



## **MUNICIPAL PROCUREMENT OF RECYCLING SERVICES**

### **A GUIDE TO CONDUCTING PEER REVIEWS**

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# 1. INTRODUCTION

## What is a Peer Review and why is it important?

A Peer Review is an independent assessment carried out at one or more stages of the procurement process. Its purpose is to enhance and simplify the process itself and, more particularly, to improve the end result. Specifically, as described in this Guide, it is a third party review of the municipal procurement process for the development and award of contracts for the provision of waste management and recycling contracts. The Peer Review has been developed primarily for RFP-based procurements but could also be applied to a tender. The objective for the peer review exercise is to provide input and guidance as to how municipal RFP processes can be structured to attract the most innovative and cost efficient private sector proposals possible, in a manner that will take full advantage of public and private sector multidisciplinary knowledge.

## Where did the idea for E&E Fund Project #265 (London MRF Peer Review) come from?

Third party reviews of complex systems and processes are common in many fields, engineering being a good example. Many municipalities have established procedures for ensuring that RFPs conform to their legal and procurement requirements. Some also engage in a “value engineering” review which may include system design and structural considerations. Few conduct reviews of operations and contractual issues. The Blue Box Program Enhancement and Best Practices Assessment Project (July 2007) and a companion document, “Blue Box Residential Recycling Best Practices A Private Sector Perspective” authored by the Ontario Waste Management Association (OWMA) identified Peer Review as a useful tool for municipalities and made some specific recommendations:

- The Blue Box Program Enhancement and Best Practices Assessment Project identified as a fundamental best practice “Following Generally Accepted Principles for Effective Procurement and Contract Management”. A number of benefits are associated with well designed and executed procurement and contract management processes, including: delivery of high quality service defined by specified requirements; flexibility to address changing needs; the provision of incentives to maximize participation, tonnage and material revenues; opportunities for innovation; and cost savings due to increased competition, economies of scale and well structured contract terms. The study cites the involvement of suppliers in pre-procurement consultations to help refine requirements, facilitate innovation, and generally take full advantage of the capabilities of experienced suppliers.
- The OWMA study identified the procurement process as a key element in the successful implementation of best practices and continuous improvement, and noted that there is room to improve the process. Specifically, the OWMA recommended that there be a higher degree of collaboration during RFP development between the private and public sector in order to optimize the potential for innovative proposals. The OWMA study team arrived at its findings with the help of two senior municipal representatives. As a result, it was proposed that a third party peer review of the municipal procurement process would offer an ideal opportunity to introduce continuous improvement into the Ontario blue box

system in a way which is relatively inexpensive and potentially far-reaching and permanent. This approach would be readily transferable to any municipality and would bring operational and procurement knowledge, experience with business partnerships, and a proponent's perspective to the municipal RFP process.

- In the latter half of 2007 the City of London was in the midst of an RFP procurement process for a new MRF and offered to be a test case by accommodating third party peer review in the process. The objective was to examine how municipal RFP processes can be structured to attract the most innovative and cost efficient private sector proposals possible, in a manner that will take full advantage of public and private sector knowledge in the areas of recycling and waste management. Also during this period the City of London was conducting an RFP process for the processing of recyclables.

This Guide therefore advocates a higher degree of collaboration between the private and public sectors during RFP development to promote innovative proposals and balanced contracts. It describes the purpose, scope, timing and execution of a Peer Review (or reviews). It sets out a recommended methodology and defines the professional experience and skill required in a peer review team.

This Guide is intended to benefit public and private waste managers, municipal waste management staff and public procurement officials. In general, any person with direct involvement in the municipal procurement process where the project is large and complex, involves private and public sector partners or relationships, and requires a significant capital investment, will benefit from this process.

While the Guide was developed to assist professionals associated with Ontario's Blue Box Program, in which the development of facilities for processing of recyclable material fits the scale and complexity suggested above, the procedures outlined in this document can also be applied in other areas of waste management and, to some extent, other municipal and public projects.

