

Deputation to the City of Toronto
Audit Committee

By

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Notes on Toronto Staff Report of Sept 23, 2008
On
Hamilton Staff Report
Regarding
Construction Procurement Costs
Or
How Do You Misplace \$2 Billion?

Attention Committee,

We know that the principle issue in today's report by the Auditor General deals with the SOGR backlog at the Parks and Recreation Department. We however would note that the report also deals with the much broader issue of the growing backlog across all the City of Toronto's infrastructure and we feel that the issue of Restrictive Tendering should be dealt with across all departments and ABC's of the City. We would also note that we believe that only the Auditor General has the mandate, power and independence to clear up our serious concerns about the state of fiscal accountability in Toronto Construction Tendering.

Background

On Oct. 29, 2007 the Executive Committee of Toronto discussed a request for support from the Mayor of Hamilton in their request that the Province of Ontario amend the Labour Relations Act to declare municipalities “Non Construction Employers” and therefore be excluded from the Construction specific provisions of the Act.

In addition to the Letter from the Mayor, a Hamilton Staff report was before the Committee that reviewed the economic impact of the 2005 Certification of the City to a Construction Sector Carpenters’ Agreement. The Report detailed research and consultations staff had done in coming to the conclusion that the City stood to lose \$200 to \$400 Million on a 6 year infrastructure renewal Capital Plan to upgrade the Hamilton’s Water and Waste Water Plants.

The cause for this cost overrun was almost exclusively attributed to the elimination of competition because the Carpenter Certification forced the City to disqualify 75 to 80% of contractor on their purchasing lists that were not bound to the Carpenters Agreement.

At the end of deputations and discussion the Committee requested that staff prepare a report on potential economic impact on Toronto and make recommendations.

On September 23, 2008 the Executive Committee finally received the Staff Report.

To set the stage for this report the following comments should be noted about the Executive Committee Meeting of November 2007. Prior to the start of the agenda or any deputations at the meeting Mayor Miller set the tone by stating that anyone speculating that there were Hundreds of Millions of Dollars to be saved in Toronto construction tendering was not being truthful. He also made the final argument of the meeting stating that the Toronto Capital Budget only had less than \$200 Million of affected ICI work in its’ entire budget so how could there possibly be Hundreds of Millions to be saved and that “of course Toronto is a Construction Employer.”

Errors and Omissions

The Report is full of assumptions, errors and omissions that are too numerous to fully outline here. These notes will therefore cover the most startling and illuminating concerns:

- The most glaring omission is that the report fails to mention over \$2 Billion worth of ICI spending found on the Toronto Water Capital Plan that is not accounted for in the City of Toronto Capital Budget. Attached is a table from the TW presentation to the Budget Committee yesterday. It clearly shows a plan to spend over \$200 Million a year for the next 10 years solely on Water and Waste Water Plant projects. Specific reference to this Plan was made by several deputations at to the Executive Committee as well as noting that the plan was a direct comparator to the Capital Plan described in the Hamilton Report. In Toronto this Capital spending is being paid for by 9% a year increases in water charges to taxpayer through 2012. It is not credible that \$2 Billion in spending be

‘accidentally missed’ by the Mayor or Staff when the main thrust of the Hamilton Report concerned an identical Capital Plan for Water and Waste Water Plant expansion.

- At the bottom of P5 of the Toronto Report there is a mistaken assertion that work outside of the ICI sector can be bid by both union and non union. While this is true for Road and Sewer Main work it is not true for Residential Work for the Housing Authority or Heavy Work for the TTC.
- In fact at the TTC unlike other sectors all 100% of labour must be Construction Trade only; a fact omitted from the report. The Mayor and the Toronto Staff report completely omits mention of \$2.5 Billion over the next 5 years on the TTC Spadina Subway extension.
- We are not sure what percentage of Transit City Lines is restricted but any estimates are also omitted as is the Buried section of the planned Eglinton line that will most likely be Building Trade only.
- Attached is a Report from Toronto Community Housing that shows that it is spending \$169 Million a year on state of good repair and construction work, most of it covered by 4 union only tendering restrictions. This fact as well was noted in deputations to the Executive Committee but ignored by the Mayor and the Staff Report.
- The Mayor and the Staff Report do not mention the \$640 Million over the next 5 years for the long planned renovation of Union Station.
- The Mayor and the Staff Report further do not mention the Capital budgets of both Toronto Solid Waste or the CNE that are also not accounted for in the formal City of Toronto Capital Budget.
- Instead of finding all this publicly available information the Report reads like a transcript of the Mayor’s assertions made to the Committee in 2007 and finds that total affected project costs in the City Capital Budget to be almost exactly what the Mayor asserted; about \$200 million.
- Instead of using the multiyear capital plan calculations used by Hamilton and Toronto Water the Staff Report uses the one year window used by the Mayor that grossly understates potential costs to the City of Union only tendering restrictions.
- During deputations it was noted that the Hamilton cost estimates were conservative when compared with Toronto since Toronto was bound to 9 Construction Trade Agreements

while Hamilton was bound by only one. Toronto is allowed to tender to General Contractors as long as they subcontract out to firms with the required Agreements, but

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the GC's work represents at most 20% of the Tender Price. The work covered by the 9 Construction Trade Obligations where all bidders will be exclusively Union cover at least 70% of the Tender Price making the Toronto restrictions much more costly. This issue and argument is completely absent from the Mayor's comments or the Staff Report.

