Agenda - Council - November 24, 2004

Report - Executive Policy Committee - November 10, 2004

Item No. 4 Unfair Labour Practices
File FP

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 10, 2004, the Executive Policy Committee concurred in the administrative recommendation and submits the following to Council:

1. That the Administration be directed to include in bid solicitation documents for City purchases from vendors of textile and apparel products, a declaration by the bidder stating that in bidding for work and in performing contracts with the City, the contractor and any subcontractors will conduct their respective business in accordance with established codes as they relate to child and forced labour embodied in United Nations and International Labour Organization conventions as ratified by Canada for a two year trial period unless otherwise extended by Council.

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

Report - Executive Policy Committee - November 10, 2004

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 10, 2004, the Executive Policy Committee concurred in the administrative recommendation and submitted the matter to Council.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 5, 2002, the Executive Policy Committee requested the Chief Administrative Officer to prepare a report which explores amendments to the civic purchasing policy affirming the City of Winnipeg's commitment to purchase products only from those companies that comply with internationally recognized labour laws, standards and practices.

RE: Unfair Labour Practices

FOR SUBMISSION TO: EXECUTIVE POLICY COMMITTEE

ORIGINAL REPORT SIGNED BY: CHIEF FINANCIAL OFFICER

REPORT DATE: June 11, 2004

RECOMMENDATION(s):

That the Administration be directed to include in bid solicitation documents for City purchases from vendors of textile and apparel products, a declaration by the bidder stating that in bidding for work and in performing contracts with the City, the contractor and any subcontractors will conduct their respective business in accordance with established codes as they relate to child and forced labour embodied in United Nations and International Labour Organization conventions as ratified by Canada for a two year trial period unless otherwise extended by Council.

REPORT SUMMARY

Key Issues:

Concerns have been raised that the City may be purchasing from vendors who follow child and forced labour practices that do not comply with international standards as ratified by Canada. The recommendation includes a two year trial period which will provide the City with time to evaluate whether other organizations such as the Federation of Canadian Municipalities (FCM) propose potential policies for Canadian municipalities to consider.

Implications of the Recommendation(s):

General Implications:

x None
□ For the organization overall and/or for other departments
□ For the community and/or organizations external to the City
□ Involves a multi-year contract

Comment(s):

Policy Implications:

x No
□ Yes

Comment(s):

Environmental Implications:

x No
□ Yes

Comment(s):

Human Resources Implications:
x No
 Yes
Comment(s):

Financial Implications:
x Within approved current and/or capital budget
 Current and/or capital budget adjustment required
Comment(s):

REASON FOR THE REPORT:

On June 5, 2002, Executive Policy Committee requested the Chief Administrative Officer to prepare a report which explores amendments to the civic purchasing policy affirming the City of Winnipeg's commitment to purchase products only from those companies that comply with internationally recognized labour laws, standards and practices.

HISTORY:

On July 11, 1990 Council referred back to Executive Policy Committee the following motion:

". . . 5. The City of Winnipeg should be a force for positive social change and should strive to do business with companies that value human rights, ethical business standards, respectful labour practices and environmental standards. . . ."

On July 18, 1990 the Executive Policy Committee referred the matter to The Board of Commissioners for report back.

During 1999 research was conducted concerning Child/slave labour practices in other jurisdictions. At that time, there were no organizations other than UNICEF that had addressed the issue to any great degree. A majority of the municipalities contacted indicated that they had no preferences. The cities of Toronto and Edmonton had limited clauses relating to fair wages and working conditions.

DISCUSSION:

A research group comprised of representatives from Materials Management, the Corporate Controller, Legal Services and the CAO Secretariat met to review the issue in detail.

Research Conducted

The following resources were consulted for supporting information concerning child labour:

The research group was requested to review two examples of no sweat procurement policies that were prepared by an organization called the Maquila Solidarity Network. The group reviewed the Maquila documents concerning this topic. The documents focus on apparel and textile goods and related service providers. The Model Procurement Ordinance proposed by Maquila seems to set employment standards for businesses no matter where they reside and proceeds to address enforcement, rectification plans and audits. Maquila's preferred approach is for the purchaser to work with the offending company to implement change, rather than canceling the contract. The investment required by the City to pursue audits and enforcement would be significant.

The group obtained a sweatshop survey that was recently conducted by Toronto. The City of New York passed new legislation relating to procurement of apparel and textiles from responsible manufacturers. Responsible manufacturers are defined to be those that demonstrate current compliance with all applicable wage, health, labour, environmental and safety laws, building and fire codes and any laws relating to discrimination in hiring, promotion or compensation on the basis of race, disability, national origin, gender, sexual orientation etc. A responsible manufacturer shall pay a non-poverty wage. Non-poverty wages means the nationwide hourly wage and health benefit level sufficient to raise a family of three out of poverty. Apparel or textiles mean all articles of clothing, cloth or goods produced by weaving, knitting, or felting, or any similar goods. There are significant administrative issues and cost implications relating to collection of information concerning offending practices and follow-up with vendors. Because the policy is new, the group had no information concerning implementation to date.

