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Staff Report

Infrastructure & Public Works

Report To: Committee of the Whole
Meeting Date: November 15, 2017
Report Number: CSPW.17.105
Subject: Bill 142 – Construction Lien Amendment Act, 2017
Prepared by: Michael Campbell, Construction Coordinator

A. Recommendations

THAT Council receive Staff Report CSPW.17.105 entitled “Bill 142 – Construction Lien Amendment Act, 2017” for their information.

B. Overview

This Staff Report will report on the current status of Bill 142 and its implications to the Town of The Blue Mountains.

C. Background

The Construction Lien Act was first introduced to the construction industry in 1983. On May 31, 2017, Ontario’s Attorney General Yasir Naqvi introduced Bill 142 “Construction Lien Amendment Act, 2017” that if passed would significantly amend the Construction Lien Act. The Bill received second reading on September 12, 2017. On October 4th the Bill was referred to the Standing Committee on the Legislative Assembly. A number of legal firms have provided a review of the Bill. Speculation by these firms suggest that the Bill will most likely become law as the government does have a majority in the Legislative Assembly. If the Bill is passed, the Attorney General anticipates that the legislative and regulatory changes will come into effect in 2018.

The Construction Lien Act has now been in effect for 34 years. The Construction industry has become familiar with the Act’s requirements and have developed procedures that substantially comply with these requirements.

The Amendments to the Construction Lien Act, which is anticipated to become the “Construction Act” represents the Province’s intention to modernize provincial construction laws. The new legislation will bring changes including: mandatory prompt payment; adjudication of construction disputes; changes to liens rights, holdbacks and summary procedures; updating the definition of substantial performance and completion, changes to the trust provisions and many other changes.

The proposed key changes to the Construction Lien Act are presented at Attachment # 1.

D. Analysis

The Act, if passed as written, will impose some changes on Town practices. The Town will need to update their tender documents to align clauses with the new Act's requirements. Staff anticipates that the current general conditions of contract that are referenced in the tender/contract documents will be updated by their authors. Staff anticipates the construction industry will organize seminars before the final draft of the Act becomes law to prepare industry including the Town. The Town's contract administration practices will have to change as required to align with the final draft of the Act.

One of the key changes in the Act that concerns the construction industry is the prompt payment requirement. For many projects the Owner has a contract administration consultant that administers the payment process which can create another step between the receipt of a proper invoice and prompt payment of same. It will be interesting to see how the construction industry adapts to the requirement for prompt payment.

E. The Blue Mountains Strategic Plan

Goal #2: Engage Our Communities & Partners

Goal #4: Promote a Culture of Organizational & Operational Excellence

F. Environmental Impacts

None.

G. Financial Impact

Unknown at this time.

H. In consultation with

Serena Wilgress, Manager of Purchasing and Risk Management.

I. Attached

1) Overview of Proposed Key Changes to the Construction Lien Act

Respectfully submitted,

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Bill 142 – Construction Lien Amendment Act, 2017

Overview of Proposed Key Changes to the Construction Lien Act

Prompt Payment

- The Bill introduces a mandatory prompt payment regime. It will be applied to Owners, both private and public, triggered by delivery of a proper invoice.
- The owner will have 28 days to pay a contractor after the delivery of a proper invoice.
- The contractor will have 7 days to pay a sub-contractor but only after receiving payment.

Adjudication of Construction Disputes

- The Bill introduces a mandatory dispute resolution through adjudication that flows from a proper invoice under a contract. This adjudication is expected to be cheap and quick.
- This form of adjudication is based on a UK model. In the experience of UK only a small number of cases go from adjudication to litigation or arbitration.

Greater Lien Rights

- The timeline for contractors and sub-contractors to register a lien is extended from 45 days to 60 days.
- The subsequent timeline to perfect a lien by commencing an action is extended from 45 days to 90 days.
- The definition of “improvements” is expanded to include capital repairs that extend the normal economic life of a structure.
- Lien claims under \$25,000 will be referred to small claims court.

Holdbacks

- Statutory Holdback will remain at 10%, the release of holdback is mandatory and holdback funds are due as soon as the deadline to register liens has passed.
- Essentially this copies the current requirements that over time have not been strictly adhered to.

Surety Bonds

- The Bill proposes that municipalities require both labour and material payment bonds and performance bonds where the contract price exceeds a prescribed amount.

Updated Definitions

- Substantial performance financial threshold tiers will increase from \$500,000 to \$1,000,000.
- Total completion threshold will be increased to the lesser of 1% or \$5,000.
- The Act introduces many new or replacement definitions to take into account modern project structures including: contractor; subcontractor; broader public sector organization; improvement; municipality; capital repair and price among others.

New Trust Fund Rules

- The Act will create some new rules relating to the deposit, administration, recording and traceability of project trust funds.

Construction Trade Newspaper

- The definition of construction trade newspaper will be repealed. As such, certification of substantial performance will no longer needed to be published in a construction trade newspaper, but rather as prescribed by the regulations.