
REPORT TO COUNCIL
ON AN INQUIRY INTO LOBBYING ABOUT
REQUEST FOR PROPOSAL
No. 9118-13-5066

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LOBBYIST REGISTRAR

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SUMMARY

This is a report on the Lobbyist Registrar's inquiry into whether the Principal/CEO of Forge Media and Design (the respondent) contravened the Lobbying By-law, § 140-41A by writing to the City Manager and Mayor's Office about Request for Proposal 9118-13-5066 (the RFP) on October 30, 2013. The Lobbyist Registrar found that the respondent contravened § 140-41A by writing to the City Manager and Mayor's Office about the RFP after the RFP was issued and before its award.

The City's Procurement Processes Policy, section 5.0, restricts all communications about the RFP to the staff contact person named in a procurement document from the time the procurement is issued until its award. All other communications with public office holders about the procurement during this "blackout period" are prohibited.

The respondent complied with the restrictions on communications about the RFP after receiving advice from Purchasing and Materials Management Division (PMMD). The respondent co-operated with the inquiry by providing the information requested of him. This was his first contravention of the Lobbying By-law. As a result, no sanction is imposed.

The Lobbyist Registrar advises the respondent to comply with the restrictions on communications about procurements and with the Lobbying By-law; and requests that the Principal/CEO attend a training session provided by the Office of the Lobbyist Registrar (OLR).

The Lobbyist Registrar makes this Report to Council as this is a procurement matter and it is in the public interest to do so.

FINDINGS

1. Gregory Neely, Principal/CEO, Forge Media and Design, contravened the Lobbying By-law, § 140-41A when he communicated about Request for Proposal 9118-13-5066 (the RFP) to the City Manager and the Mayor's Office on October 30, 2013.

DISPOSITION

1. No sanction is imposed on Mr. Neely or on Forge Media and Design as a result of Mr. Neely's breach of § 140-41A. This is the first breach of the Lobbying By-law by Mr. Neely and by Forge Media and Design. Mr. Neely has complied with § 140-41A after being warned of the restrictions on communications about procurements.
2. Mr. Neely is advised not to communicate about procurement processes at the City except as permitted by applicable procurement policies and documents. He is advised to comply with the Lobbying By-law in all of his future communications with public office holders of the City.
3. Mr. Neely is requested to attend a training session on the Lobbying By-law provided by the Office of the Lobbyist Registrar (OLR).

INQUIRY PROCESS

This inquiry was initiated on November 1, 2013, when Purchasing and Materials Management Division (PMMD) sent my office copies of communications by Mr. Neely relating to Request for Proposal 9118-13-5066 (RFP). At our request, PMMD provided a copy of the RFP and related documents.

On December 20, 2013, OLR Inquiries and Investigations Counsel sent a Notice of Inquiry to Mr. Neely, setting out the allegations of lobbying in relation to the RFP when this was prohibited, requesting copies of all related documents and providing him an opportunity to respond. Inquiries and Investigations Counsel also spoke with Mr. Neely by telephone on that date. Mr. Neely provided copies of all communications he made during the procurement process and an explanation for his actions.

On February 12, 2014, the Registrar wrote to Mr. Neely informing him of the proposed findings, sanctions and facts upon which these were based, together with an opportunity to respond. The Registrar asked him to respond by March 10, 2014, if he wished to do so. To date, no response has been received.

THE FACTS

1. A Notice to Potential Proponents concerning Request for Proposal No. 9118-13-5066 (the RFP) was issued on October 9, 2013. The Notice indicated a closing deadline of October 29, 2013; and named a buyer in the Purchasing and Materials Management Division as the City Contact.
2. Forge Media and Design bid on the RFP.

3. On October 25, 2013, Addendum No. 1 to the RFP was issued, extending the closing deadline to October 31, 2013.
4. On October 30, 2013, Gregory Neely, Principal/CEO of Forge Media and Design wrote an email to the City Manager with a copy to the Mayor's Office, stating in part:

I would like to bring a serious issue to your attention. We are very concerned about a recent action of the Purchasing Department and wanted to make sure you were fully aware of our concern and position. Please see our correspondence below that outlines the situation.

If you could please look into this matter, that would be greatly appreciated. The upholding of transparency and fairness for City procurement is crucial, and anything that may compromise that, is obviously a very serious issue. . . .

