



## REPORT FOR ACTION

### **Fair Wage Policy Non-Compliance - Aloia Brothers Concrete Contractors Ltd.**

**Date:** June 18, 2018  
**To:** Government Management Committee  
**From:** Manager, Fair Wage Office  
**Wards:** All

#### **SUMMARY**

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This report provides an update on the efforts of the Manager, Fair Wage Office, to obtain certain information from Aloia Brothers Concrete Contractors Ltd. ("Aloia") to confirm compliance with the Fair Wage By-law, as directed by City Council in December 2017.

This report recommends that the withheld funds be released to the contractor and recommends that the contractor be ineligible to bid on or be awarded any City of Toronto tenders for a period of two (2) years, commencing on the date of the decision of City Council.

Additionally this report recommends that before the gross \$119,576.62 is released to Aloia, the contractor provide the Manager, Fair Wage Office, with supporting documentation to confirm that all sub-contractors have been paid for invoiced work; and, a 15% administration fee for the City be deducted from the amounts being withheld, with the net paid out to Aloia.

#### **RECOMMENDATIONS**

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##### **Manager, Fair Wage Office recommends that:**

1. City Council, as a result of Aloia Brothers Concrete Contractors Ltd. having been found to be in non-compliance with the provisions of the Fair Wage Policy, direct that the company be disqualified from conducting business on City projects for a period of two years inclusive, from the date of the decision of Council.
2. City Council declare that any legal entity that is related to or has the same operating mind as Aloia Brothers Concrete Contractors Ltd. (including successors or assigns) be ineligible to bid on or be awarded City of Toronto contracts 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, Aloia Brothers Concrete Contractors Ltd. be placed on probation for the next contract year.

4. City Council direct that Aloia Brothers Concrete Contractors Ltd. status as a disqualified firm be published on the City's Web Site.

5. City Council authorize the Manager, Fair Wage Office to direct the release of the withheld funds in the gross amount of \$119,576.62 to Aloia Brothers Concrete Contractors Ltd. subject to:

(a) the deduction of a non-refundable payment of an administrative fee of 15 per cent of the full value of the withheld funds (\$17,936.49) for a net payment to Aloia in the amount of \$101,640.13, with the administrative fee to be deducted from the withheld funds as permitted by the Fair Wage By-law; and,

(b) the contractor providing the necessary documentation to the Manager, Fair Wage Office confirming that all sub-contractors have been paid for invoiced work before the funds are released.

## **FINANCIAL IMPACT**

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The Interim Chief Financial Officer has reviewed this report and agrees with the financial impact information

## **DECISION HISTORY**

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At its meeting on December 5, 6, 7 and 8, 2017, City Council authorized the continued retention of the amount withheld on the Aloia Brothers Concrete Contractors Ltd. contract pending the provision of the requisite information for Fair Wage Policy verification.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.GM23.22>

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](http://www.toronto.ca/legdocs/municode/1184_067_A.pdf)

## **ISSUE BACKGROUND**

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At its meeting of December 5-8, 2017, Council adopted the following two recommendations:

1. City Council direct the Manager, Fair Wage Office to continue to retain the amount of \$100,000 in withholding funds until July 2018, to allow Aloia Brothers Concrete Contractors Ltd., the Contractor, to provide the requisite information.
2. City Council direct the Deputy City Manager, Internal Corporate Services to report to the July 3, 2018 Government Management Committee meeting on whether Aloia Brothers Concrete Contractors Ltd., the Contractor, should be disqualified from conducting business with the City for a period of two years and whether any legal entity that is related to or has the same operating mind (including successors or assigns) as Aloia Brothers Concrete Contractors Ltd. should be ineligible to bid on or be awarded City of Toronto contracts, acting as a General Contractor or Sub-contractor, for a two year period.

This report is in accordance with the Council's requirement that a further report be provided in July 2018 to determine whether the funds should be released and whether the contractor should be disqualified from City work for a period of two years.

## **COMMENTS**

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The report before Council in December 2017 detailed the background of the Fair Wage non-compliance of Aloia Brothers Concrete Contractors Ltd. ("Aloia"). The main issue was that Aloia failed to provide the Fair Wage Office with adequate payroll records to support its claim that it had paid all of its workers (and through its sub-contractors, their workers) the proper Fair Wage. There exists a discrepancy between the contractor's records and the daily time cards of the Transportation Division with respect to this work. This non-compliance was on a contract with Transportation Services to provide utility cuts and maintenance of roads, sidewalks, curbs, driveways, sidewalk accessibility ramps and boulevards.

Government Management Committee, at its meeting of November 13, 2017, recommended that Aloia be extended a further opportunity to provide the requisite information to the Fair Wage Office to make a final determination on Fair Wage compliance. That recommendation was adopted by City Council.

A follow up meeting was held in January 2018 between Aloia, the City's Transportation Division and the Fair Wage Office. Aloia failed to provide any further documentation to support its claim that it had complied with the Fair Wage. As a result, there is no further information which has been provided by Aloia that the Fair Wage Office can use to change its determination of Aloia's non-compliance to compliance.

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.

The Fair Wage By-law allows the Manager, Fair Wage Office, to direct the operating division to hold back funds from the contractor's progress draw or holdback when contractors fail to furnish and disclose certified pay sheets, lists, records, time sheets which are to be open at all times for examination of wages of workers in connection with City contracts.

In this case where true payroll documentation was unable to be verified, the contractor was determined to be non-compliant with disclosure requirements and the holding back of funds was exercised by the client division on instruction from the Manager, Fair Wage Office.

The purpose of this report is to seek approval from City Council to release the contract holdback funds to Aloia on certain terms and conditions despite the fact that the required payroll records are delinquent, inaccurate and cannot be verified. These funds have been on hold since 2014. Transportation Services has confirmed the actual funds on hold as of June 14, 2018, is \$119,576.62. The funds which are on hold are without by-law direction to address, in these circumstances, as to how long and what happens to these funds in order to conclude the compliance investigation. It is for this reason that the direction and approval of Council is sought.

The conditions which are being recommended to permit the release of the holdback funds are as follows:

1. An administrative fee in the amount of 15% of the \$119,576.62 (withheld funds) be withheld permanently by the City, as permitted under the Fair Wage By-law;
2. Aloia provide the necessary documentation to the Manager, Fair Wage Office confirming that all sub-contractors have been paid for invoiced work before the funds are released; and,
3. The non-compliance of Aloia, for failure to comply with full and transparent payroll disclosure, result in the Aloia being disqualified from conducting business with the City for a period of two years, with the direction that any legal entity that is related to or has the same operating mind (including successors or assigns) as Aloia be ineligible to bid on or be awarded City of Toronto contracts, acting as a General Contractor or Sub-contractor, for a two year period, from the date of the decision of Council and that the Disqualified firm be published on the City's web site.

## **CONCLUSION**

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This report is further to the direction of City Council to report back to update the status of the outstanding Fair Wage non-compliance issue with respect to Aloia. Although an opportunity was provided to present further documentation to the Fair Wage Office, nothing of consequence was provided. As a result, the Fair Wage Office determination of non-compliance still stands.

Given that these Aloia funds have been on hold since 2014, it is being recommended that the funds be returned on Aloia on certain conditions as set out in the recommendations and in the body of this report.

## **CONTACT**

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## **SIGNATURE**

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