

CITY OF HAMILTON

CORPORATE SERVICES DEPARTMENT
Treasury Services Division (Financial Services)

TO: Chair and Members Audit, Finance and Administration Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: June 11, 2012	
SUBJECT/REPORT NO: Evaluation of the City of Hamilton Purchasing Program Update (FCS09109(d)) (City Wide) (General Issues Committee Outstanding Business Item B) (Audit, Finance and Administration Committee Outstanding Business List Item K)	
SUBMITTED BY: Antonio D. Tollis Treasurer Corporate Services Department	PREPARED BY: Rick Male 905-546-2424 ext. 4157 Angela Mastandrea 905-546-2424 ext. 2796
SIGNATURE:	

RECOMMENDATION

- (a) That the City of Hamilton not adopt any specific procurement policy with respect to applying a preference, or penalty, based on the following:
 - (i) the geographical location of any vendor/supplier, or potential vendor/supplier, of goods and services to the City of Hamilton; or
 - (ii) the Canadian, Ontario and/or Hamilton/local content of any goods and services provided, or to be provided, to the City of Hamilton;
- (b) That Item K respecting Procurement Policy Stakeholder Consultation be considered completed and removed from the Audit, Finance and Administration Committee's Outstanding Business List and that Item A respecting Buy Local recommendation (b) of FCS09020 be considered completed and removed from the General Issues Committee Outstanding Business – Corporate Services:

- (c) That the Vendor Selection Guidelines, attached as Appendix 'C' to report FCS09109(d) be posted to the Procurement Home Page on ENET as a reference tool to be used by staff when selecting vendors;
- (d) That Item B respecting Buy Local – recommendation (b) of FCS09020 be considered complete and removed from the General Issues Committee's Outstanding Business List.

EXECUTIVE SUMMARY

At the February 18, 2009, meeting of the Audit and Administration Committee meeting, Staff presented its annual Procurement Policy updates for approval. As part of this report Staff addressed the outstanding business item respecting a Buy Hamilton – Buy Ontario – Buy Canada procurement policy.

Staff's recommendation was to not adopt a procurement policy with respect to applying a preference, or penalty, based on the geographical location of any vendor/supplier, or the Canadian, Ontario and/or Hamilton/local content of any goods and/or services provided, or to be provided, to the City of Hamilton.

At its May 11, 2009, COW directed Staff to consult with Canadian Auto Workers (CAW) Local 504, Hamilton and District Labour Council C.L.C. (HDLC) and United Steelworkers regarding Buy Local Buy Canadian initiatives.

An operational review of the procurement process was undertaken by the City Treasurer's Office and the review of a Buy Local/Buy Canadian policy was included in the consultant's scope of work. In transferring this item to the operational review, Staff did not communicate the consultative piece that was requested of Staff. This was realized when Staff presented the Procurement Policy updates to Audit, Finance and Administration Committee at its December 7, 2011, meeting

Staff contacted the three associations that appeared at COW to meet and discuss the Buy Local/Buy Canadian issue. This report outlines the findings of these consultations.

Alternatives for Consideration –Not Applicable

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: None.

Staffing: None.

Legal:

The consultation undertaken did not disclose any noteworthy developments with respect to the Buy Local initiative since Staff presented the Procurement Policy updates to Audit, Finance and Administration Committee at its December 7, 2011, meeting.

At the municipal level, procurement policies and by-laws are either silent on the matter or expressly prohibit this practice. Despite the assertion from the Hamilton & District Labour Council C.L.C. in its material provided to the City on May 1, 2012, and attached as Appendix 'A' to report FCS09109(d) that listed several municipalities that '*have adopted some version of it (CAW Buy Canadian resolutions), according to the CAW*', Staff have contacted most of the municipalities and have verified that, in fact, this assertion is not accurate. The Ontario Public Buyers Association, of which the City is a member, addresses this same issue in the 'Statement of Ethics for Public Purchasers'. It states (in part), 'Fair and impartial award recommendations for all contracts and tenders. This means that we do not extend preferential treatment to any vendor, including local companies.'

