



Expression of Interest EOI-1152-2018

for

a Partnership to procure, finance and share net costs arising from the Regional Municipality of Durham's Long Term Organics Waste Management Solution

Issued: October 23, 2018

Submission Deadline: 2:00:00 p.m. on November 13, 2018 local time

Electronic Submission required

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Part 1 Invitation and Submission Instructions

1.1 Invitation to Respondents

This Expression of Interest (“EOI”) is issued by the Regional Municipality of Durham (“the Region”) to seek and identify potential partners willing to enter into a legal relationship with the Region, such as a joint venture or business partnership (hereinafter referred to as a “Business Partnership”) to assist with the implementation of the Region’s long term organics waste management solution which is anticipated to include: 1) the receipt and transfer of municipal solid wastes and organics; 2) mixed waste pre-sorting; 3) anaerobic digestion as the preferred technology for organics processing; and 4) the beneficial use of by-products generated by an anaerobic digester (hereinafter referred to as “the Project”). The anticipated cost and other details of the Project are outlined in the 2018-COW-146 Report attached hereto as Appendix C.

Expressions of interest gathered from this process will help determine whether the Region should pursue a Business Partnership prior to and independent of the anticipated Request for Prequalification (“RFPQ”) and Request for Proposal (“RFP”) for the Project, which, pending Council approval, is expected to move forward in early 2019. An RFI was conducted in 2017 to gather technical, market and financial information with respect to the Project. Refer to [RFI-1158-2017 \(Request for Information for Mixed Waste Transfer and Pre-sorting, Organics Processing and Beneficial use of By-products/End-products for the Regional Municipality of Durham\)](#)

Only expressions of interest from potential Business Partners will be reviewed and considered through this process. Submissions related to delivering the actual waste management services through a private sector service contract or Design/Build/Operate/Manage (“P3”) service contract to implement the Project will not be considered. Respondents interested in bidding on the Project should instead respond to the RFPQ and RFP outlined above.

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Respondents are asked to respond to the Region and provide the information requested.

1.2 EOI Contact

For the purposes of this procurement process, the “EOI Contact” will be:

Kelly Macpherson, Procurement Officer

All questions are to be submitted through the “Submit a Question” button within the Bidding System; not through email to the EOI Contact.

Respondents and their representatives are not permitted to contact any employees, officers, agents, elected or appointed officials or other representatives of the Region, other than the EOI Contact, concerning matters regarding this EOI. Failure to adhere to this rule may result in the disqualification of the respondent and the rejection of the respondent’s response.

1.3 The Project Objectives

The Region is seeking a Business Partnership from those who demonstrate consistent goals and objectives, and/or other synergies based on the Region’s objectives to:

1. Incorporate anaerobic digestion with mixed waste transfer and pre-sort facility as the preferred technologies for the long-term organics waste management solution to be implemented, subject to Regional Council approval through a future RFPQ - RFP process commencing in 2019;
2. Ensure a cost-effective contract with waste management service providers for the receipt and transfer of solid wastes and organics and operations for mixed waste pre-sorting to enhance organics and recyclable waste diversion, through either a private sector service contract or a design build operate and maintain private – public partnership model (i.e. a P3);

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3. Implement an organics processing strategy that maximizes net long-term organics waste management solution investment benefits;
4. Maximize solid waste diversion potential along with available energy and other by-product revenues and environmental benefits and attributes, including those related to compost/digestate, recovered energy, and/or opportunities associated with residues; and
5. Ensure timely regulatory and other approvals and continuing regulatory compliance throughout the term of future waste management service delivery contracts.

1.4 EOI Process

Responses will be evaluated in accordance with the evaluation process set out in Part 2 of the EOI. Based on the evaluation of responses, certain respondents may be selected to participate in a presentation to discuss a potential Business Partnership(s) with the Region for the development and/or implementation of the Region's long-term solid waste organics management solution. If a Business Partnership is deemed viable based on Part 2 of the EOI, respondent(s) may be invited to enter into a memorandum of understanding, or other agreeable legal vehicle, with the Region ("MOU"). The MOU will establish the terms of the Business Partnership between the Region and respondent(s) with the understanding that: 1) the Business Partnership is wholly dependent on whether the Project proceeds as anticipated; and 2) subsequent negotiations and agreements between the Region and the selected respondent(s) to this EOI are anticipated as the Project proceeds.

