

# LRP II Engagement – April 2016 Feedback and IESO Responses

LRP II Engagement – Phase 1

June 27, 2016

# Introduction

As part of the first phase of the IESO's LRP II Stakeholder and Community Engagement process, an online survey was used to invite feedback on the LRP I process and provide suggestions for the upcoming LRP II process. The IESO received a number of responses from developers, consultants, municipalities, Indigenous communities, members of the public, community groups and government bodies. The IESO also received additional feedback from stakeholders outside of the survey process. This feedback has been posted on the LRP II Engagement [page](#).

In this document, feedback has been grouped thematically along with the IESO's response. This document includes responses to feedback on the overall engagement plan and processes as well as feedback on the RFQ process. The IESO will respond to other feedback, including feedback specific to the RFP, in conjunction with the engagement period on the draft RFP, which will begin later this year.

In addition, the IESO received feedback from several respondents that is outside the scope of this engagement. As indicated in the engagement plan feedback that is out of scope includes:

- Comments on the need or amount of renewable generation to be procured;
- Potential environmental impacts of proposed renewable energy projects;
- Changes to laws and regulations related to renewable energy generation; and
- Challenges on the outcome of the LRP I RFP process (e.g. contract awards).

The IESO recognizes there are different and strongly held perspectives on these issues but is not in a position to respond to this feedback in the context of the engagement. This feedback has however been posted as part of the public record for the engagement.

## RFQ Feedback – Themes

### **PROHIBITED COMMUNICATIONS AND NON-COLLUSION REQUIREMENTS**

A number of respondents (including both individual developers and industry associations) commented that the IESO should clarify the prohibited communications and non-collusion requirements in the LRP II RFQ. Concerns were raised that the requirements, as written in LRP I, were perceived to be overly prohibitive in nature and prevented applicants from creating partnerships with other applicants, with non-applicant companies, with Indigenous communities and municipalities, or interacting with service providers or communities who may have been in talks with other applicants.

Some respondents have requested that the IESO clarify what forms of communication would constitute breaches of the LRP II prohibited communications and non-collusion requirements. Specifically, whether participating in regulatory consultation processes initiated by federal,

provincial or municipal governments or other procurement consultations, would be deemed a breach.

Other stakeholders have commented that the public posting of information such as proposed project location, technology or proposed capacity, should not be deemed a breach of the requirements.

**IESO Response:**

The prohibited communications and non-collusion requirements in the LRP I RFQ were informed by industry and public procurement standards and intended to protect the integrity and fairness of the LRP process and to prevent any unfair advantage or bias. The LRP I provisions have been compared with language in other similar procurements (e.g., Infrastructure Ontario's) and they are commensurate and permissive.

In the draft LRP II RFQ, the IESO has made minor updates to clarify that the IESO does not wish to prevent essential or appropriate communications for the purposes of participating in public stakeholder engagement initiatives and to clarify that it is not the IESO's intention to limit partnership opportunities or productive engagement exercises between applicants and communities. However, RFQ applicants are reminded that neither they nor any member of their team may engage in any activity or communication that would constitute a Conflict of Interest that would result in collusion or violation of any of the civil or criminal provisions of the Competition Act (Canada).

Examples of permitted and prohibited communications were provided in the LRP I RFQ question and comment period and it is the IESO's intention to provide additional information through supporting FAQs for LRP II. As always, interested parties and RFQ Applicants are encouraged to seek clarification from the IESO via the LRP email ([LRP@ieso.ca](mailto:LRP@ieso.ca)) regarding the appropriateness of specific communications.

With respect to the concern raised that providing proposed project information on a project website should not be considered a breach, the IESO can confirm that providing such information would not be a prohibited communication.

**STREAMLINED PROCESS FOR LRP I QUALIFIED APPLICANTS**

There was strong support among the developer community and industry associations for the position that the IESO should enable a streamlined process for LRP I Qualified Applicants (LRP I QAs) to participate in LRP II.

Although there were a number of suggestions as to how best to achieve this, most proposed three distinct paths for those LRP I QAs, as follows:

- Where no change has occurred to the RFQ applicant, the applicant team or designated equity provider, the IESO should utilize a declaration to re-qualify the LRP I QA under development experience and financial capability.
- Where changes have occurred, LRP I QAs should submit new forms to supplement previously provided information and evidence their new qualification credentials.
- For non-LRP I QAs or those who have experienced wholesale organizational change, new qualification submissions would need to be made.

