Agenda - Executive Policy Committee - October 13, 2004

REPORTS

Item No. 3 Contractor Safety
File GP-3

ADMINISTRATIVE RECOMMENDATION:

1. That effective January 1, 2005, the City of Winnipeg require bidders to submit independently verified proof of an acceptable safety program in accordance with The Workplace Safety and Health Act.

2. That the Bid Opportunity documents notify potential bidders that failure to provide satisfactory proof within three (3) business days of a request by the City will result in the bidder being determined "not qualified" for the award of the City contract.

RE: CONTRACTOR SAFETY

FOR SUBMISSION TO: Executive Policy Committee

SUBMITTED BY: Cliff Jeffers
A/Chief of Human Resources and Corporate Services

REPORT DATE: July 9th, 2004

RECOMMENDATION(S):

1. That, effective January 1, 2005, the City of Winnipeg may require bidders to submit independently verified proof of an acceptable safety program in accordance with *The Workplace Safety and Health Act*.
2. That the Bid Opportunity documents notify potential bidders that failure to provide satisfactory proof within 3 business days of a request by the City will result in the bidder being determined "not qualified" for the award of the City contract.

Report Summary

KEY ISSUES:

- 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 effective March 31, 2004 to attribute to organizations, including public sector organizations, criminal liability for the acts of their representatives.
- This change includes 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)

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 of Winnipeg
	Involves a multi-year contract
	Comment(s): Places additional requirements on bidders and may result in an otherwise qualified and responsive low bidder not being awarded a contract.

Policy implications

X	None
	Yes
	Comment(s):

Environmental implications

X	None
	Yes
	Comment(s):

Human Resources implications

X	None
	Yes
	Comment(s):

Financial Implications

X	Within approved current and/or capital budget
	Current and/or capital budget adjustment required
	Comment(s): Bidders may pass along their increased cost to satisfy this new requirement.

Report

REASON FOR THE REPORT:

Changes to *Manitoba's Workplace Safety and Health Act* require all employers to develop a process to evaluate safety programs of contractors and monitor their performance.

The proposed recommendation would satisfy this requirement by requiring bidders to submit additional health and safety documentation or they would be determined "not qualified". This decision requires Council approval.

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 effective March 31, 2004 to attribute to organizations, including public sector organizations, criminal liability for the acts of their representatives. This change includes 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 additional criteria for qualification to its Bid Opportunity documents. The criteria requires bidders to have a written workplace safety and health program in accordance with *The Workplace Safety and Health Act*. Prior to this, tender language included only 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 outlined in the discussion section of this report.

DISCUSSION:

The City of Winnipeg, as owner of land and/or premises used as a workplace, has responsibilities and potential liabilities. The City's 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 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 the revised safety legislation and regulations before awarding them a contract. The City must also establish procedures to monitor the work.

A working group on contractor safety was formed to propose a uniform approach for the City of Winnipeg to evaluate a contractor's compliance with all legislated safety requirements prior to the award of the contract. The working group had representation from all key stakeholders in contract awards and administration (see Appendix B for members).

The proposed approach will:

- demonstrate that the City is taking all reasonable steps to protect the safety of workers and the public in City workplaces;
- require contractors to have a safe work plan and training to work safely on our jobsites
- demonstrate the City's compliance with the requirements of *The Workplace Safety and Health Act*
- demonstrate due diligence
- minimize the liability of the City if a worker or member of the public is injured due to the actions of a contractor

The Federal Government, Manitoba Transportation and Government Services, Manitoba Hydro, and Inco have established or are developing similar processes in compliance of the *Act*.

In order for the City to demonstrate compliance and due diligence, the working group has established an interim process for contractor safety assessments. (Summarized in Figure 1). The template is being used to look at large construction projects (>$250,000) and those projects considered to be high safety risks. Additional detailed information regarding the assessment process appears in Appendix C.

The interim process uses City resources to review contractor safety programs. Where the contractor's safety program or safe work plan raise concerns an independent consultant is hired by the City to assist the contractor in addressing those concerns.

The city resources required in a review of a safety program may include 1 –2 safety officers to spend 2 –3 hours of time per program. If a consultant is hired to assist the contractor, fees may range from $300 - $1,000. Since safe work plans are job specific there may be multiple assessments for safe work plans developed by a single contractor.

The working group is recommending bidders be responsible for providing an independent review to show that their safety program meets the requirements of *The Ac*t. Failure to comply should result in the bidder being considered "not qualified" for the award of a City contract.

After the awarding of a contract and prior to commencing work, the Contractor will be required to provide a safe work plan specific to the job.

Bidders could comply with the requirement for independent verification by providing either:

- proof of a Certificate of Recognition (COR) Safety Program appropriate to their industry;
- a report / letter from an independent reviewer satisfactory to the City.

Further details on COR certification, safe work plans and independent reviewers appear in Appendix C.

January 1, 2005 is recommended as the effective date for these changes to provide bidders with ample notification to complete and document their safety programs. On approval by Council, Materials Management will publish a notice of these new requirements.

IN PREPARING THIS REPORT THERE WAS CONSULTATION WITH, AND CONCURRENCE BY:

The Contractor Safety Working Group – see Appendix B.

