



Office of the Auditor General / Bureau du vérificateur général

**FOLLOW-UP TO THE 2010 AUDIT OF THE
PROCUREMENT PROCESS FOR THE SMARTBUS NEXT STOP
ANNOUNCEMENT SYSTEM**

2010

**SUIVI DE LA VÉRIFICATION DU PROCESSUS
D'ACQUISITION DU SYSTÈME D'ANNONCE DES ARRÊTS
DANS LES AUTOBUS INTELLIGENTS**

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EXECUTIVE SUMMARY

Introduction

The Follow-up to the 2010 Audit of the Procurement Process for the SmartBus Next Stop Announcement System was included in the Auditor General's Audit Plan.

The key findings of the original 2010 audit included:

- Management should have informed Council of the increased cost of the SmartBus contract as soon as it became apparent that the initiative no longer had full funding.
- The initial cost estimate for Next Stop Announcement System of \$6.7 million omitted key elements and there was little communication with Council on the procurement in the 24 months prior to the September 16, 2009 Transit Committee meeting. The revised cost estimate of \$17 million was to be covered by a budget reallocation by the Branch which Council was not asked to approve.
- When finally brought to Council, the issue was confusing with no apparent overarching strategy for Council to refer to. It appears management did not fully appreciate Council's potential concern with the magnitude of cost and/or scope variance in the project.

Summary of the Level of Completion

1. The table below outlines our assessment of the level of completion of each recommendation as of December 2012.

CATEGORY	% COMPLETE	RECOMMENDATIONS	NUMBER OF RECOMMENDATIONS	PERCENTAGE OF TOTAL RECOMMENDATIONS
LITTLE OR NO ACTION	0 – 24	-	-	-
ACTION INITIATED	25 – 49	-	-	-
PARTIALLY COMPLETE	50 – 74	-	-	-
SUBSTANTIALLY COMPLETE	75 – 99	2, 4	2	33%
COMPLETE	100	1, 3, 5, 6	4	67%
TOTAL			6	100%

2. The table below outlines management’s assessment of the level of completion of each recommendation as of January 31, 2013 in response to the OAG’s assessment. These assessments have not been audited.

CATEGORY	% COMPLETE	RECOMMENDATIONS	NUMBER OF RECOMMENDATIONS	PERCENTAGE OF TOTAL RECOMMENDATIONS
LITTLE OR NO ACTION	0 – 24	-	-	-
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SUBSTANTIALLY COMPLETE	75 – 99	-	-	-
COMPLETE	100	1, 2, 3, 4, 5, 6	6	100%
TOTAL			6	100%

Conclusion

In the original audit, management disagreed with some of the findings and recommendations, or agreed with a recommendation but believed they had met the requirement during the NSAS procurement process. This related primarily to the issues of on-going communication to Council. However, during our follow-up audit, we found that most of the recommendations have been acted upon either directly or indirectly as noted in the table above.

Acknowledgement

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management.

RÉSUMÉ

Introduction

Le Suivi de la vérification du processus d'acquisition du système d'annonce des arrêts dans les autobus intelligents de 2010 était prévu dans le Plan de vérification du vérificateur général.

Les principales constatations de la vérification de 2010 sont les suivantes :

- La direction aurait dû informer le Conseil municipal de la hausse des coûts du contrat des autobus intelligents lorsqu'il est apparu que l'initiative n'était plus financée à 100 pour cent.
- L'estimation initiale des coûts du Système d'annonce des arrêts, de 6,7 millions de dollars, a omis des éléments importants et il y a eu peu de communication avec le Conseil municipal au sujet de cet achat dans les 24 mois précédant la réunion du Comité du transport en commun le 16 septembre 2009. L'estimation des coûts révisée de 17 millions de dollars devait être couverte par une réaffectation budgétaire de la Direction, que l'on n'a pas demandée au Conseil municipal d'approuver.
- Lorsqu'elle a enfin été soumise au Conseil municipal, la question portait à confusion et ne s'accompagnait d'aucune stratégie d'ensemble à laquelle le Conseil municipal aurait pu se référer. Il semble que la direction ait mal mesuré l'importance que pouvait accorder le Conseil municipal à l'ampleur de la variation au chapitre du coût ou de la portée du projet.

