

4**DURHAM/YORK RESIDUAL WASTE ENVIRONMENTAL ASSESSMENT
PRE-QUALIFICATION OF THERMAL WASTE
TREATMENT TECHNOLOGY VENDORS**

(Regional Council at its meeting on April 19, 2007, referred the foregoing report to staff for a further report to the next Solid Waste Management Committee meeting on May 9, 2007. The communication from the Regional Municipality of Durham (April 18, 2007) also be referred to the Committee)

The Solid Waste Management Committee recommends the following:

1. Recommendation 1 contained in the following report, April 3, 2007, from the Commissioner of Transportation and Works be adopted; and
2. The following additional recommendations 2 and 3 be adopted as follows:
 2. Staff be directed to pursue an option to provide for a minority private sector ownership stake with Durham Region staff prior to the finalization and release of the Request for Qualifications.
 3. The proposed anti-lobbying clause (*Attachment 2*) be referred back to staff for further clarification to be provided to Council on April 19, 2007.

1. RECOMMENDATION

It is recommended that Council endorse the issuance of a Request for Qualifications by Durham Region for vendors of thermal waste treatment technologies using the principles for complete submission requirements and anti-lobbying as described herein (*see Attachments 1 and 2*).

2. PURPOSE

The purpose of this report is to describe the process of pre-qualifying vendors of thermal waste treatment technology in the context of the joint Durham/York Residual Waste Environmental Assessment. The pre-qualified vendors will then be eligible to participate in a future Request for Proposal for implementation of a thermal waste treatment facility.

3. BACKGROUND

On April 21, 2005, Regional Council adopted Clause 1 of Report No. 3 of the Solid Waste Management Committee to initiate a partnership with Durham to jointly undertake a Residual Waste Environmental Assessment Study.

On June 23, 2005, Regional Council adopted Clause 1 of Report No. 4 of the Regional Commissioner of Transportation and Works authorizing the Region to enter into an agreement with Durham to jointly conduct the Durham/York Residual Waste Environmental Assessment Study.

On June 22, 2006, Regional Council adopted Clause 1 of Report No. 4 of the Solid Waste Management Committee identifying the preferred and alternative thermal waste treatment technologies and authorizing staff to proceed with the Environmental Assessment process.

4. ANALYSIS

At the completion of the site selection phase of the Environmental Assessment, presuming that the project proceeds as planned, it will be necessary to prepare submissions for regulatory approvals. The regulatory approvals applications will be required to contain information that is specific to the technology and equipment proposed for the energy from waste facility. The major components of energy from waste technologies are proprietary and differ significantly from vendor to vendor. As a result, it will be necessary to pre-qualify, select and engage a preferred vendor in advance of preparation and submission of the regulatory approval applications. The following describes the vendor pre-qualification process.

4.1 Pre-qualification Process and Roles

York and Durham are jointly participating in the pre-qualification of energy from waste technology vendors. It has been agreed that, to facilitate the organized completion of work tasks, Durham shall assume the lead role for procurement related activities associated with this phase of the Environmental Assessment Study, all of which will be carried out in accordance with the Region of Durham Purchasing Bylaw 68-2000. As such, York and Durham's staff will be seeking approval of the various steps of the procurement processes from both Regional Councils. York and Durham are developing an approach to ownership and contracting for the proposed facility, which will be brought forward in a separate report to the Committees and Councils of both Regions. The ownership and contracting approach to be approved by Councils will be integrated into the Request for pre-Qualification and any subsequent Request for Proposal. The following summarizes the primary roles and responsibilities of Durham and York in the context of vendor pre-qualification:

- Durham:
 - Preparation of the Request for pre-Qualifications document.
 - Retention of a Fairness Monitor to provide oversight of the Request for Qualifications and any subsequent Request for Proposal process.
 - Notification and issuance of the Request for Qualifications.
 - Operation of the Request for Qualifications process and receipt of submissions.
- York:
 - Contribution to preparation of the Request for Qualifications document.
 - Review of the Request for Qualifications document.
 - Participation in and provision of assistance with respect to the conduct of the Request for Qualifications process as may be needed.
- Joint responsibilities:
 - Evaluation of submissions.
 - Recommendation of qualified proponents for inclusion in the subsequent Request for Proposal.

4.2 The Request for Qualifications

Key components of the Request for Qualifications include the following:

- Introductory information and instructions to proponents.
- Evaluation criteria (*see Attachment 1*).
- Terms of Reference including:
 - Background information regarding the Durham/York Environmental Assessment process.
 - Identification of the project objectives and schedule.
 - Definition of the scope and term of work/services required.
 - Up to 25 years operating period.
 - Submission requirements.
- Standard terms and conditions.
- Anti-lobbying clause (*see Attachment 2*).

