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Item No. 15.1.1
Halifax Regional Council
January 24, 2023

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Caroline Blair-Smith, A/Chief Administrative Officer

DATE: December 20, 2022

SUBJECT: **Snow and Ice Clearing Contract Damage**

ORIGIN

Moved by Councillor Sam Austin, seconded by Councillor Outhit

THAT Halifax Regional Council request a staff report on HRM taking on additional responsibility for damage done to private property during snow and ice removal by contractors. Report should consider options in which:

- (1) HRM takes over sole responsibility for damages,
- (2) Scenarios where HRM takes responsibility for assessing and approving claims, but cost for repairs are still born by the relevant contractor, and;
- (3) Options where HRM could function as a sort of ombudsman/appeal route for resolving claims disputes.

MOTION PUT AND PASSED UNANIMOUSLY.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, S.N.S 2008, c.39:

Section 79A (1)

Subject to subsections (2) to (4), the Municipality may only spend money for municipal purposes if:

- (a) the expenditure is included in the Municipality's operating budget or capital budget or is otherwise authorized by the Municipality.
- (b) the expenditure is in respect of an emergency under the Emergency Management Act; or
- (c) the expenditure is legally required to be paid.

Insurance Act. R.S., c. 231, s. 1, as amended.

RECOMMENDATION

It is recommended that Halifax Regional Council continue to outsource snow and ice control and removal to third-party contractors and continue to ensure the agreements with these third-party contractors contain suitable provisions governing the level of service to be provided to the Municipality's residents and the insurance required to be maintained by the third-party contractor.

BACKGROUND

HRM contracts out snow and ice removal in large portions of the Municipality. Through its procurement processes, the Municipality enters into agreements with various third-party contractors to perform the snow and ice control and removal for the winter months. An overview of some key contractual requirements from the Request for Proposal document that forms part of the agreement between the Municipality and the third-party contractors are as follows:

- The Contractor is responsible to repair all damage caused to HRM as a result the Contractor's snow and ice control activities. Repairs are to be completed by June 1st of each year
- The Contractor is responsible to repair all reported damage caused to private property as a result of the contractor's snow and ice control activities. Repairs are to be completed by June 1st or earlier of each year.
- Any urgent or safety related damage/ repair requiring immediate attention will be completed within 24 hours.
- The Contractor must receive and respond to all calls and emails from the HRM Corporate Call Centre or HRM Manager or his/her designate, 24 hours a day for the duration of the agreement including all follow-up requirements pertaining to repairs.
- The Contractor is responsible to report to HRM staff regarding the status and completion of damage repairs through weekly updates each Monday during the spring repair season (April/May).
- A 10% holdback (for damage repairs) will be held until July 15th. This 10% hold back will be deducted from each invoice. HRM will be the sole judge of when the holdback is released, based on its satisfaction and inspection and verification that all repairs have been completed; damages, spring clean-up and gravel road grading is satisfactorily completed.

In addition to these requirements, there are performance standards that the third-party contractor must meet and associated liquidated damages that the Municipality may assess if the performance does not meet those standards. The third-party contractor must also indemnify the Municipality for any damages that occur for which the third-party contractor is responsible and, as well, the third-party contractor must have an insurance policy that addresses the services provided and the potential liabilities that are associated with the nature of that work.

As shown above, damage caused by the third-party contractor in providing the snow and ice control services, and the repairs or such damage, is the responsibility of the third-party contractor and the Municipality takes no part in assessing or managing claims. This, at times, has unsatisfactory results for residents who expect the Municipality to take responsibility for damages, given that the damage was done by a Municipal contractor clearing the Municipality's streets and sidewalks.

DISCUSSION

When performing the snow and ice removal services, the third-party contractor uses its own equipment which is licensed for the roadways in Nova Scotia. Furthermore, as required by the agreements with the Municipality, the equipment and vehicles are insured under a policy of automobile insurance. The Insurance Act for the Province of Nova Scotia governs the responsibility of the vehicle owner, to purchase insurance, and the obligations of the insurer.

Specifically, Section 119 of the Insurance Act states, in part, that where a person or company that is insured by an insurer is involved in an accident then the insurer may make investigations, conduct negotiations, and effect settlements of any resulting claims, as the insurer deems expedient. Given this legislative requirement, this section of the Insurance Act provides that the insurer has the sole authority, where a claim for damage or injury is made due to the operations of an insured vehicle, to review the case, assess the claims arising from the case and then determine if any payment should be made.

Therefore, if the way the Municipality contracts out the snow and ice control services to third-party contractors continues, the Municipality is unable to take over sole responsibility for any damages that occur by the third-party contractor in performing the snow and ice control services as these are the sole purview of the third-party contractor's insurer. It is for these reasons as well that the Municipality would be unable to assess and approve claims, and still have the contractor be responsible for the payment of damages, as part of the insurer's role as an insurer of third parties is to assess the claim and make its own determinations with respect to the payment of costs.

With respect to the option of the Municipality acting as an ombudsperson, the office of the Superintendent of Insurance has this role. The office was established to regulate the business of insurance through the enforcement of the Insurance Act. In addition, they facilitate the relationship between insureds and claimants and the insurance industry and can take disciplinary action if the Act is not followed.

FINANCIAL IMPLICATIONS

No financial implications at this time.

RISK CONSIDERATION

No risk considerations at this time.

COMMUNITY ENGAGEMENT

No community engagement was required.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

Given the above limitations related to insurance, there are no other suitable alternatives with respect to the insuring of HRM's snow and ice maintenance operations.

The operators must have insurance to operate their equipment on public roads, per the Insurance Act. Without mandating the operators obtain and maintain their own insurance, HRM would either need to pay claims directly to claimants from general revenues which is cost prohibitive. HRM cannot include the operators under HRM insurance policies as HRM is not the registered owner of the contractors' vehicles.

ATTACHMENTS

No Attachments

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

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