

City Software License Subscription Contract Issue - Process for Resolution

Date: July 13, 2021

To: City Council

From: City Manager, and Deputy City Manager, Corporate Services

Wards: All

SUMMARY

This report is pursuant to an Audit Committee motion under AU9.13 - "City must improve on Software License Subscription Tracking, Utilization and Compliance", at its meeting on July 7, 2021. At this meeting, Audit Committee directed the City Manager, in consultation with the Auditor General, to report directly to the July 14 and 15, 2021 meeting of City Council on the approach taken by staff to resolve the dispute as noted in the report from the Auditor General under AU9.13.

In AU9.13, the Auditor General provided a review of an allegation of waste and its settlement regarding the City's non-compliance with a software end user agreement which resulted in the City making an advanced purchase for new software licenses that continue to remain underutilized. Specific details of this matter are confidential and are contained in the confidential attachment to the previous report (June 23, 2021) of the Auditor General.

At the time of the negotiation with the vendor with respect to non-compliance, to make an advance purchase for annual software licenses for planned phases of council approved projects, the implementation timelines were still being finalized. The City's approach in settling this dispute was focussed on mitigating business risk, both financial and reputational, based on a potential worst-case scenario with the vendor.

The Auditor General has been provided a copy of this report and she will be reporting independently.

FINANCIAL IMPACT

There are no direct financial implications resulting from the adoption of this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On July 7, 2021, Audit Committee directed the City Manager, in consultation with the Auditor General, to report directly to the July 14 and 15, 2021 meeting of City Council on the approach taken by City staff to resolve the dispute as noted in the report (June 23, 2021) from the Auditor General.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.AU9.13>

COMMENTS

The core issue is the City technical staff's lapse in not escalating the license reporting issue. While they did work diligently to resolve the issue, they failed to escalate the issue to the Senior Management Team for timely resolution, which led to this becoming a larger compliance issue with the vendor. The lack of proper escalation led to the City incurring additional costs to settle with the vendor in June 2020.

The City approach to resolving the dispute was to mitigate business risk, by aligning with negotiated purchases for a reasonable amount, based on a potential worst-case scenario with the vendor. Technology Services Division (TSD) had awarded contracts through competitive calls according to the authority delegated to staff under the Municipal Code Chapter 195, Purchasing for these on-going projects. When these contracts were originally procured, it was part of the contract that TSD would buy these licenses at some point during the term. Subsequently, the negotiated agreement with the vendor in June 2020, accelerated the purchase of the licenses; however, it did not increase the initial value of these contracts. Under Toronto Municipal Code Chapter 195, Purchasing, City Council has authorized Division Heads to oversee the management of all contracts led by their division, including the authority to approve amendments to the contract. Further, under Chapter 71, Financial Control, staff may approve an over-expenditure on a contract up to \$500,000, and any over-expenditure above \$500,000 requires the approval of the appropriate Standing Committee. See Appendix 1 for excerpts from Chapter 195 and Chapter 71. In this situation, the advanced purchase of these licenses did not result in an over expenditure on the contracts and were otherwise within the authority of the Chief Technology Officer as per Chapter 195.

City staff made best efforts to expedite the implementation timelines to reduce the idle duration of the licenses purchased in advance. As of May 2021, the two product utilizations were at 47%, for the one which is within the control of Technology Services

and 15%, for the one which has a dependency from other Divisions, with a weighted average of 17%. Per project timelines now established, all licenses will be utilized by the end of 2022.

