
Professional Services Agreements Sole-Source Review

March 1, 2005

This page is intentionally blank.

Professional Services Agreements Sole-Source Review

1. Introduction

In its 2004 Annual Work Plan, the Office of the City Auditor (OCA) scheduled a review of the City's sole-source contracts.

Sole-source procurement of goods, services or construction occurs when one party enters into an agreement with another without a tender call or a request for proposal. This procurement approach may be appropriate in the event of extreme urgency, due to the sensitive nature of the work being performed, or when the cost of open competition outweighs the benefit, in addition to other defensible and justifiable reasons.

The risk for the City lies in the possibility of inappropriate use of sole-source procurement, which has the potential to violate the City's procurement principles of openness, transparency and best value. The principle of openness is that all qualified vendors have an equal opportunity to compete for business. Transparency allows the market to know the bid process, successful bidder and the total bid amount. Best value is achieved when the City receives the best combination of quality and price.

These principles are satisfied most readily through open competition. The purpose of this review, then, was to provide assurance that sole-source procurement is being used appropriately, in compliance with the established guidelines, and in the best interests of the City.

2. Background

The City defines professional services as the provision of technical or professional expertise, direction and guidance, including recommendations to management, by firms or individuals on a project basis. Professional services include management consulting services, engineering services, architectural services, legal services, actuarial services, financial services, computing personnel services, and property assessment services.

Professional services contracts can be awarded by open competition (all vendors can compete), departmentally-managed competition (where departments invite at least three vendors to compete) or sole-sourcing (one vendor). The City's governing documents for the procurement of professional services include the inter-provincial Agreement on Internal Trade (AIT), City Administration Bylaw 12005, the procedures outlined in the Professional Services Appointment Process Toolbox, and Administrative Directive A1439 (*Purchasing of Goods, Services, and Construction*).

a) Agreement on Internal Trade (adopted in principle by City Council in May 1999)

In addition to its own policies and procedures, the City's purchasing is guided by the inter-provincial Agreement on Internal Trade (AIT) established in 1995. Annex 502.4 of the agreement came into effect July 1, 1999, and extended coverage to municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities. The AIT encourages these entities to purchase goods and services of more than \$100,000 and construction of more than \$250,000 by tender call. The AIT also defines a number of situations or services that are exempt from these limits. The purpose of the AIT is to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market.

b) City Administration Bylaw (June 1999)

Through City Administration Bylaw 12005, City Council delegated authority to the City Manager to approve and enter into agreements on behalf of the City within specified bounds. Further, the Bylaw authorizes the City Manager to delegate to any other City employee any of the powers, duties and functions that City Council has delegated to the City Manager.

It is through this sub-delegation that General Managers obtain their authority to enter into agreements, within specified bounds, on behalf of the City. To allow City Council to monitor the resulting agreements, the City Administration Bylaw requires that the Administration reports to Council all agreements exceeding \$100,000 (inclusive of GST, change orders and contingencies) that have not received prior Committee/Council approval. This information is contained in the "Semi-Annual Activity Report Regarding Delegation" that is issued by the Office of the City Manager.

c) Professional Service Appointment Process Toolbox (January 2004)

The City's Professional Services Appointment Process Toolbox is a set of procedures that resulted in part from the OCA's *Corporate Review of Consultants* (2000). The 2000 review resulted in 17 recommendations concerning the manner in which the City contracted the services of external consultants, including the recommendation that departments provide reasonable justifications for sole-source contract awards.

The Professional Services Appointment Process Toolbox was created to guide departments in their procurement decisions (including providing justification for sole-sourcing) and the creation of professional services contractual agreements.

d) Administrative Directive A1439: Purchasing of Goods, Services, and Construction (May 2004)

Administrative Directive A1439 is intended to ensure that the City receives the best possible financial, operational, and environmental benefits when purchasing goods, services and construction. The directive applies to all City departments reporting to the City Manager as well as the Edmonton Police Service. It states that whenever possible the City will make purchases of more than \$5,000 through tender call unless the purchase is an exempt purchase. Exempt purchases are those identified in the

Agreement on Internal Trade and include services provided by specified professionals, situations of unforeseeable urgency, and situations where the open tendering process could compromise government confidentiality or security.

