



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**Aurostar Inc. – Disqualification from City Contracts, Fair Wage Policy
Non-Compliance**

Date:	June 3, 2013
To:	Government Management Committee
From:	Manager, Fair Wage Office
Wards:	All
Reason for Confidential Information:	This report relates to security of the property of the City.
Reference Number:	

SUMMARY

The provisions of Toronto Municipal Code, Chapter 67, Fair Wage require the Manager, Fair Wage Office to report to Government Management Committee on proposed disqualification action when a contractor or any subcontractor 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 Aurostar Inc. ("Aurostar") from conducting business with the City for a period of two years for failure to pay its workers earned, unpaid wages when due, resulting in several instances of Fair Wage Policy non-compliance on City contracts over the past three years.

The attachment to this report should remain confidential as it relates to security of the property of the City.

RECOMMENDATIONS

The Manager, Fair Wage Office, in accordance with Section 67-A10 of Municipal Code, Chapter 67, Schedule A, Fair Wage Policy, recommends to the Government Management Committee that:

1. City Council, as a result of Aurostar Inc. having been found to be in non-compliance with the provisions of the Fair Wage Policy on at least two separate instances over a period of three years inclusive, grant authority for the Manager, Fair Wage Office, to disqualify Aurostar Inc. from conducting business with the City for a period of two years inclusive.
2. Despite the provisions of Municipal Code, Chapter 67, Fair Wage, Subsection 67-A10B, City Council direct that Aurostar Inc. be permitted to complete its current contracts with the City in accordance with their terms, and the two-year disqualification period under Subsection 67-A10B shall start from the day of the decision of Council with respect to any City work that Aurostar Inc. is not currently under contract to perform, and that:
 - a. Once the disqualification period is over, Aurostar Inc. be placed on probation for the next year;
 - b. Aurostar Inc.'s status as a disqualified firm be published on the City's Web Site.
3. City Council direct that the Manager, Fair Wage Office, continue to closely monitor Aurostar Inc.'s current City contracts until that work is completed in 2013.
4. City Council direct that the confidential information, contained in Confidential Attachment 1, remain confidential since it relates to security of the property of the City.

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>

See Municipal Code, Chapter 67, Fair Wage, Section 67-A7 for Contractor or subcontractors responsibilities and Section 67-A10 for Disqualification Provisions, http://www.toronto.ca/legdocs/municode/1184_067_A.pdf

ISSUE BACKGROUND

The Fair Wage Policy requires contractors and any subcontractors 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.

Aurostar Inc. ("Aurostar") has performed the installation of new residential water and sewer connections and associated work for the City of Toronto. The following projects were awarded to the company over the past five years:

2009 Etobicoke York-Tender No. 204-2009 Contract No. 09EY-27 WS

2010 Etobicoke York-Tender No. 36-2010 Contract No. 10EY-41WS
Etobicoke York-Tender No. 96-2010 Contract No. 10EY-42WS

2011 North York-Tender No. 45-2011 Contract No. 11NY-307WS

2012 North York-Tender No. 177-2012 Contract No. 12NY-315WS
East York/Toronto-Tender No. 175-2012 Contract No. 12TE-313WS

These contracts span several years and involve the installation of new water, storm and sanitary sewer service connections and disconnection of existing storm, sanitary and watermain connections. The work typically involves general excavation and shoring, working around any existing utilities within the road allowance, traffic control, CCTV inspections, temporary and permanent restoration work and final clean up of the site.

Performing these functions, Aurostar is required to comply with the City of Toronto Fair Wage Policy and pay its workers the rate of wages as specified in the 2003/04 Sewer and Watermain Schedule or the rates as specified in its collective agreement.

Prior to the award of these contracts, Aurostar 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 Aurostar were undertaken by the Fair Wage Office. Based on the payroll documentation provided, non-compliance determinations were made by the Fair Wage Office in two separate instances as follows:

2011 Non-Compliance

In 2011, the Fair Wage Office fielded complaints from workers employed by Aurostar that the number of hours worked did not match the hours paid on their pay statements. In addition, cash payments, non-payment of overtime and miscalculation of payroll burden were practices allegedly carried out by Aurostar.

