

**Toronto Computer Leasing Inquiry  
Research Paper**

**PROCUREMENT**

**Volume 2:**

**City of Toronto & Recommendations**

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# ***Executive Summary***

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## **Part 1: Introduction**

The focus of this second and final volume on procurement is on issues and challenges facing the City of Toronto as well as recommendations for potential changes to current procurement policies and practices. In addition to this Introduction, the report is presented in four sections:

- An overview of the procurement provisions of the *Municipal Act, 2001* (Ontario) and other guidance provided by the Ministry of Municipal Affairs and Housing.
- A summary of the City Auditor General's March 2003 procurement review.
- An overview of current policies and practices in place at the City.
- Recommendations for changes to the City's procurement function.

This report builds on *Procurement Volume 1* dealing with common and significant risks that public sector jurisdictions face concerning procurement, including:

- Values-Based Procurement.
- Readiness.
- Specifications.
- Pre-RFP Consultation.
- Vendor Debriefing & Complaints Handling.
- Single Point of Contact.
- Role of Elected Officials.
- Training & Development.
- Evaluation.
- Clear Roles & Responsibilities.
- Efficiency & Effectiveness/Value for Money.

*Volume 1* also included a discussion of two best practices:

- The use of fairness commissioners.
- The use of a Best and Final Offer procurement methodology.

## **Research Approach**

The preparation of Volumes 1 and 2 included reviews of over 2,000 pages of documents and interviews with more than 20 individuals, including current and former municipal officials, provincial government officials, academics, private sector executives, and other experts. Information was collected on a wide range of jurisdictions including examples from Canada, the U.S., the United Kingdom, Australia, and New Zealand. Sources included departments/branches of municipal, provincial, and state governments, academic institutions, private corporations, foundations and research organizations, and associations representing procurement officials.

## **Part 2: Requirements of the *Municipal Act, 2001***

The *Municipal Act, 2001* contains specific provisions requiring Ontario municipalities and local boards to have procurement policies in place by January 1, 2005 and specifies eight areas to be addressed.

- a. "The types of procurement processes that shall be used;*
- b. The goals to be achieved by using each type of procurement process;*
- c. The circumstances under which each type of procurement process shall be used;*
- d. The circumstances under which a tendering process is not required;*
- e. The circumstances under which in-house bids will be encouraged as part of the tendering process;*

- f. *How the integrity of each procurement process will be maintained;*
- g. *How the interests of the municipality or local board, as the case may be, the public and persons participating in a procurement will be protected;*
- h. *How and when the procurement processes will be reviewed to evaluate their effectiveness.”*

## **Specific Guidance**

To assist municipalities and local boards in meeting the requirements of section 271 (1), MMAH created a 75-page *Guide to Developing Procurement Bylaws* (July 2003). The focus is on best practice processes that can be used to create a bylaw or review an existing bylaw, including key questions that municipalities should ask throughout the process. The guide contains much useful advice in its three core sections:

### **Goals**

This section includes a set of “suggested goals” that are in fact underlying values/principles that would be recognized widely by procurement professionals:

- Effectiveness.
- Objectivity.
- Fairness.
- Openness and Transparency.
- Accountability.
- Efficiency.

### **Types of procurement processes, and when to use them**

This section carries the key message that municipal procurement bylaws and policies should be clear with respect to “*the types of procurement processes that will be used, the goals of each, the circumstances under which each type will be used, and the circumstances where a tendering process is not required.*” Two major themes in this section are:

- The distinction between formal and informal procurement processes.
- The need to be clear when no competitive process is required.

### **Maintaining integrity and protecting interests in procurement**

In this section, the guide addresses the theme often stated in the research and reiterated in *Volume 1* that procurement is an inherently risky undertaking. The Ministry proposes a risk management approach, i.e. one in which maintaining integrity and protecting stakeholder interests involves identifying “*risks than can arise...and the measures that can be taken to minimize or mitigate them.*” This focus on risk management is consistent with the best practice in many jurisdictions.

## **Part 3: Procurement Process Review – Auditor**

### **General**

The City of Toronto’s Purchasing and Materials Management Division (PMMD) has already been the subject of a major procurement process review by the City’s Auditor General (*Procurement Process Review – City of Toronto, March 2003*). The resulting 70-page report contained 43 recommendations for improvements to the City’s policies and practices. Overall response from management was very positive, including agreement that the function was in need of a comprehensive review/update and that the Auditor General’s report has been a useful catalyst and focus for this review.

### **Key Findings and Recommendations**

- **Organization:** The review team suggested that there is “no one ‘best’ organizational structure” for the procurement function and that it was “premature” to recommend a specific revised structure.

- **Lack of clarity with respect to roles and responsibilities:** The review identified the need for greater clarity with respect to roles and responsibilities between PMMD and line departments.
- **Changes to Bylaws:** The review recommended a small number of changes to the current Purchasing and Financial Control bylaws, including in a number of cases that Council focus more on holding administrative staff accountable for decisions in accordance with policy as opposed to making those operational decisions itself.
- **Enhanced Policy Guidance:** The review noted that PMMD appears to be focused primarily on processing procurement transactions. The equally important functions of developing and providing useful, practical guidance and interpretive materials for staff were found to be lacking.
- **Training and Development:** The review recommended that training and development for both PMMD and line department staff should be enhanced.
- **Specifications:** The review identified the need for improved guidance for line department staff in developing specifications, including templates, guidelines, etc.
- **Evaluation of Bids/Decision Making Process:** The review made a number of recommendations with respect to ensuring the integrity of the evaluation process and related decision-making, including training, standardized methodologies, a clearer oversight role for PMMD, a “no informal contact” policy, a prohibition on accepting gifts, etc.
- **Low Dollar Value Purchases:** The review team noted the opportunity for a better application of value-for-money considerations, including implementing a procurement card and making more use of informal competitive processes for low value purchases.

- **The Bid Committee:** The review recommended that the Bid Committee be required to open high-value RFQs and RFPs.
- **Dealing with Mathematical Errors in Bids and Related Disqualification:** The review recommended that a policy be established with respect to the disqualification of bids containing mathematical errors and that this policy be clearly stated in all request documents.
- **Standardized Contract Award Reports:** The review recommended that contract award reports to Standing Committees and Council be standardized/focus on demonstrating that “*due diligence was followed in the overall process, relative to the financial risk and complexity*”.
- **Fairness Commissioner:** The review recommended the use of fairness commissioners “on an as-required basis” for complex, high risk/cost or high profile projects.
- **Conflict of Interest:** The review recommended that staff be required to sign an annual declaration acknowledging their understanding of and agreement with the policy.
- **Lobbyist Disclosure Policy:** The review recommended that the current lobbyist disclosure policy be extended to apply to all City purchases regardless of the dollar amount.
- **Use of External Consultants:** The review recommended a formal policy to prohibit external consultants hired by the City to assist in the internal preparation of a request document from responding to that request document.

## **Part 4: City of Toronto Current Policies & Practices**

### **Context for Change**

It is appropriate to view the need for change in the context of amalgamation and as part of the legitimate evolution of the procurement function in the new City.

For the procurement function, the two major priorities in the post-amalgamation period were very clear:

- The need to quickly develop a consolidated procurement policy, practice, and process that would ensure a consistent and professional approach for the City's major purchasing requirements.
- The need to quickly ensure that the new City was benefiting from more efficient and centralized purchasing opportunities through blanket contracts, vendors of record, standing agreements, etc.

In terms of bylaws and formal corporate procurement policies, a great deal has been accomplished since amalgamation. However, overall structure, functions, roles and responsibilities, etc. have not evolved significantly beyond the needs, pressures, and organizational requirements of the immediate post-amalgamation period. Additional factors that consumed PMMD and senior management attention during this period included:

- The implementation of a new integrated financial information system (SAP) that included a procurement module.
- PMMD staffing was reduced by 13.5 percent from 33 FTEs to 28.5.
- The advent of the recent computer leasing issue and pressures associated with responding to this matter.
- Senior executive turnover, including the recruitment of a CFO.

Notwithstanding these various pressures, in retrospect there is every indication that the goals of this highly centralized initial approach were successfully achieved although at a certain cost, including:

- Occupying much of PMMD's available time and attention.
- Emphasizing to a greater extent than perhaps one would find in a more mature organization, the control/policing function of PMMD.
- A strong focus on professional capacity within PMMD but a more fragmented approach across line departments.
- Providing for a consistent understanding within PMMD with respect to interpreting the bylaw and formal policies, and operationalizing procurement practices but less clarity and consistent interpretation and application across divisions.

## **Assessment of City Policies and Practices**

### **Establishing a New Procurement Culture**

It is apparent that to date a consistent culture of procurement related values and practices has not fully emerged in the City and that values and practices can vary between and among departments and divisions in ways that have the potential to detract from effectiveness and the integrity of the process.

### **Values-Based Procurement**

Similar to many other Canadian municipalities, the City of Toronto's purchasing policies were developed based on widely recognized and acclaimed professional standards. However, one generally does not find extensive evidence of these values being actively pursued and reinforced at the City as a means of building and maintaining consistently high professional standards.

## **Roles and Responsibilities**

A lack of clarity in terms of roles and responsibilities emerges from the research as a central problem area for the City. For both the central purchasing authority and line departments, roles and responsibilities – and corresponding accountabilities – are not viewed as being sufficiently clear, which has resulted in confusion/frustration, delays, overlap and duplication.

## **Policies and Procedures**

Toronto's purchasing bylaw and formal policies compare in generally favourable terms with many other municipalities. However, a reasonably crafted bylaw is not the most effective tool for communicating processes, standards, guidelines, best practices, etc. One is left with the overall impression of an approach that is overly focused on formal policy statements and relatively *bare bones* in terms of more operationally relevant guidance to staff, i.e. material that answers the critical *how to* questions.

## **Training and Development**

As discussed in *Volume 1*, the importance of having highly trained and professional procurement staff is a key component of risk mitigation. For leading jurisdictions, this includes minimum training and certification/recertification requirements for all staff involved in the procurement process, i.e. the analyst/coordinator level, specification writers, evaluators, managers, and senior executives. This kind of more comprehensive approach is not in place at the City. The City currently does not have a formally articulated, standard set of expected competencies, skills, and experience and associated training and development programs for individuals who are involved at different stages/degrees of intensity in the procurement process and in all parts of the organization.

## **Value for Money**

The City does not currently have a balanced approach in this regard and is not making effective value-for-money distinctions in terms of the procurement processes used for purchases above the current \$7,500 Departmental Purchasing Order (DPO) level. While current City policies allow for the use of an informal (e.g. three quote) process above this level, by practice virtually all contracts above \$7,500 are submitted to a formal sealed-bid, competitive tendering process, regardless of the size/complexity. This is costly for both the City and vendors, results in unnecessary delays, and is inefficient for lower value contracts.

## **Single Point of Contact**

While the Auditor General pointed out that there is no formal policy in this area, the long-standing general practice has been that request documents put out by PMMD usually do include a single point of contact requirement. However, this best practice is undermined by the lack of consistent application to all City officials and, in particular, to elected officials. Contact – and sometimes extensive contact – between vendors (including their lobbyists) and individual Councillors is allowed by convention if not by policy, to take place during the competitive process. This is not consistent with best practices in place in many other jurisdictions.

## **Complaints Handling**

At present, the City does not have what would be considered a best practices approach in this area, i.e. an established, well-developed and transparent complaints handling policy and set of procedures that safeguard the integrity of the process. In the absence of this kind of managed process, the result can only be described in professional procurement policy terms as something of a “free-for-all”.

## **Lobbying**

Lobbying of Council members emerges from the research as an ongoing concern in terms of the real and perceived integrity of the process. Procurement related lobbying can be very intense, particularly for larger business opportunities. There are no ongoing restrictions on how and when a Councillor can be lobbied and as a result lobbying can take place at all stages of the procurement process. In the past, when restrictions on lobbying have been agreed to on a one-off basis for a particularly high profile procurement, the general perception is that the rules were ignored without consequences by a number of lobbyists and Councillors.

## **Other Political Involvement in the Process**

In general, there has not been a uniform or consistent understanding of the role of elected officials in the procurement process at the City of Toronto, particularly as it relates to demonstrating and safeguarding the integrity of the process.

## **On-Line Processes**

Toronto's continued reliance on distributing paper versions of request documents is seen as increasingly out of date and administratively unnecessary. Many other Canadian and U.S. jurisdictions – municipalities, provinces/states, and federal governments – have already moved in the direction of on-line distribution, often at the request of vendors, including small businesses.

## **PMMD Resourcing/Staff Turnover**

There is a general awareness that PMMD has significant resourcing and staff turnover/morale issues. The resources issue is in part related to reductions in staffing levels that have taken place since amalgamation. As a result, the Division appears to some interviewees as being left with a more narrow focus on transactions, as opposed to value-added services.

## **Part 5: Recommendations**

A number of the recommendations in this section are intended to reinforce and/or propose additional dimensions to key Auditor General recommendations. In other cases, they are intended to supplement the Auditor General's recommendations.

### **Values-Based Procurement**

It is recommended that the City's overall approach to procurement include a more active and robust approach to embedding procurement ethics in the organization's operating culture including:

- Inclusion of procurement ethics as part of the proposed citywide ethics management program recommended on page 37 of the Toronto Computer Leasing Inquiry Research Paper *Conflict of Interest Volume 2*.
- The development of meaningful, practical descriptions of how the values are to be used by staff in all departments, including real-life case studies.
- Consistent, centrally mandated ethics related training for all procurement staff (PMMD and line departments).
- Training in procurement ethics for elected officials.
- Inclusion of procurement issues in the recommended regular meetings between Council and senior administrative officials to discuss ethics and code of conduct issues, including the use of case studies (see recommendation on page 39 of *Conflict of Interest Volume 2*).

### **A More Decentralized Accountability**

It is clear that the current level of centralization at the City made particular sense in the immediate post-amalgamation period when compliance with the new City's

procurement policies and the need to maximize efficiencies were paramount considerations. It is not clear, however, that this is the best approach for a more mature purchasing function in an organization of the size and complexity of the City of Toronto.

It is recommended that as part of the review of the procurement function currently underway through the CFO's office, consideration be given to establishing a more decentralized procurement function. This would give line departments the authority and, just as importantly, the accountability for managing their own procurement requirements under a specific dollar-value threshold. This enhanced line authority would be subject to a clearer and enhanced overall oversight/controllership role for PMMD.

### **Roles and Responsibilities**

The Auditor General's recommendation for greater clarity is strongly supported, particularly in light of the above recommended organizational structure and overarching quality assurance/controllership role for PMMD. In developing these clear responsibilities and accountabilities, it is suggested that the City draw on examples from other jurisdictions in terms of how these should be aligned and communicated effectively to staff.

### **Value for Money**

Consistent with the Auditor General's finding, the City should establish a threshold (for example, \$25,000) below which staff would use the informal/3-5 quotes process. In the more decentralized organization recommended above, this would mean that procurement staff in line departments would manage most of these under-\$25,000 informal competitive processes.

## **Training and Development**

Consistent with the best practice in leading jurisdictions, it is recommended that the City adopt a broader and more comprehensive approach to competencies skills, and expertise standards and related professional training and development across all City departments. It is also recommended that the City seek to establish formal *twinning* agreements with other large public sector organizations that would allow procurement staff to move between and among the organizations (i.e. in the form of secondments) as part of their career path and ongoing professional development. The benefits of this approach would include enhanced career and professional development opportunities and better positioning of Toronto as an attractive workplace for procurement professionals.

## **More Robust Policy Supports**

It is recommended that PMMD be directed to develop and implement a more comprehensive and robust set of policy supports (drawing on/adapting to the extent possible high quality materials already developed and available from other jurisdictions). It is also recommended that these materials be available to all City staff and, as per the subsequent recommendation in this report dealing with Transparency, to the public and vendors as well via the internet.

## **Risk Management**

It is recommended that the City's procurement policies and practices be based more formally on a risk management approach that would provide guidance to staff in PMMD and line departments. This would include the development (or adoption/modification from another jurisdiction) of risk management frameworks tailored to the needs of procurement specialists. As a best practice approach, these would be supplemented by project risk management guidelines, risk management checklists and other similar tools, as well as the identification of risk

management as a competency required for procurement professionals and as a component of ongoing training.

### **Official Contact Point during the Competitive Process**

It is recommended that the City of Toronto commit itself to the highest standards of integrity with respect to managing communications between vendors and City officials during the competitive process, including that:

- The requirement for an official contact person during the competitive process be reinforced in the existing purchasing bylaw.
- This policy be clear that the competitive process includes all stages in the decision-making process up until such time as an award decision has been reached and announced.
- It be made clear that the policy of an official contact person for dealing with vendors applies to vendor contact with Councillors as well as administrative staff.

### **Complaints Handling Procedure**

It is recommended that the City of Toronto commit itself to the highest demonstrated standards of integrity with respect to dealing with vendor complaints including:

- Clarifying in policy the expectation that all vendors are entitled to formal debriefings.
- Adopting a formal two-stage process to manage vendor complaints to replace the current standing committee/deputation approach, including:
  - Complaints to be adjudicated at the first level by a neutral panel of administrative staff that does not include the officials responsible for the procurement process.

- Complaints to be adjudicated at the second level by a panel of officials from the Auditor General's Office (as a body whose independence and integrity would be beyond question).
- The decision of the second panel would be considered final and not subject to further appeal within the City.

Where Councillors have concerns about a particular procurement process that are unprompted by a vendor (i.e. should not otherwise be part of the formal vendor-initiated complaints process) these should be brought forward in an environment of professionalism, respect, and trust between the elected and administrative levels of government.

### **Delegation**

It is recommended that Council consider a more extensive and streamlined delegation of authority for procurement decision-making to the senior administrative staff through the Bid Committee. Consistent with best practices in governance, the CAO would provide the Council with regular reports that would be designed to satisfy Council with respect to policy and procedural compliance and the exercise of good judgement on the part of the Bid Committee. The revised delegation should include, at a minimum, the following:

- Contract awards above the CAO signing authority of \$500,000 and up to \$5 million (initially, with the intention that once Council is confident in this approach, a higher limit could be set at a higher level) to be made by the Bid Committee (instead of the current \$2.5 million) for goods and services as well as consulting contracts, where the item is already a part of the approved budget and where the Bid Committee is satisfied that appropriate policies and processes were followed. (Contracts in excess of approved budgets would continue to require Council approval.)

- Authority/discretion for the Bid Committee to award contracts to other than the lowest bidder if:
  - Such an award is contemplated in the request document, i.e. a request for proposals that incorporates a price/value trade-off, as opposed to lowest-price, commodity based tenders.
  - The Bid Committee has legitimate and documented concerns about the capacity of the lowest bid to meet specifications/provide appropriate value-for-money. (The Bid Committee should be required to report annually to Council summarizing the situations in which these types of decisions were made.)
- The requirement that contracts valued at over the Bid Committee's upper limit (initially \$5 million) would be approved by Council.

### **Standing Committee Award Decision-Making**

*Note: the recommendations under the immediately preceding section on Delegation would eliminate the need for Standing Committees to review contract awards. As such, the following discussion/recommendation of Standing Committee involvement in the process should be viewed as an interim approach.*

It is recommended that:

- The primary focus of contract award discussions at Standing Committees should be between the Committee members and staff with the focus being on due diligence as per the Auditor General's report.
- As part of ensuring fairness and equity, depositions from unsuccessful (or successful) vendors, their lobbyists/agents, and individual Councillors should not be permitted. Rather, complaints should be directed through the official complaints procedure.

- It be clearly communicated to all vendors and their lobbyists/agents that the prohibition on lobbying City officials during the competitive process includes all stages in the decision-making process, up to and including Standing Committee and Council consideration of staff contract award recommendations and that vendor concerns about a staff contract award recommendation should be directed to the formal complaints process.

## **Fairness Commissioners**

The central issue with respect to fairness commissioners should not be one of “whether” but rather “how and when”. It is recommended that the City:

- Adopt a policy of requiring external independent fairness commissioners as a standard quality assurance feature of larger, more complex procurements.
- Provide for broad latitude in terms of the kind of roles and functions that fairness commissioners could provide.
- Within these policy parameters, delegate decision-making on the use of fairness commissioners in individual procurement processes to the CFO in consultation with the line department
- Provide for the independence of fairness commissioners by establishing their accountability directly to the CFO.
- Require an annual report to Council that summarize the use of fairness commissioners, consistent with the policy approved by Council, general classes of issues that may have been raised by fairness commissioners, and actions that were taken to address the issues/prevent their reoccurrence.

## **Best and Final Offer**

It is recommended that the Best and Final Offer (BAFO) model of procurement be piloted at the City of Toronto including:

- A set of existing BAFO policies and procedures be adapted from another jurisdiction and approved by Council for the purposes of a pilot.
- Testing on a range of different procurements, including small, medium, and larger sizes.
- A report to Council on the results of the pilot tests.

## **Transparency**

It is recommended that the City make all of its procurement related materials publicly available on its website, including policies, procedures, manuals, guidebooks, checklists, templates, etc.

## **On-Line Bid Request Documents**

The City's practice of mailing out release documents is increasingly out of date relative to other municipalities and other levels of government. Concerns with respect to limited on-line access for small bidders or modest additional costs for on-line tendering services appear to have been effectively dealt with by many other jurisdictions.

# Part 1

## Introduction

The focus of this second and final volume on procurement is on issues and challenges facing the City of Toronto as well as recommendations for potential changes to its current procurement policies and practices.