- At points it seems the authors of the Toronto Report did not actually read the Hamilton Report they are commenting on. How else to explain the fact that the Report misses the central issue of the Hamilton Report and the Letter from Hamilton that is a simple request that Toronto support Hamilton's efforts to have the Province declare that municipalities are Non Construction Employers. The Toronto Report doesn't even mention this and instead recommends that Toronto not proceed with a Non Construction Employer Application to the Labour Board.
- The whole point of the Hamilton Letter is to make such an Application unnecessary by having the Province declare Municipalities to be Non Construction Employers.
- The last omission/error is the Reports implication that Toronto tendering "practice" is Toronto's choice when the facts are completely contrary. Restrictive Tendering was forced upon the Toronto against its will by the Construction Trades and their affiliated Employer Associations in 1990 through collective bargaining where the City was not at the table.
- It is a simple fact that every municipal government confronted with Construction Trade certification applications has fought against it to protect fair and open tendering to all qualified bidders and the financial accountability of government including; City of Toronto, Metro Toronto, Windsor Essex School Board and the City of Sault Sainte Marie.
- The simple fact is that Toronto procurement policy, as noted in another section of today's Reports, is supposed to guarantee a fair and transparent tendering policy to guarantee that the City gets the best price for the Citizens. The Building Trade Contractual Obligations guarantee this is not possible.
- The simple fact is that the Fair Wage Policy calls for a level playing field in Construction Tendering and the Contractual Obligations restrictions violate City Policy.

Methodology

Some comment should be made on the simple and expected due diligence that should have been used in the Toronto Staff Report but was not. The first issue to note is this is not an investigation into construction costs as much as it is essentially a transcript of the opinions presented by Mayor Miller and the Executive Committee at last year's meeting on the October 29, 2007.

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Instead of reviewing costs in the context of the Hamilton Staff Report this Report ignores virtually every point made by Hamilton and deputations made to the Committee in support of Hamilton's request for help in getting the Province to change the Labour Relations Act to declare Municipalities to be Non Construction Employers.

- The authors of the Toronto Report are all from the HR Department and are the last staff you would want to prepare the report because they know virtually nothing about construction tendering and they are the front line staff dealing directly with the Construction Trades.
- In Hamilton the investigation into the impact of the Certification by the Carpenters was conducted largely by purchasing staff, who are the most familiar with construction tendering and authored by the Chief Legal Council of the City with input from Senior Managers in purchasing, public works and HR.
- 80% of City of Hamilton report deals with \$200 to \$400 Million in expected losses on tendering of Waste Plant infrastructure. The Report states that these costs are caused by the elimination of at least 75% of qualified Contractors.
- Hamilton's Purchasing Staff, to investigate the competition issue, went through Hamilton's pre qualified major contractors list and discovered that over 90% of their contractor base did not have a Carpenters' Collective Agreement and were disqualified from further tendering. There is no evidence of any empirical study in Toronto Report or that Purchasing was even consulted.
- Hamilton Staff went and consulted the Professional Engineering Consultants who plan, design, and budget and administer Water Works Contracts for municipalities across the Province and got their input into the Competition problem. There is no evidence that the authors of the Toronto Report consulted anyone but the Employers' Associations of Unionized Contractors who have the most to gain from the monopoly.
- After these consultations Hamilton Staff reviewed all ICI bidding in the previous year and of 26 projects many had no qualified bidder and Carpenter affiliated firms were successful on only 4 projects.
- After these consultations Staff researched public records on Water Works tendering in the Region for the previous three years and discovered that not a single Carpenter affiliated contractor had won a bid over \$30 Million.
- There is no evidence that Toronto made any empirical review, called Hamilton to review the data, or made even the simplest study and review large Toronto WW tenders and over the last 5 years and see how many bidders they averaged on the projects. If they had done that they would have found out what everyone in the industry knows as fact; there is a shortage of contractors and qualified labour in all sectors and most critically in Water

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- and Waste Water. In the spring of 2009, Toronto Water tendered the \$180 Million Horgan Treatment plant and received 2 bids. The shortage of contractors is such that the winning bid was from an American company that has brought in American staff to manage the project.

We would respectfully submit that the City of Toronto Staff report is not credible and that the illumination of qualified competition in Construction is not only unfair and a violation of City Policies but also extremely costly to the taxpayers of Toronto with an estimated loss of 30% on the dollar.

Those who defend these monopoly restrictions are basically arguing the irrational. Disqualify a large percent of qualified contractors and workmen; impose the most rigid and inflexible working rules on jobsites and pay a premium on hourly labour cost and Toronto will get the best price. This is as irrational as saying that Dofasco that has no union makes bad steel or that Toyota makes bad car parts.

Thank you for your time and hope the Auditor General can look into this issue as we believe he is the only one who can deal with this issue and restore rational debate.

Sincerely,

David McDonald
President
Merit Open Shop Contractors of Ontario.