



Associated Paving & Materials Ltd
5365 Munro Court
Burlington, Ontario - L7L 5M7
Tel: 905-637-1966 Fax: 905-637-1404
Web: www.associatedpaving.com

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DELIVERED BY EMAIL

November 9, 2021

Office of the City Clerk
City Hall, City of Hamilton
71 Main St. W., 1st Floor
Hamilton, ON L8P 4Y5
clerk@hamilton.ca

Dear Sirs/Mesdames:

**Re: Associated Paving & Materials Ltd. (“Associated Paving”)
Contract C15-71-17 - Prequalified Contractors for Permanent Restoration of Pavement
Cuts in Asphalt and Concrete Pavements
Recommendation Letter of City of Hamilton Manager of Procurement Dated October 19,
2021 Pertaining to Commercial Relationship with Associated Paving (“Recommendation
Letter”) --- City’s Procurement Sub-Committee Meeting on October 29, 2021 (“Procurement Sub-
Committee Meeting”) -- Audit, Finance & Administration Committee (“AFAC”) Meeting on November
4, 2021 (“AFAC Committee Meeting”) – City Council Meeting on November 10, 2021**

Your Worship & Members of City Council,

Associated Paving is a family business, started through my father’s hard work and dedication more than 50 years ago. I have worked in the business all of my adult life. My son, Marco, our General Manager, is third generation in that role. I am very proud of what we have accomplished and the reputation we have earned. Our long-term relationship with the City is very important to us.

We are writing to you regarding what we understand to be a City staff recommendation for an interim ban against us that would prevent us from bidding for and entering into road cut restoration contracts with the City.

We have been told by the Clerk’s department that we are not permitted to appear as a delegation before City Council. However, both Marco and I will be viewing the Council meeting on November 10th through Web-Ex and would be happy to answer questions from Councillors, if the technology permits.

We do not know the precise nature of the recommendation because the City’s staff, Procurement Sub-Committee and Audit, Finance and Administration Committee (“AFAC”) have conducted this process that will impact our business interests *in secret*. We have also not seen the secret report prepared by the City for these recommendations or the information relied upon - even though all of these documents are presumably about our company. In contrast, the City’s process requires all of our own submissions and letters to be made public.



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We respectfully refer you to the materials we submitted to the Procurement Sub-Committee and the AFAC, directly and through our lawyers:

- (i) letter from DLA Piper dated October 27, 2021;
- (ii) letter from DLA Piper dated October 28, 2021;
- (iii) letter from DLA Piper dated November 3, 2021;
- (iv) letter from our company dated November 3, 2021; and
- (v) PowerPoint presentation delivered by Marco Capobianco of our company on to the AFAC on November 4, 2021.

We assume all of these materials have been provided to you.

We have done many contracts for the City of Hamilton, over many years. One of the contracts we have been doing this year is the road cuts restoration contract. This is our 8th year doing that contract. We were first awarded it in 2014 and it was extended by the City each year to 2017. In 2017 we were again awarded the contract. It was extended by the City each year through this year.

There is a new road cuts restoration contract out for tender. Councillors may not know that the City just prequalified us to bid for that. An "Evaluation Team" of "City representatives and City consultants" evaluated us and our performance on contracts. The evaluation process took two months. Only 5 companies were prequalified. We were told on October 8th that we had been prequalified.

Three weeks ago today (October 19th), we received a letter telling us that "City staff" would be recommending that we be banned from bidding "for road cuts restoration work for a period to be determined by Procurement Sub-Committee". The letter said that it was the view of "City staff" that "the commercial relationship between the City and Associated Paving has been impaired" because of our performance on the road cuts restoration contract going back to November last year and before that. Are these different people from the "City representatives" who decided we should be prequalified? If we performed so badly, why were we prequalified only about 10 days before that? If we were so bad, why did the City extend us again in December 2020?

Council is considering a recommendation from Procurement Sub-Committee about us, made on October 29th. We don't know what the recommendation says. We have been told by the Clerk's department that we are not allowed to know, until after Council decides on the recommendation. We were told the same about what the AFAC decided.

A "confidential" City staff report we have not been allowed to see was presented to the Procurement Sub-Committee, who also heard from City staff in closed session on October 29th. This also happened as to the November 4th AFAC meeting.

We have asked to see the "confidential report" which lays out the case against us, so we know what it says and we can respond and defend ourselves. We have been told that we aren't allowed to know what City staff has said about us. The report supposedly contains some legal advice, but we doubt that the report is all legal advice. Is the report fair to us? We don't know, but we are thinking it tells only one side of the story.