In addition to this Introduction, the report is presented in four sections:

- An overview of the procurement related provisions of the *Municipal Act, 2001* (Ontario) as well as the key features of the Ministry of Municipal Affairs and Housing's *Guide to the Developing Procurement Bylaws*.
- A summary of the key findings and recommendations of the major review of the City's procurement function completed in March 2003 by a team from the Auditor General's office.
- An overview of current policies and practices in place at the City of Toronto, incorporating feedback received during the interview process.
- Flowing from the description of issues and challenges, a set of recommendations for changes to the City's procurement policies and practices.

This report builds on the discussion and conclusions presented in *Volume 1* with respect to common and significant procurement risks that public sector jurisdictions face, including the following:

- Values-Based Procurement.
- Readiness.
- Specifications.
- Pre-RFP Consultation.

- Vender Debriefing & Complaints Handling.
- Single Point of Contact.
- Role of Elected Officials.
- Training & Development.
- Evaluation.
- Clear Roles & Responsibilities.
- Efficiency & Effectiveness/Value for Money.

*Volume 1* also included a discussion of two best practices that are in effect tools for mitigating a number of the risks identified above:

- The use of fairness commissioners as part of the integrity/quality assurance process.
- The use of a Best and Final Offer procurement methodology as part of maximizing value-for-money.

## **Research Approach**

The preparation of Volumes 1 and 2 included reviews of over 2,000 pages of documents and a series of interviews. The latter were particularly important in terms of identifying and refining the list of identified major risks and confirming various best practice mitigation strategies. In the course of the research, interviews were conducted with over 20 individuals including current and former municipal officials, provincial government officials, academics, private sector executives, and other experts.

Documentary resources included:

- Statutes and by-laws.
- Government policies, directives, and guidelines.
- Procurement handbooks, other interpretive material, and examples of best practice tools.
- Academic and other expert reports, articles, and commentaries.

Material was collected from a wide range of jurisdictions including examples from across Canada, the U.S., the United Kingdom, Australia, and New Zealand.

Sources for these documents included various departments/branches of municipal, provincial, and state governments, academic institutions, private corporations, foundations and research organizations, and associations representing procurement officials.

## Part 2

### Requirements of the *Municipal Act, 2001*

The *Municipal Act, 2001* contains specific provisions requiring Ontario municipalities and local boards to have procurement policies in place by January 1, 2005. The Act specifies eight minimum requirements with respect to policy issues that these procurement policies are required to address.

Section 271 (1) of the Act states that:

*“Before January 1, 2005, a municipality and a local board shall adopt policies with respect to its procurement of goods and services, including policies with respect to,*

- i. The types of procurement processes that shall be used;*
- j. The goals to be achieved by using each type of procurement process;*
- k. The circumstances under which each type of procurement process shall be used;*
- l. The circumstances under which a tendering process is not required;*
- m. The circumstances under which in-house bids will be encouraged as part of the tendering process;*
- n. How the integrity of each procurement process will be maintained;*
- o. How the interests of the municipality or local board, as the case may be, the public and persons participating in a procurement will be protected;*
- p. How and when the procurement processes will be reviewed to evaluate their effectiveness.”*

Section 271 (2), also dealing with procurement, focuses on the Minister's powers to make regulations in the following areas:

- Authority to establish additional areas that municipal procurement policies would be required to address in addition to items a) through h) above, and the timeframe in which those would need to be in place.
- Authority to establish procurement policies for a municipality or local board or to require a municipality or local board to comply with its own policies (presumably where a municipality or local board has either failed to put the necessary policies in place as per section 271 (1) or is not following its policies in these areas.)

## **Context for the New Requirements**

Historically, specific requirements with respect to procurement policies and their content were not part of previous Municipal Acts in Ontario. It was left to each municipality to determine whether and to what extent to put a policy in place.

The requirements in section 271 were part of a more general provincial policy direction towards more extensive provincially mandated standards of accountability for municipalities and local boards. From the provincial perspective, the new *Municipal Act, 2001* provided municipalities with greater administrative flexibility and additional local powers (see Toronto Computer Leasing Inquiry Research Paper *Municipal Governance Volume 1* for a discussion of the new Act) and, in particular, the addition of *natural person powers* and the identification of *ten spheres of jurisdictions*. As a quid pro quo, the province argued that municipalities would need to be held to a more consistent standard of public accountability and transparency “*aimed at ensuring taxpayers can easily understand how their municipality operates*”.

The most visible indication of this standard was the creation of the Municipal Performance Measurement Program. As described by the Ministry of Municipal Affairs and Housing (MMAH), the program requires municipalities to collect data to measure their performance in 10 core municipal service areas, with a view to achieving the following objectives:

- *“To provide a tool to assess how well municipal services are delivered to improve performance: measuring the efficiency (cost) and effectiveness (quality) of local services.*
- *To strengthen local accountability to taxpayers and promote greater understanding of municipal responsibilities by the taxpayer.*
- *To provide a systematic resource that allows municipalities to share information on performance and learn better/new practices from each other.”*

## **Specific Guidance**

To assist municipalities and local boards in meeting the requirements of section 271 (1), MMAH created a 75-page *Guide to Developing Procurement Bylaws* (July 2003).

The guide is intended to be advisory in nature and there are no requirements for its use by municipalities. In addition, it is important to note – as the Ministry does at the outset of the document – that the guide is focused on *“the steps that can be taken to develop bylaws/resolutions for procuring goods and services”*. The Ministry stresses that *“The guide is not a procurement procedural manual”*. By this, MMAH means that the guide was not intended to provide municipalities with a “how-to” of best practices in procurement. Rather, the focus is on best practice processes that can be used to create a bylaw or review an existing bylaw,

including the key questions that municipalities should ask throughout the process (see *Appendix A* for a flow chart of MMAH's recommended process).

As will noted below, however, in a number of cases the Ministry's advice goes beyond the aforementioned focus on "steps that can be taken to develop bylaws" to provide what is in effect, actual best practice information on good procurement practices.

The guide contains much useful advice in its three core sections:

- Goals.
- Types of procurement processes, and when to use them.
- Maintaining integrity and protecting interests in procurement.

The following are selected highlights from each of these sections.

### **Goals**

As noted in the Toronto Computer Leasing Inquiry Research Paper *Procurement Volume 1: Common Risk Areas*, values and principles are the essential foundation of public sector procurement in leading jurisdictions. This section of the guide includes a set of "suggested goals" that are in fact underlying values/principles that would be recognized widely by procurement professionals and that in best practice jurisdictions would form the basis of policies and procedures as well as training and development:

***“Effectiveness:*** *Effectiveness refers to the extent to which the procurement process is achieving its intended results (i.e., the process delivered the goods and services required to meet the municipality's/local board's needs). The results here are the “substantive” or quality results*

as opposed to process results. Process results are the types of results that are described in the goals below.

**Objectivity:** Objectivity refers to approaching the procurement of goods and services in an unbiased way not influenced by personal preferences, prejudices or interpretations.

**Fairness:** Fairness refers to applying the policies equally to all bidders.

**Openness and Transparency:** Openness and transparency refer to clarity and disclosure about the process for arriving at procurement decisions. Municipal/local board procurement is undertaken within the context of legal considerations about confidentiality and the protection of privacy. Policies that promote openness and transparency need to be governed by these considerations.

**Accountability:** Accountability refers to the obligation to answer for procurement results and for the way that procurement responsibilities are delegated. Accountability, unlike responsibility, cannot be delegated.

**Efficiency:** Efficiency measures the quality, cost and amount of goods and services procured as compared to the time, money and effort to procure them.”

### **Types of procurement processes, and when to use them**

This section of the guide carries the key message that municipal procurement bylaws and policies should be clear about “*the types of procurement processes that will be used, the goals of each, the circumstances under which each type will be used, and the circumstances where a tendering process is not required.*”

Much of this section is actually dedicated to providing municipalities with what is, in effect, practical “how-to” advice in the form of a set of four tables (see *Appendix B*). Presented as a “typical” municipal approach, these tables describe the different types of procurements that a municipal procurement policy should include, as well as the process that would be appropriate for each, and the circumstances that would lend themselves to a particular process. Two major themes in this section are:

- The distinction between formal and informal procurement processes (e.g. a sealed bid competitive process vs. obtaining written quotes from selected suppliers).
- The importance of being clear when a competitive process (either formal or informal) is not required – and suggested policy guidance with respect to the appropriate circumstances.

With respect to the first point, the guide suggests that the informal process (i.e. competitive pricing information obtained by telephone, fax, in writing, etc. typically from a minimum of three vendors) would be used for “low value procurement”. The guide does not put forward a recommended low value threshold. However, as discussed in *Procurement Volume 1*, \$20,000 to \$25,000 would be considered the lower end of the range for most of the jurisdictions surveyed.

On the second point, Table 3a (see *Appendix B*) provides advice again in the form of a typical example, with respect to the circumstances under which non-competitive procurement should be considered/allowed.

## ***Maintaining integrity and protecting interests in procurement***

In this section, the guide addresses the theme often stated in the research and reiterated in *Volume 1* that procurement is an inherently risky undertaking.

The Ministry proposes a general risk management approach, i.e. one in which maintaining integrity and protecting stakeholder interests involves identifying *“risks than can arise...and the measures that can be taken to minimize or mitigate them.”* Much of this section of the guide is actually in the form of tables that describe common or typical risks to the goals identified earlier (aka the underlying values/principles)

- Procurement goals.
- Effectiveness.
- Objectivity.
- Fairness.
- Openness and transparency.
- Accountability.
- Efficiency.

In each case, the guide provides municipalities with advice with respect to the appropriate mitigating strategy or policy. For example:

*“When evaluating the bids:*

*...if municipal/local board elected or appointed officials are in contact with suppliers during the bid evaluation process, then integrity can suffer as several of the goals of the procurement process can be put at risk.*

*A policy of “no informal contact” between municipal/local board staff or elected officials involved in the procurement with potential suppliers during the evaluation period can minimize this risk. (A broader policy on contact at other stages of the procurement process, specifying who, when and how the contact may be made, can address risks that can arise at other stages of the process as well).”*

The MMAH guide’s focus on risk management is consistent with the best practice in many jurisdictions where it is identified as an essential component of procurement planning and management. By definition, the MMAH guide focuses on using a risk management approach to identifying bylaw/policy requirements. As such, it stops short of suggesting that municipalities should adopt formal risk management frameworks and/or incorporate risk analysis tools into their day-to-day purchasing practices.

Many best practice jurisdictions take the use of risk management methodologies and tools to this next level of professional management. The Australian Ministry of Finance and Administration, in its 2002 *Commonwealth Procurement Guidelines & Best Practice Guidance* document, notes that:

*“Managing risk is an integral part of good management. Risk management strategies are fundamental to supporting sound procurement decisions and as such, a formal risk assessment should be a part of any procurement. Identifying potential risks early and selecting the best option for managing those risks helps agencies achieve more favourable and reliable outcomes.”*

Australia and other jurisdictions and organizations reflect this emphasis on risk management in procurement at a day-to-day operational level through the creation of procurement-related risk management frameworks, analytical tools, checklists, staff training, etc.

## Part 3

# Procurement Process Review – Auditor General

The purchasing function at the City of Toronto – including but not limited to the Purchasing and Material Management Division (PMMD – the City’s central purchasing authority) has already been the subject of a major procurement process review conducted by the City’s Auditor General (*Procurement Process Review – City of Toronto, March 2003*). This section of *Volume 2* provides an overview of that review, including:

- Background information on the origins of the review.
- A brief summary of key recommendations, particularly those that relate to the risk areas discussed in *Volume 1*.
- Information on the City’s initial response to the report and recommendations.

*Appendix C* provides a copy of the report’s Executive Summary and summary of the recommendations. *Appendix D* includes a copy of management’s initial response.

## Background

In November 2001, Council requested that the CAO and the City Auditor conduct a “comprehensive review” of the City’s procurement function. The review was to include, but not be limited to:

- Reporting structure of the purchasing function.
- Administrative procedures and safeguards.
- Quality control measures.

- Purchasing for larger items done by the City's special purpose bodies.
- Potential amendments to the City's purchasing bylaw.
- The issuance of payments in a timely manner.

It was subsequently agreed that the review should be conducted by the Auditor General's office, given that the purchasing function had already been included in the Auditor General's approved workplan for 2002.

It was agreed that a team in the Auditor General's office under a Director and Manager would look at:

- The organizational structure of PMMD.
- The roles and responsibilities of PMMD and operating departments in the procurement process.
- The adequacy of the Purchasing and Financial Control by-laws.
- The integrity, efficiency and cost effectiveness of the procurement process.
- Administrative controls and management information.

The team conducted surveys of practices in other jurisdictions, examined key success factors related to procurement, and conducted internal and external interviews and focus groups.

The year-long review resulted in a 70-page report containing 43 recommendations for improvements to the City's current policies and practices. As noted by the audit review team, the report in places is somewhat high-level in terms of both its description of the problem to be solved and the actual solutions proposed:

*"The report identifies areas where procurement and related processes can be further improved. For the most part, it does not provide specific*

*solutions, as some areas have policy implications, require further study, or are dependent on the results of action taken on other issues identified. However, it does provide direction in terms of areas requiring attention, as well as considerations that should be taken into account when addressing the respective issues.”*

## **Management Response**

Overall response from management was very positive (see *Appendix D* for a copy of management’s initial response to the various recommendations). For the most part the Auditor General’s recommendations were viewed as being reasonable and effective. There was general agreement that the function was in need of a comprehensive review/update and that the Auditor General’s report has been a useful catalyst and focus for this review.

A project team, led by an external consultant with specialist expertise in procurement, has been set up in the CFO’s Office to lead and oversee implementation.

## **Key Findings and Recommendations**

Overall, the review found that PMMD was generally effective in terms of ensuring line department compliance with corporate procurement policies and that the current Purchasing (Toronto Municipal Code Chapter 195) and Financial Control (Toronto Municipal Code Chapter 71) bylaws, with a few exceptions, were *“comprehensive in terms of the responsibilities and legal authorities delegated to staff.”*

The following is a summary of the key findings and recommendations of the audit review team. The purpose of this summary is not to duplicate the information included in *Appendix C*, but rather to highlight the thoroughness of the Audit team's recommendations and the very high correlation between the team's findings/recommendations and the key risk areas discussed in Part 2 of *Volume 1*.

### ***Organization***

The review team suggested that there is “no one ‘best’ organizational structure” for the procurement function, in terms of the alignment/realignment of responsibilities between the central purchasing authority and line departments (e.g. the potential for greater delegation of responsibility and accountability to line departments to manage their own procurements, consistent with corporate policies and up to a maximum dollar value threshold). The review team felt it was “premature” to recommend a specific structure and recommended that the structure be revisited once the respective roles and responsibilities of PMMD and line departments are clarified (see next recommendation).

### ***Lack of clarity with respect to roles and responsibilities***

The review identified the need for greater clarity with respect to roles and responsibilities between PMMD and line departments, including accountability for decisions at various points in the procurement process. The review recommended that staff be trained on expectations in this area and that compliance/consequences for non-compliance be incorporated into the performance review process.

## ***Changes to Bylaws***

The review recommended a small number of changes to the current Purchasing and Financial Control bylaws. In a number of cases, the recommendations were in response to the advice provided by the Ministry of Municipal Affairs and Housing in its *Guide to Developing Procurement Bylaws* (see Part 2 of this report for an overview) or long-standing issues/concerns that had been previously identified by staff.

An additional theme in this area – although not stated as such in the report – is roles and responsibilities of Council and Standing Committees. In effect, the review team found that Council should focus more on holding administrative staff accountable for making operational decisions in accordance with City policy and within clear decision-making parameters, as opposed to making those operational decisions itself.

The following are the key bylaw change recommendations (again, a complete list of recommendations is provided in *Appendix C*):

- Greater clarity in the purchasing bylaw for staff with respect to the “criteria and considerations” that should be used by staff in determining which procurement method to use (e.g. RFQ, RFP, Tender). (As discussed in Part 2 of this report, the importance of being clear in a procurement bylaw with respect to the “*Types of procurement processes, and when to use them*” is a major focus of the MMAH *Guide to Developing Procurement Bylaws*.)
- The delegation of authority below the Commissioner level for emergency purchases within “clear parameters and guidelines” as a legitimate means of ensuring a timely capacity to respond to emergencies.

- Providing authority to administrative staff – within clear decision-making parameters – to award multi-year contracts, i.e. contracts that straddle from one year to the next, for both capital and operating expenditures, thereby addressing a long-standing issue for staff. (The current “strict interpretation” of the City’s legal department is that until the budget is established each year, Council has to approve/reapprove all contracts, regardless of dollar value, delegated signing authority, etc. that span from one year to the next.)
- Giving administrative staff the authority/responsibility to make decisions – again within budgetary approvals and clear decision-making parameters – with respect to contract over-expenditures for contracts up to the CAO’s \$500,000 signing authority limit and that the Chief Financial Officer provide Council with an annual report on cases of all over-expenditures in excess of 10 percent for contracts up to the \$500,000 level. (The current City policy requires Council to approve contract over-expenditures that exceed 10 percent of the awarded contract amount, regardless of the size of the contract.)

### ***Enhanced Policy Guidance***

The review noted that PMMD appears to be focused primarily on processing procurement transactions. The equally important functions of developing and providing useful, practical guidance and interpretive materials for staff were found to be lacking.

### ***Training and Development***

The review found that training and development for both PMMD and line department staff should be enhanced, including:

- More formal identification of the skills and expertise required within PMMD and training to ensure those skills are present.
- More extensive training for line department staff, particularly in light of the previously mentioned recommendation to clarify roles and responsibilities and strengthen compliance.

### ***Specifications***

The review identified the need for improved guidance for line department staff in developing specifications, including templates, guidelines, etc. for what should be included in specifications, online access to a central library of previous City specifications, and improved access to/making better use of specifications from other jurisdictions/levels of government.

### ***Evaluation of Bids/Decision Making Process***

The review made a number of recommendations with respect to ensuring the integrity of the evaluation process and related decision-making. Again, in many areas, the recommended approach mirrors best practices discussed in *Procurement Volume 1*, including that:

- Staff in line departments should be “properly trained” to manage and participate in the evaluation process.
- Staff in line departments should have access to guidance with respect to evaluation methodologies, the proper composition/expertise of evaluation panels, documentation requirements, etc.
- PMMD staff should be involved in the evaluations for contracts over a pre-determined dollar threshold limit in order to “monitor, provide guidance, and ensure due process is followed”.
- Request documents should consistently include the proposed evaluation criteria, including any pre-determined weighting.

- External business expertise (e.g. consultants) be retained as a support for complex and high-risk procurement transactions as part of ensuring sound business decisions.
- A formal policy be established of “no informal contact” between department staff involved in the procurement and potential suppliers, including before and during evaluation and before the contract award.
- Staff involved in the procurement cannot accept gifts, entertainment, or other benefits (an area already addressed in the City’s Conflict of Interest policy for employees) and that a vendor making these kinds of offers could be disqualified.

### ***Low Dollar Value Purchases***

The review team noted the opportunity for a better application of value-for-money considerations with respect to low dollar value purchases and made a number of best practice recommendations to ensure greater efficiency and effectiveness in this area, while still protecting the values of fairness, equity, and openness, including that:

- The City expedite its plans to implement a procurement card (“p-card”) for small dollar-value purchases as per the practice already in place in many other jurisdictions.
- Consistent with the practice in most other jurisdictions, that the City make more extensive use of informal competitive purchasing methodologies that are already approved as part of existing City policies (e.g. three quotes) for purchases below an established threshold. (See *Procurement Volume 1, Part 2, #11. Efficiency & Effectiveness/Value for Money* for more discussion of this issue.)

### ***The Bid Committee***

As part of enhancing transparency, the review recommended that the Bid Committee (a weekly senior staff-level committee that opens tenders) also be required to open high-value RFQs and RFPs. These are currently opened by the PMMD.

### ***Dealing with Mathematical Errors in Bids and Related Disqualification***

The review recommended that a clear policy be established with respect to the circumstances in which a bid would be disqualified for containing mathematical errors and that this policy be clearly stated in all request documents.

### ***Standardized Contract Award Reports***

The review recommended that contract award reports going forward for approval to Standing Committees and Council be standardized “*with respect to the nature and level of information contained*”. Again, the theme of respective roles and responsibilities between Councillors and administrative staff emerges in the review team recommendation that, consistent with best practice in this area as discussed in *Volume 1*, the information in these reports should focus on demonstrating to Council that “*due diligence was followed in the overall process, relative to the financial risk and complexity of the contract, as well as include all critical terms and conditions*”.

### ***Fairness Commissioner***

The review recommended the use of fairness commissioners on an “as-required basis” for complex, high risk/cost or high profile projects as a means of providing greater assurance with respect to the integrity of the procurement process.

### ***Conflict of Interest***

The review recommended that staff be sent an annual notice with respect to the City's conflict of interest policy and be required to sign an annual declaration acknowledging their understanding of and agreement with the policy.

### ***Lobbyist Disclosure Policy***

The review recommended that the current lobbyist disclosure policy be extended to apply to all City purchases regardless of the dollar amount. (Currently, vendors are required to register with the Clerk if they intend to lobby Councillors on contracts in excess of the current Bid Committee decision-making limit of \$2.5 million.)

### ***Use of External Consultants***

The review recommended a formal policy to prohibit external consultants that were hired by the City to assist in the internal preparation of a request document from also responding to that request document. The practice had been generally prohibited by practice within the City, as opposed to by policy.

