

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:** Marlene Bess  
for S. Dale MacLennan, Director, Financial Services

**DATE:** September 29, 2004

**SUBJECT:** Processing Contractor Liability Claims

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### INFORMATION REPORT

#### ORIGIN

On Aug 17, 2004 Councillor Adams requested a report on the rationale behind HRM's process for dealing with damage claims against contractors hired by HRM and to consider a process for HRM to assist individuals with their claims.

#### BACKGROUND

HRM contracts for a great deal of services with local businesses. This work includes Waste Collection, Construction, Snow Removal, Road Works, Grass Mowing, etc.. Occasionally an accident occurs that causes some damage to a third party and in some of these cases a contractor for HRM is involved. As an independent contractor these businesses are not agents for HRM and are legally responsible for their actions and any damage they cause. HRM has made this clear in their contracts and these businesses have agreed to carry insurance and to indemnify HRM from such claims. This protects HRM from claims due to the contractors liability and the associated financial burden.

The contractor consequently has the right to defend any claim and to take whatever action they deem necessary to mitigate the damage or loss. There are cases where the contractor has disputed liability as they feel that they are not responsible and those cases may ultimately lead to legal action which is their right.

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Presently when a claim has been reported it is investigated. If it is immediately known to be a contractor claim it is forward to the contractor or the claimant is advised to contact the contractor directly. In some cases staff may have to investigate to determine liability. If, after investigation, it is determined to be a contractor claim again it is referred to the contractor or the claimant is requested to contact the contractor. This has an efficient process and allows the claimant to directly substantiate their claim to the contractor directly and removing the cost from HRM. In some cases the settlement of the issue may not be a dollar amount but may involve other solutions such as work that the contractor does for the claimant. HRM receives a great deal of claims and there is a cost to investigate each one. The same practice is followed by the Province of Nova Scotia.

For the majority of the claims this has been satisfactory as the contractor has dealt with the claim promptly and reasonably. There have been several cases where the process did not operate smoothly and we have received some complaints.

## **DISCUSSION**

Due to comments raised, staff in the RPAM, and PWT and Finance business units met, as they are responsible for the contract work most likely to receive claims, to discuss the steps used to deal with liability claims. The objective was to develop a process that would reduce the complaints with these claims in the most effective manner. Another desired outcome was that staff have a method to evaluate the customer service performance of contractors when dealing with the public. This meeting identified the supervisor in the field or the direct contract manager as the key person in bringing resolution to an issue as they are closest to the issue. They also should be made aware of positives and negatives associated with the contractor dealing with the public.

As a result staff have changed the process to deal with these claims. With this new process, when a call is placed with our staff or call centre, it will be dealt with as an incident. The information will be referred to the supervisor in the area, or contract manager where appropriate, to obtain the background of the incident. If, as a result of this investigation, it seems that HRM is liable, the business unit may cause repairs to be completed (sod, curb repair, etc.) or an insurance adjuster will be assigned through our insurance section. If there is a contractor that seems to be responsible then the supervisor or contract manager will contact the contractor directly and present the information for response and resolve. The contractor may then call the claimant to deal with the issue.

This new procedure will improve the process for the claimants as HRM will complete some investigation which may help in the settlement of the issue. There will continue to be cases where the contractor denies that they are at fault and disputes will take place. HRM is not legally responsible for their actions and we can only use public funds to pay claims where there is legal basis on which to pay. Similarly there will be cases where the HRM will dispute claims for lack of information to substantiate a claim. The goal is to reduce the number of these issues.

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**BUDGET IMPLICATIONS**

There are no cost implications foreseen for these changes as there should only be a modest increase in time for staff to investigate these complaints and deal with the contractor.

**MULTI-YEAR FINANCIAL IMPLICATIONS**

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.

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Peter Ross, Manager - Procurement

490-6499