
HALDIMAND COUNTY

Report FDS-02-2020 Broadband Negotiated Request for Proposal Results For Consideration by Council on June 30, 2020



OBJECTIVE:

To review the results of the Negotiated Request for Proposal submission and recommend to Council the award of underlying Project Agreement to the successful proponent.

RECOMMENDATIONS:

1. THAT Report FDS-02-2020 Broadband Negotiated Request for Proposal Results be received;
2. AND THAT the Mayor and Clerk be authorized to execute all the necessary agreements and documents associated with awarding the Negotiated Request for Proposal to 676766 Ontario Limited (o/a KWIC Internet) for providing Broadband Services within the geographic boundaries of Haldimand County, subject to final negotiations and legal review;
3. AND THAT a Municipal Capital Facility By-law be enacted to provide the financial assistance as outlined in FDS-02-2020 Broadband Negotiated Request for Proposal;
4. AND THAT the 2020 Tax Supported Operating Budget be amended as outlined in report FDS-02-2020 Broadband Negotiated Request for Proposal be approved.

Respectfully submitted: Mark Merritt, CPA, CA, General Manager of Financial & Data Services

Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

On June 27th, 2019, Haldimand County staff presented a report to Council with the Corporate Priorities for the 2018-2022 Council Term. One of the priorities identified was an initiative for High Speed County Wide Broadband Internet. The objective of the initiative was for “County facilitation of private sector investment to provide this key infrastructure required for economic prosperity and to attract business and residents”. The main underlying principle of the initiative is to have an Internet Service Provider (ISP) to provide the underserved areas within Haldimand County with unlimited access to high speed internet with consistent, reliable speeds with minimum download speeds of 50 Megabits Per Second (Mbps) and upload speeds of 10 Mbps. These speed targets were identified in order to match the minimum speeds established by the Canadian Radio-television Telecommunications Commission (CRTC) guidelines. Council approved a two step process in order to select the most qualified ISP: (1) the prequalification of interested providers and (2) the issuance of Negotiated Request for Proposal.

The first step involved issuing a Request for Pre-Qualification (RFPQ) that was issued on July 16, 2019 by Haldimand County to prospective bidders to submit proposals in order to identify and shortlist a sufficient number of experienced and qualified service providers for the installation and facilitation of broadband internet services across Haldimand County. The RFPQ closed to potential bidders on August 30, 2019. At that time, of the four submissions received, three bidders met the benchmark score of 70% required and were invited to participate in the Negotiated Request for Proposal (NRFP).

The second step, being the NRFP process allowed the County to negotiate with up to all three prequalified bidders (proponents) based on a predetermined set of parameters to ensure the County receives the best service at the best value. Due to the complexity of the technical implications, inherent risks, ISPs varied approaches to implementation and financial impacts/incentives, Council previously approved the use of third party consultation to facilitate objective decision making and to assist staff with the necessary legal, technical and financial understanding of the submitted Proposals.

This step was more detailed, comprehensive and technical. The support and advice from the technical and financial consultants was significant in developing criteria that was instrumental in the ultimate objective evaluation process. There was also an opportunity for feedback from the three proponents in developing the final NRFP and draft Project Agreement to be executed with the Successful Proponent which resulted in some amendments being made to these documents. In parallel with the development of the final NRFP, a public consultation process was undertaken to ensure the project requirements met the expectations of stakeholders who would ultimately utilize the service. Generally, the feedback received was very consistent: underserved customers (those customers currently without access to unlimited internet with download/upload speeds of 50/10) wanted access to affordable and reliable high speed internet within 3 to 5 years. There were however, varied responses related to the amount of County financial support to be provided to the successful ISP. Public support was predominantly split between a) no financial support; and b) interest free loan combined with some proportional grant.

Based on the feedback from the three Proponents and the public survey, the final NRFP was issued March 31, 2020. The submission deadline was June 5, 2020 with all three Proponents submitting a Proposal. The Proposals were rated on a pre-determined scale evaluating various technical and financial components. Of the three Proponents, the submission from 676766 Ontario Limited (o/a KWIC Internet) was the highest scoring Proposal and advanced to the negotiations procurement stage. The negotiations occurred from June 15, 2020 to June 24, 2020. During this period, various components of KWIC Internet's submission were clarified and amendments were primarily made to the financial securities area to meet the County's minimum requirements. The County, with assistance from our legal, technical and financial consultants, reached a final draft Project Agreement (PA) with KWIC Internet, which staff are recommending to be approved by Council. The final draft PA meets all the minimum technical and financial requirements set out in the original NRFP.