The following responses to the "lessons learnt" through what occurred in this instance and the investigation of this allegation, are in the process of being implemented:

- **Culture Adjustment and Leadership Accountability** - Changes at Managerial level to improve and ensure proper due diligence and establish senior management escalation procedures. Communicate escalation mechanism to all staff in the Division and hold them accountable to established procedure. In addition, set clear guidelines for compliance and formally reiterate to the staff involved of compliance expectations and disciplinary consequences. Hold them to compliance practices by educating them about processes and providing training, documenting compliance expectations, and conducting regular internal audit.
- **Process Improvements** - Implementing policies and procedures that enhance compliance expectations among staff, including escalation to senior management where required to quickly resolve potential issues.
 - Adopt an integrated approach by implementing a commercial compliance framework through a compliance specialist staff, with a direct reporting line to the Division Head, located separately from the other operational units of the Division so they can be independent of the operations they assess. They will develop and establish a compliance methodology, policies, procedures and a training program and leverage their experience and knowledge to understand the complexity of license agreements and how usage and user access profile data outputs can best be aligned with the optimum licensing agreements for the City, along with well-defined processes, to ensure compliance. They will have the accountability to constantly monitor to ensure staff, divisions and stakeholders are following procedures correctly. This will help in increasing employee awareness of regulatory compliance requirements and issues, and aid in minimization and mitigation of legal, reputational, and financial risk to the City.
 - Initiating a centralized inventory and internal review to evaluate existing asset/software license agreements and, as recommended by the Auditor General, consult with Legal Services to ensure that for all future agreements, consideration is given to appropriate clauses such as limiting additional payments, only charging for historical usage when issues arise with license compliance, or addressing installation issues with any required reporting tool.
 - Replacing the City's current Asset Management Tool, as it does not track the actual utilization of licenses and subscriptions, with a new enterprise set of tools that will provide an efficient way to track, evaluate, and manage software licenses, compliance, and optimization. The tentative timeline to implement the new tool is Q3 of 2022.

Conclusion:

The purchases were acquired properly under authority delegated to staff per Chapter 195 and the agreement to purchase the license subscriptions did not result in an over expenditure on the contract. Lessons learned, and process improvements will ensure effective license management compliance and utilization. These improvements will avoid unnecessary costs incurred where the software licenses are utilized as planned.

Technology Services Division will provide an annual report to the General Government and Licensing Committee advising of all contract settlements involving additional expenditures that exceed \$500,000 due to City non-compliance in technology asset contracts, if any, for information.

CONTACT

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SIGNATURE

Chris Murray
City Manager

Josie Scioli
Deputy City Manager, Corporate Services

ATTACHMENTS

Appendix 1 - Excerpts from Chapter 195, Purchasing and Chapter 71, Financial Control

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Chapter 195 - Purchasing - Section 195-4.1G - Division Head Responsibilities

§ 195-4.1. Division head responsibilities.

Division heads or their delegate(s) shall be responsible for:

G. Directing and overseeing the management of all contracts led by or coordinated by their division including, without limitation, the approval of subcontracting, assignment, amendment, optional renewal, early termination, enforcement of warranty and performance security and the adoption of related divisional contract management procedures;

Chapter 71 - Financial Control - Section 71-11.1 Over-expenditures on commitments

§ 71-11.1. Over-expenditures on commitments.

A. A division head, or his or her delegate, may authorize expenditures in excess of the amount of a commitment, entered into in compliance with this chapter and Chapter 195, Purchasing, to a maximum of 10 percent of the original amount of the commitment, provided that:

(1) Such additional amount shall not exceed \$500,000; and

(2) Council has:

(a) Provided funds in the operating or capital budget for that purpose or funds are provided pursuant to § 71-19; or

(b) Approved the project and the funding therefor; and

(c) Sufficient funds remain in the project or program; and

(3) If the commitment was within the spending authority of staff, the person authorizing the additional amount is in a management position superior to that of the person which authorized the original amount of the commitment.

B. Despite Subsection A, the City Manager, or his or her delegate, may authorize additional expenditures in excess of the original amount of a commitment, entered into in compliance with this chapter and with Chapter 195, Purchasing, of up to \$500,000, provided there is compliance with the conditions contained in Subsection A(2) and, in the event of any delegation under this Subsection B by the City Manager, additional compliance with the condition contained in Subsection A(3).

C. Any amendment to a commitment which requires expenditures in excess of the amounts that may be authorized under Subsection A or B requires approval of the

appropriate standing committee prior to the making of a payment for the expenditure except for purchases made under § 195-9B(1) or 195-10F of Chapter 195, Purchasing.