Minutes - Executive Policy Committee - April 21, 2008

REPORTS

Minute No. 276 Contractor Safety Program
File GP-3

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and recommends to Council:

1. That effective July 1, 2008, the City of Winnipeg require bidders to submit independently verified proof of an appropriate safety program that is in accordance with The Workplace Safety and Health Act for all construction projects estimated to exceed $200,000.00, and for other projects considered to be high safety risks.

2. That the estimated contract price for construction projects to which the independent verification of an appropriate safety program applies, be reduced in $50,000.00 increments annually until 2010, resulting in limits of $150,000.00 effective July 1, 2009 and $100,000.00 effective July 1, 2010.

3. That the standard Bid Opportunity documents be adjusted to notify potential bidders that failure to provide the said proof in a satisfactory form within five business days of a request by the City will result in the bidder being determined “not qualified” for the award of the City contract.

4. That the Chief Administrative Officer be deleted the authority to make further determinations of the value and types of projects for which bidder will be required to submit independently verified proof of an appropriate safety program that is in accordance with The Workplace Safety and Health Act.

5. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

DECISION MAKING HISTORY:

Moved by Councillor Swandel,

That the recommendation of the Winnipeg Public Service be concurred in and forwarded to Council.

Carried

RE: CONTRACTOR SAFETY PROGRAM

FOR SUBMISSION TO: EXECUTIVE POLICY COMMITTEE

ORIGINAL REPORT SIGNED BY: Director, Internal Services

REPORT DATE: March 12, 2008

RECOMMENDATION(S):

1. Effective July 1, 2008, the City of Winnipeg may require bidders to submit independently verified proof of an appropriate safety program that is in accordance with *The Workplace Safety and Health Act* for all construction projects estimated to exceed **$200,000**, and for other projects considered to be high safety risks.
2. That the estimated contract price for construction projects to which the independent verification of an appropriate safety program applies, be reduced in $50,000 increments annually until 2010, resulting in limits of **$150,000 effective July 1, 2009** and **$100,000 effective July 1, 2010.**
3. That the standard Bid Opportunity documents be adjusted to notify potential bidders that failure to provide the said proof in a satisfactory form within **five** business days of a request by the City will result in the bidder being determined "not qualified" for the award of the City contract.
4. That authority be delegated to the Chief Administrative Officer to make further determinations of the value and types of projects for which bidder will be required to submit independently verified proof of an appropriate safety program that is in accordance with the *The Workplace Safety and Health Act.*
5. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report Summary

Key Issues:

- The City's existing contractor safety program required submissions of independent verification for construction projects of **$250,000** or more and allowed contractors **three** days to produce the necessary verifications.
- After two years it is being recommended that the City should further enhance its compliance, and move towards aligning itself with other large employers by lowering the threshold for contracts. It is recommended that the threshold be lowered by $50,000 annually in order to accommodate small to medium sized contractors who may require the additional time to put formal safety programs in place. As well, the incremental change provides our organization with time to publicize the changes and modify our bidding process.

It was also discovered that contractors required additional time to provide verification of compliance – hence the recommendation for a five-day window; increased from three-days.

- Delegated authority to the CAO to adjust the level of required submissions will streamline and simplify the ability to enhance our compliance with relevant legislation.
- This phased approach provides contractors with sufficient notification as we gradually expand the scope of projects covered by this program, and enhances our compliance with relevant legislation.
- An increased requirement for independently verified proof of an acceptable safety program may have implications for contract awards such as reducing the number of bidders and/or increasing prices.
- Manitoba's *Workplace Safety and Health Act* requires employers such as the City of Winnipeg to include in its written workplace safety and health program "...procedures to be followed to protect safety and health in the workplace when another employer or self-employed person is involved in work at the workplace…"
- Changes to the Criminal Code of Canada in March 2004 create criminal liability for individuals and organizations who do not demonstrate due diligence in protecting the safety of workers and the public

Implications of the Recommendation(s):

General Implications

( ) None
(**X**) For the organization overall and/or for other departments
(**X**) For the community and/or organizations external to the City
( ) Involves a multi-year contract
Comment(s): Places additional requirements on bidders who want to bid on City contracts and may result in an otherwise qualified and responsive low bidder not being awarded a contract.

