

Request to Speak to a Committee of Council

If your request is for a specific committee meeting, this form must be received by NOON the day before the scheduled committee meeting. Requests for Monday meetings must be received the Friday before the meeting. Requests for meetings scheduled for the day after a statutory holiday must be received the last business day before the meeting.

Standing Committee Requested

Kindly indicate which Standing Committee: *

Audit, Finance & Administration

Requestor Information

Name of Individual: * Joe Cosentino and Joe Iatomasi

Name of Organization: All Around Contracting Inc.

Do you or your organization represent a lobbyist (voluntary) Yes
 No

Contact Number: * 905 692-4588

Email Address: * joe.iatomasi@allaround.ca

Mailing Address: * 175 Swayze Road Hannon, Ontario L0R 1P0

Reason(s) for delegation request: * To address item 12.1 Business Relationship between City and All Around Contracting Inc.

Will you be submitting a formal presentation? * Yes
 No

Overhead projector required for the presentation

Power Point required for the presentation

Requests to speak to Council are forwarded to the Standing Committee for consideration. Once considered by Committee, and approved, you will be notified of the date for your presentation.

This form is not for the purpose of presenting unsolicited proposals by Vendors to Committee. Such proposals are subject to a competitive process as required by the City's Purchasing Policy.

Personal information collected on this form is authorized under Section 5.10(2) of the City's Procedural By-law No. 10-053 for the purpose of contacting individuals and/or organizations requesting an opportunity to appear as a delegation before a Standing Committee and will be published with the Committee Agenda. The Voluntary Lobbyist Registry is a public document and will be available for viewing in the City Clerk's office. The Procedural By-law is a requirement of Section 238(2) of the Municipal Act. Questions about its collection can be directed to the Manager, Legislative Services / Deputy Clerk, City Hall, 71 Main St. W., Hamilton, ON L8P 4Y5 (905 546-2424 ext. 4304).

May 17, 2011

Our File No.: 11-0820

VIA EMAIL

Audit, Finance and Administration Committee
Hamilton City Hall
2nd Floor
71 Main Street West
Hamilton, Ontario
L8P 4Y5

Dear Committee Members:

Re: All Around Contracting Inc.
re: City of Hamilton
re: Contract Nos. PW-10-34 (HW), PW-10-09 (HSW) and PW-09-32 (HSW)
re: Meeting of Audit, Finance and Administration Committee – May 18, 2011

As you are aware, we are the lawyers for All Around Contracting Inc. (“All Around”).

We are writing with respect to the meeting of the Audit, Finance and Administration Committee (the “Committee”) scheduled for Wednesday, May 18, 2011 at 9:30 a.m. Specifically, we again wish to address Agenda Item 12.1 – Commercial Relationship between the City of Hamilton and All Around Contracting Inc.

As previously detailed in my correspondence dated March 23, 2011, All Around disputes its receipt of a Needs Improvement rating on each of the three contracts noted above. All Around continues to have serious concerns with the policies, procedures and motivations used to arrive at said rating.

All Around requires that the Needs Improvement rating be revised so that it can continue with its business relationship with the City of Hamilton (“Hamilton”). The failure to do so will have severe consequences to All Around and will likely mean that All Around will need to suspend operations and that its employees will lose their jobs and livelihood.

All Around wishes to update this Committee about the activities that have taken place since the meeting on March 24, 2011.

It is All Around’s contention that this matter is not properly before this Committee at this time. Moreover, Hamilton has failed to show All Around procedural fairness that would justify its rating. To the contrary, based on the evidence received by All Around as presented by the Public Works Department, there continues to be no proper justification for anything other than a Satisfactory

rating. In the circumstances, All Around must be afforded the opportunity to continue to bid jobs put out for tender by Hamilton. It also must be permitted to be awarded jobs where it is the low, compliant bidder, such as is the case on Crockett Street Project (Project No. PW-11-22 (HSW)).

City Staff's Failure to Follow the Committee's Resolution

At the Committee meeting held on March 24, 2011, a resolution was passed that this matter be referred back to Hamilton staff for further review and consideration. City staff were directed to take a number of steps and report back to the Committee. For ease of reference, a copy of the resolution (provided to All Around on April 20, 2011) is attached hereto.¹

All Around maintains that this matter is not properly before the Committee at this time. City staff have not followed the mandate of the resolution and more importantly have not afforded All Around the opportunity to respond to the concerns or to the evidence allegedly in support of staff's recommendation.

To better explain what has transpired, a brief chronology of selected recent events is required:

<u>DATE</u>	<u>EVENT</u>
March 24, 2011	Committee Meeting and resolution passed.
April 5, 2011	City staff postpones meeting scheduled for April 6, 2011 as they need additional time to prepare reports.
April 6, 2011	Angela Mastandrea sends email to Joe Iatomasi (All Around) confirming meeting of April 21, 2011. City staff to present "top 5 contributing reasons" in relation to ratings. All Around advised that Hamilton does not intend to discuss each rating in detail. ²
April 20, 2011	Angela Mastandrea informs Joe Iatomasi that Contract Status Reports are now available for pickup.
April 21, 2011	All Around and City staff meet to discuss the just provided Contract Status Reports.

