

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF JANUARY 28, 2014

Item 3, Report No. 2, of the Finance, Administration and Audit Committee, which was adopted, as amended, by the Council of the City of Vaughan on January 28, 2014, as follows:

By approving the following:

That staff be directed to prepare a supplemental report for Council recommending other measures to mitigate against the potential for actual and perceived conflicts of interest, preferential treatment or undue influence in the acquisition of goods and services by the City; and

That Confidential Communication C8 from Legal Counsel, dated January 28, 2014, be received.

3 IMPROVED CONFLICT OF INTEREST PROVISIONS FOR CITY CONTRACTS

The Finance, Administration and Audit Committee recommends:

- 1) That the recommendation contained in the following report of the Commissioner of Legal & Administrative Services/City Solicitor, dated January 20, 2014, be approved; and
- 2) That staff bring forward a report to the January 28, 2014, Council meeting, providing legal advice on the issue of prohibiting family members of Senior Management and Members of Council from bidding on contracts for the City of Vaughan.

Recommendation

The Commissioner of Legal & Administrative Services/City Solicitor recommends:

1. That the proposed amendments to the City's Consolidated Purchasing Policy to require vendors providing goods and services to the City to disclose potential conflicts of interest, defined to include a familial relationship with a Member of Council or City of Vaughan employee, be brought back to Council for approval at a future date when other proposed revisions to the Policy are completed;
2. That the City's tendering documents and contracts be amended to require disclosure of potential conflicts of interest, defined to include a familial relationship with a Member of Council or City of Vaughan employee, by vendors providing goods and services to the City; and
3. That an enhanced process be implemented to record and track declared conflicts of interest by employees as outlined in this Report.

Contribution to Sustainability

Not applicable to this Report.

Economic Impact

The economic impacts, if any, will be brought forth to Council at the time the revised Consolidated Purchasing Policy comes forward for approval.

Communications Plan

The formal conflict of interest process recommended in this Report will need to be communicated to the vendor community through the City's revised Purchasing Policy and bidders' meetings held for each procurement. Also, the City's bid documents should include an instructions section that explains the conflict of interest requirements for vendors.

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Purpose

On May 14, 2013, Council adopted a recommendation of Committee of the Whole that staff report back with the appropriate information to make an informed decision on whether or not, in the spirit of transparency and accountability, the City should move in the direction of prohibiting family members, as defined in the *Municipal Conflict of Interest Act*, of Council and senior management from bidding on contracts for the City of Vaughan. This Report contains the information required for Council to make an informed decision.

Background - Analysis and Options

Background

Section 270(1) of the *Municipal Act* provides that municipalities shall adopt and maintain policies with respect to the procurement of goods and services. Procurement policies are designed to promote the integrity and transparency of a municipality's procurement system.

The City of Vaughan's Consolidated Purchasing Policy ("CP Policy") was adopted on October 30, 2012. The CP Policy incorporates key aspects of policies previously approved by Council into one document modeled on the Region of York's Purchasing By-law. It provides that all procurement undertaken by the City shall be undertaken in accordance with all applicable City Codes of Conduct and in accordance with the *Municipal Conflict of Interest Act*. While both of the Codes of Conduct and the legislation address conflicts of interest, none directly prohibit family members of Members of Council or senior management from bidding or contracting with the City of Vaughan.

Existing Legislative and Policy Requirements for Members of Council:

A. Code of Conduct

The *Code of Ethical Conduct for Members of Council* ("Council Code") prohibits conflicts of interest in relation to any Member's use of office, treatment of family members and entering of contracts. Rule 1 provides, in part, that:

- Members of Council shall avoid the improper use of the influence of their office, and conflicts of interest, both apparent and real. Members of Council shall not extend, in their discharge of their official duties, preferential treatment to family members, organizations or groups in which they or their family member have a pecuniary interest; and
- Members of Council shall avoid any interest in any contract made by him/her in his/her official capacity and shall not contract with the City or any agency thereof for the sale and purchase of supplies, material or equipment or for the rental thereof.

In the *Council Code*, the terms "*child*", "*parent*" and "*spouse*" have the same meanings as in the *Municipal Conflict of Interest Act*, and the term "*family member*" is defined in the *Council Code* as follows:

- Spouse, common-law partner, or any person with whom the person is living as a spouse outside of marriage
- Parent, including step-parent and legal guardian
- Child, including step-child and grandchild
- Siblings and children of siblings
- Aunt/uncle, niece/nephew, first cousins
- In-laws, including mother/father, sister/brother, daughter/son
- Any person who lives with the Member of Council on a permanent basis.

