

Clause 11 in Report No. 15 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on October 20, 2016.

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Contractor Health and Safety Program Update

Committee of the Whole recommends adoption of the following recommendation contained in the report dated September 26, 2016 from the Commissioner of Corporate Services:

1. Council endorse the Infrastructure Health and Safety Association's Certificate of Recognition (COR) program as a component of the health and safety prequalification process for procuring contractors to perform high risk work.
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Report dated September 26, 2016 from the Commissioner of Corporate Services now follows:

1. Recommendation

It is recommended that:

1. Council endorse the Infrastructure Health and Safety Association's Certificate of Recognition (COR) program as a component of the health and safety prequalification process for procuring contractors to perform high risk work.

2. Purpose

This report provides an update regarding the Region's Contractor/Constructor Policy and program, and reports on a pilot project for the provision of contractor health and safety pre-qualification services. This report is a follow up to a report provided to Council in June of 2015.

3. Background and Previous Council Direction

The regulatory framework imposes obligations for the Region and contractors

The capital contract work conducted by the Region occurs in operating Regional facilities or on sites attended by Regional staff. The Region has a duty to protect our employees throughout the course of their duties. Since contractors generally have care and control of their work sites, we must take all reasonable measures to ensure that Regional staff are safe on their work sites. When the Region hires contractors to perform work on its behalf, it is subject to the *Project Owner, Extended Employer, or Constructor* responsibilities under the Ontario *Occupational Health and Safety Act* (OHSA).

Additionally, the *Criminal Code of Canada* dictates employer responsibilities for occupational health and safety, including taking all reasonable steps to prevent bodily harm to “any person” in the workplace. This legal change, which occurred in 2004, was the impetus for our existing Contractor/Constructor Policy and program. Although there are no specific regulatory requirements around the hiring processes for contractors, pre-qualification is a commonly accepted best practice and contributes to an organization’s due diligence.

York Region has made a commitment to health and safety by implementing a Contractor/Constructor Policy and Program

The Region co-signed a Charter with the prevention division of the Workplace Safety and Insurance Board. The Charter acknowledges the importance of workplace health and safety as part of the York Region Community, including outreach to employers in York Region.

The Region also has a corporate health and safety policy which outlines our commitment to employee health, safety and well-being. Within the health and safety program there is a Contractor/Constructor policy and guideline, which outlines the roles and responsibilities of Regional staff and contractors, and provides tools and documentation to help mitigate risk. Key components of this program also include project planning and execution, and site health and safety audits.

York Region has a \$6.1 billion capital project plan, and construction continues to be a high risk industry

York Region’s 10-year capital budget totals \$6.1 billion, including \$783 million for 2016. While other types of workplace injuries are declining across Ontario, construction is an exception. Ministry of Labour data available reported that 72

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Ontario workers died in 2015 as a result of workplace incidents, and most of these are in the construction sector due to falls and motor vehicle incidents. One fatality occurred on a Regional project in 2015.

As part of continuous improvement to the Contractor/Constructor Policy and Program, York Region has conducted a two-year pilot project of two health and safety prequalification systems

A Regional working group was formed in 2013 to review and update the Contractor/Constructor Policy and program. One of the recommendations of this group was to investigate external systems which could help assess health and safety performance of contractors at the procurement stage. A two-year pilot program was initiated which included the trial of two contractor prequalification systems, ISNetworld (ISN) and Certificate of Recognition (COR). The pilot and systems are outlined in more detail in the Analysis and Options section of this report.

The two systems use different methods of determining health and safety performance and offer different strengths during the procurement process

ISN facilitates the collection of self-reported information from contractors and maintains it in a centralized database. The information collected is configured to the hiring client's specific requirements and is verified by ISN to maintain safety, insurance, quality and regulatory information. After contractors submit required documentation, ISN reviews each submission and the contractor's performance is reported in the form of a grade (A, B, C, D) or pass/fail, based on the hiring organization's requirements.

COR is put in place by contractors to manage risks, establish hazard controls, and minimize the incidence of injury and illness to their workers. The certification process includes requirements for mandatory training for the contractors as well as documentation and site audits. Initial certification is obtained through an external audit (Infrastructure Health and Safety Association). This external audit is required every three years. The two years in between require internal audits. In both cases, certification maintenance requirements include an annual review of the health and safety management system that has been developed, implemented, and evaluated. After certification is achieved, these audits are performed internally on years one and two and externally every three years.

