



**AUDITOR GENERAL'S  
REPORT  
ACTION REQUIRED**

**The Charbonneau Commission – An Opportunity for the City to Re-evaluate its Procurement Practices**

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| <b>Date:</b>             | February 6, 2014 |
| <b>To:</b>               | Audit Committee  |
| <b>From:</b>             | Auditor General  |
| <b>Wards:</b>            | All              |
| <b>Reference Number:</b> |                  |

**SUMMARY**

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Procurement and contract fraud is extremely difficult to detect because, in the case of bid rigging, kickbacks, and illegal gratuities for example, it generally involves collusion between parties external to the City. While there has to be a balance between controls and an effective procurement process, it is important that controls are continually evaluated. The Charbonneau Commission currently in progress provides a unique opportunity to do so.

The Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry, otherwise known as the Charbonneau Commission, is a public inquiry in Quebec into potential corruption in the management of public construction contracts.

The Commission was enacted in October 2011 with a mandate to:

- “1. Examine the existence of schemes and, where appropriate, to paint a portrait of activities involving collusion and corruption in the provision and management of public contracts in the construction industry (including private organizations, government enterprises and municipalities) and to include any links with the financing of political parties.*
- 2. Paint a picture of possible organized crime infiltration in the construction industry.*
- 3. Examine possible solutions and make recommendations establishing measures to identify, reduce and prevent collusion and corruption in awarding and managing public contracts in the construction industry.”*

It is anticipated that the final report of the Charbonneau Commission including its recommendations will be available in mid-2015. At the present time, the final cost of the Commission is estimated to be in the range of \$35 million.

Even though the Commission is still in progress, there have been significant repercussions as a result of certain information provided to the Commission as follows:

- In May 2013, the former Mayor of Laval was arrested and charged with corruption.
- In November 2013, the Mayor of Montreal resigned as a direct result of revelations made at the Commission.
- In June 2013, the interim Mayor of Montreal resigned after his arrest on criminal charges stemming from activities linked to companies central to the testimony of the Commission.

The proceedings of the Commission even at this point provide an opportunity for the City of Toronto to re-evaluate its procurement practices and, where appropriate, address certain areas. In this context, while the City has an ongoing relationship with the Federal Competition Bureau this relationship needs to be revisited particularly in regards to the referral of individual cases to the Bureau and the investigation process undertaken by the Bureau.

## **RECOMMENDATIONS**

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### **The Auditor General recommends that:**

1. City Council request the Director of Purchasing and Materials Management review the upcoming report of the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry, otherwise known as the Charbonneau Commission. Such a review determine whether recommendations pertaining to establishing measures to identify, reduce and prevent collusion and corruption in the awarding and managing of public contracts in the construction industry have relevance to the City of Toronto.
2. City Council request the Director of Purchasing and Materials Management to meet with the Federal Competition Bureau to determine the Bureau's Investigation process particularly as it relates to:
  - a. the criteria for referring specific cases to the Bureau
  - b. the level of evidence required by the Bureau
  - c. the results of individual investigations
3. City Council request the City Manager in consultation with the City's Agencies and Corporations to develop a protocol for the distribution and sharing of fraud investigation related reports. Such a process ensure that, as a minimum, recommendations contained in all such fraud investigation reports be shared with Senior Management at the City as well as its Agencies and Corporations.

## **Financial Impact**

The recommendations in this report have no financial impact.

## **COMMENTS**

The Auditor General's Office has kept itself apprised of developments emanating from the Charbonneau Commission. In this context, the Auditor General has met with the Auditor General of Montreal in order to review in general terms, audit concerns and to identify any audit risks which might be relevant to the City of Toronto. Further, we have provided certain information received from the Montreal Auditor General to the City's Director of Purchasing and Materials Management for further review by the Division. This review has been conducted in consultation with the Auditor General.

We have also met with the Director of Research for the Charbonneau Commission in order to provide information concerning both the audit and the procurement process at the City.

Finally, we have had discussions with the Montreal Controller General whose mandate is to:

- Ensure the existence and effectiveness of controls needed for sound management and use of public funds, the City's internal resources and assets, in compliance with effective legislation and frameworks in force.
- Ensure corporate monitoring of the organization in order to support the administration in its governance.
- Promote and ensure ethical behaviour and respect for the organization's values.

