



Official Notice

Meeting of Regional Council

Regional Council Chambers
Regional Headquarters Building
605 Rossland Road East, Whitby

Wednesday, June 29, 2022

9:30 AM

Note: Additional agenda items are shown in bold

1. Traditional Territory Acknowledgement

2. Roll Call

3. Declarations of Interest

4. Adoption of Minutes

4.1 Regional Council meeting – May 25, 2022

New

4.2 Committee of the Whole meeting – June 22, 2022

Pages 7-23

5. Presentations

5.1 Joe Maiorano, Deputy Chief, Durham Regional Police Services,
re: Quarterly Update to Regional Council

5.2 Kiersten Allore-Engel, Manager of Community Safety and Well-being, Diversity, Equity, and Inclusion, re: Greater Toronto and Hamilton Area (GTHA) Community Safety and Well-being Symposium Summary

New

5.3 Sarah Hickman, Policy Advisor, Local Immigration Partnership, Diversity, Equity and Inclusion, re: Durham Ukrainian Humanitarian Response

6. Delegations

There are no delegations

7. Reports related to Delegations/Presentations

There are no reports related to Delegations/Presentations

8. Communications

CC 105 Correspondence from the Durham Region Anti-Racism Taskforce, re: War in Ukraine and the Government of Canada's Response to Welcome Ukrainian Citizens

CC 106 Correspondence from the Regional Clerk, re: Cancellation of October 2022 Council and Standing Committee Meetings

CC 107 Correspondence from Bobbie Drew, Board Chair, Durham Regional Police Services Board, re: DRPS 2021 Annual Report

New CC 108 **Correspondence from Ben Drory, ADRO Investigator, ADR Chambers Ombuds Office, re: ADRO Investigation Report regarding a Complaint about the Region of Durham's Financial Planning & Purchasing Department respecting a Request for Proposal**

Pages 24-38

9. Committee Reports and any related Notice of Motions

9.1 Finance and Administration Committee

9.2 Health and Social Services Committee

9.3 Planning and Economic Development Committee

9.4 Works Committee

9.5 Committee of the Whole

10. Notice of Motions

10.1 Temporary Replacements at Committee

11. Unfinished Business

There is no unfinished business

12. Other Business

12.1 2022 Durham Regional Local Housing Corporation Annual Shareholder Meeting

- 12.2 Amending Agreement to the Metrolinx – 905 PRESTO Operating Agreement (2022-F-19)
- 12.3 Ukrainian Humanitarian Response in Durham (2022-A-22)
- 12.4 Servicing Agreement with OPB Realty Inc. for the Relocation and Oversizing of a Sanitary Sewer and Watermains from an Easement on Private Property onto Glenanna Road and Pickering Parkway, in the City of Pickering (2022-W-28)

13. Announcements

14. By-laws

- 31-2022 Being a by-law to authorize the borrowing upon instalment debentures in the aggregate principal amount of \$5,573,000.00 (\$1,200,000.00 principal amount of 10 year instalment debentures and \$4,373,000.00 principal amount of 20 year instalment debentures) for capital works of The Corporation of the City of Pickering.

This by-law implements the recommendations contained in Item #12 of the 6th Report of the Finance & Administration Committee presented to Regional Council on June 29, 2022
- 32-2022 Being a by-law to authorize the borrowing upon instalment debentures in the aggregate principal amount of \$26,402,000.00 (\$6,402,000.00 principal amount of 10 year instalment debentures and \$20,000,000.00 principal amount of 20 year instalment debentures) for capital works of The Corporation of the Municipality of Clarington.

This by-law implements the recommendations contained in Item #12 of the 6th Report of the Finance & Administration Committee presented to Regional Council on June 29, 2022
- 33-2022 Being a by-law to authorize the borrowing upon 15 year instalment debentures in the principal amount of \$25,900,000.00 for a capital work of The Regional Municipality of Durham.

This by-law implements the recommendations contained in Item #12 of the 6th Report of the Finance & Administration Committee presented to Regional Council on June 29, 2022

- 34-2022 Being a by-law to authorize the borrowing upon instalment debentures in the principal amounts authorized by by-laws Numbers 31-2022, 32-2022 and 33-2022 in the aggregate principal amount of \$57,875,000.00 (\$7,602,000.00 aggregate principal amount of 10 year instalment debentures, \$25,900,000.00 principal amount of 15 year instalment debentures and \$24,373,000.00 aggregate principal amount of 20 year instalment debentures) and the issuing of one series of instalment debentures therefor.
- This by-law implements the recommendations contained in Item #12 of the 6th Report of the Finance & Administration Committee presented to Regional Council on June 29, 2022
- 35-2022 Being a by-law to authorize the borrowing upon 10 year instalment debentures in the principal amount of \$700,000.00 for a capital work of The Corporation of the City of Oshawa.
- This by-law implements the recommendations contained in Item #12 of the 6th Report of the Finance & Administration Committee presented to Regional Council on June 29, 2022
- 36-2022 Being a by-law to adopt Amendment #187 to the Durham Regional Official Plan.
- This by-law implements the recommendations contained in Item #2 of the 6th Report of the Planning & Economic Development Committee presented to Regional Council on June 29, 2022
- 37-2022 Being a by-law to adopt Amendment #188 to the Durham Regional Official Plan.
- This by-law implements the recommendations contained in Item #3 of the 6th Report of the Planning & Economic Development Committee presented to Regional Council on June 29, 2022
- 39-2022 Being a by-law regarding development charges for transit services.
- This by-law implements the recommendations contained in Item #10 of the 6th Report of the Finance & Administration Committee presented to Regional Council on June 29, 2022

- 40-2022 Being a by-law to constitute and appoint a Compliance Audit Committee for The Regional Municipality of Durham pursuant to the requirements of section 88.37 of the Municipal Elections Act, 1996.

This by-law implements the recommendations contained in Item #1 of the 1st Report of the Finance & Administration Committee presented to Regional Council on January 26, 2022

- 41-2022 Being a by-law to confirm the appointment of Principles Integrity as the Integrity Commissioner for the Regional Municipality of Durham (Regional Integrity Commissioner).

This by-law implements the recommendations contained in Item #7 of the 6th Report of the Finance & Administration Committee presented to Regional Council on June 29, 2022

- 42-2022 Being a by-law to provide for the determining, fixing and paying of annual, other remuneration and benefits to the Chair, members of the Regional Council and to each Chair of the other Standing Committees, Transit Executive Committee and members of the Police Services Board.

This by-law implements the recommendations contained in Item #5 of the 6th Report of the Finance & Administration Committee presented to Regional Council on June 29, 2022

- 43-2022 Being a by-law to amend By-law Number 22-2018 by which the linear limits of the several roads comprising the Regional Road system are defined.

This by-law implements the recommendations contained in Item #6 of the 3rd Report of the Works Committee presented to Regional Council on March 23, 2022

15. Confirming By-law

- 44-2022 Being a by-law to confirm the proceedings of Regional Council at their meeting held on June 29, 2022

16. Adjournment

Notice regarding collection, use and disclosure of personal information:

Written information (either paper or electronic) that you send to Durham Regional Council or Committees, including home address, phone numbers and email addresses, will become part of the public record. This also includes oral submissions at meetings. If you have any questions about the collection of information, please contact the Regional Clerk/Director of Legislative Services.

If this information is required in an accessible format, please contact 1-800-372-1102 ext. 2097.

The Regional Municipality of Durham

MINUTES

COMMITTEE OF THE WHOLE

Wednesday, June 22, 2022

A regular meeting of the Committee of the Whole was held on Wednesday, June 22, 2022 in the Council Chambers, Regional Headquarters Building, 605 Rossland Road East, Whitby, Ontario at 9:30 AM. Electronic participation was offered for this meeting.

Regional Chair Henry assumed the Chair.

