

## **Municipality of Chatham-Kent**

### **CAO Office**

### **Legal Services**

**To:** Mayor and Members of Council  
**From:** David Taylor, Director, Legal Services  
**Date:** November 19, 2020  
**Subject:** Municipal Insurance- RFP Award- Single Source Award

### **Recommendation**

It is recommended that:

1. The RFP for Municipal and Related Boards Insurance be awarded to Frank Cowan Company, and Council authorize the purchase of insurance from Frank Cowan company for the quoted rate of \$1,393,865 (+tax as applicable) for the 2021 insurance year.

### **Background**

#### **Insurance Renewal Background**

Insurance is the transfer of risk from one entity to another. The Municipality transfers the risk of future unknown losses to its insurance company.

The cost of purchasing this transfer of risk is the insurance premium that is paid annually to the insurance company. The Municipality pays a premium which transfers this risk to the insurance company for a period of time, normally for one year. The Municipality insures several areas of coverage including Commercial General Liability ("CGL"), Property, Fleet/Automobile, Errors and Omissions Liability, Cyber Liability etc.

Not all risk is covered by insurance. Some claims against the Municipality are not covered by the insurance policy. For example, some environmental contamination claims, claims for punitive damages, fines and human rights complaints are not insured under the Municipal insurance policies. In addition, most claims arising from commercial and employment contracts are not insured. Insurance for these types of claims cannot normally be purchased in the marketplace. These types of claims remain the risk of the Municipality.

Mr. Dave Rikley of Programmed Insurance Brokers in Chatham is the Municipality's insurance broker. Mr. Rikley provides various forms of assistance as the Municipality's broker, including assisting in the negotiation of premiums, claims history reviews,

assisting with managing major losses, adjustments to building and vehicle coverage through the policy year, and various other insurance related matters.

The Legal Services division manages the municipal insurance and claims program for the Municipality and all boards and committees of Council. Legal Services' active approach to claims management has significantly reduced reported claims to our insurer. Prior to 2012, claims were being managed externally with an external claims adjuster and external legal counsel. After 2012, claims management was gradually moved in-house.

The five year premium history for insurance is as follows:

- a) For 2016 Legal Services undertook an RFP for insurance providers. The competitive selection process, in conjunction with our internal claims management, resulted in a decrease to a total premium of \$957,396 (+tax).
- b) For 2017 Frank Cowan Company provided a total premium of \$983,253 (+tax).
- c) For 2018 Frank Cowan Company provided a total premium of \$1,002,021 (+tax). Due to increases in vehicles and coverage for certain buildings, the year-end premium for 2018 was \$1,016,206 (+tax).
- d) For 2019 Frank Cowan Company provided a total premium of \$1,060,263 (+tax). Due to increases in vehicles and coverage for certain buildings, the year-end premium for 2019 was \$1,108,548 (+tax).
- e) For 2020 Frank Cowan Company provided a total premium of \$1,206,693.00 (+tax). Due to changes in vehicles and coverage for certain buildings, the year-end premium for 2020 was \$1,203,814 (+tax).

For insurance for 2021-2025, Legal Services used a Request for Proposals (RFP) process to seek bids from any insurance companies interested in providing insurance for the Municipality and related boards/commissions. The RFP was released on September 3, 2020 and closed on October 28, 2020.

## **Comments**

### **RFP**

There were four insurance providers who were "plan takers" under the RFP process, meaning they received the bid documents for the purpose of considering submitting a bid. Those companies were AON Reed Stenhouse Inc., BFL Canada Risk and Insurance Services Inc., MARSH Canada Limited and Frank Cowan Company.

Only one bid was received for this RFP, being a bid submitted by Frank Cowan Company.

Legal Services has followed up with representatives of the other “plan taker” companies to determine why they did not submit bids. Those companies all cited the current insurance market conditions as the primary reason for not submitting a bid. Two of the bidders also provided comments about smaller changes that could be made to the RFP to encourage bids, being specific areas where certain requirements could be identified as optional rather than mandatory inclusions in a bid.

As there is only one (1) bid received for this Insurance RFP, this award is considered a “single source” award under the Municipality’s Purchasing Bylaw.

The review committee for this RFP was comprised of Matt Torrance, Director, Financial Services; Ryan Brown, Director, Public Works, Emily Crawford, Solicitor, and David Taylor, Director, Legal Services. Dave Rikley, the Municipality’s Insurance Broker, provided assistance and advice to the committee on insurance coverage provided by the Frank Cowan Company bid.

The committee scored the Frank Cowan Company bid as 85/100.

The Frank Cowan Company bid results in a premium of \$1,393,865 (+tax as applicable) for the 2021 insurance year. This represents an increase of approximately 13% over the 2020 premium. While this is a significant increase, the RFP process used encourages bidders to put forward their best price and as a result administration recommends acceptance of this bid. This increase appears to be primarily related to difficult times in the insurance industry, rather than being reflective of Chatham-Kent’s loss history.

In general, insurance companies will not provide guaranteed premiums for longer than a one year period. Legal Services had requested that any bidder indicate whether they would agree to a longer term stability agreement, that is, a commitment to a maximum annual increase to insurance premiums. The current insurance market is referred to as a “hard market”, meaning the insurance industry is in a period where significant losses are being faced by insurance companies, and as a result insurance coverage is less available and premiums are higher. As a result, Frank Cowan has not provided a rate stability commitment. Insurance premiums for the years 2022-2025 will be negotiated annually and brought back to Council for consideration. If any year results in a high premium increase, the Municipality will have the option to release an RFP for insurance in the following year.