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B. Legislation

Pursuant to section 5(1) of the *Municipal Conflict of Interest Act*, each Member of Council is required to adhere to the following:

Where a Member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

Further, a pecuniary interest of a Member includes a pecuniary interest, direct or indirect, of a parent, spouse or child of the Member. The legislation defines “*parent*”, “*spouse*” and “*child*”, as indicated above

C. Policy

The City’s Consolidated Purchasing Policy requires that all procurement undertaken by the City (with only express limited exceptions) shall be in accordance with applicable City Codes of Conduct and the *Municipal Conflict of Interest Act*. There are no additional express provisions in the CP Policy that address Members of Council.

Existing Legislative and Policy Requirements for Employees:

A. Code of Conduct

The City’s *Employee Code of Conduct* (“*Employee Code*”) addresses conflicts of interest that may arise for employees. In the *Employee Code*, a “*conflict of interest*” is broadly defined as:

a situation in which private or personal considerations, including pecuniary interests and personal interests, could affect an employee’s judgment in acting in the best interest of the Corporation.

“*Pecuniary interests*” are defined as:

interests that have a direct or indirect financial impact and include any matter in which the employee has a financial interest, or in which the employee is a shareholder director or senior officer or holds controlling interest in a corporation and that corporation has a financial interest or in which the employee is a partner of a person or is in the employment of a person that has a financial interest, *or in which a parent, spouse, same sex partner or child of an employee has a financial interest, if known to the employee.* [emphasis added].

Where a conflict of interest arises, the employee is required to advise his or her supervisor that he/she is unable to act on a matter in which there is a real or apparent conflict of interest, to disclose to his/her Commissioner (or in the case of a Commissioner, to the City Manager), in

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writing in a timely manner, any matter in which he/she has a real or apparent conflict of interest, to refrain from participating in the analysis of information or make decisions on an issue in which he/she has a real or apparent conflict of interest, and to not provide preferential treatment and to avoid the appearance of preferential treatment by the adhering to established procedures.

B. Legislation

The legislation regarding conflict of interest does not apply to municipal employees.

C. Policy

The City's Consolidated Purchasing Policy requires that all procurement undertaken by the City (with only express limited exceptions) shall be in accordance with applicable City Codes of Conduct and the *Municipal Conflict of Interest Act*. There are no additional express provisions in the CP Policy that address employees of the City.

Existing Policies of Other Municipalities:

Staff has reviewed the policies and by-laws of a number of other municipalities in Ontario, as set out in the chart below. None of these municipalities prohibit family members of their respective Members of Council or employees, from bidding or contracting with the respective municipality for goods and services. Rather, they all address the requirement to disclose potential conflicts and prevent favoritism and inappropriate influence over decision-making regarding government contracts. The following table lists the municipalities reviewed, and indicates whether or not they have codes of conduct and procurement policies or by-laws in place that specifically require the declaration of conflicts of interest by vendors:

Municipality	Code of Conduct for Employees	Code of Conduct for Members of Council	Purchasing Policy Requirement for Vendors to Declare Conflicts of Interest
Town of Aurora	Yes	Yes	No
City of Barrie	Yes	Yes	No
City of Brampton	Yes	Yes	Yes
City of Hamilton	Yes	Yes	No
King Township	No	Yes	Yes
City of Markham	Yes	Yes	No
City of Mississauga	Yes	Yes	No
Town of Newmarket	Yes	Yes	No
City of Ottawa	Yes	Yes	No
Town of Richmond Hill	Yes	Yes	No
City of Toronto	Yes	Yes	No
York Region	Yes	No	No

In addition, City staff also reviewed a sampling of tender documents from the above-noted municipalities and found that a number of them do include conflict of interest declarations by the bidders.

Analysis and Options:

A. Codes of Conduct

As noted above, the City's existing Codes of Conduct presently require disclosure of conflicts of interest, and prohibit participation of the employee and Member of Council in decision-making or

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influence where a potential conflict exists. The definitions and provisions in the Codes dealing with conflicts of interest are sufficiently broad to apply to situations in which a family member of an employee or Member is bidding on a contract with the City. In such instances, while the contracting may be allowed, the employee or Member is prohibited from the decision-making and/or from otherwise influencing the award of the contract. The Codes however do not provide for a ban against bidding by family members on City contracts/work.

It is recommended that an enhanced process be implemented to record and track declared conflicts of interest by employees, including standard forms for employees to complete regarding the nature and extent of the conflict and written responses to employees regarding mitigation requirements.

B. Legislation

The legislation too is clear in setting out disclosure requirements regarding conflicts of interest of Members of Council that are sufficiently broad to apply to the procurement context. The legislation only applies to Members of Council and therefore does not apply to City employees and family members of Members of Council or employees.

C. Policy

The City's CP Policy does not specifically include conflict of interest provisions but it does reference the Codes of Conduct and conflict of interest legislation. It is recommended that the CP Policy be amended to include specific conflict of interest disclosure requirements by bidders. Some of the tender documents that in-house counsel reviewed did include a conflict of interest declaration requirement by bidders. However, there are no definitions or instructions included in the tender documents regarding conflicts of interest and no explanation required by the bidders of the nature of the conflict if one exists.