5. Appended to Mr. Neely's email was a previous email, also dated October 30, 2103, by Mr. Neely to the City Contact for the RFP with a copy to the Chief Purchasing Official and the Mayor's Office, stating in part:

We would like to request what the reason was for this last minute extension to the submission deadline of the Parks Wayfinding Strategy RFP.

There has been no questions raised that would fundamentally change understanding of the requirements of the RFP and therefore no valid reason we can see for a last minute extension.

For our firm that pulled this document when it was released, and worked very hard to submit on time (which we did Yesterday) and then the deadline extended twice at the last minute, this decision is simply unfair.

We did notice that four new firms pulled the RFP documents only one day before the original submission deadline. Therefore we can only surmise that the extension was requested by them to accommodate their tardiness. However this decision penalizes us and the other firms that managed to work within the stated timelines. Therefore this leads us to believe that they are being favoured in some way.

It is unfortunate that a process that is supposed to be balanced and fair, with this decision, seems to not being carried out in a manner consistent with this intent.

In the interest of fairness and transparency, we urge you to reconsider this decision and respond to us with a prompt response and explanation for this action.

6. The Chief Purchasing Official responded to the complaint and also warned Mr. Neely that his email to the City Manager and Mayor's Office was in violation of the City's Procurement Processes Policy, the RFP and the City's Lobbying By-law. The Chief Purchasing Official wrote in part on October 31, 2013 to Mr. Neely:

The Lobbying By-law prohibits any communication with a member of City Council, a City Official or a City employee in relation to a procurement process, except as permitted by applicable procurement policies and procurement documents.

The RFP in Appendix A, Item 3 – Questions and City Contact clearly indicates that from and after the date of the issuance of an RFP until the time of any ensuing contract award, no communication with respect to this matter shall be made by any potential Proponent, or its representatives, including a third-party representative employed or retained by it (or any unpaid representatives acting on behalf of either), to discuss the RFP or its Proposal with any City staff, City officials or Council member(s), other than a communication with the "City Contact" as identified in the RFP. Proponents should be aware that communications in relation to this RFP outside of those permitted by the applicable procurement policies and this RFP document contravene the Lobbying By-law, an offence for which a person is liable to a maximum fine of \$25,000.00 on a first conviction and \$100,000.00 on each subsequent conviction.

7. The Chief Purchasing Official wrote to Mr. Neely again on October 31, 2013, explaining the reasons for extending the closing deadline.
8. The RFP was awarded on December 30, 2013 to a different bidder.
9. In response to this inquiry, Mr. Neely took the position that he was making a complaint and was not lobbying.
10. After sending the emails of October 30, 2013, Mr. Neely did not communicate about the RFP with the City Manager or Mayor's Office.

LAW AND POLICY

The Lobbying By-law, § 140-41A and C, provides:

- A. *Lobbyists shall not communicate in relation to a procurement process except as permitted by applicable procurement policies and procurement documents.*
...
- C. *In the event of a conflict or inconsistency between Subsection A and any other provision of this chapter, Subsection A prevails.*

The City's [Procurement Processes Policy](#)¹ section 5, states:

5.0 Official Point of Contact and Lobbying Prohibition

The City of Toronto is committed to the highest standards of integrity with respect to the purchase of goods and services and managing the processes by which goods and services are acquired.

An official point of contact shall be named in all calls to respond to all communications in respect of the call from the time of issuance, during the competitive process, and up to and including the announcement of award. The official point of contact shall be the Chief Purchasing Official or designate. Should it be necessary or desirable to have contact person to respond to technical issues that person shall also be named. All communications with respect to a call must be made to an official point of contact named in the call.

Vendors, or any representatives employed or retained by them, and any unpaid representatives acting on behalf of either, 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 until the time of award.

Any vendor found to be in breach of the policy will be subject to disqualification from the call or a future call or calls in the discretion of Council.

Section 11 of the Procurement Processes Policy states in part:

All vendor complaints with respect to a call, whether addressed to elected officials or the administrative staff, are to be referred to the Chief Purchasing Official for resolution.

The RFP, APPENDIX A, **3. City Contacts and Questions**, states in part:

*All contact and questions concerning this RFP should be directed in writing to the City employee(s) designated as "City Contact" in the **Notice to Potential Proponents**.*

...

