

April 27, 2018

Macdonald R.I. Allen
T: 416-947-5027
mallen@weirfoulds.com

BY EMAIL

File 17671.00003

Government Management Committee
City of Toronto
10th floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2
Attention: Carol Kaustinen, Secretariat Contact

Dear Government Management Committee:

**Re: Governance Management Committee – April 30, 2018 at 9:30 a.m.
GM27.16 Queensway Excavating & Landscaping Ltd. – Disqualification from City
Contract, Fair Wage Policy Non-Compliance (Ward All)**

We represent Queensway Excavating & Landscaping Ltd. (“**Queensway**”). We are writing with respect to the Government Management Committee (“**Committee**”) meeting to be held on April 30, 2018, and the report provided by the Fair Wage Office (“**FWO**”) recommending, among other things, the disqualification of Queensway from conducting business with the City of Toronto for a period of two (2) years.

On March 29, 2018, the FWO delivered its Final Notice (“**Notice**”) to Queensway. In the Notice, and its report to the Committee the FWO has made two allegations arising from its 2018 investigation of Queensway:

(1) **Alleged 2016 Fair Wage Violation** – it is alleged that Queensway’s workers were “forced to hand back recovered owed back wages restitution payments with respect to the 2016 violation”; and

(2) **Alleged 2018 Fair Wage Violation**- it is alleged that Queensway has not been paying employees for hours worked between January 1, 2017 to date with respect to two contracts:

(a) December 16, 2015: RFQ No. 6038-15-7284 which concluded on October 31, 2017; and

- (b) October 18, 2017: RFQ No. 6038-17-7256 which commenced on November 1, 2017 and is ongoing.¹

Queensway denies both of these allegations and has presented documents to the FWO to refute these allegations.

Queensway and the City have been doing business for approximately 40 years. The manner in which the Fair Wage Policy (“**Policy**”) is being applied to Queensway is unfair. As described further below, Queensway’s employees have been paid the Fair Wage rate for the actual hours that they have worked in accordance with the Policy. Queensway requests that the Committee exercise its discretion not to disqualify Queensway from conducting business with the City.

(1) The Alleged 2016 Violation

In 2016, the FWO investigated Queensway (“**2016 Investigation**”) for alleged violations of the Policy. Queensway co-operated during the 2016 Investigation, and ultimately provided the FWO with cheques to be remitted by the FWO to Queensway’s employees.

In 2016, there were **REDACTED** employees who were entitled to receive additional monies. The employees entitled to additional monies are set out in Schedule “B” of the Notice. For ease of reference a copy of the Notice is enclosed.

Queensway operates its small company with significant transparency and input from its employees. During the 2016 Investigation, Queensway met with its employees to inform them that they were entitled to additional wages as a result of the 2016 Investigation and Policy. At this meeting, several of Queensway’s employees expressed that they did not want the additional wages and offered to voluntarily gift an amount equivalent to the additional wages back to Queensway. Queensway denies that it asked or required their employees to return their wages.

The employees were told that they had a right to and were entitled to keep the additional wages.

REDACTED

REDACTED The chart attached to this letter

¹ In addition to the current contract, Queensway was approved for two additional City of Toronto contracts (Purchase Orders No. 3556881 and 47020900) after an audit by the FWO was commenced in June 2017. Queensway did not receive the results of the FWO audit, despite following up with FWO in September 2017, until receiving the Notice in March 2018.

as **Exhibit “A”** illustrates the employee’s conduct as it relates to the wages they were entitled to from the 2016 Investigation.

The allegation that workers were forced to give wages related to the 2016 Investigation back to Queensway is false. Some of Queensway’s employees insisted on gifting the wages back to Queensway and signed an acknowledgement and release stating that they were aware of their entitlement to the additional money but that they chose to gratuitously give the money back to Queensway. Attached as **Exhibit “B”** to this letter are the signed acknowledgments and releases from Queensway’s operators related to the 2016 wages.

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REDACTED will be available to answer questions with respect to Supco, REDACTED motivation for advance these allegations.

Queensway participated fully in the 2016 Investigation and complied with its obligations under the Policy. Queensway does not control what its operators do with their own money after they received it from the FWO. Two of Queensway’s employees REDACTED REDACTED will be in attendance during the Committee meeting to respond to any questions the Committee may have.