Sommaire du degré d'achèvement

1. Le tableau ci-dessous présente notre évaluation du degré d'achèvement de chaque recommandation au mois de décembre 2012 :

CATÉGORIE	POURCENTAGE COMPLÉTÉ	RECOMMANDATIONS	NOMBRE DE RECOMMANDATIONS	POURCENTAGE DU TOTAL DES RECOMMANDATIONS
PEU OU PAS DE MESURES PRISES	0 – 24	-	-	-
ACTION AMORCÉE	25 – 49	-	-	-
COMPLÉTÉE EN PARTIE	50 – 74	-	-	-
PRATIQUEMENT COMPLÉTÉE	75 – 99	2, 4	2	33 %
COMPLÉTÉE	100	1, 3, 5, 6	4	67 %
TOTAL			6	100 %

2. Le tableau ci-dessous présente l'évaluation de la direction concernant le degré de réalisation de chaque recommandation en date du 31 janvier 2013 en réponse à l'évaluation du Bureau du vérificateur général. Ces évaluations n'ont pas fait l'objet d'une vérification.

CATÉGORIE	POURCENTAGE COMPLÉTÉ	RECOMMANDATIONS	NOMBRE DE RECOMMANDATIONS	POURCENTAGE DU TOTAL DES RECOMMANDATIONS
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PRATIQUEMENT COMPLÉTÉE	75 – 99	-	-	-
COMPLÉTÉE	100	1, 2, 3, 4, 5, 6	6	100 %
TOTAL			6	100 %

Conclusion

Lors de la vérification initiale, la direction n'était soit pas d'accord avec certaines constatations et certaines recommandations ou était d'accord avec une des recommandations, tout en estimant avoir satisfait à l'exigence lors du processus d'approvisionnement du Système automatisé d'annonce des arrêts. Cette situation est liée principalement à la question d'informer régulièrement le Conseil municipal. Au cours de la vérification de suivi, nous avons constaté que la direction a donné suite, soit directement ou indirectement, à la plupart des recommandations, comme indiqué au tableau précédent.

Remerciements

Nous tenons à remercier la direction pour la coopération et l'assistance accordées à l'équipe de vérification.

1 INTRODUCTION

The Follow-up to the 2010 Audit of the Procurement Process for the SmartBus Next Stop Announcement System was included in the Auditor General's Audit Plan.

The key findings of the original 2010 audit included:

- Management should have informed Council of the increased cost of the SmartBus contract as soon as it became apparent that the initiative no longer had full funding.
- The initial cost estimate for Next Stop Announcement System of \$6.7 million omitted key elements and there was little communication with Council on the procurement in the 24 months prior to the September 16, 2009 Transit Committee meeting. The revised cost estimate of \$17 million was to be covered by a budget reallocation by the Branch which Council was not asked to approve.
- When finally brought to Council, the issue was confusing with no apparent overarching strategy for Council to refer to. It appears management did not fully appreciate Council's potential concern with the magnitude of cost and/or scope variance in the project.

2 KEY FINDINGS OF THE ORIGINAL 2010 AUDIT

1. In 2008, Council approved funding authority of \$6.72 million for the implementation of NSAS via the capital budget. The amount was estimated / benchmarked using information from the in-house developed TTC project. In hindsight, it appears, as per City staff, that the cost determination omitted the internal cost of developing the software to run the platform and its labour costs to perform the installation of the hardware on the vehicles.
2. It appears that there was little communication with Council on the procurement of NSAS in the 24 months prior to the September 16, 2009 Transit Committee meeting. An historical look at the communication provided to Council and its sub-committees reveals that information is provided in such a way that it would be challenging for Council to obtain a holistic appreciation of the facts and the extent and direction of the SmartBus project, as well as its cost to the taxpayer.
3. The scenario to proceed when finally brought to Council was highly confusing with numerous issues in play: Higher than estimated bids being submitted, the introduction of optional features to advance introduction of SmartBus features, the potential sources of funding to cover the additional costs of acquisition, ongoing costs to maintain the platform for existing SmartBus features and the parallel tracking / implementation of SmartCard initiative, all with no apparent or pre-existing overarching strategy for Council to refer to for overall progress in implementation of SmartBus features.

