



Office of the Auditor General / Bureau du vérificateur général

**FOLLOW-UP TO THE 2006 AUDIT OF THE CONTRACT AWARD OF
THE OPERATING AND MAINTENANCE AGREEMENT FOR THE
VILLAGE WALK WASTEWATER TREATMENT FACILITY**

2009

**SUIVI DE LA VÉRIFICATION DE L'ATTRIBUTION DU CONTRAT
DÉCOULANT DE L'ACCORD D'EXPLOITATION ET D'ENTRETIEN
POUR L'INSTALLATION DE TRAITEMENT DES EAUX USÉES DE
VILLAGE WALK DE 2006**

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EXECUTIVE SUMMARY

Introduction

The Follow-up to the 2006 Audit of the Contract Award of the Operating and Maintenance Agreement for the Village Walk Wastewater Treatment Facility was included in the Auditor General’s 2009 Audit Plan.

The key findings of the original 2006 audit included:

- The contract for \$1.8 million was not awarded in compliance with the Purchasing By-law;
- No Council authority was obtained to award the contract;
- There may have been financial savings had this award gone through a competitive process; and,
- Reports to Council did not provide consideration of options and an analysis of alternate solutions.

Summary of the Level of Completion

The table below outlines our assessment of the level of completion of each recommendation as of Fall 2009.

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	-	-	-
COMPLETE	100	1, 2, 3, 4	4	100%
TOTAL			4	100%

Conclusion

During 2008, the City issued approximately 134 Financial Support Unit (FSU) Purchase Orders (FPO). Of these the predominant uses were for the contracting of instructors of one type or another at various community centres or for the conduct of maintenance work where a right of first refusal on such work was in place. There were a handful of payments to “institutions” such as hospitals and Algonquin College for revenue sharing related to parking and capital contributions of \$75,000 for start up costs for child care facilities. There were also roughly a half dozen issued to Energy Ottawa and two for specialized security requirements at \$160,000 and \$618,000.

In addition there was one for \$1.4 million for disposal / tipping in Moose Creek and one for \$2.2 million for double-decker buses for evaluation.

The balance of the money expended through FPOs involved approximately eight transactions related to front end agreements associated with major development projects, each with a value close to \$1,000,000 or more.

Given the nature of the original audit and related recommendations we reviewed four major transactions in greater detail. Two for front end agreements with developers, the landfill agreement and the purchase of double-decker buses.

All four transactions obtained Council approval after submitting documentation which outlined the options available and the limited scope for competition. All of the requirements were well justified.

However, in two of the transactions, the agreements related to the landfill site and the purchase of double-decker buses, while coded as FPO, they do not appear to meet the limited applications of this type of procurement process, which are; front ending agreements, defined Community and Protective Services contracts or third party management of City facilities.

The limited applicability of the FPO process does not appear to be well understood by some staff in FSUs and Supply Management. The FPO procedure documents could benefit from better description of the links to the requirements of the Purchasing By-law.

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 de l'attribution du contrat découlant de l'accord d'exploitation et d'entretien pour l'installation de traitement des eaux usées de Village Walk de 2006 était prévu dans le Plan de vérification du Bureau du vérificateur général de 2009.

Les constatations principales de la vérification initiale de 2006 sont les suivantes :

- L'adjudication du contrat de 1,8 million de dollars n'a pas été effectuée conformément au Règlement municipal sur les achats;
- Le Conseil municipal n'a pas approuvé l'adjudication du contrat;
- La Ville aurait pu faire des économies si elle avait eu recours à un processus d'adjudication concurrentiel;
- Les rapports soumis au Conseil ne comportaient ni examen des options envisagées ni analyse de solutions de rechange.

Sommaire du degré d'achèvement

Le tableau ci-dessous présente notre évaluation du degré d'achèvement de chaque recommandation à l'automne 2009 :

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	-	-	-
COMPLÉTÉE	100	1, 2, 3, 4	4	100 %
TOTAL			4	100 %

Conclusion

Au cours de 2008, la Ville a émis environ 134 bons de commande de l'Unité du support financier (USF) (BCF). La plupart ont été utilisés pour la retenue de services d'instructeurs d'un genre ou d'un autre dans divers centres communautaires ou pour effectuer des travaux d'entretien où le droit de préférence pour de tels travaux est en vigueur. Quelques paiements ont été versés à des « institutions » comme des hôpitaux et le Collège Algonquin en vue du partage des recettes liées au stationnement et aux apports de capitaux d'un montant de 75 000 \$ couvrant les frais de lancement de garderies. Une demi-douzaine environ a été également émise à Énergie Ottawa ainsi que deux relatifs à des exigences spécialisées en sécurité pour des montants de 160 000 \$ et de 618 000 \$.

