

Memo

To: Mayor Burton and Members of Council

From: Roads and Works Operations

Date: September 19, 2023

Subject: Bill 93 Impact to Underground Locate Services

1. Purpose

To provide an update, recommendations and next steps for the Town of Oakville as related to the new regulation introduced by Bill 93 to support compliance through Ontario One Call's Administrative Penalties Regime.

2. Key Facts

- Locates identify infrastructures that may be hidden underground.
- The Town is responsible for locates of its assets.
- The Town receives approximately 16,000 locate requests a year.
- Bill 93 "Getting Ontario Connected Act" made changes to locates and penalties and received Royal Assent in April 2022. The implementation of new penalties was deferred to April 2024.
- Staff evaluated various factors including ability to provide the service, cost implications, risk related to Bill 93 and recommends that Oakville continue using PVS for locate services.
- PVS' proposed rates include assuming all liability on penalties, which would result in an increase of town's budget from the original \$582,800 to \$1.52M for 2024.

3. Background

In 2012, the Ontario Underground Infrastructure Notification System Act (OUINS) was passed, which requires anyone in the province of Ontario must contact Ontario One Call (OOC) before they dig.

Locating underground infrastructure is vital to the province's construction activities and supports related government priorities such as accelerating access to high-speed internet and increasing housing supply. However, the delivery timelines for locating underground infrastructure are often delayed which can impact excavation projects resulting in significant delays and cost implications.

In light of this, the Ministry of Public and Business Service Delivery (MPSBD) proposed a Minister Regulation to support the changes made to OUINS Act (One Call Act), through Bill 93 "Getting Ontario Connected Act". Bill 93, the Getting Ontario Connected Act, received royal assent on April 14, 2022 and it gives Ontario One Call the ability to use administrative penalties as a new compliance tool to enhance industry locate performance. The new penalties from Bill 93 were scheduled to start in April 2023, however, it has now been deferred to April 2024 to allow for consultations.

Ontario One Call may utilize a variety of tools to encourage compliance, in addition to issuing administrative penalties, such as, reviewing and mediating complaints, issuing warning letters, and encouraging member and excavator compliance through educational programs. The administrative penalties framework under the Act is an 'absolute liability regime', which means that the penalty applies even if the person took all reasonable steps to prevent the contravention from occurring or if the person mistakenly believed there was no contravention.

As an asset owner, the Town is responsible for providing locates of its infrastructure. Locates are provided to the requesters free of charge to encourage regulatory compliance. The Town received approximately 16,000 locate requests a year. The Town's locate obligations are currently fulfilled by PVS Contractors (company under Oakville Hydro, OEC).

4. Options

Due to passing of Bill 93, staff evaluated three options to deliver locate services:

- Contract continuation with PVS
- Go out to market to retain a new service provider
- Provide locates internally through In-house service

Option 1 – Contract Continuation with PVS

The first option is to maintain the Town's current contractor PVS. The risk of fines would reside with the contractor when penalties come into effect next year. With the shift of fines liability, inflation and contract escalation, the cost of service delivery increased to a forecasted 2024 budget of approximately \$1.52M.

Option 2 – New Contract with a New service provider

The second option is to initiate a new procurement process and solicit best prices within the current market. Adjacent municipalities have gone to market with limited responses, with recent market prices comparable to Option 1. This option would introduce a risk of

service disruption if procurement process is unsuccessful or no suitable contractor is available. Further, transition to a new contract provider can increase risk for efficiencies, ability to meet service level, which could lead to increase fines for non-compliance. The estimated cost for this option is \$1.53M.

Option 3 – In House Service

A third option is to add new Town employees to provide locate services internally. Although, the compliance rate can be better controlled that may lower the risk of fines, the ability to maintain full staff levels would be challenging in the current labour market conditions. The estimated cost for this option is at \$1.93M.

5. Conclusions

Various factors were used to determine the best option for the Town. Staff is recommending that the Town continue to outsource locate services using PVS, as it is the most cost effective, efficient way to deliver the service, and minimizes Town's risk due to Bill 93 as PVS would retain all liability related to penalties. This amounts to an increase of \$932K from the 2023 budget for a total of \$1.52M that is incorporated as part of the 2024 budget process.