

# TORONTO TRANSIT COMMISSION REPORT NO.

**MEETING DATE:** March 27, 2013

**SUBJECT:** OPEN SHOP CONTRACTING

## **INFORMATION ITEM**

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### **RECOMMENDATION**

It is recommended that the Board receive this report for information.

### **FUNDING**

There are no funding impacts.

### **BACKGROUND**

The Board at its meeting of February 25, 2013 heard a deputation from Merit OpenShop Contractors Association of Ontario (Merit) requesting that the Toronto Transit Commission become an open shop construction owner. As a result of the deputation, the Board moved the following motion:

"That staff be requested to report back to the next meeting on the items presented in the subject deputation and whether the matter of open shop contracting can be incorporated into the TTC Procurement Policy."

The TTC has required the use of union workers on its construction sites since 1959. The TTC's construction contract's "Wage Rates" clause (see Appendix 1 attached), requires contractors and subcontractors to use workers that are members of "local trade unions having appropriate affiliations, if available" for work normally performed on the construction site in the execution of the contract. The clause states these workers are to be paid the prevailing union rates.

In its presentation, Merit suggests that the TTC's practice of awarding contracts requiring only union labour on construction contracts is not an open and fair practice. As noted above, this is not the case. Merit also claims there is an opportunity to save millions of dollars by removing the "Wage Rates" clause. There is no way to validate that claim in an open bidding environment.

**DISCUSSION**

The TTC's current practice is to engage a contractor who may or may not be signatory to trade agreements. However, any work to be performed on a construction site must be undertaken by members of local trade unions having jurisdiction, if available. There are cases where there are no union affiliations for trades such as epoxy flooring applicators and system control technicians. Consequently, contractors and sub-contractors can use non-union labour in these cases.

The TTC obligates construction contractors to meet all safety and quality standards stipulated in the contract documents that apply regardless of whether labour on construction sites is unionized or non-unionized.

All construction work performed in the Province of Ontario is subject to Ontario's well established building codes, engineering standards, public health, safety and environmental regulations. In addition, monitoring agencies are in place with the specific intent to safeguard workers, public safety and environmental protection.

The Province of Ontario through the Ministry of Training, Colleges and Universities also have well established apprenticeship programs where individuals are required to pass an examination in order to be licensed in specific trades.

Effective this past January 1, all contractors must have WSIB coverage for all workforces on site as evidenced by a valid certificate. The TTC will only contract with contractors provided their account is in good standing and there are no outstanding safety claims against the contractor.

The TTC requires contractors to demonstrate that they have completed work of a similar size and nature prior to award. The TTC also requires comprehensive staff approvals prior to contractors having access to construction sites. This requires the contractor to demonstrate the safety and quality programs and processes to be implemented for the specific contract after award. The TTC also conducts pre-qualifications for its larger contracts where contractors' qualifications are evaluated prior to bidding. This also includes a safety assessment.

**Other Jurisdictions**

The City of Toronto is bound by collective agreements with nine construction trade unions. The City is required to use unionized workers for construction contracts involving any of these trades. The City's Fair Wage Policy applies to the balance of the union trades where the City is not bound by collective agreements.

Metrolinx is bound by provincial policies. Their procurement policy stipulates there is "no requirement or preference for vendors with unionized workforce." This approach lets the

prevailing market conditions determine the fair wages to be paid to construction workers.

Based on TTC staff's knowledge, Metrolinx has awarded two contracts for the Eglinton LRT Crosstown. The first was the launch site which was based on using TTC's "Wage Rates" clause and the other was for the tunnel contract where the "Wage Rates" clause was not included. Kenaidan was successful on both contracts and is using unionized workers on site. Based on discussions with both the Regional Municipality of York and the City of Mississauga, neither have policies that restrict the use of non-union labour for construction work.

**TTC Procurement Policy**

There is nothing in the TTC's Procurement Policy that limits the TTC from implementing a change to open shop contracting. None of the TTC's collective agreements require the TTC to use unionized labour nor do they preclude the use of non-unionized labour.

The removal of the existing wage rates clause as it applies to construction contractors would open the bidding process to all construction contractors that have demonstrated they are qualified to perform the work, regardless of whether they use unionized tradespersons or non-unionized tradespersons on construction sites.

**JUSTIFICATION**

This report is presented for the information of the Board.

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March 4, 2013

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Attachment - Appendix 1

## **APPENDIX 1**

### **GC23 WAGE RATES**

- 23.1 The Contractor shall engage, or cause to be engaged by it or its Subcontractors, competent workers who are members of local trade unions having appropriate affiliations, if available, for Work normally performed on the site in the execution of the Contract.
- 23.2 During the term of the contract, the Contractor and its Subcontractors shall pay or cause to be paid for the Work, the union rate prevailing in the area in which the Work is to be performed and shall comply with the local union working conditions.
- 23.3 If there is no such union rate for any class of work, the Contractor shall pay the rate of wages prevailing and generally accepted.