

Clause 11 in Report No. 12 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on June 25, 2015.

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## **Contractor Health and Safety Program Update**

**Committee of the Whole recommends adoption of the recommendation contained in the report from the Commissioner of Corporate Services:**

### **1. Recommendations**

It is recommended that:

1. The Commissioner of Corporate Services report the results of the pilot project to Council in September of 2016.

### **2. Purpose**

This report provides Council with an update regarding the Region's Contractor/Constructor Policy and program and to report on a recently implemented pilot project for the provision of contractor health and safety pre-qualification services through ISNetworld, a third party service provider, and the and Certificate of Recognition (COR) program.

### **3. Background**

**York Region has a \$5.8 billion capital project plan, and construction continues to be a high risk industry**

York Region's 10-year capital budget totals \$5.8 billion, including \$826 million for 2015. Most recent Ministry of Labour data available reported that 102 Ontario workers died in 2013 as a result of workplace incidents. Most of these are in the construction sector due to falls and motor vehicle incidents.

**The regulatory framework imposes obligations for the Region**

Much of the 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 measures to ensure Regional staff are safe on their work sites.

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.

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.

Finally, when the Region hires contractors to perform work on its behalf, it is subject to the *Project Owner* or *Extended Employer* responsibilities under the Ontario *Occupational Health and Safety Act* (OHSA). Employer responsibilities are minimized through project design which designates the contractor the *Constructor*, thus shifting some of the liability to it directly. Occasionally this is not possible (i.e. for non-construction work or where the Region is the *Constructor*), meaning that a higher level of liability for the Region exists.

**A working group identified the need for enhanced pre-qualification requirements in relation to health and safety to augment scarce internal resources**

The Contractor/Constructor Policy and program was initially developed and approved by Regional Council in 2001 (revised in 2003), to help mitigate liabilities associated with construction project work performed through the use of contractors and to support compliance with the *Occupational Health and Safety Act* (OHSA).

Given the amount of time since the Policy and program were created, and to address some concerns raised by staff, a working group was formed in 2012 to discuss the contractor procurement process and the overall Program. Members of this group included those from Regional departments involved in contractor procurement or management. This working group determined that enhanced contractor health and safety pre-qualification requirements would assist the Region in mitigating the risk(s) of hiring contractors that are not competent in health and safety and protect Regional staff visiting/working at project sites. It was also thought that the use of a third party prequalification system would enable the Region’s existing internal resources to focus, to a greater extent, on the health and safety of our employees and the public.

#### **4. Analysis and Options**

##### **The Region explored the potential use of external service providers for health and safety prequalification**

In addition to enhanced pre-qualification requirements identified by the working group, it was also agreed that staff should consider external service providers for process objectivity. Also, the working group identified that the Region lacked sufficient in-house resources to administer an enhanced health and safety pre-qualification process.

##### **ISNetworld was identified through the Request for Information process as a capable prequalification service provider**

In late 2012, staff initiated a Request for Information process to identify external service providers who could assist with the health and safety pre-qualification of the Region's contractors. Through this process, ISNetworld was identified as a service provider capable of addressing the Region's needs, with the added benefits of being able to monitor insurance requirements, environmental compliance, quality assurance, and performance management systems. No other service providers were identified as being able to provide a comparable service to that of ISNetworld.

The working group saw significant opportunities for cost savings associated with the use of ISNetworld. This would stem from internal staff not having to review health and safety documentation submitted for each RFQ or RFP. There are also benefits to the contractor in that they would submit their documentation once and be prequalified for a one-year period, which could include multiple bids.

ISNetworld's process includes three steps. First, they collect health and safety information about contractors through an on-line database. Second, they verify the accuracy and quality of the data collected. Third, they report the results to project owners (e.g. the Region) as a graded score or pass/fail.

##### **The Region endorsed pilot of third party prequalification for 'high risk' projects**

It was determined that the pilot should apply to 'high risk' work which includes:

- Confined Space Entry
- Working at Heights
- Excavations
- Working with Designated Substances

- Working on Active Roadways
- Hot Work
- High Risk Electrical
- Exposure to Public (e.g. open work area).