1. Roll Call

Present: Councillor Anderson*
Councillor Ashe*
Councillor Barton*
Councillor Carter*
Councillor Chapman*
Councillor Collier*
Councillor Crawford*
Councillor Drew*
Councillor Foster*
Councillor Grant*
Councillor Highet*
Councillor Kerr*
Councillor Leahy*
Councillor Lee*
Councillor Marimpietri
Councillor McLean*
Councillor Mitchell*
Councillor Mulcahy*
Councillor John Neal*
Councillor Joe Neal*
Councillor Pickles*
Councillor Ryan*
Councillor Smith
Councillor Wotten*
Councillor Yamada
Regional Chair Henry
*** denotes Councillors participating electronically**

All members of Committee were present with the exception of Councillors Dies, John Neal, Nicholson, and Roy
Councillor John Neal attended the meeting at 9:52 AM

Staff

Present: K. Allore-Engel*, G. Anello*, S. Austin*, C. Bandel*, E. Baxter-Trahair, D. Beaton, B. Bridgeman*, S. Danos-Papaconstantinou, J. Demanuele, J. Dixon, A. Harras, B. Holmes*, J. Hunt*, R. Inacio, S. Kemp*, K. McDermott*, L. McIntosh, J. Mosher*, G. Peragine*, N. Pincombe, A. Porteous*, J. Presta*, A. Robins, C. Taylor*, N. Taylor, N. Prasad and K. Smith
*denotes staff participating electronically

2. Declarations of Interest

Councillor Marimpietri made a declaration of interest under the Municipal Conflict of Interest Act with respect to Item 7.I) re: Update on NRFP for the Mixed Waste Pre-sort and Anaerobic Digestion Project (2022-COW-22). He indicated that he has family members who reside in the area immediately impacted by a similar facility.

Councillor Joe Neal made a declaration of interest later in the meeting under the Municipal Conflict of Interest Act with respect to Item 7.J) re: City of Oshawa Request for Cost Sharing for Dedicated Downtown Patrol Enforcement – Regional Response (2022-COW-23). He indicated that he owns property in the Oshawa Downtown area.

3. Statutory Public Meetings

There were no statutory public meetings.

4. Delegations

4.1 Eric Muller, Director, Quest Canada, re: Durham Region Anaerobic Digestion (AD) Facility

Eric Muller, Director of Engagement, Quest Canada, appeared before the Committee regarding the Durham Region Anaerobic Digestion Facility. He stated that Quest Canada is a national non-profit that supports communities in Canada on their path to net zero and has been in operation for over 15 years. Durham Region is one of their many supporters.

E. Muller stated that the anaerobic digestion facility is critical for the Region to meet its greenhouse gas (GHG) reduction goals and to help Ontario achieve its climate goals. He stated that waste makes up at least half of the Region's corporate GHG footprint and the facility presents a significant opportunity to help decarbonize waste and reduce emissions from corporate and community buildings. He also stated that the facility would produce large amounts of renewable natural gas (RNG) and that Ontario's natural gas system will need all the RNG it can get to help reduce its gas related emissions.

E. Muller stated that the facility is an innovative approach to waste and environmental sustainability; plays an important role in handling waste locally; and is a great opportunity for the Region to show action in response to the climate emergency declaration as well as to lead by example.

E. Muller responded to questions of the committee.

4.2 Linda Gasser, Durham Resident, re: Update on NRFP for the Mixed Waste Pre-sort and Anaerobic Digestion Project (2022-COW-22) [Item 7.I)]

L. Gasser withdrew her request prior to the meeting.

4.3 Wendy Bracken, Durham Resident, re: Update on NRFP for the Mixed Waste Pre-sort and Anaerobic Digestion Project (2022-COW-22) [Item 7.I)]

W. Bracken withdrew her request prior to the meeting.

5. Presentations

5.1 Stella Danos-Papaconstantinou, Commissioner of Social Services, and Alan Robins, Director, Housing Services, re: At Home in Durham Annual Report (2022-COW-19) [Item 7.F)]

Stella Danos-Papaconstantinou, Commissioner of Social Services, and Alan Robins, Director, Housing Services, provided a PowerPoint Presentation regarding the At Home in Durham Annual Report. A copy of the presentation was provided to committee members in advance of the meeting.

Highlights of the presentation included:

- At Home in Durham
- Our Commitments
- New Affordable Rental Housing Units
- Projects Under Development
- At Home Incentive Program
- Financial Housing Benefits
- Community Housing
- Envision Durham
- Homelessness
- Next Steps

S. Danos-Papaconstantinou stated that in the five-year review of At Home in Durham, the Region committed to: reduce chronic homelessness to zero; increase the supply of affordable rental housing by 1,000 units; increase the supply of medium to high density housing; and make significant progress in the regeneration of community housing.

A. Robins provided an overview of the new affordable rental housing units. He advised that at a total of 395 units either completed or in progress since the five year review of At Home in Durham in 2019, the Region has reached about 40% of its targeted 1000 units. He stated that staff are working on a number of projects that have the potential to initiate a further 985 to 1285 affordable units by 2024. He provided an overview of the projects under development which are to be completed between 2022 and 2026.

A. Robins advised that in March 2022, Regional Council approved the creation of a new At Home Incentive Program (AHIP) to increase the supply of purpose built affordable rental housing in Durham Region and provided an overview of the program. He also provided an overview of the various financial housing benefits; community housing; Envision Durham; and the Region's partnership with the Canadian Alliance to End Homelessness.

Staff responded to questions with regards to when the units will be delivered and whether there are any impediments with regards to the delivery; whether building codes and zoning capacities are affecting micro-homes; and the partnership with Habitat for Humanity and Durham Region Non-Profit Housing Corporation.

Staff also responded to questions with regards to addressing the issue of affordability; whether staff is working with the development community to make housing more affordable; the timeline and location for the completion of units; whether staff is looking at changing the local housing authority with regards to its operation of rent geared to income and mixed income communities; and whether staff can look into large parcels of land and land leases owned by upper levels of government and being made available for affordable housing.

Staff was also asked to provide a geographic breakdown of where the units are being built and was requested to include a percentage aspect of this in the next report.

6. Correspondence

There were no items of correspondence.

7. Reports

A) 2022 Asset Management Plan (2022-COW-14)

Report #2022-COW-14 from N. Taylor, Commissioner of Finance, and J. Demanuele, Acting Commissioner of Works, was received.

Staff responded to a question with regards to the replacement of Information Technology equipment.

Moved by Councillor Ryan, Seconded by Councillor Smith,
(25) That we recommend to Council:

- A) That Regional Council endorse the 2022 Regional Municipality of Durham Asset Management Plan; and
- B) The asset management plan be posted on the Region's website and the Ministry of Municipal Affairs and Housing be advised.

CARRIED

B) Proposed Wastewater Energy Transfer Project – Dockside Development in the Town of Whitby (2022-COW-15)

Report #2022 COW-15 from J. Demanuele, Acting Commissioner of Works, and N. Taylor, Commissioner of Finance, was received.

Moved by Councillor Ryan, Seconded by Councillor Smith,
(26) That we recommend to Council:

- A) That Regional Municipality of Durham staff be directed to work with Creative Energy and Brookfield Homes (Ontario) Whitby Limited to develop a Memorandum of Understanding and enter into a Waste Energy Transfer Agreement for the Dockside Development to the satisfaction of the Commissioner of Works, Commissioner of Finance, and the Regional Solicitor, and
- B) That the Regional Chair and Clerk be authorized to execute any necessary documents or agreements relating to the Waste Energy Transfer project for the Dockside Development.

CARRIED

C) Updated Source Protection Plans and Assessment Reports for Proposed New Municipal Wells in the Hamlet of Blackstock, in the Township of Scugog, and the Communities of Cannington and Sunderland, in the Township of Brock (2022-COW-16)

Report #2022-COW-16 from J. Demanuele, Acting Commissioner of Works and B. Bridgeman, Commissioner of Planning and Economic Development, was received.