The evaluation criteria (attachment 1) and submission requirements are proposed such that only vendors with proven capabilities and proposed proven technologies will qualify.

4.3 Evaluation of Submissions

Submissions will be received by Durham Region. An evaluation committee will be established. The evaluation committee may include, but is not limited to, the following:

- Equal representation from York and Durham in each of the following areas:
 - Procurement;
 - Financial;
 - Technical;
 - Legal; and
- Advisory consultants.

The evaluation committee will review and score the Request for Qualifications submissions in accordance with the criteria documented in the Request for Qualifications. The evaluation process will be monitored by a Fairness Monitor.

The firms/consortia with the top scoring submissions will be recommended to York and Durham Councils for inclusion in the subsequent Request for Proposal process.

4.4 Next Steps

Pre-qualified vendors would then be eligible to participate in a future Request for Proposal process for implementation of the joint Durham/York energy from waste facility. Council authorization will be sought prior to issuance of the Request for Proposal, which is planned to be released to pre-qualified vendors in December 2007 and closing in April 2008. In January 2007, the Joint Waste Management Group asked staff to advance this schedule. Staff will update Committee and Council on this matter as the options for optimization of the schedule are defined and evaluated.

5. FINANCIAL IMPLICATIONS

Costs associated with the Request for Qualifications process include services to be provided by the Environmental Assessment Study consultant team as well as the services of a Fairness Monitor. The Regions have agreed in principle to share the costs of a Fairness Monitor equally.

The Environmental Assessment Study consultant team will contribute to preparation of the Request for Qualifications and the evaluation of submissions. Evaluation is expected to be accomplished primarily through review of information submitted by prospective proponents, but may also require due diligence field inspections, dependent upon the submissions received. The approved budget for the Environmental Assessment Study consultant team includes allowances for provision of these services.

Durham Region has recently completed a review of proposals to retain a Fairness Monitor to oversee, monitor and report on the procurement process. As the procurement lead, Durham has retained KPMG Consultants as the Fairness Monitor, the cost of which is \$50,000 for the Request for Qualifications phase of the project. York Region's share of this cost is 50 percent. The draft 2007 capital budget for this project includes sufficient funding.

6. LOCAL MUNICIPAL IMPACT

The process of vendor pre-qualification has no direct local municipal impacts other than the potential for local firms having an interest in participating in the Request for Qualifications / Request for Proposal process. Given the international availability of the proprietary energy from waste technologies, the pre-qualification is by necessity an open process, without local bias.

7. CONCLUSION

It is recommended that Council endorse the issuance of a Request for Qualifications by Durham Region using the principles for evaluation criteria, submission requirements and anti-lobbying as presented herein. Staff will make future recommendations to Council regarding the results of the Request for Qualifications and seeking authorization to proceed with issuance of a Request for Proposal.

For more information on this report contact Neil MacDonald, Engineer, of the Solid Waste Management Branch at extension 5713 in the Transportation and Works Department.

The Senior Management Group has reviewed this report.

(The attachments referred to in this clause are included with this report.)

PRE-QUALIFICATION OF THERMAL WASTE TREATMENT TECHNOLOGY VENDORS

RFQ Submission Requirements

- RFQ submissions will be received by the Durham Region Clerk and the names of respondents recorded at public meeting following the date and deadline for submissions (no other information will be revealed at the meeting).
- RFQ submissions will be initially reviewed for compliance to bidding requirements and mandatory criteria, and then forwarded to the expert Technical and Financial teams for evaluation of rated criteria.
- RFQ Submissions will be evaluated against criteria including:

Mandatory Technical Criteria: (Note: Pass/Fail)

- Submission of a complete and compliant qualification package;
- Proposal of a thermal waste processing technology that is System 2(a) or 2(b), as defined in the Durham York Residual Waste Environmental Assessment documentation and previously adopted by Council;
- Identification of proposed core project team (lead, designer, constructor and operator);

Rated Technical Criteria: (Note: To be considered for qualification short listing, respondent submissions must attain a minimum 60 percent score in each category)

Reference Facilities - Part A:

- Scale of operation in relation to the Project requirements;
- Previous Term of Operation and type of feedstock.

Reference Facilities - Part B:

- Involvement of proposed core project team in reference facility;
- Compliance record, process description and integration into host community

Proposed Project Team:

- Related experience, expertise and roles of each team member;
- Proposed project team structure and organization.

Proposed Durham York Facility:

- Fulfillment of Durham York objectives;
- Facility description, operating plan and similarity to reference facilities;

References for each reference facility confirming:

- The owner/operator, local regulatory agency and host municipality;
- Past projects and roles of proposed core project team members.

