The Regional Municipality of Durham

Committee of the Whole Agenda

Council Chambers
Regional Headquarters Building
605 Rossland Road East, Whitby

Wednesday, September 11, 2019 **9:30 AM**

1. Declarations of Interest

2. Statutory Public Meetings

There are no statutory public meetings

3. Delegations

There are no delegations

4. Presentations

4.1 Presentation by Elaine Baxter-Trahair, Chief Administrative Officer, Nancy Taylor, Commissioner of Finance and John Presta, Acting Commissioner of Works re: Organics Management Solution – Expression of Interest Process and Next Steps including Site Identification Criteria and Anti-Lobbying Protocol (2019-COW-22) [Item 6. A)]

5. Correspondence

6. Reports

7. Confidential Matters

A) Confidential Report of the Commissioner of Works and the Commissioner of Finance – Proposed or Pending Acquisition or Disposition of Land for Regional Corporation Purposes with Respect to the Disposition of Lands Located at 156 Church Street in Bowmanville, in the Municipality of Clarington (2019-COW-24) Under Separate Cover

8. Other Business

9. Adjournment

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The Regional Municipality of Durham Report

To:	The Committee of the Whole
From:	Commissioner of Works, Commissioner of Finance, and Commissioner of Corporate Services
Report:	#2019-COW-22
Date:	September 11, 2019

Subject:

Organics Management Solution – Expression of Interest Process and Next Steps Including Site Identification Criteria and Anti-Lobbying Protocol

Recommendations:

That the Committee of the Whole recommends to Regional Council:

A) That Regional Municipality of Durham ("Region") staff be authorized to commence negotiations with Epcor Utilities Inc. ("Epcor") to establish a joint venture/partnership with the Region on its long-term organics waste management solution (the "Project"), and

B) That Regional staff report back to Council on the results of the negotiations with Epcor and seek authority to ratify any agreements in principle arising from the negotiations.

Report:

1. Purpose

1.1 The purpose of this report is to provide an overview of the Expression of Interest (EOI) process the Region engaged in to solicit interest in a partnership to procure, finance, and share net costs arising from the Organics Management Project. The project will include mixed waste transfer, pre-sort and Anaerobic Digestion (AD) facilities.

1.2 An overview of the results of the EOI process and the anticipated benefits and challenges arising from a joint venture/partnership with Epcor are presented within this report.

1.3 An overview of the exclusion site identification criteria used to select the short list of sites for the mixed waste transfer, pre-sort and AD facilities is included for Council information. A further options analysis will be conducted on the short list of sites and a recommended site will be presented to Council for approval.

2. Background

2.1 As outlined in Reports #2019-COW-8 and #2019-COW-17, the Region released a non-binding EOI on October 23, 2018 (EOI-1152-2018) to solicit interest in a partnership to procure, finance, and share net costs arising from the Project. This is a step in the process leading to a service delivery Request for Pre-Qualifications (RFPQ) and Request for Proposal (RFP) on the Project.

2.2 The EOI process involved two phases. Phase 1 was a written response and Phase 2 was a live presentation. The EOI Team consisting of Regional staff evaluated the responses and presentations in accordance with the following core principles as outlined in the EOI:

a. Will the Region benefit from the Company's proposed type and level of investment in the Project?

b. What net benefits, financial or otherwise, can the Region expect from a partnership with the Company after considering the Company's expected share of any environmental attributes, beneficial by-products and/or potential net revenues arising from the Project?

c. How will the Company contribute to the Region, including the Region's overall economic development?

d. Did the Company present any conditions to a Business Partnership that will impede or substantively constrain the Project?

2.3 On November 12, 2018, the Region received nine submissions in response to Phase 1 of the EOI. Seven of the nine submissions appeared to be proposals relating to service delivery on the Project. Pursuant to the express terms of the EOI, these submissions were not considered. As such, only two companies, were considered by the EOI Team: Meridiam and Epcor.

