



REPORT FOR ACTION

Queensway Excavating & Landscaping 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 Queensway Excavating & Landscaping Ltd. from conducting business with the City of Toronto for a period of two years.

RECOMMENDATIONS

Manager, Fair Wage Office recommends that:

1. City Council, as a result of Queensway Excavating & Landscaping 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 Queensway Excavating & Landscaping 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 Queensway Excavating & Landscaping 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, Queensway Excavating & Landscaping Ltd. be placed on probation for the next contract year.
4. City Council direct that Queensway Excavating & Landscaping 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 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>

Municipal Code, Fair Wage Policy Chapter 67, A7-Contractor or sub-contractors responsibilities, A-9 – Penalty Provisions & A10 – Disqualification Provisions, http://www.toronto.ca/legdocs/municode/1184_067_A.pdf

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 wage rate set out in the collective agreement.

Queensway Excavating & Landscaping Ltd. (“Queensway”) 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.

Queensway was awarded the following contracts:

December 16, 2015: RFQ No. 6038-15-7284, Contract No. 47019643 -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 Operators 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. 47021088 – 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 Operators for planned, unplanned and emergency work and repair activities within the Toronto East York and Scarborough Districts for Toronto Water.

Construction work under these contracts involved backhoe service on lands and road allowances within North York, Etobicoke, Toronto East York and Scarborough 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, Queensway 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, Queensway 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 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 Queensway provided, non-compliance was noted in several separate instances as follows:

Queensway Fair Wage Violation 2016

Queensway employed crews of nine backhoe machine operators, operating heavy equipment that involved performing construction and maintenance tasks for Toronto Water's district operations.

Based on complaints received, the Fair Wage Office proceeded to investigate allegations of Queensway's Fair Wage non-compliance. Queensway claimed that the company was in compliance stating that their backhoe operators were not employees but rather "shareholders" of a "small business" company; thus, the Fair Wage Policy did not apply.

The Fair Wage Policy "small business" exemption is applied to contractors or sub-contractors who are owner-operators, partners or principals of companies as long as they undertake the contracted work themselves. It does not exempt contractors or sub-contractors who employ others to do the work. Queensway clearly hired employees to perform the contracted work. Queensway controlled the conditions of their employment, including wages, and was required by contract and the Policy to pay the prescribed and agreed Fair Wage.

Queensway's classification of their workers under the above scenario was viewed as an attempt to sidestep the Policy in order not to pay their workers the appropriate wages as required under the contract.

Queensway was found to be in violation of the Fair Wage Policy and ordered to pay nine backhoe operators \$118,172.37 in owed back wages, and the City \$17,725.86 (15%) in administrative penalties, totalling an amount of \$135,898.23. The Company was notified of their first violation and instructed to process the owed back wages and advised that any additional violation would be tracked with respect to a potential disqualification from City contracts.

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

Back wage payment cheques were delivered 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.

Queensway Fair Wage Violation 2018

The Fair Wage Office fielded new complaints from backhoe operators with allegations that their employer Queensway was not paying them for the full hours worked. The employees alleged that they are being underpaid for daily work time, on average two hours per day.

Queensway's payroll records were obtained and reviewed for the period of January 1, 2017 to December 31, 2017 in order to determine Fair Wage compliance. Company payroll records generally show that workers were paid for work 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 was generally performed from 7:00a.m. to 3:00 p.m.

Contractor Works Cards are Toronto Water's daily records for oversight that track the location of the work, time allocated to the work and City/ Company acknowledgement of the work performed. The Contractor Work Cards form the basis for verifying company invoices submitted to the City for payment.

The Fair Wage Office interviewed numerous workers employed by Queensway 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 only get paid for the hours worked from 7:00 a.m. to 1:00 p.m. at the prescribed Fair Wage Rate. Workers are apparently not paid for, on average, two of the hours worked daily.

After examining the employee hours worked shown on the company's payroll records and the employee hours worked shown on Toronto Water's Contractor Work Cards and taking into account information from the worker interviews, a variance averaging two hours per day, per worker was verified. The Fair Wage Office determined that Queensway failed to pay workers the Fair Wage rates for unreported work hours, and failed to provide true and accurate payroll records.

Queensway failed to pay its workers the appropriate wage rate in accordance with the Fair Wage schedule. The calculation for unpaid hours involving 15 backhoe operators results in owed back wages of \$180,174.40, with \$27,026.16 (15%) in administrative penalties. totaling an amount of \$207,200.56.

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

Additionally, during the course of the 2018 investigation, certain workers provided the Fair Wage Office with certain documentation allegedly showing that Queensway's workers were required to return to Queensway their back wage restitution payments with respect to the 2016 violation.

Queensway has been found to be non-compliant with the Policy in two separate instances resulting from the 2016 and 2018 compliance investigations.

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, as had been done for the 2016 investigation.

Given Queensway'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 Queensway 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. Queensway 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 Queensway be disqualified from City contracts for a period of two years. This disqualification would be binding on corporations or other related

Queensway 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 Queensway and the wider construction industry that unpaid wages for work performed will not be tolerated on City of Toronto contracts.

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SIGNATURE

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