In general, the Federal movement continues towards the opening up of Canadian markets to many different countries via an increase in, and expansion of existing, international free-trade agreements¹. At the Provincial level, the legislative framework has not changed² and the Agreement on Internal Trade³ remains the same with respect to limits on trade in the municipal sphere.⁴

It would be extremely difficult to craft and remain current with respect to such a policy in light of the ever-expanding free trade arena. Further, it would be very difficult to defend a policy that offered a preference to Ontario, Hamilton and/or some other definition of "local" vendors and suppliers, as applicable provincial legislation actively seeks to eliminate discrimination based on, among other things, geographical location. Further,

¹ See Foreign Affairs and International Trade Canada website at <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/index.aspx> for an up-to-date list of current agreements and ongoing international trade negotiations.

² See *Discriminatory Business Practices Act*, R.S.O. 1990, C.D-12; as amended.

³ Agreement on Internal Trade, as amended. Signed on July 18, 1994 by First Ministers. In effect July 1, 1995.

⁴ *Ibid.*, see Annex 502.4

public policy has not changed since 2009 in that municipal implementation of local preference procurement policies are discouraged. If the City were to introduce a “Buy Canadian”, “Buy Ontario” or “Buy Hamilton/Local” policy, any of these policies could be subject to legal challenge by any vendor who asserts he/she/it has been disadvantaged as a result of said policy and/or preference.

Not identifying a specific preference within the City’s Procurement policies hedges against potential claims of “unfairness” from vendors, while allowing the City to invoking a local and/or Canadian preference on a case-by-case and as needed basis with Council approval.

HISTORICAL BACKGROUND (Chronology of events)

At the February 18, 2009, meeting of the Audit and Administration Committee meeting, Staff presented its annual Procurement Policy updates for approval. As part of this report Staff addressed the outstanding business item respecting a Buy Hamilton – Buy Ontario – Buy Canada procurement policy.

Staff’s recommendation was to not adopt a procurement policy with respect to applying a preference, or penalty, based on the geographical location of any vendor/supplier, or the Canadian, Ontario and/or Hamilton/local content of any goods and/or services provided, or to be provided, to the City of Hamilton.

This item was referred back to Committee of the Whole (COW), and Staff made a presentation to COW at its May 11, 2009, meeting. At this same, there were three public delegations made with respect to this issue. The associations that presented at this meeting were: Canadian Auto Workers (CAW) Local 504, Hamilton and District Labour Council C.L.C. (HDLC) and United Steelworkers. This item was referred back to staff for consultation.

An operational review of the procurement process was undertaken by the City Treasurer’s Office and the review of a Buy Local/Buy Canadian policy was included in the consultant’s scope of work. In transferring this item to the operational review, Staff did not communicate the consultative piece that was requested of Staff. This was realized when Staff presented the Procurement Policy updates to Audit, Finance and Administration Committee at its December 7, 2011, meeting. The information provided in report FCS09109(c) respecting Buy Local Buy Canadian is summarized in Legal Implications section of this report.

Staff contacted the three associations that appeared at COW to meet and discuss the Buy Local/Buy Canadian issue. This report outlines the findings of these consultations.

Hamilton and District Labour Council C.L.C.

Staff met with representatives from the HDLC on March 27, 2012. The objective of the meeting was to better understand the association's position on the Buy Local, Buy Canada issue and to communicate to HDLC how the City's current practices are achieving results consistent with the goals outlined by HDLC. At the meeting HDLC requested some time to provide their position in writing. The City received a letter from HDLC on May 1, 2012, attached as Appendix 'A' to report FCS09109(d).

The letter outlined HDLC's recommendations for the City to consider when procuring goods and services and included an appendix with a listing of municipalities that *'have adopted some version of it (CAW Buy Canadian resolutions), according to the CAW'*. The majority of the recommendations were related to HDLC's interpretation of the Agreement on Internal Trade (AIT) Annex 502.4, which binds municipalities to the agreement. The list of municipalities was provided at the request of the City to understand what actions have been taken to implement some form of a buy local policy and what challenges were faced in doing so.

Canadian Auto Workers Local 504

Staff made several attempts to meet with CAW representatives, without success. After receiving the response from HDLC, it would appear that the CAW has provided comment as a coordinated response with HDLC.

United Steelworkers

The United Steelworkers also provided feedback through HDLC but met with Staff on May 11, 2012.