This is a non-binding invitation to submit an Expression of Interest (EOI). The Region and respondent(s) are under no obligation to enter into any Contract nor MOU in response to this request. As such, this EOI does not constitute a formal legally binding bidding process, and there will be no legal relationship or obligations created until the Region and the respondent have executed a written MOU effecting a Business Partnership. The respondent(s) may be requested to

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enter into direct negotiations to finalize an MOU with the Region for the provision of a Business Partnership.

1.5 EOI Timetable

Issue date of EOI	October 23, 2018
Deadline for questions	October 29, 2018
Submission Deadline	November 12, 2018 until 2pm.

The EOI Timetable is tentative only, and may be changed by the Region at any time and at its sole discretion.

1.6 Submission Requirements

Each response should include the following:

- Electronic Submission Form completed and signed by an authorized representative of the company
- Appendix A, Questions completed by the respondent

1.7 Submission of Responses

1.7.1 Responses to be submitted at prescribed location

Responses must be submitted at the [Region of Durham's bidding website](http://durham.bidsandtenders.ca)
durham.bidsandtenders.ca

1.7.2 Responses to be Submitted On Time

Responses must be submitted on or before the Submission Deadline.
Responses submitted after the Submission Deadline will not be accepted.
Respondents are advised to make submissions well before the deadline.
Respondents making submissions near the deadline do so at their own risk.

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1.7.3 Responses to be Submitted Electronically

All respondents shall have a Bidding System vendor account and be registered as a Plan Taker for this opportunity, which will enable the respondent to download the solicitation document, to receive addenda email notifications, download addenda and submit their responses electronically through the Bidding System.

Respondents are cautioned that the timing of their bid submission is based on when the response is received by the Bidding System, not when a response is submitted by a respondent, as transmission can be delayed due to file transfer size, transmission speed or other technical factors.

For the above reasons, the Region recommends that respondents allow sufficient time to upload their submission and attachment(s) (if applicable) and to resolve any issues that may arise. The closing date and time shall be determined by the Region's Bidding System web clock.

Respondents should contact the EOI Contact at least twenty-four (24) hours prior to deadline if they encounter any problems. The Bidding System will send a confirmation email to the respondent advising when the response was submitted successfully. If respondents do not receive a confirmation email, they should contact the EOI Contact immediately.

To ensure receipt of the latest information and updates via email regarding this opportunity, or if a respondent has obtained this solicitation document from a third party, the onus is on the respondent to create a Bidding System Vendor Account and register at Region of Durham's bidding website (durham.bidsandtenders.ca) as a plan taker for this opportunity.

1.7.4 Amendment of Responses

Respondents may amend their responses prior to the Submission Deadline. However, the respondent is solely responsible for ensuring that

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the amended response is received by the Region of Durham by the Submission Deadline.

1.7.5 **Withdrawal of Responses**

Respondents may withdraw their responses prior to the Submission Deadline. However, the respondent is solely responsible for ensuring that the withdrawn response is withdrawn by the Submission Deadline.

[End of Part 1]

Part 2 Evaluation

2.1 Stages of Evaluation

The Region will conduct an evaluation of responses in the following stages:

2.1.1 Stage I – Review of Submission Information

Stage I will consist of a review of the answers to Appendix A, Questions, to assess which responses have provided information that the Region determines to be of interest in order to move to stage II. Responses should include thorough details to allow for a comprehensive evaluation of submissions based on the Core Evaluation Principles outlined below and the questions disclosed in the Electronic Form(s), Appendix A.

Only those submissions meeting all scoring thresholds, that are detailed, fulsome, and of interest to the Region will move on to Stage II - Presentations. The submission requirements are set out in Part 1, Article 1.5.

Refer to Appendix B, Scoring Matrix, for scoring details.

The Region will assess the viability of a potential Business Partnership based on the following (hereinafter referred to as the “Core Evaluation Principles”):

- The Company’s proposed type and level of investment in initial and/ or ongoing financial/capital/ and operating costs expenditures while identifying conditions/details of the partnership arrangement.
- The net benefits, financial or otherwise, to the Region following consideration of the Company’s expected share of any environmental attributes, beneficial by-products and/or potential net revenues arising from the Project.
- Contribution to the Region, including overall economic development.