¹ Resolution passed on March 24, 2011 re: All Around.

² Copy of email chain dated April 6, 2011 is attached for your ease of reference.

<u>DATE</u>	<u>EVENT</u>
April 27, 2011	All Around receives a letter dated April 26, 2011 from Angela Mastandrea in relation to the meeting held on April 21, 2011 and Hamilton's response to All Around's counsel's letter of March 23, 2011. ³
May 3, 2011	Minutes of meeting of April 21, 2011 are circulated to All Around. ⁴
May 4, 2011	Email received by All Around stating that City staff are bringing forward an updated report to the Committee on May 18, 2011. ⁵
May 6, 2011	Email sent by All Around to Andrea Mastandrea requesting corrections to the Minutes. ⁶
May 6, 2011	All Around is low bidder on Crockett Street Project [PW-11-22-(HSW)].
May 9 & 11, 2011	Emails sent by All Around to City staff requesting postponement of portion of Committee meeting dealing with All Around.
May 11, 2011	Email received by All Around from City staff (R. Male) indicating no adjournment. Email reads as follows: There is an urgency to get this back to Committee as soon as possible so that staff can get direction from Council on current and future tenders regarding bids from All Around. Tenders continue to be issued and I assume your company plans to continue to bid

³ A copy of the letter dated April 26, 2011 from Angela Mastandrea (Hamilton) to J. Iatomasi (All Around) is attached.

⁴ Minutes of Meeting held April 21, 2011 are attached.

⁵ Email dated May 4, 2011 from Angela Mastandrea (Hamilton) to J. Iatomasi (All Around) is attached.

⁶ Email chain dated May 6-9, 2011 from All Around to Angela Mastandrea (Hamilton) is attached.

<u>DATE</u>	<u>EVENT</u>
	work that is tendered. This is prime tendering time and we can't hold off issuing tenders. ⁷

Clearly, from the sequence of events set out above, it is All Around's submission that it has not been afforded enough time to respond in a fulsome manner to the allegations put forward by City staff.

The Contract Status Reports were only provided to All Around on April 20, 2011. There are literally hundreds of documents appended to the reports. All Around had less than 24 hours to try and review these documents prior to the meeting on April 21, 2011. While All Around did its best to do so, there was simply not enough time to properly review the reports and respond to them in a meaningful manner. The response to the reports requires All Around to review its own project files so that it can organize responsive documents and refute the allegations made therein. While All Around has started this process, it has not had sufficient time to complete same. Indeed, once City staff refused to adjourn the aspect of the Committee meeting dealing with All Around, my client's energies and focus have, by necessity, shifted to preparing for the Committee meeting.

In the absence to a real opportunity to respond to the Contract Status Reports, procedural fairness mandates that this matter be put over to a date that would permit All Around time to consider what has been put forward, organize its responding documentation and summarize its position in writing.

As noted above, City staff have refused to discuss the individual ratings in detail. All Around contends that this is contrary to the intent of the resolution. Indeed, it was the individual ratings that were the central focus of All Around's disagreement with City staff's recommendation to sever the business relationship with All Around. It is disingenuous to refuse to discuss the ratings while simultaneously maintaining the Needs Improvement rating on the three projects.

Providing Contract Status Reports that allegedly justify the recommendations cannot be done in the absence of discussions about the ratings themselves and surely cannot be done without having input from All Around. The Minutes of the April 21, 2011 meeting indicate that All Around is to provide a letter outlining the details of its disagreement (see item 12-11, Point 6) with the reports. All Around has had no substantive opportunity to do so. As such, the review process is not yet complete by City staff and accordingly this matter is not properly before the Committee on May 18, 2011.

All Around asserts that City staff are rushing to bring this matter forward (see email from R. Male dated May 11, 2011) and have refused to allow the process to continue as it properly should. Indeed, All Around maintains that City staff are eager to have the Committee "rubber stamp" the recommendation put forward by the Public Works Department without due process. Mr. Male is implying that Hamilton is holding off calling tenders until such time as All Around's Needs

⁷ Email chain dated May 9 & 11, 2011 to and from J. Iatomasi (All Around) and Angela Mastandrea and R. Male (Hamilton) is attached.

Improvement rating is ratified and sanctions are imposed on All Around. The pre-judgment of this matter is not to be permitted and cannot take the place of a proper adjudicative procedure from being followed.

Lastly, it needs to be pointed out that the resolution called for “meetings” to take place between All Around and City staff to discuss this matter. To date, as set out in the chronology, only a single meeting has taken place. Said meeting was not proper in that virtually no time had been afforded to All Around to review and respond to Hamilton’s voluminous documentation. City staff have refused All Around’s request for an additional meeting or meetings. Instead they have pushed forward to Committee without regard to All Around’s rights and without the substance of the resolution having been complied with so that a fully informed decision can be made. In these circumstances, All Around submits that this matter is not properly before the Committee on May 18, 2011. An adjournment is required and further directions from the Committee are necessary in order to permit a fair process to be followed.

