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November 5, 2015

CORPORATE SERVICES REPORT- JOINT LEGISLATIVE SERVICES & LEGAL SERVICES #2015-19

TO: Mayor Van Bynen and Members of Council

SUBJECT: Lobbyist Registry for the Northern Six Waste Collection Contract (2017-2027)

ORIGIN: Legislative Services & Legal Services

RECOMMENDATIONS

THAT Corporate Services Commission Report – Joint Legislative Services & Legal Services Report 2015-19 dated November 5, 2015 regarding “Lobbyist Registry for the Northern Six Waste Collection Contract (2017-2027)” be received and the following recommendations be adopted:

- 1. THAT Council adopt the lobbyist registry framework outlined in this report for the Northern Six Waste Collection Contract (2017-2027);**
- 2. AND THAT lobbying of Council through means of a public deputation or to any communication through a public meeting to Council be prohibited prior to and during the black out period;**
- 3. AND THAT the Clerk provide the municipalities of Aurora, East Gwillimbury, Georgina, King and Whitchurch-Stouffville a copy of Council’s extract and staff report.**

COMMENTS

This report recommends a lobbyist registry framework for use by Newmarket Members of Council and Town employees prior to the release of the Request for Proposals (RFP) for the Northern Six Waste Collection Contract (2017-2027).

Details of the Northern Six Waste Collection Contract (2017-2027) are outlined in Development and Infrastructure Services – Public Works Services Report 2015-58 which is included in the November 9, 2015 Committee of the Whole agenda or from Chris Kalimootoo, Director of Public Works by contact him by email at ckalimootoo@newmarket.ca or by telephone at 905-953-5300, ext. 2551.



Background

The Town's Procurement By-law prohibits lobbying of elected officials and Town employees by proponents after the release of the RFP through to the award of the contract (referred to as the "black out period"). The following are excerpts from Town of Newmarket RFPs and will be included in the Northern Six Waste Collection Contract 2017-2027.

Blackout Period

The blackout period begins when the bid call document is issued and ends when the contract is signed by the owner and the selected proponent. During the blackout period, proponents must conduct all communication about the procurement only with the procurement representative stated in (the) bid document.

Any communication initiated by a proponent to elected officials or staff of the owner other than to the procurement staff during the "blackout period" may be grounds for disqualifying the offending proponent from consideration for contract award.

During the competitive period (blackout period), proponents may submit an emailed written question to the procurement representative. The procurement representative may issue a written addendum to provide clarification or modification to the bid call document. The addendum will be published on the bid opportunities website.

Lobbying Prohibited

If any director, officer, employee, agent or representative of a proponent, including any other parties that may be involved in a joint venture, consortium or similar business relationship with the proponent, makes, from the time the bid documents are released until a contract is executed, any representation or solicitation to any elected representative or employee or agent of the owner including project consultants, or to the media, with respect to the proponent's bid, the owner will be entitled to reject the bid.

While the RFP addresses lobbying of Members of Council and Town employees during the blackout period, it does not provide a mechanism for disclosure of lobbying activities by Members of Council and Town employees prior to the issuance of the RFP. Given the size of the contract, a lobbyist registry is recommended the Northern Six Waste Collection Contract (2017-2027) for Newmarket Council as a transparency best practice.

As recommended, lobbying would be prohibited through any communication or deputation to Council at any public meeting.

Municipal Act, 2001 Framework

The *Municipal Act, 2001* provides a lobbyist registrar regime which typically applies to lobbying activities generally and an accountability officer (lobbyist registrar) dedicated to registration functions, education and enforcement.

Given the short timeframe before the issuance of the RFP for the Northern Six Waste Collection Contract (2017-2027) in the spring of 2016 and existing priorities and resources, it would be impractical for Council to establish a broad lobbyist by-law and the potential appointment of a lobbyist registrar envisioned in the *Municipal Act, 2001*. It should be noted that the Town does not have authority to investigate, recommend or impose penalties for non-compliance.