Moved by Councillor Ryan, Seconded by Councillor Smith,
(27) That we recommend to Council:

- A) That the proposed amendments to the Trent Source Protection Plan and Kawartha-Haliburton Assessment Report, as per Section 34 of the Clean Water Act, 2006, resulting from the proposed new municipal well for the Blackstock Drinking Water System, be endorsed;

- B) That the proposed amendments to the South Georgian Bay Lake Simcoe Source Protection Plan and Lake Simcoe Assessment Report, as per Section 34 of the Clean Water Act, 2006, resulting from the proposed new municipal wells in the Cannington and Sunderland Drinking Water Systems, be endorsed;
 - C) That the commencement of the public consultation process by Trent Conservation Coalition and the South Georgian Bay Lake Simcoe Source Protection Region be authorized; and
 - D) That the new Wellhead Protection Areas (WHPAs) for Blackstock, Cannington and Sunderland Drinking Water Systems and associated mapping be incorporated into the Durham Official Plan following approval by the Minister of the Environment, Conservation and Parks, and be added to the Kawartha-Haliburton and Lake Simcoe Assessment Reports.
- D) Revisions to the Seaton Phase 1 Regional Infrastructure Front Ending Agreement (2022-COW-17)
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Report #2022-COW-17 from J. Demanuele, Acting Commissioner of Works, N. Taylor, Commissioner of Finance, and D. Beaton, Commissioner of Corporate Services, was received.

Moved by Councillor Ryan, Seconded by Councillor Smith,
(28) That we recommend to Council:

- A) That to accommodate the development of a proposed food manufacturing campus which requires approximately 60 acres (24 hectares) of Prestige Employment Land, located north of Highway 407, south of Highway 7 and west of Whites Road (Regional Road 38) which represents the first phase of the food campus development, the Seaton Phase 1 Regional Infrastructure Front Ending Agreement (Phase 1 RFEA) be amended to:
 - i) Modify the limits of the Seaton Phase 1 lands to expand the Phase 1 Prestige Employment Lands from 200 acres to 260 acres;
 - ii) Include a condition that the sanitary sewage flows resulting from the development of the balance of the Phase 1 Prestige Employment Lands be capped at the capacity of the downstream sanitary sewer;
 - iii) Require the Regional Attribution Prepayment, currently set at \$192,065 per hectare be applied to the new Phase 1 Prestige Employment Lands, at the rate in effect at the time of payment and that these Prepayments continue on the remaining Phase 1 Prestige Employment Lands until the full commitment contained in the Phase 1 RFEA is met;

- B) That the Regional Chair and Clerk be authorized to execute an amendment to the Seaton Phase 1 Regional Infrastructure Front Ending Agreement, in a form satisfactory to the Regional Solicitor; and
- C) That a copy of Report #2022-COW-17 of the Acting Commissioner of Works, the Commissioner of Finance and the Commissioner of Corporate Services, be sent to the City of Pickering.

CARRIED

E) Next Steps for the Restoration and Redevelopment of 300 Ritson Road South, in the City of Oshawa (2022-COW-18)

Report #2022-COW-18 from J. Demanuele, Acting Commissioner of Works and N. Taylor, Commissioner of Finance, was received.

Moved by Councillor Ryan, Seconded by Councillor Smith,
(29) That we recommend to Council:

- A) That the overview of the proposed project plan for the restoration and redevelopment of the former Ritson Public School located at 300 Ritson Road South in the City of Oshawa be received for information;
- B) That financing for the detailed site investigation work estimated at \$550,000 be provided to support advancing the building and site development at the discretion of the Commissioner of Finance; and
- C) That the Commissioner of Finance be authorized to execute any necessary agreements with respect to the grant funding associated with the implementation of GHG reduction measures at this location.

CARRIED

F) At Home in Durham, the Durham Housing Plan 2014-2024 Annual Report (2022-COW-19)

Report #2022-COW-19 from N. Taylor, Commissioner of Finance, S. Danos-Papaconstantinou, Commissioner of Social Services, and B. Bridgeman, Commissioner of Planning and Economic Development, was received.

Moved by Councillor Ryan, Seconded by Councillor Smith,
(30) That we recommend to Council:

- A) That Report #2022-COW-19 of the Commissioner of Finance, Commissioner of Social Services and Commissioner of Planning and Economic Development, be received for information as the legislatively required annual report on the progress of At Home in Durham, the Durham Housing Plan 2014-2024;

B) That in order to advance the goals of At Home in Durham:

- i) The Commissioner of Social Services be authorized to shift funding within the current funding envelope between all service level standard eligible units and financial housing benefits, including commercial rent supplement, Durham Rent Supplement, community housing provider programs, the Durham Portable Housing Benefit, and future municipally funded housing benefits that may be developed, in order to be more responsive to local needs and maximize the number of available housing units;
- ii) The facilitation currently undertaken to remove certain projects with fully discharged mortgages from the Housing Services Act be discontinued, and instead Regional staff be authorized to explore opportunities to partner with the community housing providers that operate these projects to continue to provide affordable housing under Part VII.1 of the Housing Services Act; and

C) That a copy of Report #2022-COW-19 be forwarded to the Ministry of Municipal Affairs and Housing (MMAH).

CARRIED

G) Employment Services Transformation Service System Manager Update (2022-COW-20)

Report #2022-COW-20 from S. Danos-Papaconstantinou, Commissioner of Social Services, B. Bridgeman, Commissioner of Planning and Economic Development, and N. Taylor, Commissioner of Finance, was received.

Moved by Councillor Ryan, Seconded by Councillor Smith,
(31) That we recommend to Council:

That subject to a successful award from the Province of Ontario, authorization to execute a funding agreement and any other necessary documentation to establish and operate as an Employment Service Manager for the Durham Region catchment area through a consortium led by the Region of Durham, be delegated to the Chief Administrative Officer over the summer and fall of 2022 subject to the concurrence of the Regional Commissioner of Social Services, the Regional Treasurer, and the Regional Solicitor.

CARRIED

H) Modified Payment Schedule for the Brooklin North Landowner Group under the 2012 Regional Official Plan Amendment 128 Minutes of Settlement (2022-COW-21)

Report #2021-COW-21 from J. Demanuele, Acting Commissioner of Works, N. Taylor, Commissioner of Finance, and B. Bridgeman, Commissioner of Planning and Economic Development, was received.

Moved by Councillor Ryan, Seconded by Councillor Smith,
(32) That we recommend to Council:

- A) That a further extension for the payment of \$10.7 million by the Brooklin North Landowners Group under the Regional Official Plan Amendment 128 Minutes of Settlement due on November 4, 2022 (with interest from November 4, 2019) be provided with \$2.5 million due on November 4, 2022 and a series of payments to December 31, 2023 with the specific terms to be approved by the Chief Administrative Officer with the concurrence of the Commissioners of Planning and Economic Development, Works, and Finance, and the Regional Solicitor; and
- B) That the Regional Solicitor be authorized to execute any necessary agreements.

CARRIED

I) Update on NRFP for the Mixed Waste Pre-sort and Anaerobic Digestion Project (2022-COW-22)

Report #2022-COW-22 from J. Demanuele, Acting Commissioner of Works, D. Beaton, Commissioner of Corporate Services, and N. Taylor, Commissioner of Finance, was received.

Staff responded to questions with regards to the length of time of the contracts with Miller Waste to process source separated green bin or organics, for what source separated organic tonnage, as well as what is being looked at when moving forward; landfill capacity within Ontario; and, sending waste across the border.

Moved by Councillor Ryan, Seconded by Councillor Smith,
(33) That we recommend to Council:

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").