## Part 4

# City of Toronto Current Policies & Practices

The purpose of this section is to provide an overview of the procurement function at the City of Toronto, including:

- A brief program description of the current procurement process, taken from the Auditor General's report, as a form of *baseline* for subsequent discussion.
- A discussion of the context for change, including that a number of the Auditor General's recommendations and those contained in this report are to an extent rooted in the pressures of amalgamation.
- An assessment of the City's current policies and practices in the various key risk areas identified in *Volume 1*.

On the latter point, it is important to note that the intention of this assessment is not to repeat the extensive discussion and analysis in the Auditor General's report, but rather to focus on and add value with respect to the key risk areas.

## Program Description

The following is a succinct description of the basic elements of the City of Toronto's procurement process taken from the Auditor General's report:

*"The Toronto Municipal Code, Chapter 195 (Purchasing By-law) and Chapter 71 (Financial Control By-law), along with various policies (such as Canadian Content, Fair Wage, Policy for the Selection and Hiring of Professional and Consulting Services, Code of Conduct for Council*

*Members, Conflict of Interest, Lobbyist Disclosure) approved by Council, as well as administrative procedures/directives issued by the Purchasing and Materials Management Division (Purchasing Division) from time to time, provide the framework for the conduct of procurement activities in the City.*

*Currently, departments may procure goods and services costing up to \$7,500, without going through the Purchasing Division, through the issuance of a Departmental Purchase Order (DPO). It should be noted that departments are expected to use DPOs for one-time, small dollar purchases up to \$7,500. Repetitive purchases are to be processed by the Purchasing Division.*

*Purchases in excess of the \$7,500 Departmental Purchase Order limit are administered by the Purchasing Division using one of three main processes: Request for Quotations; Request for Tenders; and Request for Proposals.*

*When the award of a contract is expected to be based on the lowest price meeting specifications and requirements, bids are solicited by the Purchasing Division by issuing a public tender for construction projects, and a Request for Quotations for non-construction contracts. Request for Proposals are used when a contract award is not based solely on the price and where there is some latitude in terms of the deliverable or solution offered.*

*The procurement process generally involves:*

- departments developing the specifications and requirements for the goods and services;*
- the Purchasing Division incorporating the department's specifications into a formal call document (Request for Quotations*

*or Request for Tenders) or request document (Request for Proposals);*

- *the Purchasing Division mailing the call or request documents to all suppliers on the City's Bidders' List that provide the particular good or service. Requests for construction tenders are normally advertised in trade magazines and local newspapers, and are not mailed out to suppliers on the Bidders' List;*
- *the Purchasing Division posting the opportunity on the City's Internet site, with instructions regarding how to obtain a copy of the call/request document and how to obtain further information with respect to the call/request;*
- *a public opening of the responses to Request for Quotations (bids) and Request for Proposals (proposals) by the Purchasing Division and a public opening of responses to tenders (bids) by the Bid Committee;*
- *the Purchasing Division summarizing the replies to the call/request and forwarding the bids or proposals received to the department for evaluation and recommendation on award of the contract;*
- *departments performing an evaluation of the bids and proposals received and submitting their award recommendation to the Purchasing Division; and*
- *awarding of the contract based on the following limits as delegated by Council:*
  - *Up to \$500,000\* Chief Administrative Officer/Department Head/Director of Purchasing and Materials Management where the contract is awarded to the low bid meeting specifications. If the contract award is not to the lowest bidder, the contract is referred to the appropriate Standing Committee. Delegated authority for approving consulting*

*type commitments has a more limited level of authority for commissioners.*

- *Up to \$2.5 million\* Bid Committee*
- *Up to \$5 million\* Standing Committee*
- *Over \$5 million Council*

*The Purchasing Division, reporting to the Chief Financial Officer and Treasurer, is responsible for the procurement of goods and services to all City departments, as well as the Toronto Police Service, Exhibition Place and the Toronto Atmospheric Fund.*

*The Division had a staff complement of 106.5 positions in 2002, and a net operating budget of \$5.6 million. In 2002, \$66.4 million of goods and services were procured directly by departments through the issuance of DPOs (65,487), while the Purchasing Division issued 3,854 Purchase Orders (POs) totalling \$982.5 million on behalf of City departments, Agencies, Boards and Commissions.”*

## **Context for Change**

In considering the extensive set of recommendations that have been made to date by the Auditor General, as well as the recommendations included in Part 5 of this report, one could easily be left with the impression that the procurement function at the City must be significantly “broken” if so many changes are required.

This, however, would not be a fair assessment from at least two perspectives.

- First, it is important to note that the staff and senior management have not disagreed with the Auditor General’s analysis and have been supportive

of the need to take action in the recommended areas. Many of the issues identified and actions recommended by the Auditor had already been identified by senior management and staff as areas to be addressed and/or opportunities to be seized.

- Second, it is also important to note that this study and the Auditor General's review both include assessments of the City against best practices in other jurisdictions. This includes organizations with very mature procurement functions that over the years have been priorities for their respective organizations and the subject of considerable investment in time, resources, and senior management attention.

It is perhaps more useful and appropriate to view the Auditor General's recommendations, the work of the implementation team, and the recommendations contained in this report in the context of amalgamation and as part of the legitimate evolution of the procurement function in the new City.

In terms of bylaws and formal corporate procurement policies, there has been considerable accomplishment since amalgamation. This includes the development and adoption of governing purchasing and financial control bylaws, as well as related policies such as the Code of Conduct for elected officials, a conflict of interest policy for employees, a lobbyist disclosure policy, a fair wage policy, etc.

However, in terms of overall structure, function, roles and responsibilities, etc., these had not evolved significantly beyond the needs, pressures, and organizational requirements of the immediate post-amalgamation period. The Auditor General's review gave focus to these issues.

By way of explanation, the general view is that for the procurement function, the two major priorities in the post-amalgamation period were very clear:

- The need to quickly develop a consolidated procurement policy and process that would ensure a consistent and professional approach for the City's major purchasing requirements.
- The need to quickly ensure that the new City was taking maximum advantage of various more efficient and centralized purchasing opportunities through blanket contracts, vendors of record, standing agreements, etc.

To a considerable extent, the resulting bylaw, organizational structure, operational priorities, etc. that were encountered by the Auditor General are a reflection of these priorities.

With respect to a consolidated bylaw, there was an immediate need to develop a new consolidated purchasing bylaw from what existed in the former municipalities, and to do so at the same time as major elements of the City's new administrative structure were still being put in place. Consequently:

- The process focused primarily on adapting the policies previously in place at the former City of Toronto (which also provided purchasing services for Metro Toronto).
- It did not involve a more substantive review of current best practices from other large governments or careful consideration/rethinking of the purchasing requirements of the new City.
- There was not felt to be sufficient time for more extensive consultation with line departments.
- There was a limited emphasis on training and supplementary policy guidance materials for staff.

The need for a consistent approach to the City's major purchasing requirements, as well as the need to find savings in effectiveness and efficiency, was addressed through the creation of a highly centralized purchasing authority in

PMMD. This included responsibility for all purchases above the departmental purchase order level and as noted above, achieving efficiencies through consolidation of contracts, standardization of purchases, harmonizing DPO usage, blanket contracts, vendors of record, etc.

Additional factors that consumed PMMD and senior management attention during this period included:

- Early on its history, the City moved to implement a new integrated financial information system (SAP) with a procurement module that would be mandatory for all City departments, including new on-line procedures for purchase requisitions, department purchase orders, contract release orders, etc.
- During this period, staffing in PMMD was reduced by 13.5 percent from 33 FTEs to 28.5.
- The advent of the recent computer leasing issues and pressures associated with responding to this matter.
- Senior executive turnover, including the recruitment of a new CFO.

Notwithstanding these various pressures, in retrospect there is every indication that the goals of this highly centralized initial were successfully achieved. For example:

- Centralized procurement through PMMD did result in the application of consistent professional practices with respect to the City's major purchasing requirements. Internal and external experts interviewed for this study generally concurred that PMMD has consistently demonstrated a high degree of professionalism and integrity in this regard.
- Centralized procurement also resulted in considerable efficiencies across the new City, including:

- A reduction in the total number of purchase orders issues by all departments in the former municipalities from 50,181 in 1997 to 3,854 by the year 2002.
- An immediate reduction in the release of bid request documents from 2,803 in 1996 to a low of 1,222 in 1999, which had risen by 2002 to 2,223.
- An overall increase in total annual purchasing from 1997 to 2002 from \$403 million to \$982 million.

Also in retrospect, however, these achievements came with certain inherent costs, including:

- Occupying much of PMMD's available time and attention.
- Emphasizing to a greater extent than one would find in a more mature organization, the control/policing function of PMMD and the need to deal with resistance from within line departments related to the different cultures and practices of the former municipalities. As the new City structure has *settled* this has resulted in increasing tension between the line departments and PMMD and an general sense of over-prescriptiveness.
- Placing a strong focus on professional capacity within PMMD but a more fragmented approach to standards, training, professional development, quality control, etc. across line departments.
- Providing for a consistent understanding within PMMD with respect to interpreting the bylaw and formal policies, and operationalizing procurement practices (i.e. understood among professionals, as opposed to formally articulated in guidelines, best practice documents, etc.) but the potential for less clarity and consistent interpretation/application across departments.

All of this points to a relatively positive and developmental context for understanding the Auditor General's recommendations as well as the recommendations in this report. The City's procurement function emerges not as one badly in need of repair, but rather as one that successfully met and perhaps even exceeded the requirements of the organization during the complex period of amalgamation and that itself recognizes the opportunity/need to evolve and grow.

## **Assessment of City Policies and Practices**

The assessment presented in this section is based on a review of current City policies and practices, interviews both internal and external to the City, and comparison with best practices from other jurisdictions. In terms of structure, it touches on most of the key risk areas identified in *Volume 1*.

As noted at the outset of this section, the intention of this assessment is to focus on and add value with respect to the key risk areas from *Volume 1* rather than simple to repeat the extensive discussion and analysis in the Auditor General's report. By necessity, there is a certain amount of overlap but also a somewhat different emphasis in a number of areas.

One notable area of difference concerns the involvement of elected officials in the procurement process and the real or perceived challenges this poses to the integrity of the process. This issue was generally absent from the Auditor General's report and only touched on marginally in his recommendations, but emerged more prominently from the research and interviews conducted for this report.

## **Establishing a New Procurement Culture**

As per the earlier discussion of amalgamation, it is apparent that to date a consistent culture of procurement related values and practices has not fully emerged in the City and that values and practices can vary between and among departments and divisions in ways that have the potential to detract from effectiveness and the integrity of the process. Although consolidation of policies, financial systems, etc. took place early on in the life of the new City, these actions in and of themselves were not sufficient to build a new and consistent operating culture. Furthermore, there was insufficient time and resources – as well as many other competing priorities – to focus on this particular aspect of organizational development.

### **Values-Based Procurement**

As noted in *Volume 1*, ethics-related values and principles are viewed as the essential foundation of public sector procurement in leading jurisdictions in both theory and practice. A leading organization is one whose formal policies and interpretation/guidance documents have a demonstrated and visible connection to stated values and principles. Staff would have a solid basis in ethics training and a demonstrated capacity to apply values and principles in their day-to-day activities and decision-making.

Similar to many other Canadian municipalities, City of Toronto purchasing policies are formally based on the widely recognized and acclaimed professional standards established by the National Institute of Governmental Purchasing (NIGP) and the Purchasing Management Association of Canada (PMAC). This foundation is formally expressed in section 195-3 of the City's purchasing by-law under "Ethics in purchasing".

*"In addition to any conflict of interest policy applicable to employees, as adopted by Council from time to time, the code of purchasing ethics established by the National Institute of Governmental Purchasing Inc. and*

*the Purchasing Management Association of Canada shall apply to all staff involved in the procurement process.”*

While the formal policy direction exists, however, one generally does not find extensive evidence of these values being actively pursued and reinforced at the City as a means of building and maintaining consistently high professional standards.

This is not to say that the City’s purchasing policies do not inherently reflect these values. It also does not mean that staff across the City are not aware of these values – particularly those who have completed professional procurement training/certification – or that staff involved in procurement in all departments do not generally conduct themselves with integrity. However, relative to a number of other jurisdictions reviewed as part of this study, more outward *best practice* indications of values as a driving force in building and maintaining consistently high professional standards are not present.

A relatively simple example of this would be that a staff member (or member of the public) who, in noting the reference in section 195-3 of the purchasing bylaw, would not be able to find a copy of the NIGP or PMAC codes of ethics on the internal or external procurement website.

In more complex terms, however, there is no description or discussion of the larger operational context for these values, including for example:

- Demonstrations of commitment from City senior executives to operationalizing these values.
- A meaningful description for staff of how the values are to be used in all departments as a form of “living document” that provides practical guidance.
- Consistent, centrally mandated training standards for all staff (PMMD and line departments) involved in the procurement function related to values/ethics and ongoing associated ethics training.

- Training in procurement ethics for elected officials
- Examples of case studies that demonstrate the values in action and opportunities to discuss and learn from these case studies as a part of ongoing professional development.

## **Roles and Responsibilities**

Consistent with the discussion of key risk areas in *Volume 1*, as well as the findings in the Auditor General's report, a lack of clarity in terms of roles and responsibilities emerges from the research as a central problem area for the City. For both the central purchasing authority and line departments, roles and responsibilities – and corresponding accountabilities – are not viewed as being sufficiently clear, resulting in confusion/frustration, delays, overlap and duplication.

As noted in the Auditor General's report, in some cases the issues at stake are surprisingly picayune or administrative, for example:

- Whether line departments should be required to adopt a consistent approach to entering contract release orders (draw-downs against blanket contracts) in the financial information system.
- Whether line departments or PMMD should be responsible for tracking overall spending by line departments on their own blanket contracts.

In other cases, they are more significant, for example:

- The role of PMMD to provide quality assurance/controllership over procurement processes used by line departments.
- Whether the line department or the central purchasing authority should have the final say with respect to specifications.

- The expectation that PMMD and departments would both be actively engaged in the kind of analysis required to achieve additional efficiencies through blanket contracts, vendors of record, or other similar vehicles.

Part of the obstacle in this area is a marked tension (noted in the Auditor General's report but also apparent in this study) between PMMD and line departments generally with respect to controllership and the appropriate balance between PMMD vs. line department responsibility/accountability. Based on the experience of other jurisdictions, the debate is not uncommon. The typical line department concern is that central purchasing authorities are too controlling of line department transactions and activities that should be within the discretion of line department officials. Central purchasing authorities maintain that they are usually seen as being responsible for overall controllership and that in the absence of clear accountability resting with line departments, they are compelled to intervene.

At present in the City, these issues or points of tension are well recognized and understood within the administration and have been acknowledged by the project team leading the implementation of the Auditor General's report. To date, however, a conclusive effort has not been made to achieve a resolution and then to clearly articulate that resolution in both formal policy and in guidelines and interpretive documents that can be easily understood by all staff.

## **Policies and Procedures**

Based on samples reviewed as part of this study – and as noted by the Auditor General – Toronto's purchasing bylaw and formal purchasing policies (fair wage, non-discrimination, etc.) compare in generally favourable terms with many other municipalities and against the Ministry of Municipal Affairs and Housing's *Guide to Developing Procurement Bylaws*. As noted in the Part 3 of this report, the

Auditor General identified a relatively small number of areas where changes should be made, including the following:

- Delegation of authority for emergency purchases.
- Authority for contract awards that extend/straddle over into the following year.
- Streamlining delegations and reporting with respect to over-expenditures.
- Greater delegation to the staff to deal with contract amendments that result from legitimate unforeseen circumstances.

However, as touched on by the Auditor, and as evidenced in the course of this review, a reasonably crafted bylaw is not the most effective tool for communicating processes, standards, guidelines, best practices, etc. The overall impression of the current City of Toronto approach – compared to a number of other jurisdictions surveyed for this study – is of one that is overly focused on formal policy statements and relatively *bare bones* in terms of more operationally relevant guidance to staff, i.e. material that answers the critical “how to” questions.

As described in *Procurement Volume 1*, leading jurisdictions invest considerable time and resources in ensuring that their core procurement policies (statute, bylaw, code, ordinance, etc.) are supported by an extensive and robust array of supplementary materials. In addition to the traditional bylaw and policy manual, these materials include guidebooks on specific aspects of the procurement process, process flowcharts, frequently asked questions, case studies, collections of best practices, checklists, templates, etc. In leading jurisdictions these materials are broadly accessible to staff, vendors, and the general public through the internet. Based on examples viewed as part of this study, individual topics can include:

- A general overview of the procurement process.

- The basics of procurement planning.
- Writing specifications.
- Conducting evaluations.
- Managing risk.
- The Complaints Process.
- Vendor Debriefings.
- Understanding Value for Money.
- Why Projects Fail.
- Skills Development.
- A guide to small purchases.
- Process integrity.
- Risk management checklist.

The benefits of this more transparent approach include:

- A demonstrated commitment to openness/transparency and professionalism.
- A higher level of understanding and awareness of requirements by staff and the vendor community.
- Higher levels of compliance/fewer incidences of errors with respect to policy and procedures, as well as a greater utilization of best practices.

Within PMMD, there is every indication that officials have a good understanding – through training, practice, and experience – of the various steps in the procurement process and appropriate practices in key areas such as specification preparation and evaluation. That PMMD will apply these in a consistent manner for projects that the Division manages is recognized. Also, within various departments (again, varying

somewhat department by department) there are accepted policies and procedures, sometimes written down or expressed in department-specific training, other times not.

However, there is no comprehensive body of supplementary material that would ensure consistency of approaches, uniformity of expectations, a shared understanding of how to operationalize values, recommended best practices, etc.

Examples of this problem are dealt with in the Auditor General's report:

- The Auditor General identified the need for a policy that prohibited firms or vendors who were involved in preparing a bid request document from bidding on that particular project. Management's response notes that this prohibition already exists in practice and is generally understood across departments. However, the policy is not expressed in the form of a formal policy and staff that may not be aware cannot access useful descriptive material (i.e. in addition to a formal policy statement) that would highlight the requirement.
- The Auditor General identified the need for all staff to understand their roles and responsibilities in the procurement process. Management noted that policies have been put in place dealing with conflict of interest, the requirement for a business case when hiring outside consultants, etc. but acknowledged the need for more guidance for staff on how to operationalize these requirements.
- The Auditor General noted that "*while the City's by-laws are comprehensive in nature... Often times, user departments and the Purchasing Division seek clarification from the City Solicitor and the Auditor General's Office for interpretation.*"

On a positive note, the need for a more comprehensive and robust approach is generally recognized. There have been efforts underway to create a policy manual and this has been identified as a priority for the team implementing the

Auditor General's report. However, a single policy manual – while a step forward – would not in and of itself meet the best practice test (issue-specific handbooks, checklists, tip sheets, templates, etc.)

The following is an example of how a best practice approach would play out in practical terms with respect to the evaluation process (but that could easily apply to other aspects of procurement, such as developing a business case, developing specifications, debriefing vendors, handling a complaint, etc.):

- A line department staff person has been asked to participate in an evaluation panel. In preparation for this participation, they would be able to access helpful, practical, easy to read and understand (as opposed to the formal rules-oriented language and focus of most policy manuals) information on-line that describes:
  - The principles that underlie the evaluation process.
  - The distinction between evaluation and selection.
  - The *best practice* make up of a panel and the respective roles of the various participants.
  - The actual steps the panel will go through as it carries out its duties.
  - An explanation of any special requirements for panel members, such as signing a “no conflict” declaration.
  - A description of confidentiality requirements.
  - How to actually conduct the evaluation.
  - Examples of evaluation frameworks or tools.
  - A description of the most common errors and how to avoid them.
  - Frequently asked questions and answers.
  - An evaluator's checklist of key issues.

## Training and Development

As discussed in *Volume 1*, the importance of having highly trained and professional procurement staff is a key component of risk mitigation. Within the procurement field, professional development in procurement is a recognized, well-developed, and established aspect of the profession. For leading jurisdictions, this includes minimum training and certification/recertification requirements for all staff involved in the procurement process, i.e. the analyst/coordinator level, specification writers, evaluators, managers, and senior executives. In terms of specificity and intensity, this training typically makes distinctions between and among positions in terms of their importance to the procurement process. The emphasis in best practice organizations on training and development also has an important added dimension related to ensuring that the organization can attract and retain high quality staff.

This kind of more comprehensive approach is not in place at the City. The City currently does not have a formally articulated, standard set of expected competencies, skills, and experience and associated training and development programs for individuals who are involved at different stages/degrees of intensity in the procurement process. At present, PMMD is responsible for the training and development needs of its own staff and for offering training, when requested, to line department. Line departments are responsible for identifying and addressing their own procurement-related training needs.

While as indicated in its response to the Auditor General's report, management is confident that PMMD staff "*meet the professional and technical requirements to carry out their duties*", this assessment does not appear to have been made against more formal expectations or benchmarks that one would find in a leading jurisdiction. Similarly, there is no consistent set of competency, skill, or expertise standards, or related training and development requirements for staff involved in procurement in the line departments.

It is important to stress that this finding is in no way meant to call into question the professional competence of PMMD or line department staff but rather to highlight the best practice *gap* in terms of quality assurance. It also represents a best practice gap in establishing the City as an attractive organization in terms of recruiting and retaining staff.

