



terrapure®
Environmental Solutions

January 13, 2020

Ann Marie Norio - Niagara Region Clerk
Jim Bradley - Niagara Region Chair
Tim Rigby - Niagara Region Public Works Chair
1815 Sir Isaac Brock Way
Thorold, ON L2V 4T7

RE: Niagara Region Liquid Biosolids and Residuals Management Program

Dear Madam/Sirs:

On September 5th, 2019 Terrapure Environmental responded to a RFPQ from the Region of Niagara for its Liquid Biosolids and Residuals Management Program, No 2019-RFPQ-232. The RFPQ was issued on August 7th. The RFPQ was later cancelled after respondents submitted proposals. Terrapure has very serious concerns about the manner in which this procurement was conducted. It is our opinion that this procurement process was faulty and unfair to suppliers. I request that the Public Works Committee not proceed with a recommendation from staff (to be considered at the Tuesday, January 14th Public Works Committee Meeting) to negotiate a new contract with the incumbent supplier until our concerns are investigated fully.

Terrapure Environmental is of the opinion that:

1. The Region conducted a faulty and unfair procurement process and failed to meet its own standard under By-law No. 02-2016, Purposes, Goals and Objectives.
2. The staff report for the Tuesday, January 14th, meeting omits important information and mis-characterizes the capabilities of other suppliers.
3. The Region will pay (and has been paying) too much for biosolids services and assumes risk that should otherwise be the responsibility of the biosolids contractor.

Our opinions and concerns are addressed in detail below.

1. The Procurement Process.

- Terrapure deployed considerable resources to respond carefully and thoughtfully to the RFPQ.
- The RFPQ process was subsequently cancelled (Notice of Cancellation) on October 4th. In the cancellation notice the Region states that the procurement process was cancelled because “bid submissions received did not meet the established pre-qualification requirements”.
- The Region sent a revised Notice of Cancellation on October 25th that omitted the above point (“bid submissions received did not meet the established pre-qualification requirements”).
- Both Notices stated that the Region anticipated that the procurement “may be retendered at a later date, yet to be determined”.
- We requested a debrief of the process (as allowed in the Section 3.3.2 of the RFPQ) to understand why Terrapure did not qualify. It was very difficult for us to understand how we could qualify for every major biosolids program in Ontario (e.g., Toronto, Hamilton, Halton, Waterloo, Durham, Ottawa) but fail to qualify for the Region of Niagara’s biosolids program and for which we had previously operated for 10-years. Our verbal response from the Region was that “because the Region was planning to re-issue the RFPQ that it would be inappropriate for NR Procurement to debrief Terrapure. This was confirmed in an email.
- Unsure of the advice we were provided we formally (email and letter) asked for a debrief on Oct 17th. We received no response to this request.
- A second Notice of Cancellation (actually two Notices of Cancellation were received that same day) on October 25th. The email note mentions that this second Notice was being sent to correct an earlier error in the original October 4th Notice. The wording in the second Notice omitted the previous sentence that the RFPQ had been cancelled because “bid submissions received did not meet the established pre-qualification requirements.
- There was no communication provided to vendors about the staff decision. We discovered the staff decision only by reading the documents for the Tuesday meeting (whereby the incumbent would be awarded a 3-year contract).

2. The staff report prepared for the Tuesday, January 14th meeting, that recommends a three year negotiated contract with the incumbent, is misleading in several areas.

- The report fails to mention that, in fact, a RFPQ process was conducted earlier in the year but was then cancelled because no proponents, including the incumbent, were qualified. No explanation of why the three companies failed to meet the criteria is provided. This is important

information for the Committee to understand. It implies that NR is now prepared to negotiate a 3-year \$14,000,000 contract with an unqualified supplier.

- The report notes that another reason for selecting Thomas Nutrient Solutions (Thomas) is that Thomas is so familiar with the current operations and that this would result in a “seamless” transition for NR operations staff.
 - Terrapure operated this facility for a decade previously and would provide an equally seamless transition.
 - A seamlessness transition was not an issue 5 years ago when the Region opted to award the biosolids contract to Thomas despite the fact that Thomas had never handled one kilogram of biosolids prior to the award of a five year contract. Why is it now an important criteria?
- In Alternatives Reviewed (2 and 3), staff notes that the existing contract contains a renewal opportunity for either one or three years.
 - This is untrue. The current contract expired December 31, 2019 (with no further extensions) as noted in staff Key Facts and in Public Works document PW12-2017. Consequently, there is no existing contract with a renewal option.
 - The report notes that Thomas “expressed a willingness” (not a commitment) to invest an additional \$600,000 in equipment and that it would be impossible for an alternate company to provide at this late stage. It is important to note that as a result of NR failing to conduct its procurement process in 2019 it created the situation whereby a sole-source arrangement now has to be made. Terrapure could easily meet this condition and made this clear to NR in an email on October 17th. It is false to make this claim.
 - The many other listed reasons for selecting Thomas (significant capital investment, high volume, large unique equipment, highly skilled trained and experience people) are all conditions that could be met by other biosolids suppliers. The staff summary suggests that no other company could do this – that is false. Other respondents were not asked.

3) As a result of sole sourcing a \$14,000,000, 3-year contract with TNS, the Region is not receiving competitive prices for biosolids services.

- Is it appropriate to sole-source a \$14,000,000, multi-year, contract to an unqualified supplier (as determined by the Region in the RFPQ process) that has unreasonably increased prices and has shifted risk to the Region?
- The Region has accepted “weather risk” (as stated in the staff report) by allowing Thomas to increase the 2018 budget by 14% to accommodate for wet weather conditions. Terrapure

experienced the same wet weather conditions in 2018 with multiple programs but no client was asked for additional money. This is a risk that the vendor takes on. The Region should not be responsible for this risk condition.

- In 2018 the cost from the incumbent increased by 14 %, for “weather related issues”, but did not return to 2017 +CPI +CPI levels in 2019. Thomas has effectively increased the 2019 contract base amount arbitrarily and NR has accepted this cost increase despite the fact the vendor accepts weather risk.
- Staff notes that the investments to be made by Thomas will increase efficiency yet these efficiencies are not visible in projected costs for 2020, 2021 and 2022.
- In 2014 Thomas won the biosolids contract for approximately \$2,600,000. In 2019 the cost to the Region was (2019F) \$4,173,775. In 2022F the Region is on track to pay Thomas \$4,980,094. The 2019F cost is an approximate 60% increase over the first year of the contract (2014) and the 2022F cost is a 92% increase with respect to the 2014 contract. No municipality in Ontario has experienced such a dramatic cost increases for biosolids programs, nor would they accept this steep increase. Council should undertake a cost increase comparison with other large municipalities and compare. Compare these cost increases to the previous 10 years before Thomas became the liquid biosolids contractor.
- P.30 of the staff report states that fees (costs) are dependent on plant operating conditions and seasonal variations and weather conditions. Terrapure does not increase costs to its clients for weather related issues, this is risk that we manage as part of a biosolids contract. NR is now accepting and paying for risk normally accepted by the contractor.

There are substantial cost and procurement fairness issues that need to be reviewed prior to proceeding with the recommendation currently being made by NR staff.

I respectfully request your review of the staff recommendation to renegotiate this contract with Thomas Nutrient Solutions.

Yours truly,



Doug Legge P. Eng, MBA
Vice-President

c.c.

Councillor Pat Chiochio
Councillor Jim Diodati
Councillor Betty Disero
Councillor Kelly Edgar
Councillor Wayne Fertich
Councillor Robert Foster
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