Conversely, a small number of respondents requested that the IESO automatically re-qualify all LRP I QAs for LRP II.

It should be noted that there was no consensus within the developer community as to whether LRP I QAs should have to re-evidence their current financial capability in LRP II or whether the LRP I evidence provided in 2014 should be sufficient.

**IESO Response:**

The April 5, 2016 Ministerial directive instructed the IESO to “consider under what conditions an applicant that was previously designated a Qualified Applicant (QA) under the LRP I RFQ may automatically qualify as an eligible QA for the LRP II RFP.”

The purpose of the RFQ is to ensure that only qualified, experienced applicants move forward to the RFP stage. To ensure that this is the case, and to ensure that the LRP II RFQ evaluation process is manageable and efficient, the IESO has introduced a streamlined qualification process for previously qualified applicants (LRP I QAs) who have maintained their exact development team from the LRP I RFQ and who would like to qualify for the same MW and renewable fuels as under the LRP I RFQ. Allowing LRP I QAs to evidence new information only where it had changed from LRP I would overly complicate and lengthen the RFQ evaluation process, which would affect the overall LRP II timelines.

Current financial capability will need to be evidenced by all LRP II participants to ensure that no financial changes have occurred since LRP I that could negatively affect their ability to develop a project under LRP II.

Should an LRP I QA wish to change any aspect of their LRP I submission, they would need to requalify under the standard LRP II RFQ process. Given that LRP I QAs have gone through this process once before, this is not viewed as being overly onerous.

The draft LRP II RFQ, which details the proposed Simplified Process, is now available for review and comment.

## **IESO ENGAGEMENT AND COMMUNICATIONS**

Some respondents, specifically the developer community and industry associations, requested that the IESO conduct more in-person engagement prior to the release of the LRP II RFP. This would allow more technical questions to be addressed, while webinars could be used as a complementary means to disseminate more general information on LRP II.

There was agreement among public and community groups and the developer community that the IESO or the Ministry of Energy should take on a more educational role during the LRP II process. One suggestion was that guidance documents should be provided to help the public or municipalities to better understand the LRP process.

A number of respondents requested that the IESO speed up the response time between the submission of and response to questions during the identified question and comment periods. Other respondents, conversely, argued that the timelines that were provided for LRP I were too short. They did not allow community groups and those opposing certain projects enough time to review, organize and effectively oppose the proposed project(s). Similarly, municipal respondents stated that the shorter proposed LRP II timelines limit their ability to participate in the procurement.

Additionally, some respondents from the public and community groups requested that the IESO attend public community meetings or help coordinate some aspects of community engagement between the public and developers.

### **IESO Response:**

In the context of this engagement and in the LRP procurement process generally, the IESO has to balance competing interests when it comes to the timelines and in the manner in which engagement discussions will take place.

The timelines in the Engagement Plan are an attempt to balance the need identified from developers for an expeditious process with the community need for time to allow for discussion and education to support meaningful participation and feedback.

The final Engagement Plan for the next phases of this engagement includes both webinars to ensure accessibility for all interested stakeholders and communities, along with in-person sessions (including a technical session) and opportunities for individual questions and answers throughout. The IESO will also explore opportunities for further engagement and education with municipalities and other communities over the course of this engagement.

The IESO will provide responses to RFP-specific comments in the next round of feedback.

## **PARTICIPATING IN LRP AND INFORMATION DISCLOSURE**

Some municipal respondents and those from the co-op community requested that there be adjustments to the LRP process to facilitate the participation of co-operatives and municipally owned projects. The requirements in the LRP I RFQ and LRP I RFP were deemed to be prohibitive to their participation, despite community support for these projects. Specifically, using a municipality's bond rating and experience in procuring large infrastructure projects should have been considered enough to satisfy financial capability qualification requirements.

Municipal respondents have stated that the shorter proposed LRP II timelines limit their ability to participate in the procurement. Due to some municipalities' inability to meet the tangible net worth requirements as outlined in the RFQ, municipalities are required to partner with private developers. However, the shortened timelines limit their ability to do so as they are unable to complete due diligence in the time provided, especially during the summer months.