De plus, un bon de commande a été émis pour un montant de 1,4 million de dollars pour le site d'enfouissement/de déversement du ruisseau Moose de même qu'un autre s'élevant à 2,2 M\$ concernant les autobus à deux étages aux fins d'évaluation.

Le solde de l'argent dépensé par le biais de bons de commandes touchent environ huit transactions relatives à des ententes ponctuelles liées à des projets d'aménagement majeurs, chacun ayant une valeur de près ou de plus d'un million de dollars.

Étant donné la nature de la vérification originale et des recommandations connexes, nous avons examiné plus en profondeur quatre transactions importantes : deux concernant des ententes ponctuelles avec des promoteurs, l'entente pour le site d'enfouissement et l'achat des autobus à deux étages.

Les quatre transactions ont reçu l'approbation du Conseil après la soumission des documents exposant les options possibles et la portée limitée pour les concours. Toutes les exigences étaient parfaitement justifiées.

Cependant, dans le cas de deux transactions, nommément l'entente liée au site d'enfouissement et l'achat des autobus à deux étages, alors qu'elles étaient codées comme des BCF, elles ne semblent pas entrer dans le cadre des applications limitées de ce type de processus d'approvisionnement, qui sont des ententes ponctuelles, des contrats définis des Services communautaires et de protection ou la gestion par une tierce partie d'installations de la Ville.

L'applicabilité limitée du processus de BCF ne semble pas être bien compris par certains membres du personnel des USF et de Gestion de l'approvisionnement. Il serait bon d'intégrer une meilleure description des liens aux exigences du Règlement sur les achats dans les procédures relatives au BCF.

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 2006 Audit of the Contract Award of the Operating and Maintenance Agreement for the Village Walk Wastewater Treatment Facility was included in the Auditor General's 2009 Audit Plan.

The key findings of the original 2006 audit included:

- The contract for \$1.8 million was not awarded in compliance with the Purchasing By-law;
- No Council authority was obtained to award the contract;
- There may have been financial savings had this award gone through a competitive process; and,
- Reports to Council did not provide consideration of options and an analysis of alternate solutions.

2 KEY FINDINGS OF THE ORIGINAL 2006 AUDIT

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.

3 STATUS OF IMPLEMENTATION OF 2006 AUDIT RECOMMENDATIONS

2006 Recommendation 1

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

2006 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.

Management Representation of the Status of Implementation of Recommendation 1 at December 31, 2008

Implementation of this recommendation is 100% complete.

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

OAG's Follow-up Audit Findings regarding Recommendation 1

During 2008, the City issued approximately 134 FPOs. Of these the predominant uses were for the contracting of instructors of one type or another at various community centres or the conduct of maintenance work through Arnon Developments (who we were advised, had a right of first refusal on such work). There were a handful of payments to "institutions" such as hospitals and Algonquin College for revenue sharing related to parking and capital contributions of \$75,000 for start up costs for child care facilities. There were also roughly a half dozen issued to Energy Ottawa and two for specialized security requirements at \$160,000 and \$618,000.

In addition there was one for \$1.4 million for disposal / tipping in Moose Creek and one for \$2.2 million for double-decker buses for evaluation.

The balance of the money expended through FPOs involved approximately eight transactions related to front end agreements associated with major development projects, each with a value close to \$1,000,000 or more.

We reviewed four major transactions in greater detail. Two for front-end agreements with developers, the landfill agreement and the purchase of double-decker buses. There was Council authority available for each agreement.

The audit recommendation has been 100% completed.

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

2006 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.

2006 Management Response

Management agrees with this recommendation.

Management Representation of the Status of Implementation of Recommendation 2 at December 31, 2008

Implementation of this recommendation is 100% complete.

Management: % complete *100%*

OAG's Follow-up Audit Findings regarding Recommendation 2

In all four cases reviewed there was a rationale provided for the process and an appropriate explanation that there were no viable alternate sources (i.e., no basis for competition).

The audit recommendation has been 100% completed.

OAG: % complete *100%*

2006 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 appropriate. Where appropriate, there should be a standard termination for convenience clause included in contracts.

2006 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.

Management Representation of the Status of Implementation of Recommendation 3 at December 31, 2008

Implementation of this recommendation is 100% complete.

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

OAG's Follow-up Audit Findings regarding Recommendation 3

A protocol has been implemented in Legal Services dating back to 2006 to ensure that where Legal Services stamps a contract as approved, that the authority to enter into the contract is valid and appropriate. All Financial Support Unit purchase orders pertaining to contracts with a threshold of \$100,000 or more can only be stamped by the Deputy City Solicitor for approval (or, in his absence, by the Senior Legal Counsel).