4. Purchasing By-law No. 50 of 2000 governs how the City shall purchase goods and services. It allows Supply Management great latitude in decision-making when conducting business activities associated with procurement. However, there are several controls built into the By-law such as prescribed procedures to be followed to make a contract award or to make a recommendation of a contract award to Council. It further gives discretion to Supply Management to submit a contract award to Council where it is a matter of procurement procedure and / or in the opinion of Supply Management, it is in the best interest of the City to do so.
5. Regarding the actual managing of the procurement itself, a comprehensive legal review found no fault with the process, with the exception of the inclusion of the "options" aspect. As the options were not fully described, this element of the RFP did not appear to promote a level playing field for competition. Both bidders were not asked to price the same items.
6. As early as the fall of 2008, through the Request for Qualification evaluation stage, Supply Management and Transit staff are made aware that in a best case scenario there is a likely 30% over budget contract coming. This would have been an opportunity to advise Committee and Council that there was a strong chance that the \$6.72 million budget would not be sufficient to meet the market-based estimate required to undertake the project.
7. Effective July 6, 2009 Supply Management and Transit staff were informed, at the conclusion of the Request for Proposal stage, that the minimum contract value will be roughly twice the estimated amount for the core NSAS requested. This would have been another opportunity to advise Committee and Council that there was a market-based price that doubled the \$6.72 million budget for NSAS.
8. In the conduct of the RFQ and RFP procurement process, the City utilized a clause in which it reserved the right to terminate the process at any time for convenience. The clause is simply worded and could give anyone not involved in the intricacies of contract and tendering law the impression that the City could exercise this exit strategy without financial impact. However, as the legal opinion offered to the City has made clear, the exercise of the clause cannot be made without cause.
9. On July 6, 2009, the sole qualified bidder was notified that they were the successful proponent in the RFP. Negotiations to obtain the best and final offer were then entered into. The proponent submitted their Best and Final Offer (BAFO) on July 15 2009. In our opinion, in accordance with the By-law, Supply Management should have gone to Council for authority to proceed when it became apparent that they no longer had a fully funded requisition for the acquisition of the NSAS.

3 STATUS OF IMPLEMENTATION OF 2010 AUDIT RECOMMENDATIONS

2010 Recommendation 1

That Supply Management, in compliance with the By-law, come to Council for authority to proceed when they have an unfunded requisition.

2010 Management Response

Management agrees with the recommendation.

This reflects current practice.

The SmartBus program is comprised of many separate, yet interrelated, projects. Although under the larger SmartBus umbrella, budget approval was sought on a project-by-project basis. Article 9(1)(c) of the Purchasing By-law states that Council approval is required “where the cost amount proposed for acceptance is higher than the Council approved branch estimates and the necessary adjustments cannot be made.”

In the case of the SmartBus program, the General Manager, Transit Services had identified funding that could be transferred from other approved SmartBus projects to the NSAS. These programs had been previously approved by Council through the Capital Budget process. Report ACS2009-ICS-TRA-0011 was seeking approval to use these previously approved funds for the NSAS project.

Management believes that no further action is required.

Management Representation of the Status of Implementation of Recommendation 1 as of July 3, 2012

Implementation of this recommendation is complete as per the management response.

Management: % complete *100%*

OAG’s Follow-up Audit Findings regarding Recommendation 1

Management agrees with the recommendation but believe that no further action was required as there was sufficient available funding approved for the SmartBus project which could be readily transferred to the NSAS procurement.

Notwithstanding this view, to ensure that the City obtains specific Council authority to proceed when they have an unfunded requisition, the City has implemented the use of “*Procurement Plan Approval Request PPAR*” forms as well as “*Requirement for Approved Funds*” forms. The use of these forms during the acquisition life cycle process will assist the City in tracking the requirements by the procurement group to go to Council if it is determined that they have an unfunded requisition.

OAG: % complete

100%

2010 Recommendation 2

That the City develop guidance for procurement staff for the application of paragraphs 6 (1) and (3) and paragraph 9 (1) (c) of the By-law, for determining under what circumstances and at what stages of the contracting process information should be presented to Council.