The Controller General's position was established in 2010 with a major focus on contractor performance particularly in regards to the ongoing monitoring of contracts. Our discussions with the Controller General at this point have been fairly general in nature and we anticipate having further meetings in the future.

We have also met with the City of Toronto's Director of Purchasing and Materials Management to discuss the proceedings at the Charbonneau Commission, as well as the Division's interaction with the Federal Competition Bureau.

The Competition Bureau is an independent law enforcement agency whose objective is to ensure that Canadian businesses and consumers prosper in a competitive market place. The major types of anti-competition activities investigated by the Bureau involve situations where competitors agree on prices that they will charge their customers (price fixing).

Where the Purchasing and Materials Management Division have concerns regarding various responses to procurement requests, information is referred to the Competition Bureau for their review and analysis. Over the past number of years, a significant

number of referrals have been made to the Bureau and the response by the Bureau to each one of them has been *“Investigation completed. The evidence obtained in this case was insufficient to establish the elements of the bid rigging offence under Section 47 of the Act”*. While we are not questioning the adequacy of the investigations by the Competition Bureau, the Division should meet with the Bureau to review in detail the results of each investigation, determine the extent of evidence required for future investigations and to discuss criteria for referring cases to the Bureau.

Further, we continue to have concerns in relation to the sharing of information both within the City and with Agencies and Corporations. Fraud investigation reports, prepared either by internal staff or by third party consultants should be shared particularly if these reports contain recommendations.

Finally, the Auditor General has access to various publications as well as professional development course materials provided by the Association of Certified Fraud Examiners. In this context, the Auditor General has provided a publication entitled “Contract and Procurement Fraud” to the Director of Purchasing and Materials Management for his review. This publication includes information relating to the identification of “red flags” throughout all stages of the procurement process. It is suggested that the Director review this publication, along with others available from the Association, with a view to developing a review check list which should be used by the staff within the Division. It is also suggested that once the check list has been developed it be shared with other staff throughout the City who have procurement responsibilities as well as staff from the City’s Agencies and Corporations.

## **CONCLUSION**

The Charbonneau Commission provides a unique opportunity for the City of Toronto to re-evaluate its procurement practices. Having said that, it is important to recognize that the procurement process at the City was subject to significant scrutiny between 2003 and 2005 during two Public Inquiries namely:

- The Toronto Computer Leasing Inquiry
- The Toronto External Contracts Inquiry

The Inquiries, which were presided over by Madame Justice Bellamy, made 241 recommendations many of them relating specifically to the procurement process and contract management. Recommendations were made in connection with:

- Code of Conduct
- Lobbying
- Project Management
- Central Procurement
- Staff Training
- Project Management, Teamwork and Expertise
- Tender Documents and Processes
- Vendors of Record

The City Manager in a report dated November 14, 2005 entitled “Implementation of the Recommendations of the Bellamy Inquiry” reported that each one of the recommendations had been addressed or were in the process of being addressed.

Prior to the Bellamy Report, in 2003, the Auditor General issued a major report entitled “Procurement Process Review” that contained 42 recommendations many of which were repeated in the Bellamy Report. Subsequent to the Bellamy Report, the Auditor General has also issued a significant number of reports in connection with procurement and contract management issues including the use of Divisional Purchase Orders, sole sourcing and use of consultant contracts.

In essence, the procurement process at the City has undergone a significant number of reviews and, as a result, its internal administrative controls have been significantly enhanced over the years.

Having said that, individuals intent on committing fraud generally devise new ways to circumvent controls and in such circumstances it is important to constantly re-evaluate internal controls and emerging risks in order to identify, reduce and prevent fraud in awarding and managing public contracts in the construction industry.

The challenge at the City is to ensure that adequate controls are in place to minimize the risk of procurement fraud. Ongoing dialogue with representatives from both the Charbonneau Commission and the City of Montreal, as well as lessons learned from the final Charbonneau Report will assist the City in meeting this challenge.

## **CONTACT**

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## **SIGNATURE**

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Jeff Griffiths, Auditor General