2.1.2 Stage II – Presentations

Stage II will consist of the following:

Submissions passing stage I may be selected to provide a presentation to the Region. The Region will furnish details concerning the presentation location. The short-listed respondents chosen will be allowed (15) fifteen minutes to prepare for their presentation onsite and (1) one hour to present. The presentation should demonstrate:

- Validation of the Company's understanding of the Region's Project Objectives
- Alignment of the Company's proposed partnership arrangement, goals, and objectives with the Region's Project Objectives and potential synergies/benefits of a partnership for the Region
- Appropriateness of responses to questions during the presentation and demonstration of alignment with the Core Evaluation Principles
- The Company's stated Project conditions, if any, will not impede or substantively constrain the Project.

Instructions will be provided in advance to those respondents selected for a presentation.

Short-listed respondents invited to provide a presentation to the evaluation committee may be required to provide additional information and/or answer specific pre-established questions for evaluation purposes, and may be required to sign a non-disclosure agreement with the Region.

The presentation shall be rated based on Appendix B, Scoring Matrix, and must meet all scoring thresholds.

If any respondents fail the Presentation, the Region may, without incurring any liability, withdraw the selection of that respondent from further consideration.

2.2 Selection of Respondents

All scores from Stage I and Stage II will be added together and Respondents will be ranked based on their total scores. Based on the evaluation of the responses in Stage I and II, and agreement from the potential partner(s) that a partnership for the Project may be beneficial to both parties, the Region may put forward a recommendation for the approval of the Region's Senior Management and the Regional Council as required, to commence negotiations for an MOU to enter into a Business Partnership with one or more of the highest scoring respondents.

If approval to move forward to negotiate for an MOU is obtained, the Region may seek financial information from the potential partner(s) to assess whether they can fulfill the financial obligations in the proposed MOU. If this option was exercised by the Region, The Region will only enter into an MOU with a potential partner(s) if they are deemed financially sound by the Region and/or authorized agents of the Region.

Respondent(s) selected for a potential Business Partnership will be approached to negotiate a MOU with the Region.

2.3 Memorandum of Understanding (MOU)

Respondents who have been successful in stages I and II may be invited to enter into negotiations for a potential Business Partnership with the Region through an MOU, or another agreeable legal vehicle, prior to the RFPQ and RFP for the Project. It is understood that the initial MOU will establish the terms of a potential Business Partnership and it is anticipated that additional agreements will need to be negotiated and executed as the Project implementation progresses. It is also understood that a Business Partnership is wholly dependent on the approval of the Project by Regional Council.

Respondent(s) who enter into an MOU with the Region will not be permitted to bid on or partner with a bidder who is bidding on the subsequent RFPQ or RFP for the Project.

[End of Part 2]

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Part 3 Terms and Conditions of the EOI Process

3.1 General Information and Instructions

3.1.1 Respondents to Follow Instructions

Respondents should structure their responses in accordance with the instructions in this EOI. Where information is requested in this EOI, any response made in a response should reference the applicable section numbers of this EOI.

3.1.2 Responses in English

All responses are to be in English only.

3.1.3 No Incorporation by Reference

The entire content of the respondent's response should be submitted in a fixed form, and the content of websites or other external documents referred to in the respondent's response but not attached will not be considered to form part of its response.

3.1.4 References and Past Performance

In the evaluation process, the Region may include information provided by the respondent's references and may also consider the respondent's past performance or conduct on previous contracts with the Region or other institutions.

3.1.5 Information in EOI Only an Estimate

The Region and its advisers make no representation, warranty or guarantee as to the accuracy of the information contained in this EOI or issued by way of addenda. Any quantities shown or data contained in this EOI or provided by way of addenda are estimates only, and are for the sole purpose of indicating to respondents the general scale and scope of

the Deliverables. It is the respondent's responsibility to obtain all the information necessary to prepare a response in response to this EOI.

3.1.6 Respondents to Bear their Own Costs

The respondent will bear all costs associated with or incurred in the preparation and presentation of its response, including, if applicable, costs incurred for interviews or demonstrations.

3.1.7 Response to be Retained by the Region

The Region will not return the response or any accompanying documentation submitted by a respondent.

