

**Subject: Appointment of external licensed auditor to conduct an election compliance audit of Third Party Advertiser Horizon Ottawa from the 2022 Municipal Elections**

**File Number: ACS2023-OCC-GEN-0015**

**Report to Election Compliance Audit Committee on 8 December 2023**

**Submitted on December 1, 2023 by David White, City Solicitor and Interim City Clerk, Office of the City Clerk**

**Contact Person: Krista Bressette, Acting Manager, Municipal Elections and French Language Services, Office of the City Clerk**

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**Ward: Citywide**

**Objet : Nomination d'un vérificateur externe agréé afin d'effectuer une vérification de conformité des élections pour le tiers annonceur Horizon Ottawa, dans le cadre des élections municipales de 2022**

**Numéro de dossier : ACS2023-OCC-GEN-0015**

**Rapport présenté au Comité de vérification de la conformité pour les élections**

**Rapport soumis le 8 décembre 2023**

**Soumis le 1 décembre 2023 par David White, avocat général et greffier municipal par intérim**

**Personne-ressource : Krista Bressette, gestionnaire intérimaire, Élections municipales et Services en français**

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**Quartier : À l'échelle de la ville**

## **REPORT RECOMMENDATIONS**

**That the Election Compliance Audit Committee:**

- 1. Approve the appointment of an external licensed auditor to conduct an election compliance audit of the campaign finances of Third Party**

**Advertiser Horizon Ottawa from the 2022 Municipal Elections, as outlined in this report;**

- 2. Delegate the authority to finalize the contract and audit plan to the City Clerk or his designate, 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 :**

- 1. approuve la nomination d'un vérificateur externe agréé afin d'effectuer une vérification de conformité des élections relativement au financement de la campagne du tiers annonceur Horizon Ottawa dans le cadre des élections municipales de 2022, comme l'indique le présent rapport;**
- 2. délègue au greffier municipal ou à son mandataire le pouvoir de finaliser le contrat et le plan de vérification, de concert avec le conseiller juridique du Comité, comme l'indique le présent rapport.**

## **BACKGROUND**

On Wednesday, March 23, 2022, City Council approved the staff report titled "[Update on the 2022 Municipal Elections and Amendments to Election-Related By-laws and Policies](#)" which included recommendations to establish the 2022-2026 Election Compliance Audit Committee (the "Committee"), pursuant to Section 88.37 of the *Municipal Elections Act, 1996* (the "MEA"). The 2022-2026 Committee's term of office began on Tuesday, November 15, 2022, and will end on Saturday, November 14, 2026.

The Committee is an independent, statutory body whose responsibilities and powers are largely prescribed by the MEA. The Committee is responsible for reviewing and making decisions on applications for municipal election campaign finance compliance audits, and on reports from the City Clerk regarding apparent contraventions of contribution limits prescribed by the MEA, resulting from the regular municipal election or any by-election held during the term of office for the City Council for which the Committee was appointed.

Subsections 88.33(1) and 88.35(1) of the MEA state that any eligible elector who believes that a candidate or registered third party advertiser has contravened the campaign finance rules in the statute may apply for a compliance audit of that party's election campaign finances, even if they have not filed a financial statement.

Further, Subsections 88.33(7) and 88.35(4) state that within 30 days after the Committee has received the application, the Committee shall consider the application make their decision on whether to grant or reject a compliance audit.

Following the consideration of the application, the Committee will provide their decision and brief written reasons to the candidate or third party advertiser, the City Clerk, and the Applicant.

The decision of the Committee to grant a compliance audit may be appealed to the Superior Court of Justice within 15 days after the decision is made, and the court may make any decision the Committee could have made such as granting or rejecting the request for a compliance audit.

Subsection 88.33(10) of the MEA requires that, if the Committee decides to grant an application, it shall appoint an auditor to conduct a compliance audit of the candidate's or registered third party advertiser's election campaign finances. In accordance with Subsection 88.33(11) of the MEA, the appointed Auditor must be licensed under the *Public Accounting Act, 2004*.

At its meeting on [Monday, July 31, 2023](#), the Committee considered an election compliance audit application for Third Party Advertiser Horizon Ottawa from the 2022 Municipal Elections.

Following private deliberations, the Committee carried [Motion No. ECAC 2023-02-03](#) with the following direction:

BE IT FURTHER RESOLVED THAT this Committee directs that the Office of the City Clerk, in consultation with the Committee's independent legal counsel, to initiate a call-up against the City's Standing Offer for Audit Services and provide the Committee with the proposals received of up to three (3) potential auditors. The Committee will speak to the nature of the compliance audit to be carried out at the time of the auditor's appointment.

## **DISCUSSION**

As directed, the Office of the City Clerk initiated a call-up against the City's [standing offer](#) for auditing services (RFSO No. 29121-91804-S01). The call-up attached as Document 1 was circulated to all seven firms on the standing offer list on September 20, 2023.

The following firm's proposals were submitted to the Elections Office on October 4, 2023:

1. Raymond Chabot Grant Thornton's (RCGT)
2. BDO Canada LLP (BDO)

RCGT'S and BDO's confidential written proposals were provided to the Election Compliance Audit Committee (the "Committee") on December 1, 2023.

Each firm's proposal met all the requirements outlined in the call-up on standing offer including the Auditor(s) be licensed under the *Public Accounting Act, 2004* in accordance with Subsection 88.33(11) of the *Municipal Elections Act, 1996* (the "MEA").