Hamilton Chamber of Commerce

Staff contacted the Hamilton Chamber of Commerce to get an update on their current position on a local preference policy. Correspondence received from the Hamilton Chamber of Commerce on April 16, 2012, attached as Appendix 'B' to report FCS09020(d) confirms that they cannot encourage or support a buy local policy.

POLICY IMPLICATIONS

Procurement Policy By-law 11-297.

RELEVANT CONSULTATION

Legal Services was consulted in the preparation of this report and attended the stakeholder consultation meetings.

Canadian Auto Workers Local 504
Hamilton and District Labour Council C.L.C.
United Steelworkers
Hamilton Chamber of Commerce

Walkerton (for Brockton)
Chatham – Kent
Goderich
Ingersoll
Kincardine
City of Oshawa
Oxford County
St. Catharines
Thorold
Thunder Bay
Welland

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The purpose of the meeting with HDLC was to better understand other agencies' experiences in incorporating and carrying out these initiatives and to communicate to HDLC how the City's current practices are achieving results consistent with the goals outlined by HDLC. During the meeting, City Staff requested a listing of municipalities or other public agencies that have adopted a Buy Local or Buy Canadian policy as a result of its initiative. An attempt was made to contact the majority of the municipalities that were identified in the coordinated response received from HDLC.

HDLC provided a list of 15 municipalities that have adopted some form of the Buy Canadian initiative. Staff contacted 11 of these municipalities and below is a summary of how they handled the Buy Canadian issue.

**SUBJECT: Evaluation of the City of Hamilton Purchasing Program Update
(FCS09109(d)) (City Wide) (General Issues Committee Outstanding
Business Item B) (Audit, Finance and Administration Committee
Outstanding Business List Item K)**

Municipality	Findings
Walkerton (for Brockton)	<ul style="list-style-type: none"> • Walkerton has not adopted any specific purchasing policy to give preference to Buy Local Buy Canadian initiatives.
Chatham-Kent	<ul style="list-style-type: none"> • Attempts to contact Staff at Chatham-Kent were unsuccessful.
Town of Goderich	<ul style="list-style-type: none"> • Procurement is a decentralized model. • Resolution respecting 'Buying Canadian Matters – Manufacturing Matters' was approved in December 2008. • Resolution included provision to adopt a Buy Canadian policy. • No changes were made to its purchasing policy.
Town of Ingersoll	<ul style="list-style-type: none"> • Procurement is a decentralized model. • Policies and Procedures for Quotations/Tendering, approved on September 8, 1999. • Awards to lowest tender. • Policy includes, '<i>Where possible, the Town will seek and encourage quotations and tenders from local businesses.</i>'
Municipality of Kincardine	<ul style="list-style-type: none"> • Procurement is a decentralized model. • Resolution respecting 'Buying Canadian Matters – Manufacturing Matters' was approved in January 2009. • Resolution did not include provision to adopt a Buy Canadian policy. • No specific provision in their purchasing policies on Buy Local, Buy Canadian.
City of Oshawa	<ul style="list-style-type: none"> • Council resolution passed to support CAW position on Buy Canadian. • Oshawa did not incorporate a Buy Canadian policy. • Contract documents include the following language: '<i>Wherever possible, the equipment or services specified or called for in or under this RFP/RFT/RFQ shall be of Canadian origin and manufacture.</i>'
Oxford County	<ul style="list-style-type: none"> • Procurement is a decentralized model. • Oxford County does not have a policy regarding purchasing.

Municipality	Findings
City of St. Catharines	<ul style="list-style-type: none"> • Procurement Policy has been in effect since 2005. • Policy includes the following on local preference: <i>'In accordance with the Discriminatory Business Practices Act, Revised Statutes of Ontario, 1990, Chapter D.12 there will be no local preferences for purchases. All else being equal, preference will be given to purchase goods and/or services firstly from St. Catharines based businesses, secondly from businesses located in the Region of Niagara and thirdly from Canadian owned businesses.'</i>
City of Thorold	<ul style="list-style-type: none"> • Policy includes the following on local preference: <i>'Local Suppliers The Province of Ontario's Discriminatory Business Practices Act R.S.O. 1990 has been established to prevent discrimination in Ontario on the ground of race, creed, colour, nationality, ancestry, place of origin, sex or geographical location of persons employed or engaging in business. Therefore, granting preference to local supplier to supply goods and/or services to the City (of Thorold) cannot be undertaken. All else being equal, preference shall be given to the purchase from local suppliers.'</i>
City of Thunder Bay	<ul style="list-style-type: none"> • No provisions in its Purchasing Policy that speaks to the Buy Local, Buy Canadian initiative.
City of Welland	<ul style="list-style-type: none"> • Policy includes the following on local preference: <i>'No Local Preference The City of Welland will endeavour to achieve the best value in its commercial transaction. As a consequence, the City will not be bound to purchase goods and/or supplies based on Canadian content, nor will the City practice local preference in awarding purchasing contracts.'</i>

