



REPORT FOR ACTION

Ruffolo Contracting Ltd. – Disqualification from City Contracts, Fair Wage Policy Non-Compliance

Date: April 16, 2018
To: Government Management Committee
From: Manager, Fair Wage Office
Wards: All

SUMMARY

The City's Fair Wage Policy requires every contractor and sub-contractor to pay their employees in accordance with applicable Fair Wage Schedule(s) while engaged on City contracts.

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 the disqualification of Ruffolo Contracting Ltd. from conducting business with the City of Toronto contracts for a period of two years.

RECOMMENDATIONS

Manager, Fair Wage Office recommends that:

1. City Council, as a result of Ruffolo Contracting Ltd. 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 Ruffolo Contracting 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 Ruffolo Contracting Ltd. (including successors or assigns) be ineligible to bid on or be awarded City of Toronto tender calls as a General

Contractor or as a 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, Ruffolo Contracting Ltd. be placed on probation for the next contract year.
4. City Council direct that Ruffolo Contracting Ltd. status as a disqualified firm be published on the City's Web Site;

FINANCIAL IMPACT

There are no financial implications as a result of this report.

DECISION HISTORY

At its meeting on June 24, 25 and 26, 2003, City Council approved Clause No. 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. Municipal Code, Fair Wage Policy Chapter 67, Schedule A & B requires the Manager, Fair Wage Office to report annually to the Government Management Committee concerning the Fair Wage Policy administration and application including enforcement activities.

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.

Ruffolo Contracting Ltd. ("Ruffolo") is the prime contractor that was awarded two contracts to perform backhoe services for the repair of water main breaks, repair to water service, sewer/laterals, and repair and maintenance of catch basins, manholes, hydrants and other related maintenance jobs.

Ruffolo was awarded the following contracts:

December 16, 2015: RFQ No. 6038-15-7284, Contract No. 47019645 -Valid from 01/01/2016 to 12/31/2016, with potential 2017, 2018 & 2019 Option Year Periods. For all labour, materials, equipment necessary to provide Backhoe Services with Operator for planned, unplanned

and emergency work and repair activities within the North York and Etobicoke Districts for Toronto Water.

October 18, 2017: RFQ No. 6038-17-7256, Contract No. 47021091 – Valid from 11/16/2017 to 08/31/2018, with potential 2019-2022 Option Year periods. For all labour, materials, equipment necessary to provide Backhoe Services with Operator for planned, unplanned and emergency work and repair activities within the North York and Etobicoke Districts for Toronto Water.

Construction work under these contracts involved backhoe service on lands and road allowances within North York and Etobicoke Districts that required qualified backhoe operators to perform tasks such as excavating, digging, pavement cutting, grading, backfilling, finishing sloping, banking, loading, stockpiling etc.

Performing these functions, Ruffalo is required to comply with the City of Toronto Fair Wage Policy and pay its workers the rate of wages as specified in Fair Wage schedule.

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

COMMENTS

Enforcement of the Policy requires the Manager, Fair Wage Office to report and recommend to Government Management Committee that 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 three year period, the violating contractor be disqualified from conducting business with the City for a period of two (2) years.

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 Ruffolo provided, non-compliance was noted in several separate instances as follows:

Ruffolo Fair Wage Violation - 2016

Based on complaints received, our investigation revealed that Ruffolo failed to comply with the Fair Wage Policy and the related requirements as set out in their contract.

Besides not paying the prescribed wage rate for all workers, other irregular practices were detected. Ruffolo did not maintain payroll records for their backhoe operators. Contractors are required to furnish a certified copy of all paysheets, lists, records and books related to the work and keep the originals open at all times for examination.

In addition, workers were paid in cash. Payment in cash is permissible, however, full and proper accounting is required for disclosure to appropriate authorities.

The Fair Wage Office was able to obtain Toronto Water's Daily Contractor Work Cards and determined the names of workers performing the work, their daily work hours and interviewed the workers to understand the hourly wage Ruffolo paid them.

Ruffolo was found non-compliant and ordered to pay restitution to the 5 backhoe operator's owed back wages of \$91,859.17 with \$13,778.88 (15%) in administrative penalties totalling an amount of \$105,638.05.

This constitutes Ruffolo's first violation within a two year period.

This first violation was reported to Government Management Committee in September 2017 (Fair Wage Office – 2016 Annual Report, GMC Item GM22.5).

Outstanding back wage payment cheques were delivered by Ruffolo to the Fair Wage Office which were then distributed to the workers who signed an acknowledgement/release that served as a resolution to the 2016 investigation.