2.4 Epcor is a corporation that is wholly owned by the City of Edmonton (City), however their Board of Directors remains independent from the City. Epcor is a for-profit commercial entity that invests in power, water and natural gas projects throughout Canada and the United States. Epcor has $500 million available for investment in Ontario.

2.5 Epcor received the highest scores in both phases, 1 and 2, of the EOI. Also, the EOI Evaluation Team determined that both companies met the EOI evaluation thresholds and did not present any significant conditions or restraints that would impede or substantively constrain the Project. As such, the EOI Evaluation Team recommended that senior management interview both respondents to determine whether a business partnership/joint venture is viable and confirm whether Epcor was the preferred respondent.

2.6 On May 28, 2019, both respondents sent representatives to meet with the Region's Chief Administrative Officer, Commissioner of Finance, Acting Commissioner of Works, and Director of Legal Services. Senior management in attendance reached consensus that Epcor was the preferred respondent.

3. The Selected Respondent: Epcor

3.1 During the EOI process, Epcor demonstrated a sophisticated level of understanding of the Project and the Region. They outlined the following with respect to their anticipated Project conditions:

a. Epcor has no technological preference and was open to Anaerobic Digestion ("AD") as a preferred technology for the Project.

b. Epcor has no known conflicts or connection to a specific service delivery company/consortium.

c. Epcor can finance 50 per cent to 100 per cent of the Project from their own balance sheet without the need for external financing, approvals and external fees.

d. Epcor must seek an independent third-party review for any financial contributions greater than $100 million for a single project.

e. Epcor would work with the Region in allocating and sharing Project risks.

f. Epcor's expected participation in governance of the Project will be commensurate with their level of investment. They anticipate a high level of involvement in the early phases of the Project and more of an oversight/support role once the AD is built and operating.

g. Epcor was amenable to a P3 service delivery agreement (public-private partnership).

h. Epcor has no geographic constraints or site conditions related to the Project.

i. Epcor has no notable time constraints for the development and implementation of the Project.

3.2 Following the EOI process, the Region engaged in thorough background and reference checks on Epcor. This process included a review of their corporate environmental and health and safety record, a financial check and three industry reference checks.

Regulatory Review

3.3 The Region conducted a review of Epcor's record with respect to regulatory convictions, tickets, orders, fines, penalties, warnings, public complaints orders, fines and/or charges. The Region submitted Freedom of Information requests in Alberta, Saskatchewan, and British Columbia, conducted a case law review and expressly asked Epcor to disclose any notable order, charges and/or convictions. The results of these checks did not present any barriers to pursing a relationship with Epcor.

Financial Review

3.4 The Region retained Deloitte LLP to review Epcor's financial information. Epcor also reported that it has not been involved in any material litigation in the last five years. The results of this review did not present any barriers to pursing a relationship with Epcor.

Industry Reference Checks

3.5 The Region interviewed three industry reference checks wherein Epcor was a key stakeholder in large infrastructure projects. In each case, Epcor designed, built and operated sizeable water and wastewater plants. In one case, they also financed the project. All three references were very impressed with Epcor's professionalism, attention to detail and deliverables. Epcor is highly recommended by the three references, each of whom claimed they would use Epcor again for another infrastructure project.

4. Benefits of a Joint Venture/Partnership with Epcor

4.1 The anticipated benefits and challenges of a joint venture/partnership with Epcor that would be negotiated are as follows:

Optimal Risk Allocation

a. Optimal risk allocation is the transfer and allocation of risks in a project to the party best able to manage the risk. If each party assumes the risks it is best able to manage, the Project achieves efficiencies and best value. Through a joint venture/partnership agreement, the Region can transfer and allocate risks and responsibilities to Epcor. For instance, the Region would likely be expected to retain risks related to regulatory changes or changes in strategic direction, while Epcor could accept responsibilities for any risks related to the Project technology, construction or operational impacts (i.e. environmental impacts or poor performance standards).