From the information provided by the above municipalities, the City was unable to garner any best practices or lessons learned on how a Buy Local Buy Canadian policy can be implemented. The hope was to understand how these municipalities addressed the challenges of quantifying or monitoring compliance with respect to requiring a minimum Canadian content as proposed by HDLC. City staff have considered and discussed this suggestion and feel if such an initiative or policy is implemented it would expose the City to legal challenges, would require significant resources to monitor, analyze and deal with vendor complaints on compliance issues, the City would incur

increased costs associated with the additional Staff complement required and potentially increased costs in goods and services acquired.

A review of best practices has overwhelmingly shown that a local preference policy or any other policy giving preference to a vendor's location has not been adopted by any Ontario municipality or public authority and in several instances, their policy expressly prohibits it. This review consisted of approximately twenty public entities within Ontario.

New York State declared Ontario and Quebec as 'discriminatory jurisdictions' and prohibited Ontario and Quebec suppliers from bidding on their contracts due to the Canadian content policy. As a result, the Province of Ontario eliminated its' Canadian content policy in June 2001. Similarly, the Province of Quebec also repealed its' Canadian content policy in 2001.

The City of Toronto had adopted a Canadian content policy in July 2000 which was similar to the former policy of the Province of Ontario. Toronto suspended their policy in April 2003 as a result of the following challenges that they faced:

- There is an ongoing difficulty in verifying the claims of actual Canadian content. In one example, the City of Toronto issued a tender for a good, where there were three bids received. By the nature of the good required, all three vendors had offered the same equipment in their bid. However, as part of their bid submission, each vendor was required to state what the Canadian content was, and each of the three vendors provided a significant difference in the Canadian content percentage reported by each bidder for the same equipment. Apart from the vendors not understanding how to report the Canadian content, as requested, there is a concern that vendors would misquote this information to put themselves at an advantage. Therefore, if such a policy was considered, how does one resolve this type of discrepancy for the same piece of equipment?
- Limited effectiveness and utility in achieving the stated policy goals. The City of Toronto reported that, during the three year period that their Canadian content policy was active, there were six (6) instances (of approximately 12,000 contracts) in which a contract was not awarded to the lowest bidder as a result of applying the Canadian content policy. The financial impact of awarding these six (6) contracts was an additional cost of approximately \$45,000 to the City of Toronto.
- Increased risk of legal challenges, based on discrimination and preferential practices in procurement, requiring them to move from an 'honour' system to one that needs to be policed. This level of administration would be labour intensive and would result in increased staffing demands.

A review of the City of Hamilton’s 2008 expenditures was conducted (including procurement card spending, petty cash and payments made through Accounts Payable). The total expenditures were then adjusted for mandatory payments required by the City; such as remittance of employees’ payment to Revenue Canada (i.e. unemployment insurance premiums, Canada Pension Plan contributions, etc…) and utilities. This same review was conducted for the City’s 2011 expenditures. The results are based on the location of the remit to address of the vendor.

Analysis of City’s Spend Based on Vendor Remit to Address

Year	Percent Spend in Hamilton	Percent Spend in Ontario (including Hamilton)	Percent Spend in Canada (including Ontario)	Percent Spend outside of Canada
2008	52.3 %	94.8 %	99.9 %	0.1 %
2011	49.2 %	97.9 %	99.7 %	0.3 %

Therefore, in 2008, a total of 99.9 % of the City’s spend was paid to a vendor in Canada and in 2011, the total was 99.7%.