3. Objectives

The objectives of the review were to:

1. Determine the frequency of professional services sole-sourced contracts.
2. Evaluate the level of compliance with established guidelines and delegated authority limits.
3. Assess the appropriateness and defensibility of justifications for the use of sole-source for contracting professional services.

4. Scope and Methodology

The scope of the review involved professional services contracts over \$5000 in total value that the City entered into between January 1 and September 30, 2004. "Total value" includes the value of the initial contract, contingencies and subsequent change orders. The contract award codes that form part of this review appear in Appendix A.

The initial scope of the review was intended to include goods, services and construction. However, during the planning stage of this review, the OCA observed that almost all professional services contracts were awarded through departmentally-managed competitions or were sole-sourced. The OCA therefore focused this review on professional services and will undertake a review of sole-source procurement of other services (e.g., maintenance contracts) and goods at a later date. The professional services procured by the Edmonton Police Service were not considered in scope due to a separate project that was underway.

The OCA conducted the following steps as part of its fieldwork:

1. Reviewed the SAP purchasing data from January 1 to September 30, 2004 to determine the frequency with which the City undertook the various forms of contracted procurement (open competition, departmentally-managed competition and sole source) to retain professional services.
2. Selected and assessed a sample of 50 professional services purchasing files, supplemented as required to include all City departments, to evaluate compliance with all applicable bylaws, directives, procedures and guidelines.

Prior to selecting the sample for detailed review, the OCA divided the population into two groups: those contracts that required General Manager approval (contracts up to and including \$100,000) and those contracts that required approval from a higher authority (contracts over \$100,000). Twenty-five files were randomly pulled from each sub-population. This allowed greater focus on the higher value contracts, but limited the OCA's ability to generalize to the population as a whole.

3. Determined the reasonableness of the business case justifications for this sample, through the OCA's own research and the use of corporate expertise (e.g., Materials Management).

The review was intended to assess only the awarding of contracts. The OCA did not review the work subsequently completed by the consultants.

5. Observations and Analysis

The review encompassed three objectives: to determine the frequency of the three types of professional services contracting, to evaluate compliance with established guidance, and to assess the reasonableness of professional services sole-source justifications.

SAP purchasing data did not allow contracts awarded by sole-sourcing to be separately identified from contracts awarded by departmentally-managed competition. This issue is addressed further in section 5.5 of this report.

5.1. Frequency Analysis of Professional Services Contract Awards

Between January 1 and September 30, 2004, the City awarded 98 percent (215 out of 220) of its professional service contracts through departmentally-managed competition and sole-sourcing (Table 1). Projects ranged from simple service provision to complex engineering projects.

Table 1: Professional Services Contracts Awarded between January 1 and September 30, 2004

Method of Procurement	Number of Contracts	Contract Value
Open Competition	5 (2%)	\$462,865 (1%)
Departmentally-Managed Competition & Sole Source	215 (98%)	\$40,419,780 (99%)
Totals	220 (100%)	\$40,882,645 (100%)

During the period under review, the majority of the contracts (71%) that were awarded by departmentally-managed competitions or sole-sourcing were for values of \$100,000 and less (Table 2). Such contracts are approved at the departmental level by a General Manager or an authorized delegate. Contracts requiring approval by a higher level of authority (i.e., by the City Manager or a Committee of Council) comprised 29 percent of the contracts.

Table 2: Professional Services Contract Awarded by Departmentally-Managed Competitions or Sole-Sourcing between January 1 and September 30, 2004

Contracts	Number of Contracts	Percent
\$100,000 and Less (General Manager approval required)	153	71%
Over \$100,000, Up to \$250,000 (City Manager approval required)	50	23%
Over \$250,000 (Committee approval required)	12	6%
Total	215	100%

To further define the frequency with which the City awarded contracts through departmentally-managed competitions and sole-sourcing, as well as determine the level of compliance with established guidelines and delegated authority limits, the OCA reviewed 50 professional services contracts awarded between January 1 and September 30, 2004.