CARRIED ON THE FOLLOWING RECORDED
VOTE:

Yes
Councillor Anderson
Councillor Ashe
Councillor Barton

No
Councillor John Neal

Councillor Carter
Councillor Chapman
Councillor Collier
Councillor Crawford
Councillor Drew
Councillor Foster
Councillor Grant
Councillor Highet
Councillor Kerr
Councillor Leahy
Councillor Lee
Councillor McLean
Councillor Mitchell
Councillor Mulcahy
Councillor Joe Neal
Councillor Ryan
Councillor Smith
Councillor Wotten
Councillor Yamada
Regional Chair Henry

Members Absent: Councillor Dies
Councillor Nicholson
Councillor Pickles
Councillor Roy

Declarations of Interest: Councillor Marimpietri

Moved by Councillor Carter, Seconded by Councillor Wotten,
(34) That the Committee dispense with notice to introduce and consider Item 7.J), Report #2022-COW-23 of A. Hector-Alexander, Director, Diversity, Equity & Inclusion, re: City of Oshawa Request for Cost Sharing for Dedicated Downtown Patrol Enforcement – Regional Response.

CARRIED ON THE FOLLOWING RECORDED
VOTE (A 2/3rds VOTE WAS ATTAINED)

Yes
Councillor Anderson
Councillor Ashe
Councillor Barton
Councillor Carter
Councillor Chapman
Councillor Crawford
Councillor Drew
Councillor Foster
Councillor Grant

No
Councillor McLean

Councillor Highet
Councillor Kerr
Councillor Leahy
Councillor Lee
Councillor Marimpietri
Councillor Mitchell
Councillor Mulcahy
Councillor John Neal
Councillor Ryan
Councillor Smith
Councillor Wotten
Councillor Yamada
Regional Chair Henry

Members Absent: Councillor Collier
Councillor Dies
Councillor Nicholson
Councillor Pickles
Councillor Roy

Declarations of Interest: Councillor Joe Neal

J) City of Oshawa Request for Cost Sharing for Dedicated Downtown Patrol
Enforcement – Regional Response (2022-COW-23)

Report #2022-COW-23 from A. Hector-Alexander, Director, Diversity, Equity & Inclusion, was received.

Staff responded to questions with regards to whether there was any consultation with Durham Regional Police Services or Region of Durham Paramedic Services with regards to the request from the City of Oshawa; whether there was any consultation with Regional Departments or City of Oshawa staff during the preparation of the report; whether staff reached out to the Greater Oshawa Chamber of Commerce or the Downtown Oshawa Business Association for feedback; whether the documentation submitted by the City of Oshawa was reviewed; and whether the Durham's Street Outreach Team is available in all municipalities.

Discussion ensued with regards to the variety of unlawful activities in all municipalities and whether the Region would undertake the costs for patrol enforcement in other municipalities as well.

Discussion also ensued with regards to the expansion of the Primary Care Outreach Program and whether it is equally shared across the Region. Staff was requested to provide data showing the number of visits in each municipality to Council members.

Moved by Councillor Carter, Seconded by Councillor Wotten,
(35) That we recommend to Council:

That Council deny the request for cost sharing for dedicated downtown patrol enforcement in the City of Oshawa.

REFERRED BACK LATER IN THE MEETING
(SEE FOLLOWING MOTIONS)

Moved by Councillor Chapman, Seconded by Councillor Marimpietri,
(36) That Report #2022-COW-23 be referred to staff for a report that addresses the issues identified in Correspondence Items 6.A and 6.B of the March 9th, 2022 Committee of the Whole meeting especially the concerns of the Business Community regarding unlawful behavior;

That staff consult with the Durham Regional Police Service for input on the effects this security program can and is having on their resources;

That staff consult with Oshawa and Durham Region Economic Development Departments for input on the effects this security program may have on local and Regional Business and Tourism attraction efforts;

That staff consult with the Greater Oshawa Chamber of Commerce and the Downtown Oshawa Business Alliance for input on the concerns they expressed in their correspondence;

That the report include the financial implications and where funds may be available if the request is approved; and

That the report come back no later than the September 2022 Committee of the Whole meeting.

CARRIED AS AMENDED (SEE FOLLOWING
MOTIONS)

Moved by Councillor Collier, Seconded by Councillor McLean,
(37) That the foregoing motion (36) of Councillors Chapman and Marimpietri be amended in the fourth paragraph by deleting the words, "the Greater Oshawa Chamber of Commerce and the Downtown Oshawa Business Alliance" and replacing them with the words, "all municipalities in the Region of Durham and their Boards of Trade, Chambers of Commerce, and BIAs".

CARRIED ON THE FOLLOWING RECORDED
VOTE

Yes
Councillor Anderson
Councillor Barton
Councillor Collier

No
Councillor Carter
Councillor Chapman
Councillor Grant

Councillor Crawford
Councillor Drew
Councillor Foster
Councillor Highet
Councillor Leahy
Councillor Lee
Councillor McLean
Councillor Mitchell
Councillor Mulcahy
Councillor Wotten

Councillor Kerr
Councillor Marimpietri
Councillor John Neal
Councillor Ryan
Councillor Smith
Councillor Yamada
Regional Chair Henry

Members Absent: Councillor Ashe
Councillor Dies
Councillor Nicholson
Councillor Pickles
Councillor Roy

Declarations of Interest: Councillor Joe Neal

Moved by Councillor Marimpietri, Seconded by Councillor Carter,
(38) That the referral motion (36) of Councillors Chapman and Marimpietri be divided to vote on the referral motion and the amending motion (37) of Councillors Collier and McLean separately.

DEFEATED ON THE FOLLOWING RECORDED
VOTE

Yes
Councillor Carter
Councillor Chapman
Councillor Kerr
Councillor Marimpietri
Councillor John Neal
Councillor Yamada

No
Councillor Anderson
Councillor Ashe
Councillor Barton
Councillor Collier
Councillor Crawford
Councillor Drew
Councillor Foster
Councillor Grant
Councillor Highet
Councillor Leahy
Councillor Lee
Councillor McLean
Councillor Mitchell
Councillor Mulcahy
Councillor Ryan
Councillor Smith
Councillor Wotten
Regional Chair Henry

Members Absent: Councillor Dies
Councillor Nicholson
Councillor Pickles
Councillor Roy

Declarations of Interest: Councillor Joe Neal

Moved by Councillor Foster, Seconded by Councillor Smith,
(39) That the referral motion (36) of Councillors Chapman and Marimpietri be amended by changing the date for the report to come back to the first meeting of the newly elected council.

CARRIED ON THE FOLLOWING RECORDED
VOTE

Yes

Councillor Anderson
Councillor Ashe
Councillor Barton
Councillor Collier
Councillor Drew
Councillor Foster
Councillor Highet
Councillor Leahy
Councillor McLean
Councillor Mitchell
Councillor Mulcahy
Councillor Ryan
Councillor Smith
Councillor Wotten
Regional Chair Henry

No

Councillor Carter
Councillor Chapman
Councillor Grant
Councillor Kerr
Councillor Lee
Councillor Marimpietri
Councillor John Neal
Councillor Yamada

Members Absent: Councillor Crawford
Councillor Dies
Councillor Nicholson
Councillor Pickles
Councillor Roy

Declarations of Interest: Councillor Joe Neal

The referral motion (36) of Councillors Chapman and Marimpietri, as amended, was then put to a vote and CARRIED AS AMENDED ON THE FOLLOWING RECORDED VOTE:

Yes

Councillor Anderson
Councillor Ashe
Councillor Barton
Councillor Carter

No

Councillor Grant

Councillor Chapman
Councillor Collier
Councillor Crawford
Councillor Drew
Councillor Foster
Councillor Highet
Councillor Kerr
Councillor Leahy
Councillor Lee
Councillor Marimpietri
Councillor McLean
Councillor Mitchell
Councillor Mulcahy
Councillor John Neal
Councillor Ryan
Councillor Smith
Councillor Wotten
Councillor Yamada
Regional Chair Henry

Members Absent: Councillor Dies
Councillor Nicholson
Councillor Pickles
Councillor Roy

Declarations of Interest: Councillor Joe Neal

8. Confidential Matters

- A) Confidential Report of the Commissioner of Finance, Commissioner of Social Services and Acting Commissioner of Works – Closed Matter with respect to information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency or any of them, regarding a financing opportunity (2022-COW-13)
-

Confidential Report #2022-COW-13 from N. Taylor, Commissioner of Finance, S. Danos-Papaconstantinou, Commissioner of Social Services, and J. Demanuele, Acting Commissioner of Works, was received.