Even without a specific Buy Local, Buy Canadian Procurement Policy, the City is involved in several initiatives that are in keeping with the goals outlined by the HDLC. Some of these initiatives are outlined in the following sections.

The City of Hamilton is a party to the Governance Agreement for the Joint Procurement of Transit Buses (Metrolinx) in accordance with the City’s Procurement Policy # 12 – Cooperative Procurements. This agreement incorporates the Ministry of Transportation’s Canadian Content for Transit Vehicle Procurement Policy which requires that all transit vehicles procured with provincial funding must have at least 25 per cent Canadian content. The HDLC refers to the same policy in its May 1, 2012 letter to the City.

This policy describes Canadian content to include expenditures which are directly related to transit vehicles manufacturing process, distribution and acquisition:

- labour;
- subcomponents and components;
- project management;
- engineering;
- manuals;
- special tools;
- test equipment;

- freight; and
- warranty.

The HDLC also makes reference to a local food procurement policy, and specifically names Toronto as an example. This policy is a stand alone policy, and is outside of Toronto's Purchasing Policy. The City of Hamilton currently has a task group that is developing a Healthy Food and Beverage Policy for the City. Again this is outside of the City's Procurement Policy. Staff are not recommending that the Procurement Policy include specific policies regarding the different commodities that the City requires.

As part of an outreach initiative, the City's Procurement Section hosts a series of Bidders Presentation on an annual basis. The purpose of these presentations is to present information regarding the City's procurement process, changes that have been implemented and upcoming initiatives. It also provides vendors an opportunity to ask questions of Staff and meet various members of the Procurement team. Although the presentations are open to all vendors, there is an inherent advantage to local vendors as these meetings are all held at various locations in Hamilton.

There are other inherent advantages that local bidders enjoy due to their physical proximity to the City of Hamilton. When competitive bids are sought, the City uses landed prices as the basis for comparing prices. In other words, prices are inclusive of all freight and duty. Therefore, with shorter travel distances, the cost of freight would be minimal as compared to a vendor that is out of province. Also, there would be duty charges incurred for purchases from vendors outside of Canada, which is a further advantage enjoyed by local vendors.

The Procurement Policy allows Client Departments (within the City) to obtain their own pricing for goods and services valued at \$5,000 to (up to) \$50,000. In these instances, the Client Department invites vendors to quote on the good or service required using the Request for Quotations Policy. This provides the department the latitude to select which vendors to use. The City has a vendor database, whereby vendors who are interested in doing business with the City register themselves in those commodities (goods and services) they are able and interested in supplying. This database includes the vendor's complete contact information, including address, they may take this information into consideration when the department is selecting vendors to invite to quote.

For Request for Tenders and Request for Proposals issued through Centralized Procurement, there have been instances where response time is critical to the success of a contract. For these contracts, vendors are measured against their response time to a call or event, and therefore there is an advantage to those vendors located within or near the City of Hamilton. In other contracts, the physical location of the vendor is

paramount whereby the successful vendor will be servicing Ontario Works Clients. As this population may not readily have access to their own transportation, the City requires that the successful vendor be within a certain distance of a bus route, and be located within the City of Hamilton.

The City of Hamilton recognizes and values the contributions local vendors make to the local, national and inter national economies. Procurement staff has developed Vendor Selection Guidelines which will serve as a reference tool by staff when selecting vendors to provide goods/services to the City. The guidelines do not change the Procurement Policies Council has approved but provide a concise summary of the latitude staff have in selecting vendors. It is being recommended that the Vendor Selection Guidelines be posted to the Procurement home page on ENET where all Procurement related information is available.

Lastly, the City contacted the Hamilton Chamber of Commerce as outlined in the Historical Section of this report.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

None.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

None.

APPENDICES / SCHEDULES

Appendix 'A' – May 1, 2012, letter from the Hamilton and District Labour Council C.L.C
Appendix 'B' – April 16, 2012, letter from the Hamilton Chamber of Commerce
Appendix 'C' – Vendor Selection Guidelines



HAMILTON and DISTRICT LABOUR COUNCIL C.L.C.