2010 Management Response

Management agrees with the recommendation.

Management believes that pricing at the RFQ stage is unreliable and is generally vague or overstated and that, consequently, there is not sufficient pricing information to go to Council. Training has been provided to procurement staff and guidelines are being developed to aid them in the application of these paragraphs of the Purchasing By-law. Guidelines will be developed by the end of Q3 2010.

With regard to the NSAS project, funding was not considered a significant issue at the time as Transit had identified other funding that could be transferred into the NSAS budget resulting in no necessary increase in funding for the project. The report was initially tabled with the sub-committee of Council to obtain budget approval to reallocate funds. Once this approval was obtained, staff could award the contract under delegated authority in accordance with the Purchasing By-law.

Moreover, it was clearly defined in the RFP process for Evaluation and Selection that identification of the selected proponent did not constitute contract award. The RFP made clear that approval was required by “the appropriate approving authority at the City” prior to executing a contract with the “approved successful proponent” [emphasis added].

The audit appears to confuse the well-established legal/procurement principals of Contract A, being the terms and conditions of the tendering process (with its corresponding duties and liabilities on the parties involved in the process), and Contract B, being the actual contract awarded by the owner to the successful bidder for the delivery of the required goods/services.

Management Representation of the Status of Implementation of Recommendation 2 as of July 3, 2012

The guidelines were developed in August 2010, approved by the Chief Procurement Officer in September 2010, and communicated to Purchasing staff at a training session in November 2010.

Management: % complete *100%*

OAG's Follow-up Audit Findings regarding Recommendation 2

Our findings indicate that the City has developed guidance for their procurement staff to address By-law requirements: "PPAR - Procurement Plan Approval Request" has been implemented. The purpose of this tool is to document the requirements, to document a summary of the procurement process to be undertaken, to identify any procurement risks or issues that may present a challenge, as well as to identify key milestones.

Training has been provided to City staff in the use and application of the PPAR. However, the PPAR does not explicitly identify under what circumstances and at what stages of the contracting process information should be presented to Council. We believe it is beneficial to fully document the guidance for reference purposes as indicated in their management response above (i.e., that guidelines will be prepared by end of Q3 2010) for major procurements.

Moreover, the guidance provided to staff, and the newly implemented PPAR, should explicitly establish the circumstances and the stages of the contracting process to appropriately communicate the information to Council while ensuring the timeliness and the relevance of the information delivery.

OAG: % complete *80%*

Management Representation of Status of Implementation of Recommendation 2 as of January 31, 2013

Article 9 of the Purchasing By-law clearly articulates when Council approval is required and includes a provision when the Director and/or Supply deem it to be in the best interest of the City to do so. This along with the implementation of the Procurement Plan Approval Request and training that has been provided to City staff is deemed by management to fully meet this recommendation.

Management: % complete *100%*

2010 Recommendation 3

That the City modify the Purchasing By-law, or develop other policy, to make clear that unidentified or inadequately described optional elements not be included in the Request for Proposal.

2010 Management Response

Management agrees with the recommendation.

On October 30, 2009, the Manager of Supply temporarily halted the inclusion of optional value added features in bid solicitation documents until a formal review was conducted.

Following the review, the Purchasing Procedures & Policy Manual was updated to include instructions regarding the use of optional value added features in bid solicitation documents. Where optional value added features are to be included as part of a multi-stage procurement process, staff should review the appropriateness of including these features based on the information obtained in the preliminary phases of the procurement. Where their inclusion is deemed appropriate, these features should be fully described and priced as part of the financial proposal.

Management believes that no further action is required.

Management Representation of the Status of Implementation of Recommendation 3 as of July 3, 2012

Implementation of this recommendation is complete as per the management response.

Management: % complete 100%

OAG's Follow-up Audit Findings regarding Recommendation 3

Our findings indicate that the Purchasing Procedures & Policy Manual was update to include instructions regarding the use of optional value added features in bid solicitation documents.

