

**Report to  
Rapport au:**

**Election Compliance Audit Committee  
Comité de vérification de la conformité pour les élections municipales  
28 July 2015 / 28 juillet 2015**

**Submitted on July 27, 2015  
Soumis le 27 juillet 2015**

**Submitted by  
Soumis par:  
M. Rick O'Connor, City Clerk and Solicitor/Greffier et Chef du contentieux**

**Contact Person  
Personne ressource:  
Leslie Donnelly, Deputy City Clerk/Greffière adjointe  
(613)580-2424 x28857, [Leslie.Donnelly@ottawa.ca](mailto:Leslie.Donnelly@ottawa.ca)**

**Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE      File Number: ACS2015-CMR-CCB-0093**

**SUBJECT: APPOINTMENT OF AUDITOR FOR ELECTION COMPLIANCE AUDITS**

**OBJET: NOMINATION D'UN VÉRIFICATEUR AUX VÉRIFICATIONS DE LA  
CONFORMITÉ POUR LES ÉLECTIONS MUNICIPALES**

#### **REPORT RECOMMENDATIONS**

**That the Election Compliance Audit Committee:**

- 1. Approve the appointment of Raymond Chabot Grant Thornton to conduct a compliance audit of the election campaign finances for the 2014 Municipal Election campaign of Candidate Mark Taylor, Bay Ward and Candidate Eli El-Chantiry, West Carleton-March Ward, as outlined in this report.**
- 2. Delegate the authority to finalize the contract and audit program to the City Clerk and Solicitor and the Deputy City Clerk, individually (or a designate of either), in consultation with the Committee's legal counsel, as outlined in this report.**

## RECOMMANDATIONS DU RAPPORT

**Que le Comité de vérification de la conformité pour les élections municipales :**

- 1. Approuve la nomination de Raymond Chabot Grant Thornton pour effectuer une vérification de la conformité des finances de la campagne électorale municipale de 2014 du candidat Mark Taylor, quartier Baie, et du candidat Eli El-Chantiry, quartier West Carleton-March, comme l'indique le présent rapport.**
- 2. Délègue le pouvoir de finaliser le contrat et le programme de vérification individuellement au greffier municipal et chef du contentieux et à la greffière adjointe (ou à leur remplaçant désigné), de concert avec le conseiller juridique du Comité, comme l'indique le présent rapport.**

## BACKGROUND

Under Subsection 81(1) of the *Municipal Elections Act, 1996* (the "MEA"), "An elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of this Act relating to election campaign finances may apply for a compliance audit of the candidate's election campaign finances."

Section 81.1 of the MEA requires that the municipality establish a committee for the purposes of considering applications for compliance audits. Furthermore, Subsection 81(5) states that "within 30 days after receiving the application, the committee shall consider the application and decide whether it should be granted or rejected."

At its meetings of July 10, 2015 and July 15, 2015, the City's Election Compliance Audit Committee (the "Committee") considered applications for compliance audits of the election finances of six individual candidates nominated in the 2014 Municipal Election.

On July 10, 2015, the Committee granted applications for a compliance audit of the election campaign finances of Candidate Mark Taylor, Bay Ward and Candidate Eli El-Chantiry, West Carleton-March Ward.

Subsection 81(7) of the MEA requires that, if the Election Compliance Audit Committee decides to grant an application, it shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances.

On July 15, 2015, the Committee approved the following motion with respect to the process for appointing an auditor:

Moved by Member C. Bédard

WHEREAS on July 10, 2015 the Election Compliance Audit Committee granted applications for a compliance audit of the election campaign finances of Candidate Mark Taylor, Bay Ward and Candidate Eli El-Chantiry, West Carleton-March Ward; and

WHEREAS Subsection 81(7) of the Municipal Elections Act, 1996 requires that, if the Election Compliance Audit Committee decides to grant an application, the Committee shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances;

THEREFORE BE IT RESOLVED that the Election Compliance Audit Committee direct the City Clerk and Solicitor, in cooperation with the Committee's legal counsel, to provide this Committee with recommendations as to potential auditors to be retained for the purposes of the compliance audit;

BE IT FURTHER RESOLVED that this Committee be reconvened within 45 days of today for the purpose of appointing an auditor to conduct a compliance audit of the election campaign finances of Candidate Mark Taylor, Bay Ward and Candidate Eli El-Chantiry, West Carleton-March Ward.

CARRIED

## **DISCUSSION**

Following the direction from the Election Compliance Audit Committee, the City Clerk and Solicitor's Office, in consultation with the Committee's legal counsel, initiated a call-up against the City's Standing Offer for Audit Services. As the Standing Offer for Audit Services is in place for the Office of the Auditor General, technical guidance was also sought from the Auditor General with respect to placing a call-up against the Standing Offer. The Standing Offer includes twelve firms. Four firms were screened out of the initial call-up, three of which had conducted financial audits of nominated candidates in the 2014 Municipal Election including one of the candidates subject to a compliance audit.

Of the eight firms which were circulated, two proposals were submitted. Four firms formally declined the opportunity to submit a proposal and two others did not submit a proposal.

Based on the proposals submitted, the City Clerk and Solicitor's Office, in consultation with the Committee's legal counsel and the Auditor General, is recommending the Election Compliance Audit Committee (the "Committee") approve the appointment of Raymond Chabot Grant Thornton ("RCGT") to conduct a compliance audit of the election campaign finances of Candidate Mark Taylor, Bay Ward and Candidate Eli El-Chantiry, West Carleton-March Ward. The proposal from RCGT (Document 1) addressed all the requirements outlined in the call-up and the team members identified possess relevant experience to conduct this type of audit.

