



Audit Follow Up Report

September 23, 2013

To: Pre Audit Sub Committee
From: Brian Bigger, Auditor General

Re: Transit Kiosk and Cafe Contract Management

Audit Report Released	October 2011
Original # Of Recommendations	21
# Of Action Plans Previously Completed	10
# Of Action Plans Now Closed	11
# Of Action Plans On Next Follow Up	2
Status As Of June 30, 2013	On Track

Recommendation and Summary Of Progress (Note: Self assessment conducted by Finance Services)	Self-assessed Status
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<p>Recommendation 1</p> <p>Before the City enters into a contract, City Management should identify risks in drafting the contract and take care to mitigate these risks. This may include consulting with other departments within the City such as Finance, Legal, the Auditor General's office, etc., and outside legal experts in drafting particular kinds of contracts. Auditor Comments: Departmental signoffs and the Due Diligence process did not work as expected. The facts show that this contract was not well written and did not accurately reflect the relationship between the City and the Company. To properly mitigate the risk of loss, the sales proceeds should have been deposited on a timely basis into a City bank account instead of the management company's bank account, and that any outstanding amounts were to be held in "Trust".</p>	Alternative Action Taken
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Original Management Response

Management does identify business and operational risks (in accordance with the Due Diligence by-law (2001-296F) and factors appropriate provisions into the language of contracts. Departments engage in consultation between departments when contracts are drafted and/or entered into and as appropriate. Where there are multiple department reviews of a contract each department signs off on the contract. No Action Required.

Actions Taken, Results and /or Actions Planned

Management continues to work closely with Legal Services to ensure contracts are drafted with appropriate provisions to ensure stewardship of taxpayers dollars.

Recommendation 2

Departmental Management should be required to ensure that all contracts are managed and performed according to their terms.

Fully or
Substantially
Implemented

Original Management Response

Agreed. Management will undertake a review of the processes and policies and procedures related to contract administration. Timing is to be determined.

Actions Taken, Results and /or Actions Planned

Draft Purchasing By-law changes approved by Finance and Administration Committee in April 2013.
Procurement Contract Administration Policy to be presented to Finance and Administration Committee in August 2013

Recommendation 3

To obtain full value for money, the City should ensure it receives a final copy of all consultants' reports where draft reports are provided. These reports should be disseminated to appropriate staff. Auditor Comments: When the Auditors attended Transit in our Cash Handling Audit, we found that improved cash and ticket handling procedures were not documented. Transit also used the control deficiencies identified by KPMG in a request to Council for the creation of the Cashier position.

Alternative
Action Taken

Original Management Response

As per the engagement letter of February 4, 2008, KPMG was engaged by management to provide assistance with the development of cash and ticket handling procedures and train staff in following these procedures. A report was not a requirement of this engagement. What was gained by the City are improved cash and ticket handling procedures. The effectiveness of these improvements was reported on in the AG's report regarding Cash Handling at Transit. When consultants are engaged to provide reports, it is City practice to obtain final copies. No Action Required

Actions Taken, Results and /or Actions Planned

No Action Required

Recommendation 4

When a contract is extended or renewed, the City should ensure that it is not owed any money unless such debt is specified in the contract. Additional contracts should not be awarded if the company owes the City money.

Fully or
Substantially
Implemented

Original Management Response

Agreed. As provided by the Records and Reputation clause in the City's procurement documents, the City can choose not to award a contract if there are large outstanding balances owing to the City. Also the Accounts Receivable policy provides for amounts owing to suppliers to be offset by amounts owed to the City. Staff will review existing policies and enhance business procedures to ensure that these existing controls are effective.

Actions Taken, Results and /or Actions Planned

Aged Accounts Receivable listings are sent to Senior Management Team members. Draft Purchasing By-Law changes approved by Finance and Administration Committee in April 2013.
Procurement Contract Administration Policy to be presented to Finance and Administration Committee in August 2013

Recommendation 5

Contracts should not be extended or renewed if the terms and conditions of the original contract have not, or can no longer be followed.

Fully or Substantially Implemented

Original Management Response

See 2 above.

Actions Taken, Results and /or Actions Planned

Draft Purchasing By-Law changes approved by Finance and Administration Committee in April 2013. Procurement Contract Administration Policy to be presented to Finance and Administration Committee in August 2013

Recommendation 9

Management should consider developing a new policy for determining the amount of the letter of credit. For example, the value of the contract as well as other risks (financial, operational, etc.) should be considered in establishing an amount for the letter of credit. The policy should consider instances where exceptions are made, how these exceptions are documented and what approvals are necessary.

Partially Implemented

Original Management Response

The City's construction contracts for capital projects have specific guidelines for the amounts that the City is to collect for bid deposits, bid bonds and letters of credit. Building on the guidelines in place for construction contracts, Purchasing, in consultation with Legal, will develop a policy and procedure that will apply to other types of contracts by the end of the first quarter of 2012.

