To: Chair and Members
Audit and Administration Committee

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Date: January 5, 2009

Re: REQUEST FOR INFORMATION OF CLAIMS FROM CONTRACTORS FROM MAY 7, 2008 (FCS09009) (CITY WIDE)

Council Direction:
N/A.

Information:
The Audit and Administration Committee at their meeting of May 7, 2008, (refer to Item (f) of May 7, 2008 Audit & Admin Committee Minutes - Audit Report 2008-01 – Risk Management – Claims Administration (CM08016) (City Wide) (Item 8.3), requested that staff look into whether or not the City, could write into the purchasing policy, a mandatory request for information on claims, when work is done for the City.

In consultation with Legal Services and the Capital Planning and Implementation (CPI) Division, it was determined that it would not be feasible to change or add wording to the current Construction Contracts.

The contract clearly transfers all liability and costs associated with the payment or defence of any claims arising out of the work performed under the contract. The current contract clearly makes this a responsibility of the contractor. The reason for this, is to ensure the City does not incur any liability and/or costs with respect to any claims arising from the Contractor’s work. If the City were allowed to interfere in the investigation or handling of claims by the contractor, the City could be viewed as prejudicing the contractor’s rights and position which could lead to a denial of the claim by the contractor and consequently the City having to bear some or all of the claim costs.
Legal Services does not support any changes to the existing contract wording to deal with any issues regarding claims. Risk Management Services (RMS) is required to deal with the wordings and requirements as agreed to in the contract between the two parties relative to claims that are made against the City.

Legal Services, CPI Division and RMS met to discuss the RMS study results of a review of contractor claims with a view to considering possible enhancements to the current claims handling procedure to determine if any such changes would have an effect on contractor claims.

RMS compiled data for the years 2006 and 2007 and revealed the City had received 94 claims directly related to construction activity. A random sampling of 24% or 23 claims (11 for 2006 and 12 for 2007) were chosen for the study and the individual files were then reviewed in detail. Data not collected by the system but available in the hard copy file, was included in the review for further analysis.

This data was reviewed to determine what the inherent problems were in the current application of the claims handling requirements within the standard construction contract and if any possible enhancements to the process may improve the current process.

In order to determine the adequacy of the claims handling by contractors under the current process, the following extracted data provided our best insight as to the adequacy of the current process:

- Current disposition of claim
- Response time by contractor
- Reasonableness of claim submitted

Findings:

The request for review of "contractor claims" did not make clear whether it was a concern over the response time by contractors or the ultimate resolution of claims offered by contractors. Risk Management Services have attempted to address both of these points in our review.

Current Disposition:

It was determined that RMS did not receive any indication of the disposition of a claim from a contractor in 57% of files reviewed. With no contact from the claimant, RMS had no indication in 43% of the claims as to whether the contractor has or has not resolved the claim. For those claims that might not have been resolved, had RMS known, RMS may have been able to act in a mediation role to assist in resolution.
Response Time:

From the results of the review, it is evident that only 57% of claims met the 30-day contact time line. The current claims handling response by contractors could use some improvement in order to speed up the claim process. This would not necessarily have any impact on the nature of the resolution of the claim, i.e., whether or not a payment is offered.

It is acknowledged that investigation time is required to obtain all information and evidence to make a determination on liability. For a variety of reasons, investigations can take a considerable period of time in the gathering of information, records or experts reports but for most claims, this should be able to be done within 30 days from the time the contractor is notified. If the investigation period required additional time for an extended investigation, the claimant could be so advised of the reasons.

Reasonability of Resolution of Claim:

Reasonability of claims was judged by determining if the City would have paid or denied the claim had the claim been made against the City. Using this classification method in the review for defining 'reasonable' vs. 'unreasonable' claims, 65% of claims submitted to the City and subsequently forwarded to the contractor for handling would have been denied by the City based on the information in the file at the time of review.

We do not find the actual reasonability of decisions by contractors to pay or not pay as being an issue under the contract based on the information available.

Enhancements to Process:

As the review indicates, only 57% of claimants were contacted within the required 30 period as provided in the contract. It is believed that, if greater compliance within the 30 day requirement can be achieved, it may result in fewer complaints regarding communication and response.

In discussions with the Construction Division, which oversees most construction contracts, RMS and the Construction Division have been able to agree on modifications to the current claims handling process, both by RMS and the Construction Division, which we RMS and the Construction Division believes, will significantly increase the percentage of claims that are dealt with by contractors, in a timely manner, and in accordance with the existing contract wordings. These changes will also assist RMS in being kept up-to-date, in a more timely fashion, such that RMS might become aware of problem issues at an earlier date.
Modifications to the current claims handling process will be made as follows:

- When a new construction related claim is received by RMS, a copy of the notice sent to the responsible contractor will also be sent to the construction Project Manager for the City such that he is aware of the claim and can keep the matter on his weekly agenda with the contractor.
- The notice to the contractor will contain a claim status form asking them to complete the form and return it to RMS within 30 days.
- The Project Manager can continue to obtain status information directly from the contractor which can be relayed back to RMS until such time as the claim is resolved.
- If no information is forthcoming to RMS in 30 days, RMS will follow up with the Project Manager to determine the status of the claim.

RMS is of the opinion the above changes to the communication process will ultimately assist in reducing the contractor’s response time to claims. RMS will monitor this process to determine if it results in improvement in the communication process.

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