THIS REPORT SUBMITTED BY:

John Van Delden
Human Resource Development Division
Corporate Services Department

Financial Impact Statement **Date:** July 6, 2004

Contractor Safety

	2004	2005	2006	2007	Total
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
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)	$ -	$ -	$ -	$ -	$ -
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

There is no financial impact to the City for this report, However, there will be an increase in costs for the safety regulation requirement for the Bidders. Bidders may pass along their costs to their clients to satisfy this requirement.

Original Signed by Radhika Abeysekera

Manager of Finance & Administration

APPENDIX A

Regulatory Requirements Regarding Contractor Safety

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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 regulations;

The City of Winnipeg, as owner of a construction project, is considered the prime contractor unless otherwise designated. 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, (especially when there are many small contractors), a 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. This designation is usually given to the largest contractor or the contractor involved for the longest period of time with a project.

The second requirement appears in section 7.4(5) which details the elements of a written workplace safety and health program required of any Manitoba employer. 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

Criminal Code of Canada

Bill C-45 became effective on March 31, 2004 and amended the Criminal Code of Canada by; assigning criminal liability to organizations and their representatives where "*reasonable* steps are not taken to prevent workplace injury", and extending this liability to cover injuries to the public resulting from workplace accidents.

The requirement to take reasonable steps in C-45 is similiar to the approach outlined to meet the requirements of due diligence in *The Workplace Safety and Health Act*.

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

APPENDIX B

Contractor Safety Working Group Members

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Contractor Safety Working Group Members

Member	Title	Department
Bergen, Wayne	Safety and Health Coordinator	Community Services
Bogi, Lisa	Solicitor	Corporate Services
Corey, Fred	Streets Project Engineer	Public Works
D'Avignon, Barb	Manager of Materials	Corporate Finance
Deane, Lester	Streets Project Engineer	Public Works
Dreolini, Tony	Manager of Plant and Equipment	Transit
Groening, Coleen	Contracts Officer	Corporate Finance
Ireland, Ron	Safety Technician	Public Works
Kazun, Bruce	Supervisor of Community Centre Maintenance	Public Works
Loudfoot, Rob	Technical Services Administrator	Planning, Property and Development
Maertins, Norbert	Superintendent of Contracted Maintenance Services	Public Works
Miller, Terry	Safety Officer	Water and Waste
Papst, Diane	Solicitor	Corporate Services
Richards, Frank	Corporate Safety Officer	Corporate Services
Robinson, Greg	Operations and Safety Coordinator – Insect Control	Community Services
Robinson, Jason	Safety Officer	Public Works
Turko, Ken	Streets Project Officer	Public Works
Van Delden, John	Corporate Safety Coordinator	Corporate Services
Whiteside, Terry	Design and Specification Coordinator	Water and Waste
Zurek, Kas	Design and Construction Engineer	Water and Waste

APPENDIX C

Background - Assessment and Monitoring of Contractor Safety

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Safe Work Plans

A safe work plan evaluates the hazards associated with a task or project and details the steps taken to minimize each hazard. These plans provide a clear indication of the contractor's ability to complete a task safely and act as templates to monitor a contractor's safety performance during a project.

The City has developed a template for contractors to use in preparing a safe work plan

Acceptable Safety Programs

Contractor Safety programs are reviewed using a standard template developed by the City. The template is based on the Province's requirements for a safety program as outlined in *The Workplace Safety and Health Act*.

The working group is proposing that reviews be conducted by an independent auditor at the expense of the contractor. The auditors qualified to review programs are the same as those certified to conduct COR audits. These auditors have been contacted and have agreed to use the City template to review programs.

The City recognizes COR certification as proof of an acceptable safety program.

Once a contractor has demonstrated an appropriate safety program, by COR certification or independent review, the contractor's safety program will be considered acceptable for a 3 year period.

COR Certification

"COR" stands for Certificate of Recognition. The Workplace Safety and Health Division of Manitoba Labour and Immigration recognizes COR certification as a demonstration that a company has an effective safety program.

Contractors achieve COR certification by completing safety programs administered by the Manitoba Heavy Construction Association, the Manitoba Construction Safety Association, or another recognized industry association. Upon completion of the program the contractor's safety program is independently audited to determine a contractor’s eligibility for a Certificate of Recognition.

There are currently approximately 50 COR Certified contractors in Manitoba.

Independent Safety Program Reviews

Bidders / Contractors can meet the requirements for independent verification without obtaining COR certification by providing a report / letter from an independent reviewer satisfactory to the City. The review will be conducted using a standard template provided by the City to ensure consistency.

Acceptable reviewers will include individuals who have:

- been approved to conduct safety audits for COR Programs
- 5 years of field experience in safety and health programming and have completed the COR Audit Training program
- hold a certification such as Canadian Registered Safety Professional or an equivalent

The City will provide a list of acceptable reviewers to contractors.

FIGURE 1

City of Winnipeg Contractor Safety Assessment Process - May 5, 2004

Figure 1. City of Winnipeg Contractor Safety Assessment Process - May 5, 2004