Moved by Councillor Foster, Seconded by Councillor Anderson,
(40) That we recommend to Council:

That the recommendations contained in Confidential Report #2022-COW-13 of the Commissioner of Finance, Commissioner of Social Services, and Acting Commissioner of Works, be adopted.

CARRIED ON THE FOLLOWING RECORDED
VOTE:

<u>Yes</u>	<u>No</u>
Councillor Anderson	None
Councillor Ashe	
Councillor Barton	
Councillor Chapman	
Councillor Collier	
Councillor Crawford	
Councillor Drew	
Councillor Foster	
Councillor Grant	
Councillor Highet	
Councillor Kerr	
Councillor Leahy	
Councillor Lee	
Councillor Marimpietri	
Councillor McLean	
Councillor Mitchell	
Councillor Mulcahy	
Councillor Joe Neal	
Councillor John Neal	
Councillor Pickles	
Councillor Ryan	
Councillor Smith	
Councillor Wotten	
Councillor Yamada	
Regional Chair Henry	

Members Absent: Councillor Carter
Councillor Dies
Councillor Nicholson
Councillor Roy

Declarations of Interest: None

9. Other Business

9.1 Passing of Mayor Parish's wife

Councillor Collier announced the passing of Mayor Steve Parish's wife, Rose Parish.

9.2 Review of Procedural By-law

Councillor Foster requested that staff look at the Rules of Procedure By-law with regards to the rules with respect to debating on referral items.

9.3 Lame Duck Criteria

Councillor Joe Neal requested clarification with regards to the lame duck rules and how they apply to Regional Council.

9.4 Members of Council attending meetings but not voting

Councillor Joe Neal inquired about members of council attending meetings virtually, but not voting, and how that is noted during the taking of a recorded vote.

9.5 Discussions between Regional Clerk and Regional Chair

Councillor Joe Neal inquired whether discussions or advice provided between the Regional Clerk and Regional Chair during meetings should be heard by all council members.

10. Adjournment

Moved by Councillor McLean, Seconded by Councillor Marimpietri,
(41) That the meeting be adjourned.

CARRIED

The meeting adjourned at 12:26 PM

Respectfully submitted,

John Henry, Regional Chair

Committee Clerk



ADRO INVESTIGATION REPORT

Complainant:	Complainant
Complaint Reference Number:	MUN-15879-1221
Complaint Commenced:	December 3, 2021
Date Assigned to Investigator:	March 11, 2022
Date All Required Information Received:	May 3, 2022
Report Date:	June 24, 2022
Investigator:	Ben Drory

Terms of Reference

This report has been prepared pursuant to the ADR Chambers Ombuds Office (ADRO) Terms of Reference, which describe the scope of ADRO's mandate, its process upon receiving Complaints, and the authority and responsibilities of an ADRO Investigator. Defined terms used below have the same meaning as in the Terms of Reference.

Complaint

Complainant (the “Complainant”) is the CEO of Company (“Company”), an Ontario-based company. He submitted a complaint about the Region of Durham’s (the “Region”) Financial Planning & Purchasing Department to ADRO, respecting a Request for Proposals (“RFP”) his company bid for. He included details of a debrief he had with the Region on November 2, 2021, and in his December 3, 2021 CSF he stated:

Vendor dispute resolution process – Regarding RFP-285-2021 award

Company Evaluation position 2nd (as provided verbally by Procurement Officer)

In regards to the numerous inconsistencies:

Debrief with Procurement Officer November 2nd, 2021

1. Procurement Officer mentioned that our bid was only considered for four out of 7 area. We reminded Procurement Officer that we bid all areas for bus stops (7 areas). In 3 out of the seven areas we also bid parking lots and facilities. Procurement Officer reminded us that section 4.1 of the instruction to bidders mentions that the contractors are asked to bid on all areas. I’ve included the language in 4.1: If the contractor is required to bid on ‘one are all seven’, this is misleading for two reasons;

** Why would the bid form allow for proponents to a checkmark at the top of each of the bid tables:*

...

Proponents would not have been provided with the option not to submit bids for a section of the work area if the Region was looking for a bid in the entire work area. Instead, they have the portion to click a check and opt. Thus, out is misleading the proponents. Furthermore, the Bids and Tender portal has numerous fail-safes that warn proponents that their bid is either missing content or has not properly filled in the appropriate fields. This error in the bid portal has wrongly removed Company from consideration in all seven areas for transit stop clearing. This clear error on the side of the Region should render this RFQ non-compliant from a procurement perspective and be re-issued in the spring of 2022.

This is the language contained in 4.1

4.1 Instructions on how to complete Pricing Form(s)

...

There are total seven work locations in this contract as listed under Section 3 of Appendix D, D1 "The Deliverables". Proponents may bid on one or all of the seven work locations. ...

*2.1.3 details lacking information 1.3 Provide a thorough narrative that illustrates a clear reporting hierarchy and organizational structure that demonstrates adequate supervision, training, and workforce administration capability; **Respondents should respond to this criteria through a document upload in Step 4 – Documents.***

...

*** The feedback provided by Procurement Officer was that 'they, were looking for more in depth information'. When I referred to the instructions in Appendix E inserted and bolded below. The additional information that Procurement Officer was looking for would have been provided through the document (highlighted ... above). Instead, Company provided the following documents: Titled '**1.3 Company and Work Team**' (attached). Procurement Officer only referenced the field in 1.3 and not the additional documentation we uploaded.*

3. Details lacking information 1.4 Provide a work team breakdown detailing supervisors, and all service team members including a number of staff and their classification, defining their roles, responsibilities, qualification, and training;

We placed the following information in the field provided:

Operations Manager – ...

Contract Managers – ...

Contract Supervisor – ...

Furthermore, we provided an uploaded document titled 'Service delivery plan' which clearly adds and supports the information provided in field 1.4.

4. 4.1 Provide a comprehensive list of sufficient resources (vehicles, GPS and equipment, salt storage capacity) as it relates to the requirements described in the Scope of the Work. ... Rated Poorly due to suggesting we may use some rental equipment:

During the debrief Procurement Officer and his associate mentioned that they had concerns with renting winter maintenance equipment. Associate mentioned that if we get a particularly bad storm trying to rent winter equipment would be difficult because other contractors would be renting equipment at the same time. We advised both Procurement Officer and Associate that companies do not go out and try and rent equipment during winter storms. Companies such as ours use rental equipment from time to time to add to an already extensive resource of owned equipment. ... Equipment should we decide to rent is rented on a seasonal basis and not on as and when needed basis. Rental equipment has been a popular business model around the world to further mitigate against long term debt obligations. To suggest that our company was score poorly in this area because we suggested that we 'may' use rental equipment after supplying an extensive list of owned equipment is an egregious oversight in both the understanding of how companies treat equipment fleets and service clientele. This is a complete failure in the evaluation process and should be disregarded entirely in our evaluation process as it is clearly without merit.

...

