

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by Director

SUBMITTED BY:

Greg Keefe, CMA, Director of Finance & ICT, CFO

DATE: January 14, 2013

SUBJECT: Processing Contractor Liability Claims

INFORMATION REPORT

ORIGIN

Item 10.4.3 of Halifax Regional Council meeting held on 24 March 2009.

LEGISLATIVE AUTHORITY

Under the Halifax Charter, Section 79 (1) Halifax Regional Council may expend money for municipal purposes including, but not limited to, snow and ice removal, public transportation services, solid waste, streets, culverts, sidewalks, curbs and gutters, playgrounds.

HRM's Administrative Order #35, the Procurement Policy, governs the overall manner in which the required services for municipal purposes are procured.

BACKGROUND

At a meeting held on March 24, 2009 Regional Council asked that staff provide a report to formulate an enhanced policy ensuring that HRM's hired contractors address liability claims in an effective and timely manner. Staff was also asked to address other related aspects of the contractors' claims process including: the data collection and tracking of claims; the retention and the use of claims' information in the contract renewal process; available recourses when a number of claims have been filed against a contractor including the use of holdbacks; and ways to reduce damage to property.

DISCUSSION

HRM currently contracts for a variety of services including, but not limited to, Waste Collection, Construction, Snow Removal, Road Works, Grass Mowing, etc. As the contractor who has been selected to provide a service for HRM is not an Agent of HRM, they may be legally responsible for any loss, claim or damage that flows from their fulfillment of the contract. HRM has provided clear language in the various contracting documents that the Contractor must carry appropriate insurance coverage and agrees to indemnify and save harmless HRM from all claims, actions and or costs that may arise from the Contractor's works.

The Contractor consequently has the right to investigate, negotiate and/or defend any claim that may be presented as a result of their work. In addition, they may take whatever action they deem necessary to mitigate the cost of any claim. As in claims situations, there may be cases where the Contractor disputes liability. Ultimately, these claims may result in legal proceedings. It is recognized that there will continue to be cases where the Contractor denies that they are at fault and disputes will take place. Overall, HRM has no involvement in the claims process, the ultimate resolution or settlement of claims.

When a claim is received from the Public it is directed through 311 to the Corporate Center a Hansen record of the incident is created, a number is assigned and tracked accordingly. All claims from the Public are directed to Risk and Insurance Services. When a claim is received Risk initiates an investigation to determine the cause of the loss and the identity of the contractor involved. If the cause of loss is associated with works completed by HRM employees a determination on the extent, if any, of liability is made and the claim is processed accordingly. If it is determined that the cause of the loss is associated with the operations of a Contractor, the contract information for the Contractor is provided to the claimant. As HRM is not a party to the claim the file is then closed.

When damage is caused to HRM property or infrastructure by an Independent Contractor the cause of the damage and the cost of the repair are determined by the "owner" Department. The Department then arranges with the Contractor to have the damage repaired. For the Snow and Ice Control Program staff identify the damages within a contracted area and submit lists to the Contractors for reparation in an agreed upon timeline.

Supervisors and contract managers monitor work sites regularly and, as a result, are in tune with contractor performance on a day-to-day basis. As performance issues are identified they are addressed with contractors for timely resolution. This minimizes the likely damage caused by contractors and the claims from the Public. It is noteworthy that, in general, contractors self-identify damages and take corrective action without claims being submitted to HRM and that when claims are submitted to HRM they are usually successfully resolved.

There is also an established process for the evaluation of the performance of HRM's contractors conducted either upon the expiration of a contract or on an annual basis for multiple year contracts. The evaluation is based on a broad variety of service contract criteria ranging from contract compliance to customer service performance when dealing with the public which necessarily includes the timely and efficient response to claims. It presents an opportunity to

focus on providing feedback to contractors on optimizing contract performance. This process is intended to compliment the day-to-day ongoing monitoring of the contract by contract managers or supervisors.

Contractors must have the credentials, experience, equipment and training to perform work for HRM and with all contracts, HRM demands contract adherence and satisfactory performance. In certain situations, improved performance of contracts can be leveraged through the use of holdbacks, such as monthly retainer payments, to ensure satisfactory contract performance. Since HRM only retain contractors who provide satisfactory performance based upon past performance, unsatisfactory performance can impact future contracting opportunities for contractors. Ultimately, if there is sufficient evidence of consistent failure to meet standards specified by HRM, contractors may be subject of disqualification from future contacts for a specified time period. Contractor files recording contract performance are retained so that performance can be tracked over time and dealt with accordingly.

FINANCIAL IMPLICATIONS

None

COMMUNITY ENGAGEMENT

No community engagement was undertaken as the report presents information for Council's consideration. No action is required at this point.

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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