Council can approve a lobbying registry framework specifically for the Northern Six Waste Collection Contract (2017-2027) and could be either voluntary or mandatory in nature. Development and Infrastructure Services – Public Works Services Report 2015-58 referenced a voluntary lobbyist registry. Staff have since reviewed options available and can confirm a mandatory lobbyist registry is an option available to Council and is being recommended by staff.

Outlined below are recommended definitions and an administrative procedure for the disclosure of lobbying activities in advance of the issuance of the RFP for the Northern Six Waste Collection Contract (2017-2027).

Lobbyists

For the purposes of the registry, lobbyists include any director, officer, employee, agent or representative of a firm or agent of a firm (whether or not they receive payment) who have an interest in submitting a proposal for the Northern Six Waste Collection Contract (2017-2027). Among other examples, lobbyists include any director, officer, employee, agent or representative of a firm or agent of:

- A firm currently providing services identified in the RFP;
- Firms partnering to submit a proposal; and,
- Firms yet to form who wish to submit a proposal.

Lobbyists do not include representatives or agents of firms with a general economic or other interest in the Northern Six Waste Collection Contract (2017-2027) and have no interest in submitting a proposal. This mirrors the type of firms who would not be subject to the “black out” period required by the RFP.

Lobbying

Lobbying includes any communication between representatives or agents of lobbyists and a Member of Newmarket Council or Town employees (excludes purposes of obtaining general procurement/process information), whether this occurs in person, by telephone, by e-mail, or other means electronic or otherwise where the subject of the communication is directly or indirectly related to the Northern Six Waste Collection Contract (2017-2027).

Administration of lobbyist registry

In terms of the administration of the lobbyist registry, Members of Council and Town employees (to be determined by the CAO) will be provided with a form which identifies the name of the Member of Council or Town employee, name and address of the lobbyist, date and time of the communication and how the communication occurred (i.e., by telephone, by e-mail, or other means electronic or otherwise) and a field where the Member of Council or Town employee can include a summary of the communication. An information sheet outlining the purpose, use and

disclosure of information collected will be produced for Members of Council to provide to lobbyists. Given that lobbying occurs between firms (i.e., businesses) and Members of Council, there are no considerations relative to the collection, use and disclosure of personal information.

The Purchasing Department will also provide firms with information about the lobbyist registry (and will be required to acknowledge the receipt of the information) when the RFP is obtained.

Members of Council and Town employees will submit their completed lobbying forms on routine basis (i.e., bi-weekly) to Legislative Services and will be posted on the Town's website and made available at the Legislative Services Department. The lobbyist registry will be updated on a weekly basis.

Lobbying forms and information sheets will be made available by November 18, following Council approval on November 16, 2015. Posting of the voluntary lobbyist registry will commence the week of November 23, 2015.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

The initiative relates to the Well-equipped and managed link of the Town's Community Vision-implementing policy and processes that reflect sound and accountable governance.

BUDGET IMPACT (CURRENT AND FUTURE)

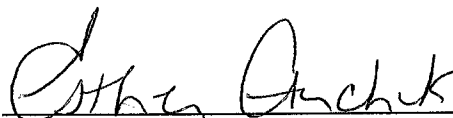
There are no budget impacts associated with this Information Report.

CONTACT

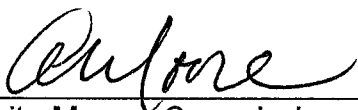
For more information on this report, please contact Andrew Brouwer, Director of Legislative Services/Town Clerk at abrouwer@newmarket.ca or at 905-953-5300, ext. 2211 or Esther Armchuk, Director of Legal Services/Municipal Solicitor at earmchuk@newmarket.ca or at 905-



Andrew Brouwer, Director of Legislative Services/Town Clerk



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Anita Moore, Commissioner of Corporate Services