It should be noted that, as this was a competitive bid process, many of the details of the Proponents submissions and ultimately the PA, are proprietary in nature (such as financial projections, pricing of packages, location of infrastructure, etc.) and as such, are to remain confidential. With legal counsel's advice, the following information can be released publicly as it relates to KWIC's Proposal:

- Technical Requirements:
 - Ability to provide required minimum download/upload speeds of 50/10 Mbps – to be achieved through a combination of fibre to homes and wireless towers in more remote areas (with the appropriate core infrastructure with backhaul to Toronto, redundancy and scalability);
 - Available unlimited Broadband internet service to 100% of the underserved areas (those customers currently without access to unlimited internet with download/upload speeds of 50/10 Mbps) within the geographic boundaries of Haldimand County. Priority service is being granted to these underserved areas first;
 - Specific construction timelines ensuring the complete network is built and operational within 5 years from execution of the PA;
 - Regular progress reporting and testing/monitoring of quality of service and customer satisfaction during construction; and
 - Qualified project management and technical/civil engineering works.

- Financial Requirements:
 - Competitive pricing - KWIC Internet's Proposal met or was lower than the established target price point of \$115 per month as required by the NRFP;
 - The maximum, interest free loan amount set at \$15,000,000 – KWIC Internet's Proposal is requesting the full \$15 million to be fully drawn within 2 years from start of construction;
 - Full principal balance of the loan to be repaid within 12 years from the execution of the PA - KWIC Internet loan repayment schedule proposes repaying the full principal balance, in equal monthly payments, starting in year 6 and ending in year 12 of the PA;
 - Financial loan security - KWIC Internet has secured a Performance Bond for the substantial balance of the estimated underlying infrastructure covering the full 5 years of the construction phase, after which, Haldimand County is the sole creditor of the newly formed company that will hold all the customers and assets serving the geographic boundaries of Haldimand County; These mechanisms provide the County with key mechanisms that help ensure the project gets built as proposed and that the loan is repaid.
 - Incentive to seek Government financial support – in the event KWIC Internet secures Federal/Provincial grants for this project, Haldimand County agrees to forgive a proportionate amount of the loan up to a maximum of \$1,500,000 - this forgiveness is conditional on KWIC Internet accelerating the construction of fibre to the premises as part of the PA.

The above-noted approach, as recommended by the County in the fundamental principles of the NRFP, includes financial incentives of an interest free loan and a potential loan forgiveness over the course of the project. Under the provisions of the Municipal Act, this would be facilitated through a Municipal Capital facilities by-law. The provision of telecommunication systems (which includes internet services), are eligible under the Act for the financial incentives contemplated. The Draft by-law is also presented for Council's approval and needs to be enacted prior to execution of the PA.

Staff, in conjunction with the feedback from the legal, technical and financial consultants, are confident that KWIC Internet, based on their proposal, are well aligned to meet Council's objective of providing internet access to 100% of the underserved premises with minimum download/upload speeds of 50 Mbps/10 Mbps within the 5 year timeframe. Having said that, it has been recognized from the outset that any proposal would not be 100% risk-free to the County both in terms of service delivery or from a financial security perspective. Despite the Proposal meeting the fundamental conditions of the NRFP, there are risks that the planned methodology may not meet the objectives due to unforeseen events. Despite all the security provisions put in place it is still subject to numerous risks such as: failure of surety to provide the performance provisions as noted; bankruptcy of the ISP and; the inability of the County to sell the underlying infrastructure to recover the County's loan in the event of default. The structure of the Project Agreement does attempt to minimize these risks and, at a minimum, ensure the infrastructure is substantially built as designed. Specific securities are in place to ensure all loan amounts are returned, but there is limited ability to ensure this with 100% certainty. Ultimately, the Project Agreement is structured to mitigate risks where possible while providing security to ensure the network is built. However, staff do highlight there is still potential risks involved.