3.1.8 Trade Agreements

Respondents should note that procurements falling within the scope of Chapter 5 of the Canadian Free Trade Agreement (CFTA) or Chapter 19 of the Canada European Union: Comprehensive Economic and Trade Agreement (CETA) are subject to that trade agreement but that the rights and obligations of the parties will be governed by the specific terms of this EOI.

3.1.9 No Guarantee of Business Partnership or Exclusivity of Contract

This EOI process may result in an MOU with one or more respondents, as selected by the Region, at its sole discretion. Any agreement entered into will not necessarily be an exclusive contract.

3.2 Communication after Issuance of EOI

3.2.1 Respondents to Review EOI

Respondents shall promptly examine all of the documents comprising this EOI, and

(a) shall report any errors, omissions or ambiguities; and

(b) may direct questions or seek additional information

in writing through the Bidding System on or before the deadline for questions. All questions or comments submitted by respondents through the Bidding System shall be deemed to be received once the question has been entered into the Bidding System and email has been received by the respondent confirming that the question was saved in the Bidding System successfully. No such communications are to be directed to anyone outside of the Bidding System, and the Region shall not be responsible for any information provided by or obtained from any source other than the EOI Contact. The Region is under no obligation to provide additional information. It is the responsibility of the respondent to seek clarification on any matter it considers to be unclear. The Region shall not be responsible for any misunderstanding on the part of the respondent concerning this EOI or its process.

3.2.2 All New Information to Respondents by way of Addenda

This EOI may be amended only by addendum in accordance with this section. If the Region, for any reason, determines that it is necessary to provide additional information relating to this EOI, such information will be communicated to all respondents by addendum. Each addendum forms an integral part of this EOI and may contain important information, including significant changes to this EOI. Respondents are responsible for obtaining all addenda issued by the Region. Respondents should confirm their receipt of all addenda in the electronic Submission Form.

3.2.3 Post-Deadline Addenda and Extension of Submission Deadline

If the Region determines that it is necessary to issue an addendum after the Deadline for Issuing Addenda, the Region may extend the Submission Deadline for a reasonable period of time.

3.2.4 **Verify, Clarify and Supplement**

When evaluating responses, the Region may request further information from the respondent or third parties in order to verify, clarify or supplement the information provided in the respondent's response. The Region may revisit and re-evaluate the respondent's response or ranking on the basis of any such information.

3.3 **Notification and Debriefing**

3.3.1 **Notification to Other Respondents**

Once the selected respondents have been notified, the other respondents shall be notified of the outcome of the procurement process by public posting in the same manner that the EOI was originally posted.

3.3.2 **Debriefing**

Respondents may request a debriefing after receipt of a notification of the outcome of the procurement process. All requests must be in writing to the EOI Contact and must be made within thirty (30) days of such notification. The intent of the debriefing information session is to aid the respondent in presenting a better response in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process or its outcome.

3.3.3 **Procurement Protest Procedure**

If a respondent wishes to challenge the EOI process, it should provide written notice to the EOI Contact in accordance with the Region's vendor dispute mechanism and any applicable trade agreement or other applicable bid protest procedures. The notice must provide a detailed explanation of the respondent's concerns with the procurement process or its outcome.

3.4 Conflict of Interest and Prohibited Conduct

3.4.1 Conflict of Interest

The Region may disqualify a respondent for any conduct, situation or circumstances, determined by the Region, in its sole and absolute discretion, to constitute a Conflict of Interest, as defined in the electronic Submission Form.

3.4.2 Disqualification for Prohibited Conduct

The Region may disqualify a respondent, rescind a notice of selection or terminate a contract subsequently entered into if the Region determines that the respondent has engaged in any conduct prohibited by this EOI.

3.4.3 Prohibited Respondent Communications

Respondents must not engage in any communications that could constitute a Conflict of Interest and should take note of the Conflict of Interest declaration set out in the electronic Submission Form

3.4.4 Respondent not to Communicate with Media

Respondents must not at any time directly or indirectly communicate with the media in relation to this EOI or any agreement entered into pursuant to this EOI without first obtaining the written permission of the EOI Contact.

3.4.5 No Lobbying

Respondents must not, in relation to this EOI or the evaluation and selection process, engage directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the successful respondent(s).

