



*Office of the Auditor General*

**AUDIT OF THE CONTRACT AWARD OF THE  
OPERATING AND MAINTENANCE AGREEMENT FOR THE  
VILLAGE WALK WASTEWATER TREATMENT FACILITY**

**2006**

**Chapter 14**

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## 1. Introduction

The audit was conducted as a result of a report to the Fraud and Waste Hotline. It was not originally identified in the 2006 Audit Plan that was presented to Council.

## 2. Background

The report to the Fraud and Waste Hotline alleges that a numbered company, not active in the municipal water and wastewater sector in this part of Ontario, got a contract with the City of Ottawa for a price that was 2.26 times higher than a competitor's proposed price, without any procurement process. The contract was for the operation and maintenance of Village Walk Wastewater Facility in Manotick.

We found that an agreement for operating and maintenance services for Village Walk Wastewater Treatment Facility was entered into with 1504927 Ontario Inc. (iDM) in June 2005 for the period from June 2005 to June 2010 for a total of \$1.8 million including taxes. This contract was established using a Financial Support Unit purchase order (FPO) and included the following text, *"As per contract. This direction was a carried recommendation found in a staff report to the Region of Ottawa-Carleton (ROC) Corporate Services and Economic Development Committee dated July 20, 1998. This purchase order is issued for payment purposes only."*

Under the City's financial policy, an FPO may be used for payment with reference to a contract which has been approved by Council.

In this case, the contract was awarded without following a competitive procurement process. An FPO was used based on a recommendation found in the July 20, 1998 ROC Corporate Services and Economic Development Committee (approved at the August 12, 1998 Regional Council meeting). The Department and the Financial Support Unit (FSU) used this resolution as their criteria to establish an FPO.

## 3. Audit Objective

The objective of this audit was to review the procurement process used for this contract and to determine if this contract was awarded properly in accordance with the Purchasing By-law and the City's policies.

## 4. Observations

Subsequent follow-up with the FSU and Department to confirm the rationale of how they satisfied themselves that Council authority was in place in order to comply with the corporate policy for an FPO resulted in the following responses: The FSU and Department felt they were following the direction from the 1998 Regional Municipality

of Ottawa-Carleton Council resolution. However, as noted below, we found they were not in compliance with the Council resolution.

The ROC Council resolution of August 12, 1998 stated, “*That Council approve: The Region be authorised to enter into an operating and maintenance contract for the CMS system for a period of two years.*”

Upon reviewing the responses from the FSU, the Department and the Council resolution relating to this matter, we consulted with the City’s Legal Services Branch and attach the opinion that they provided, highlights of which have been detailed below:

1. **Sole source contract issue** – Legal Services was of the opinion that if the recommendations were read together as a whole that Council intended to provide City staff with authority to sole source the contract with CMS Group Inc., not iDM Inc.
2. **Length of term of contract** – Legal Services could find no support within the Council report for a length of term of five years. The Council authority was for two years.
3. **Authority to contract with iDM Inc.** – Legal Services could not find any authority within the Council report for the City to enter into a contract with iDM Inc. (1504927 Ontario Inc.) The Council authority was to enter into a contract with CMS (or a successor company).

Legal Services indicated options that were available to City staff included:

- going back to Council to seek authority for a two-year sole source contract (or five-year sole source contract) with iDM Inc. (1504927 Ontario Inc.);
- pursuing a competitive process; or,
- Legal Services suggested there may have been some limited authority to sole source under section 22(d) of the Purchasing By-law where there is an absence of competition for technical or other reasons and the goods, services or construction can only be supplied by a particular supplier and no alternative exists.

We would consider only the first two options relevant in this case as there appeared to be a competitive market for these services.

4. **Legal Services Review of the Contract** – Although the contract was stamped as approved for execution by Legal Services in June 2005, their opinion was that there had been no request to confirm the authority of the City to enter into the contract. Legal Services does not believe there was authority to have entered into the contract. The Legal approval stamp should only be used if appropriate authority exists to enter into the contract.

5. **Delegation of Authority By-law** – Legal Services sent a letter to the Acting Deputy City Manager, that stated, “*as Acting Deputy City Manager of Public Works and Services, you have delegated authority to execute the above agreement pursuant to City of Ottawa Delegated Authority By-law, Schedule “D”, section 2*”. Legal Services has now reviewed this provision and noted that the legal opinion previously provided was erroneous.
6. **Status of contract with iDM Inc.** – Legal Services indicated there is no termination for convenience in the contract, therefore internal irregularity would not negate the binding nature of the five-year contract awarded using an FPO. Where appropriate, there should be a standard termination for convenience clause in contracts.

