

## Report to Civic Works Committee

**To:** Chair and Members  
Civic Works Committee

**From:** Kelly Scherr, P.Eng., MBA, FEC  
Deputy City Manager, Environment & Infrastructure

**Subject:** Exclusion of H.I.R.A. Limited from the City of London's  
Bidding and Tender Processes

**Date:** February 1, 2022

## Recommendation

That, on the recommendation of the Deputy City Manager, Environment and Infrastructure, the following actions **BE TAKEN** with respect to outstanding legal action against the City of London:

- a) H.I.R.A. Limited **BE EXCLUDED** from any City of London bidding opportunities until such time as they are no longer in litigation against the City of London in accordance with Section 19.6 of the Procurement of Goods and Services Policy; and,
- b) the balance of this report **BE RECEIVED** for information.

## Executive Summary

### Purpose

The purpose of this report is to update City Council with respect to the status of the Vauxhall Wastewater Treatment Plant Flood Protection project and to request approval to exclude the general contractor in that project, H.I.R.A. Limited, from current and future bidding opportunities as a result of legal action that H.I.R.A. Limited is engaged in against the City.

### Context

The Vauxhall Wastewater Treatment Plant Flood Protection project encountered difficulties and delays that City staff attempted to work through with H.I.R.A. Limited, with periodic updates and direction from City Council. The project is now complete, but no consensus was reached in terms of resolving additional costs claimed by H.I.R.A. Limited. In response, H.I.R.A. Limited initiated legal action against the City.

## Linkage to the Corporate Strategic Plan

This recommendation supports the 2019 – 2023 Strategic Plan through the strategic focus area of Leading in Public Service: The City of London is a leader in public service as a steward of public funds.

# Analysis

## 1.0 Background Information

### 1.1 Previous Reports Related to this Matter

Civic Works Committee, April 16, 2019, Item 2.7 – Vauxhall WWTP Flood Protection Additional Dewatering Costs

Civic Works Committee, July 17, 2018, Item 2.6 – Clean Water and Wastewater Fund Project Budget Amendments

Civic Works Committee, October 24, 2017, Item 18 – Vauxhall Wastewater Treatment Plant Flood Protection Construction Tender Award

## 2.0 Discussion and Considerations

The Vauxhall Wastewater Treatment Plant was selected for upgrades related to protection from flooding because of its location at a low elevation near the south branch of the Thames River. The contract to construct the flood protection measures, including a protective berm and an effluent pumping station, cost more to construct and took much longer to complete than was anticipated at the time of tender. The City also incurred additional consulting fees.

City staff have attempted to reach resolution on an acceptable value of additional compensation for the services provided by the general contractor, H.I.R.A. Limited, but have been unable to reach an acceptable resolution. In the absence of a resolution to the dispute, H.I.R.A. Limited initiated legal proceedings against the City, seeking damages. That legal action continues today.

The City of London's Procurement of Goods and Services policy considers the potential for difficulty in maintaining effective contractual relationships and the potential for incurring additional burden and cost on the Corporation while litigation is ongoing. As a result, the Policy includes specific language that allows the City to reject bids from bidders engaged in a legal action against the Corporation. The specific language of the Policy follows:

#### 19.6 Exclusion of Bidders in Litigation and disputes or appeals of contract awards

a. The City may, in its absolute sole discretion, reject a bid submitted if the bidder, or any officer or Deputy City Manager of the bidder is or has been engaged, either directly or indirectly through another Corporation or personally, in a legal action against the City, its elected or appointed officers and employees in relation to:

i. any other contract or services; or

ii. any matter arising from the City's exercise of its powers, duties, or functions; or

iii. a dispute and/or an appeal of contract awards as per section 2.9.

b. In determining whether or not to reject a bid under this clause, the City will consider whether the litigation is likely to affect the bidder's ability to work with the City, its consultants and representatives, and whether the City's experience with the bidder indicates that the City is likely to incur increased staff and legal costs in the administration of the contract if it is awarded to the bidder.

This discretionary power described in the Procurement Policy is also reflected in the Tender documents that govern the terms of bids currently posted by the City of London. By letter dated January 17, 2022 staff advised H.I.R.A. Limited that a public and confidential report would be taken to Committee and Council seeking a formal decision to exclude H.I.R.A. Limited from future public tenders so long as the current litigation continues. A copy of this letter is attached as Appendix "A". Any response to the City's position received from H.I.R.A. Limited in time for the meeting on February 1, 2022 will be provided to the Committee.

A separate confidential report containing legal advice will be provided to Committee from the City Solicitor's office.

## **Conclusion**

H.I.R.A. Limited is currently engaged in a legal action against the City, and it is expected that this will create difficulties in maintaining effective contractual relationships and the potential for increased burden and cost on the Corporation. It is therefore recommended that H.I.R.A. Limited be excluded from bidding on any current or future City of London bidding opportunities for as long as their legal action against the City of London remains unresolved.

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**Submitted by:** Scott Mathers, MPA, P. Eng., Director, Water,  
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**Recommended by:** Kelly Scherr, P. Eng., MBA, FEC  
Deputy City Manager, Engineering and Infrastructure

**CC:** Geoff Belch  
John Freeman