Limits to Risk Allocation

b. Optimal risk allocation is unlikely to involve transferring all risk to Epcor. This may come at too high a price and would involve Epcor taking on risk that others might more effectively address. The key is to allocate risks to the most appropriate parties in the joint venture. If risk is being transferred to Epcor, the Region must be prepared to provide Epcor with: 1) the authority and power to address the risks transferred to it; and 2) returns from the Project commensurate to the level of risk Epcor assumes.

Diversifying Finances

c. While the Region can borrow at a lower interest rate than Epcor, there may be benefits arising from diversifying the cost of financing and sharing the Financial Risk.

d. Beyond simply diversifying finances, a joint venture may allow Epcor to apply its financial resources to the Project. This could include transferring to Epcor various potential financial obligations to:

- Providing seed capital, equity investments and capital contributions at the beginning of the Project and from time to time as capital is required;
- Agreeing to be proportionately responsible for loan or guarantee obligations as required for third party financing and
- Being proportionately responsible for funding ongoing operating deficits or operational requirements as they arise from time to time.

Lower Interest Rates

e. The Region can borrow at lower interest rates than Epcor. In this sense, pushing financial responsibility for capital and loans to Epcor may come at the cost of losing that financial benefit. However, lower interest rates are only one aspect of the cost of financing. As noted above, an investment from Epcor will free up the Region's financing capacity for other projects and will remain off the Region's balance sheet.

Taking Advantage of Epcor's Expertise

f. Epcor's participation in the Project could provide the Region with access to its depth of expertise in sizeable P3 infrastructure projects. Further, Epcor's unique roots in municipal government provides an added level of insight and connectivity a regular private sector entity would not have. It is anticipated that Epcor will bring their expertise and industry knowledge to every aspect of the Project including: procurement, service agreement, regulatory and operational oversight. Epcor's sophisticated understanding of the life cycle of a sizable P3 infrastructure project will have the added benefit of shifting more project risks to Epcor and steering the Region away from unnecessary risks.

4.2 In addition to the foregoing benefits, Epcor's participation introduces a business corporation into the joint venture arrangement. A business corporation is subject to corporate governance, as opposed to municipal legal governance. As such, the management of Epcor's business and affairs is overseen by a professional business corporation board of directors (hereinafter referred to as the "Board").

4.3 The Region could benefit from Epcor's Board representatives as they can provide input based on their extensive industry knowledge, contacts, and experience working on similar projects.

4.4 Further, the creation of a joint venture could result in the development of a management board with representatives from the Region and Epcor. The Region's participation on this management Board could allow the Region to exert the appropriate amount of control over the joint venture undertakings to ensure that Epcor's and the Project's business objectives do not override the Region's public duties. These items, among others, would be determined through negotiations.

5. Next Steps – Site Identification Criteria

5.1 Regional staff, in consultation with GHD, have developed the following siting criteria for identifying a co-location for the mixed waste transfer, pre-sort and AD facilities:

a. Prevention, reduction, and elimination of impacts to the environment;

b. Protection and conservation of natural resources and ecologically sensitive areas; and

c. Integration of social and economic considerations.

5.2 The following exclusionary site identification criteria are grounded largely on the technical requirements of the facility that meets the program needs set out by the Region. If a site fails to meet all the requirements set out in the exclusionary criteria listed in the table below, it will be excluded from further consideration.

Factor	Criteria/Indicator	Rationale
Technical	**Site Suitability** • Meets minimum size requirements (8-15 ha) • Meets minimum buffer area requirements to sensitive receptors (e.g., residential areas, parks, recreational areas, and institutions) • Must be land owned by the Region of Durham or Local Area Municipality within the Region of Durham	The facility must ensure that the site is suitable for construction and operation from a size, location and site constraints perspective. The site must be owned by the Region of Durham or Local Area Municipality within the Region of Durham with minimal existing development on the site.
	Utilities and Services • Availability to connect utilities and services including hydro, water, sewer, natural gas, etc.)	The facility requires connections to municipal services and other utilities for both construction and operation.
Social/ Environmental/ Cultural	**Transportation** • Neighbourhood traffic impacts including increased haul route traffic, distance travelled	Truck traffic associated with the facility may affect residents, businesses, institutions, etc., in the site vicinity. Upgrades to the surrounding road network may be required.

