



STAFF REPORT ACTION REQUIRED

PEGAH CONSTRUCTION LTD. – Disqualification from City Contracts, Fair Wage Policy Non-Compliance

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

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 Pegah Construction Ltd. or related entities from conducting business with the City for a period of two years for failure to pay its workers in accordance with fair wage policy requirements.

RECOMMENDATIONS

Manager, Fair Wage Office recommends that:

1. City Council, as a result of Pegah Construction Inc. 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 Pegah Construction Ltd. 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 Pegah Construction Ltd. (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, Pegah Construction Ltd. be placed on probation for the next contract year.
4. City Council direct that Pegah Construction Ltd. status as a disqualified firm be published on the City's Web Site.

Financial Impact

There are no financial implications resulting from 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

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.

Pegah Construction Ltd. ("Pegah") acts as a general contractor that undertakes different forms of building construction in the industrial, commercial, institutional ("I.C.I.") sector of the construction industry for the City of Toronto. The following projects were awarded to the company over the past year:

January 13, 2016 – For the new construction of an EMS Multi-Functional Station at 1300 Wilson Avenue, Toronto - Tender Call No. 256-2015, Contract No. 6042673 – Contract award amount - \$8,657,900 (later increased to \$9,369,515), excluding taxes.

July 5, 2016 – For the replacement of Garage Concrete Slab at Toronto Police Services Building located at 33 Division, 2 Dyas Road – Tender Call No.171-2016, Contract No. 6043511 – Contract award amount - \$407,394, excluding taxes.

Construction work under these contracts involved numerous labour activities involving concrete retaining walls, foundations landscape, retaining armour stone, storm, sanitary water systems, new concrete slab installation, place crushed stone drainage layer, trench and install drain, compaction and cement finish etc.

Performing these functions, Pegah 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 Industrial Commercial, Institutional fair wage schedule.

Prior to the award of these contracts, Pegah indicated that it had reviewed and understood the City's Fair Wage Policy requirements and agreed to comply fully on all 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 alleged non-compliance were undertaken by the Fair Wage Office. Based on the payroll documentation Pegah provided, non-compliance was noted in several separate instances as follows:

EMS Multi-Functional Station - 1300 Wilson Avenue

Pegah employed a crew of workers performing multiple labour functions in the new construction of the facility such as grading, asphalt laying, concrete, road, curb and sidewalk landscaping interlock repair and restoration.

Pegah was found in violation of the Fair Wage Policy based on the payroll review conducted on February 23, 2017 and ordered to pay four of its workers the back wages they were owed as well as administrative penalties in the total amount of \$24,774.10. 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. Pegah made restitution to its employees.

Additionally, Pegah's sub-contractor Azores Landscape & Renovating ("Azores") was found to be in non-compliance in the amount of \$16,412.93, including penalties, for failing to pay fair wages to its workers. Azores did not maintain a payroll records for its workers who were paid in cash and could not be tracked. According to Azores, their workers were from another country working on the City job site and are no longer in Canada. A notice of the violation was sent to Azores. No Fair Wage Confidential Declaration Form was filled out by Azores, since Pegah did not list Azores as one of its subcontractors.

The violations of Pegah, as contractor, and Azores, as subcontractor, identified above are considered Pegah's non-compliance. Pegah, as contractor, hiring Azores as subcontractor, is responsible for Azores' actions under the by-law. Subsection 67-A7A of Municipal Code, Chapter 67, Schedule A, Fair Wage Policy provides: "Contractors will be responsible for any violations or non-compliance issues arising from the engagement of any subcontractor on City work". Azores, as a subcontractor will independently have been notified of its first instance of non-compliance, with the warning that a second non-compliance in three years may result in a recommendation for disqualification from bidding on City contracts.

It should also be noted, Pegah violated the City's labour trade agreement involving the Iron Workers by employing a non-signatory company to install overhead garage doors, which resulted in a construction grievance against the City.

TPS 33 Division Replacement of Garage Concrete Slab – 2 Dyas Road

As part of Pegah'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 I.C.I. fair wage schedule that outlines the trade classifications, minimum hourly wages, benefits and hours of work.

Responsibility of Pegah 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. The company's ADP payroll records revealed non-compliance for the pay period(s) reviewed, October 2016 to April 2017 Pegah's violation amounted to \$16,653.56 involving three workers. This constitutes non-compliance where Pegah failed in fulfilling its responsibilities under the Fair Wage Policy. Once Pegah received Fair Wage formal notification to disclose payroll for the Dyas Road project on March 30, 2017, Pegah realized the variance and took it upon themselves to make restitution to the affected workers in mid-April 2017.

Despite Pegah making restitution to its employees with respect to both of these contracts, Pegah's two instances of non-compliance within a three year period as set out in Municipal Code, Chapter 67, Fair Wage, requires that the Manager, Fair Wage Office must report and is recommending Pegah be disqualified from City contracts.

CONCLUSION

The City of Toronto takes non-payment of workers' wages and enforcement of the Fair Wage Policy seriously. Given that Pegah has been found to be in non-compliance with the provisions of the Fair Wage Policy in two separate instances:

1. For the contract at the EMS Functional Station 1300 Wilson Avenue

(a) For workers employed by Pegah not having been paid the Fair Wage rates contrary to the Fair Wage By-law; and

(b) Pegah's sub-contractor Azores failed to pay its workers the Fair Wage rates as stipulated in Pegah's contract with the City. Non-compliance applies to both Pegah and Azores

2. For the contract at the TPS 33 Division 2 Dyas Road

For the workers employed by Pegah not having been paid the Fair Wage rates contrary to the Fair Wage By-law

The Manager, Fair Wage Office is recommending that Pegah be disqualified from City of Toronto contracts for a two year period. This disqualification would be binding on corporations or other business entities which might be successors or assigns related to Pegah, the recommendations address this possibility. Facilities Management and Legal Services have been involved in discussions with the Fair Wage Office with respect to the proposed Fair Wage Office recommendation.

Azores has been notified of its first instance of non-compliance.

By adopting the recommendation in this report, City Council will clearly communicate to Pegah 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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