We reviewed four major transactions in greater detail. In all cases the requirement to acquire the goods and/or services had been given Council approval. In the cases where the contract/agreement was with developers with a front-end agreement, they were initialed by Legal. In the two instances where Legal Services stamped the contracts as approved, the authority to enter into the contract was valid and appropriate.

While the process/protocol established by Legal is appropriate, the agreements related to the landfill site and the purchase of double-decker buses were not initialed by Legal, as the FSU in program areas did not directly consult them (the FSU for Transit consulted with risk management regarding insurance requirements for the purchase of double-decker buses).

Furthermore, although these last two agreements are coded as FPOs, they do not appear to meet the prescriptive limitations of this type of procurement vehicle, which are; front ending agreements, defined Community and Protective Services contracts or third party management of City facilities, set out in the Payment with Reference to a Contract Procedures.

Supply Management was not involved in any aspect of the contract negotiations for the buses. However they did review the contractual terms and conditions, and recommend that the FPO payment method be utilized.

Of the four contracts/agreement reviewed, three contained a standard termination for convenience clause.

The limited applicability of the FPO process does not appear to be well understood by some staff in FSU and some in Supply Management. The FPO procedure documents could benefit from better description of the links to the requirements of the Purchasing By-law.

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

Management Comment on OAG's Follow-up Audit Findings regarding Recommendation 3

A Finance Purchase Order (FPO) is defined as a purchase order used for payments with reference to a contract, which has been approved by Council **OR** approved under the Delegated Authority By-law and does not fall under the scope of the Purchasing By-law. The policy goes on to say that the intent of the payment with reference to a contract is to provide a payment method that references an approved contract that falls outside the scope of the Purchasing By-law. The two contracts in question clearly meet the definitions described above but are excluded when the policy goes on to limit FPO use in only certain operational areas.

Finance is of the opinion that the policy does not reflect the best interests of the City. For this reason, an exception was made to the policy. In both cases, a FPO was issued to allow for the tracking of expenditures/payments made against the \$2.3M and \$1.4M agreements approved by Council versus using the Payment Without Reference (PWR) as a payment mechanism.

Finance will undertake to amend the policy to allow for an expanded use of FPOs under the policy to include all Council approved contracts that do not go through Supply.

2006 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.

2006 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.

Management Representation of the Status of Implementation of Recommendation 4 at December 31, 2008

Implementation of this recommendation is 100% complete.

This item was discussed at a meeting between the Mayor, City Manager and Auditor General on October 3, 2007. It was agreed that it is accepted practice for the Planning, Transit and the Environment department (now Infrastructure Services and Community Sustainability department) to provide discussion and evaluation of reasonable options in reports to Council, and that this practice would continue.

Management: % complete **100%**

OAG’s Follow-up Audit Findings regarding Recommendation 4

In the four major transactions reviewed, there was a rationale provided for the process and an explanation of why there were no viable alternate options to meet the requirement.

The audit recommendation has been 100% completed.

OAG: % complete **100%**

4 SUMMARY OF THE LEVEL OF COMPLETION

The table below outlines our assessment of the level of completion of each recommendation as of Fall 2009.

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

5 CONCLUSION

During 2008, the City issued approximately 134 FSU Purchase Orders (FPO). Of these the predominant uses were for the contracting of instructors of one type or another at various community centres or for the conduct of maintenance work where a right of first refusal on such work was in place. There were a handful of payments to “institutions” such as hospitals and Algonquin College for revenue sharing related to parking and capital contributions of \$75,000 for start up costs for child care facilities. There were also roughly a half dozen issued to Energy Ottawa and two for specialized security requirements at \$160,000 and \$618,000.

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The balance of the money expended through FPOs involved approximately eight transactions related to front end agreements associated with major development projects, each with a value close to \$1,000,000 or more.

Given the nature of the original audit and related recommendations we reviewed four major transactions in greater detail: Two for front end agreements with developers, the landfill agreement and the purchase of double-decker buses.

All four transactions obtained Council approval after submitting documentation which outlined the options available and the limited scope for competition. All of the requirements were well justified.

However, in two of the transactions, the agreements related to the landfill site and the purchase of double-decker buses, while coded as FPOs, they do not appear to meet the limited applications of this type of procurement process, which are; front ending agreements, defined Community and Protective Services contracts or third party management of City facilities.

The limited applicability of the FPO process does not appear to be well understood by some staff in FSUs and Supply Management. The FPO procedure documents could benefit from better description of the links to the requirements of the Purchasing By-law.

6 ACKNOWLEDGEMENT

We wish to express appreciation to the staff and management for their cooperation and assistance throughout the audit process.