Council requested an update at the conclusion of the pilot

This report is a follow up to a report provided to Council on [June 25, 2015](#), which requested Council support for a pilot of health and safety prequalification systems.

Council endorsed a two-year pilot of two systems for contractor health and safety prequalification.

4. Analysis and Implications

The Region's Contractor/Constructor Policy and program are working well overall

The Region's Contractor/Constructor Policy and program have been in place since 2003. The program review highlighted key strengths. Firstly, the health and safety audit function performed by the Contractor Safety Specialist is working well. Secondly, the language in the contracts clearly outlines responsibilities for site health and safety. And, thirdly, the written policy and guidelines provide tools and information which helps project managers navigate the process.

The working group identified overall program improvement opportunities, including revisions to the current policy and program and specific opportunities in the early stages of the bid/contractor selection process. As a result, and with Council endorsement, a two-year pilot program was conducted.

Two external prequalification systems were piloted and the scope of the pilot was capital projects predominantly in the Environmental Services Department

Six Requests for Prequalification were conducted during which respondents were required to register with ISN or enroll in COR in order to participate in the procurement. In addition, Environmental Services issued three tenders which required that bidders be registered with ISN in order to submit bids.

Extensive consultation occurred with the contractor community

Consultation was conducted with contractor associations in writing, in person and in public meetings before and during the course of the pilot. Feedback was received from contractor associations including the Ontario General Contractors Association (OGCA), Ontario Road Builders Association and Greater Toronto Sewer and Watermain Contractors Associations. The Region was responsive to this feedback through modifications to the scope and timing of the implementation requirements, and the associations are now aligned with the Region's proposed direction.

The contracting Industry and Ontario public sector supports COR over ISN

All contractors opted for COR in procurements where contractors were provided with the opportunity to choose between COR and ISN. There was significant opposition voiced by the contracting industry and numerous requests that the Region endorse COR instead in procurements where contractors were required to register with ISN only in order to participate. In particular, the OGCA brought forward a petition requesting that legislation be enacted which would ban the use of Third Party Health and Safety Verification Service Providers, such as ISN, in Ontario.

During the course of the pilot project, a scan was conducted and no government institutions have implemented ISN; however, a number of government institutions, including the City of Toronto, Toronto Transit Commission, Metrolinx, Greater Toronto Airport Authority and Infrastructure Ontario, have endorsed the use of COR on their projects.

Proceeding with the use of COR is part of overall due diligence

Both ISN and COR were assessed throughout the pilot. COR is no cost to York Region and is aligned with both the contractor community and other Ontario public sector organizations' practices; therefore, moving forward with COR is recommended. This will augment the due diligence measures already in place through the Contractor/Constructor policy and program by including health and safety considerations earlier in the Region's procurement processes.

5. Financial Considerations

Continuing to work with COR requires no additional Regional funds

As stated above, the Region has an ambitious capital delivery program, necessitating continued due diligence measures in this high risk industry. The use of COR is no additional cost to the Region.

6. Local Municipal Impact

It is not anticipated that this will have any direct impact on local municipalities. As the results of this pilot could be helpful in capital planning at the local municipalities, a copy of this report can be shared with the local Clerks' offices.

7. Conclusion

As stated above, there is a need for the Region to manage the health and safety liability associated with contracting out capital construction. To that end, the Region has a Contractor/Constructor Policy and Program. This program is undergoing a review, which has indicated strengths as well as an opportunity for improvement. This improvement was thought to be implementing contractor pre-qualification during procurement, thus beginning the two-year pilot of ISN and COR.

As a result of this pilot, it has been determined that COR meets the ongoing needs of York Region. The certification process provides the Region with confidence that due diligence is being advanced with respect to health and safety.

The policy and program improvements will continue in the remainder of 2016 and into 2017. This includes the updating of the written policy, program and accompanying resources, as well as the development of a procurement and onboarding process for contractors.

For more information on this report, please contact Sharon Kennedy, Executive Director, HR Services at ext. 71265 or Jerry Paglia, Senior Counsel, Construction Law at ext. 75083.

The Senior Management Group has reviewed this report.

September 26, 2016

eDOCS #7042581

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