Furthermore, some respondents from the general public requested that the IESO provide information on previous projects built by proponents in addition to completing an economic analysis and making the results public prior to evaluation.

### **IESO Response:**

Planning, developing, constructing, financing and operating large renewable energy facilities is a complex undertaking that requires considerable experience and financial resources. Based on the IESO's involvement in procuring these facilities since the mid-2000s, and the outcome of the LRP I process, maintaining a standard set of RFQ requirements, which are not applicant-type specific, is deemed appropriate. Furthermore, as the IESO was directed to consider a streamlined process for existing LRP I QAs, the LRP II RFQ qualification requirements need to align with those in LRP I so that all those qualifying for LRP II are on an equal footing.

Interested participants that individually do not meet the RFQ requirements may choose to collaborate with other interested participants so that together they meet the requirements. Partnerships were not uncommon in LRP I.

With respect to the timeframes, the IESO notes that both the 2013 Long-Term Energy Plan and the December 16, 2013 direction from the Minister of Energy indicated that there would be a second round of LRP following LRP I. The IESO respectfully believes that there has been adequate time to form partnerships in advance of LRP II.

With respect to publishing details of proponents and in line with the LRP I practice, the IESO intends to publish the names and contact information of all qualified applicants under LRP II. Interested parties may contact any qualified applicant to make inquiries. In terms of publishing details of a proponent's submission, such as financial capabilities, in keeping with competitive procurement practices, proponents are allowed to indicate whether any portion of their submission contains confidential information. Based on the practice in LRP I, it is anticipated that most if not all proponents will do so for their financial information. The IESO is not able to release confidential information. The financial information for any publicly traded company is

always accessible through the company's website or through the applicable financial reporting authority.

## **RFQ – OTHER GENERAL COMMENTS**

Some respondents found the LRP I RFQ requirements to be overly complex, leading to a large administrative burden when preparing a qualification submission. One recommendation to address a portion of the administrative burden was to limit the number of hard copies required for an RFQ submission.

The developer community suggested that administrative or clerical errors in an RFQ submission should not be cause for disqualification. Rather they requested that the IESO should clarify administrative errors during the RFQ application evaluation process.

Some Indigenous community respondents have asked that the RFQ place greater emphasis on experience with Indigenous communities.

Some respondents indicated that various LRP I RFQ requirements should be changed for LRP II, including tangible net worth requirements and experience level thresholds.

### **IESO Response:**

The IESO understands that there is a significant amount of material to be collected and submitted as part of the RFQ process. The qualification submissions provided to the IESO in response to the RFQ must contain all of the material and information that the evaluation team will need to review to evaluate the qualification submission. In response to feedback, the IESO intends to reduce the number of hard copies in the LRP II RFQ and to introduce further standardization to help reduce ambiguity.

The evaluation team will evaluate qualification submissions by assessing their compliance with the requirements of the LRP II RFQ without Material Deviation, as defined the LRP II RFQ. The evaluation team does ask for clarifications when there are inconsistencies between different sections within a submission. Minor clerical errors are also overlooked when they are not considered a Material Deviation. However, the evaluation team cannot request that new information be provided if it is missing from a submission, as this would constitute bid repair and would be contrary to procurement law.

With respect to evidencing experience with Indigenous communities, the RFQ is focused on qualifying the financial capability and development experience of applicants. The IESO notes the definition of 'Developing' under the Development Experience requirements, which includes the following: "Means prior demonstrable experience in engaging in community and municipal consultations, obtaining site access, obtaining regulatory and environmental approvals and other permits necessary for construction of a facility, and where the Crown had a duty to consult

obligation in the jurisdiction where the prior experience was obtained, undertaking the procedural aspects of consultation with Indigenous Communities that are required to support the Crown's duty to consult obligations; each of which must have been completed prior to the Qualification Submission Deadline." The requirements under this definition address the need for an applicant's prior experience working with Indigenous communities, with no further evidence required.

In terms of changing the LRP I RFQ requirements for LRP II, the IESO has clarified the Tangible Net Worth definition to include concepts that were outlined during the LRP I RFQ question and comment period. As the IESO was directed to consider a streamlined process to requalify LRP I QAs, the Development Experience requirements for LRP II need to remain the same as LRP I so that both those qualifying through the streamlined and standard processes are on a level playing field.