From and after the date of this RFP until the time of any ensuing contract award, no communication with respect to this matter shall be made by any potential Proponent, or its representatives, including a third-party representative employed or retained by it (or any unpaid representatives acting on behalf of either), to promote its Proposal or oppose any competing Proposal, nor shall any potential Proponent, or its representatives, including a third party representative employed or retained by it (or any unpaid representatives acting on behalf of either), discuss the RFP or its Proposal with any City staff, City officials or Council member(s), other than a communication with the "City Contact" identified on page 1 on this RFP.

¹http://www1.toronto.ca/City%20Of%20Toronto/Purchasing%20and%20Materials%20Management/Selling%20to%20the%20City/Purchasing%20&%20Material%20Management/Policies-Legislation/policy_procurement_process.pdf

Proponents should be aware that communications in relation to this RFP outside of those permitted by the applicable procurement policies and this RFP document contravene the Lobbying By-law, an offence for which a person is liable to a maximum fine of \$25,000.00 on a first conviction and \$100,000.00 on each subsequent conviction. In addition, the City's Procurement Processes Policy provides that any Proponent found in breach of the policy may be subject to disqualification from the call or a future call or calls at the discretion of Council.

Notwithstanding anything to the contrary as set out in this document, the obligations as set out in the City of Toronto Municipal Code, Chapter 140 shall apply.

DISCUSSION

The respondent, Mr. Neely, emailed public office holders other than the designated staff contact about the RFP on October 30, 2013. By doing so, he contravened § 140-41A of the Lobbying By-law, which provides:

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

Mr. Neely, by virtue of his position as Principal/CEO of Forge Media and Design, a Proponent in the RFP, was an in-house lobbyist as this term is defined by § 140-20. The emails he sent to the City Manager and Mayor's Office were prohibited by the procurement document and the City's Procurement Processes Policy and constituted lobbying that was prohibited by § 140-41A.

The City's Procurement Processes Policy, section 5.0, and the RFP document restricted all communications about the RFP during the period from its issue until its award to a named contact person. The respondent sent the emails to public office holders who were not the named contact person after the RFP was issued and before the award of the RFP.

In response to this inquiry, Mr. Neely took the position that he was making a complaint and was not lobbying. Paragraph 140-5D exempts complaints about a "service or program" from the Lobbying By-law:

This chapter does not apply in respect of:

D. A communication that is restricted to compliments or complaints about a service or program.

I conclude that the exemption in § 140-5D for complaints about a "service or program" does not apply to communications about the RFP. The RFP was a "procurement process", not a "service or program". The respondent's emails were about a procurement process with specifically defined limits on communication. They were not "complaints about a service or program". The definition of "LOBBY", § 140-1, describes

“procurement of goods, services or construction” separately from a “program” or a “service”.

The restrictions on communications about a procurement process are contained in § 140-41A and C, which restrict all communications by lobbyists about a procurement process in a manner that is distinct from all other types of communications. The Lobbying By-law’s strict restrictions on communications about procurement processes ensure that these processes are conducted fairly and without improper influence. Preserving the integrity of the City’s procurement processes is a central purpose of these restrictions.

Further, I conclude that to the extent that there is a conflict or inconsistency between §§ 140-5D and 140-41A, § 140-41A prevails by virtue of § 140-41C, which provides:

In the event of a conflict or inconsistency between Subsection A and any other provision of this chapter, Subsection A prevails.

Mr. Neely was prohibited from communicating with any public office holder about the RFP except as permitted by the Procurement Processes Policy and the RFP. The combined effect of the policy and the RFP was to restrict all communications about the RFP to the single point of contact named in the RFP during the period from its issue until its award. Mr. Neely’s communications with the City Manager and the Mayor’s Office were prohibited by the policy and the RFP, and therefore contravened § 140-41A of the Lobbying By-law.

Mr. Neely complied with PMMD’s advice not to communicate with other public office holders about the RFP and co-operated fully with this inquiry. In these circumstances, no sanction is imposed. Mr. Neely is advised not to communicate about procurement processes at the City except as permitted by applicable procurement policies and documents. Mr. Neely is requested to attend a training session on the Lobbying By-law provided by the Office of the Lobbyist Registrar (OLR).

Respectfully submitted,

Linda L. Gehrke,
Lobbyist Registrar
City of Toronto