



TORONTO STAFF REPORT

December 19, 2005

To: Audit Committee
From: Auditor General
Subject: Contract Management Issues

Purpose:

To recommend improvements to the management of certain City contracts.

Financial Implications and Impact Statement:

The implementation of the recommendations contained in this report will improve controls relating to the management of contracts. Improvements will ensure that the City receives the quality of goods and services it specified in the tender documents, resulting in the potential for reduced future maintenance and capital costs.

Recommendations:

It is recommended that:

- (1) the Deputy City Manager ensure that:
 - (a) all specifications contained in construction contracts are clear, concise and enforceable. In circumstances where certain specifications are considered too rigid and likely unenforceable, such specifications be reviewed and where appropriate, amended;
 - (b) minimum standards for material testing on all construction contracts are developed, documented, approved and monitored;
 - (c) all contract specifications are appropriately communicated to Contract Administrators, including Senior Engineers, Engineers and Inspectors. In unusual circumstances, where there is a need to deviate from contract specifications, reasons for such deviations be documented and approved

- (d) recommendations contained in the March 2001 report entitled, "Contract Management Procedures – Transportation Services Division, Works and Engineering Services Department" are reviewed and implemented;
 - (e) decisions in regard to asset preservation issues should be documented; and
 - (f) current policies concerning the rotation of Inspectors throughout the City's districts be evaluated. Such evaluations take into account the need to rotate Inspectors amongst the City's Contractors;
2. the Deputy City Manager ensure that:
- (a) all tender calls are appropriately planned and managed in order to ensure that any tender call cancellations are minimized;
 - (b) all tender calls be appropriately planned in order to ensure that the tendered work can be completed during the construction period time frame;
 - (c) policies relating to "vendor complaint resolution" be re-evaluated in order to ensure that delays to the contract approval process are minimized;
 - (d) the determination of what constitutes a "material written objection" relating to contract awards be evaluated in consultation with City Legal; and
 - (e) decisions relating to cancelled contract awards be in writing and approved by Senior Management; and
- (3) the Deputy City Manager ensure that the issues identified in this report are included in the Capital Works Projects, Procurement and Administration Manual. In addition, the development of a detailed procedural checklist for inclusion in the manual should be considered.

Background:

Over the past 12 months, concerns have been raised by third parties in connection with the way the City manages certain of its major construction/maintenance contracts. The issues raised were reviewed with the third-party complainants by the Auditor General and as a result, a number of concerns were identified. These concerns have been communicated to Senior Management and action has been taken in connection with the issues identified. While these concerns relate generally to two major contracts in the Technical Services Division, they may have relevance to other contracts within the Division, as well as to other Divisions within the City and certain of its local Agencies, Boards and Commissions.

The specific concerns identified by the third parties to the Auditor General's Office relate to contract compliance and the manner in which certain major construction/maintenance tenders are sometimes cancelled.

Comments:

1. Contract Compliance

Third-party concerns were raised with the Auditor General in relation to a major road reconstruction project. These concerns generally centred around compliance with provisions of one particular contract and related to the following:

(a) Adherence to Contract Specifications

The third-party complainant has raised concerns that in a number of circumstances work was not completed or managed in accordance with specifications contained in the contract. We have reviewed this issue with Senior Management who have advised us that “in preparing its specifications, the City has intentionally used strong wording to give the City control over situations where needed. However, it is generally accepted practice to relax some less critical specifications in order to either save money or to complete a contract in a shorter period of time.”

While the reasons for non-compliance to precise and strict contract specifications may have some merit, there are concerns that arise as a result of this practice:

- specifications are included in contracts for a reason and, accordingly, should be complied with; and
- instances where specifications are not complied with may have the potential to compromise the bidding process. The fact that it is “generally accepted practice to relax some less critical specifications” may not be known to all potential bidders. Prices submitted on contracts, therefore may not be comparable.

The issues of apparent non-adherence to contract specifications has been discussed with Senior Management and in one case in particular, a more detailed review of the concerns is taking place. This matter refers to the mechanical vibration of poured concrete.

(b) Public Safety

The concerns raised generally related to inadequate pedestrian traffic control and the non-removal and stock piling on-site of construction material. Both of these concerns related to public safety and in view of this, these concerns were communicated to the Division immediately.

Specific provisions relating to public safety are included in all road reconstruction contracts. Costs relating to public safety are the responsibility of the contractor. Certain companies who are regularly awarded contracts may have a higher awareness of specific areas where specifications are “relaxed”, thus extending their competitive advantage when submitting tender documents.

The third-party complaints in regard to public safety have been reviewed in detail by Senior Management, as well as the Engineer responsible for this particular project. It is the view of Senior Management that provisions relating to public safety on this particular contract have been complied with. Nevertheless, we have provided Senior Management with details of the alleged non-compliance.

(c) Material Testing

The third-party complainant alleged that testing of various construction material was not conducted or was completed inappropriately. We have reviewed this matter with Senior Management who advises that such testing is conducted by an independent third party. Records indicate that almost \$23,000 was expended on materials testing for this particular contract. After a detailed review of the allegations, Senior Management is satisfied that an appropriate level of material testing was conducted on this project.

However, the City's Technical Services Division is currently in the process of reviewing all issues relating to material testing and is developing minimum standards for material testing that will be applied on a consistent basis to all construction contracts.

(d) Preservation of City Assets

The third-party complainant expressed concerns that there were inadequate tree protection measures in place for this contract and that the City's Tree Protection Policy, which forms a part of the contract specifications, was not followed.

The City's "Tree Protection and Specifications for Construction Near Trees Policy" requires that the preservation of trees be a priority in all road reconstruction projects. The policy also requires project staff to contact the District Supervisor of Urban Forestry for clarification on how to apply the contract specifications as it relates to tree preservation to a specific project.

