
REPORT TO COUNCIL

**ON AN INQUIRY: LOBBYING IN RELATION TO A
PROCUREMENT PROCESS FOR BEVERAGE
SERVICES**

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BACKGROUND

On July 27, 2011, the City's Purchasing and Materials Management Division (PMMD) issued Request for Proposal No. 0604-11-0158 for the Operation of Beverage Services for Cold Drink Vending and Pouring Rights (the RFP). PMMD received three submissions in response to the RFP, including that of Coca-Cola Refreshments Canada (CCRC). At the closing date of August 25, 2011, PMMD reviewed CCRC's submission in accordance with the procurement process and found it did not satisfy the RFP's mandatory requirements. As a result, under the terms of the RFP, CCRC was disqualified from the evaluation process. PMMD informed CCRC of its disqualification by letter dated September 12, 2011.

On October 12, 2011, Government Management Committee considered the award of the RFP as agenda item GM8.8. A staff report recommended the award of the contract one of the two bidders that met the mandatory requirements, Pepsi Beverage Company (PBC). Government Management Committee adopted the staff report and recommendation. The matter went to City Council on October 24 and 25, 2011. Council adopted item GM8.8 with amendments. The Council decision awarded the contract to PBC.

THE INQUIRY

I received a report that at the Government Management Committee meeting on October 12, 2011, a member of Council appeared to have a copy of the September 12, 2011 letter to CCRC. I was informed that this letter was confidential, as it was part of the procurement process, and could only have come from CCRC.

Section 5 of the City's Procurement Processes Policy prohibits all communications during a procurement process except with an official point of contact named in a call. Section 5 states in part:

Vendors . . . are strictly prohibited from communicating, either verbally or in writing, with any other City staff, City official or member of City Council with respect to any call from the time of its issuance to the time of award.

Section 140-41A of the Lobbying By-law (Chapter 140, Toronto Municipal Code) provides:

Lobbyists shall not communicate in relation to a procurement process except as permitted by applicable procurement policies and procurement documents.

I commenced an inquiry to determine if CCRC had breached § 140-41A by providing the PMMD letter of September 12, 2011 (the letter) to a member of Council. Inquiries and Investigations Counsel contacted CCRC and the office of the member of Council for information about whether and how the letter may have been communicated to the member of Council.

Lobbying in relation to a Procurement Process for Beverage Services

On May 17, 2012, CCRC's Vice-President and General Counsel provided the following information by letter to the Office of the Lobbyist Registrar (OLR) Inquiries and Investigations Council:

- On or about October 12, 2011, a councillor called the President of CCRC to inquire about CCRC's involvement in the RFP. The call lasted less than five minutes, and the President provided the following information to the councillor:
 - CCRC had submitted a bid, but its bid had been rejected.
 - CCRC was disappointed that its bid had been rejected without it being invited to meet with or present to City staff regarding its proposal.
 - In response to the councillor's question regarding why the CCRC bid was rejected, the President responded that the details are found in the City's September 12, 2011 letter to CCRC. The councillor asked to be provided with a copy of the letter.
- CCRC informed the OLR that in response to the councillor's request, on October 12, 2011 CCRC staff emailed a copy of the September 12, 2011 PMMD letter to the councillor's office.
- CCRC submitted that the communication was initiated by the councillor. CCRC's communications with the councillor were limited to responding to the councillor's request for information. Section 140-5H provides that communication "in direct response to a written request from the public office holder" is exempt from the Lobbying By-law. "Although the Councillor's requests for information were communicated orally rather than in writing, the policy underlying this exemption . . . suggests that information provided to a public office holder in direct response to a request from that public office holder should not violate the City's lobbying regulations."
- CCRC also submitted that "CCRC had no reason to believe that responding to a request from a councillor who had the right to review RFP-related information would cause it to run afoul of Chapter 140."
- At the time of the communication, CCRC believed that the procurement process had ended. CCRC thought the September 12, 2011 letter ended the procurement process.

The member of Council confirmed the CCRC President's account of their telephone conversation on October 12, 2011. The member informed the OLR that his Executive Assistant had briefed him on his concerns regarding the RFP process arising from the Executive Assistant's own investigation into the matter. Following this, the member of Council contacted the President of CCRC.

FINDINGS

I have found that the decision of Council on October 24 and 25, 2011 adopting the staff recommendation to award the RFP to PBC constituted the “award” referred to in Section 5 of the City’s Procurement Processes Policy (the Policy). Under that Policy, all communications other than with the designated point of contact were strictly prohibited from the date the RFP was issued (July 17, 2011) until the award of the contract (October 24 and 25, 2011).

The RFP document made clear that all questions concerning the RFP must be directed in writing to the City employee(s) designated as “City Contacts” in the “Notice to Potential Proponents.” The PMMD letter of September 12, 2011 to CCRC also made clear that communications continued to be restricted to the City employee designated as a City Contact. Therefore, communications by CCRC about the RFP with a member of Council on October 12, 2011 were prohibited by City Policy, the RFP document and § 140-41A.

The Lobbying By-law § 140-5H exempts responses to written requests from public office holders. However, that exemption did not apply in this case, because there was no written request. Even if the request by the member of Council had been a written request, the response by CCRC to that request would have been prohibited by § 140-41A, because it was a communication in relation to a procurement process that was prohibited by the City’s Procurement Processes Policy and the RFP document.

ACTION TAKEN

Based upon CCRC’s submission, I have found that CCRC misunderstood the restrictions on communication about a procurement process imposed by the Lobbying By-law. CCRC also mistakenly believed that the procurement process was terminated by PMMD’s letter of September 12, 2011. The prohibited communication was initiated by the member of Council, not CCRC. CCRC and the member of Council fully co-operated with my inquiry.

In these circumstances, I have taken no further action, other than to report on this inquiry to City Council. A report to Council is necessary, as it concerns the integrity of a City procurement process. I have also advised CCRC that compliance with the Lobbying By-law is required of all lobbyists, and that breach of the Lobbying By-law is a provincial offence.

Respectfully submitted,

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Lobbyist Registrar