



## REPORT FOR ACTION

### **Queensway Excavating & Landscaping Ltd. – Reconsideration of Disqualification from City Contracts for Fair Wage Policy Non-Compliance**

**Date:** June 22, 2020

**To:** General Government and Licensing Committee

**From:** Manager, Fair Wage Office

**Wards:** All

#### **SUMMARY**

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Upon conclusion of a Judicial Review, Toronto's Fair Wage Office was ordered by the Divisional Court on October 15, 2019 to reconsider its decision to disqualify Queensway Excavating & Landscaping Ltd. (Queensway) for non-compliance with Toronto's Fair Wage Policy.

The Fair Wage Office reconsideration is related directly to Government Management Committee Report, Item GM27.16 adopted by City Council on May 22, 2018 resulting in the disqualification of Queensway from bidding on City contracts for a period of two years. Report GM27.16 detailed that Queensway was non-compliant with the Fair Wage Policy in 2016 and 2018. In 2019-2020, the Fair Wage Office conducted a reconsideration of the 2018 Fair Wage decision with the proper notice and disclosure and provided Queensway with an opportunity to be heard as required by the Court. The reconsideration decision in February 2020 determined that Queensway was non-compliant with the City's Fair Wage Policy.

This report recommends that Queensway not be disqualified from conducting business with the City of Toronto for a period of two years. This report further recommends that the time between the May 22, 2018 adoption of the Government Management Committee Report GM27.16 and this report, wherein Queensway was unable to bid on City contracts be deemed to be the equivalent of any disqualification period which might have been imposed for any Fair Wage Policy non-compliance.

#### **RECOMMENDATIONS**

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The Manager, Fair Wage Office recommends that:

1. City Council not disqualify Queensway Excavating & Landscaping Ltd. from conducting business with the City, despite the court-ordered reconsideration decision by Staff report for action on Queensway Excavating & Landscaping Ltd.

the Fair Wage Office which found Queensway in non-compliance with the provisions of the Fair Wage Policy in two separate instances over a period of three years inclusive, given that the time between the May 2018 report and this report is equivalent to any disqualification period which might have been imposed for multiple instances of any Fair Wage Policy non-compliance.

## **FINANCIAL IMPACT**

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The contract balance, less agreed upon items, has been fully remitted to Queensway, with an outstanding balance absorbed within the 2020 Approved Operating Budget for Toronto Water.

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

## **DECISION HISTORY**

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The staff report GM 27.16 indicates that Queensway had been found to be in non-compliance with the provisions of the Fair Wage Policy in two separate instances and recommended to the then Government Management Committee that Queensway be disqualified.

<https://www.toronto.ca/legdocs/mmis/2018/gm/bgrd/backgroundfile-114177.pdf>

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)

## **COMMENTS**

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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”) was 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:

Staff report for action on Queensway Excavating & Landscaping Ltd.

- 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.

In 2018 Queensway had been found to be in non-compliance with the provisions of the Fair Wage Policy in two separate instances (2016 & 2018). The Fair Wage Office recommended to the then Government Management Committee and Council that Queensway be disqualified. City Council adopted the recommendations from the Fair Wage Office.

Queensway challenged the validity of decision that was made by the Fair Wage Office and addressed the matter in court (details of this case are presented in the accompanied report from the City Solicitor). Upon the conclusion of the Judicial Review, the Fair Wage Office was ordered on October 15, 2019 in Divisional Court file no. 605/18 to reconsider of Queensway Excavating & Landscaping Ltd. compliance with Toronto's Fair Wage Policy.

### **Queensway Fair Wage Violation 2018 - Reconsideration**

#### *Notice*

On December 19, 2019, Queensway, as part of the reconsideration, was provided notice that the City of Toronto had received complaints that workers did not receive the requisite compensation. The notice pertained to the investigation that took place in 2018.

#### *Methodology of the Reconsideration*

As part of the reconsideration, the following methodology was applied:

- The Toronto Water records and related amounts invoiced by Queensway used in the initial consideration in 2018, were not included as part of the reconsideration;
- The reconsideration relied on other records from Queensway including samples from payroll documentation, review of Circle Check Reports submitted by Queensway, Queensway's internal daily timesheets, the hour calculations that formed part of Queensway's submission to the Divisional Court and the statements made by Queensway under oath as part of the Divisional Court proceeding;

- The reconsideration reviewed these records to reconcile the difference between the hours paid to Queensway employees and the hours worked on the City Contracts; and
- Certain workers were interviewed to address the concerns raised by Queensway that the Fair Wage Office did not have adequate background with respect to the worker complaints.

Queensway was provided with disclosure of all of the types of records and information which the Fair Wage Office was going to refer to in whole or in part during the reconsideration.

### *Issues Identified with Queensway's Records*

Certain former employees of Queensway came forward to the City to provide information about the contract Queensway had with the City and employee compensation. The general consensus from those employees is that Queensway's books are not accurate and that Queensway paid them in accordance with the 6 or 6.5 hour per day arrangement and not in accordance with the hours that they actually worked.

Queensway has stated, under oath, that their employees were paid based on the hours that they worked. There are many instances throughout the Queensway records which show that their employees were not, in fact, paid based on the hours that they worked.

A review of Queensway's weekly/daily time keeping records indicate that employees were frequently paid 6 or 6.5 hours per day irrespective of the actual hours on the records. In many instances the records did not match what was submitted as paid, nor did they have complete or consistent information upon which calculations could be formed. This is not in compliance with the Fair Wage Policy.

### *Opportunity to be Heard*

Queensway was provided with ten (10) business days to review and provide written comments on the draft decision to the Manager, Fair Wage Office, prior to the issuance of the final decision. Queensway did not respond back to the draft decision.

### *Decision*

Based on the reconsideration, the Manager, Fair Wage Office has concluded that Queensway was non-compliant with the City's Fair Wage Policy.

Based on the records reviewed and the new information obtained through various interviews, it is not possible to form the basis of a calculation that would conclusively determine whether the employees were paid the appropriate Fair Wage for the hours which were worked. The way Queensway maintained its records is in non-compliance with the Policy.

Queensway is also in non-compliance by its own admission and sworn statements before the Court. Queensway's lawyer referred us to their own calculations of monies  
Staff report for action on Queensway Excavating & Landscaping  
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owed to employees. The amount of \$1,902.58 owed to the employees provided the basis for at least one instance of not paying an employee the fair wage rate (Municipal Code, s.67-A7(B)). This is the second event of non-compliance and would be retroactive to the 2018 initiation of the Fair Wage review for the purposes of disqualification; the first event being in 2016 and the second event being in 2018.

Despite the non-compliance, the Manager, Fair Wage Office does not recommend that Queensway be disqualified any further as the time between the initial disqualification approved by Council on May 22, 2018 and now, amounts to two years disqualification under the Fair Wage Bylaw.

In accordance with Municipal Code, s.67-A10 (A) of the by law, should Queensway found to be in non-compliance with the provisions of the Fair Wage Policy a second time within three years of this contravention, the Manager, Fair Wage Office must report and may recommend to the General Government and Licensing Committee that the said contractor or sub-contractor be disqualified from conducting business with the City for a period of two years, inclusive.

## **CONTACT**

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## **SIGNATURE**

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