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Report To: Council

From: Trevor Pinn, Deputy CAO/Treasurer

Date: May 2, 2022

Memo #: Memo-026-22

File No.: FSD-020-22

Re: Ability of the Municipality to Cancel/Amend an Issued RFP

During the discussion of Report FSD-020-22, there was a motion to refer the report back to Staff to provide more scoped terms of reference, focusing on the Bowmanville waterfront and other key waterfront locations. This motion was defeated.

During that discussion, I indicated that there were risks to this motion. Firstly, there is a duty of fairness to the compliant bidders that must be considered.. When we issue an RFP there is an expectation on behalf of the respondents that there is sufficient budget and desire to complete the project. If there was a change of scope to the RFP, there would be a corresponding duty to compliant bidders so that they have a fair opportunity to bid on the revised scope of work.

The Municipality does have wording in our RFPs limiting, not eliminating, our liability. The language indicates that other than direct costs attributable to the preparation of a Proposal

- the Municipality, employees, advisors or representatives will not be liable for a claim arising out of the proposal process, including but not limited to loss of profits, loss of opportunity or any other claim; and
- The Proponent waives any claim for any compensation of any kind whatsoever, including loss of profit or loss of opportunity by reason of the Municipality's decision to not accept the Proposal submitted by the Proponent, to award a contract to any other supplier or to cancel this RFP process, and the Proponent shall be deemed to have agreed to waive such right or claim.

While there are protections, there is still the risk of liability up to the cost of preparing the RFP, which we usually do not pay for. The other risk is a reputational risk; if the Municipality gets the reputation that it is "bid shopping" then suppliers may not respond to our bid

solicitations for fear that they are wasting their time and resources. This could drive up costs as we would have fewer supplier options.

Specifically to the Waterfront Strategy, the responses to the issued RFP were beyond the 2016 budget estimate, requiring the Council report to seek additional funding and award the contract. It is up to Council to determine if they wish to approve the additional funds or cancel the RFP and start over with a different scope; cancelling the RFP and reissuing would be preferred over changing the scope of the existing RFP award.

There is also still the potential harm to the Municipality's reputation and the delays in completing the work which starting over would create. It is Council's choice on whether or not to award an RFP; however, not awarding the RFP does come with potential risks to the organization.

Options for Council

1. The Staff recommendation in report FSD-020-22 is the recommended course of action for Council;
2. Council may cancel the RFP, change the scope and issue a new RFP. This is not recommended by staff due to the timing delays that this will cause as well as the potential risks to reputation and liability that may occur as a result;
3. Council may cancel the RFP. This is not recommended as the waterfront was identified as a priority during the 2018 to 2022 Strategic Plan process.

I trust the above answers the questions raised at Council.

Trevor Pinn, CPA, CA:
Deputy CAO/Treasurer
Financial Services Department

cc: Mary-Anne Dempster, CAO
Department Heads
David Ferguson, Purchasing Manager