OAG: % complete 100%

2010 Recommendation 4

That the City modify its Privilege or Rights Reserved Clause to better assist both the City and potential bidders appreciate the likely consequences which may result should the procurement process be modified or cancelled.

2010 Management Response

Management disagrees with the recommendation.

Privilege clauses, and the right to cancel a procurement, are common features in procurements. Contract authorities insert these types of clauses to give them the greatest degree of flexibility in how the procurement process, including evaluations and contract award, will be conducted.

However, like all clauses that give contract authorities flexibility in how procurements are conducted (the so-called privilege clauses); the courts have

interpreted those clauses in a way that ensures that all parties are treated fairly and in a manner which ensures the integrity of the procurement process.

Similarly, with respect to cancellations, courts have looked carefully at the reasons that motivate a contract authority to cancel a procurement in order to ensure that the cancellation is not done for improper motives. That is, for a purpose that would have the effect of undermining the integrity of the competitive bidding process.

The privilege clause utilized by staff is very similar to the clause used by PWGSC (excerpted below). Management suggests that it is the application of this clause, and not the clause itself, that requires an increased understanding. Management proposes to provide increased training on the application of this clause in an effort to *“better assist both the City and potential bidders to appreciate the likely consequences which may result should the procurement process be modified or cancelled.”*

2003 (2010-01-11) Standard Instructions - Goods or Services - Competitive Requirements

Rights of Canada

Canada reserves the right to:

- (a) reject any or all bids received in response to the bid solicitation;
- (b) enter into negotiations with bidders on any or all aspects of their bids;
- (c) accept any bid in whole or in part without negotiations;
- (d) cancel the bid solicitation at any time;
- (e) reissue the bid solicitation;
- (f) if no responsive bids are received and the requirement is not substantially modified, reissue the bid solicitation by inviting only the bidders who bid to resubmit bids within a period designated by Canada; and,
- (g) negotiate with the sole responsive Bidder to ensure best value to Canada.

Management Representation of the Status of Implementation of Recommendation 4 as of July 3, 2012

Management continues to disagree with this recommendation for the reasons outlined in the management response.

As indicated, management suggests that it is the application of the clause and not the clause itself that requires an increased understanding. Supply has been proactive in discussing this provision with their clients before issuing the bid solicitation.

Management: % complete ***0%***

OAG's Follow-up Audit Findings regarding Recommendation 4

Our findings indicate that the Privilege or Rights Reserved Clause has not been modified as suggested. Management does not believe the change to the clause is required but has recognized that it is the application of the clause that requires increased understanding.

Accordingly, they have provided training on the application of the clause to procurement staff. The training agenda, demonstrates that the matter was discussed. However, we believe that formal guidelines, or directive, should be documented, distributed, and accessible through normal means of disseminating procurement guidance, to ensure staff has the support it needs to apply the intent of the clause appropriately.

OAG: % complete 80%

Management Representation of Status of Implementation of Recommendation 4 as of January 31, 2013

With the continuation of in-house 'lunch and learn sessions' provided by lawyers in Legal Services to City procurement staff on such topics as: (1) the importance of consistency and clear language in procurement documentation; (2) the legal parameters of the Privilege or Rights Reserved Clause; and, (3) current relevant case law on procurement processes, and the practice of the Chief Procurement Officer and/or the Manager of Procurement consulting with and seeking specific legal advice in procurement matters where City staff are considering exercising the legal Privilege or Rights Reserved Clause to modify or cancel a City procurement process, it is deemed by management that this recommendation is fully met.

Management: % complete 100%

2010 Recommendation 5

That the City ensure that major procurement initiatives be required to develop and follow a Briefing Strategy in order to ensure that Council is kept abreast of progress against targets and/or phases which are potentially separated by months if not years.

2010 Management Response

Management agrees with the recommendation. However, management disagrees that Council was not provided with complete and accurate information regarding the NSAS issue.

The background section of report (ACS2009-ICS-TRA-0011), presented to Transit Committee on September 16, 2009, clearly sets out the history of the SmartBus program and how the recommended approach would address any challenges with the program. The Financial section of the report outlines the cost of what staff was

recommending to purchase, and the budgets the spending was to be drawn from. Following the September 16, 2009 Transit Committee meeting, members of Council were provided with detailed information to assist in clarifying the situation. The SmartBus technology has been an ongoing discussion with Council since amalgamation. A number of opportunities have been presented by Transit Services to discuss IT technology, including a 2003 KPMG study, Capital Budget requests and three SmartCard reports.