Mandatory Financial Criteria: (Note: Pass/Fail)

- The prime team member(s) must provide evidence of the ability to provide construction performance bonding in accordance with RFQ requirements.

Rated Financial Criteria: (Note: To be considered for qualification short listing, respondent submissions must attain a minimum 60 percent score in each category)

- Organization Structure, Roles and Responsibilities of Team;
- Sufficient Capacity to design, build and operate the EFW;
- Sufficient Condition to design, build and operate the EFW; and
- Previous experience and details on corporate structure

Upon completion of evaluations by the evaluation teams, a shortlist of vendors will be recommended, comprised of the highest rated submissions, subject to the endorsement of Regional Council. It is anticipated the RFP document will be released in December 2007, just after the preferred site location is approved and commercial agreements are prepared.

The overall evaluation process will be closely monitored by a senior representative from KPMG Consultants, retained by the Regions as an independent third party Fairness Monitor.

To ensure complete fairness to all vendors, suppliers, consultants, staff and elected officials, the RFQ document will include a generally accepted anti- lobbying clause. This will require all vendors or proponents to direct any questions or concerns through a designated Regional representative only and the provisions of the anti lobbying clause extends from the date of the release of the RFQ to the completion of the formal award of an EFW design, build operate contract by both Durham and York Regional Councils (Refer to Attachment 2 for Proposed Anti-Lobbying Clause)

The RFQ document is currently under active development and review by Durham and York Regional staff and it is anticipated that the release date will be shortly following the authority to release the RFQ by Council in April 2007.



Transportation and Works Department
Office of the Commissioner

MEMORANDUM

TO: Bill Fisch, Regional Chair and Members of Council

FROM: Bruce Macgregor, P.Eng.,
Commissioner of Transportation and Works

DATE: April 17, 2007

RE: **Pre-Qualification of Thermal Waste
Waste Treatment Technology Vendors**

On Wednesday, April 11, 2007, the Solid Waste Management Committee adopted Clause 4 of Report No. 5 dealing with the Durham York Residual Waste Environmental Assessment: Pre-qualification of Thermal Waste Treatment Technology Vendors. Attachment 2 to the Report was a Summary of Proposed Anti-Lobbying Clause which Committee referred back to staff for clarification. Staff have reviewed the anti-lobbying clause and revised it (attached) to allow for:

- Meetings, interviews, tours of facilities or presentations that are duly authorized as part of the procurement process.
- All correspondence or contact by interested parties with respect to this project must be directly and only with the Project Authority.

These two changes allow staff and elected officials to visit facilities to better understand the issues and impact of energy from waste facilities on a community and allow vendors who may bid on the Energy from Waste project to be able to communicate with the Region on other business.

AC/tl

Attachment (1)

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PRE-QUALIFICATION OF THERMAL WASTE TREATMENT TECHNOLOGY VENDORS

Summary of Proposed Anti-Lobbying Clause

- Once the draft Request for Qualifications is prepared, it is proposed that all communications with potential vendors be directed through a single Regional procurement contact (the “Project Authority”) and that no project related communications occur between potential vendors and Environmental Assessment team consultants, Regional staff & elected officials.
- Respondents will be required to adhere to a proposed anti-lobbying clause to be included in the Request for Qualifications and Request for Proposal documents, which is to remain in effect through the entire procurement process including both the Request for Qualifications and subsequent Request for Proposal.
- Proposed Clause:

“Anti-Lobbying

*Respondents or their Team Members or anyone involved in the Team will not engage in any form of political or other lobbying whatsoever with respect to this project or seek to influence the outcome of this qualification process. This anti-lobbying clause extends to all members of Regional or Local Area Municipal Councillors within both Durham and York Regions, their respective staff members or their appointees, including members of the consulting team. In the event of any such lobbying, the Regions will reject any RFQ or subsequent RFP submission by that Respondent without further consideration and terminate that Respondent’s right to continue in the process. All correspondence or contact by interested parties with the Regions **with respect to this project** must be directly and only with the Project Authority.*

*It should be duly noted by all Respondents that this anti-lobbying clause extends from the release date of this RFQ through the date and time when the two respective Regional Governments formally award the project, i.e., AFTER the RFP review stage. Any **activity contrary to this provision** undertaken during this timeframe will result in immediate disqualification from the process be it during the RFQ stage, the RFP stage or anytime between and after the commencement of this process until the date of award.*

This clause shall not be construed as prohibiting any activity which is duly authorized as part of the procurement process, including meetings, interviews, tours of facilities or presentations, which activities may include the participation of Council members from the Regions or their area municipalities.