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President Mary Long

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Secretary Tom Atterton

May 1, 2012

R. P. Male
Director, Financial Services
Angela Mastandrea
Procurement Manager
Corporate Services Department
City of Hamilton
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Hamilton ON L8P 4V2

Dear Rick and Angela:

Thank you for meeting with representatives from the Hamilton and District Labour Council on March 27, 2012. We appreciated the opportunity to provide our perspective on the city's procurement policy and, in particular, our request that it contain specific "buy local, buy Canadian provisions". Of course, it would have been much better if we had been consulted, as directed by the committee, before the policy had been finalized and submitted to City Council.

As follow up to our discussion, we are submitting some recommendations for your consideration.

The Labour Council hopes that the City of Hamilton recognizes the value added by purchasing goods and services produced in Hamilton by Hamiltonians. And to alleviate concerns about local "protectionism", our definition of local is quite expansive. Indeed, while we want to see as many local workers and businesses benefit from purchases made by the city, we are very aware that not everything is made here or every service available here; going outside the city and even the province might be necessary to meet the city's requirements. We ask, however, that local content in bids be accorded some value.

In December 2011, City Council adopted a resolution on the CETA negotiations. As you are aware, none of Canada's current free trade arrangements apply to sub-national governments, including municipalities. This appears set to change with CETA. We find it incongruous that some future local infrastructure project might have to be awarded to a company in Belgium, probably without a guarantee that local labour or goods or services would be used to complete the job, with the profits flowing out to Brussels. Although not directly related to the procurement policy here and now, we hope the city takes the resolution seriously and expresses concerns to the governments of Canada and Ontario about the potential limitations about to be imposed on municipalities.

Again, we are grateful for the opportunity to provide feedback.

Regards,



Tom Atterton
Secretary

cc: Mary Long, President, Hamilton and District Labour Council
Political Action & Social Services Committee, Hamilton and District Labour
Council
Don Fisher, Assistant City Solicitor, City of Hamilton
Adam Sweedland, Law Clerk, City of Hamilton

**Proposal and Recommendations for “Buy Local” Considerations
In the City of Hamilton Procurement Policy**

Submitted by:

The Hamilton and District Labour Council

May 1, 2012

Preamble

While the Hamilton and District Labour Council (HDLC) understands the restrictions that the City of Hamilton is under to meet the requirements of legislation and trade agreements, we also hope that the City appreciates the added value in keeping the dollars of ratepayers as close to home as possible.

In formulating the following recommendations, we have tried to avoid what restrictions tell us we cannot do and instead focus on the things we can. The document that seems most on point concerning restrictions to “Buy Local” initiatives with regards to municipalities is *Chapter Five: Procurement from the Agreement on Internal Trade (AIT) – Annex 502.4*.

The HDLC has tried to respect the restrictions and limitations of *Chapter Five* of the *AIT* while, admittedly, being creative in our approach. Such “creativity”, in all cases, is exercised only in the spirit of recognizing how important we consider the issue of value-added “Buy Local” measures to be with Hamiltonians. We hope you will agree with the import we put on the issue, and consider our recommendations as valuable pieces to the city's Procurement Policy.

Recommendations

Recommendation 1 – Statement of Buy Local Value-Added

While we understand the limitations of ascribing blanket benefits or penalties to parties concerning “Buy Local” initiatives, legislation does not prevent a belief statement about the value-added nature of procuring from local suppliers and contractors. Indeed, the *AIT*, by allowing a “value-added” clause for buying Canadian, acknowledges the economic benefits of keeping ratepayer dollars close to home.

We recommend that an overarching statement be included within the policy to enshrine the city's belief in supporting local vendors, suppliers, and contractors.

Recommendation 2 – Hamilton Value-Added Preference (Scope and Coverage)

Chapter Five of the *AIT* only applies where the procurement value is:

- a) \$100,000 or greater, in the case of goods or services, or
- b) \$250,000 or greater, in the case of construction

Under **Article J** of the same document, the agreement recognizes a Canadian value-added provision for all items within its purview:

J. Canadian Content

- 1. Entities covered by this Annex may accord a preference for Canadian value-added, provided that the preference is no greater than 10 percent.*
- 2. An entity covered by this Annex may limit its tendering to Canadian goods or suppliers, provided the procuring entity is satisfied that there is sufficient competition among Canadian suppliers and the requirement for Canadian content is no greater than necessary to qualify the procured good as a Canadian good.*

