TO: Chair and Members  
Audit, Finance & Administration  
WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: June 8, 2011

SUBJECT/REPORT NO:  
Fair Wage Complaint Contract C13-01-09 – Audit Results (FCS11037) (City Wide)

SUBMITTED BY:  
Tony Tollis  
Treasurer  
Corporate Services Department  
PREPARED BY:  
Rick Male (905) 546 2424 ext. 5971

SIGNATURE:

RECOMMENDATION

That no further action be taken, respecting the complaint against Besseling Mechanical Inc., regarding the City’s Fair Wage Policy.

EXECUTIVE SUMMARY

The City’s Fair Wage Policy and Fair Wage Schedule are applicable to construction contracts over $100,000 and all contractors and sub-contractors providing construction and construction maintenance work shall pay or provide wages and benefits to their employees in accordance with this Policy.

The City received a complaint relating to contract C13-01-09 Tender for General Contractor Required for Renovations to Hamilton Public Library and Farmers Market alleging non-compliance by Kemp Construction’s sub-contractor, Besseling Mechanical Inc. for improper payment of wages and benefits.
The City has now concluded an audit in response to this complaint. Besseling Mechanical Inc. were found to be non-compliant with the Fair Wage Policy, however, the non-compliance has now been rectified.

**Alternatives for Consideration – Not Applicable**

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

- **Financial:**
  None.

- **Staffing:**
  None.

- **Legal:**
  None.

**HISTORICAL BACKGROUND** (Chronology of events)

The City received a complaint relating to contract C13-01-09 Tender for General Contractor Required for Renovations to Hamilton Public Library and Farmers Market alleging non-compliance by sub-contractor, Besseling Mechanical Inc. for improper payment of wages and benefits.

The City informed the complainant of the process and the anticipated costs associated with undertaking an audit as the complainant was not an employee of the sub-contractor in question, therefore, any costs of inspection, audits or other action deemed necessary regarding the complaint shall be assessed against the complainant.

The complainant confirmed their wish to continue with the complaint and audit.

The City’s Internal Audit inspected information and documentation at the sub-contractor’s office to assess the wages and benefits of the employees working on the City contract in question.

The results of the review:

- 12 employees were assigned by the sub-contractor to work on this contract for the period April 27, 2009, to January 16, 2011, were covered by the Fair Wage Policy and Schedule.
- 12 employees were owed monies for wages under the Fair Wage Schedule rates totalling $17,961.39.

- Six employees were owed monies for overtime under the Fair Wage Schedule rates totalling $185.22.

Besseling Mechanical Inc. was a sub-contractor to Kemp Construction.

The City met with Kemp Construction, as contractor, to discuss the Fair Wage complaint and results of the audit of their sub-contractor, Besseling Mechanical Inc. Kemp Construction were co-operative and provided written assurance that their sub-contractors acknowledge compliance by a declaration prior to release of final payments and will continue to post a copy of the City’s Fair Wage Policy on all City construction projects.

The City then met with Besseling Mechanical Inc. (sub-contractor) to discuss the Fair Wage complaint and audit findings. Besseling Mechanical Inc. had been working under the assumption that the City was operating under the same terms as used in the former municipality of the Regional of Hamilton-Wentworth, whereby if the contractor/sub-contractor’s employees were working under a Labour Agreement covered under Provincial legislation, the contractor/sub-contractor was not required to adhere to the City’s Fair Wage Policy. The Policy had since been updated and Besseling Mechanical Inc. recognized their failure to make themselves aware of the changes to the Fair Wage Policy and Schedule.

Besseling Mechanical Inc. has provided their written assurance that they have reviewed their procedures and in the future, when working on City of Hamilton projects, will ensure they are aware of the Policy, in effect, at that time. Besseling Mechanical Inc. has also provided signed receipts from each employee to confirm they have received the shortfall identified in the audit.

Besseling Mechanical Inc. has reimbursed the City the $2,535.53 cost of undertaking the audit.

Staff has not recommended any of the other sanctions or penalties, outlined in the Fair Wage Policy, be imposed on Besseling Mechanical Inc.

**POLICY IMPLICATIONS**

None.
RELEVANT CONSULTATION

Internal Audit: Ann Pekaruk, Director of Audit Services, provided the audit findings.

Kemp Construction: Tom Kemp, President, agreed with the audit findings.

Besseling Mechanical Inc.: Phil Besseling and Cameron Besseling agreed with the audit findings.

ANALYSIS / RATIONALE FOR RECOMMENDATION

Besseling Mechanical Inc. has rectified the non-compliance and amended their procedures.

Kemp Construction has amended their procedures when using sub-contractors.

ALTERNATIVES FOR CONSIDERATION

None.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Financial Sustainability

• The Fair Wage Policy and Schedule allows the employees of contractors, the rate of pay to be financially sustainable.

Healthy Community

• The Fair Wage Policy and Schedule enables the employees of contractors to be paid a living wage and provide benefits to enable a healthy lifestyle.

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
APPENDICES / SCHEDULES

None.