The PA also includes provisions for KWIC Internet to provide public notification of planned construction schedule as well as regular updates to Council and public on project milestones.

Staff, with assistance of the legal consultant, are finalizing revisions to the draft Project Agreement and legal review by the Proponent. Until these steps are complete, staff are recommending Council authorization to execute the agreement, subject to the completion of the above.

County staff and KWIC Internet are eagerly looking forward to the construction phase of this project which will implement a key Term of Council priority. It is anticipated there may be a need for additional County financial/staffing resources to manage the project milestones moving forward.

BACKGROUND:

On June 27th, 2019, Haldimand County staff presented a report to Council with the Corporate Priorities for the 2018-2022 Council Term. One of the priorities identified was an initiative for High Speed County Wide Broadband Internet. The objective of the initiative is for “County facilitation of private sector investment to provide this key infrastructure required for economic prosperity and to attract business and residents”.

Broadband Internet in Haldimand County was identified as a Council priority and vital for the following reasons:

- There are areas of the County with limited/no internet service providers (underserved households/premises)
- Presence of large number of home-based businesses that do not have high speed internet
- Large farming operations require high speed internet access for daily operations
- Will help address social inequalities in the communities where lack of high speed internet is impacting students and residents abilities to access information or services
- Increases competition in areas where internet access is available
- Help retain and attract business in Haldimand County

To meet the expectations of the Council priority, staff utilized a two step procurement process to provide the most efficient approach to identify qualified Internet Service Providers (ISPs) that would develop, maintain and operate a County wide high speed internet service. Step one - initiate a Request for Pre-Qualification (RFPQ) process to identify interested, qualified ISPs that have experience in developing and providing internet service, especially in underserved rural areas. Step two – issue Negotiated Request for Proposal (NRFP) process to the pre-qualified ISPs.

The first step involved issuing a Request for Pre-Qualification (RFPQ) that was issued on July 16, 2019 by Haldimand County to prospective bidders to submit proposals in order to identify and shortlist a sufficient number of experienced and qualified service providers for the installation and facilitation of broadband internet services across Haldimand County. The RFPQ closed to potential bidders on August 30, 2019. At that time, of the four submissions received, three bidders met the benchmark score of 70% required and were invited to participate in the Negotiated Request for Proposal (NRFP). The three prequalified ISPs were: KWIC Internet, Metroloop Inc., and Xplornet.

The second step of the process, being the NRFP process, was recommended to allow the County to negotiate with up to all three prequalified bidders (Proponents) based on a predetermined set of parameters to ensure the County receives the best service at the best value. Due to the complexity of the technical implications, inherent risks, ISPs varied approaches to implementation and financial impacts/incentives, Council previously approved the use of third party consultation to facilitate objective decision making and to assist staff with the necessary technical and financial understanding of the submitted Proposals. This step was more detailed and technical which also included feedback from the three Proponents in developing the final NRFP and draft Project Agreement to be executed with the Successful Proponent.

In parallel with the development of the final NRFP, a public consultation process was undertaken to ensure the project requirements met the expectations of public that would ultimately utilize the service. Over 280 responses were received to the on-line survey (hard copies were also available for those without internet access). The focus of the survey was to: understand the current service limitations

customers were experiencing (such as customer service, internet speeds, data limits, etc.) and to solicit feedback on priorities of a County-wide Broadband internet service (such as minimum internet speeds, unlimited data, competitive pricing, financial support from the County, etc.). Generally, the feedback received was very consistent: underserved customers (those customers currently without access to unlimited internet with download/upload speeds of 50 Mbps/10 Mbps); and the need for access to affordable and reliable high speed internet to be available within 3 to 5 years. These principles generally aligned with the principles established in the Draft NRFP.

Based on the feedback from the three proponents and the public survey, the final NRFP was issued March 31, 2020 and the NRFP submission deadline was June 5, 2020. All three pre-qualified three proponents submitted a Proposal by the deadline. The Proposals were rated on a pre-determined scale evaluating various technical and financial components. The result of the NRFP process are detailed below.