During the debrief we expressed concerns with the following:

The evaluation committee: *Procurement Officer informed us to the best of our knowledge that the individual evaluators with stakeholders that work in the transit department and in the various facilities: I expressed to Procurement Officer that this is a concern that an evaluation committee for a contract of this size approx. 4.5 million dollars annually should be done by a committee at arm's length from the incumbent bidder. By not doing this Region has exposed itself to favouritism and/or collusion with the incumbent vendor.*

Recommended mandatory site visit: *Procurement Officer's remarks as related to the poor score in section 1.3 ... would have like to have seen more site specific supervisors with names of each supervisor allocated to each working area. Our response: if the Region was looking for site specific details why did they not have a mandatory site meeting? Again this decision ... only favours the incumbent, giving them an unfair advantage because of proprietary information.*

References not checked: *Procurement Officer mentioned that the Region only checks references for those who finished 1st in the evaluation process. We finished 2nd. I expressed concerns with the Region only checking references for the 1st place proponent. ... [O]ur*

extensive experience and working relationship with the three largest transit providers in Ontario, if not Canada – TTC, Metrolinx, and York Region Transit would bring a wealth of knowledge and experience to Durham Region Transit. Not reaching out to our references is a clear oversight and puts the Region on the short end from realizing value brought to the table by Company and removes the possibility of having Company engage services for winter in case of vendor financial or performance issues.

...

The RFP should be re-tendered in its entirety in the spring of 2022.

I understand that Complainant escalated the matter further within the Region, and spoke with Supervisor, Purchasing and Manager, Purchasing. Manager, Purchasing wrote to Complainant by letter dated November 24, 2021:

Thank you for providing your concerns related to RFP 285-2021 on November 11, 2021 and meeting with us on November 15, 2021.

Please find below our written response to conclude the Region's Vendor Dispute Resolution Process.

Bid only considered for 4 out of 7 areas

- *Document 1 Sections 4.1 and 4.2 identifies that there are seven work locations and the pricing evaluation breakdown identifies how the pricing score will be allocated for the seven work locations.*

...

- *The bidding system did allow for bidders to 'opt out' of any of the tables in order to provide flexibility in bidding since it was not mandatory to bid on all tables. The instructions within the document were to be read in conjunction with the bidding system. The fact that you could 'opt out' of a table did not in itself indicate that the Region would consider bids that did not include prices for the entire work location.*

Additional Information Provided and not Evaluated

- *We can confirm that all documentation provided was considered by the evaluation team in scoring your submission.*

The evaluation committee

- *It is a standard procurement practice to ensure that the evaluators are those who understand the contract, prepare the specifications and evaluation criteria so that they have the knowledge to score the proposals appropriately.*

- *Only what is submitted is scored by the evaluators and the Procurement Officer facilitates the process to ensure fairness.*

Recommended mandatory site visit

- *Mandatory site visits are only included where there is the need to see a specific sited in order to understand the requirements being requested. In this case, the sites were noted within the RFP and all proponents were free to view the sites on their own time if they felt it was beneficial.*
- *Visiting the sites was not seen as a factor in assisting with allocating staff.*

References

- *As noted in bid document 1, Part 2, Item 2.3, references are only checked for the highest scoring proponent.*
- *There are no further points allocated for reference checking so it is not conducted on all proponents.*
- *Any information submitted related to experience was considered and scored in the experience section of the criteria, reference Appendix D, D-6 Rated Criteria*
- *We do not check references of any other proponents (just the highest scoring) as a contingency. If the awarded vendor was to fail due to poor performance, it is at that point that the Region would check references for the contractor being awarded in its place.*

We understand that you will be taking this forward to the Ombudsman for further review.

Thank you for taking the time to meet with us.

ADRO Investigation

I conducted telephone interviews with:

- Complainant
- For the Region: Supervisor, Purchasing and Manager, Purchasing

Prior to the interviews, I reviewed the file information provided by the parties. The Request for Proposal in question (the “RFP”), #RFP-285-2021, “Winter maintenance for various properties of the Region of Durham”, was issued on July 28, 2021, due 2:00 pm on August 30, 2021. Some of its key provisions were as follows (all shading and bolding per the original versions the Region provided to ADRO).

1.1 Invitation to Proponents

This Contract is for the provision of winter maintenance services to include all labour, material, vehicles, fuel, and equipment to perform winter maintenance services. The work shall include snow clearing from gates, egress locations, front entrances, walkways, driveways, parking lots and culverts; ice melting product; and spring clean-up at all regional facilities identified within this Contract.

2.2 Selection of Top-Ranked Proponent

After the completion of Stage III, all scores from Stage II and Stage III will be added together and proponents will be ranked based on their total scores for each of the seven work locations. In the event of a tie, the selected proposal will be selected by way of coin toss.

2.3 References

The Region will contact references of the top-ranked proponent to obtain a score related to the reference scoring as indicated in Section D-6 of the RFP Particulars (Appendix D). If the top-ranked proponent fails to achieve a passing score, the Region may, without incurring any liability, withdraw the selection of that proponent and proceed with the selection of the next top-ranked proponent.

Subject to the reserved rights of the Region, the top-ranked proponent passing the reference checks will be selected to enter into the agreement in accordance with the following section.

3.3.2 Debriefing

Proponents may request a debriefing after receipt of a notification of the outcome of the procurement process. All requests must be in writing to the RFP Contact and must be made within thirty (30) days of such notification. The intent of the debriefing information session is to aid the proponent in presenting a better proposal in subsequent procurement opportunities. Any debriefing 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 proponent wishes to challenge the RFP process, it should provide written notice to the RFP 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 proponent's concerns with the procurement process or its outcome.

4.1 Instructions on how to complete Pricing Form(s)

Pricing must be submitted electronically in accordance with the Bidding System instructions.

...

There are total seven work locations in this contract as listed under Section 3 of Appendix D, D1 “The Deliverables”. Proponents may bid on one or all of the seven work locations. ...

4.2 Evaluation of Pricing

*It is the intention of the Region to award this RFP to the highest scoring proponent for **each of the seven work locations** listed under section 3 of Appendix D, D1 “The Deliverables”.*

Pricing will be scored based on a relative pricing formula using the rates set out in the Pricing Form. Each proponent will receive a percentage of the total possible points allocated to price, which will be calculated in accordance with the following formula:

$$\text{Lowest price} \div \text{proponent's price} \times \text{weighting} = \text{proponent's pricing points}$$

Pricing calculation for each of the seven work locations will be based on the Pricing Form (Appendix C) Total for all the tables under that work location. For example, the pricing for Ajax will be the total of Pricing Form – Ajax – Table A (Regional Facilities) and Pricing Form – Ajax – Table B (DRT sites).

4.4 Electronic Form(s), (Appendix E)

...

The following documents are to be uploaded electronically:

- *Resume upload of key staff (Rated Criteria item 1.2)*
- *Organizational chart (Rated Criteria item 1.3)*
- *Service Delivery Plan (Optional upload for Rated Criteria item 3.1)*
- *Resources (Rated Criteria item 4.1)*
- *Sample Service Report. (Refer to detailed Scope of Work; not part of Rated Criteria)*

...

Proponents should address the above rated criteria in their proposals only for the work locations they are bidding on. Each of the seven work locations will be evaluated and awarded separately.

Appendix D, D-6 Rated Criteria

The following sets out the categories, weightings and descriptions of the rated criteria of the RFP. Proponents who do not meet a minimum threshold score for a category will not proceed to the next stage of the evaluation process.

Item number	Rated criteria category	Weighting (points)	Threshold
1.	<i>Experience and qualification</i>	<i>20 points</i>	<i>N/A</i>
2.	<i>Contract Management</i>	<i>20 points</i>	<i>N/A</i>
3.	<i>Service Delivery Plan</i>	<i>20 points</i>	<i>N/A</i>
4.	<i>Resources</i>	<i>20 points</i>	<i>N/A</i>
	Rated criteria total	80 points	40
5.	Pricing (See Appendix C for details)	20 points	N/A
	Total points (Rated criteria ÷ pricing)	100 points	
6.	<i>References</i>	Pass/fail	

*Proposals should include thorough details to allow for a comprehensive evaluation of submissions based on the **Rated Criteria** disclosed above and further detailed in the Electronic Form(s), **Appendix E**. In determining the level of detail to submit for evaluation, refer to the evaluation weighting (points) breakdown outline as noted above, and the instructions contained in Part 4, Electronic Form Instructions.*

Appendix D, D-1 The Deliverables

2. Location of Work

The work locations include a variety of facilities, such as water and sewage treatment plants, pumping stations, reservoirs, ambulance stations, waste management facilities, childcare centres, administrative buildings, Durham Regional Local Housing Corporation (DRLHC) facilities, and Durham Region Transit (DRT) bus stops.