## 5. Other Issues

### Village of Manotick Servicing System

We noted that, in addition to the project for the Village Walk Wastewater Treatment Facility which was initially introduced to Regional Council in 1996, there was a separate project in progress entitled Manotick Servicing System. The Manotick Servicing System is a project to provide central water and wastewater services to the Village of Manotick to address existing and future servicing concerns. The services study in 1991/92 concluded connection to central services was the best alternative for new development in Manotick. Approval was delayed due to lack of community consensus until 2000/2001, when staff had indications that central water and sewer services for Manotick would proceed. It did not appear that Council was made aware that the full servicing project was also proceeding at the same time Council was considering capital costs approved for the Village Walk Wastewater Treatment Facility. Reports to Council did not provide options and analysis of connecting the Village Walk Wastewater Facility project to the overall Manotick Servicing System when the Village Walk project was first approved in 1996. In addition, even when capital budget authority was increased by over 75% (\$1.1 million) from 2002 to 2005 for the Village Walk Wastewater Facility, options and analysis of connecting to the overall system were not provided. Had these options been presented initially, our preliminary estimate is that a cost saving of \$2.6 million could have been achieved by not completing the Village Walk Wastewater Facility project, but waiting to connect the Village Walk to the overall Manotick Servicing System.

## 6. Key Findings

The key findings are:

1. The contract of \$1.8 million to iDM Inc. (1504297 Ontario Inc.) was inappropriately awarded using an FSU Purchase Order (FPO). There was no Council authority to award this contract to this supplier.
2. This contract should have included a standard termination for convenience clause.

3. This contract was not awarded in compliance with the Purchasing By-law. There appears to be a competitive market for services relating to the operation of a waste water plant and, therefore, there may have been financial savings had this gone through a competitive process.
4. Where the contract was stamped as approved for execution by Legal Services, it was their opinion that there was no request to confirm the authority of the City to enter into the contract; however, the stamp would appear to indicate that the authority exists.
5. Legal Services advised the Deputy City Manager of PWS that he had delegated authority to execute the agreement, whereas a subsequent review by Legal Services indicated he does not.
6. Reports to Council did not provide options and analysis of alternate solutions such as connecting the Village Walk Wastewater Facility project to the overall Manotick Servicing System, resulting in the following:
  - Council was not made aware of alternate project options;
  - Had these options been presented, our preliminary estimate is that a cost saving of \$2.6 million could have been achieved.

## 7. Recommendations

### **Recommendation 1**

**That Corporate Services Department ensure a Financial Support Unit purchase order (FPO) procurement not be issued unless Council authority exists.**

#### **Management Response**

Management agrees with this recommendation. The Financial Support Unit purchase order (FPO) procurement should only be issued on contracts previously approved by Council or when the contract has been included in the Delegation of Authority By-law.

### **Recommendation 2**

**That Corporate Services Department ensure where a competitive market exists for a product or service, a competitive process is generally followed in accordance with the Purchasing By-law.**

#### **Management Response**

Management agrees with this recommendation.

### **Recommendation 3**

**That Corporate Services Department ensure that where Legal Services stamps a contract as approved, that the authority to enter into the contract is valid and**

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**appropriate. Where appropriate, there should be a standard termination for convenience clause included in contracts.**

**Management Response**

Management agrees with the recommendation. Based on the circumstances highlighted in the report, it appears that the lawyer responsible for providing legal advice to staff in the Supply Management Division and the Public Works and Services Department mistakenly concluded that there was authority for the City to enter into the contract as a result of an error in judgment.

To guard against such errors in the future, Legal Services will implement controls based on dollar thresholds or type of contract to ensure that where appropriate the authority to enter into a contract must be formally confirmed by the designated Manager within the Legal Services Branch.

It is agreed that where appropriate, there should be a standard termination for convenience clause included in contracts.

**Recommendation 4**

**That Planning, Transit and the Environment Department ensure all reports to Council include discussion and evaluation of the alternate options available to Council.**

**Management Response**

Management disagrees with the recommendation.

A Council report that went forward to CSEDC February 16, 2001 indicated that a servicing study "Manotick Servicing Options Study" was done to investigate and develop solutions to the servicing requirements for Manotick to the year 2021. The report recommended that the disposal of wastewater from Manotick be pumped to the West Rideau Collector at an estimated cost of the collection system, pumping station and forcemain being 11 million dollars. As a result of the report, it was in the opinion of staff, that the possibility of such a forcemain in the future was not a present answer for the development of this site. This suggested approach was only at the most preliminary planning stages and there were no environmental, planning or funding approvals in place. Therefore, it was recommended that Council continue to support the development at the former Village Court site.

The hauling of waste was not put forward for consideration, as it was deemed by staff, that it was not a viable option on an indeterminate basis, due to environmental and residential concerns. Council, as always in considering the report before them, had the opportunity to stop the project by defeating the recommendation put forward and by directing staff to stop the continuation of the development site.