



## STAFF REPORT ACTION REQUIRED

### Fair Wage Policy Compliance Verification - Aloia Brothers Concrete Contractors Ltd.

<b>Date:</b>	October 30, 2017
<b>To:</b>	Government Management Committee
<b>From:</b>	Manager, Fair Wage Office
<b>Wards:</b>	All
<b>Reference Number:</b>	TBA

### SUMMARY

The purpose of this report is to seek direction, from Council with respect to continuing to withhold contract holdback from a contractor or subcontractor when payroll records are delinquent, inaccurate and cannot be verified.

The Fair Wage by-law allows the Manager, Fair Wage Office, to direct the operating division to hold back funds from the contractor's progress draw or holdback when contractors fail to furnish and disclose certified pay sheets, lists, records, time sheets, open at all times for examination of wages of workers in connection with City contracts.

A case has arisen where true payroll documentation cannot be verified, the contractor has been determined to be non-compliant with disclosure requirements and hold back of funds has been exercised by the client division on instruction from the Manager, Fair Wage Office.

These funds which are on hold are without by-law direction to address, in these circumstances, how long and what happens to these funds in order to conclude the compliance investigation.

### RECOMMENDATIONS

**The Manager, Fair Wage Office, recommends that:**

1. City Council direct the Manager, Fair Wage Office to continue to retain the amount of \$150,000 in withholding funds for one further year, to allow Aloia Brothers Concrete Contractors Ltd., the Contractor, to provide the requisite information;

OR

2. City Council direct the Manager, Fair Wage Office to advise Aloia Brothers Concrete Contractors Ltd., the Contractor, that the withholding funds of \$150,000 will be permanently retained by the City and directed to the compliance-related operations of the Fair Wage Office;

OR

3. City Council direct the Manager, Fair Wage Office to advise Aloia Brothers Concrete Contractors Ltd., the Contractor, that the withholding funds of \$150,000 will be released subject to an additional administrative fee of 15 per cent of the full value of the withheld funds;

AND/OR

4. City Council determine that, since Aloia Brothers Concrete Contractors Ltd., the Contractor, has failed to comply with full and transparent payroll disclosure, non-compliance result in the Contractor being disqualified from conducting business with the City for a period of two years and direct that any legal entity that is related to or has the same operating mind (including successors or assigns) as Aloia Brothers Concrete Contractors Ltd. be ineligible to bid on or be awarded City of Toronto contracts, acting as a General Contractor or Sub-contractor, for a two year period, from the date of the decision of Council and that the Disqualified firm be published on the City's web site.

AND

5. City Council authorize the Manager, Fair Wage Office, to pay the subcontractor Ferpac Paving Inc. the amount of \$13,771.83 directly from the funds withheld from Aloia Brothers Concrete Contractors Ltd., the Contractor, as Ferpac Paving Inc., one of the subcontractors on this Contract, has provided the Fair Wage Office with verifiable records and has confirmed that they have not received full payment from Aloia Brothers Concrete Contractors Ltd. for work completed.

## **FINANCIAL IMPACT**

There are no financial implications resulting from the adoption of this report.

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

## **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](http://www.toronto.ca/legdocs/municode/1184_067_A.pdf)

## **ISSUES BACKGROUND**

Toronto Municipal Code Chapter 67, Fair Wage by-law, requires contractors engaged on City contracts to pay their workers the prescribed wages rates as part of their contract with the City of Toronto. The by-law obligates contractors to keep accurate payroll records of trade workers on all City projects and submit copies of certified payroll for review upon request.

Payroll investigations with respect to allegations of non-compliance were undertaken by the Fair Wage Office involving the following contractor:

### **Contract No. 14NY-101TU - Aloia Brothers Concrete Contractors Ltd. "Aloia"**

Aloia being the lowest successful bidder was awarded the contract to perform all necessary activities for the permanent restoration of utility cuts and maintenance repairs of roads, sidewalks, curbs, driveways and sidewalk accessibility ramps and boulevards.

Performing these functions Aloia and all of Aloia's sub-contractors are required to comply with the City of Toronto Fair Wage Policy and pay its workers the rate of wages under the Road Building Schedule specified in the contract.

Prior to the award of the contract, Aloia indicated that it had reviewed and understood the City's fair wage requirements and agreed to comply fully.

An Investigation was undertaken requesting Aloia to provide payroll records for the verification of proper payments of fair wages to the different classification of workers engaged on the contract. This required full disclosure of certified payrolls records for review and verification of hourly wages paid, proper trade classification, daily time cards, checking for overtime, weekend, holiday or shift work, reviewing fringe benefit contributions etc. In addition, verification of sub-contractors on the project was also undertaken.