(2) Alleged 2018 Fair Wage Violation

Queensway denies the allegation contained in the Fair Wage report that their employees, “are being underpaid for daily work time, on average two hours per day.”

There is a discrepancy between the Toronto Water District Operations Daily Contractors Work Cards (“**Shift Cards**”) and the self-reported actual time cards maintained by Queensway and its operators (“**Actual Time Cards**”).

The City’s Shift Cards are issued by the Water Department and indicate the shift that an operator was requested for (generally, an 8 hour time period). The Shift Cards include an additional one (1) hour for travel. The Shift Cards are provided to the operator at the time he is

dismissed from the City job site, and reflect the entire 8 hour time period plus an additional travel hour regardless of the time the operator is dismissed from the site.

The Shift Cards do not represent the actual hours that an operator works. For example, if the Water Department requests an operator for its day shift (7 a.m. – 3 p.m.), but the operator is dismissed from the City job site before 3 p.m. the operator still receives a Shift Card from the Water Department that includes 8 hours, plus the additional travel hour regardless of the time they were dismissed from the City job site. The operator returns to Queensway, self-reports the time he stopped working and goes home.

(A) Queensway pays their employees for actual hours worked

Under Article A7, section 3 of the Policy, Queensway is obligated to keep a list of the names and classifications of their operators, their hourly rate and *hours worked per day* and a record of the amounts paid to each.

Under the current contract between the City of Toronto and Queensway (RFQ, 6038-17-7256) (the "**Contract**"), it is acknowledged that the duration of the work assignments given to the Vendor will vary², and that the additional travel hour belongs to the company.³ Some assignments only require Queensway's employees to be on site for a couple hours per day – not the entire 8 hour shift.

Queensway's employees self-report daily on the actual number of hours they work each day. Queensway's employees are paid based on their actual number of hours worked, not the Shift Cards issued by the Water Department

Attached as **Exhibit "C"** to this letter are examples of the discrepancies between the Shift Cards and the Actual Time Cards for invoices submitted to the City in January 2017, and January 2018. The Water Department has told Queensway that it is to invoice the City based on the Shift Cards in order to ensure that Queensway and their machines (not specific, individual employees) are available 24/7. This established practice ensures that Queensway can maintain its vehicles and commit to the service levels required by the City.

² RFQ, 6038-17-7256, s. 3.1.9

³ RFQ, 6038-17-7256, s. 3.1.4; and see Addendum No. 1 for RFQ 6038-15-7284, question 4.

(B) The Established Practice results from the 2012 Pilot Project

In 2012, the Water Department performed a pilot project related to 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.

It became apparent to the Water Department and the companies involved in the pilot project that in order to properly service the City's requests for service, companies would need to be available 24/7. However, given the nature of the work the City could not guarantee a minimum amount of work. As a result, through several discussions and meetings it was understood that the City would issue Shift Cards which included 8 hours plus 1 hour of travel time.

Queensway, and other companies invoice the City for payment based on the Shift Cards. However, although Queensway was required to be available 24 / 7 there was no requirement for its operators to be available for the entire period. If necessary, Queensway could supply different operators for different portions of each shift.

Queensway's owner / operators will be in attendance during the Committee meeting on April 30, 2018 in order to answer any additional questions that the Committee may have with respect to the Water Department's practice of issuing Shift Cards that do not represent the actual hours worked by an employee, and the Policy requirement that Queensway pay its employees for the actual hours worked as reflected by the Actual Time Cards prepared by the employees and maintained by Queensway.

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(3) Relief Requested

Queensway has complied with the Policy. In the alternative, the Policy is being misapplied to Queensway based on the misconception that Queensway's operators work the hours that are identified on the Water Department's Shift Cards. Queensway's operators are paid for the hours that they actually work – in line with the Policy.

Queensway looks forward to presenting its position to the Committee in person. Queensway requests that the Committee deny the recommendation that Queensway be disqualified from conducting business with the City of Toronto for a two (2) year period. Queensway is committed to working with the Committee and FWO to ensure the proper application of the Policy going forward.

Yours truly,

WeirFoulds LLP

A handwritten signature in black ink, appearing to be 'Macdonald R.I. Allen', written over a horizontal line.

Per: Macdonald R.I. Allen

MA/mb
Encls.
c: Client

Note:

Exhibits A, B and C are on file with the City Clerk and are subject to further review under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)