



STAFF REPORT ACTION REQUIRED

Serve Construction Limited – Disqualification from City Contracts, Fair Wage Policy Non-Compliance

Date:	May 28, 2015
To:	Government Management Committee
From:	Manager, Fair Wage Office
Wards:	All
Reference Number:	

SUMMARY

As directed by Council, Toronto Municipal Code, Chapter 67, instructs the Manager, Fair Wage Office to take disqualification action when a contractor or any sub-contractor is found to be in non-compliance with the provisions of the Fair Wage Policy in two separate instances over a period of three years.

This report recommends disqualification of Serve Construction Limited or related entities, from conducting business with the City for a period to two years for failure to pay its workers unpaid wages and underreporting workers hours on several City contracts over the past three years.

RECOMMENDATIONS

Manager, Fair Wage Office recommends that:

1. City Council, as a result of Serve Construction Limited having been found to be in non-compliance with the provisions of the Fair Wage Policy in two separate instances over a period of three years inclusive, direct that Serve Construction Limited be disqualified from conducting business on City projects for a period of two years inclusive.
2. City Council declare that any legal entity that is related to or has the same operating mind as Serve Construction Limited (including successors or assigns) be ineligible to bid on or be awarded City of Toronto construction tender calls as a General Contractor or Sub-contractor, for the two year disqualification period, from the date of the decision of Council.

3. City Council direct that once the disqualification period is over, Serve Construction Limited be placed on probation for the next contract year.
4. City Council direct that Serve Construction Limited status as a disqualified firm be published on the City's Web Site.

Financial Impact

There are no financial implications resulting from this report.

DECISION HISTORY

At its meeting on June 24, 25 and 26, 2003, City Council approved Clause 2 contained in report No. 5 of the Administration Committee, 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>

Municipal Code, Fair Wage Policy Chapter 67, A7-Contractor or sub-contractors responsibilities, A-9 – Penalty Provisions & A10 – Disqualification Provisions, http://www.toronto.ca/legdocs/municode/1184_067_A.pdf

ISSUE BACKGROUND

The Fair Wage Policy requires contractors and any sub-contractors engaged on City contracts to pay workers a rate not less than that set out in the Schedule of Wage Rates approved by City Council, or where a contractor is in contractual relationship with a recognized union the applicable rate of wages set out in the collective agreement.

Serve Construction Limited "Serve Construction" has performed the installation of permanent repairs to utility cuts and associated work for the City of Toronto. The following projects were awarded to the company over past three years:

2014 – Etobicoke York District Tender No. 40-2014 Contract No. 14EY-103TU
Etobicoke York District Tender No. 38-2014 Contract No. 14EY-101TU

2013 – Etobicoke York District Tender No.64-2013 Contract No. 13EY-103TU
Etobicoke York District Tender No.62-2013 Contract No. 13EY-101TU

Construction work under these contracts involved activities for permanent restoration of utility cuts and repairs to roads, sidewalks, curbs, driveways & sidewalk accessibility ramps and boulevards.

Performing these functions, Serve Construction is required to comply with the City of Toronto Fair Wage Policy and pay its workers the rate of wages as specified in the 2013/2016 Road Building Schedule.

Prior to the award of these contracts, Serve Construction indicated that it had reviewed and understood the City's Fair Wage Policy requirements and agreed to comply fully on all of the City projects.

COMMENTS

The Fair Wage Policy is designed to ensure that contractors awarded contracts with the City of Toronto pay their workers "fair wages" for work performed. Payroll investigations with respect to allegations of non-compliance by Serve Construction were undertaken by the Fair Wage Office. Based on the payroll documentation provided, non-compliance was noted in two separate instances as follows:

2013 Projects

Serve Construction employed a crew of workers performing the removal and replacement of concrete, stone, existing and new interlock bricks, unit pavers, precast slabs, granite sets, flagstone, grind/compact and lay asphalt.

Responsibility of contractors under contract with the City requires them to pay or cause to be paid weekly or biweekly to every worker employed in the execution of the contract subject to the City's 2003/2004 Road Building Schedule.

Serve Construction was found in violation of the Fair Wage Policy and ordered to pay back 6 of the 7 crew workers their owed wages and administrative penalties that amounted to \$5,903.25. The contractor was notified of their first violation and advised that any additional violation would be tracked in the event of disqualification from City contracts.

2014 Projects

In 2014, the Fair Wage Office fielded complaints from at least one worker employed by Serve Construction that the number of hours worked did not match the hours paid on their pay statements.

As part of Serve Construction's contract with the City, the company was required to pay its workers the applicable wage rate as set out in the City's 2013/2016 Road Building schedule that outlines the trade classifications the minimum hourly wages, benefits and hours of work.

The Fair Wage Office investigation uncovered an apparent violation of the Fair Wage Policy where Serve Construction seems to have failed to pay at least one of its workers fair wages and appears to have submitted falsified payroll records. On its face, this practice seems to be designed to not accurately report payroll documentation in what appears to be an attempt to conceal the practice of under-reporting workers' hours. By apparently under-reporting workers' hours, the company was in contravention of paying workers their full hours worked that Serve Construction is contractually obligated to do.

Serve Construction has failed to cooperate with the City in disclosing fully original/certified payroll documentation for all of their workers for all pay periods in order to allow the Fair Wage Office to determine the full extent of non-compliance. This violation constitutes a second instance of non-compliance within a three year period and as set out in Municipal Code, Chapter 67, Fair Wage the Manager, Fair Wage Office must report and is recommending Serve Construction, be disqualified from City contracts.

Serve Construction is currently the lowest bidding contractor on two "permanent repairs to utility cuts on collectors and local roads" tender calls. Given that Serve Construction failed to comply with requirements on previous City contracts, and as set out in Municipal Code Chapter 67, Section A9-B, it is recommended that the next lowest qualified bidder be awarded the 2015 contract(s).

CONCLUSION

The City of Toronto takes non-payment of workers' wages and enforcement of the Fair Wage Policy seriously. Serve Construction has been found to be in non-compliance with the provisions of the fair Wage Policy in two separate instances over a three year period. It is recommended that Serve Construction be disqualified from City contracts for a period of two years.

Given the lack of cooperation in producing original certified payroll documentation on recent contracts as summarized in this report, the Fair Wage Office, in consultation with Transportation Services and Legal Services, is recommending Serve Construction be disqualified from City of Toronto contracts for a two year period.

By adopting the recommendation in this report, City Council will clearly communicate to Serve Construction and the wider construction industry that unpaid wages for work performed will not be tolerated on City of Toronto contracts.

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SIGNATURE

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