There are other examples of policies that incorporate a portion of the areas identified above. On average, however, most municipal jurisdictions do not have policies but some, including Toronto are in the process of researching policy alternatives.

The United Nations has an affiliation with the International Labour Organization. The International Labour Organization has targeted child and forced labour as some of their key mandates. It should be noted that Canada has only ratified selected conventions pronounced by the International Labour Organization. In this regard the International Labour Organization has prepared a program whose aim is to work towards the progressive elimination of child and forced labour by strengthening national capacities to address child and forced labour problems and by creating a worldwide movement to combat it. The following International Labour Organization conventions relating to child and forced labour issues have been ratified by Canada

Convention No. 182 (1999) – Worst forms of child labour
This convention defines the worst forms of child labour and asks all governments to ban them. Worst forms of child labour is comprised of all forms of slavery; the use, procuring or offering of a child for illicit activities; and any work that by its nature is likely to harm the health, safety or morals of children.

Convention No. 105 (1957) – Abolition of Forced Labour
The convention requires countries to suppress and not to make use of any form of forced or compulsory labour as a means of political coercion or punishment for expressing political views, as a means of labour discipline or as punishment for having participated in strikes.

Further, the International Labour Organization issued the following convention that has not been ratified by Canada:

Convention No. 138 (1973) – Minimum Age
The minimum age pursuant to this convention shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. If a country has insufficient educational facilities and an undeveloped economy, by agreement, this age may be reduced to 14. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18. However, on consultation, this can be reduced to 16. Other clauses in the convention set other ages based on the type of work involved.

Beyond those conventions mentioned above there are also conventions concerning the right to organize and collective bargaining. However, the group did not notice any mention of International Labour Organization conventions concerning minimum wages in jurisdictions where child labour is prevalent.

Options

As noted above, setting policy in one or several aspects of labour practices can be quite complex. In this context, there are several options in considering procurement practices with respect to child and forced labour:

The City could prepare a policy separate from its primary purchasing policy to which the City could look for guidance concerning this area.

The City could prepare a questionnaire that would need to be completed by bidders at a pre-award stage to qualify companies.

The City could prepare a declaration to be included in the general conditions section of its contracts. This could be amended to include all commodities or simply the apparel and textile industries that have been primarily targeted as areas where abuse has occurred.

The group discussed the various options and determined that the last option relating to amendments to general conditions would be preferable and that the City should focus on the apparel and textile industries in this regard. The City's bid documents and contracts are legal agreements. As such, clauses in the agreements are designed in such a manner so that they can be understood and enforced both by the City and the bidder/contractor. All contractors should be able to easily refer to the International Labour Organization conventions ratified by Canada to determine the standards that they must adhere to. The other alternatives add more complexity

and bureaucracy in the bidding process. The business community, in the past, has expressed its desire to simplify their bidding relationships with the City.

Noted below is a draft of a clause that could be used to amend the City's contracts:

The Contractor declares that in bidding for the work and in entering into this Contract, he and his subcontractors conduct their respective business in accordance with established international codes as they relate to child and forced labour embodied in United Nations (UN) and International Labour Organization (ILO) conventions as ratified by Canada.

The Contractor shall forfeit all claims under the Contract as well as refund to the City any monies paid to him, beyond his actual proven expenses for work done, if this declaration is shown to be false.

From an administrative perspective, the City would act on complaints as they arise. If evidence was produced that a vendor had not complied with the clause, the City would present the vendor with the information, ask for explanations and evaluate if the explanations were sufficient to alleviate the City's concerns. If there was sufficient evidence, the City would apply the provisions of the clause and terminate the contract.

Summary

The recommendations that have been presented above focus on child and forced labour relating specifically to the apparel and textile industries. The approach that administration is advocating provides reference material that has been ratified by the Government of Canada and the United Nations. As a result the business community has a written standard to which they might refer in dealing with the City. Although there are no written pronouncements evident from the International Labour Organization relating to fair wages for child labour, these conventions may be developed in future years.

The recommendation does not address human rights, ethical business standards, respectful labour practices and environmental standards outside the area of child labour. Few municipalities at this date have mature policies that may be used as examples to develop defendable alternatives in our procurement process at the City. New York has initiated a process and Toronto recently included information on their website with respect to child labour that focuses on this area in a similar manner as suggested above. Significant resources would be required at the City to implement a system similar to that of New York. The Administration, therefore, recommends that the City continue to monitor the situation and determine if further amendments are required at a future date.

Further, given that policies relating to unfair labour practices are not consistent in municipalities throughout North America, the City may wish to refer further research relating to unfair labour practices to the Federation of Canadian Municipalities (FCM). In this manner, future developments in this area could be examined with a view to providing a consistent and sustainable approach for all Canadian municipalities.

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

Legal Services
Corporate Finance

THIS REPORT SUBMITTED BY:
Corporate Finance
Corporate Controllers Division
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