



Hamilton

INFORMATION REPORT

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	February 09, 2015
SUBJECT/REPORT NO:	By-law Compliance by Bidders to City of Hamilton Projects (LS15002/FCS15019 (Outstanding Business List Item))
WARD(S) AFFECTED:	City Wide
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SIGNATURE:	

Council Direction:

The Audit, Finance and Administration Committee at its meeting on April 14, 2014 approved the following:

“6. By-law Compliance by Bidders to City of Hamilton Projects (Johnson/Pearson)

That staff be directed to review the tender process to determine the feasibility of including a phase in the procedure, which ensures staff have confirmed that bidders are compliant with the zoning and licensing by-laws, prior to awarding a contract(s), and report back to the Audit, Finance & Administration Committee.”

The purpose of this report is to update Council on the actions taken by staff to address this outstanding item. As a result of this report, the item representing By-law Compliance by Bidders to City of Hamilton Projects will be considered complete and removed from the GIC outstanding business list.

Information:

Review of Current Processes

The City's current procurement document templates contain language which requires the successful bidder to comply with all applicable laws, including all municipal by-laws such as those related to zoning and licensing, and to correct any violation where notified by the City. As this language applies once the successful bidder has been awarded the contract, it provides the City with the ability to deal with non-compliance issues that come to the attention of the City during the performance of the contract. Procurement staff has enforced this contract language where allegations of by-law non-compliance have come to their attention.

There are some limitations with this contract language. For example, bidders located outside of the City's municipal boundaries would not be subject to compliance with many of the City's by-laws. Further, even where the City's by-laws do apply, this contract language does not address any by-law non-compliance matters arising prior to contract award.

Improvements Being Made to Current Procurement Processes

To ensure that bidders are fully aware of their obligation to comply with the provisions of all City of Hamilton by-laws, including zoning and licensing by-laws, the following amendments have been made:

1. All procurement document templates include a representation by the bidder that the bidder is in compliance with all City of Hamilton by-laws relating to its business and the applicable City contract; and
2. Where City staff identify a higher risk of bidder non-compliance with City zoning and/or licensing by-laws on a specific contract, those procurement documents shall require the bidder to provide proof of by-law compliance to the City prior to award of the contract.

Further details of each procurement process improvement are set out below.

1) Amending the procurement document templates for all procurements

Most municipalities canvassed by City staff do not include a bidder representation that it is in compliance with municipal by-laws at the time of bid submission. However, certain municipalities such as Mississauga and Vaughan have done so with some success. In the case of Mississauga, they have expanded the scope of the bidder representation beyond zoning and licensing by-laws to include all municipal by-laws. In Vaughan, they have limited the bidder's representation to compliance with Vaughan's Property

Standards By-law or Zoning By-laws. It should be noted that the City's licensing by-law does not require all businesses and trades to have a City of Hamilton license.

This procurement process improvement involves including a bidder representation in the bid documents whereby a bidder confirms to the City that they are in compliance with all City of Hamilton by-laws relating to both its business and the relevant City contract. This broader language compliments the language currently contained in the City's procurement document templates. If the bidder's representation is untrue or incorrect, the City will have the discretion as to whether to reject the bid, refuse to enter into the contract with the bidder or consider the bidder to be in default under the contract, depending on the circumstances of the situation.

This approach does not mean that the City will be checking every bid before award but rather that the City will look at the issue of by-law non-compliance on a complaint basis only. Such an approach will allow any review by the City to be more focussed on the specific alleged non-compliance.

2) *Amending the procurement documents for higher risk procurements*

City staff has identified that for certain operational service contracts, such as grass cutting, snow removal and vehicle towing, it is important to ensure that the bidders are in compliance with the City's zoning by-laws.

Therefore, for the above types of operational contracts and any others which are identified by staff to have a higher risk of concern for compliance with City zoning and/or licensing by-laws, bidders shall be required to submit a current zoning verification report or proof of a current City of Hamilton license. City staff reviewed the most appropriate timing for the submission of these required documents and in order to minimize the risk of bidder disqualification and cost to the bidders, it was determined that only the successful bidder would be required to submit proof of by-law compliance after the close of the procurement process but prior to award of the contract.