### **Value for Money**

As discussed in *Volume 1*, the essential value-for-money theme is that “no single purchasing method suits all situations”. In practical terms, this means that a government that relies almost exclusively on the formal competitive process (i.e. an open, publicly advertised, sealed bid competitive process) for all purchases over minimum thresholds will not be achieving value for money. Likewise, a government that relies almost exclusively on informal approaches such as soliciting three quotes from known, competent suppliers will not be demonstrating the values of fairness, equity, and openness.

The sense both internally and externally – and confirmed in the Auditor General’s report – is that the City does not currently have a balanced approach in this regard and is not making effective value-for-money distinctions in procurement processes for purchases above the current \$7,500 DPO level. While current City policies allow for the use of informal (e.g. three quote) processes above this level, by practice virtually all contracts above \$7,500 are subject to a formal sealed-bid, competitive tendering approach, regardless of the size/complexity of the contract or its value to bidders.

The general view is that this emphasis on the formal process is costly for both the City and vendors, results in unnecessary delays, is inefficient for lower value contracts, and clearly out of step with many other organizations (both larger and

smaller). The interviews indicated a consensus that greater reliance on informal processes below a pre-determined threshold (comparable to other jurisdictions, e.g. in the range of \$25,000) would result in improved efficiency and effectiveness and an enhanced capacity to focus resources on larger, more complex, and higher risk undertakings.

### **Single Point of Contact**

As discussed in *Volume 1*, failure to manage communications effectively during the competitive process can pose both real and perceived risks to the integrity of the process. The best practice is to carefully and consistently manage interaction between vendors and the purchasing organization during the competitive process. At present, however, this best practice is undermined by the lack of application to all City officials.

While the Auditor General's report correctly points out that there is no formal policy in this area, the research shows that this is not unusual in many leading jurisdictions given that the practice is so well established in many cases that a formal policy would be viewed as unnecessary.

In operational terms, the long-standing general practice is that request documents put out by PMMD do include some form of single point of contact requirement. This can be either an individual in the PMMD or the line department, depending on who is leading the procurement, or on occasion a combination of the two (the PMMD person for inquiries about the process and the line person for more technical/specification related inquiries). For these kinds of competitions, PMMD is usually in a monitoring/compliance assurance role and the general view within the City that the current practice is respected at the staff level.

For purchases under the \$7,500 DPO, departments have the flexibility to determine their own approach but have the same general understanding of the recommended best practice (although the requirement is somewhat less relevant below the DPO threshold given that competitive processes at that level tend to involve obtaining three quotes).

In light of the above, the Auditor General has recommended – and management has concurred – that a more formal policy should be developed and, as discussed in *Volume 1*, there are many examples of good policies from other jurisdictions that can be easily adapted for use in Toronto. One outstanding issue, however, that was not addressed in the Auditor General's report is the applicability of the policy to elected officials.

At present, there appears to be some confusion within the City in this regard. Some of those interviewed were clear that the current requirement in bid request documents (requiring vendors or their lobbyists/agents to deal only with the designated contact person) applied to both staff and elected officials. Others took the position that the requirement technically only applied to staff. In either case, the general consensus was that vendor/lobbyist contact with elected officials often took place while the competitive process was underway. There was also a general awareness that this is not consistent with best practices in place in many other jurisdictions.

## **Complaints Handling**

As discussed in *Volume 1*, clear, transparent policies with respect to reviewing complaints from bidders is emphasized in the literature, practices in other jurisdictions, and expert opinion as an important best practice in terms of mitigating and managing risk. At its core, a formal complaints process is meant to be an additional physical embodiment of fairness, equity, and transparency as

well as a further check on value-for-money decision-making. Consistent with these principles, a well-developed complaints procedure is generally seen as something that bidders should have a right to expect.

At present, the City does not have what would be considered a best practices approach in this area, i.e. an established, well-developed and transparent complaints handling policy and set of procedures that safeguards the integrity of the process.

In the absence of this kind of managed approach, the result can only be described in professional procurement policy terms as something of a “free-for-all”, particularly at the political level, including the following as not-uncommon occurrences:

- Vendors or their lobbyists/agents are not prohibited from voicing complaints to Councillors at any stage in the process (notwithstanding “single point of contact” requirements stated in the request document).
- Councillors can choose to contact staff directly, champion the bidder’s complaint in public at a Council meeting, or make a deputation on the complainant’s behalf to the appropriate Standing Committee at the time the contract award is being considered.
- Unhappy bidders and/or their lobbyists/agents can make their own deputation to the appropriate Standing Committee when that Committee meets to review the staff award recommendation. In response, the winning bidder can also make a deputation at the same time, sometimes resulting in debates between and among competing vendors and lobbyists.

## Lobbying

Lobbying of Toronto Council members emerges from the research as an ongoing concern in terms of the real and perceived integrity of the procurement process. As noted in the Toronto Computer Leasing Inquiry Research Paper *Lobbyist Registration Volume 3 – City of Toronto & Recommendations*:

*“Lobbying has been generally pervasive at the City of Toronto in the wake of amalgamation and given the existence of larger economic opportunities for outside interests. Lobbyists have been and continue to be a familiar presence at City Hall and in particular on the second floor where Councillors’ offices are located – a phenomenon known apparently in City circles as ‘working the second floor’.”*

This message was strongly reinforced during the research for this report (*Procurement Volume 2*). The following are key highlights:

- Procurement-related lobbying of Councillors is often very intense, particularly for larger business opportunities. In general, Toronto City Councillors are seen as much more accessible and responsive to lobbyists than many other municipalities or other levels of government, often reflecting the prevailing approach in their respective former municipalities. As reported, this results in a form of *self-fulfilling prophecy* phenomenon within the private sector i.e. if the competition is doing it, you need to do it as well.
- For the most part, there are no restrictions on how and when a Councillor can be lobbied on a procurement related matter and as a result lobbying – and often very intensive lobbying – takes place at all stages of the procurement process, including:
  - After a request document has been released.

- Once the bid receipt deadline has passed.
  - During the evaluation process.
  - During the period in which staff are formulating award recommendations.
  - During the process when staff are presenting their recommendations to Council.
  - During the period after an award has been made.
- Professional lobbyists at the City are often not the “unseen backroom strategists” that one typically finds at in Canada, particular at more senior levels of government (see Toronto Computer Leasing Inquiry research paper *Lobbyist Registration Volume 1: Comparative Overview*). Rather they have a level of prominence and visibility that, as reported in external interviews, would be viewed as offensive or even unthinkable in many other municipalities or at other levels of government, e.g. provincial/federal level.
  - In terms of defining their services, lobbyists active at the City of Toronto are seen in the private sector as being more interventionist with elected officials than the same lobbyists would be at the provincial or federal level. As reported, this includes:
    - A much higher incidence of direct advocacy with elected officials and staff on behalf of their clients than is generally the case at the provincial or federal level including providing elected officials with briefing material designed to counter staff contract award recommendations.
    - A highly visible presence at Council meetings and Standing Committee meetings.

- Making deputations on behalf of clients – particularly unsuccessful clients – to Standing Committees, including debates between lobbyists before the Committee.
- In the past, when restrictions on lobbying have been agreed to on a one-off basis for a particularly high profile procurement, the general perception is that the rules were ignored by many lobbyists and some Councillors as well and that there were no consequences for this lack of compliance.
- The general view among procurement experts was that elected officials who advocate for this kind of unrestricted approach to lobbying typically use the same public rationale – to paraphrase the Mayor of Alameda California (p.60 in *Procurement Volume 1*):
  - That as elected officials, they need to be accessible to anyone who wants to talk to them and that just because they are listening, does not mean that their judgement is inappropriately affected.

According to experts, the thinking behind this rationale often reflects one or more of the following:

- This kind of unrestricted lobbying can have a powerful appeal to some elected officials – the chance to be seen to exercise power, hospitality opportunities, fundraising opportunities, etc. – and attempts to restrict it are often resisted for these reasons.
- Some elected officials interpret the concepts of *transparency* and *democracy* to mean access at any time to elected officials and the right of elected officials to intervene at anytime on behalf of their constituents, rather than their role to provide a policy-driven process that ensures a level playing field for all vendors.
- Some elected officials may simply and legitimately not have a good understanding of the more structured, professional, and policy-

oriented ways in which they can ensure fairness, equity, and transparency for all bidders (as opposed to just those with lobbyists) without jeopardizing the real or perceived integrity of the process.

## **Other Political Involvement in the Process**

Beyond the specific issues discussed above with respect to single point of contact, complaints handling, and lobbying, there is a general internal and external sense that there has not been a uniform or consistent understanding of the role of elected officials in the procurement process at the City of Toronto, particularly as it relates to demonstrating and safeguarding the integrity of the process. The following are other past examples:

- Individual requests for copies of bid request documents before they have been made public.
- Calls to administrative staff on behalf of a bidder while the procurement process was underway urging that a late bid be accepted.
- Standing Committees intervening to “re-award” contracts to unsuccessful bidders (although these attempts are generally overturned by Council given the obvious legal implications).

## **On-Line Processes**

Toronto’s continued reliance on distributing paper versions of request documents is seen as increasingly out of date and, even though a fee is charged for this service, administratively unnecessary. Many of those interviewed noted that other Canadian and U.S. jurisdictions – municipalities, provinces/states, and federal governments – have already moved in this direction, often at the request

of vendors, including small businesses. Approaches include either managing the service directly through their own website or through third party electronic tendering services. Although some jurisdictions also provide paper copies of documents by request, many took the position at the outset that it was reasonable in the present day to expect that even small vendors wishing to respond to request documents should have the capacity to access request documents or other information on line.

### **PMMD Resourcing/Staff Turnover**

There is a general awareness that PMMD has significant resourcing and staff turnover/morale issues. The resources issue is in part related to reductions in staffing levels that have taken place since amalgamation. As a result, the Division appears to some interviewees as being left with a more “bare bones” focus on transactions, as opposed to value-added services.

With respect to turnover, an additional consideration appears to be workload and morale. The currently highly centralized model in place in the City, in conjunction with resourcing levels, has resulted in heavy workload demands, long hours, and a consistently low level of customer satisfaction within line departments. As reported, the situation is exacerbated by what are perceived as negative or unhelpful attitudes/activities of Council itself, including:

- The tendency for some members of Council to be highly critical in public of the professionalism and integrity of procurement officials as a *first response* rather than to deal more directly with the CAO or CFO with respect to performance concerns.
- External to the City, Toronto Councillors in general are viewed as being more inappropriately interventionist in procurement related activities relative to many other municipalities or other levels of government.

As suggested at various points during the interview process, the above factors combine to give the City of Toronto a recognized negative reputation in the larger community of public sector procurement professionals as a less attractive place to work.

## Part 5

### Recommendations

This section focuses on recommendations intended to strengthen current procurement policies and practices at the City of Toronto. As noted elsewhere, the Auditor General's review resulted in a comprehensive set of detailed recommendations. For the most part, these appear to have been viewed within the City as reasonable and valid recommendations that have been accepted and are being acted upon.

With a few exceptions (as discussed in individual recommendations below) the Auditor General's recommendations are supported and reinforced by the results of this study. The challenge in this case has been one of adding value to, rather than duplicating/simply repeating the very comprehensive recommendations of the Auditor General.

As presented, a number of the recommendations that follow (for example, with respect to clarity in roles and responsibilities, value for money, etc.) are intended to reinforce and/or propose additional dimensions to key Auditor General recommendations. In other cases (for example, recommendations dealing with the role of Councillors in the procurement process, transparency, risk management, and delegation), they are intended to supplement the Auditor General's recommendations.

Recommendations are provided in the following areas:

- Values-based procurement
- A more decentralized accountability.
- Roles and responsibilities.

- Value for money.
- Training and development.
- More robust policy supports.
- Risk management.
- Official contact point during the competitive process.
- Complaints handling.
- Delegation.
- Standing Committee award decision-making.
- Fairness commissioners.
- Best and final offer.
- Transparency.
- On-line bid request documents.

### **Values-Based Procurement**

It is recommended that the City's overall approach to procurement include a more active and robust approach to embedding procurement ethics in the organization's operating culture (i.e. consistent with the recommendations under "Continuing to Build an Ethical Organization" in TCLI Research Paper *Conflict of Interest Volume 2*).

This would involve the following types of activities:

- Inclusion of procurement ethics as part of the proposed citywide ethics management program recommended on page 37 of *Conflict of Interest Volume 2*.
- Identifying ongoing opportunities for City senior executives to emphasize and demonstrate the values for staff.

- The development of meaningful descriptions of how the values are to be used by staff in all departments as a form of “living document” that provides practical guidance.
- Consistent, centrally mandated training standards for all staff (PMMD and line departments) involved in the procurement function related to values/ethics and ongoing ethics training and development in support of these standards.
- Training in procurement ethics for elected officials.
- Examples of real-life case studies that demonstrate the values in action and opportunities to discuss and learn from these case studies as a part of ongoing professional development.
- Inclusion of procurement issues in the recommended regular meetings between Council and senior administrative officials to discuss ethics and code of conduct issues, including the use of case studies (see recommendation on page 39 of *Conflict of Interest Volume 2*).

### **A More Decentralized Accountability**

The Auditor General’s report found that there is no single best practice with respect to organization of the procurement function and that no changes should be made to the current structure until roles and responsibilities have been more thoroughly clarified. This finding is certainly true across a wide range of different organizations. However, on the issue of the appropriate balance between centralized and decentralized accountability in purchasing, the research conducted for this report suggests that there is a pattern for larger government organizations. This typically involves a greater degree of decentralization and responsibility/accountability in line departments than currently exists in the City of Toronto.

In these other jurisdictions, it is generally clear that this greater decentralization of authority relates to both managing the competitive process and making awards within the context of clearly articulated corporate policy and process expectations.

It is clear that the current level of centralization at the City made particular sense in the immediate post-amalgamation period when compliance with the new City's procurement policies and the need to maximize the use of blanket contracts, vendors or record, etc. were paramount considerations. It is not as clear, however, that this is the best approach for a more mature purchasing function in an organization of the size and complexity of the City of Toronto and one that otherwise places a high value on the accountability of line departments for making effective decisions within corporate policies.

It is recommended, therefore, that as part of the review of the procurement function currently underway through the CFO's office:

- Consideration be given to establishing a more decentralized procurement function. This would involve giving line departments the authority and, as importantly, the accountability for managing their own procurement requirements under a specific dollar-value threshold, with PMMD more clearly positioned in an enhanced overall oversight/controllership role.
- The start of this review need not wait until roles and responsibilities under the current configuration are clarified (as had been recommended by the Auditor General).
- Accommodation be made for the fact that not all departments have procurement volumes sufficient to warrant the decentralized approach and may wish to continue to utilize PMMD for their requirements. In these cases, service level agreements should be established.

- The delegation of authority and accountability to individual departments be made on a department-by-department basis involving a form of quality assurance certification by PMMD and supported by:
  - Clear standards for competencies, skills, experience, training, and development for staff in line departments established and monitored by PMMD and with centralized training and professional development provided by PMMD.
  - Consistent expectations for data entry, monitoring, tracking, and reporting.
  - The availability of much more extensive, user-friendly and operationally relevant materials (handbooks, checklists, etc.) that define and describe required processes and recommended best practices, again as part of the oversight role of PMMD.
- As a condition of receiving this decentralized responsibility and accountability, the procurement staff in a line department would:
  - Have a dual accountability relationship – for administrative and management purposes to the line department and for professional competence and adherence to corporately-established policies, procedures, guidelines, best practices, etc. to the Director of PMMD (including joint line-PMMD responsibility for performance management).
  - Be required to meet training and competency standards established by PMMD.
- The dollar value threshold for procurements managed within line departments should be established commensurate with risk, i.e. extensiveness of training, whether external fairness commissioner or internal quality assurance advisors are utilized consistently, etc. For a fully capable line department, a maximum threshold of \$100,000 would not be unreasonable.

## **Roles and Responsibilities**

Both the Auditor's study and this review identified the lack of internal clarity with respect to roles and responsibilities as a major issue for the City. As such, the Auditor General's recommendation in this area is strongly supported, particularly in light of the organizational structure changes and overarching quality assurance/controllership role for PMMD proposed above.

In developing these clear responsibilities and accountabilities, it is suggested that the City could draw on numerous examples from other jurisdictions in terms of not only how these should be aligned, but also how to communicate these effectively to staff.

## **Value for Money**

As discussed in this report, as well as in the Auditor General's review, the City's current approach of requiring a competitive sealed bid process for virtually all projects above the \$7,500 DPO level is not consistent with best practices in other jurisdictions and is not maximizing efficiency, effectiveness, and value for money.

Consistent with the direction in the Auditor General's report, the City should consider establishing a threshold, (for example, \$25,000) above which a sealed competitive bid process with public opening of responses would be the norm. Below that level, City staff would primarily use the informal competitive process, emphasizing where possible pre-qualified bidders, with bids to be received and awarded by staff, i.e. this approach would not require the public opening of bids.

In the more decentralized organization recommended earlier, this would mean that procurement staff in line departments would manage these under-\$25,000 informal competitive processes.

## **Training and Development**

Consistent with the best practice in leading jurisdictions, it is recommended that the City adopt a broader and more comprehensive approach than that initially recommended by the Auditor General, i.e. one that would emphasize the professional development of the procurement function across all City departments, including that:

- Skills, experience, and competency levels should be identified for positions that have substantive involvement in the procurement process.
- Training and certification standards should be put in place for each of these positions that recognizes and makes appropriate distinctions in terms of complexity/their importance to the procurement process.
- Individuals currently in these positions should be assessed and appropriate training/certification plans put in place.
- Individuals in key positions should have paid membership in one or more professional associations with the expectation that this membership will be used to further enhance their professional development.
- PMMD, in consultation with line departments and corporate Human Resources, should be responsible for standard setting and quality control with respect to the professional development of staff that have substantive involvement in the procurement process in all departments.

An additional concern and recommendation in this area relates to opportunities for career path development and staff recruitment/retention. These issues were identified in the interview process and in the Auditor General's report.

The specific concern is that procurement is increasingly considered a professional discipline in the public service and individuals in this area often want to plan their careers within this discipline. However, opportunities for professional development and advancement can be limited within individual organizations with obvious implications for staff retention/turnover.

Many public sector organizations have recognized the benefits of what are, in effect, “twinning” agreements with other organizations. The purpose of these agreements would be to allow staff in the participating organizations the opportunity to move between and among the organizations (i.e. in the form of secondments) as part of their career path and ongoing professional development. The benefits of this approach include:

- Staff access to career and professional development opportunities that would not otherwise be available.
- Higher levels of job/career satisfaction among staff and higher retention rates.
- Positioning Toronto as a more attractive workplace for procurement professionals, resulting in an improved capacity to fill vacancies/attract qualified new people.
- Cross-fertilization of ideas and professional experiences between and among participating organizations.

With this in mind, it is recommended that the City seek to establish formal agreements as described above with other large public sector organizations – the Province of Ontario and Public Works and Government Services Canada (PWGSC) would be two obvious potential candidates.

## More Robust Policy Supports

As described in *Procurement Volume 1*, leading jurisdictions invest considerable time and resources in ensuring that their core procurement policies (statute, bylaw, code, ordinance, etc.) are supported by an extensive and robust array of supplementary materials. As discussed elsewhere, in addition to the traditional bylaw and policy manual, these materials include guidebooks on specific aspects of the procurement process, process flowcharts, frequently asked questions, case studies, collections of best practices, checklists, templates, etc. Also as noted, in leading jurisdictions these materials are broadly accessible to staff, vendors, and the public through the internet. Based on examples viewed as part of this study, individual topics can include:

- A general overview of the procurement process.
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- The Complaints Process.
- Vendor Debriefings.
- Understanding Value for Money.
- Why Projects Fail.
- Skills Development.
- A guide to small purchases.
- Process integrity.
- Risk management checklist.

The benefits of this approach include:

- A demonstrated commitment to openness/transparency and professionalism.
- A higher level of understanding and awareness of requirements by staff and the vendor community.
- Higher levels of compliance/fewer incidences of errors with respect to policy and procedures, as well as a greater utilization of best practices.

As per the above practices in other jurisdictions, it is recommended that PMMD be directed to develop and implement a comprehensive and robust set of policy supports as described above (drawing on/adapting to the extent possible high quality materials already developed and available from other jurisdictions). It is also recommended that these materials be available to all City staff and, as per the recommendation dealing with Transparency presented later on in this section, to the public/vendors as well via the internet.

### **Risk Management**

As discussed in *Volume 1*, risk management methodologies and tools emerge from the research as a useful best practice in managing the procurement function. It is recommended that the City's procurement practices be based more formally on a risk management approach that would provide guidance to staff in PMMD and line departments. This would include the development (or adoption/modification from another jurisdiction) of risk management frameworks tailored to the needs of procurement specialists. As a best practice approach, these would be supplemented by project risk management guidelines, risk management checklists and other similar tools, as well as the identification of risk management as a competency required for procurement professionals and a focus of ongoing training.

### **Official Contact Point during the Competitive Process**

As discussed in *Volume 1*, failure to manage communications effectively during the competitive process can pose both real and perceived risks to the integrity of the process. The best practice is to carefully and consistently manage interaction between vendors and the purchasing organization during the

competitive process. At present, however, this best practice is undermined by the lack of application to all City officials.