Through the agreement own recognition of the basic concept of value-added, and the lower limits as outlined above do not fall within the scope of the document, **we recommend that for goods and services under \$100,000 or construction under \$250,000 a preference for Hamilton value-added be accorded at no greater than an additional 10 percent to existing Canadian value-added preference.**

Recommendation 3 – Regional Economic Development

Article K of *Chapter Five* of the *AIT* allows for exclusion from the Agreement for “economic development purposes” under exceptional circumstances. Historically, municipalities have undertaken infrastructure projects to not only help the local economy, but to help job stimulus. While we acknowledge the rare situations under which this may occur, **we recommend including a Hamilton value-added preference (as outlined in Recommendation 2) in the policy for projects that can be deemed exempt from the AIT**

under economic development purposes.

Recommendation 4 – Non-Application

Chapter Five, Article L of the *AIT* Annex provides for a list of 12 instances under which the procurement limitations in the agreement do not apply.

We recommend the Article L list of *AIT* exemptions be included in an Appendix to the Procurement Policy and that a Hamilton Value-Added preference be applied to all such instances.

Recommendation 5 – Legitimate Objectives

The *AIT* allows for “Legitimate Objectives” to mitigate requirements as prescribed within. Under Article F (2) of Chapter Five, the “protection of the health, safety and well being of workers” and “consumer protection” are listed as legitimate objectives.

In recognizing the importance of these objectives, workers from outside of Hamilton must receive sector-specific training in any by-laws or codes that are associated with elements of the procured work.

We recommend that any workers from outside of Ontario receive compliance training with regards to the Ontario *Occupational Health and Safety Act* in addition to any job-specific training in municipal by-laws and codes. Such training will be at the cost of the contractor or any subcontractor therein.

Further, we recommend that any workers from Ontario, but outside of Hamilton receive job-specific training in municipal by-laws and codes. Such training will be at the cost of the contractor or any subcontractor therein.

Recommendation 6 – “Unbundling” for Local Bids

We understand that the scope and duration of projects may be prohibitive to Hamilton contractors. Within the scope of realizing the value-added nature of local procurement when available, we would hope that making them “too big to bid on” is not stifling local bids. Tenders which inevitably reach into the millions or tens of millions of dollars place hardship and restriction on local contractors.

We recommend that the new Procurement Policy include a statement encouraging departments to foster local participation in the bidding process by “unbundling” tenders, where possible, to allow for smaller, local, independent contractors to vie for the contracts while remaining above the \$100,000 lower limit required for Hamilton's “Fair Wage” policy to remain in effect.

AND

Where such “unbundling” may provide for a tender that falls under the amount required for *AIT* compliance, that the Hamilton Value-Added preference in Recommendation 2 be applied.

The aforementioned recommendations have been submitted and endorsed by the Hamilton and District

APPENDIX

Research Provided by the United Steelworkers Public Policy and Bargaining Support Department at the Request of the Hamilton and District Labour Council

The Toronto Transit Commission's procurement policy is here:

http://www.ttc.ca/TTC_Business/Materials_and_procurement/About_Us/Commission_Policies/Procurement_Policy.jsp.

See section 4.6, which reads:

4.6 Canadian Content Effective September 1, 2008 the Province of Ontario implemented a requirement for Canadian Content for Transit Vehicle Procurement Policy that specifies that some provincially funded transit vehicles will require 25% Canadian content. TTC procurements of provincially funded vehicles shall comply with the Province of Ontario's Canadian Content for Transit Vehicle Procurement Policy.

In addition to the above, for the procurement of city buses the Commission has directed higher percentages of Canadian content for the various types of city buses as well as a minimum percentage of Canadian content applicable to the direct labour for the final assembly of the buses. These percentages are posted on the Commission's web site under [Commission Policies](#) and may only be changed as approved by the Commission.

For all other purchases, the Commission may provide preference to Canadian manufacturers or Canadian Content if pricing and quality are equal to other bids.