It was agreed that the scope of the pilot project would not include existing contracts. However, contractors bidding on new Regional projects involving 'high risk' work, within the one year pilot period, would be required to subscribe to the prequalification service provider and meet the Region's health and safety requirements in order to have their bid accepted.

### **Communication of Pilot Project to Contractors commenced in summer of 2014**

A pilot with ISNetworld began in July 2014. Contractors were notified of the pilot project on July 31, 2014. Region and ISNetworld staff held two public information sessions on September 9, 2014 and September 10, 2014. Both meetings were well attended with approximately 100 contractors over the two days.

Attendees raised the following concerns during the public information sessions:

- Timelines –attendees requested for the Region to not include ISNetworld in procurements until 2015, at the earliest
- Competing Qualification Systems – attendees were concerned that different owners were using different qualification systems which resulted in increased costs and level of effort to comply, and
- Cost – smaller contractors were concerned with the costs of subscribing.

### **Region responds to questions by adopting an alternate system (COR) as equivalent in response to concerns raised by some contractor associations**

Based upon the concerns raised at the contractor information session, and in consultation with several contractor associations, the Region agreed to allow registration with the COR program as an alternative to ISNetworld, such that bidders have the option of registering with ISNetworld or enrolling in COR.

COR is a certification program which consists of verification of the contractor's written programs (somewhat like ISNetworld) but also includes site audits. The anticipated end result of the COR certification is that the contractors develop their own independent health and safety program and self-audit function.

**Tenders and Pre-Qualifications with health and safety requirements are expected to be issued in Q3 of 2015**

It is anticipated that these requirements will be incorporated into tender documents for all new 'high risk' work procurements issued during the pilot period, starting with tenders in Q3 of 2015.

The approach will be phased, the first requiring that contractors be subscribed in either program. Based on the 18-month certification process for COR, enrolment will continue to be the requirement. The second phase will require a passing score from ISNetworld in Q1 of 2016.

**Environmental Services Department Capital Delivery Projects will pilot ISN contractor pre-qualification system**

The Environmental Services Department has elected to pilot ISNetworld as the prequalification system for their high risk projects, essentially the majority of their contracts.

In preparation for this prequalification pilot, the department consulted extensively with the Greater Toronto Sewer and Watermain Contractors Association (GTSWCA). As a result of this consultation, GTSWCA has endorsed the pilot.

**Link to key Council-approved plans**

An enhanced health and safety pre-qualification process will assist with the timely delivery of critical infrastructure projects in accordance with the goals of the 2015-2019 Strategic Plan to optimize critical infrastructure systems capacity.

**5. FINANCIAL IMPLICATIONS**

The one-year start-up fee for York Region ISNetworld was \$38,500, excluding HST; following years would cost \$33,000 excluding HST. Adequate Spending Authority is included in the 2015 Corporate Services Budget to retain ISNetworld for the pilot period.

Contractors are required to pay fees for both the ISNetworld and COR systems. The fee structure is quite different for each system; however, the minimum costs for the first year are \$790 and \$1320 for ISNetworld and COR, respectively. A total of 37% (46) of the Region's contractors were already ISNetworld members and 18% (23) are currently COR certified, although we have been advised that 33 others are currently enrolled in the COR program (but not yet certified).

**6. LOCAL MUNICIPAL IMPACT**

It is not anticipated that the trial agreement with ISNetworld will have any direct impact on local municipalities at this time, but partnerships could be explored with local municipalities if this project is determined to be successful following the pilot period.

**7. CONCLUSION**

This report provides Council with an update regarding the Region's Contractor/Constructor Program and Guideline, and reports on the pilot project for the provision of contractor health and safety pre-qualification services through ISNetworld as well as the use of COR. It is recommended that the Commissioner of Corporate Services report the results of the pilot project back to Council in September of 2016 in order to determine whether the agreement with ISNetworld should be extended.

For more information on this report, please contact Teresa DuCroix, Manager, Workplace Health, Safety and Wellness at Ext.75715 or Jerry Paglia, Senior Counsel, Construction Law at Ext. 75083.

The Senior Management Group has reviewed this report.

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