## RFP Feedback – Themes

Many respondents provided feedback on the LRP I RFP. The following are the key RFP feedback themes that the IESO heard. This feedback will be addressed during the subsequent LRP II RFP stage.

### **PROJECT SITING**

A number of respondents (primarily municipalities, community groups and the general public), requested that the LRP II RFP enable municipalities to have more influence over the approval and/or siting of potential projects. The requests ranged from allowing municipalities to request a change of renewable fuel being proposed, to municipalities being able to decide site location of projects. Furthermore, some respondents requested that municipalities be granted the ability to veto proposed projects or inherently prevent the development of large renewable projects in their jurisdiction by declaring themselves an unwilling host community.

Other respondents shared their concern regarding limited connection availability in some areas of the province and the impacts on potential projects they would like located in their communities. Particular concerns were raised by some communities in Northern Ontario, questioning why there were grid constraints that limited new projects in their communities.

Respondents also commented on issues such as the Green Energy Act and the impacts of the government's electricity policy in the province of Ontario. This feedback has been posted on the engagement webpage but is outside the scope of the LRP engagement.

## **ADMINISTRATIVE ISSUES – MUNICIPALITIES AND COMMUNITIES**

A number of respondents highlighted that the administrative burden placed on municipalities is quite high, due to the volume of information to be reviewed and the potential number of applicants approaching the same municipality. Additionally, the need to communicate with both their residents and the developer community was a challenge for some municipal respondents.

A number of suggestions were made to help alleviate some of this administrative burden:

- Standardize municipal council resolution terms; some found it too costly to negotiate separate terms for each proposed project
- Educational support for municipalities to help ease the learning curve for some officials
- Provide supporting documents in ‘layman’s terms’ to help alleviate the administrative burden of deciphering the entirety of procurement documents
- Requiring only one signature on the Prescribed Form – Municipal Meeting Confirmation
- Provide Prescribed Forms for municipal support and abutting landowner support as early as possible, allowing proponents to begin engagement activities.

## **COMMUNITY ENGAGEMENT – MANDATORY AND OPTIONAL**

A large portion of the feedback received from municipalities, community groups and the public focused on the mandatory community engagement and optional (rated criteria) community support requirements. The responses varied but a number of key themes emerged and are listed below.

A significant portion of respondents requested that longer timelines for community engagement be established, in addition to deadlines being fixed. The request was made so that municipalities can better prepare for meetings with applicants and so that they are not approached late in the process. Additionally, community groups and members of the public requested longer time periods to prepare opposition to projects (when applicable) and have a longer period of time to understand the proposals being presented. In addition to timelines, some have commented that the content of the community engagement plan should be standardized and include prescriptive steps as a way of addressing some of these issues.

Some respondents requested that proponents provide municipal officials and/or council with an information package prior to meetings. Furthermore, some members of the public found the engagement with municipal officials to be non-transparent and highlighted differences between some community groups and their elected officials, in terms of project support.

With respect to public community meetings, members of the public requested that there be broader advertising for public meetings and/or more public meetings in order to encompass the broader community, including seasonal citizens. In addition to the specific suggestions pertaining to community engagement, some community groups requested that new engagement activities be required for LRP II, so as to avoid the recycling of prescribed forms or engagement activities from LRP I. Lastly, a number of respondents requested that more formal ‘feedback

loop' mechanisms be required under LRP II so that both community feedback and the proponent's proposed responses to the feedback are documented in LRP material.

Public and community groups have requested that more information pertaining to site considerations be provided during public community meetings, in particular turbine locations for on-shore wind farms. Furthermore, some stakeholders requested more focus on the potential environmental impacts of proposed large renewable projects, including the possibility of involving conservation authorities in public community meetings.

Conversely, respondents from the developer and consultant community highlighted the difficulties surrounding early community engagement, when some project details were not yet certain. Additionally, some developers have asked for clarification in the site considerations requirements, making it clear that information can evolve after a public community meeting.

Developers also indicated that there was confusion among some public or community groups regarding the Prescribed Form – Notice of Community Meeting – with misinformation leading to a belief that attending meetings or signing the form indicated community support. Additionally, some found that the wording in the Prescribed Form – Abutting Landowner Support was confusing and led to some abutting landowners misinterpreting the forms or not understanding the context.