The inventory of sites is divided into seven (7) work locations based on their municipalities and are as follows:

Line number	Work location	Description of site
1	Ajax	Regional Facilities, DRLHC sites, and DRT Stops
2	Brock	Regional Facilities and DRLHC sites
3	Clarington	Regional Facilities, DRLHC sites, and DRT Stops
4	Oshawa	Regional Facilities, DRLHC sites, DRT Stops, and vacant properties
5	Pickering	Regional Facilities, DRLHC sites, and DRT Stops
6	Scugog and Uxbridge	Regional Facilities, DRLHC sites, and DRT Stops
7	Whitby	Regional Facilities, DRLHC sites, and DRT Stops

4. Detailed Scope of Work

4.9 Vehicles and Equipment

Contractor(s) will possess an extensive and comprehensive inventory of snow clearing equipment suited to the Contract requirements and scope. The contractor shall only use equipment and vehicles appropriate for the purpose of performing the work detailed in the Scope of Work. Only the vehicles and equipment noted in the bidder's submission through electronic forms (Appendix E) shall be used, and the Region reserves the right to conduct an inspection of this equipment. The V.I.N. will be used to identify vehicles used in the performance of the work. ...

The Contractor shall ensure that all equipment used to perform the work is well maintained, in a state of good repair and that it is operated within the specifications and recommendations of the manufacturer. ...

Appendix C – Electronic Pricing Form(s)

Appendix C, Electronic Pricing Form(s) are available for viewing by registered plan takers only on the Region's bidding website. ... Once you have registered and become a plan taker for this opportunity, you can click on the "Start Submission" button and follow the steps to complete all the electronic forms necessary to complete your submission.

Proponents were advised to fill out a variety of tables related to each of the specific municipalities. For Regional Facilities ("Table A"), proponents were asked, for various site addresses, to provide unit prices for snow clearing service, salt application, and daily garbage pickup, with estimated numbers of annual services, and the resultant total cost. For Durham Region Transit sites ("Table B"), proponents were asked, for various site addresses, to provide unit prices and relevant totals. Proponents were also asked to provide unit prices and costs for vacant areas for Oshawa specifically. For each table, proponents could check a box at the top left indicating that they didn't want to submit for the particular municipality or property type.

The Region also included a sample submission based on a "Test Vendor", showing examples of how the forms could be filled out.

In its proposal, Company identified in its proposal that it would not be submitting for:

- Clarington – Table A (Regional Facilities)
- Oshawa – Table A (Regional Facilities)
- Whitby – Table A (Regional Facilities)

There were four bidders, for which there was evidence that Company finished in second place in all areas it was graded in. One organization was the highest-scoring proponent for all areas. The award for the RFP was recommended internally within the Region on October 15, 2021.

Complainant and Company's Winter Maintenance Manager attended a debriefing meeting with two Region employees (from Purchasing and Facilities) on November 2, 2021. The Region's notes from that meeting stated:

- The Region informed Company that it didn't fulfil the mandatory submission requirements for three out of the seven work locations (Oshawa, Whitby, Pickering) (*sic*), and accordingly their proposal wasn't considered for those locations. The Region identified that this requirement was outlined in section 4.2 of the RFP.
- The Region confirmed that Company ranked second in all four of the other locations.
- The Region stated that only the references of the top-ranked proponent were contacted, as per the RFP.
- The Region addressed how the RFP was evaluated – i.e., a committee comprising representatives of user departments. Respecting the Region's opinion that Company's proposed rental equipment was an area of weakness, Complainant apparently stated that equipment can be rented seasonally and is an industry practice – to which the Region staff replied why they preferred ownership over renting, and stated the preference was mentioned in the RFP document.
- Respecting Complainant's assertion that site visits should have been mandatory, the Region stated that the proponent had the opportunity to submit questions through Bids & Tenders if they had any concerns regarding the RFP process or requirements.

I spoke with Supervisor, Purchasing and Manager, Purchasing from the Region's Purchasing Department (collectively "Region Staff"). They confirmed that only one award was made from the RFP process, but clarified that the intent had always been to award separate awards for each of the seven work areas – but the highest-scoring respondent ended up being the same for all seven, so one large contract was granted to one company.

Region Staff identified that each proposal had to include a completed electronic Submission Form and the electronic Pricing Forms according to the instructions contained in Appendix D-3 ('Mandatory Submission Requirements') and Part 4 ('Electronic Form Instructions'). They emphasized that proponents could bid on any or all of the seven areas, but in order to bid, all of the work components in any work location had to be bid on fully. As an example, for Ajax, proponents had to bid on everything encompassing the Ajax location – such as facilities, site locations, Durham Transit locations, and whatever else was listed in the RFP. She noted that tables in the RFP broke out work locations and types by municipality.

Region Staff stated that Company failed to bid fully for three of the locations, so they couldn't be considered for those, but Company fully bid on the other four locations (Ajax, Brock, Pickering, and Scugog-Uxbridge), and were considered for those locations. They confirmed that Company finished in second place in all four.

Region Staff felt that in the simulation of electronic forms provided to bidders (Appendix E), the wording was clear that there were seven work locations, but because there were Durham Transit and facilities requirements for each, two tables were needed for each section in the bidding website, as they had different input requirements. So they said proponents would see 14 tables – two for each of the seven work locations – and proponents had to bid on both tables for each

location they wanted to bid on. Region Staff confirmed that each of the 14 tables had a checkbox that allowed proponents to not bid on any one of them – they felt it was important for proponents to be able to opt out.

Region Staff referred to section 4.9 of Appendix D-1 respecting Complainant’s question about owned versus rented equipment. They stated that owned equipment wasn’t mandatory, but was still something being scored – i.e., the nature of the contract required the Region to ensure proponents had the equipment in their inventories, and could respond to the contractual needs depending on different weather conditions. They said it was important for proponents to show the Region they had the inventory available, and those that could demonstrate such would have achieved a higher score in that section. They noted Company could have scored higher if they had proof of ownership, which was rated in the highest criteria, but Company basically couldn’t show that they had their fleet ready to go on standby. Region Staff referred to Appendix E (the simulation of electronic forms), which included the following:

Appendix E – rated criteria – 4.0 resource

4.1 Provide a comprehensive list of sufficient resources (vehicles, GPS and equipment, salt storage capacity) as it relates to the requirements described in the Scope of Work. The list of equipment should include the following detail: equipment make, model, VIN and proof of ownership.

*Respondents should provide response to this criteria through a document **upload in Step 4 – Documents**.*

4.2 Provide detailed information on how the Global Positioning System (GPS Tracking) tracking devices and reporting programs are capable of providing a precise time and location of the Contractors vehicle(s), including the proposed rate of salt application, volume and frequency of salt and ice melt distribution.

<i>Item number</i>	<i>Response</i>
<i>4.1</i>	<i>Refer to document upload</i>
<i>4.2</i>	<i>GPS tracking system...</i>

Region Staff said the accusation that Region staff involved weren’t at arm’s length from the incumbent firm was serious. They said the Procurement Officer oversaw the process, and would have brought any favoritism concerns to her if he felt there were such. They stated that none of the evaluators had any relationship to the incumbent firm, and it is common practice to include stakeholders who are subject matter experts with in-depth knowledge of the requirements in the evaluation, who are only there to evaluate the submissions in the proposal, and nothing else. Region Staff added that just because an incumbent submits a bid doesn’t mean their relationship is a good one, and the Region only based their evaluation on what was submitted. They said a number of people were on the Evaluation Committee, who all evaluated the submissions independently and then came together to identify a consensus, which was overseen by the Purchasing and Procurement Officer.

