

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial:

The change in law to 'non-construction employer' status is expected to result in cost savings realized in the procurement of capital projects, simplification of and expedited procurement processes, and increased efficiencies through less consultation and limited liability under the collective agreement.

It is difficult to estimate the potential cost savings in capital delivery as the City's existing procurement practices of using only signatory Carpenters affiliated unions has persisted for 14 years. Staff is aware of at least five examples in recent years where non-signatory contractors have bid on City procurements. In such cases the cost savings from the next lowest bidder ranged from 9 percent to 32 percent lower, with the average being 21 percent lower.

For demonstrative purposes, if one applies the average of the cost savings in each of the five examples to the total value of carpentry component contracts awarded in 2018, the estimated cost savings of that the City may have realized as a 'non-construction employer' status would have been approximately \$7 million (\$33,731,927 (in contracts awarded in 2018) x 21%). It is important to note that these calculations only include contracts awarded through the Procurement Section through a Request for Tenders or Request for Proposals. Any bid solicitations issued by the client departments in the form of a Request for Quotations have not been included.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

This change in law will inevitably result in cost savings through more open and competitive procurement, staff resourcing efficiencies, and reduce the potential undue influence in procurement and liability in contract delivery. The City of Hamilton currently faces numerous procurement challenges as a result of being certified with the Carpenter's Local 18 including but not limited to the following:

1. **Difficulty in attracting qualified bids.** Restricting bids to signatory General Contractor's reduced the number of competitive bids submitted and compounds the City's ability to complete the project within budget.
2. **Emergency Roofing Repairs** requires immediate attention. Restricting the bids to signatory General Contractors only limits the pool of available General Contractors who can perform the work in a timely manner.
3. **Parks & Landscaping Projects** are often smaller budgets, with only a limited amount of carpentry work. This type of work is usually performed during busy construction months, and General Contractors are either not available to bid, or

they're not financially motivated to bid on smaller projects. The procurement process becomes less competitive because too few bids are received. Additional hardship is experienced when the project then needs to be re-tendered and completion is delayed. In addition to this, there is usually a minimal amount of the work involved in parks and landscaping projects is that covered under the CBA scope of work.

4. **Large scale specialty projects with unique requirements result in too few qualified bids.** When larger scale projects with unique requirements or specialized expertise is required, and it includes any sort of Carpentry work, the requirement to limit bids to signatory General Contractors often results in too few qualified bids, not enough competitive bids, or no bids at all. Requests for exemptions in this case is at the discretion of the EBA and Union, who have often refused to provide exemptions, resulting in project delays. The City is then forced to re-tender or carve out the bid (i.e. separate tendering of the Carpentry portion from the rest of the project). Non-signatory General Contractors are reluctant to bid on projects where they don't have oversight of the entire project.

If Council decides to take no action, the City would be deemed a "non-construction employer" and the following will result:

- Broader procurement opportunities will result in expanded access to the City's construction procurement to signatory contractors (other than Carpenters, Local 18) as well as non-signatory contractors;
- The City's Procurement Policy sets out procurement goals and objectives which includes *"Encourage an open and competitive bidding process for the acquisition and disposal of Goods and/or Services, and the objective and equitable treatment of all vendors."* Becoming a non-construction employer will significantly and positively affect the City's ability to be open and fair to all bidders regardless of their union affiliation.
- The City will no longer be obliged to award construction work to a limited set of signatory general contractors and signatory subcontractors aligned with the Carpenters, Local 18, permitting the City to seek the best contractor and most competitive price regardless of union affiliation;
- The City will be able to streamline the use of bid templates and refrain from having to include terms and conditions to suffice union requirements and the use of joint venture bid submissions.
- Greater attention may be paid to compliance with the Fair Wage Policy to ensure minimum labour rates for all contractors and subcontractors.