

Clause 10 in Report No. 5 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on March 24, 2016.

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Authority to Align Consulting Services Fees with Construction Administration and Site Inspection Requirements

Committee of the Whole recommends adoption of the following recommendations contained in the report dated February 23, 2016 from the Chief Administrative Officer:

1. Council authorize the Commissioners of Community and Health Services, Corporate Services, Environmental Services and Transportation Services to approve the extension of consulting agreements for construction contracts to accommodate changes in the duration of the construction schedule, and to approve a corresponding increase in the contract price, provided that:
 - a) the contract price is increased in accordance with the competitive pricing provided in the consulting agreement; and
 - b) any increase in cost is within the project's approved budget and Capital Spending Authority.
2. Council be advised on an annual basis of any contracts amended under this authority.

Report dated February 23, 2016 from the Chief Administrative Officer now follows:

1. Recommendations

It is recommended that:

1. Council authorize the Commissioners of Community and Health Services, Corporate Services, Environmental Services and Transportation Services to approve the extension of consulting agreements for construction contracts to accommodate changes in the duration of the construction schedule, and to approve a corresponding increase in the contract price, provided that:

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- (a) the contract price is increased in accordance with the competitive pricing provided in the consulting agreement; and
 - (b) any increase in cost is within the project's approved budget and Capital Spending Authority.
2. Council be advised on an annual basis of any contracts amended under this authority.

2. Purpose

This report seeks Council authorization for the Commissioners of Community and Health Services, Corporate Services, Environmental Services and Transportation Services to extend consulting agreements for contract administration and site inspection services to accommodate the extension of the duration of the associated construction contract, and to approve an increase in the contract price for the extended term. The report is required because the Purchasing Bylaw does not permit staff to amend contracts or authorize increases in contract prices, except within the limits of scope change and contingency.

3. Background

Consulting assignments for services during construction are awarded through a competitive process

Engineering services during construction, including contract administration and site inspection services, are typically procured in conjunction with the engineering design assignments for each capital project. These procurements are typically subject to a competitive Request for Proposal process, in accordance with the Purchasing Bylaw.

Consultants providing services during construction for capital projects are required to provide daily or weekly rates for construction administration and site inspection, which are factored into their total fee proposal. Since these rates form part of their overall fee proposal and upset limit price for the work, the rates are compared competitively through the evaluation and award process.

In accordance with the Region's Purchasing Bylaw, the Chief Administrative Officer and Commissioners are authorized to award consulting contracts, to a maximum value of \$2 million and \$500,000 respectively, provided the award is to the highest scoring and lowest cost proponent, as determined through the evaluation process.

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Full-time site inspection staff and dedicated contract administrators help reduce risks

During construction, management of quality, duration and cost of work is critical to ensuring capital projects are constructed so they will function as designed and are completed on time and within the anticipated budget. Full-time, onsite presence, monitoring contractor activities and construction progress, as well as a dedicated contract administrator for each capital project are critical tools to manage the Region's risks during construction activities. For most capital projects, these functions are performed by subject matter experts provided by the engineering design consultant.

Region's consultant services agreement permits adjustment of construction services fees, based on the actual construction schedule

Due to the risks to construction progress and schedule, it is generally impractical to re-procure construction support services during construction activities unless there are performance issues with the consultant. Further, the Region may be liable to the contractor for any costs and/or delays resulting from this process, which would likely exceed the value of engineering services. To address this, the Region's standard consulting services agreement includes language which permits the adjustment of fees for contract administration and site inspection services based on the construction schedule using contingency funds within the approved budget.

Request for Proposals are issued early in the project life cycle

Requests for Proposal ("RFPs") are generally released at the pre-design stage of a project. The estimated construction schedule set out in the RFP is based on preliminary design or conceptual information developed prior to detailed design and without a complete understanding of constructability and required work sequencing. Accordingly, the estimated length of the project may vary significantly from that set out in the RFP. Throughout the detailed design, constructability review and pre-tender processes, schedules are refined on an ongoing basis based on project complexity, staging and coordination requirements.