In the absence of City staff’s adherence to the resolution passed on March 24, 2011, there is no proper justification for the Committee to make a negative finding that affects Hamilton’s business relationship.

Response to Letter of April 26, 2011

While All Around maintains that it has not been provided with a real opportunity to respond to the allegations put forward by City staff, it feels it is necessary to point out to the Committee its areas of disagreement with the issues set out in Ms. Mastandrea’s letter of April 26, 2011.

These areas of concern are summarized as follows:

- a) Reference is made to a report prepared by City staff concerning All Around’s performance on Hamilton contracts. A copy of this report has not been provided to All Around. This document is necessary in order for All Around to know and respond to the case and arguments being made against it;
- b) Ratings put out by Hamilton can impact All Around’s ability to be awarded work with other municipalities. Contractor references are common place in the industry. A negative rating or an inability to get a reference from Hamilton is harmful to All Around’s business opportunities and reputation;
- c) City staff admit that there was little time for All Around to review the entirety of the material, and request that All Around forward its concerns in writing. Notwithstanding same, City staff but have effectively prevented this from occurring by rushing this matter to Committee;
- d) “Report card” approach discussed at page 2 of Ms. Mastandrea’s letter is not appropriate. Discussion of ratings in detail with specific reference to the criteria set out in the Guidelines is what is required;

- e) Reports were prepared in “November-December 2010 timeframe”. This is not “at the completion of the project” as mandated by the Guidelines;
- f) Purchasing Policy 8 – Vendor Performance only speaks about Public Works Department being responsible for the vendor performance evaluation process. It does not speak about the application of the specific Guidelines. While the generic process may have been in place since 2005, the Guidelines only came into being in late November 2010. Therefore, the specific procedures are being applied retroactively and were not in place at time of tender;
- g) Reference is made to various meetings City staff had with All Around. No minutes of these meetings have been produced. All Around contends that the meetings were not specifically linked to the vendor performance review process but were instead regular construction meetings held to discuss the projects. Indeed, the meeting about Stonechurch Road was a start-up meeting. No performance evaluations were undertaken;
- h) Reference to prior contracts is irrelevant to the current rating review process concerning the three projects. All Around requires minutes of meetings or other correspondence that specifically point out alleged performance issues if this is considered to be a relevant criteria for evaluation. All Around was awarded multiple jobs by Hamilton after 2008;
- i) Meetings in 2008 cannot be construed as Incident Reports pursuant to the Guidelines;
- j) City staff admits “subjectivity” in ratings process. This is improper. Objective data needs to be utilized especially in circumstances where an adverse rating will have such a deleterious effect on All Around’s business;
- k) References on the Reports to liquidated damages are misleading. Hamilton has not charged liquidated damages on the three projects. All Around has justified that additional working days be added to the contracts and Hamilton has not yet addressed these requests;
- l) Hamilton has not provided any specifics about its contribution to project delays;
- m) Substantial performance was granted on the three projects. The projects were carried over to 2011 based on Hamilton’s approval. Extra time and extra work were given to All Around and penalties should not flow from same; and
- n) All Around advised of date of Committee meeting and no consideration given to requested and necessary postponement to this agenda item.

All Around reserves the right to bring forward other concerns it has with the letter of April 26, 2011. It has attempted, for the Committee’s benefit, to set out same in summary fashion in this correspondence.

Response to Contract Status Reports

All Around has not had sufficient opportunity to review and respond to the Contract Status Reports. However, it wishes to point out certain areas of disagreement with this alleged "evidence" being put forward by City staff to justify the negative rating given to All Around.

These issues can be summarized as follows:

- i) Value of extra work has been misrepresented by City staff. Variance with original scope of work as tendered is not adequately explained;
- ii) Failure to set out design problems identified by All Around, specifically with respect to Stonechurch Road project;
- iii) Emails presented by City staff are only a fragment of the overall "story" of the projects. Emails only present alleged problems but have no record of All Around's responses, solutions and follow up actions. Accordingly, emails are one sided. Several emails never copied to All Around and yet are used to justify the ratings given;
- iv) Selected diary entries do not give proper context. City sets out issues and again ignores the resolutions put forward by All Around. Inflammatory issues are highlighted but findings which demonstrated that All Around was in the right are not shown.
- v) Selective use of Minutes of Meetings. Entirety of project needs to be examined. Minutes set out ordinary construction issues encountered on every project by every contractor; and
- vi) Payments to All Around are not properly accounted for and are understated. Distorts change in scope of projects.

Conclusion

It is apparent that City staff are attempting to legitimize their recommendation to the Committee without affording All Around a real opportunity for input and discussion. There has not been any re-consideration of the ratings, only an attempt to retroactively justify them.

City staff must not be permitted to explain away and "bless" an imperfect and flawed process. The decision maker, namely the Committee, needs to ensure that a fair process is undertaken and needs to know that all relevant materials are before it in order to make a proper and informed decision.

All Around maintains that once the supposed "evidence" is thoroughly reviewed, the Committee will see that there is no substance to same. The evidence is incomplete, flawed and easily refutable. This process needs to unfold in a fair and unhurried manner.