For the purposes of devising and testing a Peer Review process the following sequence of steps was established as a general guide:

a) Background Information

Municipality gathers current information on what others are doing, what innovations are being developed and how all this applies to their particular circumstances.

b) Prepare Request for Qualifications (RFQ)

This step defines the general scope and scale of the work to the proponents, including a preliminary system design. The RFQ should be structured to solicit as much interest from potential proponents who are thought to be qualified. This step confirms which companies meet the project requirements and is used to limit distribution of the RFP to only those companies meeting those requirements.

c) Select Short List

The objective here is to retain all prospective proponents who can demonstrate an ability (against the clear criteria defined in the RFQ) to execute the work successfully.

d) Request for Proposals (RFP)

The RFP is designed by municipal staff and/or their consultants, and defines the service requirements and expectations of the municipality. For maximum benefit and best results the RFP must be structured to attract the most innovative and cost efficient private sector proposals that meet the municipality's service requirements. The draft RFP is subjected to Peer Review in order to improve the chance that maximum benefit is derived, then modified and subjected to final Peer Review prior to being issued.

e) Evaluation of Proposals

Evaluation, by municipal staff and their consultants, is performed against clearly defined criteria found in the RFP. Following evaluation, recommendations are made to Council for selection of the preferred proponent, subject to successful negotiation of a final contract.

f) Contract Negotiations

Execution of a final contract with the preferred proponent

## 2. The Peer Review Process

The development and conduct of a Peer Review can be divided into four steps;

- Defining the extent of the Peer Review
- Establishing a scope and schedule
- Staffing the Peer Review team
- Executing the review.

Each is described below.

### 2.1 Defining the Extent of the Peer Review

There are five stages within a procurement process at which a peer review may be conducted:

- a) Conceptual design completed
- b) RFQ drafted
- c) RFP drafted
- d) Proposals received, evaluated and due diligence performed (prior to final recommendations)
- e) Contract drafted – review of contract specifically in relation to risk allocation and provision for continuous improvement.

The value of a Peer Review at any stage must be weighed against the cost and time to conduct it. The following guidelines may help the decision:

- Even if the conceptual design has been prepared by experienced waste management professionals, a Peer Review for confirmatory purposes would be useful and neither time-consuming nor costly.
- The RFQ should be a straightforward document. It is, however, very important since everything which follows depends upon the quality of the responses. A Peer Review can be carried out quickly and inexpensively, and may be of great value.
- Peer Reviews are highly desirable at the RFP stage; this is where the greatest benefit lies.
- A fairness opinion should be obtained to confirm that the evaluation of proposals was conducted in accordance with the procedures set forth in the RFP, and that thorough due diligence was performed on the preferred proposal and proponent, before final recommendations are made to Council.
- A Peer Review at the contract stage should only be necessary if a draft of the contract terms was not subject to Peer Review in the RFP.

## **2.2 Scope and Schedule**

Once the stage(s) at which peer review(s) will be conducted have been determined, the scope and schedule for each can be established. The following are suggested questions for the Peer Review team to put to the project team. It is not intended to be an exhaustive list; it is for guidance purposes only.

### *Conceptual System Design Questions - Examples*

- To what extent is the system design incorporated in an integrated waste management plan which includes consideration of public and private sector infrastructure in neighbouring jurisdictions?
- Are there likely to be changes during the life of the proposed contract which might seriously affect the scope and cost of the project?
- What criteria were used to design the system?
- Has the system design been subjected to a critical operational analysis in the search for efficiency - describe?
- Have the following been consulted and asked to comment on the system design?
  - Prospective proponents
  - Equipment vendors
  - Other municipalities
- Do you intend that the RFP will ask for alternative system designs in the form of alternative proposals?

### RFQ Questions - Examples

Does the RFQ include the following?

- Project definition
- Location
- Capacity of system
- Proposed contract term
- Schedule
- Mandatory meeting of respondents
- Description of evaluation process
- General terms and conditions
- Anti-lobbying provisions
- Requirements for financial information
- Insurance requirements
- Requirements for references
- Bonding requirements
- Standards for experience in similar projects
- A clear statement, with examples, of errors and omissions which will lead to disqualification

Is it likely to result in several acceptable statements of qualifications from qualified respondents or is it too restrictive?

### RFP Questions - Examples

- Does the RFP define capacity, location, performance criteria and leave open the choice of equipment, layout, building size etc? Or does it define in detail the equipment specifications, building size, design, materials of construction etc? In cases where specifications appear restrictive, does the RFP allow the respondent to take exceptions and to offer alternatives as long as they can demonstrate equivalent performance?
- Does it have a long menu of possible combinations of services or is it fairly narrowly defined?
- Will it promote creativity (innovative thinking) on the part of the respondents or does it tend to the prescriptive?
- Does it provide an opportunity for alternative proposals as long as they accompany a conforming proposal?
- Does the RFP employ the two-envelope system?
- Are the evaluation procedures and scoring criteria thorough, fair and easily understood?
- Is there a commitment to a fair and open evaluation process?

