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Halifax Regional Council
November 14, 2006
November 28, 2006

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Cathie O'Toole
Cathie O'Toole, A/Director, Finance

DATE: November 8, 2006

SUBJECT: **Tax Exemption for Non-Profit Organizations in Receipt of Municipal Contracts: Policy Implications**

INFORMATION REPORT

ORIGIN

At the meeting of Regional Council, October 24, 2006, the HRM Grants Committee's recommendation to award a partial tax exemption to the Ecology Action Centre under By-law T-218 was challenged. On a motion by Councillor Adams, seconded by Councillor Rankin, staff were asked to "provide information on all organizations that have a fee for service, HRM or other agencies, as there could be a competitive disadvantage. Further, the staff report examine whether a policy needs to be developed to ensure that there is a level playing field when there are tenders or contracts being awarded". The motion passed unanimously.

BACKGROUND

HRM procurement practices are guided by Administrative Order 35, HRM Procurement Policy, fiscal and administrative practices. The policy covers tenders, calls for proposals, expressions of interest and other forms of solicitation initiated by HRM. Policy and procedures are aimed at achieving cost effective and efficient means to purchase goods and services for HRM operations through an open, fair, consistent, and competitive process.

Where a requirement for goods and services is identified, competitive bids are sought from the market. A contract may be awarded to the lowest price bidder (quotes/tender) or highest scoring submission (request for proposal) and in accordance with the specific terms and conditions of the bid[1]. The bidder must be capable of both physically and financially providing the required goods and services and have a sound performance history. Satisfactory performance is based on the following:

- performance
- previous contracts
- financial and other resources to complete the contract
- references

Presently, an award is not directly related to the status of the organization ie. type of business or non-profit structure, or its funding sources. As such, a bid may be received from a for-profit enterprise or non-profit group in receipt of public subsidy or concessions from government sources[2]. In summary, tenders are performance-based in relation to cost or the merit of a proposal.

Item 4.4 of the Procurement Policy allows for the removal of a supplier from consideration for a contract for up to 3 years based on poor performance or non-performance on a contract. There is no reference to exclusion on the basis type of organization, revenue source, and/or public subsidy by type or value.

EXECUTIVE SUMMARY

- There appears to be no substantive, direct correlation between the value of an HRM tax subsidy to a non-profit group and a lower bid price independent of the organization's fundraising, volunteer labour, donations, and grants from government or philanthropic foundations (See: Discussion section of this report, page 3).

- For-profit entities have access to government tax concessions, loans, preferred interest rates etc that reduce operating costs and could provide an "advantage" relative to another business entity not in receipt of a public subsidy.

- An independent audit of HRM's procurement process will be conducted in 2006-07 (anticipated completion date June, 2007) and the issues addressed in this report could be incorporated in this larger review.

- Presently, HRM does not award "community partnership"contracts through a competitive bidding process (eg. facility management agreements); if it is Regional Council's desire to do so program-specific criteria could be developed for Regional Council's approval.

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[1]There are exceptional circumstances where a competition might not be viable such as compatibility with existing equipment or operating systems eg. computers or telecommunications equipment.

[2]The Municipal Government Act (1989) restricts municipal authority to provide grants to business. It prohibits direct property tax concessions and limits grants to marketing the municipality as a location for business, notably tourism.

DISCUSSION

1. HRM Contracts Awarded to Non-Profit Organizations - Competitive Procurement Process

Currently, there are two non-profit organizations who have successfully competed in a Call for Proposals process; the Ecology Action Centre (EAC) and the Society for the Prevention of Cruelty (SPC). Both are by-law awareness and enforcement services. Namely, HRM's Pesticide By-law and Animal Control By-law respectively. Neither group was tax exempt under a former municipality but the Society for the Prevention of Cruelty was added to By-law T-200 in 2000.

Pesticide By-law P-800

The RFP#05-042 *Pesticide Application Assessment Program and Related Public Education Awareness Program* (April, 2005) illustrates the point that not all procurement competitions are between for-profit vs non-profit bids. This competition received only two applicants, the Ecology Action Centre and Clean Nova Scotia, both non-profit societies and federally registered charities. The Ecology Action Centre was awarded the contract based on highest score (91 vs 72) and lowest cost. The Ecology Action Centre bid was $27,221 lower despite the fact that Clean Nova Scotia received a tax exemption under By-law T-200.

At the time of the RFP, Clean Nova Scotia received an HRM tax subsidy at 50% exempt at the Residential tax rate (By-law T-203): the current value is $5,621.98/year. The Ecology Action Centre rented in the market and paid full Commercial tax as part of their rent. The Centre purchased a property in 2005 and applied for partial tax exemption under By-law T-200 for the 2006-07 fiscal year. The Grants Committee agreed with staff's recommendation to award a Conversion from Commercial to Residential tax rate which, if approved, would be valued at $2,111 in 2006-07. Note: this rate of exemption is lower than that awarded Clean Nova Scotia.

In the opinion of staff, the recipient of an HRM property tax subsidy, Clean Nova Scotia, did not have an "unfair" advantage over the Ecology Action Centre: the contract was awarded based on merit and their bid was $27,221 lower than the non-profit who received a municipal tax subsidy.