It is recommended that the City of Toronto commit itself to the highest standards of integrity with respect to managing communications between vendors and City officials during the competitive process, including that:

- The current practice of official contact persons during the competitive process be reinforced in the existing bylaw and related policies (recognizing that in some cases, there may be more than one official point of contact, i.e. a purchasing professional with respect to the process and the program official to respond to technical issues).
- This policy be clear that the competitive process includes all stages in the decision-making process up until such time as an award decision has been reached and announced.
- It be made clear that the policy of an official contact person for dealing with vendors applies to vendor contact with Councillors as well as administrative staff.
- It be made clear in the bylaw and accompanying policies/operational guidance materials that vendors (or their lobbyists or agents) who violate this policy will be disqualified.
- For repeated breaches of this policy, vendors be prohibited from bidding on City business for a defined period.
- Decisions with respect to vendor disqualification/prohibition be made by the CFO, with appropriate warnings and notification to the vendor as well as documentation of the reasons for the decision.
- Appeals of the CFO's decisions be submitted in writing to a panel of officials from the Auditor General's Office (as a body whose independence and integrity would be beyond question).

- City officials (including Councillors and administrative staff) be required to report material breaches of the official point of contact policy by lobbyists to the proposed City Integrity Commissioner who, upon verification, would be required to remove the individuals from the Registry.
- Compliance with this policy be referenced in the Code of Conduct for Elected Officials and in the proposed Code of Conduct for Employees (see Recommendations in Toronto Computer Leasing Inquiry Research Paper *Conflict of Interest Volume 2*).

### **Complaints Handing Procedure**

Currently, the City does not have a best practice approach to handling vendor complaints that ensures fairness and equity for all participants in the process and is an outward demonstration of the integrity of the process. As with the previous recommendation dealing with an official point of contact during the process, it is recommended that the City of Toronto commit itself to the highest demonstrated standards of integrity with respect to dealing with vendor complaints including:

- Clarifying in policy the expectation that all vendors are entitled to a formal debriefing from staff that provides them with feedback on why their bid was not successful.
- The development of a standard protocol/set of guidelines that staff would be expected to follow when conducting debriefings.
- The development of a formal two-stage process to manage vendor complaints about the procurement process to replace the current standing committee/deputation approach, including that:
  - All vendor complaints to elected officials and administrative staff would be referred as a matter of course to the official complaints process.

- Vendors would be required to request and participate in a formal debriefing as precondition of being able to launch a complaint.
- Complaints would be put in writing using a template to be provided and within a reasonable timeframe.
- Complaints would be adjudicated at the first level by a neutral panel of administrative staff that did not include the officials responsible for the procurement process.
- Complaints would be adjudicated at the second level by a panel of officials from the Auditor General's Office (as a body whose independence and integrity would be beyond question).
- The panel process would be conducted in a timely and expeditious manner. If the complaint was received before the contract was awarded, the contract award decision could be held until the complaint is resolved.
- Panel decisions and the reasons for those decisions (at both levels) would be communicated to the complainant in writing.
- The decision of the second panel would be considered final and not subject to further appeal within the City.
- The panel process would focus on the merits of the case and engage the complainant and other officials as the panels see fit but should not require/permit the involvement of individual Councillors or lobbyists appearing on behalf of a vendor.

This is not to suggest that individual Councillors may not have their own concerns about a particular procurement process (i.e. concerns that are unprompted by/unrelated to a particular a vendor). Again, however, there should be clear and consistent expectations with respect to how these complaints are to be processed. The recommendation, based on a consensus from the research and expert opinion is that:

- Councillor concerns should be brought forward in an environment of professionalism, respect, and trust between the elected and administrative levels of government.
- These concerns should be brought first to the attention of the appropriate and accountable senior administrative official e.g. the Director of PMMD or the Chief Financial Officer in the case of centrally managed procurements or senior line department officials in other cases.
- These senior staff should be given a reasonable opportunity to obtain any additional information that might be required, to review the situation, and to determine whether corrective action is required (either specific to an individual procurement or a more general change to policies and/or practices.)
- In the event that the individual Councillor and accountable senior departmental official cannot reach an agreement on the appropriate course of action, the matter should be referred to the CAO and Mayor for resolution.
- Council should encourage individual members who raise specific procurement concerns at Council meetings to first use the process described above.

## **Delegation**

As noted in TCLI Research Paper *Municipal Governance Volume 2*, Toronto Council has generally been viewed as being particularly conservative in terms of decisions delegated to staff and in Council becoming directly involved in operational decision-making. One sees this characteristic in the current purchasing policies of the City, particularly with respect to the Bid Committee. As noted by the Auditor General:

*“Currently, the Bid Committee meets on a weekly basis and has authority to award contracts up to \$2.5 million, resulting from a request for quotations, proposals or tenders where the lowest bidder meeting specifications and requirements is being recommended for award. Accordingly, the Bid Committee can only award contracts where there is no discretion required.”*

In light of this, a central theme of the recommendations in *Municipal Governance Volume 2* is “ensuring that the City of Toronto’s approach to delegation optimizes its effectiveness and efficiency and maximizes the benefits of having a large, professional and accountable bureaucracy”. It was recommended in that paper that this involve more extensive delegation to staff within the following framework:

- *“That the philosophical (as opposed to strictly legal) starting point for delegation should be not which decisions and matters/activities can Council let go to other levels, but rather which of these are essential, either for legal reasons or reasons related to financial, strategic, or other essential areas of risk, for Council to retain.”*
- *“That decisions, activities, or other matters to be delegated should be delegated to the lowest possible level in the organization, commensurate with risk. This would mean that where Council has the option of delegating an administrative matter either to a Committee or to administrative staff, in general delegation should go to staff, unless there is a compelling reason not to do so.”*

It was also recommended that “the CAO and Council institute and place greater emphasis on robust and risk-based reporting/accountability mechanisms so that Council can be assured that decisions and actions delegated to staff are executed in a manner that is consistent with Council direction as set out in policy and strategic directions.”

With respect to procurement, the various recommendations offered in this report, as well as those made by the Auditor General should provide Council with the assurance it would need in order to agree to more delegation of decision-making to staff, including:

- The existence of the Bid Committee as a vehicle for senior administrative officials to exercise direct accountability.
- A clearer, organization-wide quality assurance/controllership role for PMMD.
- More robust and consistent policy support to all staff (handbooks, guidelines, best practice, case studies, checklists, etc.) and greater public transparency with respect to those expectations.
- Enhanced and more consistent training and professional development standards for all staff.
- A best-in-class and fully transparent complaint handling process.
- Standard use of independent external fairness commissioners.

In light of this greater assurance, and in recognition of the City's status as one of the larger governments in Canada/North America, as well as the high standard of professionalism of its current senior management team, it is recommended that:

- Council consider a more extensive and streamlined delegation of authority for procurement decision-making to the senior administrative staff through the Bid Committee.
- Consistent with best practices in governance, the CAO provide the Council with regular reports that would be designed to satisfy Council with respect to policy and procedural compliance and the exercise of good judgement on the part of the Bid Committee.

The revised delegation should include, at a minimum, the following:

- Contract awards above the CAO signing authority of \$500,000 and up to \$5 million (initially, with the intention that once Council is confident in this approach, a higher limit be set) to be made by the Bid Committee (instead of the current \$2.5 million).
- This authority would apply to goods and services as well as consulting contracts, where the item is already a part of the approved budget and where the Bid Committee is satisfied that appropriate policies and processes were followed. (Contracts in excess of approved budgets would continue to require Council approval.)
- Authority/discretion for the Bid Committee to award contracts to other than the lowest bidder if:
  - Such an award is contemplated in the request document, i.e. a request for proposals that incorporates a price/value trade-off, as opposed to lowest-price, commodity based tenders.
  - The Bid Committee has legitimate and documented concerns about the capacity of the lowest bid to meet specifications/provide appropriate value-for-money. (The Bid Committee should be required to report annually to Council summarizing the situations in which these types of decisions were made.)
- The requirement that contracts valued at over the Bid Committee's upper limit (initially \$5 million) would be approved by Council.

### **Standing Committee Award Decision-Making**

*Note: the recommendations under the immediately preceding section on Delegation would eliminate the need for Standing Committees to review contract*

*awards. As such, the following discussion/recommendation of Standing Committee involvement in the process should be viewed as an interim approach.*

As noted earlier in this report, Standing Committees are often the subject of intensive lobbying when considering staff recommendations for contact awards. This includes lobbying by vendors, their paid lobbyists, and Councillors on behalf of individual proponents. As discussed in this report and in *Volume 1*, this kind of activity presents a perceived (and, on occasion, real) threat to the integrity of the procurement process.

Recommendations put forward elsewhere in this section dealing with vendor debriefings and complaints handling are intended to address these matters to a significant extent. However, they do not deal specifically with the issue of lobbying of Standing Committees when those committees are considering staff award recommendations.

As noted in the Auditor General's report, Standing Committees at this stage should be focusing on demonstrating that "*due diligence was followed in the overall process, relative to the financial risk and complexity of the contract, as well as include all critical terms and conditions*". With this in mind, it is recommended that:

- The primary focus of contract award discussions at Standing Committees should be between the Committee members and the staff making the recommendations with the focus being on due diligence as per the Auditor General's report.
- As part of ensuring fairness and equity, deputations from unsuccessful (or successful) vendors, their lobbyists/agents, and individual Councillors should not be permitted. Rather, complaints about the process should be directed through the official complaints procedure.

- It be clearly communicated to all vendors and their lobbyists/agents, that the prohibition on lobbying City officials during the competitive process includes all stages in the decision-making process, up to and including Standing Committee/Council consideration of staff contract award recommendations. Vendor concerns about a staff contact award recommendation should be directed to the formal complaints process.

### **Fairness Commissioners**

The Auditor General's report notes that *"for complex, high risk/cost or high profile projects, the engagement of a fairness commissioner, on an as required basis, may provide additional assurance to senior management and Council that the process followed was open, impartial, transparent, and proper."* The report recommended that a report on the costs and benefits of using fairness commissioners should be submitted to the Administration Committee. Management's response was that the issue would be studied and would require consultation with Councillors.

As discussed in *Procurement Volume 1*, the research, expert opinion, and practices from other jurisdictions strongly supports the use of fairness commissioners as part of demonstrating the integrity of the process not only to senior management and to elected officials, but also – and perhaps more importantly – to the vendor community. In addition, the City's current approach to procurement already countenances the use of external experts (albeit more technically oriented) *"to reflect the complexity and dollar value of the assignment."* As such, the central issue should not be one of "whether" but rather "how and when".

With respect to larger, more complex procurements, it is recommended that the City:

- Adopt a policy of requiring external independent fairness commissioners as a standard quality assurance feature of larger, more complex procurements.
- Provide for broad latitude in terms of the kind of roles and functions that fairness commissioners could provide (see *Procurement Volume 1, Appendix C*, page 109 for a comprehensive description of potential roles.)
- Be clear with respect to the general parameters (the “how” and “when”) under which a fairness commissioner should be used (i.e. what constitutes a larger, more complex procurement).
- Within these parameters, delegate decision-making on the use of fairness commissioners in individual procurement processes to the CFO in consultation with the line department. This would include discretion to define the specific range of services in any given situation and discretion to use external fairness commissioners in situations other than larger, more complex procurements.
- Provide in that policy for the independence of fairness commissioners by establishing their accountability directly to the CFO.
- Require an annual report to Council that summarize the use of fairness commissioners, consistent with the policy approved by Council, general classes of issues that may have been raised by fairness commissioners, and actions that were taken to address the issues/prevent their reoccurrence.

## **Best and Final Offer**

As discussed in *Procurement Volume 1*, the Best and Final Offer (BAFO) is essentially a two-stage procurement process, with the focus of the second stage being on either the top evaluated bidder or a short list of the top bidders. It provides an opportunity for short-listed suppliers to improve the quality of their

proposals in specific identified areas, including cost and quality. As reported, BAFO is well established and used extensively in the U.S. at the federal and state level as well as in many municipalities for both large and small/simple and complex procurements. To date, the methodology has not been used extensively in Canada.

From the research, it is apparent that this method, while unconventional in the Canadian context, has significant benefits in terms of overcoming the inherent rigidity of traditional *one shot* procurement processes. Therefore, it is recommended that the model be piloted at the City of Toronto including the following:

- For the purposes of the pilot, a set of existing BAFO policies and procedures be adapted from another jurisdiction and approved by Council.
- That the model be tested on a range of different procurements, including small, medium, and larger sizes.
- That a report on the results of the pilot tests be prepared including a staff recommendation whether to adopt BAFO on a more permanent basis.

## **Transparency**

Currently the City does not make all of its procurement related policies and supporting documents/materials available to the public, but rather only a sub-set of those documents that are viewed as being necessary for bidders to respond to request documents. From the research, it was apparent that best practice jurisdictions are committed to transparency with respect to all procurement policies and procedures. This translates into full disclosure – typically on-line – of not only legislation and formal procedural manuals, but also of supplementary materials including staff guidebooks, protocols, analytical tools, risk management

tools, checklists, tip sheets, etc. This level of disclosure is viewed as having several important benefits:

- It demonstrates that the jurisdiction is committed to openness and transparency and that there are no *secret* policies or guidelines.
- It ensures that all suppliers have equal access to and understanding of City policies and procurement practices.
- It provides for a level of rigour and accountability within a jurisdiction that might not be the case otherwise.

Accordingly, it is recommended that the City make all of its procurement related materials publicly available on its website, including policies, procedures, manuals, guidebooks, checklists, etc.

### **On-Line Bid Request Documents**

Following on the above discussion of transparency and the use of the internet, a related issue is the use of the internet to issue bid release documents. Given the focus of this study on key risk areas, the use of on-line processes (as a means of enhancing efficiency and effectiveness as opposed to mitigating risk) did not receive extensive attention in terms of best practices.

As noted in Part 4 and as remarked by the Auditor General, the City's practice of mailing out release documents is increasingly out of date relative to other municipalities and other levels of government. Many of those jurisdictions contacted as part of this study were actually quite surprised that a jurisdiction of Toronto's size would not have already implemented an on-line/electronic process. It was further suggested that vendors themselves were usually the biggest proponents in those jurisdictions of an on-line system.

From the interviews, as discussed in the Auditor General's report, and as evidenced in management's response, there has been a historical reluctance at the City to move in this area, notwithstanding the preponderance of evidence in its favour from other jurisdictions. The most commonly expressed concerns appear to be that small bidders do not always have access to the internet and would be disadvantaged or that the use of a third party tendering service would add additional cost, again particularly for small vendors.

To a large extent, the recommendation in this report dealing with value-for-money and the more extensive use of a three-quote approach for purchases up to \$25,000 should address much of this concern. Above that level, it would appear that very many other jurisdictions have already dealt successfully with these issues from two perspectives:

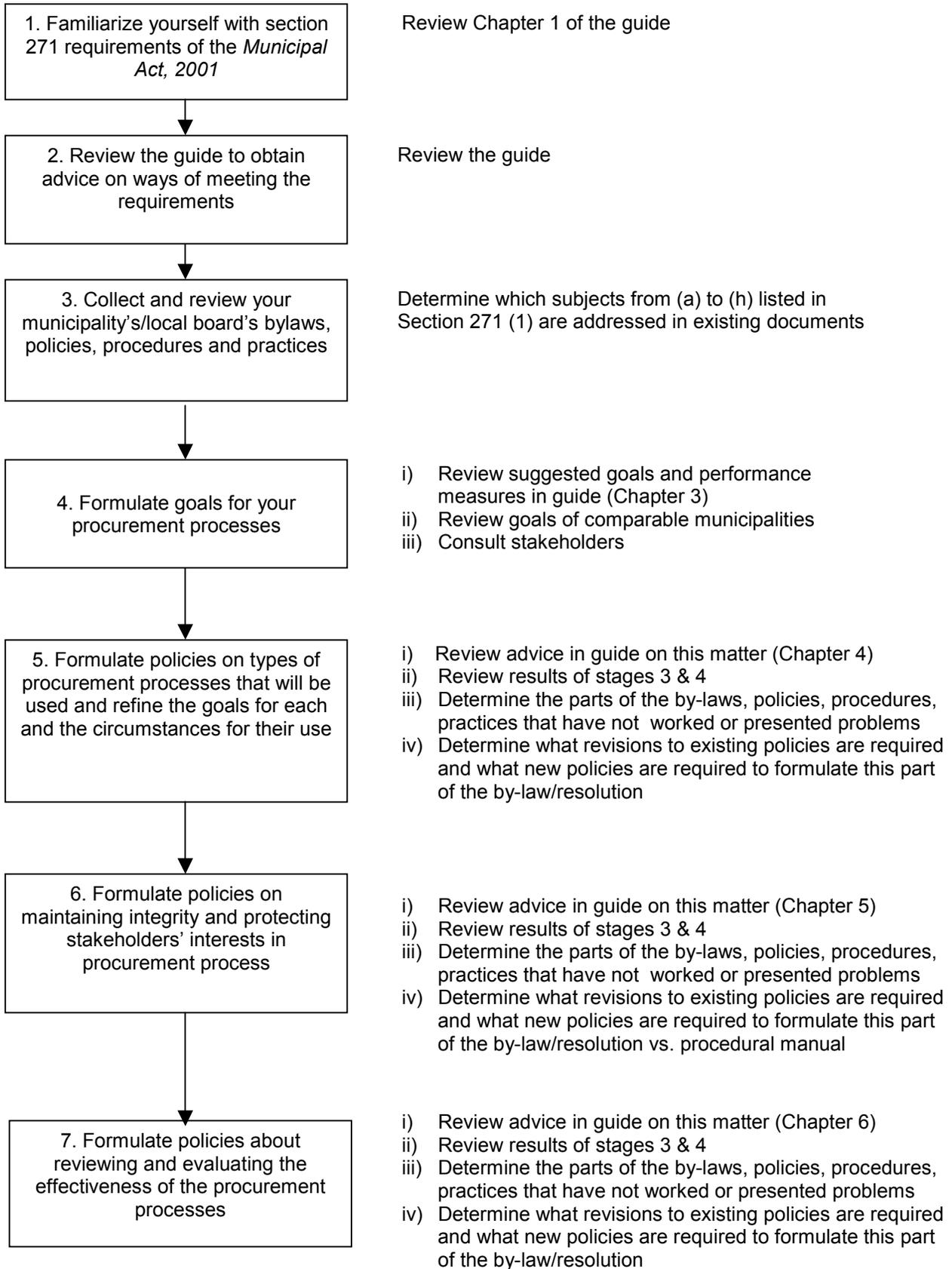
- That given the role/prevalence of technology in society, it is not unreasonable to expect any organization, regardless of size, that wants to do business with government to have access to the internet.
- That the fees/costs associated with vendors having to download bid request documents from third-party services are relatively modest and a reasonable cost of doing business with government.

**Appendix A**  
**Process Flow Chart from the MMAH “Guide to  
Developing Procurement Bylaws”**

# A Process to Developing Your Procurement Bylaw

## STAGES

## SUGGESTED ACTIONS



## **Appendix B**

### **Types of Procurements – MMAH Guide**

**Table 1. Goals of Procurement Processes**

Item	Competitive Process Seeking Multiple Bids or Proposals				Non-Competitive Procurement
	Request for Proposal	Request for Tender	Request for Quotation	Informal, Low Value Procurement	
Key goals	<p>To implement an effective, objective, fair, open, transparent, accountable and efficient process for obtaining unique proposals designed to meet broad outcomes to a complex problem or need for which there is no clear or single solution.</p> <p>To select the proposal that earns the highest score and meets the requirements specified in the competition, based on qualitative, technical and pricing considerations.</p>	<p>To implement an effective, objective, fair, open, transparent, accountable and efficient process for obtaining competitive bids based on precisely defined requirements for which a clear or single solution exists.</p> <p>To accept the lowest bid meeting the requirements specified in the competition.</p>	<p>Same as for Request for Tender, except that bid solicitation is done primarily on an invitational basis from a pre-determined bidders list but may be supplemented with public advertising of the procurement opportunity.</p>	<p>To obtain competitive pricing for a one-time procurement in an expeditious and cost effective manner through phone, fax, e-mail, other similar communication method, vendor advertisements or vendor catalogues.</p>	<p>To allow for procurement in an efficient and timely manner without seeking competitive pricing.</p> <p>To provide for exceptions to the procurement requirements of interprovincial trade agreements.</p> <p>To also provide for any additional exceptions stipulated in the municipality's or local board's purchasing bylaw/resolution or policies, providing that they are not in contravention of the interprovincial trade agreements.</p>

**Table 2. Descriptive Features of Procurement Processes**

Item	Competitive Process Seeking Multiple Bids or Proposals				Non-Competitive Procurement
	Request for Proposal	Request for Tender	Request for Quotation	Informal, Low Value Procurement	
Sealed bids or sealed proposals required	Always			Not Applicable	
Issue a Request for Information or a Request for Expressions of Interest/Pre-qualification prior to or in conjunction with a call for bids or proposals	Moderate to High Likelihood	Low to Moderate Likelihood		Not Applicable (needs statement may still be required)	
Call for bids or proposals advertised	Done in accordance with requirements of interprovincial trade agreements when estimated procurement value is \$100,000 or more; otherwise, done sometimes.	Always	Same as for Request for Proposal	Not Applicable	
Formal process used to pre-qualify bidders/ proponents (i.e. Request for Pre-qualification)	Moderate to High Likelihood		Low Likelihood	Not Applicable	
Seek bids or proposals from known bidders/ proponents (Bidders List)	Always	Low to Moderate Likelihood	Always	Moderate to High Likelihood	

**Table 2. Descriptive Features of Procurement Processes (Cont'd)**

Item	Competitive Process Seeking Multiple Bids or Proposals				Non-Competitive Procurement
	Request for Proposal	Request for Tender	Request for Quotation	Informal, Low Value Procurement	
Two-envelope <sup>1</sup> or similar multi-stage approach used	Moderate to High Likelihood	Not Applicable			
Bids or proposals opened and announced at a public meeting (excluding proprietary information)	Low to Moderate Likelihood	Always	Moderate to High Likelihood	Not Applicable	
Type of agreement with supplier	Purchase order, legally executed agreement, or blanket contract (standing agreement/offer).			Purchase by cash, purchase order, or credit card.	Cash, purchase order, credit card, legally executed agreement, or blanket contract (standing agreement/offer).
May include In-house bidding in addition to external bidding	Yes			Not applicable	

<sup>1</sup> In the two-envelope approach, qualitative and technical information is evaluated first and pricing information in a separate envelope is evaluated thereafter only if the qualitative and technical information meet a minimum score requirement predetermined by the municipality/local board. For more details, see Appendix 5.