ANALYSIS:

County staff evaluated the three proposals on June 15th, 2020 in accordance with the criteria listed in the RFPQ including:

- **Technical Requirements:** Feasibility and robustness of the proposed technical solution and its ability to meet the County's minimum upload/download speeds (including core infrastructure with backhaul to Toronto, redundancy and scalability); Ability to achieve the County's objective to facilitate access to Broadband service for 100% of its residents and businesses within 5 years; Effective project governance and quality and risk management; Experience in the satisfactory delivery of similar projects; and Experienced and qualified team.
- **Financial Requirements:** Competitive pricing of the required Broadband project; Competitive Plan and packages; Financing required from the County; Ability to generate adequate funds; and Ability to comfortably service County debt.

Based on the evaluation criteria above, of the three proponents, the submission from 676766 Ontario Limited (o/a KWIC Internet) was the highest scoring Proposal and advanced to the negotiations procurement stage. The negotiations occurred from June 15, 2020 to June 24, 2020. During this period, various components of KWIC Internet's submission were clarified and amendments were primarily made to the financial securities area to meet the County's minimum requirements. The County, with assistance from our legal, technical and financial consultants, reached a final draft Project Agreement with KWIC Internet, the principles of which, staff are recommending to be approved by Council. The final draft Project Agreement meets all the minimum technical and financial requirements set out in the original NRFP.

It should be noted that, as this was a competitive bid process, many of the details of the proponents submissions and ultimately the Project Agreement (PA), are proprietary in nature (such as financial projections, pricing of packages, location of infrastructure, etc.) and are to remain confidential. Based on our legal representation's advice, the following details can be released publicly:

- **Technical Requirements:**
 - Ability to provide required minimum download/upload speeds of 50/10 Mbps – to be achieved through a combination of fibre to homes and wireless towers in more remote areas (with the appropriate core infrastructure with backhaul to Toronto, redundancy and scalability);
 - Available unlimited Broadband internet service to 100% of the underserved areas (those customers currently without access to unlimited internet with download/upload speeds of 50/10) within the geographic boundaries of Haldimand County – with a priority to service these areas first;

- Specific construction timelines ensuring the complete network is built and operational within 5 years from execution of the (PA);
- Regular progress reporting and testing/monitoring of quality of service and customer satisfaction during construction; and
- Qualified project management and technical/civil engineering works.
- Financial Requirements:
 - Competitive pricing - KWIC Internet's Proposal met or was lower than the established target price point of \$115 per month as required by the NRFP;
 - The maximum, interest free loan amount set at \$15,000,000 – KWIC Internet's Proposal is requesting the full \$15 million to be fully drawn within 2 years from date of execution of the PA;
 - Full principal balance of the loan to be repaid within 12 years from the execution of the PA - KWIC Internet loan repayment schedule proposes repaying the full principal balance, in equal monthly payments, starting in year 6 and ending in year 12 of the PA;
 - Financial loan security - KWIC Internet has secured a Performance Bond for a substantial portion of the full value of the estimated underlying infrastructure covering the full 5 years of the construction phase, after which, Haldimand County is the sole creditor of the newly formed company that will hold all the customers and assets serving the geographic boundaries of Haldimand County;
 - Incentive to seek Government financial support – in the event KWIC Internet secures Federal/Provincial grants for this project, Haldimand County agrees to forgive a proportionate amount of the loan up to a maximum of \$1,500,000 - this forgiveness is conditional on KWIC Internet accelerating the construction of fibre to the premises as part of the project of the project.

The above-noted approach, as recommended by the County in the fundamental principles of the NRFP, includes financial incentives of an interest free loan and a potential loan forgiveness over the course of this project. Under the provisions of the Municipal Act, this would be facilitated through a Municipal Capital facility by-law. As confirmed by legal advice the provision of telecommunication systems, which includes internet services, are eligible under the Act for the financial incentives contemplated. The Draft by-law is included in the agenda for the June 30, 2020 Special Council meeting and needs to be enacted prior to execution of the PA.

The PA also includes provisions for KWIC Internet to provide public notification of planned construction schedule as well as regular updates to Council and public on project milestones.

