e. Letter of support for Construction;
 - f. Letter of support for O&M;
 - g. Letter of support for Subcontractors.
- 4.8 On May 26, 2022, both respondents provided financial submissions to support their technical submissions. The proposals were submitted to the Region in confidence. As such, staff have provided Council with a confidential summary of these financial submissions in order to make a fulsome decision on the recommendation herein (See Confidential Attachment #1).
- 4.9 The review of the Financial Proposal Submissions was conducted independently by two (2) evaluators, including a representative from Deloitte LLP, with support from two (2) subject matter experts from Deloitte LLP. Following the independent evaluation, the Financial Evaluation Team met with the Fairness Monitor and Purchasing for a consensus meeting. Thereafter, the final Financial Evaluation reports were submitted to purchasing and the fairness monitor. This process was completed on June 7, 2022, at which time staff were then permitted to view the proposals in their entirety and assess next steps.
- 4.10 In Report #2022 -COW-2, staff and external financial and technical consultants estimated that the capital cost for the AD Project would be approximately \$242 million or \$40.1 million more than 2020 estimate (Report #2020-COW-20) and \$78.5 million more than the 2019 estimated (Report #2019-COW-17). This estimate accounted for the impact of COVID-19 and other market pressures on infrastructure projects known at the time; and anticipated proposal premiums due to reduced market tolerance for project risks.
- 4.11 The financial proposals that were received by the two respondents were significantly higher than the anticipated cost of the AD Project because of an unexpected and rapid rise in material, shipping and labour costs over the past few months. The combined effect of the rapid escalation in material, labour and shipping costs, coupled with the uncertainty of how these costs may continue to increase, have caused suppliers and subcontractors at every level to significantly increase their costs and projections of costs on larger and long-term capital projects like the AD Project. This increase at every level of the supply chain has compounded and resulted in the proposals submitted well above the Region's projected costs as noted in Report# 2022-COW-2. The Region is experiencing this on all large infrastructure projects currently in the procurement/project costing process and it continues to remain uncertain when the market will stabilize.

- 4.12 Upon receipt of these proposals, the Region, in consultation with the Fairness Monitor, established a confidential process to meet with the two respondents the week of June 13th to seek an explanation for the inflated proposals and explore whether the capital costs could be substantively reduced without changing the technical scope of the AD Project. Due to the confidential nature of these procurement meetings, staff cannot publicly disclose the details of those discussions. However, staff can disclose that both respondents did provide options to decrease the up-front capital costs, but staff concluded that those options could not decrease the capital costs within an acceptable range and in a timely manner without substantively changing the scope of the AD Project. As such, staff do not recommend proceeding with the AD Project at this juncture given current international market conditions and recommend that staff revisit the short and long-term waste management plan and report back to Regional Council in the new year.
- 4.13 As per the NRFP and Council direction (Report# 2022-COW-2), the Region will pay the honorariums in the amount of \$400,000 to both DRRG and DRS. This is not only legally required but is a demonstration of good faith for the efforts undertaken and value added by both respondents and will encourage future participation in Regional projects.

5. Next Steps

- 5.1 Staff do not recommend proceeding with the AD Project at this juncture. However, the imperative need to proceed with a long-term waste management strategy remains. The Region has four (4) key objectives that were to be met by the AD Project: 1) addressing legislative mandates; 2) addressing the service requirements of the Region's growing population; 3) addressing capacity limitations of the Region's existing waste disposal infrastructure, and 4) increasing environmental sustainability through an increase in overall diversion.
- 5.2 The Region had developed an interim solution to process organics in anticipation of the time it would take to operationalize the AD Project. However, the use of existing infrastructure and contracts is, and was always meant to be, a short-term solution. The status quo will not adequately address the anticipated legislation, capacity needs and budgetary pressures on a go forward basis in the absence of the AD Project proceeding at this juncture. As such, staff will need to re-assess the short-term solution while working towards a sustainable long-term integrated waste management system.

5.3 Considering the foregoing, staff will report back to Council in 2023 to provide a plan to address the Region's short and long-term waste management needs in a cost effective and environmentally responsible manner. This plan will consider the prevailing state of the market in relation to large infrastructure projects and staying apprised of available funding opportunities, prevailing and evolving technologies, a re-evaluation of service delivery options and current and anticipated legislation.

6. The Future of the AD Project

6.1 The AD Project, or a variation thereof, continues to remain the preferred solution for the Region. Council approved the AD Project as a necessary measure to address the Region's projected waste management needs in an environmentally responsible manner. The benefits of the AD Project remain:

- a. GHG Reduction: Durham Region declared a climate emergency in 2020 and developed a Corporate Climate Action Plan (CCAP) to guide efforts to reduce greenhouse gas (GHG) emissions from Regional operations. The AD Project will generate the most significant GHG reductions than any other short-term corporate project.
- b. Renewable Natural Gas: The AD Project will generate a significant source of renewable natural gas and sources of revenues from such production (which will only grow as the carbon cost of fossil fuels increases).
- c. Legislative Compliance: The AD Project will ensure the Region is compliant with anticipated regulations for banning organics from landfills and for recovering organics and food waste.
- d. Diversion: The AD Project will help the Region divert over 70 percent of its organic waste from curbside collection program to AD and at least 50 percent from its multi-residential collection program.
- e. Delay DYEC Expansion: The AD Project will allow the Region to reduce up to 30,000 tonnes of capacity at the DYEC and delay its expansion for at least 15 years.

6.2 Furthermore, the Region has developed significant intellectual property, including complex procurement documentation/processes, technical background/modeling and a developed Project Agreement, that was informed by industry experts. These will be invaluable assets in future procurement processes for the AD Project or other long term waste management strategy projects. It should result in a streamlined, expedited and less costly procurement process/es. This process also helped the Region to develop some of its Renewable Natural Gas opportunities and strategies.

7. Relationship to Strategic Plan

7.1 This report aligns with/addresses the following strategic goals and priorities in the Durham Region Strategic Plan:

- a. Goal 1.1 Accelerate the adoption of green technologies and clean energy solutions through strategic partnerships and investment
- b. Goal 1.2 Increase waste diversion and resource recovery
- c. Goal 1.4 Demonstrate leadership in sustainability and addressing climate change
- d. Goal 5.1 Optimize resources and partnerships to deliver exceptional quality services and value

8. Conclusion

8.1 The Region's long term waste management strategy continues to be an imperative that needs to be addressed and while staff do not recommend proceeding with the AD Project during this volatile economic market, staff continues to remain committed to finding cost effective and environmentally responsible methods for the Region's projected waste management needs.

8.2 This report has been reviewed by the Works, Finance and Corporate Services Departments.

8.3 For additional information, contact: Gioseph Anello, Director, Waste Management Services at 905-668-7711, extension 3445.

9. Attachments

Attachment #1: Confidential Financial Submissions

Respectfully submitted,

Original signed by:

Jenni Demanuele, CPA, CMA
Acting Commissioner of Works

Original signed by:

Don Beaton, BCom, M.P.A.
Commissioner of Corporate Services

Original signed by:

Nancy Taylor, BBA, CPA, CA
Commissioner of Finance

Recommended for Presentation to Committee

Original signed by:

Elaine C. Baxter-Trahair
Chief Administrative Officer