Region Staff said they asked Complainant during their meeting if they could have structured the RFP differently for future, and he essentially replied it was fine. They said the Region's goal is always to be open and transparent about competitions, and they don't want to have respondents confused or concerned about the way they conducted a competition. They said the Region has a three-year contract in place with the winning proponent now, and no legal right to terminate it early without legal action in return. They added that it was very serious for the Region to disqualify any bidder, even partially, from consideration respecting the intention of the proposal. The Region felt they were obligated to treat all bidders equally, and once they realized Company was non-complaint with the mandatory submission requirements, they took the matter to the Legal Department and discussed it with them, following which they considered Company's fully-submitted portions.

Region Staff forwarded me an internal Conflict of Interest and Confidentiality Agreement that each RFP evaluator must sign before they can evaluate submissions, and confirmed all of the evaluators had signed. The Agreement noted:

... Your designation as a member of a RFP evaluation team requires that you fully understand the applicable policies regarding potential conflicts of interest and the confidential nature of the RFP Submissions and all that is contained therein.

Confidentiality

The Request for Proposals process and the obligations imposed by law require the evaluation of all RFP Submissions to be conducted in a fair and equitable manner. ... By accepting the responsibility of being a member of the RFP evaluation team ... you are charged with special professional, ethical and fiduciary responsibilities. ...

Conflict of Interest and Ethical Considerations

A conflict of interest or the appearance of a conflict of interest may occur if you are directly or indirectly involved with an organization that has submitted a RFP Submission for evaluation. Prior to reviewing any RFP Submission, you must inform the Procurement Team Leader of any potential conflicts of interest or the appearance thereof. ... You may be disqualified as a RFP evaluator if you conduct yourself in a way that could create an appearance of bias or unfair advantage ...

...

This Form must be completed and submitted to the Procurement Team Leader before the RFP Submissions may be released.

I have read this document and understand my obligations as explained herein. I further understand that I must advise the Procurement Officer if a conflict of interest currently exists or arises during my term of service as a member of, or advisor to a RFP evaluation team. ... I acknowledge that I am choosing of my own free will to participate in the RFP

Evaluation as an evaluator. I agree to abide by the obligations set forth herein and to exercise my duties as an evaluator in the utmost good faith.

I spoke with Complainant. He said he was engaging the Ombudsman process because he was concerned about the process that impacted the results. He said his biggest issue was that proponents were given the chance to opt out of certain areas, but the Region told him during the debrief that the result was impacted because he checked off certain areas. Complainant said proponents were clearly told they could opt out of certain areas, and the RFP didn't speak clearly enough to the fact that if he checked off one of the areas, it would disqualify his company for that area. He stated as an example that for Ajax Facilities, Table A had an option saying they would not be submitting for Appendix C, Ajax – he felt this was a clear example of allowing proponents to opt out of an area.

Complainant added that Procurement Officer told him during the debrief they were looking for more in-depth information for each particular location, which he felt clearly indicated that the process favoured the incumbent, because it was impossible for Company to have had the information depth and clarity the Region wanted. Complainant added that Procurement Officer only referred to the section where Company noted their managers, but said Company had uploaded an organizational chart specifically designed for the RFP that Procurement Officer told him they didn't even look at or consider. Complainant concluded that the process was very questionably conducted, for a significant Regional expenditure.

Complainant asserted the Region wouldn't provide the info Company was requesting (i.e., the specific scores for each section), and added that the pricing for the contract had never been revealed, which he thought would have been divulged as a public tender. Complainant was also concerned that none of Company's references were checked; he asked how anyone could evaluate a bid without following up with the references, and how they could install the second-place bidder if the top bidder defaulted, without having done so.

Complainant added that the winning proponent only does work for the Region (i.e., to his knowledge, their only work was the Region contract), so he speculated their only references would be from the Region. He thought it was questionable that the evaluators were stakeholders within the department – i.e., the incumbent was being evaluated by the people they worked for, when they only work for the Region.

Complainant said nothing notable arose in his follow-up meeting with the Region. He said it wasn't a fair process because people were evaluating their peers who probably made egregious errors. He said this contract involved millions of dollars in public money, and he felt the process led itself to collusion, and therefore the bid process had to be re-opened.

I followed up with Region Staff again for specific information. They stated that the Region doesn't disclose scores to proponents during debriefs, and provided a link to the Region's debriefing procedures.¹ They stated that the Region's website only automatically reveals pricing for tenders, and RFP award amounts weren't publicly posted at the time of the debriefing.

¹ Debriefing of Request for Proposal (RFP) – External, Procedure #10.02 (May 2, 2019)
https://www.durham.ca/en/resources/PUR_PROC_10.02-Debriefing-of-request-for-proposal-RFP.pdf

However, they noted that the Region adopted a new process in 2022 whereby it discloses a winning bidder's total price after the contract has been fully executed – and so accordingly, based on that change, Region Staff provided the following details of the winning proponent's price, which they acknowledged could be shared within this Report.

<u>Site</u>	<u>Estimated Annual Amount (\$)</u>
Ajax	590,858.95
Brock	564,275.00
Clarington	611,975.15
Oshawa	2,033,908.60
Pickering	532,623.15
Scugog/Uxbridge	680,425.70
Whitby	<u>1,042,865.05</u>
TOTAL	6,056,931.60

Region Staff confirmed that the winning proponent's three references were from the Region, but from three different departments relating to work on two different contracts, and two of the named references weren't part of the Evaluation Committee. They stated the RFP was clear that references would only be conducted for the highest-scoring respondent once the evaluation was completed, and wasn't part of the evaluation process itself – i.e., references were merely a pass/fail validation step, and didn't contribute to scores for any proponent. They referenced section 2.3 of the RFP.

ADRO Analysis

I am satisfied that the Region followed its policies and procedures acceptably respecting the administration of the challenged RFP. The Region acknowledged that it intended to grant up to seven different awards for the different work areas, but ultimately ended up making one large award because the same proponent was the highest-ranked proponent for all seven. The Region acknowledged that it granted proponents "opt-outs" for any of the seven areas – i.e., no bidder was forced to bid on all seven areas if they didn't want to.

I find that if a bidder intended to bid on an area, then it was mandatory for them to fill out the Region's forms in the way that the Region asked. There was clearly a disconnect between the parties in this sense. It is possible the tables could have been clearer, in the sense of what proponents had to fill out (and the fact two tables had to be completed for each location); however, the evidence demonstrates that one of the proponents did meet the mandatory requirements for all seven locations. Of note, Company was not the highest-ranked proponent for any of the locations that it was scored on.

I am satisfied that the Region's debriefing procedures were followed, and that the Region requires all employees on RFP evaluation committees to attest that they have no conflicts of interest with the bidders involved. The allegations of conflict of interest in this matter were essentially bald statements that since Regional employees familiar with the work of the incumbent bidder were involved, that alone led to a biased process. Those assertions are simply not borne out. Incumbent bidders anywhere often enjoy some advantage simply through familiarity with the work they are

already doing – but that familiarity isn't unfair or improper in itself. The Region asserted that the incumbent won solely on the basis of the quality of its submissions, and no evidence establishes otherwise.

Many of Complainant's other issues would be inappropriate for our office to opine on. For example, Complainant disagrees with the Region's analysis about the merits of owned versus rented equipment. The parties can continue to disagree on that; but it should suffice to say that the Region is entitled to value what it wishes. Respecting references, the RFP was clear that references weren't part of the scoring, and was merely a pass/fail step that would only be completed for the highest-scoring bidder. The highest-scoring bidder passed that step. The RFP was also clear that site visits were optional, and would only be included if a proponent needed to see a specific site to understand the requirements – which Company never requested.

Conclusion and Recommendation

I am satisfied that the Region followed its policies and procedures appropriately in this matter. No recommendation is made against the Region in these circumstances.

Respectfully submitted,

Ben Drory
ADRO Investigator