- Are the performance criteria well thought out, measurable and achievable?
- Are the financial guarantees and bonding requirements appropriate to the scope of work and the associated risk or does the RFP attempt to offload risk onto the contractor which it is beyond his ability to manage?
- Is there a form of contract attached? Is it balanced and does it include provisions which encourage innovation through the term of the agreement?
- Are there penalty and bonus provisions to support the performance criteria?
- Who prepared the RFP and who has been asked to comment on its content?
- Does it include a clear statement, with examples, of errors and omissions which will lead to disqualification?

#### Evaluation Questions – Examples

- Has the evaluation of the RFP been conducted in strict accordance with the procedures set forth in the RFP, do they conform to municipal procurement standards and are the recommendations therefore sound?
- Has the project team thoroughly confirmed the technical adequacy of the preferred proposal and the qualifications and the performance record of the preferred proponent?

The schedule for the Peer Review(s) must track that of the project itself which must, in turn, incorporate the necessary elapsed time for the review(s). This must include the time and resources to review, comment on, and revise the subject documentation. This will vary depending on the stage. **The RFP stage (the most complex with lengthy documents to be read) will require two weeks for the actual review** including a meeting of the review team and then a separate meeting with the municipality and their consultant. Adherence to the process schedule is important.

### **2.3 Staffing the Peer Review Team(s)**

Each stage of review will require a particular set of skills. For example, a team to review an RFP for a municipal MRF would consist of the following:

- Senior private sector waste management experience to provide insight into how proponents may respond and whether that response will promote innovation and actually bring about desired results. With respect to operations and contract management, an individual with this background can identify language and concepts that are unclear, unenforceable or difficult to manage, and can suggest other approaches that will lead to better results. Private sector expertise is also helpful in facilitating discussion about performance-based versus prescriptive RFP language, specifically whether the structure of the RFP will direct proponents to meet required standards or simply to tell them what type of equipment to use. Obtaining neutral, third party, expertise of this type is considered essential to the process.

- Senior, third party municipal waste management experience, with a background in contract management introduces a second municipal opinion, which, based on previous experiences with the RFP process, contractual wording, and alternative approaches, will help to identify possible pitfalls and opportunities within the document.
- Third party municipal procurement, legal and risk experience is useful to reinforce purchasing policies or suggest alternative approaches. It is important, however, that the third party procurement experience be matched to the size of the municipality and the complexity of the project. It must also be recognized that municipalities all have their own preferred procedures which they may be very reluctant to alter.

This particular combination of people and expertise will be suitable for all stages of the Peer Review process except the fairness review of the evaluation process which comes with certain liabilities and requires particular skills. If applicable, this must be conducted by a Fairness Commissioner<sup>1</sup> or a third party specializing in this form of procedural audit. Some municipalities employ this practice and others do not, relying instead on the integrity of the review process and the competence of those conducting the review.

All team members should be required to sign a conflict of interest and confidentiality agreement.

The peer review team, in collaboration with the client municipality, should assign a lead to coordinate and compile their collective input. It is recommended that the leader be selected based on as many of the following criteria as practical:

- Practical experience (preferably private sector) designing and operating a waste management system
- Knowledge of performance-based contracts and the criteria which govern them
- Knowledge of municipal purchasing processes and policies
- Experience in managing and negotiating contracts
- Basic understanding of the legal issues which arise in long term contracts (escalation, change in law etc.)

It is also recommended that the peer review team include, if available, a representative from a municipality that has conducted a peer review of their RFP.

## **2.4 Conducting the Peer Review**

The Peer Review process must move in step with the procurement process and, because members of the Peer Review team will be drawn from various sources, schedules must be well-planned and adhered to as far as possible. The Peer Review will have four distinct steps and strict confidentiality must be maintained throughout:

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<sup>1</sup> The term "Fairness Commissioner" is used by York Region, representatives of which participated as peer reviewers for this project. This function is referred to in a number of different ways but is essentially a third party procedural and process consultant who determines whether the purchasing procedure is appropriate given the scope and nature of the service or project, and monitors the purchasing process to ensure that procedures are followed.

#### a) Document Review

The municipality and their consultant will make all relevant documents available to the team. Preferably these should be in electronic form to simplify the process of commenting and editing. All members of the team will read and comment on the documents to confirm, or otherwise, that the particular stage of the procurement process which is under review is being effectively executed and every reasonable opportunity taken to ensure success.

#### b) Consolidation of Reviewers' Comments

The Peer Review team will require at least half a day to discuss and consolidate their comments into a single set of questions and recommendations to the municipality. The comments must be clear, to the point and well organized. They should then be forwarded to the municipality for their review in preparation for a meeting.