Following the review of the above-noted proposals, the City Clerk, in consultation with the Committee's legal counsel, is recommending the Committee approve the appointment of one firm to conduct the compliance audit. The City of Ottawa is responsible for the costs associated with the compliance audit.

Staff is further recommending that the Committee delegate the authority to finalize the contract and audit plan of the appointed firm to the City Clerk in consultation with the Committee's legal counsel.

### **Summary of audit services**

The Auditor(s) appointed by the Committee will conduct a comprehensive compliance audit for Third Party Advertiser Horizon Ottawa's election campaign finances for the 2022 Municipal Elections to determine whether the third party advertiser appears to have contravened any of the campaign finance rules established by the MEA. Staff has estimated a timeline from November 2023 to March 2024 to complete the compliance audit.

In accordance with Subsection 88.33(15) of the MEA, the Auditor has the powers of a commission under Section 33 of the *Public Inquiries Act, 2009*. The Auditor is entitled to have access, at reasonable hours, to all relevant books, papers, documents, or things of the third party advertiser, and to all relevant books, papers, documents or things of the City of Ottawa relating to the 2022 Municipal Elections. The Auditor can also issue summonses to compel persons to produce documents and give evidence under oath for the purposes of the compliance audit.

In addition, the Auditor's compliance audit is not limited to issues identified in the

application for a compliance audit and are to be conducted in accordance with Subsection 88.33(12) and 88.33(15) of the MEA:

***Duty of auditor***

*(12) 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***

*(15) 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 set out in section 33 of the Public Inquiries Act, 2009 and section 33 applies to the audit.*

Although the above-noted sections are specific to candidates, in accordance with Subsection 88.35(4) of the MEA, Subsections 88.33(12) and 88.33(15) are applicable to compliance audits of registered third party advertisers:

***Application of s. 88.33 (4) to (20)***

*(4) Subsections 88.33 (4) to (20) apply to a compliance audit under this section, with the following modifications:*

- 1. A reference to a candidate shall be read as a reference to the registered third party.*
- 2. A reference to the clerk with whom the candidate filed his or her nomination shall be read as a reference to the clerk of the municipality in which the registered third party is registered.*
- 3. A reference to election campaign finances shall be read as a reference to the campaign finances of the registered third party in relation to third party advertisements that appear during an election in the municipality.*

The Auditor(s) will prepare a report outlining any apparent contraventions of the MEA by the third party advertiser as revealed or discovered during their compliance audit and

submit it to the City Clerk.

The City Clerk will then forward the report to the 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 and decide whether legal proceedings should be commenced against the third party advertiser for apparent contravention(s). The City of Ottawa is responsible for the prosecutor's costs related to commencing the legal proceedings.

The Auditor(s) will be required to attend the Committee meeting to make presentations and/or answer questions from committee members related to their audit. Should the Committee decide to commence a legal proceeding against the third party advertiser for any apparent contravention(s), the Auditor(s) may be required to provide audit related evidence in an ensuing prosecution. This includes but is not limited to providing documentation and in-court testimony related to the audit and to cooperate with the independent prosecutor retained by the City carrying out the prosecution against the third party advertiser.

## **FINANCIAL IMPLICATIONS**

In accordance with Subsection 88.37(7) of the *Municipal Elections Act, 1996*, the City of Ottawa shall pay all costs in relation to the Election Compliance Audit Committee's operation and activities. These costs will be funded from the Tax Stabilization Reserve.

## **LEGAL IMPLICATIONS**

There are no legal impediments to implementing the recommendations in the report. Under Subsections 88.33(10) and 88.35(4) 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 or registered third party advertiser's election campaign finances.

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

This is a Citywide report.

## **CONSULTATION**

This report is required under the *Municipal Elections Act, 1996* and is administrative in nature, therefore no public consultation was required.

## **ACCESSIBILITY IMPACTS**

There are no accessibility implication associated with this report.

### **RISK MANAGEMENT IMPLICATIONS**

There are no risk management implications associated with this report.

### **RURAL IMPLICATIONS**

There are no rural implications associated with this report.

### **TERM OF COUNCIL PRIORITIES**

This report has no direct impacts on the 2023-2026 City Strategic Plan and Term of Council Priorities.

### **SUPPORTING DOCUMENTATION**

Document 1 – Call-Up on Standing Offer for Auditing and Support Services – Third Party Advertiser Horizon Ottawa

Document 2 – Proposal from RCGT dated October 4 – TPA Horizon Ottawa – Confidential (Held on file with the City Clerk)

Document 3 – Proposal from BDO Canada LLP dated October 4 – TPA Horizon Ottawa – Confidential (Held on file with the City Clerk)

### **DISPOSITION**

The City Clerk, in consultation with the Committee's independent legal counsel, will take the necessary steps to formalize the contract and audit plan with the appointed Auditor.

When the Auditor has completed their audit and submitted their final report to the City Clerk, the City Clerk will provide a copy of their report to the Applicant, Third Party Advertiser Horizon Ottawa, and the Election Compliance Audit Committee (the "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 and decide whether legal proceedings should be commenced against the third party advertiser for apparent contravention(s).

If the Committee decides to commence legal proceedings, the City Clerk will carry out the required steps to implement the Committee's decision, pursuant to Section 88.37(6) of the *Municipal Elections Act, 1996*. Specifically, the City Clerk will, in consultation with the Committee's legal counsel, retain and refer this matter to an independent prosecutor

who will have the usual power and authority of a prosecutor. The City Clerk may provide updates to the Committee on the status and/or conclusion of the legal proceedings.