### Coverage Changes

Frank Cowan Company is applying a Communicable Disease Outbreak Exclusion for Commercial General Liability and Errors and Omissions insurance for eldercare, long term care and seniors assisted living facilities. This means that there will not be insurance coverage if it is alleged that the Municipality was negligent, resulting in

communicable disease outbreaks at these facilities. While this is unfortunate, this is an exclusion that is being added in many policies across the insurance industry due to the ongoing pandemic. Legal Services inquired with Frank Cowan Company about whether there is any opportunity to pay additional premiums to eliminate this exclusion but have been advised that no such coverage is available.

### 1. Loss History

The insurance premium for 2021 is based on the Municipality's loss history for the past 10 years. The largest liability problem area, in terms of the overall cost, arises out of motor vehicle accidents in which it is alleged that the municipal highway was in disrepair, improperly designed or controlled.

The second largest type of liability claim, in terms of overall cost, arises out of trip and falls or slip and falls on sidewalks and walkways. Most trip and falls occur on uneven municipal sidewalks or walkway entrances. Most slip and falls occur on icy or snowy sidewalks or walkways during winter.

Both types of liability claims are categorized as CGL (Commercial General Liability) policy coverages.

Overall, the losses on these types of claims have been low over the past five years. This is largely due to the internal management model employed by the Municipality which avoids significant external adjuster and legal fees, and continuous improvements in risk management processes, particularly in the Public Works area.

The most significant costs to the Municipality's insurance company over the past five years have been two significant fires, in the Wallaceburg Arena and Ridgetown Public Works Garage. Both of these insurance claims have now concluded.

### 2. Internal Litigation

#### a. Claims Summary

The Legal Services Division takes an active approach to claims management which has resulted in fewer reported losses. This greatly reduces the costs spent on external legal counsel as internal staff members can perform this legal work at considerably lower rates.

A claims summary has been provided to council in closed session laying out the major outstanding claims faced by the Municipality.

#### b. Recoverable Cost

Another function of internal claims management is to recover losses suffered by the Municipality of Chatham-Kent. These costs are defined as "subrogated claims" and include costs of claims of other internal departments for losses they suffered from 3<sup>rd</sup> parties. In 2020, Legal services recovered \$58,349.67.

*c. Payments from Reserve and Total Cost of Claims*

The Municipality's legal and insurance reserve is maintained in order to have funds available for legal matters and claims which have been brought against the Municipality.

As of November 19, 2020, a total of \$221,770.00 has been paid this year from the insurance reserve for municipally related claims. It is anticipated that this amount will grow slightly by year end as further amounts are paid in November and December.

This amount of \$221,770.00, when added to the 2020 insurance premium of \$1,203,814, and staff and department costs for claims and litigation of \$324,030.00 results in a total true cost of claims and insurance (on an actual cash basis) of \$1,749,614.00.

Property Inspections

The 2020 municipal property insurance schedule consisted of buildings, contents (including mobile work equipment) which was insured on a replacement cost basis with a, blanket limit of \$893,672,560. Various coverage extensions and riders brought the total property insured value to \$900,128,060. The 2021 property insured value is \$948,538,267 after adjusting for inflation and several replacement cost value reassessments.

Since the municipality is insured on what is known as a "blanket basis", the Municipality has over \$900 million available for any single loss in which covered property is damaged or destroyed. Even though the blanket feature provides protection against having undervalued locations, risk assessments using the COPE (Construction, Occupancy, Protection, Exposure) format continue on an annual basis in conjunction with the Frank Cowan Company and our local insurance broker. The COPE assessment process has now reviewed 376 locations representing 90% of the buildings and structures values under the property insurance policy.

Our insurance provider and broker will continue to use the COPE evaluation process on a systematic basis, moving down from the higher value properties to lower value structures like picnic shelters, gazebos etc. The focus going forward will be to complete the site assessments for the remaining 281 buildings and structures as community health concerns and time allow.

**Areas of Strategic Focus and Critical Success Factors**

The recommendation in this report supports the following areas of strategic focus:

- Economic Prosperity:  
Chatham-Kent is an innovative and thriving community with a diversified economy
- A Healthy and Safe Community:  
Chatham-Kent is a healthy and safe community with sustainable population growth
- People and Culture:  
Chatham-Kent is recognized as a culturally vibrant, dynamic, and creative community
- Environmental Sustainability:  
Chatham-Kent is a community that is environmentally sustainable and promotes stewardship of our natural resources

The recommendation in this report support(s) the following critical success factors:

- Financial Sustainability:  
The Corporation of the Municipality of Chatham-Kent is financially sustainable
- Open, Transparent and Effective Governance:  
The Corporation of the Municipality of Chatham-Kent is open, transparent and effectively governed with efficient and bold, visionary leadership
- Has the potential to support all areas of strategic focus & critical success factors
- Neutral issues (does not support negatively or positively)

### **Consultation**

The Municipal Insurance Broker was consulted throughout the preparation of this report.

The Purchasing Officer has reviewed the procurement aspects of this report.

Budget, Performance Services has reviewed the financial aspects of this report.

The RFP review committee of Matt Torrance, Director, Financial Services; Ryan Brown, Director, Public Works; and Emily Crawford, Solicitor; were consulted on this report.

### **Financial Implications**

The financial implications of this report are the payment of the recommended insurance premiums. The Frank Cowan Company bid results in a premium of \$1,393,865 (+tax as

applicable) for the 2021 insurance year. This represents an increase of approximately 13% over the 2020 premium.

Further financial information regarding the total losses and future loss exposure of the Municipality will be provided to Council in Closed Session.

Prepared by:

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David Taylor

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Consulted and confirmed the content of the consultation section of the report by:

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