Ruffolo Fair Wage Violation – 2018

The Fair Wage Office fielded new complaints from backhoe operators with allegations that Ruffolo was not compensating workers for the full hours worked.

Prior to the contract award, Ruffolo declared wages to be paid to backhoe operators met the current all-inclusive hourly Fair Wage rate. No sub-contractors were identified to perform the work.

Ruffolo employs seven backhoe operators that are paid when each individual operator submits their hours worked and the amount to be paid by an invoice on a weekly basis. Ruffolo has described its employment arrangement with its backhoe operators as a Sub-Contractor or independent contracting relationship.

Four backhoe operators invoiced Ruffolo under their individual company names, however, no formal contract or agreement between the parties has been provided. No company name is associated with the other three backhoe operators who invoiced Ruffolo for hours worked to receive payment.

The provisions of the Fair Wage Policy apply equally to contractors and all sub-contractors engaged in work for the City of Toronto. It is understood that contractors cannot sub-contract work to any sub-contractor at a rate lower than called for in the Policy.

According to the workers, they simply operate the backhoe equipment. Ruffolo owns or leases the backhoes. Ruffolo assumes risks and profit, directs and controls how the work is to be performed, when, where and how. Ruffolo creates the work schedule and oversees the quality and results of the work and pays WSIB on behalf of the workers. Ruffolo's backhoe operators have no backhoe equipment, they do not compete, bid or quote nor do they have other projects they are directly responsible for.

Ruffolo's payment records and various backhoe operators invoices were obtained for review for the period of January 2017 to December 2017 in order to determine Fair Wage compliance. Company payment records and weekly time sheets generally show workers were paid for 6 hours of work typically performed from 7:00 a.m. to 1:00 p.m. at the appropriate Fair Wage rate.

Working in collaboration with Toronto Water, the Division which has oversight of the contracted work, Toronto Water District Operations Daily Contractors Work Cards were obtained which show daily backhoe work performed, on average eight hours per day, generally from 7:00 a.m. to 3:00 p.m.

Although Ruffolo's was cited for its first violation in 2016, the 2018 investigation required the Fair Wage Office to follow-up on complaints and interview numerous workers employed by Ruffolo engaged on the work sites. The backhoe operators indicated that they typically work from 7:00 a.m. to 3:00 p.m. however, they get paid for work hours from 7:00 a.m. to 1:00 p.m. at the prescribed Fair Wage Rate. Workers are underpaid on average two hours daily.

Whether backhoe operators function as Ruffolo's direct employees or as independent sub-contractors, it appears that Ruffolo failed to pay workers for all hours worked.

Ruffolo failed to pay the appropriate wage rates in accordance with the Fair Wage Schedule. The calculation for unpaid work hours involving the seven backhoe operators results in owed back wages of \$139,118.53, with \$20,867.78 (15%) in administrative penalties owed to the City, totalling an amount of \$159,986.21.

This constitutes Ruffolo's second violation within a three year period. The Fair Wage Office provided Ruffolo with notice of their second violation and enforcement action required under the Fair Wage By-Law.

Ruffolo has been found to be non-compliant with the Policy in two separate instances resulting from the 2016 and 2018 compliance investigations. In both cases, Ruffolo tried to avoid its obligations associated with paying backhoe operators as per the terms and conditions of Ruffolo's contract with the City.

Ruffolo failed to pay workers Fair Wage rates for unreported work hours, and failed to provide true and accurate payroll records.

Holdback provisions of the Policy are exercised through Toronto Water with respect to the 2018 investigation in order to secure owed back wages to affected workers.

Given Ruffolo's instances of non-compliance within a three year period and as set out in Municipal Code, Chapter 67, the Manager, Fair Wage Office must report and is recommending Ruffolo be disqualified from City contracts for a two year period.

CONCLUSION

The City of Toronto takes non-payment of workers' wages and enforcement of the Fair Wage Policy seriously. Ruffolo 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 Ruffolo be disqualified from City contracts for a period of two years. This disqualification would be binding on corporations or other related Ruffolo business entities, including successors or assigns and the recommendations address this possibility.

This report was prepared in consultation with Toronto Water, Employee and Labour Relations and Legal Services.

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

CONTACT

Mark Piplica, Manager, Fair Wage Office,
Phone: (416) 338-5594, Fax: (416) 392-0801, Email: Mark.Piplica@toronto.ca

SIGNATURE

Mark Piplica
Manager, Fair Wage Office