The Toronto City Council in 2008 adopted a local food procurement policy. It's stated goals are to help the environment, not local jobs, but obviously it helps local farmers. The 2009 implementation update document is here:

<http://www.toronto.ca/legdocs/mmis/2009/gm/bgrd/backgroundfile-22345.pdf>

You probably know all about the campaign the CAW launched a couple of years back to get city councils to adopt "Buy Canadian" resolutions. They got a legal opinion on the subject that could be useful:

<http://www.caw.ca/assets/pdf/LegalOpinion.pdf>. The CAW's model resolution is here: <http://www.caw.ca/en/campaigns-issues-manufacturing-matters-buy-canadian-build-communities-resolution.htm> and the list of municipalities that

have adopted some version of it, according to the CAW, is here:

Ontario Brockton
Chatham-Kent
Goderich
Ingersoll
Kincardine
Oshawa
Oxford County
Pelham (North Pelham, Ridgeville, Effingham, Fonthill & Fenwick)
St. Catharines
Tecumseh
Thorold
Thunder Bay
Welland
Woodstock

Newfoundland
Marystown

On a related front, you're probably aware that the Ontario NDP has promoted (including in the 2011 platform) a "Buy Ontario" policy that would require the province to make its purchases from Ontario unless that would increase the costs of the procurement by more than 10 percent – so that's a possible model.

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chamber of commerce
your voice in business

April 16, 2012

Angela Mastandrea
Manager, Purchasing
City of Hamilton

Dear Ms. Mastandrea:

On behalf of the Hamilton Chamber of Commerce, I am pleased to provide this letter in response to the City of Hamilton's review of local purchasing policies. It is commendable that the City is reviewing its purchasing policies regarding procurement of products and services from local businesses. While the Hamilton Chamber of Commerce supports and encourages the City to procure locally, including communicating purchasing opportunities with local business, the Chamber supports, as a principle, free enterprise. We want our local businesses to be able to compete on a "level playing field" with other business, whether it be in our own city, or in this province or country or internationally.

We cannot, therefore, encourage nor support local policies that may be protectionist in nature, real or perceived, that may produce the unintended consequence of other municipalities, or other jurisdictions, adopting similar policies that affect our local businesses' ability to compete for bids. The Hamilton Chamber supports, as another principle, open and transparent purchasing policies and processes. The Chamber is confident that when open and transparent purchasing policies and processes are in place, our local businesses can compete with the best to win bids.

The Hamilton Chamber welcomes the opportunity to work with the City and its Purchasing Division to communicate City procurement opportunities to our members and the broader business community. This work could include hosting information workshops, posting bid opportunities through a link on the Chamber website (this has been done for some time now), or other ways that we may contemplate over time. The Hamilton Chamber, in collaboration with Innovation Factory, will be hosting a "Contacts to Contracts" event through our Innovation and Technology Committee on June 14 to link local established businesses and organizations with new local companies to discuss business opportunities, including procurement.

I would be pleased to discuss this letter with either City staff or members of Council at your convenience.

Sincerely,



David Adames
President and CEO

c. Louise Dompierre, Chair, Hamilton Chamber of Commerce Board of Directors

CORPORATE SERVICES

PROCUREMENT SECTION

VENDOR SELECTION GUIDELINES

The City of Hamilton values the contributions made by local vendors to the Hamilton, Canadian and International economies. Under Council approved Procurement policies, when a Corporate Contract has not been established to provide the goods/services being sought, Staff have flexibility in determining which vendors to invite to bid. This flexibility exists in the following instances: (1) when there isn't a Corporate Contract and the purchase is under \$5,000 or (2) when there isn't a Corporate Contract and the purchase is \$5,000 or greater but under \$50,000. In these situations staff can consider selecting local vendors to bid on providing the goods and/or services but must adhere to the following vendor selection guidelines:

- Staff must use all applicable City Contracts where they have been established.
- Staff must comply with all aspects of Procurement By-Law Number 11-297 approved by Council the 14th day of December, 2011. In particular, Policy #5 - Determining the Procurement Process, outlines the process for soliciting bids.
- Staff, should solicit bids from vendors who have registered to be on the City's electronic vendor data base providing staff feel the vendor can provide goods/services of acceptable quality in a cost effective manner, where a City Contract has not been established for the goods/services being solicited.
- Staff, when selecting vendors to be invited to bid, should consider soliciting bids from local vendors if staff are of the opinion that the local vendors can provide goods/services of similar or better quality and price than non local vendors.