Factor	Criteria/Indicator	Rationale
	Land Use Compatibility	
	• Minimize impact to sensitive receptors (number and distribution of)	The facility has the potential to affect local sensitive receptors from a nuisance perspective.
	• Minimize impact to natural heritage elements including Designated Greenlands, Source Water Protection Areas	The facility may remove or disturb the functioning of natural heritage habitats (terrestrial and aquatic, species at risk) and protected sources of water.
	• Minimize impact to Class 1 and Class 2 Agricultural Areas	Agricultural land may be displaced by the development of the facility.
	• Minimize impact to Cultural Heritage/Archaeological Potential Areas	Archaeological and Cultural Heritage resources are nonrenewable cultural resources that can be permanently displaced by the development of the facility.
	• Minimize impact to Wetlands, Floodplains and Water Bodies	The construction of the facility may disrupt natural surface drainage patterns and may alter runoff and peak flows. The presence of the facility may also affect base flow to surface water.

5.3 Consultation with the local area municipalities and the public, on the site selection, is planned to be conducted once the short list of sites has been determined using the above criteria. The option analysis applied in the form of a comparative evaluation for each site will be made available for public review. Staff will seek Council approval of the recommended site once the evaluation of the short list of sites has been completed.

6. Next Steps – Anti-Lobbying Protocol

6.1 Following previous Council direction, GHD (Engineering) and Deloitte (Financial) have been engaged to support the Project Team where required.

6.2 As indicated in Report #2019-COW-17, the Region has now engaged in a selection process to retain external legal counsel and an independent third-party fairness monitor to assist with and oversee the Project. The chosen incumbents are Weir Folds LLP (legal) and P1 Consulting Inc. (fairness monitor). They were chosen based on their relevant experience in sizeable P3 infrastructure projects, competitive industry pricing and exemplary customer service. The Region is finalizing retainer agreements with both firms in the coming weeks.

6.3 Further direction from the Region’s lawyers and fairness commissioner to members of Council and staff regarding the necessary anti-lobbying provisions will follow. Such direction will prohibit potential respondents to the procurement process from influencing or attempting to influence members of Council, Regional staff and/or contractors/agents engaged by the Region in the forthcoming procurement process and/or negotiations with Epcor.

6.4 In light of this anticipated direction and sections 1.2B and 13.1 of the Code of Conduct, the Region respectfully requests that members of Council refrain from communicating with potential respondents about the negotiations with Epcor or any procurement process arising from the Project in order to protect the integrity of the processes.

7. Financial Implications

7.1 The Purchasing By-law #68-2000, as amended permits negotiations (Section 8.0).

7.2 The ongoing work to support the investigations into a potential joint venture/partnership as well as the site selection criteria is funded from the approved project budget.

7.3 Any financial implications and risk considerations of the partnership will be part of the subsequent report to Council on the results of the negotiations.

8. Conclusion

8.1 On review of the overall benefits and challenges associated with pursuing a joint venture with Epcor, Regional staff are recommending authority from Council to enter into negotiations with Epcor prior to, or contemporaneous to, the release of the RFPQ and RFP on the Project to establish a joint venture/partnership. Regional staff will report back to Council on the results of the negotiations and authority to ratify any agreements in principle arising from the negotiations.

8.2 The siting identification criteria outlined in Section 6 herein be accepted by Regional Council for information purposes.