Due to limited payroll documentation disclosed by Aloia, the Fair Wage Office obtained Transportation Services daily inspection logs in order to verify head count of workers on the job site on any given day. This is in line with the Auditor General's recommendations adopted by Council for City Divisions to work collaboratively with the Fair Wage Office to provide any necessary contract related records required to strengthen the payroll reviews to ensure Fair Wage compliance.

Aloia simply could not account for City inspector's logs showing significantly more workers than disclosed by Aloia's payroll, even when taking into consideration sub-contractors engaged on the job site. Aloia was cited for their first violation under the by-law and an amount of \$150,000.00 was withheld from their contract until full accounting is determined. Numerous attempts were made with Aloia and Transportation Services to reconcile the variance. However, no documentation was presented to come to a reasonable conclusion in finalizing this investigation and the \$150,000.00 hold back remains in place.

Aloia had four subcontractors working on this contract: Ferpac Paving Inc., Aquatech Solutions Inc., Old Thistle town Contractors Construction Ltd. and Nationwide Paving Ltd. Several of these subcontractors are unionized, so the Fair Wage investigation was not necessary. Of the remaining subcontractors, only Ferpac has provided the Fair Wage Office with verifiable records for work performed by its workers. Ferpac has advised that they have not been paid their full remuneration

from Aloia. One of the recommendations in this report is that the Manager, Fair Wage Office be authorized to pay directly to Ferpac the funds owing to Ferpac by Aloia.

## **COMMENTS**

Given that the by-law does not provide direction in this circumstance the Manager, Fair Wage Office requires Council's direction on how to address this situation with respect to Aloia Brothers to ensure transparency if an employer fails to account for each workers engaged on the project.

At its Meeting on November 8, 2016, City Council adopted Audit Committee Meeting 7, Strengthening Enforcement of the Fair Wage Policy,  
<http://www.toronto.ca/legdocs/mmis/2016/au/bgrd/backgroundfile-97448.pdf>

This report contains a number of recommendations which are set out below to guide Council in its instruction to the Manager, Fair Wage Office. It may be possible for a number of these recommendations to be adopted, in order to address this set of circumstances. Council should be aware that there are other instances which have arisen in the context of Fair Wage Investigations, which are currently under review. If those other situations are not resolved, the Manager, Fair Wage Office, will prepare and present subsequent reports for Council direction, pending a determination of whether there should be a specific by-law amendment to address non-verifiable records and ongoing lack of co-operation by Contractors or Subcontractors.

The options which the Manager, Fair Wage Office, is putting before Council are as follows:

Instruct the Manager, Fair Wage Office to do one or more of the following, subject to recommendations below:

1. a) Continue to hold these funds for one further year, to allow Aloia Brothers, the Contractor, to provide the requisite information; or,
- b) Advise the contractor that these funds will be permanently retained by the City and directed to the compliance-related operations of the Fair Wage Office; or,
- c) Make a determination that since Aloia Brothers, the Contractor, has failed to comply with full and transparent payroll disclosure, that the non-compliance will result in the Contractor being disqualified from conducting business with the City for a period of two years; or,
- d) Advise the Contractor that holdback will be released subject to an additional administrative fee of 15 per cent of the full value of the holdback.
- e) if Recommendation c) is adopted, then also direct that any legal entity that is related to or has the same operating mind (including successors or assigns) as Aloia Brothers be ineligible to bid on or be awarded city of Toronto contracts, acting as a General Contractor or Sub-contractor, for a two year period, from the date of the decision of Council and that the Disqualified firm be published on the City's web site

2. Despite the non-compliance of Aloia Brothers, one of their subcontractors on this Contract, Ferpac Paving Inc. has provided the Fair Wage Office with verifiable records and has confirmed that they have not received full payment from Aloia Brothers for work completed, so it is recommended that the Manager, Fair Wage Office be authorized to pay the subcontractor Ferpac Paving Inc. the amount of \$13,771.83 directly from the funds being held back, as noted in this report.

## **Conclusion**

The proposed options for Council direction to the Manager, Fair Wage Office, to ensure full and transparent payroll disclosure required of employers on City contracts have been developed in consultation with the Legal Services Division. In cases where the by-law is silent or doesn't provide sufficient direction, Council direction must be sought to assist in the enforcement of the fair wage policy to allow the Manager, Fair Wage Office to be more effective in obtaining true payroll documentation for analysis, ensuring accuracy of investigations. The Policy's principle intent is to enhance the reputation of the City for ethical, fair and transparent business dealing with vendors on City Contracts.

## **CONTACT**

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## **SIGNATURE**

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