



## STAFF REPORT ACTION REQUIRED

### Permanent Suspension of Entities Owned, Directed or Controlled by Sebastian Corbo from being Awarded or Granted City Contracts

<b>Date:</b>	October 29, 2012
<b>To:</b>	Government Management Committee
<b>From:</b>	Acting Treasurer
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2012\Internal Services\PMMD\gm12014pmmd (AFS #16510)

#### SUMMARY

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City Council considered GM10.15 on February 6 and 7, 2012 and directed staff to suspend IPAC Paving Inc., Sebastian Corbo, as an individual, and any entities owned, directed or controlled by Sebastian Corbo from being awarded or granted any future City contracts until the courts had rendered a final decision regarding the charges laid against Sebastian Corbo with respect to several Criminal Code offences, and all appeals had been exhausted or until all of the charges against Sebastian Corbo had been withdrawn.

The purpose of this report is to inform City Council of the final decision regarding the charges against Sebastian Corbo and to recommend that the suspension continue permanently.

This report also informs City Council of a reserve right clause that Purchasing and Materials Management Division will add to all of the City's future procurement call documents reserving the right to Council not to award to the lowest bidder or highest scoring proponent where making such an award would undermine the business reputation of the City or undermine the public's confidence in the integrity of the City's procurement process as a result of the City having knowledge or information of criminal or quasi-criminal activity (including, without limitation, knowledge or information in relation to existing criminal or quasi-criminal charges or convictions) regarding that bidder/proponent.

## **RECOMMENDATIONS**

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### **The Acting Treasurer recommends that:**

1. City Council continue to suspend, on a permanent basis, IPAC Paving Inc., Sebastian Corbo, as an individual, and any entity in any way owned, directed or controlled by Sebastian Corbo, as determined by the Director, Purchasing and Materials Management in consultation with the City Solicitor, including Road Mill Construction Inc., from being awarded or granted any future City contracts.

### **Financial Impact**

There are no financial impacts from the recommendation in this report.

The Acting Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

At its meeting on February 6 and 7, 2012, City Council suspended IPAC Paving Inc., Sebastian Corbo, as an individual, and any entity in any way owned, directed or controlled by Sebastian Corbo, including Road Mill Construction Inc., from being awarded or granted any future City contracts until the courts had rendered a final decision regarding the charges laid against Sebastian Corbo with respect to several Criminal Code offences, and all appeals had been exhausted or until all of the charges against Sebastian Corbo had been withdrawn.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.GM10.15>

## **ISSUE BACKGROUND**

As discussed in GM10.15, in 2009 the Toronto Transit Commission (the “TTC”) began an investigation into a complaint of fraud between a TTC employee and Sebastian Corbo. It was alleged that between June, 2009 and July, 2010, Sebastian Corbo billed the TTC \$198,619.92 for work valued at \$54,087.75, resulting in a monetary loss due to fraud in the amount of \$149,020.62 according to the Toronto Police Services News Release dated June 15, 2011 attached to GM10.15. It was further alleged that the TTC project manager, his wife and son created bank accounts and received funds directly from IPAC Paving Inc., under fraudulent companies.

In June, 2011, Sebastian Corbo, the TTC employee, the TTC employee's wife and son were arrested and charged with several Criminal Code offences including fraud over \$5,000, conspiracy to commit an indictable offence and paying and receiving a secret commission.

As indicated in GM10.15, on November 29, 2011, the TTC employee pleaded guilty and was convicted of accepting a secret commission while acting as an agent for the TTC. The TTC employee received a conditional sentence and was given a \$30,000 restitution order. All charges were withdrawn against the TTC employee's wife and son.

On July 12, 2012, Sebastian Corbo plead guilty and was convicted of paying a secret commission and has been sentenced to a four month conditional sentence, one year probation and was ordered to pay \$30,000 restitution to the TTC within 12 months. The remaining charges against Sebastian Corbo were withdrawn as part of the plea arrangement.

At its meeting held on January 31, 2012, prior to the final disposition of Sebastian Corbo's criminal charges, the TTC permanently prohibited the awarding of any TTC contract to Sebastian Corbo and IPAC Paving Inc., based on its investigation into the matter. A copy of the public portion of the TTC report is available online at:

[http://www.ttc.ca/About\\_the\\_TTC/Commission\\_reports\\_and\\_information/Commission\\_meetings/2012/January\\_31/Reports/Prohibition\\_on\\_Biddi.pdf](http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2012/January_31/Reports/Prohibition_on_Biddi.pdf)

The TTC has also settled its civil action against Sebastian Corbo and the TTC employee.