As part of Aurostar's contract with the City, the company was required to pay its workers the applicable wage rate as set out in the City's 2003/04 Sewer and Watermain Schedule that outlines the trade classifications minimum hourly wages, benefits and hours of work.

The Fair Wage Office investigation uncovered apparent violations of the Fair Wage Policy in that Aurostar failed to pay its workers fair wages and allegedly submitted falsified payroll records. It is alleged that this practice appeared to be designed to not only provide inaccurate reporting of payroll documentation to the City, but to the company's own accountants as well, in what appeared to be an attempt to conceal the practice of under-reporting workers' hours. By under-reporting workers' hours, Aurostar appeared to be side-stepping its legal obligations to pay its workers for their total full hours worked.

As a result of this Fair Wage Office determination, Aurostar was ordered to pay 37 of its workers their owed wages and to pay the City its administrative penalties, which together amounted to \$258,750.00. The contractor was notified of its first violation and advised that any additional violation would be tracked with respect to a potential disqualification from City contracts under the provisions of the Fair Wage By-law. This Fair Wage violation was reported to Government Management Committee at its meeting of October 18, 2012,

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.GM17.9>

2013 Non-Compliance

Aurostar currently employs approximately twenty (20) workers on its two City contracts performing labour work for water and sewer connection and states that it subcontracts to five independent contractors who perform additional construction related tasks.

Numerous workers employed by Aurostar complained to the Fair Wage Office that they had not been paid over a four-week period while performing construction work on the two projects. One of the workers who complained wanted to remain anonymous, fearful of losing his job if the employer found out that he had complained to the City. Workers interviewed on the work site confirmed that they had either not been paid for over a four-week period or the pay cheque(s) they received from Aurostar had been returned by their banks NSF (not sufficient funds).

Pursuant to the Fair Wage Policy, Aurostar Inc. is required to, weekly or biweekly, pay or cause to be paid every worker employed in the execution of the contract at the rates set out in City's Fair Wage 2003/04 Sewer and Water Main Schedule or the schedule of wages set out in the company's collective agreement.

After confirmation that the workers were not paid their wages, under the authority of the By-law, the Fair Wage Office directed Toronto Water that approximately \$100,000.00 from Aurostar's contract be retained from Aurostar's progress draws under the contracts until it was confirmed that workers had received their pay. As a result of the City's intervention, the workers did receive their owed wages from Aurostar and the \$100,000.00 which had been retained by the City was released to Aurostar accordingly.

The violations under these two contracts constitute a second instance of significant Fair Wage non-compliance by Aurostar within a three-year period. As directed by Toronto Municipal Code, Chapter 67, Fair Wage, the Manager, Fair Wage Office must report such violations to the Government Management Committee.

Normally the disqualification provisions anticipate that the contractor is no longer performing work for the City when Council makes its disqualification decision. In this case, Aurostar is still performing work under two contracts with the City, which work should be completed in 2013. In order to ensure that this work continues, and despite the provisions of Subsection 67-A10B of the Fair Wage By-law, it is recommended that the disqualification apply only to future City work which Aurostar is not currently under contract to perform. The disqualification with respect to future City work would commence upon Council's decision.

It is also recommended that the Fair Wage Office closely monitor Aurostar's Fair Wage obligations until the conclusion of the work under the existing contracts in 2013.

CONCLUSION

The City of Toronto takes non-payment of workers' wages and enforcement of the Fair Wage Policy seriously. Aurostar has been found to be in non-compliance with the provisions of the Fair Wage Policy on two separate instances over a three-year period. It is recommended that Aurostar be disqualified from City contracts as set out in the Recommendations set out in this report.

This report was prepared in consultation with staff from the Toronto Water and Legal Services Divisions.

The confidential information contained in Confidential Attachment 1 must remain confidential since it relates to security of the property of the City.

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SIGNATURE

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ATTACHMENTS

Confidential Attachment 1: Aurostar Inc. Contract Performance