**Table 3. Circumstances for Use of Procurement Processes**

Item	Competitive Process Seeking Multiple Bids or Proposals				Non-Competitive Procurement
	Request for Proposal	Request for Tender	Request for Quotation	Informal, Low Value Procurement	
Dollar value of procurement	Low to High Value	Medium to High Value	Low to Medium Value	Low Value	Any value, subject to proper authorization and to requirements of the interprovincial trade agreements
Purchaser has a clear or single solution in mind and precisely defines technical requirements for evaluating bids or proposals	Rarely	Always			
In evaluating bids/proposals from qualified bidders, price is the primary factor and is not negotiated	Low to Moderate Likelihood	Always			Not Applicable

## **Appendix C**

### **Auditor General's Report – Executive Summary**

### EXECUTIVE SUMMARY

This report responds to Toronto City Council's request for a comprehensive review of purchasing processes within the City.

The objectives of the review were to assess the procurement function in the City to determine whether the various activities, processes and policies are fair, open, transparent, cost-effective and value added. The review looked at:

- the organizational structure of the Finance Department's Purchasing and Materials Management Division (Purchasing Division);
- the roles and responsibilities of the Purchasing Division and operating departments in the procurement process;
- the adequacy of the Purchasing and Financial Control by-laws;
- the integrity, efficiency and cost effectiveness of the procurement process; and
- administrative controls and management information.

In conducting this review, we held a number of focus groups sessions with staff from both operating departments and the Purchasing Division. This approach was important in terms of identifying issues and opportunities for improvement. In addition to consulting with staff, we also conducted surveys of procurement practices in other jurisdictions, researched and identified key success factors related to procurement activities, and reviewed documents and records as we deemed necessary.

It is important to note that this was not a review of the Purchasing Division alone, but rather a review of procurement activities in general. While the Purchasing Division plays an important role in purchasing goods and services in the City, it is not the only player in the overall procurement process. Departments also play a key role in the process, which stretches from identifying and planning requirements to the evaluation and award of contracts.

The City of Toronto operates a number of programs across the City that deliver a variety of services to the public. The diversity of services offered and the different operating needs of departments, makes the development of standard procurement policies and the delivery of effective procurement services a challenging task. It is therefore essential that the procurement by-laws and policies are supported by key values and principles that staff understand and can default to in those instances where professional judgement must be exercised. It is also important that appropriate controls are imposed on the overall process to enhance transparency, openness and accountability with respect to procurement decisions, particularly where the decisions fall outside the standard rules or are somewhat subjective in nature.

## Procurement Processes Review – City of Toronto

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Over the last three to four years, management has established and City Council has adopted a number of policies and implemented various initiatives to strengthen procurement processes and better ensure that the City conducts its affairs in a fair, open and transparent manner. These policies and initiatives include:

- Code of Conduct policy for members of Council
- Conflict of Interest policy for City staff, as well as the distribution of this policy to City suppliers
- Lobbyist Disclosure Policy and voluntary lobbyist registry
- Fraud Policy, as well as a Fraud and Waste Hotline
- Information Technology Acquisition Process
- Policy for the Selection and Hiring of Professional and Consulting Services
- Purchasing Division's Web site, that provides purchasing related information and by-laws

In addition to the above, our review has identified other areas to further improve the City's procurement processes. These are discussed below.

For procurement processes to be effective there must be co-operation, as well as an understanding of and a commitment to the various components of the process on the part of both the Purchasing Division and departmental staff.

Our review found a lack of clarity with respect to roles, responsibilities, and requirements that must be adhered to in the various procurement processes. This has contributed to unnecessary delays in the procurement of goods and services, frustration on the part of Purchasing and departmental staff, and an unproductive use of staff time. It also exposes the City to the risk that proper processes may not be followed consistently by all staff. There is therefore a need to clarify the respective roles and responsibilities of the Purchasing Division and departments, and assign clear accountability for each component in the procurement process. By-laws and policies must also be clear, simple, practical, easy-to-understand and communicated to all applicable staff. In this regard, certain parts of the City's purchasing and financial control by-laws require clarification or amendment. In addition, clear guidelines and procedures need to be developed to guide staff, and necessary training provided, to ensure staff understand the requirements for each type of procurement process.

The City's Purchasing Division has a difficult task of performing a dual function of service and control. The Division provides service and advice to departments, ensures due process is followed, and brings non-compliance matters to the attention of the respective departmental senior manager or department head. It is, however, the department heads' responsibility to

ensure procurement policies are understood and adhered to by their respective staff, and that checks and balances exist to prevent and detect non-compliance.

Our focus group sessions found that departments view the Purchasing Division staff as transaction oriented, and as enforcers instead of facilitators. Recent events involving certain City contracts have understandably heightened this behaviour on the part of the Division. The Purchasing Division has advised that because of the lack of clarity as to who is responsible for enforcing policies and by-laws, it has fallen on the Purchasing Division to ensure compliance and as a result, its customer service role has suffered.

While process oversight is an essential component in the overall procurement process control framework, effectively servicing and facilitating the procurement needs of departments within a well-defined and clear policy/process framework is an equally important role for the Purchasing Division. The importance of departmental co-operation in this regard must also not be overlooked, as operating departments can facilitate and assist Purchasing in providing efficient customer service by properly planning and identifying the nature, specifications and timing of their goods and services needs.

The current commodity-based organization structure of the Purchasing Division was recommended by an outside consultant after amalgamation, and was approved by the Chief Administrative Officer and Executive Management Team at the time. Since that time, the City has evolved and harmonized many of its operations, and conditions and expectations have changed. It would therefore be appropriate to revisit the Purchasing Division's organizational structure to determine whether other models would be more effective in enhancing customer service and meeting the Division's mandate, taking into account the diverse operational needs and requirements of departments, and with the benefit of experience since amalgamation.

Since amalgamation, the Purchasing Division has experienced a high rate of staff turnover. This high turnover combined with difficulties in recruiting qualified purchasing professionals, has resulted in the Division losing significant procurement experience and expertise, which it has not been able to effectively replace. The Purchasing Division is working with the City's Human Resources Division to address this problem. However, in addition to retaining and recruiting qualified staff, the Purchasing Division must also ensure its current staff has the necessary knowledge and expertise to effectively enable the Division to carry out its customer service, advice and oversight responsibilities. In this regard, skills gaps should be identified and the necessary training provided.

The Purchasing Division's current processes are very labour and paper intensive. There are therefore opportunities to streamline some of the processes and improve customer service. The introduction of purchase cards to facilitate the purchase of low value items, while resulting in some additional work for the Purchasing Division to manage the program, would reduce the number of departmental purchase orders issued as well as related administrative and accounts payable requirements. Expanding the use of blanket contracts to meet both corporate and department specific needs, and establishing parameters and criteria to assist Purchasing staff in using less formal procurement processes, would also contribute to the more timely and efficient provision of goods and services to departments. In addition, making greater use of information

technology to enable suppliers to download call and request documents off the City's internet Web site, would help eliminate the current paper intensive processes.

The Purchasing Division currently operates nine stores across the City that supply various supplies and equipment to departments. The cost (\$2.1 million) to operate these stores appears high in relation to the value of goods (\$8.9 million) that flow through the stores to departments. In addition to the nine stores operated by the Purchasing Division, there are over 80 other locations, managed by City departments that also stock various materials and supplies. There is a need to review and rationalize the City stores operation, particularly if purchase cards are implemented and the use of blanket contracts is expanded. In this regard, we agree with staff's position that any rationalization review should also include the over 80 stores operated by departments. The Chief Financial Officer and Treasurer has been requested to report to the Administration Committee on the rationalization of City stores, and should include the stores operated by departments in the review.

Maintaining fair and transparent procurement processes are critical to protecting the integrity of and public confidence in the processes. Transparency means that City Committees and Council are provided accurate and complete information to allow for proper consideration of procurement transactions that they are expected to approve. Transparency also requires that each step in the procurement process is properly documented and retained such that it allows for and can withstand scrutiny by the public and other parties independent of the transaction or process. Clear guidelines for staff, supported by advice from Purchasing Division staff as appropriate, would help promote compliance with this important requirement. As a general rule, the greater the subjectivity in conducting an evaluation and making a decision, the more transparent the process must be and the more important conflict of interest and code of conduct become. As previously mentioned, the City has developed a number of policies to ensure the City conducts its affairs in a fair, ethical and transparent manner. However, there is a need to reinforce and formalize some current practices to ensure staff understand and apply the requirements consistently across the City.

The purchasing and financial control by-laws delegate certain authorities, within prescribed limits to staff, the bid committee and standing committees. Transparency with respect to decisions that Council has delegated to staff, could be enhanced by having the Purchasing Division report to Council annually on, among other things, single source purchases over \$7,500 that did not go through a competitive process, single source purchases as a percentage of total purchases, and all instances where purchase orders have been issued after the fact.

The City is currently considering the appointment of an integrity commissioner to further enhance integrity in its processes and investigate complaints. In addition, the use of an external consultant (fairness commissioner), on an as-required basis, to shadow the bid process for certain large, high risk and/or complex request for proposals, quotations or tenders, could provide senior management and Council with an increased level of assurance on the fairness of the process. The cost and benefits of using outside expertise for this purpose, and the criteria for determining when this expertise should be engaged, should be explored further.

Finally, it is important that appropriate results based performance indicators be established to measure the performance of the Purchasing Division in carrying out its program objectives on an ongoing basis, as well as establishing appropriate benchmarks to measure the success of the implementation of action recommended in this report.

The recommendations in this report address the need to streamline current processes, expedite initiatives in progress or on hold, and clarify, reinforce and formalize current practices.

On September 30, 2002, the Toronto Computer Leasing Inquiry commenced. The mandate of this Inquiry is to look into all aspects of leasing contracts for computers and related software between the City of Toronto and MFP Financial Services and between the City and Oracle Corporation. In October 2002, City Council voted to expand the Inquiry's mandate to investigate a number of issues related to consultants retained by the City of Toronto and the former City of North York, with respect to the development and implementation of the City's property tax system (TMACS). The Commissioner of both these inquiries, Madam Justice Denise Bellamy has been asked to make any recommendations which she may deem appropriate and in the public interest. Accordingly, there may be recommendations that arise from the Inquiries that could affect the City's procurement processes, as well as related policies. The timing of the Commissioner's report and recommendations is not known at this time. It is our view, however, that the development of an implementation plan and action on recommendations in the Auditor General's report should not be delayed, recognizing that some policies or procedures may be revised further once the Commissioner's recommendations are made public.

Successful implementation of the recommendations in this report will require significant time and effort. Staff cannot be expected to carry out their day to day duties and at the same time, work on implementing the recommendations in this report. Consequently, if action on the recommendations is to occur in a timely manner, then dedicated resources must be assigned to oversee and implement the action required. Appointing a project manager to develop an implementation plan and oversee the implementation, as well as the assignment of specific resources to deal with legal, information technology and other requirements, is strongly recommended.

## RECOMMENDATIONS

It is recommended that:

1. The Chief Financial Officer and Treasurer, in consultation with Commissioners, develop service level agreements for the procurement process:
  - (i) that clearly define the roles, responsibilities, authorities and accountability of the Purchasing and Materials Management Division and departments for each step in the process, including the responsibility for ensuring compliance with the various policies;
  - (ii) that outline the standards and expectations, with respect to the level of service, turnaround time and lead time required; and
  - (iii) ensure such requirements are communicated and understood by all applicable staff, and the necessary training is provided to staff in this regard.
2. The Chief Financial Officer and Treasurer and Commissioners ensure that:
  - (i) appropriate controls are in place to effectively mitigate the risks in the procurement process;
  - (ii) mechanisms exist to prevent and detect situations of non-compliance;
  - (iii) all applicable staff understand and are aware of their roles and responsibilities, and requirements that must be followed in the respective procurement process, as well as the consequences for not meeting their responsibilities or adhering to policies and procedures; and
  - (iv) compliance with procurement procedures is incorporated into the staff performance review process.
3. The Chief Financial Officer and Treasurer, in consultation with the Commissioner of Corporate Services, report to the Administration Committee by January 2004 on any revisions to the organizational structure of the Purchasing and Materials Management Division, such report to include:
  - (i) an examination of the various organizational structure models;
  - (ii) a determination as to whether the Client Services group of the Purchasing and Materials Management Division should be merged with the Purchasing Services Unit; and
  - (iii) clarification of the roles and responsibilities of each unit, the number, type and mix of positions required, and any resulting resource implications.

## Procurement Processes Review – City of Toronto

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4. The Chief Financial Officer and Treasurer, in his report to the Administration Committee on the rationalization of all City stores, take into account:
  - (i) what materials, supplies and equipment should be stocked in City stores, including those operated by departments;
  - (ii) the impact of the use of procurement cards and the increased use of blanket contracts to supply goods currently stocked by City Stores;
  - (iii) the impact on staff levels;
  - (iv) the opportunity costs of land and building on which the current stores are located, as well as funds tied up in inventory; and
  - (v) the overall benefits and cost savings resulting from the rationalization of the City stores operation.
  
5. The Chief Financial Officer and Treasurer, in consultation with the Commissioner of Corporate Services:
  - (i) identify the skills and expertise required by Purchasing and Materials Management Division staff to effectively meet the Division's business and customer service objectives;
  - (ii) assess the skill set and competency level of current staff;
  - (iii) develop a training and development program that ensures staff have the necessary customer service and technical expertise to effectively perform their responsibilities; and
  - (iv) determine the causes of the Purchasing and Materials Management Division's high staff turnover rate, and take the necessary corrective action to remedy this problem.
  
6. The Chief Financial Officer and Treasurer develop:
  - (i) results based performance indicators for the Purchasing and Materials Management Division that measure the results and effectiveness of its activities; and
  - (ii) benchmarks to measure the success of the implementation of the recommendations in this report.

## Procurement Processes Review – City of Toronto

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7. The Chief Financial Officer and Treasurer:
  - (i) expedite the development of a Purchasing Manual, develop clear and concise procedures to guide both the Purchasing Division and departmental staff in each type of procurement process, and ensure that the requirements of the Municipal Act, 2001 are incorporated into the City’s Municipal Code and policies, as required;
  - (ii) in conjunction with Commissioners, ensure that the procedures and guidelines are communicated to all staff with procurement responsibilities, and that the necessary training is provided, such that staff are aware of, understand and comply with the requirements;
  - (iii) develop a process to periodically review and update the Toronto Municipal Code chapters 71 (Financial Control) and 195 (Purchasing), as well as purchasing policies and procedures as required; and
  - (iv) incorporate procurement procedures/guidelines, applicable forms and “Frequently Asked Questions and Answers”, for each type of procurement process on the Purchasing Division’s Web site.
  
8. The Chief Administrative Officer, in consultation with the City Solicitor, the Chief Financial Officer and Treasurer and Commissioners, review and make the necessary revisions to the Toronto Municipal Code and/or policies to clarify the following:
  - (i) the appropriate level of delegation for emergency purchases, below the Commissioner level, as well as any conditions or parameters for such delegation;
  - (ii) the authorities required for the award of multi-year contracts and contracts that straddle from one year to another, for both capital and operating expenditures;
  - (iii) any appropriate revisions to the extent of Commissioners’ authority to approve over-expenditures for contracts under \$500,000, and the necessary reporting requirements;
  - (iv) the approval requirements for over-expenditures pertaining to operating contracts;
  - (v) the parameters and criteria under which the Commissioners should be able to authorize additional expenditures under a contract as a result of unforeseen circumstances or conditions, or to take the necessary action to complete a contractor’s unfulfilled contractual obligations in a timely manner, including any after the fact reporting requirements in this regard; and
  - (vi) the types of expenditures that do not require a purchasing document to support payment to the respective organization, including any appropriate parameters or limitations relating to these expenditures.

## Procurement Processes Review – City of Toronto

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9. Commissioners, in consultation with the Chief Financial Officer and Treasurer, revise their respective delegation of financial signing authority schedules, such that requests to increase the previously authorized dollar value on purchase orders and contracts, requires the approval of the original authorizer's immediate manager as soon as the additional work required becomes known.
10. The Chief Financial Officer and Treasurer report to the Administration Committee on the potential repeal of the Canadian Content Policy, and any related implications.
11. The Chief Financial Officer and Treasurer, in consultation with the City Clerk, develop a composite report format, by September 2003, for the award of contracts by the Bid Committee.
12. The Chief Financial Officer and Treasurer develop a dollar threshold limit above which responses to Request for Quotations must be opened by the Bid Committee.
13. The Chief Financial Officer and Treasurer:
  - (i) verify on a random basis, mathematical extensions on tenders received, regardless of whether the department identified an error or not;
  - (ii) in consultation with the City Solicitor incorporate in the Purchasing Manual, as well as in all call/request documents, the protocol and policies for the correction of mathematical errors contained in supplier submissions and how tenders and bids with mathematical errors will be treated;
  - (iii) communicate with vendors on a regular basis, to emphasize the importance of ensuring bids are accurate and complete, and include all mandatory information, monitor bids and proposals received for any error patterns, and, in consultation with the City Solicitor, determine whether any protocol or mechanisms can be implemented to deal with problematic vendors;
  - (iv) develop a standard template for bids/proposals, such that the location of mandatory documentation and information at bid openings is facilitated; and
  - (v) in consultation with the City Solicitor, review the call/request documents such that critical information requirements and consequences for non-compliance are clear, in particular those situations under which a bid/proposal will be declared informal.
14. The Chief Administrative Officer:
  - (i) develop a policy that formalizes the requirement to prohibit consulting firms who were involved in preparing the call/request from bidding on the respective project; and
  - (ii) ensure this requirement is communicated to all applicable staff and vendors.

15. The Chief Financial Officer and Treasurer, in consultation with Commissioners, ensure that all City staff involved in the procurement process have the knowledge and are properly trained to manage and participate in the process, and develop directives and guidelines such that:
- (i) call/request methods used are appropriate, an effective evaluation methodology is designed for all requests, that the evaluation is performed by more than one person, as appropriate, that the composition, knowledge and expertise of the evaluation team is reflective of the complexity and dollar value of the assignment, and that outside expertise is retained as required for complex and high risk procurement transactions, to ensure that a sound business decision is made and properly justified;
  - (ii) the proposal evaluation criteria are disclosed in the request document, the relative weights are pre-determined and documented, that price be assigned a minimum weight of 25 per cent, consistent with the City’s Hiring and Selection of Consulting Services Policy, and that criteria be developed for any exceptions to these requirements;
  - (iii) the Purchasing and Materials Management Division is involved, in proposal evaluations for those projects above a pre-determined dollar threshold limit or based on other criteria, as determined by the Chief Financial Officer and Treasurer, to monitor, provide guidance and ensure due process is followed;
  - (iv) proposal evaluations are performed independently and that each evaluation team member, whether a staff member or an outside consultant, is required to sign a conflict of interest declaration:
    - disclosing any entertainment, gifts, or other benefits, in cash or in kind, received from proponents or their representatives;
    - certifying that he or she conducted the evaluation in a fair and objective manner, and free from any conflict of interest or undue influence;
  - (v) the Chief Financial Officer and Treasurer develop a policy of “no informal contact” between department staff involved in the procurement process and the potential suppliers, and establish guidelines to assist staff in determining proper conduct and limitations with respect to communication and contact with potential suppliers; and
  - (vi) the City’s call/request documents stipulate that staff directly or indirectly involved in the evaluation and decision making process are not permitted to accept any gifts, entertainment or other benefits, and that the supplier’s bid/proposal may be rejected if it fails to comply with this requirement.

## Procurement Processes Review – City of Toronto

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16. The Chief Financial Officer and Treasurer, in consultation with the City Clerk, report to the Administration Committee on the level of documentation required to support procurement decisions and the responsibility for the retention of such documentation.
17. The Chief Financial Officer and Treasurer post the results of all contract awards, which exceed the Departmental Purchase Order limit, on the City's Web site, including appropriate information on all bids and proposals received.
18. The Chief Financial Officer and Treasurer develop a template for contract award reports that clearly presents key information to committees and Council, including information such as:
  - the bid/proposal solicitation method
  - evaluation criteria, including weight assigned to each factor
  - composition and technical knowledge of evaluation team
  - justification for contract award
  - length of the contract, including any renewal options
  - total value of contract
  - total value of any contingencies in contract
  - key terms and conditions in the contract.
19. The Chief Administrative Officer:
  - (i) ensure that City staff sign an annual declaration acknowledging that they understand and agree to the terms and conditions contained in the City's Conflict of Interest policy, as well as the consequences of non compliance;
  - (ii) send an annual notice to all City staff reiterating the City's Conflict of Interest policy;
  - (iii) on an annual basis, forward the Code of Conduct for Members of Council, Conflict of Interest Policy and the Fraud Policy to the Ethics Steering Committee, requesting their direction on whether these policies are clear and current, and recommend any revisions to Council for approval; and
  - (iv) amend the Lobbyist Disclosure Policy such that the policy applies to all City purchases regardless of dollar amount, so that it is consistent with the voluntary lobbyist registry.