One of the basic underlying principles of public procurement is fairness. Public bodies strive to put in place procurement policies and procedures that are open, transparent and fair to all bidders. If the City of Vaughan prohibited family members of employees or Members of Council from bidding and contracting with the City, such a prohibition could be viewed as unfair and unreasonable given the existing safeguards in place, and those recommended in this Report. As well, such a prohibition could be subject to abuse and circumvention, for example, if a non-related corporation submitted a particular bid, when in fact, it was the family member of an employee or Member of Council benefiting from the potential contract. This would be difficult for City staff to monitor and police, and it would not necessarily achieve the purpose intended.

Therefore, staff does not recommend the adoption of a ban on family members of employees and Members of Council from bidding or contracting with the City. Instead, staff recommends an amendment to the CP Policy which would explicitly state that bidders are required to disclose in their bids/proposals whether or not they have a conflict of interest which includes a familial relationship with a City employee or Member of Council. If so, the bidder will be required to describe the nature and extent of the potential conflict. As well, provisions should be included in both tender documents and contracts that enable the City to terminate any contract entered into where the requisite disclosure had not been provided.

Relationship to Vaughan Vision 2020

This Report is consistent with Vaughan Vision 2020, in particular, the City's strategic goal to use financial resources wisely by making informed decisions that take into consideration the effect on the current and future operations of the City. This Report also supports the City's strategic goal of recognizing and promoting the corporate values of respect, accountability and transparency.

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Regional Implications

Not Applicable.

Conclusion

Further to the City's objectives, as a public body, to procure in an open, transparent and fair manner, and consistent with the practices of other municipalities in Ontario, staff does not recommend an absolute ban on bidding by family members of Members of Council or employees for City contracts. It is however recommended that the City's processes and documentation be enhanced as noted in this Report to require more fulsome and enlightened disclosure of potential conflicts of interest by bidders, employees and Council members in the procurement context.

Attachments

None.

Report prepared by:

Nancy Salerno
Legal Counsel

FINANCE, ADMINISTRATION & AUDIT COMMITTEE – JANUARY 20, 2014

IMPROVED CONFLICT OF INTEREST PROVISIONS FOR CITY CONTRACTS

Recommendation

The Commissioner of Legal & Administrative Services/City Solicitor recommends:

1. That the proposed amendments to the City's Consolidated Purchasing Policy to require vendors providing goods and services to the City to disclose potential conflicts of interest, defined to include a familial relationship with a Member of Council or City of Vaughan employee, be brought back to Council for approval at a future date when other proposed revisions to the Policy are completed;
2. That the City's tendering documents and contracts be amended to require disclosure of potential conflicts of interest, defined to include a familial relationship with a Member of Council or City of Vaughan employee, by vendors providing goods and services to the City; and
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Contribution to Sustainability

Not applicable to this Report.

Economic Impact

The economic impacts, if any, will be brought forth to Council at the time the revised Consolidated Purchasing Policy comes forward for approval.

Communications Plan

The formal conflict of interest process recommended in this Report will need to be communicated to the vendor community through the City's revised Purchasing Policy and bidders' meetings held for each procurement. Also, the City's bid documents should include an instructions section that explains the conflict of interest requirements for vendors.

Purpose

On May 14, 2013, Council adopted a recommendation of Committee of the Whole that staff report back with the appropriate information to make an informed decision on whether or not, in the spirit of transparency and accountability, the City should move in the direction of prohibiting family members, as defined in the *Municipal Conflict of Interest Act*, of Council and senior management from bidding on contracts for the City of Vaughan. This Report contains the information required for Council to make an informed decision.

Background - Analysis and Options

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Where a conflict of interest arises, the employee is required to advise his or her supervisor that he/she is unable to act on a matter in which there is a real or apparent conflict of interest, to disclose to his/her Commissioner (or in the case of a Commissioner, to the City Manager), in writing in a timely manner, any matter in which he/she has a real or apparent conflict of interest, to refrain from participating in the analysis of information or make decisions on an issue in which he/she has a real or apparent conflict of interest, and to not provide preferential treatment and to avoid the appearance of preferential treatment by the adhering to established procedures.

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Relationship to Vaughan Vision 2020

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Regional Implications

Not Applicable.

Conclusion

Further to the City's objectives, as a public body, to procure in an open, transparent and fair manner, and consistent with the practices of other municipalities in Ontario, staff does not recommend an absolute ban on bidding by family members of Members of Council or employees for City contracts. It is however recommended that the City's processes and documentation be enhanced as noted in this Report to require more fulsome and enlightened disclosure of potential conflicts of interest by bidders, employees and Council members in the procurement context.

Attachments

None.

Report prepared by:

Nancy Salerno
Legal Counsel

Respectfully submitted,

MaryLee Farrugia
Commissioner of Legal & Administrative Services/City Solicitor