Actions Taken, Results and /or Actions Planned

The City has established guidelines, and the draft purchasing by-law has been amended to state that the Authorized Person must approve the securities. However Supplies and Services will develop a formal written policy for Contract Securities (Letters of Credit). It is anticipated that this will be completed in Q1 2014

Recommendation 10

When letters of credit are used, they should be reviewed when contracts are extended and renewed, and changes made as required. Having the ability to review and make changes to the amount of a letter of credit must be included as part of the terms of the contract. If a letter of credit to an acceptable amount cannot be secured, other controls should be put in place to ensure collectability of City funds.

Fully or Substantially Implemented

Original Management Response

It is the City's practice to review letters of credit and certified cheques when contracts are renewed and extended. As noted by the AG in his comment at 9, there are many factors that are considered when establishing the amount of the letter of credit. Clarification will be provided by the action plan in Item 2 and 9 above.

Actions Taken, Results and /or Actions Planned

Draft Purchasing By-Law changes approved by Finance and Administration Committee in April 2013. Procurement Contract Administration Policy to be presented to Finance and Administration Committee in August 2013

Recommendation 11

If the City pursues any further collection attempts on the receivables owing, the City should attempt to collect the full amount of interest payable on the account.

Alternative Action Taken

Original Management Response

Council has been advised by Legal that the City is in the process of conducting examinations of the Company in an effort to determine if there is any possibility of collecting on the court judgment against the Company. Further comments cannot be provided since they relate to matters where direction was provided by Council in-camera. Regarding the potential interest payable, a balanced discussion of this issue is required.

There are two positions that could effectively be made. One is that the interest is owed and the other is that the interest is not owed. The AG's position is that the interest is owed. On the other side of the discussion the following should be noted. The 1999 contract had interest but the 2004 contract did not have an interest provision and therefore it could be argued that there was an agreement not to charge interest. Further, since interest was not billed, the supplier would not have knowledge that interest was owed and consequently it could be argued that no interest applies. If the imputed interest argument fails, then the City is left with the Court rates applicable to litigation which is very conservative. The rate the City was awarded on the judgment against 1211250 Ontario Inc. was 2% per year (compounded annually) which is much lower than the imputed interest rate of 15% per year. The claim of \$252,000 in accumulated imputed interest is far from certain and would be challenged. Legal will consider this as it moves forward.

Actions Taken, Results and /or Actions Planned

The City has since completed all examinations and the City has a judgement against 1211250 Ontario Inc. and a writ of seizure and sale. Legal Services will be monitoring these on an annual basis.

Recommendation 17

In order to simplify lease administration and reduce the risk of payment errors, the City should develop a system to flag when lease and contract renewals are coming due. Auditor Comments: This solution was identified by management, and the Auditor General agrees that this would improve internal controls. It is a normal internal audit practice to recommend improvements working cooperatively and with the advice of management.

Partially
Implemented

Original Management Response

The AG has adopted a recommendation in this updated report that was put forward by management in its response to the original recommendation. A system to flag when lease and contract renewals are coming due is required. If there is an effective system in place, then the renewal date should not be an issue. We do not agree that it would be more beneficial to have all leases renewing on January 1 and further it is not common business practice. Renewing leases and contracts can be significant work and having it all occur for January 1 is not practical. Action plan described in item 2 above.

Actions Taken, Results and /or Actions Planned

Draft Purchasing By-Law changes approved by Finance and Administration Committee in April 2013. Procurement Contract Administration Policy to be presented to Finance and Administration Committee in August 2013. In addition staff is pursuing the notification features within Procurement Contract Functionality in PeopleSoft.

Recommendation 18

If any further collection attempts can be made, the City should attempt to recover the missed revenues under the terms of the contracts. Auditing the financial records of the company would determine the actual amount owing to the City.

Alternative
Action Taken

Original Management Response

Legal will assess the City's abilities to collect these amounts. This is on-going.

Actions Taken, Results and /or Actions Planned

The City has since completed all examinations and the City has a judgement against 1211250 Ontario Inc. and a writ of seizure and sale. Legal Services will be monitoring these on an annual basis.

Recommendation 19

As part of the City's due diligence in awarding contracts, business searches should be considered. The City would need to state in the RFP that the City may request that the vendor submit to a business search prior to the award of the contract. A business search should be mandatory for all revenue generating contracts. Due to the cost of performing such a search, for all other contracts, management should decide and document whether to request that the vendor do a business search.

Fully or
Substantially
Implemented

Original Management Response

Management will undertake a review of the processes, policies and procedures related to contract administration (as noted in 2 above). In addition, this will be reviewed when the updated purchasing by-law is presented to Council. To be reviewed by Legal and Purchasing in 2012.

Actions Taken, Results and /or Actions Planned

Draft Purchasing By-Law changes approved by Finance and Administration Committee in April 2013.
Procurement Contract Administration Policy to be presented to Finance and Administration Committee in August 2013



Brian Bigger, CGA, CRMA

Auditor General for the City of Greater Sudbury