#### c) Meeting with Municipality

This meeting will require at least half a day and longer for more complex projects. Senior municipal waste management staff and their consultant (if applicable) should be present, together with all members of the Peer Review team. The team leader should chair the discussion using an agenda circulated beforehand. Each point should be thoroughly discussed; if agreement is reached easily this should be recorded. Matters which are not readily resolved should be set aside for future discussion by the municipality and its consultant to avoid time consuming debate.

The municipality and their consultant will use the results of the meeting to make whatever changes to the documents and the process they see fit. The Peer Review team provides comments and recommendations to the municipality; the municipality is not obliged to accept any of them; the final decision is theirs alone.

#### d) Final Review

Following the modification of the documents to include the changes agreed to as a result of the Peer Review and comments from others such as legal and procurement staff, the revised document should be circulated to the Peer Review team for a final review and discussion. A conference call among the municipality, the consultant and the team should then be scheduled to discuss any final comments or observations.

### 3. Peer Review Reports

A short report, summarizing the comments and recommendations of the Peer Review team, should be provided to the municipality at the conclusion of each review. The Peer Review process is not intended to be an assessment in detail of the various documents, it is rather to identify elements of the process which could be improved upon and to use the broad-based experience of the peer review team to get the right combination of innovation and commercial terms.

The report should therefore reflect the answers to the types of questions set forth in Section 2.2, and concentrate on the specific ways in which improvements to the procurement process can be made.

## 4. What Practical Results should you expect?

This will vary greatly depending on the nature and complexity of the project and the stage at which it is being reviewed. However, when this process was tested on the City of London RFP for a new MRF, several significant comments and suggestions were presented by the Peer Review team and discussed with the City and its consultants. Most made it into the revised RFP but some did not. For example:

### *Contractor's Obligations Limited to Area of Expertise*

The requirement for the contractor to landscape the property was removed from the RFP and became the direct obligation of the City with the cooperation of the contractor. This is not within the contractor's field of expertise and is better handled by the City directly.

### *Changing Markets*

A provision was inserted so that, should the City change the Market Specifications for recycled material and should that change result in increased costs, the contractor would have the right (with supporting documentation) to claim additional compensation. This provision was absent from the original draft RFP.

### *Payment Terms*

The payment terms during the operations phase were modified considerably to eliminate ambiguities while retaining the original intent.

### *Material and Residue Audit Processes*

The basic framework of an audit process to determine the percentage of non-recyclable materials entering the MRF was included in the RFP, with the additional requirement that the final protocol be decided through cooperative negotiations between the City and the proponent. This provision was absent from the original draft RFP.

Likewise the basic framework of an audit process, to determine the percentage of residue produced by the MRF and the recovery rates of recyclable materials, was included in the RFP. The original draft contained a procedure which was too imprecise.

### *Material Composition Change*

A new provision was incorporated to deal with changes in the composition of the incoming material to allow the contractor to recover demonstrable cost increases attributable to the change. The original draft attempted, unsuccessfully, to define the parameters which would entitle the contractor to additional compensation.

### *Continuous Improvement*

The principle of continuous improvement as an obligation of the contractor was incorporated in the RFP with a requirement for an annual compliance review. Although, ultimately, this may not be legally enforceable, it sets out the expectations of the City that this is how the contractor will operate.

### *“Exceptions” versus “Alternative Proposals” Clarified*

The distinction between an Alternative Proposal on the one hand, and exceptions to technical requirements of the RFP on the other, was clarified.

Two general points are worth noting; firstly, all but one of the changes set forth above (and which were accepted by the City) relate exclusively to the Operations Phase of the RFP and, secondly, suggestions by the Peer Review team that the specifications in the Design-Build Phase were somewhat too restrictive turned out to be largely unfounded: the RFP makes specific provision whereby the proponent can take exception to a specification within a conforming base proposal and offer an alternative as long as the equivalency of the alternative can be adequately demonstrated. This may illustrate a need to pay closer attention to operating matters in the development of RFPs.

It was apparent that the involvement of private sector expertise added an important dimension to the process, one which is often overlooked. Given that the entire purpose of the exercise is to attract competitive proposals from the private sector, this is an important consideration.

The Peer Review Process itself will undergo continuous improvement particularly if municipalities take the time, after completion of the procurement, to analyze and document its strengths and weaknesses for the benefit of subsequent peer reviewers.

In conclusion, all the participants, the City, their consultants and the Peer Review team members, agreed that the process had been helpful, the time well spent, and an improved RFP had resulted.