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PROJECT CONTINGENCY USAGE REVIEW

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report, September 23, 2008, from the Commissioner of Finance:

1. RECOMMENDATION

That this report be received for information.

2. PURPOSE

The purpose of this report is to update Council on how contingencies and additional work allowances as provided for in the Purchasing by-law have been applied to contracts for the period of January 1, 2006 to June 30, 2008.

3. BACKGROUND

On November 18, 2004 Regional Council passed By-law No. A-0353-2004-089 commonly known as the Purchasing By-law which allowed for up to a fifteen percent (15%) additional cost contingency allowance on projects. This contingency would apply to situations where the contingency was needed to complete work set out in the original contract.

The Purchasing By-law also has a provision that addresses situations where the Region is conducting work for third parties or where an unanticipated requirement occurs that is not within the scope of work. The by-law allows up to twenty percent (20%) of the value of the original contract to address these situations.

These provisions were intended to address unforeseen circumstances during the course of a project that could delay the projects while awaiting council approval yet put limitations on the use of this delegated authority.

At the February 2008 Council meeting, the Commissioner of Finance was directed to bring a report forward regarding the use of contingencies.

4. ANALYSIS AND OPTIONS

Sections 12 and 13 of the Purchasing By-law No. A-0353-2004-089 state:

12. <u>Contingencies</u>

12.1 Where any purchase of goods, services or construction has been authorized under this by-law, the Commissioner may authorize disbursement of additional funds, provided that such additional funds shall not exceed fifteen percent (15%) of the total cost of the original contract, and provided that the additional funds are required to complete the work set out in the original contract.

12.2 The Commissioner may authorize expenditure under Section 12.1 of this by-law, irrespective of the total cost of the original contract.

13. <u>Purchase of Additional Goods, Services or Construction</u>

13.1 Where goods, services or construction have been purchased under this by-law, no similar, additional or related goods, services or construction shall be purchased from the same contractor, whether by way of contract extension, renewal, or separate purchase, unless:

a) a report is submitted to Council; or
b) the procurement procedures set out in this by-law are complied with as if the additional purchase is a new contract; or
c) the total cost of the additional goods, services or construction does not exceed twenty percent (20%) of the total cost of the original contract; or
d) the total cost of the additional goods, services or construction is to be paid in full by a third party, and security to ensure payment is in place, to the satisfaction of the Treasurer.

13.2 Any amount authorized under Section 13.1 of this by-law may be expended in addition to any contingency allowance authorized under Section 12.1 of this by-law and may be authorized by the Commissioner irrespective of the total cost of the original contract.

During the period of January 1, 2006 and June 30, 2008, the Region had awarded 378 contracts greater than $100,000 for a total value of $1,012,136,358. Of the 378 contracts, 129 utilized the contingency, change of scope or “other” funds approved by Council allowance for a total value of $136,797,761 as listed in Table 1 and Table 2 of this report.

Table 1
Summary of Contingency/ Additional Work Costs
For Contracts over $100,000.00
Awarded January 1, 2006 – June 30, 2008

Description	$ Amount	% Increase	$ Value
378 Original contracts awarded value > $100,000	1,012,136,358		
Contingency added to 93 contracts		1.3	13,454,164
Additional work allowance added to 68 contracts		2.8	28,835,979
Total delegated changes Additional scope and contingencies through individual Reports to Council (38)		4.2 9.3 13.5	42,290,143 94,507,618 136,797,761

Table 2
Summary of Contingency/ Additional Work Costs
For Contracts over $100,000.00
Awarded January 1, 2006 – June 30, 2008

# of contracts issued > $100,000	378
# of contracts that used the contingency provision	93
% of total contracts issued that used contingency	24.0%
Average % contingency used for contracts using contingency	10.9%
# of contracts using scope change	68
% of total contracts issued that used scope increase	17.0%
Average % scope used for contracts using scope change	14.9%

5. FINANCIAL IMPLICATIONS

Existing delegated authority appears to be meeting its purpose in that the provision for contingency and scope changes are used to a limited extent with other changes being forwarded to Council.

There were 378 contracts awarded in the test period of January 1, 2006 to June 30, 2008, of which 76% (285 contracts) did not use the 15% delegated contingency and 83% (310 contracts) did not use the 20% delegated scope change allowance.

The application of the contingency allowance and additional work provision may have an impact on the budget, however in the process of approving these features of the by-law departments must confirm there are funds available in the approved budget allocation.

6. LOCAL MUNICIPAL IMPACT

There are no local impacts related to this report.

7. CONCLUSION

The application of the contingency allowance and additional work allowance is reasonably managed as the costs related to their implementation is about 4% of what departments could potentially apply under the purchasing by-law.

The costs related to applying the contingency and additional work provision are viewed as reasonable since if the Region did not initiate the use of these provisions it could be at risk of project delays and potential claims from the contractors.

For more information on this report, please contact Tom Appleby at extension 1650.

The Senior Management Group has reviewed this report.