The Committee cannot permit sanctions to be imposed on All Around based on the improper process that was followed and the incomplete evidentiary record before it. To do otherwise, would be a serious breach of natural justice and procedural fairness.

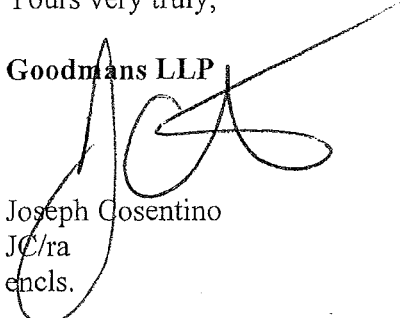
All Around maintains that it is not properly in default of the Guidelines and must be awarded a Satisfactory rating. Given that the process has not yet been brought to its conclusion, the status quo must be maintained. This means that All Around must continue to be permitted to bid Hamilton related work and must, as the lowest compliant bidder on the Crockett Street project, be awarded said project without further delay.

All Around reiterates its suggestion that a third party neutral be brought in to examine all of the evidence and circumstances surrounding the Public Work Department's negative rating towards it. This would better ensure that any biases, political considerations and/or subjective motives are not part of the evaluative process.

If a proper and fair procedure is not put into place, All Around reserves all of its rights and remedies available to it at law and in equity. All Around has expended considerable time and resources in addressing what it believes to be unfounded and improper allegations. It sincerely hopes that it will be permitted the opportunity to move forward with its business relationship with Hamilton in circumstances that are fair and acceptable to all parties.

Yours very truly,

Goodmans LLP



Joseph Cosentino
JC/ra
encls.

cc: S. Paparella
cc: J. Iatomasi

Cosentino, Joseph

Subject: FW: All Around Contracting Inc. re: City of Hamilton re: Audit, Finance and Administration Committee Meeting on March 24, 2011

From: Paparella, Stephanie [<mailto:Stephanie.Paparella@hamilton.ca>]

Sent: Wednesday, April 20, 2011 11:48 AM

To: Cosentino, Joseph

Cc: Joe Iatomasi

Subject: RE: All Around Contracting Inc. re: City of Hamilton re: Audit, Finance and Administration Committee Meeting on March 24, 2011

Hello gentlemen,

My apologies for the delay in forwarding the Audit, Finance & Administration Committee resolution to your attention. For your reference, a copy of the resolution is below:

(e) PRIVATE & CONFIDENTIAL (Item 12)

(i) Commercial Relationship between the City of Hamilton and All Around Contracting Inc. (FCS11031/LS11004) (City Wide) (Item 12.1)

(a) That Report FCS11031/LS11004, respecting the Commercial Relationship between the City of Hamilton and All Around Contracting Inc., be referred back to staff and that staff be directed to:

(i) Review the correspondence from Mr. Joe Iatomasi, of All Around Contracting Inc., and his Legal Counsel, Mr. Joseph Cosentino, respecting the Commercial Relationship between the City of Hamilton and All Around Contracting Inc., dated March 23, 2011;

(ii) Arrange and attend meetings with representatives of All Around Contracting Inc., respecting the Commercial Relationship between the City of Hamilton and All Around Contracting Inc.;

(iii) That the forthcoming report, respecting the Commercial Relationship between the City of Hamilton and All Around Contracting Inc., include a chronological listing of both verbal and written communications/meetings between City staff and representatives of All Around Contracting Inc.; and,

report back to the Audit, Finance & Administration Committee.

Thank you.

Joe Iatomasi (All Around Contracting)

From: Mastandrea, Angela <Angela.Mastandrea@hamilton.ca>
Sent: April-06-11 3:20 PM
To: Joe Iatomasi (All Around Contracting)
Subject: RE: Scheduled Meeting

Joe,

This is to confirm that the purpose of the meeting is to address those items and issues raised by yourself and your solicitor at Audit, Finance and Administration Committee.

Also, to assist you in understanding the ratings provided on the three contracts, the City is going to present you with the top 5 contributing issues to these ratings as discussed with Gabe (and confirmed with yourself yesterday) It is not the City's intent to discuss each rating in detail.

Kind regards,

Angela

-----Original Message-----

From: Joe Iatomasi (All Around Contracting) [mailto:joe.iatomasi@allaround.ca]
Sent: Wednesday, April 06, 2011 2:45 PM
To: Mastandrea, Angela
Subject: RE: Scheduled Meeting

Angela,

I am available on April 21st. I am still trying to fully understand the purpose of the meeting and the extent of preparation or information that is required on my part. What information can I expect to receive prior to the meeting and is there an agenda?

Meeting aside, of greater concern to me is that I have spent the past few weeks personally reviewing every email, meeting minutes, our diaries, claims, justification for extra working days, and every bit of correspondence relating to the three projects. I also walked the 3 job sites. At the end of it all, the indication is that most complications were typical and resolved. Of the not so typical (the majority of which relate to drawings, grades and specs.), I can only see where we worked with, not against the City to try to resolve these matters. From what I can see, the information that has been communicated to senior levels of management is not supported by the data. However, I do understand that senior management had an obligation to act in response to whatever information they received.