Respectfully submitted,

Original signed by:

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

Original signed by John Presta for:

Susan Siopis, P.Eng.
Commissioner of Works

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

If this information is required in an accessible format, please contact 1-800-372-1102 ext. 2304

The Regional Municipality of Durham
Report

To:	Committee of the Whole
From:	Commissioner of Finance and Commissioner of Social Services
Report:	#2019-COW-23
Date:	September 11, 2019

Subject:

Social Housing Projects in Difficulty as at July 31, 2019

Recommendation:

That Report #2019-COW-23 be received for information.

Report:

1. Purpose

1.1 In 2003, Regional Council approved a process for the identification and management of social housing projects in difficulty (Report #2003-J-22). The purpose of this report is to provide a semi-annual update, as required under the process, to the Committee on the status of all social housing projects that have required Regional intervention.

2. Background

2.1 By definition, a designated housing project is in difficulty under section 72(2) of the Housing Services Act (HSA) when any of the following occurs:

a. The mortgage is in default
b. The mortgage is likely to be in default within 12 months of the end of the current fiscal year
c. The housing provider is likely to fail to meet a substantial financial obligation within 12 months of the end of the current fiscal year; or
d. The housing provider has failed to comply with a substantial obligation under the HSA, and the failure is deemed to be material.

2.2 For reporting purposes, projects in difficulty are classified as either Tier 1 or Tier 2, based on the following criteria:

a. Tier 1 Projects in Difficulty: These are social housing providers with significant unresolved problems, regardless of the risk to the mortgage. The issues leading to the designation as a Tier 1 Project in Difficulty may relate to finance, governance, technical and/or other matters that require close monitoring to avoid financial insolvency, mortgage default or other triggering events as described under section 83 of the HSA.

b. Tier 2 Projects in Difficulty: These social housing providers have unresolved issues but have demonstrated satisfactory performance in addressing the problems and require monitoring only.

3. Status of Projects in Difficulty (PID)

3.1 The following table shows the number of projects in Tier 1 and Tier 2 PID status as at July 31, 2019, along with the number of units in these projects, compared to the totals for all housing providers.

	April 2017	**July 2018**	**July 2019**
Number of Projects:			
Tier 1 PID	5	2	2
Tier 2 PID	2	5	4
Total number of PIDs	7	7	6
Total number of Housing Providers	44	37	36
Percentage of projects in PID status	16%	19%	17%
Number of Units:			
Units in PID Status	554	554	486
Total Units	5,098	4,517	4,218
Percentage of units in PID status	11%	12%	12%

3.2 Typically, at the end of the operating agreement and the maturity of the mortgage the Region’s role as Service Manager, with oversight responsibilities for social housing projects, would end. However, social housing providers with an on-going financial relationship with the Region will continue to be monitored by Regional staff and, where applicable, will be included as a PID for status update reports.

3.3 There are a number of projects and / or units that have reached the end of their operating agreement and have no further legislative relationship with the Region under the original agreements. Although most subsidized units have been maintained through rent supplement agreements operational oversight, a condition of the original operating agreement, has ceased. Accordingly, there is a decrease in the number of projects and units for the purposes of this report.

3.4 Details of the specific PID projects and follow-up actions being undertaken are included in the confidential attachments. Staff continues to closely monitor the housing projects designated as projects in difficulty to support activities that demonstrate improvements in the areas identified by Regional staff.

4. Attachments

Confidential Attachment #1: Tier 1 Projects in Difficulty – Significant Issues

Confidential Attachment #2: Tier 2 Projects in Difficulty – Continued Monitoring

Respectfully submitted,

Original Signed by Nancy Taylor

Nancy Taylor, BBA, CPA, CA
Commissioner of Finance

Original Signed by Dennis Holmes for

Stella Danos-Papaconstantinou
Commissioner of Social Services

Recommended for Presentation to Committee

Original Signed by Elaine C. Baxter-Trahair

Elaine C. Baxter-Trahair
Chief Administrative Officer