## Procurement Processes Review – City of Toronto

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20. The Chief Administrative Officer, in consultation with the Chief Financial Officer and Treasurer, report to the Administration Committee by September 2003, on:
  - (i) the costs and benefits of using an external consultant (Fairness Commissioner) on certain City projects, to shadow and attest to the fairness and appropriateness of the procurement process;
  - (ii) the criteria to be used to determine when an external consultant (Fairness Commissioner) should be engaged; and
  - (iii) the reporting relationship for this role.
21. Commissioners:
  - (i) identify their procurement needs, including the volumes of goods and services required, specifications and deliverables, and the timing of such requirements; and
  - (ii) ensure that this information is communicated to the Purchasing and Materials Management Division and City Legal on a timely basis, allowing for sufficient lead time, such that both the Purchasing and Materials Management Division and City Legal can schedule their respective resources to meet departmental timelines.
22. The Chief Financial Officer and Treasurer:
  - (i) post on the City's Intranet a library of previously developed specifications;
  - (ii) develop specifications templates and guidelines which provide information to staff on the nature, type and level of detail required for specifications; and
  - (iii) establish partnerships with other jurisdictions for the sharing of specifications information.
23. Commissioners, in consultation with the Chief Financial Officer and Treasurer, establish mechanisms in their respective program areas to ensure that specifications and deliverables in Requests for Quotations, Proposals and Tenders, are clear and complete.
24. The Chief Financial Officer and Treasurer:
  - (i) ensure that departments are notified of any changes to call/request documents before the request or call is issued; and
  - (ii) in consultation with departments, make the determination with respect to any changes to the closing date specified in a call/request document.

## Procurement Processes Review – City of Toronto

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25. The Chief Financial Officer and Treasurer review and report to the Administration Committee by September 2003, on:
  - (i) discontinuing the practice of mailing out call/request documents to suppliers;
  - (ii) utilizing the City's Internet Web site or other electronic tendering services, as appropriate, to advertise contract opportunities with the City, and allow interested vendors to download the call/request document;
  - (iii) the purpose, cost and benefits of maintaining a Bidders List in its current form;
  - (iv) the cost savings and revenue implications resulting from changes to the current procurement solicitation process; and
  - (v) an appropriate and effective communication plan to inform suppliers of any changes to the current procurement solicitation process and requirements.
26. The Commissioner, Corporate Services, take the necessary action to expedite implementation of procurement initiatives that require information technology assistance and support.
27. The Chief Financial Officer and Treasurer establish clear parameters and criteria to guide Purchasing and Materials Management Division staff in using less formal procurement processes to obtain price quotations or proposals, taking into consideration the time given to suppliers to respond to calls or requests, the method by which responses are received, and the number of suppliers from which bids or proposals are solicited.
28. The Chief Financial Officer and Treasurer:
  - (i) expedite the implementation of purchasing cards in City operations, using a phased-in approach;
  - (ii) develop the necessary policies and procedures with respect to the issuance, use and control of credit and purchasing cards, including consequences for misuse of the cards;
  - (iii) in consultation with Commissioners, ensure that necessary training is provided to all departmental staff responsible for the use and management of the purchasing cards; and
  - (iv) report to the Administration Committee by January 2004, on the status of the purchasing card program, including any costs to administer the program and any benefits realized.

## Procurement Processes Review – City of Toronto

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29. Commissioners:
- (i) monitor the use of single source purchases in their respective departments with the view to reducing the need to purchase goods and services without going through a competitive process; and
  - (ii) in consultation with the Purchasing and Materials Management Division, properly plan their requirements in order to reduce the single sourcing of purchases.
30. The Chief Financial Officer and Treasurer:
- (i) in consultation with Commissioners, develop a list of sole source goods and services (e.g., TTC tokens, utilities, etc.) that can be processed without completing a sole (single) source request form;
  - (ii) report annually to the Administration Committee outlining, by department:
    - all single source purchases exceeding the Departmental Purchase Order limit and reasons therefor;
    - percentage of purchase orders processed through the Purchasing Division using single source as justification;
    - all instances where purchase orders have been issued after the fact; and
  - (iii) post on the City's Web site, all single source contract awards in excess of \$7,500.
31. The Chief Financial Officer and Treasurer:
- (i) monitor purchasing activity, including Departmental Purchase Orders issued by departments, and work with departments to identify opportunities to consolidate the procurement of common goods and services;
  - (ii) in consultation with departments, be more proactive in identifying potential opportunities to utilize blanket contract agreements for goods and services, to more efficiently meet the needs of departments, including emergency requirements;
  - (iii) further explore opportunities to enter into co-operative purchasing agreements with the City's Agencies, Boards and Commissions, other municipalities, public organizations, and other levels of government.
32. The Commissioner of Corporate Services, in consultation with the Chief Financial Officer and Treasurer, report to the Administration Committee by March 2004 with respect to the effectiveness of the Information Technology Acquisition procedures.

## Procurement Processes Review – City of Toronto

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33. The Chief Financial Officer and Treasurer, in consultation with Commissioners, re-establish a Purchasing Client Reference Group to deal with procurement issues.
34. The City Solicitor, in consultation with the Chief Financial Officer and Treasurer, and Commissioners:
  - (i) develop criteria and guidelines outlining the circumstances in which a formal contract is required; and
  - (ii) develop a standard contract template to be used and executed by departments for straightforward purchases, and where there is no negotiation involved with respect to the terms and conditions in the bid document.
35. The Chief Financial Officer and Treasurer, in consultation with the City Solicitor develop:
  - (i) a corporate policy that outlines when Bid Bonds and Performance Bonds are required and the type of security that is acceptable; and
  - (ii) a process to determine the dollar value of the security requested, taking into account the nature of goods or services to be provided, the magnitude of the contract and the risks involved, to ensure that the interests of the City are adequately protected.
36. The Chief Administrative Officer, in consultation with the City Solicitor:
  - (i) clarify the roles and responsibilities of City Legal, the Chief Financial Officer and Treasurer, City Clerk and Commissioners in the contract execution process and ensure that the responsibilities and rationale are clearly communicated to all staff involved; and
  - (ii) develop mechanisms and assign clear responsibility for ensuring the decisions of Bid Committee, Standing Committee and Council are accurately reflected in the purchase order or contract, and that the necessary authority exists to enter into the agreement.
37. The Chief Administrative Officer, in consultation with the Chief Financial Officer and City Clerk, establish a central repository for all contract signing and other procurement authorities delegated to departmental staff.
38. The Chief Financial Officer and Treasurer:
  - (i) report to the Administration Committee by September 2003 on the control mechanisms in place or to be implemented to prevent contracts from being over-spent, including the benefits and resource implications of processing contract release orders, both at the dollar value and commodity level, and explore other

## Procurement Processes Review – City of Toronto

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- viable options, such as potential system modifications to achieve this objective;  
and
- (ii) develop appropriate interim mechanisms to prevent contracts from being over-spent.
39. The Chief Financial Officer and Treasurer in consultation with Commissioners, identify the procurement information needs of the Purchasing and Materials Management Division and departments, and take the necessary action to cost-effectively obtain the information required, in order to enable the effective management of procurement activities.
40. The Chief Financial Officer and Treasurer:
- (i) in consultation with departments, establish separate blanket contracts for each individual department in accordance with the terms and conditions provided in the master agreement for the respective goods and services; and
  - (ii) establish mechanisms to prevent department specific blanket contracts from being accessed by other departments.
41. The Chief Financial Officer and Treasurer:
- (i) ensure that all purchase orders and contracts issued specify the prices and/or rates to be charged; and
  - (ii) request suppliers to provide adequate details on the invoices, specifying the rates/prices charged and goods/services provided.
42. The proposed Water and Wastewater Committee be governed under the Toronto Municipal Code, Chapters 71 (Financial Control) and 195 (Purchasing), and be delegated the same level of contract award and procurement authority as other standing committees in the City.
43. The Chief Financial Officer and Treasurer report to the Administration Committee by July 2003 on:
- (i) a prescribed time line and or standard payment term for the payment of all City accounts; and
  - (ii) action taken or to be taken to ensure that accounts are paid within the prescribed time line, including any changes in processes and resources required.

# **Appendix D**

## **Management Response to the Audit**

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

**Recommendation**

**Management’s Response**

<p>1. The Chief Financial Officer and Treasurer, in consultation with Commissioners, develop service level agreements for the procurement process:</p> <ul style="list-style-type: none"> <li>(i) that clearly define the roles, responsibilities, authorities and accountability of the Purchasing and Materials Management Division and departments for each step in the process, including the responsibility for ensuring compliance with the various policies;</li> <li>(ii) that outline the standards and expectations, with respect to the level of service, turnaround time and lead time required; and</li> <li>(iii) ensure such requirements are communicated and understood by all applicable staff, and the necessary training is provided to staff in this regard.</li> </ul> <p>2. The Chief Financial Officer and Treasurer and Commissioners ensure that:</p> <ul style="list-style-type: none"> <li>(i) appropriate controls are in place to effectively mitigate the risks in the procurement process;</li> <li>(ii) mechanisms exist to prevent and detect situations of non compliance;</li> <li>(iii) all applicable staff understand and are aware of their roles and responsibilities, and requirements that must be followed in the respective procurement process, as well as the consequences for not meeting their responsibilities or adhering to policies and procedures; and</li> <li>(iv) compliance with procurement procedures is incorporated into the staff performance review process.</li> </ul>	<p>Agreed. However, it must be emphasized that roles and responsibilities of the Purchasing Division and the departments must be first clearly defined corporately before finalizing service level agreements.</p> <p>The CAO and all members of the Executive Management Team (EMT) have implemented a number of initiatives since 2000 to mitigate risks in the procurement process. These include amendments to the purchasing by-law, a Conflict of Interest policy, the requirement for business cases when hiring outside consultants and several other steps. The City’s senior management group regularly communicates the priority that they place on these controls to staff. Departments will receive more guidance on implementing such controls and mechanisms to ensure consistency across the organization.</p> <p>It should also be noted that the current Office Support Services Unit of Community and Neighbourhood Services (CNS) has been very effective in ensuring CNS purchase requests forwarded to the Purchasing Division in accordance with By-laws and Policies which allows for faster processing of requests from CNS. EMT is in agreement that the CNS Unit is the model which could be utilized across the Corporation.</p>
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**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>3. The Chief Financial Officer and Treasurer, in consultation with the Commissioner of Corporate Services, report to the Administration Committee by January 2004 on any revisions to the organizational structure of the Purchasing and Materials Management Division, such report to include:</p> <ul style="list-style-type: none"> <li>(i) an examination of the various organizational structure models;</li> <li>(ii) a determination as to whether the Client Services group of the Purchasing and Materials Management Division should be merged with the Purchasing Services Unit; and</li> <li>(iii) clarification of the roles and responsibilities of each unit, the number, type and mix of positions required, and any resulting resource implications.</li> </ul>	<p>The current organizational structure is based on the recommendations of an outside consultant (Johnson Smith International), hired at amalgamation, and input from City departments. The proposed structure was reviewed and approved by EMT and the CAO.</p> <p>In order to satisfy the requirements of providing a client service focus to the Purchasing Division and reduce staff at the same time, it was determined that the best solution was to create commodity based Purchasing Units with a separate Client Services Unit. The outside consultant concluded that a portfolio-based structure would require more staff, result in a duplication of duties, and would hinder standardization.</p> <p>The January 2004 report to Administration Committee on organizational structure will include an examination of portfolio, commodity-based and hybrid models. Consultations will be held with departments on the recommended structure. It should be noted that the Toronto District School Board was structured on a portfolio basis and has reverted to a commodity-based structure with a client services section, similar to the current Purchasing Division structure. Departments have requested that any reorganization should not be done at the expense of specific commodity expertise.</p> <p>It is anticipated that staff will report further in 2004 on the implementation of further recommendations for improvement stemming from the MFP inquiry.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>4. The Chief Financial Officer and Treasurer, in his report to the Administration Committee on the rationalization of all city stores, take into account:</p> <ul style="list-style-type: none"> <li>(i) what materials, supplies and equipment should be stocked in City stores, including those operated by departments;</li> <li>(ii) the impact of the use of procurement cards and the increased use of blanket contracts to supply goods currently stocked by City Stores;</li> <li>(iii) the impact on staff levels;</li> <li>(iv) the opportunity costs of land and building on which the current stores are located, as well as funds tied up in inventory; and</li> <li>(v) the overall benefits and cost savings resulting from the rationalization of the City stores operation.</li> </ul>	<p>A report on the rationalization of all City stores will be submitted in late 2004. This report will clearly define the corporate and program service requirements of the more than 80 locations across the City. The CFO and Treasurer will report on the progress of this initiative during the presentation on the 2003 work plan to Policy and Finance Committee.</p>
<p>5. The Chief Financial Officer and Treasurer, in consultation with the Commissioner of Corporate Services:</p> <ul style="list-style-type: none"> <li>(i) identify the skills and expertise required by Purchasing and Materials Management Division staff to effectively meet the Division’s business and customer service objectives;</li> <li>(ii) assess the skill set and competency level of current staff;</li> <li>(iii) develop a training and development program that ensures staff have the necessary customer service and technical expertise to effectively perform their responsibilities; and</li> <li>(iv) determine the causes of the Purchasing and Materials Management Division’s high staff turnover rate, and take the necessary corrective action to remedy this problem.</li> </ul>	<p>The CFO is assured that Purchasing Division staff meet the professional and technical requirements to carry out their duties (i.e., Professional Certification or equivalent, communication skills, knowledge of By-laws and policies, etc.) as professional purchasing staff. Training issues within the Purchasing Division are more appropriately focussed on customer service, not the competency and qualifications of staff.</p> <p>However, given that the majority of purchases are made by departments under the DPO limit, departments such as Urban Development Services have requested that training programs be developed for staff performing purchasing duties in departments.</p> <p>Finance management staff recognize the turnover issue and have been working with the City’s Human Resources Division to develop strategies to address the turnover rate. It is expected that this review of organizational structure, job responsibilities and compensation levels will lead to a more stable work force.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>6. The Chief Financial Officer and Treasurer develop:</p> <ul style="list-style-type: none"> <li>(i) results based performance indicators for the Purchasing and Materials Management Division that measure the results and effectiveness of its activities; and</li> <li>(ii) benchmarks to measure the success of the implementation of the recommendations in this report.</li> </ul>	<p>City staff have been tracking performance indicators set by the Centre for Advanced Purchasing Studies (CAPS), the North American benchmarking body for purchasing performance.</p> <p>Purchasing staff also track additional effectiveness and customer service indicators such as customer service questionnaires, average time to resolve customer complaints and stores order fill rate, etc.</p> <p>The Chief Financial Officer’s 2003 work plan includes the development of these performance based indicators for future business planning and for use in service level agreements.</p>
<p>7. The Chief Financial Officer and Treasurer:</p> <ul style="list-style-type: none"> <li>(i) expedite the development of a Purchasing Manual, develop clear and concise procedures to guide both the Purchasing Division and departmental staff in each type of procurement process, and ensure that the requirements of the Municipal Act, 2001 are incorporated into the City’s Municipal Code and policies, as required;</li> <li>(ii) in conjunction with Commissioners, ensure that the procedures and guidelines are communicated to all staff with procurement responsibilities, and that the necessary training is provided, such that staff are aware of, understand and comply with the requirements;</li> <li>(iii) develop a process to periodically review and update the Toronto Municipal Code chapters 71 (Financial Control) and 195 (Purchasing), as well as purchasing policies and procedures as required; and</li> <li>(iv) incorporate procurement procedures/guidelines, applicable forms and “Frequently Asked Questions and Answers” for each type of procurement process on the Purchasing Division’s Web site.</li> </ul>	<p>The Purchasing Division has already prepared a preliminary draft of a Purchasing Manual. It is expected that this manual will be in circulation in 2003. The Purchasing Division will issue plain language policy and procedure bulletins on key procurement processes as required, e.g. Request for Proposals (RFPs), tenders, Purchase Orders, etc.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>8. The Chief Administrative Officer, in consultation with the City Solicitor, the Chief Financial Officer and Treasurer and Commissioners, review and make the necessary revisions to the Toronto Municipal Code and/or policies to clarify the following:</p> <ul style="list-style-type: none"> <li>(i) the appropriate level of delegation for emergency purchases, below the Commissioner level, as well as any conditions or parameters for such delegation;</li> <li>(ii) the authorities required for the award of multi-year contracts and contracts that straddle from one year to another, for both capital and operating expenditures;</li> <li>(iii) any appropriate revisions to the extent of Commissioners’ authority to approve over-expenditures for contracts under \$500,000, and the necessary reporting requirements;</li> <li>(iv) the approval requirements for over-expenditures pertaining to operating contracts;</li> <li>(v) the parameters and criteria under which the Commissioners should be able to authorize additional expenditures under a contract as a result of unforeseen circumstances or conditions, or to take the necessary action to complete a contractor’s unfulfilled contractual obligations in a timely manner, including any after the fact reporting requirements in this regard; and</li> <li>(vi) the types of expenditures that do not require a purchasing document to support payment to the respective organization, including any appropriate parameters or limitations relating to these expenditures.</li> </ul>	<p>Agreed.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>9. Commissioners, in consultation with the Chief Financial Officer and Treasurer, revise their respective delegation of financial signing authority schedules, such that requests to increase the previously authorized dollar value on purchase orders and contracts, requires the approval of the original authorizer’s immediate manager as soon as the additional work required becomes known.</p>	<p>Agreed.</p>
<p>10. The Chief Financial Officer and Treasurer report to the Administration Committee on the potential repeal of the Canadian Content Policy, and any related implications.</p>	<p>Agreed.</p>
<p>11. The Chief Financial Officer and Treasurer, in consultation with the City Clerk, develop a composite report format, by September 2003, for the award of contracts by the Bid Committee.</p>	<p>Will consult with the City Clerk as recommended.</p>
<p>12. The Chief Financial Officer and Treasurer develop a dollar threshold limit above which responses to Request for Quotations must be opened by the Bid Committee.</p>	<p>Agreed.</p>
<p>13. The Chief Financial Officer and Treasurer:</p> <ul style="list-style-type: none"> <li>(i) verify on a random basis, mathematical extensions on tenders received, regardless of whether the department identified an error or not;</li> <li>(ii) in consultation with the City Solicitor incorporate in the Purchasing Manual, as well as in all call/request documents, the protocol and policies for the correction of mathematical errors contained in supplier submissions and how tenders and bids with mathematical errors will be treated;</li> </ul>	<p>Agreed. The Purchasing Division will work with Legal Services to implement this recommendation.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>(iii) communicate with vendors on a regular basis, to emphasize the importance of ensuring bids are accurate and complete, and include all mandatory information, monitor bids and proposals received for any error patterns, and, in consultation with the City Solicitor, determine whether any protocol or mechanisms can be implemented to deal with problematic vendors;</p> <p>(iv) develop a standard template for bids/proposals, such that the location of mandatory documentation and information at bid openings is facilitated; and</p> <p>(v) in consultation with the City Solicitor, review the call/request documents such that critical information requirements and consequences for non-compliance are clear, in particular those situations under which a bid/proposal will be declared informal.</p>	
<p>14. The Chief Administrative Officer:</p> <p>(i) develop a policy that formalizes the requirement to prohibit consulting firms who were involved in preparing a call/request from bidding on the respective project; and</p> <p>(ii) ensure this requirement is communicated to all applicable staff and vendors.</p>	<p>Departments do prohibit consulting firms or vendors who were involved in preparing a Request for Proposals or other bid request documents from bidding on the respective project and related bid request. A corporate directive, formalizing this requirement as suggested by the Auditor, will be issued to all applicable staff and vendors.</p>
<p>15. The Chief Financial Officer and Treasurer, in consultation with Commissioners, ensure that all City staff involved in the procurement process have the knowledge and are properly trained to manage and participate in the process, and develop directives and guidelines such that:</p>	

