CITY WIDE IMPLICATIONS

To: Chair and Members
Audit and Administration Committee

From: Peter A. Barkwell
Acting General Manager
Finance and Corporate Services Department

Telephone: 905 546-2424 x4636
Facsimile: 905 546-4370
E-mail: Peter.Barkwell@hamilton.ca

Date: September 8, 2008
Re: J.C.J. Contracting Delegation Request Regarding RFP C11-40-08 (FCS08087) (City Wide)

Council Direction:

Staff were asked to prepare an Information Report at the September 3, 2008, Audit and Administration Committee, outlining the issues regarding the disqualification of J.C.J. Contracting on RFP C11-40-08 – Operation and Maintenance of the City of Hamilton’s Waste Transfer and Disposal Systems.

Information:

RFP C11-40-08 was issued by the City for the Operation and Maintenance of the City of Hamilton’s Waste Transfer and Disposal Systems. Beth Goodger, Director of Waste Management, provided an Information Update on this RFP, dated July 22, 2008, to the Mayor and Members of Council. In this update, it was mentioned that J.C.J. Contracting’s Proposal was disqualified as they did not meet a mandatory requirement specified in the RFP for proposal security.

J.C.J. met with the Manager of Purchasing to review their disqualification. After the meeting they were not satisfied that their concerns had been addressed. As a result, they have exercised their right under the RFP to request to appear before the Audit and Administration Committee to discuss their case.

On the day of close, the representative of J.C.J. attended at Purchasing a few minutes prior to the closing time for the RFP. This representative realized they had forgotten to bring the irrevocable Letter of Credit to submit with their Proposal (mandatory requirement). They asked one of the Buyers in Purchasing to use the phone and the fax machine and then called their offices and asked to have something faxed.
When the fax was received, it was handed to the representative who inserted the fax copy into an envelope, sealed it and submitted it with their Proposal.

Upon opening the Proposals in order to verify that all mandatory requirements had been met, Purchasing identified that there was no original Letter of Credit included in the Proposal from J.C.J. In consultation with Legal Services, J.C.J.’s Proposal was disqualified. It is Purchasing’s practice to only accept original Letters of Credit in order to authenticate the existence of the document. To the best of our knowledge, Purchasing has never accepted a copy of a Letter of Credit, nor has a bidder ever attempted to submit a copy of a Letter of Credit in place of an original.

It should be noted that the only type of proposal security that was acceptable for this RFP was either a certified cheque, bank draft, money order, or an Irrevocable Letter of Credit.

The banker for J.C.J. is the Royal Bank, who is also the City's banker. The Royal Bank informed J.C.J. that it is possible to draw on the Letter of Credit, knowing the particulars of a Letter of Credit, such as, the document reference number. Although, it may be possible to draw against a Letter of Credit without the original, the process is not the normal process, and the Royal Bank has also advised City staff that we should always insist on getting the original Letter of Credit, as that is the only way to ensure it actually exists and that the bank agrees to the details of the copy.

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Peter A. Barkwell
Acting General Manager
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