With respect to applicants offering community vibrancy funds to municipalities, a number of respondents from both the developer community and general public identified concerns with the optics surrounding the funds. Some developers highlighted the misinformation that has been prevalent throughout the engagement process, leading to challenges while engaging some communities.

## **RATED CRITERIA**

Some municipalities, community groups and members of the public asked that the breakdown of rated criteria points in LRP II be adjusted. Some suggestions were to:

- Increase the value of rated criteria points, including making the municipal council resolution more valuable
- Make rated criteria activates mandatory requirements
- Develop rated criteria that incentivize projects to avoid agricultural land

Respondents from the developer community and some industry associations have identified specific challenges in attaining some rated criteria activities. Abutting landowner support was specifically highlighted as being a challenging category. To address this challenge, they have requested that rated criteria points be provided in a checklist format, allowing proponents to pick the categories where they can more easily attain rated criteria points. Some respondents from the on-shore wind industry have requested that a sliding scale of rated criteria points from a minimum of 50% support to a maximum of 100% support should be implemented.

## **CONNECTION AVAILABILITY AND TESTING**

Industry associations and developers highlighted a number of areas of concern when it came to LRP I connection availability and the IESO's issuance of connection availability information throughout the LRP I process.

Respondents requested more connection information provided by the IESO earlier in the LRP II process. This would include Transmission Availability Testing (TAT) and Distribution Availability Testing (DAT) information and preliminary project and circuit analysis information. Some respondents asked to have the ability to pay for detailed IESO feasibility studies of proposed connection points prior to RFP submission.

Additionally, the IESO has been asked to consider whether it would allow proponents to pay for minor transmission system upgrades that would enable projects to connect to areas where there may otherwise be limited connection availability.

Some respondents inquired about planned (but not yet built) infrastructure projects designed to improve transmission capacity (e.g. East West Tie). They inquired on the impact on some areas of limited connection availability when infrastructure projects are complete.

Finally, some respondents asked the IESO to consider allowing projects to be located in connection-constrained regions in exchange for the proponents accepting higher curtailment exposure in their contracts.

## **DEFINITIONS AND REQUIREMENTS**

The developer community and industry associations raised their concern with the definition of 'deliver' as it pertains to the delivery of notices of public community meeting. These two groups requested that the IESO include a formal defined term and that the requirements as listed in the LRP II RFP should be a confirmation by proponents that they have used 'commercially reasonable' efforts to inform parties of the public community meeting.

The requirements for letters of credit that were included in LRP I were identified as a challenge by some developer respondents.

Additionally, developers requested that the IESO hold a webinar or additional engagements in order to clarify the definitions of certain terms in the LRP II RFP that were not clear to some in LRP I (such as Collector Lines).

Some respondents requested that the requirements around Existing Facilities should be relaxed to allow existing uncontracted facilities to participate in LRP II without having to perform an expansion or redevelopment.

## **INDIGENOUS PARTICIPATION**

Some community group respondents and members of the public requested that the IESO consider altering the requirements for Indigenous participation in LRP II to limit partnerships to only those Indigenous communities who are geographically close to or have historical association with the land on which the large renewable project is proposed to be located.

## **PROPOSAL PRICE**

There was broad consensus among industry associations and the developer and consultant communities that the IESO should allow LRP II bids to contain multiple price/project capacity combinations, unlike LRP I that allowed multiple project capacity options at a single price

Additionally, an Indigenous community requested that the Indigenous price adder include more gradations; allowing projects to receive different price adders for different levels of Indigenous economic interest.

Some respondents suggested that the formula for the evaluated proposal price should be adjusted to include new assumptions such as capacity factors, regional benefits and system needs. Additionally, the complexity of evaluated proposal price formula was identified as being a deterrent for more accurate pricing.

## **LRP CONTRACT – VOLUNTARY TERMINATION**

A number of respondents from the developer community and industry associations requested that the IESO re-evaluate the calculation of the voluntary termination sum in the LRP Contract. Some respondents have asked that voluntary termination be restricted to the pre-Key Development Milestones phase. In order to develop the voluntary termination provisions in the contract, respondents request additional discussions with the IESO opportunity for feedback.

Other members of the developer community indicated that voluntary termination sums were not enough to cover development costs. This ended up driving up financing costs and therefore bid prices. They have stated that the IESO should increase the per MW payout defined in the voluntary termination clause.