Unless I've missed something remarkable, instead of entering into a meeting that will inevitably result in more finger pointing, is there a way that we could instead use this meeting to discuss what went wrong in the process, can it be fixed, and what can we all do to ensure success moving forward?

Thank you,
Joe Iatomasi

From: Mastandrea, Angela [mailto:Angela.Mastandrea@hamilton.ca]

To: Joe Iatomasi (All Around Contracting)
Subject: Scheduled Meeting

This is to confirm that tomorrow's meeting is cancelled and we are looking to reschedule for the week of April 18th.

Can you please confirm if you are available on Thursday, April 21, 2011 at 10 am.

Meeting Room 320B - City Centre

Thanks so much.

Angela



Hamilton

Angela Mastandrea
Procurement Section
Corporate Services
Phone 905.548.2424, extension 2796 Fax 905.548.2327
angela.mastandrea@hamilton.ca

April 26, 2011

All Around Contracting Inc.
175 Swayze Road
Hannon, Ontario
Canada, L0R 1P0

Fax: 905.692.6449

Attention: Joe Iatomasi
President

Re: City of Hamilton Contracts PW-10-34, PW-10-09 and PW-09-32

Dear Mr. Iatomasi,

This is to address the issues presented by Mr. Joseph Cosentino in his letter of March 23, 2011 to Mr. Brad Clark and the information presented to Audit, Finance and Administration Committee on March 24, 2011. Further, this is to confirm your meeting with City Staff on April 21, 2011 regarding the same.

The letter states that the 'Needs Improvement rating will have a severe consequence on All Around's business'. This is to confirm that a 'Needs Improvement' rating will not result in the loss of business, but cumulative non or poor performance over the past four plus years may. It is All Around's performance on awarded City contracts that speaks to the status of its commercial relationship with the City. Staff have prepared a report that speaks to All Around's performance on City contracts for Council's consideration. Council's approval of the recommendations set out in this report may impact All Around Contracting Inc.'s ability to bid on future City projects. Mr. Cosentino also expressed the concern that area municipalities would not award contracts to All Around Contracting Inc. as a result of any performance rating given by the City of Hamilton. The award of Request for Tenders for construction work is based on the lowest compliant bid, and therefore these ratings would not affect All Around Contracting Inc.'s ability to bid and be awarded any tendered construction work with another municipality.

On April 20, 2011, the City provided documentation to All Around Contracting Inc. to support the City's rating on the above three contracts. The documentation presented was prepared by the Public Works Department. The information was provided in response to the statement made that 'All Around strongly disagrees with the Needs Improvement rating.' Understanding that the documentation provided by the City was

comprehensive, there was little time for All Around to review the material in its entirety. If there are any concerns or questions regarding the documentation provided, All Around will forward these concerns to the City in writing with all supporting documentation.

The 'report cards' were provided to capture performance issues experienced during the contract. The areas of concern outlined in the 'report cards'; Safety, Traffic Control and adhering to schedules have always been part of the contract administration process, and are not newly created criteria. This is the only change to the contract administration process, and this is the first application of it. The City will continually review its process and will make any necessary revisions to improve on it.

Non-Compliance With Public Works Department's Own Policy

One concern raised in this section of the letter was the date that the reports were prepared. The City acknowledges that the dates entered on the form were in a different format order, resulting in the date of the report being stated incorrectly. Staff confirmed that the reports were completed in the November – December 2010 timeframe.

A concern is raised to the timing of the reports and that they were prepared 'well past the time when All Around bid the three jobs'. Vendor Performance Issues are raised at any time during the performance of the contract, and are not tied the time of bidding a contract. Mr. Cosentino further states that 'no such criteria existed' at the time the contract was tendered and when work commenced. Purchasing Policy 8 – Vendor Performance includes a provision that states (in part)

"The Public Works Department shall be responsible for the vendor performance evaluation process with regard to construction contracts issued under Section 4.7 (Policy for Construction Contracts) in a format which includes feedback from area residents and elected officials."

This provision has been present in the policy since 2005 (a copy was provided to All Around Contracting Inc. at the April 21, 2011 meeting), and is therefore not being applied retroactively.

The letter also outlines the concern that All Around was unaware that vendor performance was being monitored. City staff (including Procurement) have met with All Around Contracting Inc. to discuss its vendor performance issue. The dates of these meetings were:

- October 4, 2010 (regarding PW-10-34 – Upper Wellington Street),
- May 28, 2009 (regarding PW-09-32 – Stonechurch Road West), and
- June 15, 2010 (regarding PW-10-34 – Upper Wellington Street)

It was also confirmed that meetings were previously held to discuss vendor performance issues on prior contracts that All Around Contracting Inc. was awarded in the spring of 2008 (e.g. Buckingham Drive, Owen Place, Wendover Drive, etc...).

The intent of these meetings is the same as the 'Incident Report' (which has been recently adapted by Public Works for construction tenders in order to formalize this part of their contract administration process).