Staff is further recommending that the Committee delegate the authority to finalize the contract and audit program to the City Clerk and Solicitor and the Deputy City Clerk, individually (or a designate of either if either is unavailable), in consultation with the Committee's legal counsel.

This recommendation is in keeping with guidance from the Committee's independent legal counsel for the following reasons:

- The Committee and its members would likely exceed their jurisdiction and powers under the MEA were it or they to become involved in the appointment process. Subsection 81(7) of the MEA provides that it is the Committee who appoints the auditor. Action by the Committee with respect to the auditor is by the Committee as a whole, and not by any member or group of members of the Committee.
- The Committee will have to consider the auditor's report pursuant to Subsection 81(14) of the MEA and cannot be perceived as having participated in the preparation of the compliance audit as a matter of procedural fairness and avoidance of bias. Such participation in the compliance audit process would arguably make the Committee a participant rather than solely a decision-maker. The MEA contemplates that the Committee is a decision-maker, not a participant. Committee member participation in the audit process would run contrary to administrative law principles of independence and would give rise to allegations of bias on the part of the Committee and its members.
- Pursuant to Subsection 81(9) of the MEA, the auditor is to conduct an audit "to determine whether he or she has complied with the provisions of the Act". Any involvement by any Committee member in the preparation for, carrying out, or directions to the auditors with respect to the same would give rise to allegations of bias and interference with the auditor in the discharge of its duty pursuant to the MEA.

- In considering the report under Subsection 81(14), the Committee will have to exercise its discretion, determine questions of mixed fact and law, interpret the meaning of the legislation's election campaign finance provisions, determine whether the auditors may have erred in their interpretation of the MEA, and, as the case may be, again turn to the reasonable grounds test to determine whether costs should be sought from the Applicant. The Committee or Committee member participation in the process would strike at its exercise of discretion as it could be argued that the Committee or Committee member's participation in the auditor program etc. constitutes a pre-exercise of discretion.

The auditor shall be responsible for promptly conducting a compliance audit of the candidate's election campaign finances to determine if the candidate complied with the election campaign finance rules of the *Municipal Elections Act, 1996* (the "MEA"). Staff has estimated a four-month period to complete the two compliance audits. The City is responsible for the auditor's costs related to performing the compliance audit.

The MEA requires that the appointed auditor must be licensed under the *Public Accounting Act, 2004* and RCGT has confirmed that the identified representatives are licensed under this Act.

The compliance audits will not to be limited to issues identified in the application for a compliance audit and will be conducted in accordance with Subsections 81 (9) and (12) of the MEA:

#### Duty of auditor

- (9) The auditor shall promptly conduct an audit of the candidate's election campaign finances to determine whether he or she has complied with the provisions of this Act relating to election campaign finances and shall prepare a report outlining any apparent contravention by the candidate.

#### Powers of auditor

- (12) For the purpose of the audit, the auditor,
- a) is entitled to have access, at all reasonable hours, to all relevant books, papers, documents or things of the candidate and of the municipality or local board; and

- b) has the powers of a commission under Part II of the Public Inquiries Act, which Part applies to the audit as if it were an inquiry under that Act.

Upon completing the compliance audit, the auditor shall prepare a report outlining whether a contravention of the election campaign finance provisions of the MEA occurred. When the auditor has completed his/her report, the report shall be forwarded to the following individuals:

- the Candidate;
- City Council;
- the City Clerk; and
- the Applicant.

The City Clerk will then forward the report to the Election Compliance Audit Committee within 10 days of receipt. Within 30 days of receiving the report, the Committee shall hold a meeting for the purposes of considering the auditor's report. As part of its consideration of the auditor's report, the Committee may:

- Decide whether legal proceedings should be commenced against the candidate, if the report finds a contravention did occur; or
- Decide whether there were reasonable grounds for the application, if the report finds that no contravention occurred.

Following its decision, the Committee will submit a report to City Council, for information, outlining its findings and decision as a result of the auditor's report.

In the event that the auditor's report finds that there was no contravention of the election campaign finance rules and the Election Compliance Audit Committee has found that there were no reasonable grounds for the application, City Council is entitled to recover the auditor's costs from the Applicant.

## **RURAL IMPLICATIONS**

There are no rural implications associated with this report.

## **CONSULTATION**

This report is administrative in nature and therefore no public consultation was required.

**COMMENTS BY THE WARD COUNCILLOR(S)**

This is a city-wide report.

**LEGAL IMPLICATIONS**

There are no legal impediments to implementing the recommendations in the report. Under Subsection 81(7) of the *Municipal Elections Act, 1996*, if the Election Compliance Audit Committee decides to grant an application, it shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances.

**RISK MANAGEMENT IMPLICATIONS**

There are no risk management implications associated with this report.

**FINANCIAL IMPLICATIONS**

The costs of the Election Compliance Audit Committee's operations and activities will be funded from the Election Reserve Fund.

**ACCESSIBILITY IMPACTS**

There are no accessibility implications associated with this report.

**TERM OF COUNCIL PRIORITIES**

This report has no direct impacts on the City's strategic priorities or directions.

**SUPPORTING DOCUMENTATION**

Document 1 – Proposal from Raymond Chabot Grant Thornton

**DISPOSITION**

The City Clerk and Solicitor, in consultation with the Committee's independent legal counsel, will take the necessary steps to formalize the contract with the appointed auditor and facilitate the audit process as necessary.