## **COMMENTS**

### **Recommendation for Permanent Suspension**

The City of Toronto's Charter of Expectations for its employees sets out that City employees are to act with integrity, to avoid conflicts of interest and to report instances of fraud. Further, pursuant to Chapter 195 of the City of Toronto Municipal Code, the City's Purchasing staff are required to follow additional ethical guidelines as set out by the National Institute of Governmental Purchasing Inc. Accepting secret commissions or bribes from any member of the public, including vendors, would clearly be a violation of the expectations that the City holds for its employees.

The Bellamy Inquiry report indicates that, "[t]he first rule of procurement is that the taxpayer's money should be spent only in the public interest."<sup>1</sup> Further, companies who bid on City work need to understand and respect that when dealing with procurement calls issued by the City, the City is the trustee of public money. To that end, it is important for the City to send a clear message to denounce and deter any attempts to bribe City employees in order to receive favourable treatment.

With these principles in mind, staff believe that in this case given the seriousness of the criminal activity, as indicated in the investigation conducted by the TTC and the Toronto Police Services and the fact that Sebastian Corbo has plead guilty to paying a secret

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<sup>1</sup> Madam Justice Denise E. Bellamy, *Toronto Computer Leasing Inquiry; Toronto External Contracts Inquiry: Good Government*, vol. 2 (Toronto: City of Toronto, 2005) at 97.

commission, awarding any contract in the future to IPAC Paving, Sebastian Corbo, or to any company which Sebastian Corbo owns, directs or otherwise controls, would be an unsound business decision and would undermine the public's confidence in the integrity of the City's procurement processes.

As a result, staff recommends that City Council continue to suspend, on a permanent basis, IPAC Paving Inc., Sebastian Corbo, as an individual, and any entity in any way owned, directed or controlled by Sebastian Corbo, as determined by the Director, Purchasing and Materials Management in consultation with the City Solicitor, including Road Mill Construction Inc., from being awarded or granted any future City contracts. This is consistent with the approach taken by the TTC to permanently suspend Sebastian Corbo from being awarded future TTC contracts.

By adopting this recommendation, City Council will be sending a clear message to any vendor who attempts to try to manipulate the procurement process through criminal activity such as bribery or offering to pay a secret commission that the City will take the appropriate steps to ensure that the City does not do business with those types of vendors in the future.

#### **New Reserve Right related to the City's knowledge or information of Quasi-Criminal/Criminal Activity of a Bidder/Proponent**

In light of the criminal activity leading to charges being laid against Sebastian Corbo and the TTC employee, City staff reviewed the City's procurement documents to ensure that the City's interests and the public's interest generally are being appropriately protected.

A general principle in procurement law is that the contract resulting from a call should be awarded to the bidder with the lowest priced bid or to the highest scoring proponent. However, all City procurement documents contain privilege clauses/reserve rights to inform bidders/proponents ("Bidders") that, in some circumstances, the City may choose to not award to the lowest priced bidder or highest scoring proponent.

Whenever a purchasing entity decides to rely on a reserve right to bypass the winning bid/proposal, that decision must have a business rationale as it relates to the procurement, and the exercise of such a reserve right must be done judiciously and fairly. Reserve rights are not unfettered rights, and are subject to judicial oversight; further, the courts place significant restrictions on the use of reserve rights. Therefore, in situations where the City has decided to utilize a reserve right to bypass a winning bid, the City must be ready to defend that decision in court. In practice, when staff are of the opinion that one of the City's reserve rights should be utilized, a report is written to Council setting out the reasons why staff believe the lowest priced bid or highest scoring proposal should be bypassed in favour of the next response. Since the use of a reserve right may lead to litigation with the bypassed Bidder, it is appropriate that Council make the decision.

For example, the City's procurement documents contain the following reserve rights:

- Lowest quoted price may not necessarily be accepted by the City; and
- In determining the best value to the City, consideration may be given to past performance of any Bidder.

To help clarify and further protect the City's interests in the procurement process, Purchasing and Materials Management Division (PMMD) will add a reserve right to all City procurement documents that will inform Bidders that where the Director of PMMD, in consultation with the appropriate staff, including Legal Services, is of the view that awarding to the Bidder would undermine the business reputation of the City, or undermine the public's confidence in the integrity of the City's procurement process as a result of the City having knowledge or information of criminal or quasi-criminal activity (including, without limitation, knowledge or information in relation to existing criminal or quasi-criminal charges or convictions) in relation to the Bidder, a staff report will be written to Council setting out the reasons why staff are recommending to Council to bypass the lowest priced bid or highest scoring proposal in favour of the next response.

Whether the City will bypass a Bidder will be determined on a case by case basis. Further, whether the City decides to also suspend that Bidder for a period of time or permanently will also be determined on a case by case basis.

Legal Services has been consulted and concurs with the recommendation in this report.

## **CONTACT**

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## **SIGNATURE**

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Mike St. Amant  
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