



## STAFF REPORT ACTION REQUIRED

### FAIR WAGE POLICY DISQUALIFICATION: OJCR CONSTRUCTION LTD.

<b>Date:</b>	January 8, 2007
<b>To:</b>	General Government Committee
<b>From:</b>	Manager, Fair Wage Office
<b>Wards:</b>	All
<b>Reference Number:</b>	TBA

#### SUMMARY

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The Fair Wage Policy (the “Policy”) requires the Manager, Fair Wage Office to report on companies that have violated the Policy twice within a three year period and recommend either to disqualify the firm or not. The purpose of this report is to recommend disqualification of OJCR Construction Ltd. from working on City contracts for a period of two years.

In 2004, OJCR violated the Policy when it was determined that \$25,287.94 was owed to OJCR’s workforce. In 2006, OJCR again violated the Policy, owing its workforce approximately \$143,000. Restitution has been arranged to pay workers back wages in full.

Accordingly, City Council should disqualify OJCR from working on any City contracts for a period of two years, followed by a probationary period of one year.

#### RECOMMENDATIONS

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**It is recommended by the Manager, Fair Wage Office that:**

1. City Council disqualify OJCR Construction Ltd. from conducting business with the City for a period of two (2) years inclusive for violating the Fair Wage Policy in two separate instances in 2004 and 2006;
2. the disqualification period start on the day of Council’s decision and run for two years inclusive;

3. after the disqualification period is over OJCR Construction Ltd. be placed on probation for one (1) year;
4. the disqualification of OJCR Construction Ltd. apply to any related companies owned, operated or controlled by the same or related company officials for a period of two years inclusive from Council's adoption of their recommendation.
5. the Manager, Fair Wage Office add OJCR Construction Ltd. to the disqualified firm list on the City's website; and
6. City Council authorize and direct the appropriate City officials to take the necessary action(s) to implement these recommendations.

## **FINANCIAL IMPACT**

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There are no financial implications resulting from this report.

## **DECISION HISTORY**

At its meeting on June 24, 25 and 26, 2003, City Council adopted Administration Committee Report No. 5, Clause No. 2, clarifying the role of the Fair Wage Office and its responsibility for ensuring compliance with the Fair Wage Policy.

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030624/adm5rpt/cl002.pdf>

Chapter 67, Schedule A of the Municipal Code requires the Manager, Fair Wage Office to report to the General Government Committee concerning the Fair Wage Policy administration and application including enforcement activities.

[http://www.toronto.ca/legdocs/municode/1184\\_067\\_a.pdf](http://www.toronto.ca/legdocs/municode/1184_067_a.pdf)

## **ISSUE BACKGROUND**

The Policy requires contractors and any sub-contractors on City contracts to pay a pre-determined wage to their non-unionized workers. The pre-determined wages are set out in Schedules attached to the Policy, approved by Council and posted on the City's website. The Schedules outline trade classifications, the minimum hourly wages, hours of work and benefits paid to various classes of labourers, truck drivers and machine operators.

Before the award of any City contract, the three lowest bidders on the contract are asked to sign a declaration indicating that the bidder has reviewed, understands and will comply with the Policy. If a low bidder is found to be in violation of the Policy and has not paid restitution to its workers, the Manager has the discretion to recommend to the Purchasing & Materials Management Division that the contract be awarded to the next lowest bidder.

The Policy requires the Manager to report to the General Government Committee on companies that have violated the Policy twice within a three year period and recommend either to disqualify the firm or not.

## **COMMENTS**

OJCR Construction Ltd. (“OJCR”) repairs water services, mains and sewer connections. The firm has worked on City contracts for a number of years. OJCR, before being awarded any contract, has signed the Fair Wage Office’s declaration form, indicating that it understands and will comply with the Policy.

### **OJCR’s History with the Fair Wage Policy prior to June 30, 2003**

Before June 30, 2003 the Policy did not contain a disqualification provision. In early 2003, OJCR violated the Policy. The Fair Wage Office ordered OJCR to pay \$55,064.50 in back wages to its workers and an administrative fee of \$5,506.45 to the Fair Wage Office. As this violation happened before June 30, 2003, the Fair Wage Office did not consider this violation to count towards disqualification.

### **OJCR’s History with the Fair Wage Policy in 2004**

In 2004 the Fair Wage Office received complaints that OJCR was not following the Policy on City contract 04D3-319WS and 04D3 & 4-325WS and an investigation of OJCR’s payroll records to determine compliance was conducted. The investigation revealed that OJCR failed to pay its workers the stipulated hourly wage rates and fringe benefit as set out on the Sewer and Watermain Construction Schedule in effect at that time.

OJCR objected to the findings and refused to make any additional payments to its workers in accordance with the Sewer and Watermain Construction Schedule, but did agree to use the Utility Work Schedule to determine the wages. Accordingly, OJCR agreed to pay \$25,287.94 in back wages to 13 workers and an administrative fee of \$3,793.19 to the Fair Wage Office. The Fair Wage Office made it clear to OJCR that this occurrence was a first violation under the Policy’s disqualification provision.

### **OJCR’s History with the Fair Wage Policy in 2006**

In 2006 the Fair Wage Office received further complaints that OJCR was not following the Policy on City contracts 06TE/EY-305WS and 06NY/SC-306WS. A Fair Wage Office audit of OJCR’s payroll for the period of January to July 31, 2006 determined that OJCR owed approximately \$74,000 to its workers, based on the Sewer and Watermain Construction Schedule. That amount was held back on the contract. OJCR was informed that this was the second violation of the Fair Wage Policy in a three year period.

In October 2006, OJCR was the lowest bidder on three tendered City contracts. Since OJCR had not paid restitution for the second violation to its workers, the Manager recommended the next lowest bidder on those contracts to the Purchasing & Materials Management Division.

Prior to that recommendation, OJCR entered into negotiations with the Fair Wage Office to determine the appropriate restitution for the second violation. OJCR agreed to pay the back wages to its workers based on the Sewer and Watermain Construction Schedule. The Fair Wage Office conducted a second audit of OJCR's payroll for the period of August 1 to November 30, 2006 and found that only three of 43 workers had been paid in accordance with the Policy. In total (both audits combined) \$143,374.52 was owed to the workers with an administration fee of \$21,506.18 payable to the Fair Wage Office. OJCR agreed and made restitution. Therefore, the Manager did not have the ability to recommend any other bidder for the tendered contracts. OJCR was awarded the three contracts on November 29, 2006.

OJCR has been made aware of the Fair Wage Policy and the Fair Wage Schedules on a number of different occasions. Before being awarded any City contract, OJCR signed a declaration agreeing to abide by the Fair Wage Policy. Despite this, OJCR has continually violated the Policy.

The purpose of the Policy is to prohibit the City doing business with contractors who discriminate against its workers. OJCR has demonstrated substantial evidence of discriminating against its workers, despite its assurance that it would abide by the Policy.

Consequently, the Manager recommends that Council disqualify OJCR from working on City contracts for two years, followed by one year probation.

This report has been prepared in consultation with the City Solicitor.

## **CONTACT**

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## **SIGNATURE**

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