3.4.6 **Illegal or Unethical Conduct**

Respondents must not engage in any illegal business practices, including activities such as bid-rigging, price-fixing, bribery, fraud, coercion or collusion. Respondents must not engage in any unethical conduct, including lobbying, as described above, or other inappropriate communications; offering gifts to any employees, officers, agents, elected or appointed officials or other representatives of the Region; deceitfulness; submitting responses containing misrepresentations or other misleading or inaccurate information; or any other conduct that compromises or may be seen to compromise the competitive process provided for in this EOI.

3.4.7 **Past Performance or Past Conduct**

The Region may prohibit a company from participating in a procurement process based on past performance or based on inappropriate conduct in a prior procurement process, including but not limited to the following:

- (a) illegal or unethical conduct as described above;
- (b) the refusal of the supplier to honour its submitted pricing or other commitments; or
- (c) any conduct, situation or circumstance determined by the Region, in its sole and absolute discretion, to have constituted an undisclosed Conflict of Interest.

3.5 **Confidential Information**

3.5.1 **Confidential Information of the Region**

All information provided by or obtained from the Region in any form in connection with this EOI either before or after the issuance of this EOI

- (a) is the sole property of the Region and must be treated as confidential, including a requirement for a non-disclosure agreement for any

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respondent requested to provide a Stage II Presentation under section 2.1.2;

- (b) is not to be used for any purpose other than replying to this EOI and the performance of any subsequent contract for the Deliverables;
- (c) must not be disclosed without prior written authorization from the Region; and
- (d) must be returned by the respondent to the Region immediately upon the request of the Region.

3.5.2 Confidential Information of Respondent

A respondent should identify any information in its response or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the Region. The confidentiality of such information will be maintained by the Region, except as otherwise required by law or by order of a court or tribunal. Respondents are advised that their responses will, as necessary, be disclosed on a confidential basis to advisers retained by the Region to advise or assist with the EOI process, including the evaluation of responses. If a respondent has any questions about the collection and use of personal information pursuant to this EOI, questions are to be submitted to the EOI Contact.

Despite the foregoing, respondents are advised that information provided in their responses to this EOI may be utilized in a public report to the Region's Council to advise them of the results and recommendations on Business Partnership(s) arising from this EOI. Respondent information, based on approval of development of a business partnership, may also be utilized within future RFPQ – RFP documentation for the benefit of potential vendors wishing to respond to the anticipated 2019 RFPQ – RFP for the Project.

3.6 Procurement Process Non-binding

3.6.1 No Contract A and No Claims

This procurement process is not intended to create and will not create a formal legally binding bidding process and will instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation:

- (a) this EOI will not give rise to any Contract A–based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and
- (b) neither the respondent nor the Region will have the right to make any claims (in contract, tort, or otherwise) against the other with respect to the selection of respondents, a decision to reject a response or disqualify a respondent, or a decision of the respondent to withdraw its response.

3.6.2 No Legal Relationship or Obligation

No legal relationship or obligation will be created between the respondent and the Region by this EOI process.

3.6.3 Cancellation

The Region may cancel or amend the EOI process without liability at any time.

3.7 Governing Law and Interpretation

These Terms and Conditions of the EOI Process (Part 3)

- (a) are intended to be interpreted broadly and independently (with no particular provision intended to limit the scope of any other provision);

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- (b) are non-exhaustive and shall not be construed as intending to limit the pre-existing rights of the Region; and
- (c) are to be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein.

[End of Part 3]

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Part 4 Electronic Form Instructions

4.1 Electronic Form(s) (Appendix A, Questions)

The information submitted in the electronic form(s) will be evaluated as per Part 2, Evaluation. Respondents should carefully review the questions in Appendix A and provide fulsome information for the Region's consideration.

Information to be completed under the "Response" column beside each question has a 32,500 character limit per cell. Responses must be entered in a text format.

Part 5 Appendices and Attachments

Appendix A – Electronic Questions for potential Business Partner(s)

Appendix B – Scoring Matrix (posted as a separate PDF document on the Region's bidding website under EOI-1152-2018)

Appendix C- 2018-COW-146 (posted as a separate PDF document on the Region's bidding website under EOI-1152-2018)