For this particular project, we have been advised that the Project Manager had several site meetings with the District Supervisor of Urban Forestry and his staff regarding tree protection during construction and the planting location and species for new trees that were planted after construction. We have been advised that all requirements of Urban Forestry were met.

The "Tree Protection and Specifications for Construction Near Trees Policy" is currently under review by Urban Forestry.

(e) Other Issues

- (i) In March 2001, the Auditor General issued a report entitled "Contract Management Procedures – Transportation Services Division, Works and Emergency Engineering Services Department", which addressed concerns similar to those contained in this report. The recommendations contained in the March

2001 report should be reviewed in order to ensure that they have been implemented.

- (ii) While the Technical Services Division has a policy of rotating Inspectors across the City, the policy should be re-evaluated in terms of the extent of rotation. Inspectors are generally rotated between Districts with little regard to specific contractor responsibilities. In some cases, Inspectors may continue to have responsibilities with the same contractor, albeit in a different district. The rotation of Inspectors minimizes the opportunity for Inspectors to be compromised.

Recommendations:

1. The Deputy City Manager ensure that:
 - (a) all specifications contained in construction contracts are clear, concise and enforceable. In circumstances where certain specifications are considered too rigid and likely unenforceable, such specifications be reviewed and where appropriate, amended;
 - (b) minimum standards for material testing on all construction contracts are developed, documented, approved and monitored;
 - (c) all contract specifications are appropriately communicated to Contract Administrators, including Senior Engineers, Engineers and Inspectors. In unusual circumstances where there is a need to deviate from contract specifications, reasons for such deviations be documented and approved;
 - (d) recommendations contained in the March 2001 report entitled "Contract Management Procedures – Transportation Services Division, Works and Emergency Engineering Services Department" are reviewed and implemented;
 - (e) decisions in regard to asset preservation issues should be documented; and
 - (f) current policies concerning the rotation of Inspectors throughout the City's districts be evaluated. Such evaluations take into account the need to rotate Inspectors amongst the City's Contractors.
2. Cancellation of Tenders

Concerns were expressed to the Auditor General in connection with the cancellation of one particular City tender relating to certain maintenance work. The tender call was cancelled after the announcement of the low bidder by the Bid Committee. We have had discussions with Senior Management, as well as Purchasing and the City Legal Division in regard to this issue who advised us that the tender was cancelled to provide for a change in the scope of work.

In regard to the cancellation of a tender, the Toronto Municipal Code 195-8 states that:

“The Chief Purchasing Official shall be authorized to cancel any call where:

- (a) There is a request by the department head who initiated the call and responses are greater than the funding approval for the commitment that would result from an award in respect of the call; or
- (b) In the opinion of the department head or director responsible for the call:
 - (1) A change in the scope of work or specifications is required and therefore a new call should be issued; or
 - (2) The goods, services or construction to be provided by the call no longer meets the department’s requirements; or
- (c) In the opinion of the Chief Purchasing Official the integrity of the call process has been compromised.”

Based on our preliminary review of this matter, it is clear that the reasons for the cancellation of the contract award were in compliance with the provisions of the Toronto Municipal Code. However, our review did identify a number of concerns, which should be addressed by Management.

These concerns were as follows:

- the cancellation of a contract particularly subsequent to the announcement of the winning bid has the appearance of compromising the City’s tender process;
- responses by Contractors to tender calls in many cases involve a significant amount of time and resources on the part of Contractors. The cancellation of a tender call subsequent to the award of a contract should only be considered after significant review and analysis. Reasons for the cancellation of calls should be documented and approved in writing;
- the cancellation of a contract award to amend it to include an increase in the scope of work, is in our view, an indication of an inappropriate level of long term planning. Any increase in the scope of work contemplated in any contract should be considered prior to the preparation of tender documents;
- request for tender calls should be completed on a more timely basis in order to ensure that contracts, when appropriate, can be completed within the construction season;
- the approval process for contract awards, when there is a written complaint from a vendor, requires re-evaluation. The time currently required to accommodate a “material”

vendor complaint may significantly delay a contract to the extent that it can not be completed within the construction season; and

- a determination as to what constitutes a “material written objection” by a bidder should be conducted in consultation with City Legal and should be in writing.

Recommendation:

2. The Deputy City Manager ensure that:
 - (a) all tender calls are appropriately planned and managed in order to ensure that any tender call cancellations are minimized;
 - (b) all tender calls be appropriately planned in order to ensure that the tendered work can be completed during the construction period time frame;
 - (c) policies relating to “vendor complaint resolution” be re-evaluated in order to ensure that delays to the contract approval process are minimized;
 - (d) the determination of what constitutes a “material written objection” relating to contract awards be evaluated in consultation with City Legal; and
 - (e) decisions relating to cancelled contract awards be in writing and approved by Senior Management.

Procedures Manual

The Division has recently issued a Procedures Manual, entitled “Capital Works Projects, Procurement and Administration”. Changes implemented as a result of the recommendations contained in this report should be included in this manual.

In addition, the development of a detailed procedural checklist for inclusion in the Procedures Manual would be useful. The checklist will assist in minimizing errors, resulting in better quality tender documents with fewer addendums.

Recommendation:

3. The Deputy City Manager ensure that the issues identified in this report are included in the Capital Works Projects, Procurement and Administration Manual. In addition, the development of a detailed procedural checklist for inclusion in the manual should be considered.

Conclusions:

The recommendations contained in this report address concerns identified during the Auditor General’s review of two specific construction contracts. The issues raised likely are applicable

to other contracts throughout the City. The implementation of the recommendations will improve the way the City manages its major contracts.

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