Policy Implications

(**X**) No
( ) Yes

Regulatory Implications

( ) None
(**X**) Eliminates or reduces regulatory impact
( ) Proposes regulatory impact
Comment(s): Works towards enhanced compliance with the requirements specified in Section 7 of The Workplace Safety and Health Act which requires procedures for evaluating, selecting and regularly monitoring contractors.

Environmental Implications

(**X**) No
( ) Yes

Human Resources Implications

(**X**) No
( ) Yes

Financial Implications

(**X**) Within approved current and/or capital budget
( ) Current and/or capital budget adjustment required
Comment(s): There is no financial impact for the City to implement the recommendations of this report. However, there would be increased costs for the Bidders to meet the safety regulation requirement. Bidders may pass along the additional costs to the City.

REASON FOR THE REPORT:

The process that is being proposed to demonstrate due diligence by the City in evaluating contractor safety programs, requires bidders to submit additional documentation related to health and safety programs or they will be determined to be "not qualified". Council approval is required to implement this process and to delegate authority to the Chief Administrative Officer.

HISTORY:

In 2002, the Government of Manitoba enacted changes to *The Workplace Safety and Health Act ("The Act")* to create a safer workplace for workers and the public. In addition, the Criminal Code of Canada was amended March 31, 2004 to attribute to organizations, including public sector organizations, criminal liability for the acts of their representatives and to establish a legal duty for all persons directing work to take reasonable steps to ensure the safety of workers and the public *(See Appendix A for details).*

In 2003, the City added an additional qualification to its Bid Opportunity documents requiring bidders to have a written workplace safety and health program in accordance with *The Workplace Safety and Health Act*. Prior to this time tender language included a general requirement to comply with all applicable laws and regulations. However, there was no consistent process to assess a contractor's safety program or monitor work in progress in terms of safety and health issues.

In 2004, the City started requesting bidders to submit documentation regarding safety and health as is further in the discussion section of this report.

Effective January 1, 2005, the City required bidders to submit independently verified proof of an acceptable safety program in accordance with The Workplace Safety and Health Act for construction projects estimated to exceed $250,000 and those projects considered to be high safety risks.

DISCUSSION:

The recommendation to change the City's existing contractor safety program to those submissions for construction projects of $200,000 or more (down from $250,000) is based on

- continued (phased) compliance with legislative requirements (which sees the amount reduced to $150,000 in July, 2009, and $100,000 as of July, 2010).

- working toward alignment with other agencies of government and large employers in the Province who have adopted similar Contractor Safety Programs.

- accommodates small to medium sized contractors who may require the additional time to put formal safety programs in place while providing our organization with time to publicize the changes and modify our bidding process.

As the legislation affects all contractors regardless of size, it is necessary to continue to reduce contract amounts in order to comply with the Workplace *Safety and Health Act.* The "*Contractor Safety Working Group*", comprised of representatives from departments involved in contract awards and administration, recommends that the reduction to $200,000 is a reasonable step for 2008 with the full alignment (to $100,000) occurring in 2010.

The Working Group is also recommending an extension on the current requirement of three working days to submit proof of an acceptable safety program to five working days. The recommendation is a result of two-year experience with this program. The three-day window has been identified as a potential barrier to what otherwise might be an appropriate submission.

Finally, the Working Group is recommending that authority be delegated from Council to the CAO to adjust the level and types of contracts for which submissions for contract work must comply with this program. This delegated authority will simplify the City's phased approach by eliminating the need to take each new (reduced) amount or type of contract back to Council.

The Federal Government, Manitoba Transportation and Government Services, Manitoba Hydro, The University of Manitoba and Inco have established or are developing similar contractor safety programs and processes.

Manitoba Infrastructure and Transportation requires "COR" or equivalent for submissions to contracts of $100,000 or more. The Certificate of Recognition (COR) Program is an occupational health and safety certification program for construction industry employers aimed at reducing the human and financial costs associated with workplace accidents and injuries. It may also used as a pre-qualification requirement for contractors working in and out of province. The University of Manitoba requires that all contractor employees attend an annual orientation and that all firms working in construction related activities to have been registered for COR certification.

The City of Winnipeg, as owner of land and/or premises used as a workplace, has responsibilities and potential liabilities. The City's own written workplace safety and health program must include:

7.4(5) (g) a statement of the procedures to be followed to protect safety and health in the workplace when another employer or self-employed person is involved in work at the workplace that includes

(i) criteria for evaluating and selecting employers and self-employed persons to be involved in work at the workplace, and

(ii) procedures for regularly monitoring employers and self-employed persons involved in work at the workplace

In order to demonstrate its due diligence in complying with this requirement of *The Act*, the City must establish procedures to properly evaluate a contractor's ability to comply with Manitoba safety legislation and regulations before awarding them a contract. The City must also establish procedures to monitor the work.