Staff, with assistance of our legal consultant, are finalizing revisions to the draft Project Agreement and requires legal review by the Proponent. Until these steps are complete, staff are recommending Council authorization to execute the agreement, subject to the completion of the above.

It should be noted that the approach recommended by staff to achieve these results is unique relative to other municipally supported internet service projects in Ontario (e.g. SWIFT funded pilot projects in South-western Ontario). Although the fundamental goal is the same of providing broadband for 100% geographic coverage of underserved areas at 50 Mbps/10 Mbps; our recommended approach is achievable within 5 years at a relative limited financial costs to the County while meeting project objectives.

County staff and KWIC Internet are eagerly looking forward to the construction phase of this project. It is anticipated there may be the need for additional financial/staffing resources to manage the project milestones on the County's end moving forward.

FINANCIAL/LEGAL IMPLICATIONS:

Although this project was approved by Council in 2019 as a priority for this term of Council, no budget was included in the approved 2020 Tax Supported Budget for any additional costs aside from the previously approved consulting costs. It was noted during the report to Council related to the result of the RFPQ, that during the NRFP award stage, further financial details would be presented and require Council approval.

The successful proposal, as contemplated by the NRFP, includes a number of ongoing and potential financial impacts to the County.

Firstly, the main financial incentive proposed by the County is an interest-free loan to KWIC Internet up to a maximum of \$15 million. This loan will be advanced in relation to development of the underlying infrastructure. Advances will align with verification of actual cost incurred. Based on the Proponents construction plan, these funds would be fully drawn with-in 2 years from execution of the PA. Although this is quicker than contemplated in the original NRFP, there is appropriate security in place as noted below. As this is an interest-free loan, as noted above, the County must enact a Municipal Capital Facility by-law to provide this incentive.

As this initiative was only approved starting in 2019, and no actual expenditures were contemplated based on the fundamental financial incentive being a loan, staff have been reviewing various options to ensure sufficient cash flows are available to provide the required loans funds. As this is a substantial sum, the majority of which will not be repaid until more than 5 years from now, there will be impacts to: future cash flow projections; available investment portfolio options; and potential lost revenue opportunities due to the unavailability of these funds. Although not minor considerations, the overall success of this project to meet Council's objectives requires this substantial investment/commitment. Staff are continuing to evaluate various options to ensure the recommended approach aligns with the County's overall financial principles.

Also, as contemplated in the NRFP, there is the potential for a portion of the loan to be forgiven under specific conditions, namely: if KWIC Internet is successful in obtaining Federal/Provincial grants funds, the County would match these funds up to a maximum of \$1,500,000 specifically to accelerate the conversion of wireless portions of the project to fibre to home. This financial incentive would also need to be included in the above noted Municipal Capital Facility by-law. Given there is no current budget for this project related to this provision, it recommended the 2020 Tax Supported Operating budget be amended to include a grant/forgiveness of a portion of the loan to a maximum \$1,500,000, subject to the conditions noted above.

As noted, one of the main review factors of the financial portion of the NRFP was related to financial security to protect/ensure repayment of the County's loan. The options included liquid financial security, bond, or equivalent security over the project assets. As outlined above, KWIC Internet's Proposal included a combination of performance bond and unencumbered asset security. This combination provides two benefits: the performance bond ensures a substantial portion (if not all) of the underlying project asset will be constructed; while the unencumbered asset security provides an asset value, relative to the estimate cost perspective, equivalent to approximately two times the maximum loan amount. Although this does not ensure 100% that the County can liquidate the project asset for this amount, it does provide a high comfort level that sufficient value is present to recover the County's principal.

Lastly, there is no budget allocation for future resources to manage the construction phase of this project. Once initial meetings are held with KWIC Internet and the scope of County resources required are better defined, an appropriate budget allocation will be recommended to Council for approval.

STAKEHOLDER IMPACTS:

The ultimate development of a County wide, high speed broadband internet service will have far reaching impacts for all Haldimand County residents, existing businesses and potential economic development across the County. High speed, reliable internet service is a necessity to ensure the County is competitive both locally and globally as well as ensuring social equality for its residents.

REPORT IMPACTS:

Agreement: Yes

By-law: Yes

Budget Amendment: Yes

Policy: No

ATTACHMENTS:

None.