

Submissions on the *Construction Lien Act*

Date:	September 3, 2015
To:	Executive Committee
From:	City Manager City Solicitor
Wards:	All
Reference Number:	

SUMMARY

The purpose of this report is to seek authority from Council to make submissions on behalf of the City of Toronto regarding its position on issues related to the *Construction Lien Act*, which is now under review.

RECOMMENDATIONS

The City Manager and City Solicitor recommend that:

1. City Council authorize the Executive Director, Engineering & Construction Services, and the City Solicitor and/or his/her delegates, as appropriate, to make oral and/or written submissions to any groups or bodies, including the Ontario Legislature, to protect the interests of the City by expressing the City's position on issues related to the *Construction Lien Act* and its potential amendment.

Financial Impact

There is no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

On December 16, 2013, City Council authorized City staff to make submissions to the Ontario Legislature, including any standing committees or other bodies, to express the City's concerns with *Bill 69 – Prompt Payment Act, 2013* ("Bill 69") and any subsequent bill or regulations dealing with payment issues.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC45.7>

ISSUE BACKGROUND

In 2013, a private member's bill, *Bill 69 – Prompt Payment Act, 2013*, was introduced in the Legislature. The Bill proposed legislation sought to restrict the ability of parties to negotiate payment terms, imposing prescribed timelines for payment that would adversely affect owners of construction projects, including the City, if it was passed without amendment.

The Bill did not continue through the Legislature after submissions were made to the Standing Committee in 2014.

COMMENTS

In February, 2015, the Ministry of the Attorney General and the Ministry of Economic Development, Employment and Infrastructure launched an expert review of the *Construction Lien Act* (the "Review") and retained counsel to conduct it. The purpose of the Review is to identify substantive issues with the *Construction Lien Act* including an examination of payment issues, as raised by Bill 69.

The Review will involve extensive consultation with the construction industry, which will be documented in a report to the Attorney General and the Minister of Economic Development, Employment and Infrastructure, currently expected to be delivered by December 31, 2015. It is anticipated that the Review will lead to draft legislative amendments and ultimately a bill through the Legislature to enact changes.

Some of the issues that are already being considered in the Review, as set out in the Expert Review of Ontario's Construction Lien Act Information Package, relate to:

- a) lienability and the effectiveness of the definitions of words such as "improvement", "materials", "supply of services" and "owner";
- b) holdback and substantial performance;
- c) preservation, perfection and expiry of liens;
- d) prompt payment or timely payment for construction work;
- e) proof of financing;
- f) trust provisions;
- g) interrelationship with insolvency legislation;
- h) priorities;
- i) public-private partnerships;

- j) non-waiver;
- k) bidder exclusion provisions;
- l) alternative dispute resolution;
- m) summary procedure; and,
- n) surety bonds and default insurance.

Details about the Review can be found at:

(<http://www.constructionlienactreview.com/information-package/>).

The City of Toronto has been identified as an important stakeholder to provide input and have an active role, including making written and oral submissions. It is anticipated that the Review will lead to legislative changes, and the City may need to make further written and oral submissions to various bodies of the Legislature on proposed amendments, especially those that may have financial implications for the City.

Staff seek authority from Council to make submissions on behalf of the City of Toronto to advance the City's position on issues related to the *Construction Lien Act* throughout the Review and future legislative changes. To ensure submissions are comprehensive and coordinated, the City divisions, agencies and corporations that perform significant construction are being engaged for their input. In addition, the City of Toronto is consulting regularly with representatives of other "owners" in the construction industry (including other municipalities and public body associations) to discuss issues and find consensus.

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