Mr. Cosentino asserted that no formal notification was given to All Around Contracting Inc. regarding the March 24, 2011 Audit, Finance and Administration Committee meeting. Mr. Iatomasi called the Procurement Section on March 16, 2011 after receiving the vendor performance ratings from the Public Works Department. It was during this conversation that Mr. Iatomasi was directed to the relevant Purchasing Policies, advised of the agenda item regarding the commercial relationship between All Around Contracting Inc. and the City, and was provided the name and extension of the Legislative Assistance so that Mr. Iatomasi could request to appear as a delegate at the meeting.

Errors In the Reports Themselves

Claims were made that the ratings were a result of 'incorrect and subjective opinion'. This was included in Mr. Cosentino's letter and reiterated by All Around Contracting Inc. at the April 21, 2011 meeting.

The City advised that the performance of a vendor is done in a consistent manner, and that objective criteria are used in identifying issues. The City acknowledges that there may be some subjectivity when considering the final ratings, but have established descriptors to assist in achieving a consistent rating determination for vendor performance.

It was confirmed at the meeting that All Around Contracting Inc. would forward any concerns it had regarding any of the documentation provided to it on April 20, 2011. Further, any concerns raised will be made in writing to the City with documentation to support its concerns.

The issue of liquidated damages was also addressed at Committee on March 24, 2011 and in Mr. Cosentino's letter. The City confirmed that when liquidated damages are assessed against a vendor, this compensation does not negate any vendor performance issue(s) that caused any delays in the work schedule and is still considered a vendor performance issue. Further, the City confirmed that it has not charged any liquidated damages for this work, but liquidated damages were indicated on the form as the work schedule is beyond the completion date of the contract. Liquidated damages will be assessed by offsetting the actual completion date of the work by any claims accepted by the City (i.e. the City takes into consideration any delays that are not attributed to All Around Contracting Inc.'s performance).


Challenges with the Projects

This section of the letter outlines contract related issues that All Around is not responsible for. The City acknowledges their contribution to any project delays and has allowed for additional time to complete these projects..

The letter further states that 'All Around has achieved substantial performance on all three projects'. The City has clarified that substantial performance has been achieved on a reduced project scope. In other words, the City has approved substantial performance only for that work that has been completed by All Around, not on the entire scope of work.

The City feels that it has addressed the concerns raised with respect to All Around Contracting Inc.'s vendor ratings. Once staff has made arrangements to bring this matter forward to Audit, Finance and Administration Committee, All Around Contracting Inc. will be advised of the date.

Sincerely,



Angela Mastandrea, CIM, CPPO
Procurement Manager

cc: Public Works Department, City of Hamilton
cc: Legal Services, City of Hamilton
cc: Members of Audit, Finance and Administration Committee, City of Hamilton
cc: Stephanie Paparella, Legislative Assistant, City of Hamilton

City of Hamilton
Public Works Department, Environment and Sustainable Infrastructure Division
Engineering Services' Group ~ Construction Section

**ALL AROUND CONTRACTING INC.
PERFORMANCE APPRAISAL MEETING
Meeting Room "320B"**

Thursday, April 21, 2011 10:00 a.m.-11:00 a.m.

Attendance: Angela Mastandrea (Procurement Section); Rick Male (Financial Services); Geoff Rae (Environment & Sustainable Infrastructure); Gary Moore (Engineering Services); Jerry Parisotto (Construction Section); Jeff Pidsadny (Construction Section); Joe Iatomasi (All Around Contracting Inc.); Eric Lallouet (All Around Contracting Inc.)

ITEM	TOPIC DISCUSSED	ACTION REQ'D BY
01-11	The meeting was called to order by Geoff, and the parameters for the meeting were established. Due to the time allotted for the meeting, there was to be no assignment of blame (i.e. he said / they said) by anyone present and everyone agreed.	
02-11	The purpose of the meeting was to address comments made at AF&A Committee and to review the letter from All Around's legal representative, Goodman, and discuss the issues contained therein.	
03-11	<p>Concerns were raised about the newly-introduced Contractor Appraisal system and the ratings used. Staff confirmed that this was not a new process, only the report card portion of the process.</p> <p>A "needs improvement" rating alone will not preclude bidding but poor performance over longer periods of time will. Our ratings are not published so should have no effect on awards in other municipalities. Rick explained that low bids are accepted regardless of poor rating by another municipality.</p> <p>Documentation explaining the ratings themselves was provided to Joe earlier (April 20, 2011) for his review and understanding.</p>	
04-11	<p>Public Works has the following policies in place:</p> <ol style="list-style-type: none"> 1. Purchasing Policy #8 – Vendor Performance Evaluation: Applicable since 2005 – required performance appraisals to be done, PW is responsible for vendor performance for construction contracts, which includes feedback from residents and elected officials. 2. All Around Contracting Inc. noted that this situation didn't go from Incident Report to a meeting to committee for recommendation to exclude them from contract bidding opportunities. 3. Public Works Department responded by stating that a more formalized process is being implemented by doing Performance Appraisals as a basis to moving forward with the process. Meetings were held on February 2008; May 28, 2009; October 4, 2010. 4. Past performance issues, (Buckingham; Sherwood Rise; Normanhurst; Owen Place; Lynwood; etc.) were discussed in past meetings and are a <u>cumulative effect</u> of the last 4 ½ years. 	