In order to ensure senior management and Council are kept abreast of progress against targets and/or phases of major procurements, Supply Management has implemented a formal Procurement Plan Approval process whereby requirements and strategies are reviewed and approved in advance of a procurement process. This approval process is aimed at ensuring that requirements, deliverables and timelines are well established and are not unduly restrictive, and that multi-stage procurement processes do not unnecessarily limit competition.

It is proposed that the formal procurement plan be used as a communications tool identifying the timing and proposed strategy for procuring the components comprising the initiative as a whole, and that regular updates be provided to Committee and/or Council on significant changes (technology, schedule, proponents, and costs) and their impact on the procurement plan.

Management believes that no further action is required.

Management Representation of the Status of Implementation of Recommendation 5 as of July 3, 2012

Implementation of this recommendation is complete as per the management response.

Management: % complete *100%*

OAG's Follow-up Audit Findings regarding Recommendation 5

Management agrees with the recommendation but believes no further action is required. However, Supply Management has implemented a formal Procurement Plan Approval Request (PPAR) process whereby requirements and strategies are reviewed and approved in advance of the launch of the procurement process. The purpose of this tool is to document the requirements, to document a summary of the procurement process to be undertaken, to identify any procurement risks or issues that may present a challenge, as well as to identify key milestones. The document includes procurement approvals. While the communication and/or briefing strategy is a process that belongs to the "client" requesting the procurement, this PPAR formalizes the tracking of the various key steps in the process.

OAG: % complete *100%*

2010 Recommendation 6

That all parties involved in major procurement initiatives, with respect to their various areas of expertise, ensure that Council receives correct and timely information.

2010 Management Response

Management agrees with the recommendation. However, management disagrees that Council was not provided with complete and accurate information regarding the NSAS issue.

The background section of report (ACS2009-ICS-TRA-0011), presented to Transit Committee on September 16, 2009, clearly sets out the history of the SmartBus program and how the recommended approach would address any challenges with the program. The Financial section of the report outlines the cost of what staff was recommending to purchase, and the budgets the spending was to be drawn from. Following the September 16, 2009 Transit Committee meeting, members of Council were provided with detailed information to assist in clarifying the situation. The SmartBus technology has been an ongoing discussion with Council since amalgamation. A number of opportunities have been presented by Transit Services to discuss IT technology, including a 2003 KPMG study, Capital Budget requests and three SmartCard reports.

Management believes that no further action is required.

Management Representation of the Status of Implementation of Recommendation 6 as of July 3, 2012

Implementation of this recommendation is complete as per the management response.

Management: % complete ***100%***

OAG's Follow-up Audit Findings regarding Recommendation 6

Management agrees with the recommendation but disagrees that management has not provided correct and timely information to Council. However, the process followed to communicate to Council has been improved, in part due to the implementation of a "No Surprises Strategy". This strategy, led by the General Manager, Transit Services, aims to anticipate, mitigate, respect and communicate items of concerns to the proper individuals responsible to take action. In addition, a PPAR has been developed (refer to discussion in Recommendation 1 and 2), and its respective training, which will contribute to improve the delivery of information to Council.

OAG: % complete ***100%***

4 SUMMARY OF THE LEVEL OF COMPLETION

1. The table below outlines our assessment of the level of completion of each recommendation as of December 2012.

CATEGORY	% COMPLETE	RECOMMENDATIONS	NUMBER OF RECOMMENDATIONS	PERCENTAGE OF TOTAL RECOMMENDATIONS
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TOTAL			6	100%

5 CONCLUSION

In the original audit, Management disagreed with some of the findings and recommendations, or agreed with a recommendation but believed they had met the requirement during the NSAS procurement process. This related primarily to the issues of on-going communication to Council. However, during our follow-up audit, we found that most of the recommendations have been acted upon either directly or indirectly as noted in the table above.

6 ACKNOWLEDGEMENT

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management.