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In the bullets below, we list some of what we are thinking might not have been mentioned in the staff report or might not have been presented fairly:

- The written commendations we have received from the City for our performance on the road cuts restoration contracts (in 2015, 2018 and 2020);
- The City having been sufficiently satisfied with our performance to extend our contracts six times, including last December;
- The City having doubled the amount of restoration work over what the contract provided for and insisting that we complete it all in the same time period (six weeks) regardless of COVID and the weather;
- The City has required us to change the sequencing of our work by doing “priority lists”, which have our crews hopping around the City and losing productivity and actually slowing progress on completion of restorations.
- The City directs that we devote our crews and equipment to emergency work, resulting in restoration work being delayed.
- We have reported to the City that we lost 38 days in 2020 due to the difficult circumstances arising from COVID and weather and that so far in 2021 we have lost 33 days due to COVID and weather. This does not count time spent on emergency work.
- The City having introduced in January 2020 a brand new system called “Cityworks”, which adds further steps in the work order “completion” and “invoicing” process and has led to lags in work orders being considered by the City to be “completed” --- meaning that reports generated from the Cityworks system may *inaccurately* indicate that we have *not completed* restorations which in some cases *we had actually completed weeks ago* (Marco explained an example of this in November 4th PowerPoint presentation to AFAC);
- The City having rated our performance in **June of this year** as **“Satisfactory” in all categories**;

Were Council told about the prequalification process just completed and that the Evaluation Team had conducted a more rigorous process of evaluating us and our performance than is possible for Councillors to conduct? What reason has been given to Council for over-riding the decision of the Evaluation Team?

As mentioned, we and our lawyers have submitted letters to the Sub-Committee and to the AFAC and my son Marco also made a presentation to AFAC. But without being allowed to know what “City staff” has said about us in the “confidential report” it is not possible to challenge and correct whatever has been said in the “confidential report”. We believe we are entitled to a fair process, but the process has been **secretive and unfair**.

We also understand that some Councillors might have received complaints from residents about how long it has taken us to complete restorations. When Councillors inquired of staff about the resident’s complaint, were they told that it was the contractor’s fault? It is easy to blame the contractor, but was that fair? Did the fault lie only with the contractor? We would say not.



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The current road cuts restoration Contract states that our obligation is “to supply sufficient crews and equipment to undertake the estimate square meters of pavement cut restoration in this Contract”. Like any construction company, we forecast needs for crews and equipment and then plan and allocate accordingly. The City has told us they have no control over and cannot forecast the volume of restorations required, so as a reference point we used the estimated quantities the Contract states we are obligated to provide sufficient resources to undertake. The actual quantities needed have far exceeded the estimated quantities. **We consider that to be the root cause of what has occurred.** For the current contract the City estimated far less than the actual restoration quantities done in 2016 and 2017. Why they did so, we do not know.

We have in good faith worked diligently and cooperatively with the City to complete restoration of the unanticipated volumes and also to accommodate the increased requirements of the City’s new *Cityworks* process. We have also been sensitive to the fact that residents sometimes complain to the City and to Councillors when restoration does not occur promptly and we have accommodated directions from the City to perform what the City advises is priority work. Further, we even offered to open our asphalt plant on Saturdays to address these issues. The City refused to pay for that.

In 2020 the actual quantities of restoration we completed were almost double the Contract’s estimated quantities, and 2021 already exceeds the Contract’s estimated quantities.

As a practical matter, sod can only be laid in the spring and the fall, especially considering the weather conditions experienced this past summer. Despite the weather conditions this year, we have laid significantly more sod than any previous year.

We have been planning to submit a competitive bid for the upcoming road cuts contract. We can do that because of our experience and modifications we made to our asphalt plant in Burlington and to our facilities at Lottridge Street --- a contaminated property we bought, cleaned up and modified to more effectively perform road cuts restorations. We have also shown that we have the ability to be responsive to emergency situations because of the proximity of our facilities and because we have one of the few asphalt plants in the Province which can produce asphalt in the winter months,

The City’s Evaluation Team has already determined that we are able to satisfactorily perform the upcoming road cuts restoration contract. We have in place the same project management team that the City has commended. The quantities estimated by the City for the upcoming contract are more consistent with historical actual quantities, which will assist in our planning and allocation of resources.

We understand that construction contractors have rarely been banned by the City. Imposing a ban, even a limited ban, will have *serious consequences for us*, especially damage to our reputation. If the City does not wish us to bid for the new road cuts restoration contract, why didn’t they disqualify us in the prequalification process? Disqualifying us would have been less damaging to us than imposing a ban on us will be.

For the City, banning us from bidding would mean the other prequalified companies would not have to compete with us --- the low bidder on the last two road cuts contracts.

We understand that the Councillors will be inclined to follow whatever “City staff” and the Procurement Sub-Committee (on a 2 to 1 vote) have recommended. But we ask that the Councillors consider all of the impact on us of being banned, our entitlement to a fair process and whether the process followed has been fair. We ask that Councillors put themselves in our shoes.



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We respectfully ask that we not be banned from bidding for the 2021 Road Cust Contract. Thank you for your consideration of this letter and our circumstances.

Sincerely,

Stan Capobianco, President
Associated Paving & Materials Ltd
Tel: 905 637-1966
Fax: 905 637-1404