Animal Control By-law

The RFP#02-327 *Animal Control Services* (May, 2003) attracted only two applicants, the Society for Prevention of Cruelty and Stealth Security Inc. The SPC is a non-profit society and federally registered charity; Stealth Securities is a for-profit business. The SPC was awarded the contract based on a higher score (397 vs 317) and a bid that was $335,706.38 lower than the other proponent. At the time of the RFP, the SPC received an HRM property tax subsidy at 50% exempt at the Residential tax rate: the current value is $10,610.63.[3]

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[3] The SPC exemption is at a lower rate than that awarded the Bide-A-While Animal Shelter which was 100% tax exempt under the former City of Dartmouth and included in By-law T-200 at the same level in 1997. The value of this award is $3,586.57 in 2006-07.

In the opinion of staff, the recipient of an HRM property tax subsidy did not have an "unfair" advantage over Stealth Security Inc : the award was based on merit and a significant cost saving in bid price that far exceeded the value of the non-profit tax subsidy.
Is the value of HRM's property tax assistance comparable to or greater than the cost saving, received by the municipality?

To date, awards to non-profit organizations in a competitive procurement process suggest that the value of a tax subsidy awarded a non-profit organization was not a determining factor, nor even of major significance, in an award recommendation. The very low participation rate in these processes might also suggest some contracts have limited appeal to either the non-profit or business sector.

Summary

The value of tax subsidy provided to a non-profit group under By-law T-200 is not a function of the type of service or indicative of quality of service. The $-value is derived from market conditions which determine the value of the land and/or building, geographic location (urban, suburban, rural), and assessment classification. If the property is not a permanent place of residence or resource land, by default it will be classified as Commercial irrespective of ownership. By-law T-200 is, in part, a corrective process that recognizes non-profit organizations are not comparable to for-profit entities. Staff estimate that the cost of the program is primarily a function of Commercial assessment classification (>75%). Therefore, it is inaccurate to compare the $-value of tax subsidies between non-profit groups on the by-law: a higher cost may simply be a function of location (urban vs rural) and not of relative "wealth" (assets).

Many non-profit organizations are able to reduce the cost of service provision through their own independent fundraising initiatives, volunteer labour, in-kind contributions from the private sector, and grants or concessions from other levels of government or philanthropic foundations. And, a non-profit organization does not exist to create a profit for an individual interest (an owner), partners, shareholders, or employee profit-sharing incentives. Typically, few if any non-profit groups would pursue a government contract at financial loss (a "loss leader"). Therefore, irrespective of any municipal assistance, non-profit organizations may be able to provide a service at a comparatively lower cost. Arguably, the exclusion of non-profit organizations from consideration for property tax assistance would not in and of itself eliminate, nor necessarily reduce, any perceived "competitive advantage" relative to the for-profit sector.

Finally, the for-profit business sector has access to numerous provincial and federal grants and tax concession programs, such as but not limited to research and development, exports, employment incentives, and different tax rates for small business and specific industries. In many cases, these subsidies or incentives to business leverage future revenues to the government and are thus a form of cost-recovery program (eg. employment creates future income tax and sales tax revenue). In contrast, HRM's property tax subsidy to the non-profit sector is <u>not</u> a direct cost recovery and is based more on an "ability to pay" perspective (similar to the small business tax rate), municipal support to volunteerism, and an inferred cost saving to program participants or service recipients by virtue of lower operating costs.

2. Negotiated Partnership Agreements

In response to a community driven interest HRM might entertain unsolicited proposals from community groups interested in forming a partnership to resolve the specific issue. Two or more partners assume a proportional share of the risk and opportunities provided by the agreement. Note: this does not have to be an "equal" (identical) share in type or cost of contribution. A proportional share might be relative to each partner's financial capacity, technical expertise/specialization, or in-kind resources such as volunteer labour, fundraising, access to government grants or sponsorship etc. Although such agreements might not use a competitive bidding process to determine cost/benefit or the most "qualified" service provider, the opportunity is 'open' or 'known' in the sense that discussion of these projects is public. For example, debated in meetings of Regional Council or committees, recorded in the minutes of meetings, publicized by the local media etc. These kinds of agreements might not have a very detailed outcome determined at the outset and tend to evolve through negotiation. They tend to be property-related such as facility management agreements or site maintenance agreements (sports field, park, playground, trail). The non-profit operator is eligible to apply for property tax assistance from HRM but the level of public subsidy may vary.

HRM is not a for-profit enterprise. On occasion we might choose to enter into a partnership for developmental and/or community relations benefits over and above direct service delivery. HRM might choose to partner with the non-profit sector specifically because of their access to grants from other levels of government or corporate sponsorship to leverage the municipality's contribution. The tax status of the respective partner(s) varies. Competitive bidding could be addressed through program-specific criteria approved by Regional Council that award contracts that are merit-based, cost effective, and/or performance based.

BUDGET IMPLICATIONS

None.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

This is an Information Report only. Regional Council could direct staff to make recommendations.

ATTACHMENTS

None

A copy of this report can be obtained online at http://www.halifax.ca/council/agendasc/cagenda.html then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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