The Contractor Safety Working Group was formed to propose a uniform approach for the City of Winnipeg when evaluating a contractor's compliance with safety requirements prior to the award of contract. The Working Group had representation from all groups with a stake in contract awards and administration. The Working Group was created January 1, 2005, following the approval of the current "Contractor Safety Program" rules.

The recommendations within this report:

- demonstrate the City is continuing to take reasonable steps to protect the safety of workers and the public in City workplaces
- require an increased number of contractors to have the safe work plan and training to work safely when working on City jobsites
- respond to the logistical needs of contractors bidding on City work; giving them a reasonable window of time to demonstrate compliance
- streamline the process for a phased-in approach to enhanced compliance
- demonstrate the City's compliance with the requirements of *The Workplace Safety and Health Act*
- demonstrate due diligence
- reduce the potential incidence of and minimize the City's liability if a worker or member of the public is injured due to the actions of a contractor

Financial Impact Statement

Date: March 12, 2008

Project Name:

Contractor Safety Program

First Year of Program **2008**

	2008	2009	2010	2011	2012
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

There is no financial impact for the City to implement the recommendations of this report. However, there would be increased costs for the Bidders to meet the safety regulation requirement. Bidders may pass along the additional costs to the City.

Original signed by Radhika Abeysekera

Radhika Abeysekera
Manager of Finance & Administration
Internal Services Dept.

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

The Contractor Safety Working Group
Legal Services Division – Internal Services Department
Materials Management Branch – Corporate Finance Department

External Consultation With:

Construction Safety Association of Manitoba, Manitoba Heavy Construction Association, University of Manitoba Environmental Health and Safety Office, Manitoba Infrastructure and Transportation.

THIS REPORT SUBMITTED BY:

Department:	Internal Services
Division:	Human Resource Development
Prepared by:	Mark Geiger, Corporate Safety Officer

Appendix A
Regulatory Requirements Regarding Contractor Safety

Manitoba Workplace Safety and Health Act (WSHA)

The Act was revised in 2002 and now contains clear requirements for Manitoba employers hiring contractors.

The first requirement is fairly specific and appears in section 7(3) of the Act which says:

"The prime contractor for a construction project shall
(a) ensure, so far as is reasonably practicable, that every person involved in work on the project complies with the Act and the regulations;"

The City of Winnipeg, as owner of a construction project is the prime contractor unless there is a contract designating another person as prime contractor. It is appropriate for the City to be the prime contractor on a construction project when we maintain day to day oversight of a project - usually if there are many small contractors, and wide variety of work, or a single contractor. Where multiple contractors are involved we can contract with one of those contractors to be the prime contractor – usually the largest contractor involved or the contractor involved the longest with a project.

The second requirement appears in section 7.4(5) which details the elements of a written workplace safety and health program that any Manitoba employer must have. Section 7.4(5) (g) deals with contractors and says that the employer's (City of Winnipeg) safety program must include:

"a statement of the procedures to be followed to protect safety and health in the workplace when another employer or self-employed person is involved in work at the workplace that includes
(i) criteria for evaluating and selecting employers and self-employed persons to be involved in work at the workplace, and
(ii) procedures for regularly monitoring employers and self-employed persons involved in work at the workplace;"

Manitoba Workplace Safety and Health Regulation (WSHR)

The Regulation was introduced in February 2007 and replaces 12 previous regulations.

There are 24 references to "Contractor" in the regulation including the requirements to conduct regular inspections and correct unsafe conditions in a timely manner.

Criminal Code of Canada

Bill C-45 amended the Criminal Code of Canada to create criminal liability for organizations and their representatives where "reasonable" steps are not taken to prevent workplace injury. C-45 extends this liability to cover injuries to the public resulting from workplace accidents. These amendments came into effect March 31, 2004.

The requirement to take reasonable steps in C-45 is much the same as the approach proposed to meet the requirements of due diligence in The Workplace Safety and Health Act.

The amendments to the Criminal Code allow fines to a maximum of $1,000,000 for injury with no limit in the case of a fatality. In addition individuals could be jailed for up to 7 years in case of injury and up to life imprisonment for fatalities. Convicted individuals would have a criminal record.