

Right-to-Audit Project Summary

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Office of the City Auditor

Introduction

At the November 26, 2003 Audit Committee meeting and again at the December 16 City Council Meeting, the Right-to-Audit project in the OCA's 2004 Annual Work Plan received significant attention from members of Council. Based on the importance Councillors placed on this project, the OCA made it a priority. The OCA has worked with the Administration to address concerns regarding application of right-to-audit wording to contracts and agreements and to develop standard wording that can be readily incorporated into specific documents (note: in this document the phrase "contracts and agreements" includes grants, leases, and other forms of agreements).

The OCA determined that right-to-audit wording is currently included in City of Edmonton standard construction contracts and a few specific agreements. However, the wording in each agreement is customized to that agreement rather than existing as blanket wording that can be readily extended to all contracts and agreements.

Summary of Wording Used in Other Jurisdictions

The OCA conducted a survey to determine the practices followed by other jurisdictions. Thirteen local governments (two Canadian and eleven from the United States) and one consultant responded with example texts used in their contracts and agreements. The OCA reviewed the wording used both in Edmonton and in other jurisdictions and worked with Law Branch, Purchasing, and the Office of the City Manager to develop wording that could be consistently applied to City of Edmonton contracts and agreements.

While some jurisdictions limit their right-to-audit clauses to only certain types of contracts and agreements, others apply right-to-audit clauses to all or nearly all contracts and agreements, including grant agreements.

The following points are commonly incorporated in right-to-audit clauses in other jurisdictions:

- Maintaining financial and related records for a specified number of years
- Making records readily available to the auditing organization
- Passing the audit obligations down to any subcontractors, suppliers, etc.
- Complying with other rights, powers, or obligations regarding audit authority (e.g., legislation)

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In addition, some jurisdictions require provision of audited financial statements from at least some funding recipients. In three cases, the jurisdictions explicitly state that the costs associated with providing records to the auditor are borne by the auditee. In three instances, the right-to-audit clause indicates that the auditee will bear the costs of the entire audit and rebate of associated monies paid if the audit results in significant findings against the auditee. In ten cases, access to records is required with no explicit statement about who bears the cost of copying records.

Application Guidelines

The proposed wording will be included in all contracts and agreements executed by the City of Edmonton that involve financial transactions (regardless of value), including but not limited to:

- Providers of goods and services
- Agencies and organizations that receive City funding
- Organizations and individuals that negotiate leases at less than market value
- Revenue-sharing contractors
- Grant awards

In the special case of providers of goods and services, right-to-audit wording would be required for contracts or agreements valued at \$100,000 or greater. For contracts or agreements valued at less than \$100,000, right-to-audit wording would be optional, but would be included if the City's risk exposure is judged to be higher than normal. This would mean that in most cases for contracts for goods and services that are well-defined (e.g., purchasing equipment, stationery, chemicals, and similar products or procuring services for a clearly defined scope of work) and are relatively low value, right-to-audit wording would be optional.

Under the terms of the right-to-audit section of contracts and agreements, City Council has the option of directing the City Auditor to conduct an audit to determine whether or not City funds or foregone revenues have been used effectively and efficiently.

An individual who has suspicions of improper action or faulty business processes on the part of a "Contractor" will report their suspicion to the OCA for evaluation and potential investigation. The OCA will review available evidence to determine whether or not further investigation is warranted. Reports determined to be malicious or frivolous in nature will be dealt with appropriately. The City will provide appropriate protection from retaliation for those who provide reports in good faith.

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Proposed Wording for all Contracts and Agreements

Representatives from Law Branch, Finance Branch, Office of the City Manager, and Office of the City Clerk have reviewed the following wording. It is our collective intent to incorporate these right-to-audit provisions in each applicable new contract or agreement (i.e., they will not be applied retroactively).

The term “<Contractor>” is used in the sample section below to describe signatories to contracts, grants, and agreements with the City and must be changed to accurately reflect the relationship with the City (Contractor, Licensee, Supplier, Vendor, Consultant, Grant Recipient, etc.).

Audit Provisions

1. The City may audit all financial and related records associated with the terms of the contract or agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the <Contractor>.
2. The <Contractor> shall at all times during the term of the contract or agreement and for a period of six years after the end of the contract, keep and maintain records of the work performed pursuant to this Contract or Agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the <Contractor>. All such records shall be maintained in accordance with generally accepted accounting principles. The <Contractor> shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.
3. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the <Contractor> and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfilment of the <Contractor>’s obligations to the City.
4. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. The <Contractor> shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.
5. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, Provincial, or Municipal law, whether those rights, powers, or obligations are express or implied.

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Conclusion

The OCA believes that this wording will establish the City's right to audit those companies, individuals, or organizations to which it directly or indirectly provides funding or from which it receives or waives market value revenues.