

Section III – Items for the Information of the Board

TO: Chair and Members of the Executive Committee
Meeting #10/19, Friday, January 10, 2020

FROM: Michael Tolensky, Chief Financial and Operating Officer

RE: **PERFORMANCE-BASED CONTRACTS**

KEY ISSUE

Report regarding a summary of findings regarding performance based contracting practices carried out by Toronto and Region Conservation Authority's (TRCA) regional and municipal partners as well as a review of Infrastructure Ontario's Vendor Performance Program and proposed actions to be completed by TRCA staff.

RECOMMENDATION

THAT the report on performance-based contracts be received.

BACKGROUND

Following a discussion at Executive Committee Meeting #8/19 held on October 5, 2019, staff conducted a review of performance based contracting practices carried out by TRCA's regional and municipal partners. Performance based contracting is a results-oriented contracting method that may tie to a contractor's payment, extension or renewal of contract, or award of new contracts. Incentives or disincentives are used to encourage the desired outcome(s) of a contract and may be monetary or non-monetary in nature.

Incentives encourage desirable behavior such as finishing a project on time or ahead of schedule, reducing the cost of completion, or improvement of the quality of the goods or services received beyond the agreed upon specifications. Examples of common incentives are:

- Early completion bonuses;
- Extension or renewal of contract; and/or
- Sharing in cost savings.

Disincentives are mechanisms that discourage or prevent undesirable behavior such as delays in finishing a project, non-payment to sub-contractors, or delivery of poor-quality goods or services. Examples of common disincentives are:

- Liquidated Damages;
- Construction bonds;
- Holdback; and/or
- Suspension or ineligibility to bid on future contracts.

Staff conducted a benchmark review and received information regarding incentives, disincentives, and vendor performance from 3 regional and 5 municipal partners. Detailed information can be provided in an in-camera presentation, upon request.

TRCA and the majority of its partners do not include fee incentives or performance bonuses in their contracts. The City of Toronto, City of Vaughan, and Regional Municipality of York are exceptions and have demonstrated examples where incentives have been included in certain

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high risk contracts such as delivery of auto parts, snow removal, and road works. Generally, applying incentives to contracts occurs if the risk is high, the project budget can accommodate the potential extra cost, it is agreed upon by the parties funding the project, and there is an appropriate amount of resources allocated to the project.

TRCA and its partners apply standard disincentives to their contracts, especially when required under the Construction Act. Liquidated damages provide compensation to the injured party for delays in completing the work on time. The amount of the damages is calculated per day and is a portion of the cost of resources on a project. Performance and Labour and Material Payment bonds protect from financial loss if the contractor defaults on the work and ensures that subcontractors or suppliers are paid. A holdback mechanism is used to ensure that there is enough money to satisfy any lien claims that may arise and is typically 10% of the cost of the services and/or materials supplied on a project.

A contractor's performance can impact their ability to do business with TRCA or one of its partners. Poor past performance can result in ineligibility to bid on future contracts or can justify non-award of an existing contract. Most of TRCA's municipal and regional partners have formal vendor performance programs in place where contract administrators are required to complete standardized evaluation scorecards during and/or upon completion of the contract. While TRCA does not currently have a formal program in place, TRCA conducts document vendor performance in several ways, including but not limited to, completing site inspection reports, quality checking goods received, tracking work completion against the project schedule, and reviewing deliverables.

In order to improve TRCA's vendor performance management and information exchange between divisions, TRCA intends to establish a formal vendor performance program and will consider Infrastructure Ontario's program as an example. Infrastructure Ontario monitors performance of its vendors through Vendor Performance Scorecards (VPS). VPSs include a score out of 5 ranging from 0 (fails to meet expectations) to 5 (meets expectations). The score of 5 is assigned when there are no performance issues and the vendor has met all of the contract requirements. A Vendor Performance Rating (VPR) is then assigned to a vendor based on all projects the vendor has been involved in over the previous two years. VPRs are then used in the evaluation of future bids from the vendor. In projects valued at \$100,000 or more, 15% of the total evaluation score is based on a vendor's VPR, with some contracts increasing it to 25%. Vendors who have been issued an infraction throughout the course of a contract will receive a maximum score of 2 on the VPS and may also be ineligible to submit a bid for a period up to 2 years. Infrastructure Ontario includes references to the vendor performance program and a copy of the scorecard in its procurement documents, and outlines performance requirements in the final contract.

Relationship to Building the Living City, the TRCA 2013-2022 Strategic Plan

This report supports the following strategy set forth in the TRCA 2013-2022 Strategic Plan:
Strategy 9 – Measure performance

DETAILS OF WORK TO BE DONE

The following items represent key action items to be completed by TRCA staff following receipt of this report by the Executive Committee:

- TRCA will not apply incentives to its contracts, however, if determined in the future that it would be beneficial to apply incentives to a particular contract, staff will obtain approval from the Board of Directors before doing so;

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- Continue to apply standard disincentives to contracts to protect against financial loss, as required by the Construction Act, and outlined in TRCA policies and procurement templates;
- Establish standardized vendor performance evaluation forms and letter templates and include a summary of vendor performance metrics in TRCA's annual summary of procurements report to the Board of Directors;
- Train staff on the use of standardized forms and formally documenting vendor performance;
- Include reference to performance evaluation requirements and a copy of the evaluation form in procurement solicitation documents;
- Include past performance in Request for Proposal/Quotation/Tender evaluation criteria prior to contract award; and
- Ensure performance requirements are outlined in the final contract.

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