All Around Contracting Inc. ~ Performance Appraisal Review
 April 21, 2011

ITEM	TOPIC DISCUSSED	ACTION REQ'D BY
	5. All Around Contracting Inc. bid other work in 2008 but was not successful in Hamilton; therefore, they worked in other municipalities.	
05-11	The dates in the report look odd because of the format, but all reports were completed in November and December 2010.	
06-11	Retroactivity was addressed in the discussions above. (see 04-11, item 1)	
07-11	Form (report card) was developed to formalize process	
08-11	Input to reports: the scoring is the City's interpretation and not a consensus. Ratings are as objective as possible and are based on the explanation of the ratings (Appendix A). All contractors have the opportunity to meet with staff to discuss how they were rated.	
09-11	Errors in the report: 1. Being subjective was discussed. 2. Liquidated damages noted as being charged but are actually only being assessed at this time and not actually charged on a payment certificate. They may be offset by claims which are still being discussed.	
10-11	Substantial Completion: All three projects were granted on reduced scope and are still being worked on.	
11-11	Angela will issue a letter of response either today or Tuesday, April 26, 2011.	Angela M.
12-11	Comments / Questions from Joe: 1. Who prepared the package? Jerry and Jeff. 2. Was the package reviewed by everyone? No; it was our due diligence back-up of facts to support our ratings. 3. Has anyone else seen the package? No. 4. Emails that are included do not show the follow-up responses from All Around Contracting Inc. This is meant only to highlight issues that were a concern during various projects. 5. Does he [Joe] have an opportunity to go over documentation and have a meeting to discuss and rebut individual points? Joe was requested to identify any issues in writing and to provide back up. 6. Geoff suggested that All Around Contracting Inc. provide a letter outlining the details of the package with which he disagrees.	Joe I.
13-11	Meeting adjourned with another date to be established – if required/requested by All Around Inc.	

If there are any errors or omissions, please contact Jerry Parisotto.

Respectfully submitted,

Jerry Parisotto, Manager of Construction

GBP:amg

Cosentino, Joseph

Subject: FW: Minutes from April 21, 2011 - All Around Contracting
Attachments: All Around Performance Appraisal April 21 2011.doc

From: Mastandrea, Angela [<mailto:Angela.Mastandrea@hamilton.ca>]
Sent: May-03-11 4:06 PM
To: Joe Iatomasi (All Around Contracting)
Cc: Moore, Gary; Parisotto, Jerry; Rae, Geoff; Male, Rick
Subject: FW: Minutes from April 21, 2011 - All Around Contracting

Good afternoon Joe,

Please find the minutes to our April 21, 2011 meeting as promised.

Kind regards,

Angela Mastandrea, CIM, CPPO | Procurement Manager | Procurement Section | City of Hamilton
Phone: 905.546.2424, extension 2796 | Fax: 905.546.2327
angela.mastandrea@hamilton.ca

Cosentino, Joseph

Subject: FW: Committee Report

From: Mastandrea, Angela [<mailto:Angela.Mastandrea@hamilton.ca>]

Sent: May-04-11 4:29 PM

To: Joe Iatomasi (All Around Contracting)

Cc: Male, Rick

Subject: Committee Report

Good afternoon Joe,

As promised, I am writing to advise you that staff are bringing forward an updated report to the May 18th Audit, Finance and Administration Committee meeting.

Kind regards,

Angela Mastandrea

Cosentino, Joseph

Subject: FW: Minutes from April 21, 2011 - All Around Contracting

From: Joe Iatomasi (All Around Contracting) [mailto:joe.iatomasi@allaround.ca]
Sent: May-09-11 1:01 PM
To: 'Mastandrea, Angela'
Cc: 'Male, Rick'
Subject: RE: Minutes from April 21, 2011 - All Around Contracting

Angela,

In reply to your comments....

1. I absolutely did mention that there was nothing of substance in the documentation. Maybe this will help you remember "there is nothing of substance in the document, it's filled with fluff, and you're all going to look like a bunch of morons in front of committee".
2. What has or hasn't occurred since the meeting took place is irrelevant to the minutes themselves. What's important is that the discussions that took place during the actual meeting are accurately reflected in the minutes. All Around requested another meeting, and time to prepare a response. It was City staff who said "if required" pending a review of our response.

What you choose to do with the minutes from this point on is up to you. Additionally, following your report of April 26, 2011, All Around was preparing items for discussion at a subsequent meeting and doing so in good faith. However, 6 days later you abruptly notified us that staff was bringing this to the next committee meeting. It is unfortunate that we were not given the time or opportunity to address your report prior to your decision to go to committee.

Joe Iatomasi

From: Mastandrea, Angela [mailto:Angela.Mastandrea@hamilton.ca]
Sent: May-09-11 11:26 AM
To: Joe Iatomasi (All Around Contracting)
Cc: Male, Rick
Subject: RE: Minutes from April 21, 2011 - All Around Contracting

Joe,

I neglected to mention that I will be out of the office for the balance of the week, returning on Tuesday, May 17th.

Please ensure that you copy Rick on all correspondence.

