

Impacts of Using or Not Using Local Contractors for the Arena Project

Recommendation:

That the May 8, 2013 Sustainable Development report 2013SCO529, be received for information.

Report Summary

This report responds to an inquiry regarding the ability of the City to use or not use local contractors for the Arena project.

Previous Council/Committee Action

At the April 24, 2013, City Council meeting, the following motion was passed:

That Administration provide a report outlining:

1. the impacts of using or not using local contractors for all construction related to the arena project.
2. the tools that are available to the City to encourage the use of local contractors.

Report

The City is obligated under the Agreement on Internal Trade and the New West Partnership Trade Agreement, to refrain from discriminatory procurement practices, such as local preference in any procurement for goods and services over \$75,000, or for construction over \$200,000. Local suppliers have the opportunity to bid whenever open

tenders are issued; however, non-local companies must also have the opportunity to bid. A significant amount of City work is carried out by local businesses. For example in 2011, 87 percent of City spending went to Edmonton or Greater Edmonton based suppliers.

Compliance with the trade agreements requires that procurement of goods, services, and construction with values greater than the specified threshold be properly advertised and conducted in a fair, open and transparent manner. The prohibition on discriminatory procurement practices in the Agreement on Internal Trade specifically includes, but is not limited to:

- placing restrictions on calls for bids based upon the location of a supplier and its subcontractors
- qualification procedures that discriminate between suppliers by province of origin
- the consideration, in evaluating bids, of provincial content or economic benefits that favour a supplier of a province
- the use of price discounts or preferential margins to favour suppliers of a province
- the requirement that a construction contractor or subcontractor use workers, materials or suppliers of materials originating from the province where the work is being carried out

The agreement with PCL for its services as the Construction Manager for the arena project includes an obligation to ensure that the sub-trade selection process is in accordance with Canadian contract and competitive bidding laws

and in compliance with the Agreement on Internal Trade and the New West Partnership Trade Agreement.

If the City adopted a resolution to use only local contractors for all Arena-related construction, the City faces risk that the Province of Alberta, as a party to the trade agreements, could face monetary fines, political backlash, or the suspension of opportunities for Alberta businesses to bid on contracts outside of Alberta.

With regard to the Arena project specifically, it is difficult to quantify any direct net benefit to the Edmonton economy without having a very detailed understanding of the complete supply chain of products used in the Arena project. It is equally difficult to determine the amount of loss that could occur to local business if they were to be precluded from doing work in other jurisdictions. Thus, a measure designed to restrict Arena-related construction contracts to local vendors could potentially have significant impact on the ability of local vendors to benefit from contract opportunities outside of Alberta.

Additionally, it would be extremely difficult, if not impossible, to give all Arena-related work to local contractors and suppliers. This is because no municipal or regional economy produces all the goods and services that such a large and complex project demands. A considerable portion of the materials and services required simply cannot be sourced locally as there are no suppliers in the area. Hence a local contractor would also have to source these materials and services from suppliers elsewhere in Canada or internationally. By requiring use of only local

contractors and suppliers in Arena-related construction, there may be difficulties in acquiring all of the necessary skills and materials required for the Arena project.

The City may encourage the use of local contractors through advertising and education. Materials Management holds “Selling to the City” information sessions periodically for local business to learn how to find opportunities at the City. The City could also consider additional local advertising for Arena related procurements to further promote these bidding opportunities within the local market.

Policy

- Debt Management Fiscal Policy – C203C.

Corporate Outcomes

The Way Ahead, Edmonton’s Strategic Plan 2009-2018:

- Transform Edmonton’s urban form
- Improve Edmonton’s liveability

Legal Implications

If the City adopted a measure, such as a resolution to use only local contractors for all Arena-related construction, a vendor or other province subject to the New West Partnership Trade Agreement could initiate the dispute resolution process contained therein. Since the City is subject to the New West Partnership Trade Agreement, but not a party, such a process would involve the Province of Alberta, as the party to the New West Partnership Trade Agreement, and the person or other party raising the dispute. The dispute resolution process could result in a monetary award against the non-compliant party, the Province of Alberta

in this case, of up to \$5 million or retaliatory measures of equivalent economic effect. Any fine would be in addition to political consequences.

Under the Agreement on Internal Trade, vendors may complain to their provincial governments about the City's non-compliance. That province can then communicate such complaints to the government of the Province of Alberta. A potential result of the dispute, if the dispute resolution procedure is not successful, the province of the complaining vendor(s) may temporarily suspend equivalent benefits to the Province of Alberta and vendors located therein.

Others Reviewing this Report

- L. Rosen, Chief Financial Officer and Treasurer
- D. H. Edey, General Manager, Corporate Services
- L. Cochrane, General Manager, Community Services