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>(i) call/request methods used are appropriate, an effective evaluation methodology is designed for all requests, that the evaluation is performed by more than one person, as appropriate, that the composition, knowledge and expertise of the evaluation team is reflective of the complexity and dollar value of the assignment, and that outside expertise is retained as required for complex and high risk procurement transactions, to ensure that a sound business decision is made and properly justified;</p>	<p>The City’s present evaluation method for bid requests does include utilization of expert technical staff (more than one person) to reflect the complexity and dollar value of the assignment. The acquisition of outside expertise for complex and high risk procurement transactions will be done with Standing Committee and/or Council input.</p>
<p>(ii) the proposal evaluation criteria are disclosed in the request document, the relative weights are pre-determined and documented, that price be assigned a minimum weight of 25 percent, consistent with the City’s Hiring and Selection of Consulting Services Policy, and that criteria be developed for any exceptions to these requirements;</p>	<p>As the Auditor points out, the City’s current policy requires that price be assigned a minimum 25 percent weight in the hiring of outside consultants. Practice shows that the 25 percent weight given to the price factor is generally followed by departments in Request for Proposals. The City will formalize this policy.</p>
<p>(iii) the Purchasing and Materials Management Division is involved, in proposal evaluations for those projects above a pre-determined dollar threshold limit or based on other criteria, as determined by the Chief Financial Officer and Treasurer, to monitor, provide guidance and ensure due process is followed;</p>	<p>Purchasing Division staff should only be involved in advising on the purchasing process. In addition, other financial analysis expertise will most likely be required for large contracts and will include other division staff from Finance.</p>
<p>(iv) proposal evaluations are performed independently and that each evaluation team member, whether a staff member or an outside consultant, is required to sign a conflict of interest declaration:</p> <ul style="list-style-type: none"> <li>- disclosing any entertainment, gifts, or other benefits, in cash or in kind, received from proponents or their representatives;</li> <li>- certifying that he or she conducted the evaluation in a fair and objective manner, and free from any conflict of interest or undue influence;</li> </ul>	<p>The Municipal Code, Chapter 195 (Purchasing), requires that all staff involved in the procurement process must abide by the purchasing ethics established by the National Institute of Government Purchasing. In addition, the City of Toronto’s Conflict of Interest Policy expressly addresses this issue. The Purchasing Division will work with Legal Services to develop a sign off form for all appropriate City staff.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>(v) the Chief Financial Officer and Treasurer develop a policy of “no informal contact” between department staff involved in the procurement process and the potential suppliers, and establish guidelines to assist staff in determining proper conduct and limitations with respect to communication and contact with potential suppliers; and</p> <p>(vi) the City’s call/request documents stipulate that staff directly or indirectly involved in the evaluation and decision making process are not permitted to accept any gifts, entertainment or other benefits, and that the supplier’s bid/proposal may be rejected if it fails to comply with this requirement.</p>	<p>A policy on the type of communication and contact, and information that can be given will be developed. Legal Services will assist in developing this Policy.</p> <p>A survey conducted throughout the GTA indicates that no municipality has adopted a policy of “no communication with bidders” once a Call has closed.</p>
<p>16. The Chief Financial Officer and Treasurer, in consultation with the City Clerk, report to the Administration Committee on the level of documentation required to support procurement decisions and the responsibility for the retention of such documentation.</p>	<p>The CFO and Treasurer will submit such a report with the assistance of Legal Services and the City Clerk.</p>
<p>17. The Chief Financial Officer and Treasurer post the results of all contract awards, which exceed the Departmental Purchase Order limit, on the City’s Web site, including appropriate information on all bids and proposals received.</p>	<p>The Purchasing Division will begin posting the required information on the City’s Web site in 2003.</p>
<p>18. The Chief Financial Officer and Treasurer develop a template for contract award reports that clearly presents key information to committees and Council, including information such as:</p> <ul style="list-style-type: none"> <li>- the bid/proposal solicitation method</li> <li>- evaluation criteria, including weight assigned to each factor</li> <li>- composition and technical knowledge of evaluation team</li> <li>- justification for contract award</li> <li>- length of the contract, including any renewal options</li> <li>- total value of contract</li> <li>- total value of any contingencies in contract</li> <li>- key terms and conditions in the contract.</li> </ul>	<p>Staff reports pertaining to contract awards generally include all or most of the information highlighted by the Auditor. To ensure compliance, staff will develop a new template for contract award reports that more clearly presents the required information to Committees and Council.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>19. The Chief Administrative Officer:</p> <ul style="list-style-type: none"> <li>(i) ensure that City staff sign an annual declaration acknowledging that they understand and agree to the terms and conditions contained in the City’s Conflict of Interest policy, as well as the consequences of non compliance;</li> <li>(ii) send an annual notice to all City staff reiterating the City’s Conflict of Interest policy;</li> <li>(iii) on an annual basis, forward the Code of Conduct for Members of Council, Conflict of Interest Policy and the Fraud Policy to the Ethics Steering Committee, requesting their direction on whether these policies are clear and current, and recommend any revisions to Council for approval; and</li> <li>(iv) amend the Lobbyist Disclosure Policy such that the policy applies to all City purchases regardless of dollar amount, so that it is consistent with the voluntary lobbyist registry.</li> </ul>	<p>Since 2002, the CAO has required the Conflict of Interest declaration to be signed by Commissioners and their direct reports. In 2003, the CAO directed Commissioners to roll this out to the manager level.</p> <p>Additionally in 2002, the following memos were sent by the CAO relating to fraud, conflict of interest and/or accountability:</p> <ul style="list-style-type: none"> <li>Approval of permanent fraud policy hotline (Dec 9/02)</li> <li>Conflict/Christmas gifts (Dec 5/02)</li> <li>Internal Management controls (Sept 20/02)</li> <li>Budget approvals and priorities/accountability (Mar 13/02)</li> <li>Financial Accountability, fraud policy and hotline (Mar 8/02)</li> <li>MFP, Oracle and management controls (Feb 11/02)</li> <li>Implementing Auditor’s report re consultants (Jan 7/02)</li> </ul> <p>In 2002, the CAO communicated to all City staff about the Conflict of Interest Policy. In addition, the Purchasing Division already sends an annual notice to all Purchasing Division staff and the CFO and Treasurer also sends an annual notice to all Finance staff regarding this policy.</p> <p>The City Clerk will forward applicable policies to the Ethics Committee on an annual basis for their information and any action deemed appropriate.</p> <p>Agreed. However, it should be noted that any awards made by the Bid Committee and staff are to the lowest bidder meeting specifications, where no objections to the award have been received. These awards are generally not subject to lobbying.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>20. The Chief Administrative Officer, in consultation with the Chief Financial Officer and Treasurer, report to the Administration Committee by September 2003, on:</p> <ul style="list-style-type: none"> <li>(i) the costs and benefits of using an external consultant (Fairness Commissioner) on certain City projects, to shadow and attest to the fairness and appropriateness of the procurement process;</li> <li>(ii) the criteria to be used to determine when an external consultant (Fairness Commissioner) should be engaged; and</li> <li>(iii) the reporting relationship for this role.</li> </ul> <p>21. Commissioners:</p> <ul style="list-style-type: none"> <li>(i) identify their procurement needs, including the volumes of goods and services required, specifications and deliverables, and the timing of such requirements; and</li> <li>(ii) ensure that this information is communicated to the Purchasing and Materials Management Division and City Legal on a timely basis, allowing for sufficient lead time, such that both the Purchasing and Materials Management Division and City Legal can schedule their respective resources to meet departmental timelines.</li> </ul>	<p>This issue will require further study and consultation with Councillors. The CAO and CFO will report to Policy and Finance Committee on the criteria, costs and benefits with respect to the appointment of a Fairness Commissioner.</p> <p>Agreed.</p>
<p>22. The Chief Financial Officer and Treasurer:</p> <ul style="list-style-type: none"> <li>(i) post on the City’s Intranet a library of previously developed specifications;</li> <li>(ii) develop specifications templates and guidelines which provide information to staff on the nature, type and level of detail required for specifications; and</li> </ul>	<p>Regarding (i) and (ii), the City has developed specifications for the vast majority of ongoing program requirements. These are available from departments and the Purchasing Division. The Purchasing Division and departmental staff will work co-operatively to collect and post these specifications on the Intranet site for use by City staff in preparing RFPs, RFQs and tenders. The Purchasing Division and I&amp;T staff will work together to develop the best method of posting RFPs, RFQs and tenders to the City’s external Web site.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>(iii) establish partnerships with other jurisdictions for the sharing of specifications information.</p>	<p>The City is already involved in partnerships, as per item (iii), with Universities Purchasing Group, the Toronto District School Board, the GTA Purchasing Group, the Police Purchasing Co-operative and others across North America. Often co-ordinated by the Purchasing Division, some of these have resulted in the sharing of specifications. The Purchasing Division will continue to establish more partnerships.</p>
<p>23. Commissioners, in consultation with the Chief Financial Officer and Treasurer, establish mechanisms in their respective program areas to ensure that specifications and deliverables in Requests for Quotations, Proposals and Tenders, are clear and complete.</p>	<p>Agreed.</p>
<p>24. The Chief Financial Officer and Treasurer:</p> <ul style="list-style-type: none"> <li>(i) ensure that departments are notified of any changes to call/request documents before the request or call is issued; and</li> <li>(ii) in consultation with departments, make the determination with respect to any changes to the closing date specified in a call/request document.</li> </ul>	<p>The Purchasing Division presently works with departments on refining bid request documents to ensure that these documents reflect all requirements. The division will ensure that final changes are communicated to departments prior to release.</p>
<p>25. The Chief Financial Officer and Treasurer review and report to the Administration Committee by September 2003, on:</p> <ul style="list-style-type: none"> <li>(i) discontinuing the practice of mailing out call/request documents to suppliers;</li> </ul>	<p>This recommendation has significant implications for suppliers who tend to bid on small City projects. Further review and consultation with bidders would be appropriate. Also, the suggested alternatives outlined in the report may result in cost increases for suppliers when bidding on City business opportunities.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>(ii) utilizing the City’s Internet Web site or other electronic tendering services, as appropriate, to advertise contract opportunities with the City, and allow interested vendors to download the call/request document;</p> <p>(iii) the purpose, cost and benefits of maintaining a Bidders List in its current form;</p> <p>(iv) the cost savings and revenue implications resulting from changes to the current procurement solicitation process; and</p> <p>(v) an appropriate and effective communication plan to inform suppliers of any changes to the current procurement solicitation process and requirements.</p> <p>26. The Commissioner, Corporate Services, take the necessary action to expedite implementation of procurement initiatives that require information technology assistance and support.</p>	<p>The Purchasing Division has researched the use of MERX. Using systems such as MERX could result in increased suppliers’ cost to do business with the City. The use of MERX and other electronic bidding systems will be reviewed and staff will report to Committee in September 2003.</p> <p>Staff will report back to Council, documenting the implications of imposing new fees on bidders and the potential revenue loss to the City in Bidders list and Tender document fees.</p> <p>The current process allows for a fair and open competition for bidders for all City business opportunities in that contract opportunities are advertised on the Internet site. However, documents cannot be downloaded. Consideration will have to be given to how best to deal with suppliers who do not possess the technology to download documents.</p> <p>If the previous recommendation is adopted, a comprehensive communication plan to inform suppliers will be developed and implemented.</p> <p>Staff supports this recommendation in principle. The technology needs of the purchasing process should be prioritized relative to the other I&amp;T initiatives currently underway or in the planning stage.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>27. The Chief Financial Officer and Treasurer establish clear parameters and criteria to guide Purchasing and Materials Management Division staff in using less formal procurement processes to obtain price quotations or proposals, taking into consideration the time given to suppliers to respond to calls or requests, the method by which responses are received, and the number of suppliers from which bids or proposals are solicited.</p>	<p>The current process allows for a fair and open competition for all City business opportunities. If this recommendation is implemented, a policy would need to be developed as all bidders expect to continue to compete on City business. Given the objectives of fair and open competition, clear guidelines will have to be developed to avoid any possible misunderstandings in restricting the number of bidders. Other GTA municipalities also allow 15 days minimum for a call to be in the market, as is the current practice with the Purchasing Division.</p>
<p>28. The Chief Financial Officer and Treasurer:</p> <ul style="list-style-type: none"> <li>(i) expedite the implementation of purchasing cards in City operations, using a phased-in approach;</li> <li>(ii) develop the necessary policies and procedures with respect to the issuance, use and control of credit and purchasing cards, including consequences for misuse of the cards;</li> <li>(iii) in consultation with Commissioners, ensure that necessary training is provided to all departmental staff responsible for the use and management of the purchasing cards; and</li> <li>(iv) report to the Administration Committee by January 2004, on the status of the purchasing card program, including any costs to administer the program and any benefits realized.</li> </ul>	<p>Agreed. Preliminary planning for the Implementation of a P-Card was completed in early 2002. Staff are planning the first pilot in 2003, with city-wide implementation in 2003/2004. It is anticipated that the use of P-cards will streamline departmental purchasing activity and the accounts payable process.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>29. Commissioners:</p> <ul style="list-style-type: none"> <li>(i) monitor the use of single source purchases in their respective departments with the view to reducing the need to purchase goods and services without going through a competitive process; and</li> <li>(ii) in consultation with the Purchasing and Materials Management Division, properly plan their requirements in order to reduce the single sourcing of purchases.</li> </ul>	<p>The Purchasing Division supplies departments with quarterly reports on sole (single)-sourcing activities as a tool which may help departments reduce these activities.</p>
<p>30. The Chief Financial Officer and Treasurer:</p> <ul style="list-style-type: none"> <li>(i) in consultation with Commissioners, develop a list of sole source goods and services (e.g., TTC tokens, utilities, etc.) that can be processed without completing a sole (single) source request form;</li> <li>(ii) report annually to the Administration Committee outlining, by department: <ul style="list-style-type: none"> <li>- all single source purchases exceeding the Departmental Purchase Order limit and reasons therefor;</li> <li>- percentage of purchase orders processed through the Purchasing Division using single source as justification;</li> <li>- all instances where purchase orders have been issued after the fact; and</li> </ul> </li> <li>(iii) post on the City’s Web site, all single source contract awards in excess of \$7,500.</li> </ul>	<p>In 2002, approximately 4 per cent of the dollar value of contract awards (\$42.5M out of \$982.5M) were from sole and single source contracts. These contracts fulfill the requirements of Chapter 195 (Purchasing) of the Municipal Code. If Council adopts this recommendation, these contracts will be listed separately on the City’s Web site.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

**Recommendation**

**Management’s Response**

<p>31. The Chief Financial Officer and Treasurer:</p> <ul style="list-style-type: none"> <li>(i) monitor purchasing activity, including Departmental Purchase Orders issued by departments, and work with departments to identify opportunities to consolidate the procurement of common goods and services;</li> <li>(ii) in consultation with departments, be more proactive in identifying potential opportunities to utilize blanket contract agreements for goods and services, to more efficiently meet the needs of departments, including emergency requirements;</li> <li>(iii) further explore opportunities to enter into co-operative purchasing agreements with the City’s Agencies, Boards and Commissions, other municipalities, public organizations, and other levels of government.</li> </ul>	<p>Since amalgamation, departmental and Purchasing Division staff have worked cooperatively to identify opportunities to consolidate common procurement initiatives. Staff will continue to pursue more opportunities to utilize blanket contract agreements to more efficiently meet the needs of departments, including emergency requirements. Staff will also continue to canvass departments for opportunities to consolidate departmental purchases.</p> <p>As noted above, opportunities have already been, and continue to be explored by the Purchasing Division. Currently, the Purchasing Division is involved in purchasing partnerships with the Universities Purchasing Group, the Police Co-op Purchasing Group, and continues to make joint purchases with Toronto Zoo, Toronto Transit Commission and the Toronto District School Board. In addition, the Purchasing Division is assisting Works &amp; Emergency Services in forming a joint purchasing group with other jurisdictions to jointly purchase items needed for emergency operations.</p> <p>The Purchasing Division also chairs the GTA Purchasing Group. However, the group members have decided that the major focus of the group is to be information sharing and there has been no joint purchases made to date.</p> <p>It should be noted that since the Purchasing Division is one of the largest government purchasing bodies in Canada, City volumes for purchases are much higher than other participants and the City therefore receives little benefit from participation in joint purchases.</p> <p>Benefits are experienced by small purchasing bodies who participate as they get bulk price discounts by adding their requirements to the City’s requirements.</p>
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**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>32. The Commissioner of Corporate Services, in consultation with the Chief Financial Officer and Treasurer, report to the Administration Committee by March 2004 with respect to the effectiveness of the Information Technology Acquisition procedures.</p>	<p>Agreed.</p>
<p>33. The Chief Financial Officer and Treasurer, in consultation with Commissioners, re-establish a Purchasing Client Reference Group to deal with procurement issues.</p>	<p>A Purchasing Client Reference Group was established in 1999 and met regularly until the summer of 2002. Staff turnover temporarily halted meetings. Staff agree that this group is an opportunity to assist in implementing the recommendations of this report and will take steps to re-establish the Group.</p>
<p>34. The City Solicitor, in consultation with the Chief Financial Officer and Treasurer, and Commissioners:</p> <ul style="list-style-type: none"> <li>(i) develop criteria and guidelines outlining the circumstances in which a formal contract is required; and</li> <li>(ii) develop a standard contract template to be used and executed by departments for straightforward purchases, and where there is no negotiation involved with respect to the terms and conditions in the bid document.</li> </ul>	<p>Agreed.</p>
<p>35. The Chief Financial Officer and Treasurer, in consultation with the City Solicitor develop:</p> <ul style="list-style-type: none"> <li>(i) a corporate policy that outlines when Bid Bonds and Performance Bonds are required and the type of security that is acceptable; and</li> <li>(ii) a process to determine the dollar value of the security requested, taking into account the nature of goods or services to be provided, the magnitude of the contract and the risks involved, to ensure that the interests of the City are adequately protected.</li> </ul>	<p>Agreed. Departments, Purchasing Division and Risk Management review the nature of purchases to determine the type of bonding requirements. The Auditor is correct in pointing out that this process requires better coordination to ensure that the interests of the City are adequately protected and a policy will be developed.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>36. The Chief Administrative Officer, in consultation with the City Solicitor:</p> <ul style="list-style-type: none"> <li>(i) clarify the roles and responsibilities of City Legal, the Chief Financial Officer and Treasurer, City Clerk, and Commissioners in the contract execution process and ensure that the responsibilities and rationale are clearly communicated to all staff involved; and</li> <li>(ii) develop mechanisms and assign clear responsibility for ensuring the decisions of Bid Committee, Standing Committee and Council are accurately reflected in the purchase order or contract, and that the necessary authority exists to enter into the agreement.</li> </ul>	<p>These clarifications will be contained in the Purchasing Bulletins and in the Purchasing Manual.</p> <p>Purchasing Division staff has been instructed to ensure that decisions of Committees/Council are reflected in the PO’s or blanket contracts to ensure that authority exists to enter into an agreement. Mechanisms will be developed to ensure that there are checks in place to ensure that this is done.</p>
<p>37. The Chief Administrative Officer, in consultation with the Chief Financial Officer and City Clerk, establish a central repository for all contract signing and other procurement authorities delegated to departmental staff.</p>	<p>Agreed.</p>
<p>38. The Chief Financial Officer and Treasurer:</p> <ul style="list-style-type: none"> <li>(i) report to the Administration Committee by September 2003 on the control mechanisms in place or to be implemented to prevent contracts from being over-spent, including the benefits and resource implications of processing contract release orders, both at the dollar value and commodity level, and explore other viable options, such as potential system modifications to achieve this objective; and</li> <li>(ii) develop appropriate interim mechanisms to prevent contracts from being over-spent.</li> </ul>	<p>The CFO and Treasurer, in co-operation with Department Heads, have implemented reports/warning messages in the Financial Information System to monitor/control contract expenditures exceeding 80 per cent of the original contract amount. Further contract system monitoring initiatives are underway in order to prevent contract over expenditures. Staff will report on the progress of this initiative to Administration Committee in September 2003.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>39. The Chief Financial Officer and Treasurer, in consultation with Commissioners, identify the procurement information needs of the Purchasing and Materials Management Division and departments, and take the necessary action to cost-effectively obtain the information required, in order to enable the effective management of procurement activities.</p>	<p>Agreed.</p>
<p>40. The Chief Financial Officer and Treasurer:</p> <ul style="list-style-type: none"> <li>(i) in consultation with departments, establish separate blanket contracts for each individual department in accordance with the terms and conditions provided in the master agreement for the respective goods and services; and</li> <li>(ii) establish mechanisms to prevent department specific blanket contracts from being accessed by other departments.</li> </ul>	<p>The CFO and Treasurer is presently working with departments to utilize the City’s existing financial systems to assist departments in better managing the allocations of blanket contracts.</p>
<p>41. The Chief Financial Officer and Treasurer:</p> <ul style="list-style-type: none"> <li>(i) ensure that all purchase orders and contracts issued specify the prices and/or rates to be charged; and</li> <li>(ii) request suppliers to provide adequate details on the invoices, specifying the rates/prices charged and goods/services provided.</li> </ul>	<p>We agree. However, there are limited situations where this might occur, e. g. repairs. It is normal practice to ensure that all of the above is attained. In a small minority of cases this is difficult because the amount or type of service required is unknown, but purchase orders and contracts all contain a dollar limit.</p>
<p>42. The proposed Water and Wastewater Committee be governed under the Toronto Municipal Code, Chapters 71 (Financial Control) and 195 (Purchasing), and be delegated the same level of contract award and procurement authority as other standing committees in the City.</p>	<p>Agreed.</p>

**Procurement Processes Review – City of Toronto  
Summary of Recommendations and Management’s Response**

<b>Recommendation</b>	<b>Management’s Response</b>
<p>43. The Chief Financial Officer and Treasurer report to the Administration Committee by July 2003 on:</p> <ul style="list-style-type: none"> <li>(i) a prescribed time line and or standard payment term for the payment of all City accounts; and</li> <li>(ii) action taken or to be taken to ensure that accounts are paid within the prescribed time line, including any changes in processes and resources required.</li> </ul>	<p>Agreed. The Finance Department has made some improvements in reducing outstanding accounts payable, and increasing payments made within 30-60 days. In addition, an enhanced accounts payable process (3-way matching) is being implemented, which along with the P-Card implementation, will significantly reduce the number and time line for payment of accounts in 2003.</p>

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