Regards,

Angela

-----Original Message-----

From: Mastandrea, Angela
Sent: Monday, May 09, 2011 11:21 AM
To: 'Joe Iatomasi (All Around Contracting)'

Cc: Moore, Gary; Parisotto, Jerry; Rae, Geoff; Male, Rick
Subject: RE: Minutes from April 21, 2011 - All Around Contracting

Joe,

I was out of the office on Friday, but please see my comments below.

-----Original Message-----

From: Joe Iatomasi (All Around Contracting) [mailto:joe.iatomasi@allaround.ca]
Sent: Friday, May 06, 2011 9:00 AM
To: Mastandrea, Angela
Cc: Moore, Gary; Parisotto, Jerry; Rae, Geoff; Male, Rick
Subject: RE: Minutes from April 21, 2011 - All Around Contracting

I have 2 issues with the accuracy of the minutes:

1. Item 03-11 – the minutes state “Documentation explaining the ratings themselves was provided to Joe earlier (April 20, 2011) for his review and understanding”

This line should be followed by “Joe indicated that he had just received the documents on the previous day and had only begun to review them. So far he could not see anything of substance in the documentation and noticed that follow-up action by All Around was also left out of the document.”

This omission should be added to Item 03-11. The point that is made in item 12-11 (#4) does not adequately cover the above discussion.

Joe - I do not recall you mentioning that you could not see anything of substance in the documentation - but I do recall that you mentioned that you did not have adequate time to review the entire contents of the package and noted that the resolutions were not included. Staff acknowledge the short time that you had to review the contents, and explained that the package was to identify issues that occurred during the contract only.

2. Item 13-11 – minutes state “Meeting adjourned with another date to be established – if required/requested by All Around Inc.”

THIS IS INCORRECT AND SHOULD READ “Meeting adjourned with another date to be established as requested by All Around Inc. following a full review of the documentation provided to them on April 20, 2011. All Around also noted that the resolution stated that meetings (in plural) are to take place between City staff and All Around.”

Joe - I acknowledge that you pointed out that the resolution stated meetings in plural. The City has provided you with all the requested information and do not need to meet again. To date, you have not requested any meetings, clarification or had any other correspondence regarding this matter. Staff also stated that if you wanted to meet with the City that you were to provide the items for discussion with back up information to the City. Again, the City has not received any such package.

Regards,

Joe Iatomasi

From: Mastandrea, Angela [mailto:Angela.Mastandrea@hamilton.ca]
Sent: May-03-11 4:06 PM
To: Joe Iatomasi (All Around Contracting)

Cc: Moore, Gary; Parisotto, Jerry; Rae, Geoff; Male, Rick
Subject: FW: Minutes from April 21, 2011 - All Around Contracting

Good afternoon Joe,

Please find the minutes to our April 21, 2011 meeting as promised.

Kind regards,

Angela Mastandrea, CIM, CPPO | Procurement Manager | Procurement Section | City of Hamilton
Phone: 905.546.2424, extension 2796 | Fax: 905.546.2327
angela.mastandrea@hamilton.ca

Cosentino, Joseph

From: Cosentino, Joseph
Sent: Monday, May 16, 2011 4:15 PM
To: Cosentino, Joseph
Subject: FW: Committee Meeting

From: Male, Rick [<mailto:Rick.Male@hamilton.ca>]
Sent: May-11-11 5:15 PM
To: Joe Iatomasi (All Around Contracting)
Cc: Mastandrea, Angela; Moore, Gary
Subject: RE: Committee Meeting

There is an urgency to get this back to Committee as soon as possible so that staff can get direction from Council on current and future tenders regarding bids from All Around. Tenders continue to be issued and I assume your company plans to continue to bid work that is tendered. This is prime tendering time and we can't hold off issuing tenders.

-----Original Message-----

From: Joe Iatomasi (All Around Contracting) [<mailto:joe.iatomasi@allaround.ca>]
Sent: Wednesday, May 11, 2011 2:01 PM
To: Male, Rick
Subject: FW: Committee Meeting

Rick,

I understand that Angela is off for several days. I had sent her the below noted email earlier this week and have not heard back so I'm not sure if she forwarded this to you prior to leaving. I should also mention that I am currently on standby to be called to a trial on a personal matter for the 3 weeks beginning May 9, 2011. Therefore, if my lawyer cannot attend on May 18th it is quite possible that I too will not be able to address committee and it is All Around's intention to speak to committee. Given that our schedules have no flexibility, this should be deferred to a mutually agreed date. Please advise.

Regards,
Joe Iatomasi

From: Joe Iatomasi (All Around Contracting) [<mailto:joe.iatomasi@allaround.ca>]
Sent: May-09-11 11:09 AM
To: 'Mastandrea, Angela'
Subject: Committee Meeting

Angela,

It is All Around's intention to have legal counsel present when this matter is next dealt with by the Committee. City staff has very abruptly scheduled this matter to the next committee meeting. Failure to provide proper notice means that our legal counsel is unavailable to attend on May 18th due to a previously scheduled trial. Given the importance of the matter, we respectfully request that this be re-scheduled to another mutually agreed date.

Regards,