4. Analysis and Options

Multiple factors through the design and construction processes can affect the construction schedule

Estimates of construction duration are developed and refined throughout the project life cycle and can be affected by a number of factors, such as:

- Coordination with facility operations (required shutdowns or tie-ins)
- Construction staging requirements
- Unanticipated site/ground conditions
- Unknown utility conflicts
- Additions to project scope
- Contractor performance
- Availability of materials
- Abnormal inclement weather
- Other Contractors working in the vicinity of the project site

The majority of these factors are determined and mitigated or managed during the design process and are incorporated into the RFP documents. In some cases, addressing these factors results in an increase in the duration of the construction schedule, requiring additional contract administration and site inspection services.

Additional costs associated with delays attributable to construction contractors can be recovered through liquidated damages

Construction tenders include the ability for the Region to apply liquidated damages against contractors where work is not completed within the prescribed number of working days. Calculation of liquidated damages includes the daily cost for consulting services, amongst other costs. Where the contractor is responsible for delays and extended time for completion, costs associated with contract administration and site inspection services can be recovered. However, if the Region is successful in recovering liquidated damages from the contractor, staff currently has no authority to increase the value of the consulting contract and apply the liquidated damages to fund the increase.

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Consulting assignments awarded by Council have authorized the Commissioner of Environmental Services to increase contract administration and site inspection services

Where consulting assignments for Environmental Services projects are awarded by Council, the authority typically includes authority for a Commissioner to adjust contract administration and site inspection fees, based on the project requirements and construction schedule.

Over the last two years, six adjustments in contract administration and site inspection fees were approved by the Commissioner of Environmental Services based on changes to the actual construction schedule. These totalled \$1.6 million for five projects, which represents less than one per cent of the total cost of the projects. In some instances, these increases could have been accommodated within the scope and contingency allowances of the contract however, in other cases, the scope and contingency allowances were already depleted to manage engineering changes. This leaves limited flexibility to adjust contract administration and site inspection contracts.

During construction, continuity of construction and inspection services is critical to mitigate the Region's risk. Any delay in obtaining authority for additional fees associated with these services may have more significant consequences. This could include potential claims from the contractor or overall delays to the committed completion date. The authority to adjust the fees will alleviate some of these risks along with the associated administrative burden. It is therefore recommended that Council authorize the Commissioners of Community and Health Services, Corporate Services, Environmental Services and Transportation Services to approve extensions to consulting contracts, where necessary, to provide for continuing services where the duration of construction contracts has been extended. Any corresponding increase in the contract price should be approved in accordance with the pricing submitted by the consultant through the RFP process and would be conditional on the requisite funds being available in the annual budget and Capital Spending Authority.

Link to key Council-approved plans

Construction of infrastructure is a critical component of the Region's plans to ensuring that capacity is available to service target growth of the *Regional Official Plan*.

Granting the authority to Commissioners to adjust fees for contract administration and site inspection to correspond to the actual duration of construction will further assist in managing the Region's risk on capital projects. This aligns with the Region's *2015-2019 Strategic Plan* under the objective: Ensuring a fiscally prudent and efficient Region.

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5. Financial Implications

Any adjustments to the fees will be required to remain within the approved budget and Capital Spending Authority of the respective projects, and no financial implications are anticipated.

6. Local Municipal Impact

No local municipal impact is anticipated, based on the recommendations contained in this report.

7. Conclusion

Adjustments to the contract price for contract administration and site inspection services may be required to ensure that the services continue to project completion and the continuity of the consultant team is preserved.

For more information on this report, please contact Community and Health Services - Josh Scholten ext 72004, Corporate Services - Mike Shatil ext 71684, Environmental Services - Mike Rabeau ext 75157 or Transportation Services - Salim Alibhai ext 75229.

The Senior Management Group has reviewed this report.

February 23, 2016

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