In the OCA's sample of 50 contracts, sole-sourcing was generally the procurement method of choice for lower value contracts (17 out of 25 contracts, 68%). As the value of the contracts increased beyond \$100,000, departmentally-managed competitions were used much more frequently (18 out of 25 contracts, 72%). The distribution of contracts in the OCA's sample among departments and by contract value is presented in Table 3.

Table 3: Departments' Use of Professional Services Awarded by Departmentally-Managed Competitions or Sole-Sourcing, January 1 and September 30, 2004

(Sample of 50 Professional Services Contracts)

Department	\$100,000 or Less		Over \$100,000		Total
	Sole Source	Dept. Comp.	Sole Source	Dept. Comp.	
Corporate Services	8	0	2	5	15
Transportation & Streets	4	1	1	6	12
Asset Mgt & Public Works	2	3	2	5	12
Community Services	1	3	1	0	5
Emergency Response	1	1	1	1	4
Planning & Development	1	0	0	0	1
Office of the City Manager	0	0	0	1	1
Totals	17	8	7	18	50
Sample Size	25		25		

The services most commonly procured in the OCA's sample included engineering services (19 contracts out of 50, 38%), general professional services (12 contracts, 24%) and computing personnel services (9 contracts, 18%). "General professional services" in the sample included expert advisors, event coordination, and market

research. A complete listing of the services retained in the OCA's sample of 50 professional services contracts is presented in Table 4.

Table 4: Professional Services Retained by Departmentally-Managed Competitions or Sole-Sourcing between January 1 and September 30, 2004
(Sample of 50 Professional Services Contracts)

Service	\$100,000 or Less		Over \$100,000		Total
	Sole Source	Dept. Comp.	Sole Source	Dept. Comp.	
Engineering	5	2	2	10	19
General Prof. Services	6	4	1	1	12
Computing Personnel	4	0	2	3	9
Communications	1	1	0	2	4
Architectural	0	0	1	1	2
Management Consulting	1	1	0	0	2
Medical	0	0	1	0	1
Actuarial	0	0	0	1	1
Totals	17	8	7	18	50
Sample Size	25		25		

5.2. Compliance with Governing Documents

The second objective of this review was to determine the degree to which departments complied with governing documents. The City has four governing documents that guide the procurement of professional services: Administrative Directive A1439, the Agreement on Internal Trade (AIT), the City Administration Bylaw, and the Professional Services Appointment Process Toolbox.

Although City Council adopted the principles of the Agreement on Internal Trade in May 1999, the City Administration Bylaw 12005 was passed in June 1999 and superseded all related prior resolutions including the adoption of the AIT and previous procurement policies. In January 2004, the creation of the Professional Service Appointment Process Toolbox was intended to improve the guidance available to departments. Then, in May of 2004, the City provided further direction to its departments for the purchasing of goods, services and construction through Administrative Directive A1439. The administrative directive also re-affirmed the City's support of the principles in the Agreement on Internal Trade.

However, in part due to the evolution of the guidance, the governing documents provide different information with regard to exemptions based on dollar thresholds, type of professional service procured and situational demands. As a result, departments can have varied understandings of what constitutes acceptable exemptions from open competition requirements. For governing documents to effectively direct the outcomes desired, they must provide clear guidance. Current governing documents, taken together, do not readily meet this requirement.

A comparison of the guidance provided with regard to exemptions based upon dollar thresholds, type of service procured and situational demands, is provided below.

5.2.1. Exemption by Dollar Thresholds

The Agreement on Internal Trade encourages municipalities to purchase goods and services of more than \$100,000 and construction of more than \$250,000 by open competition. Below these thresholds, organizational policies and procedures provide additional direction. The City provides this direction through Administrative Directive A1439.

Administrative Directive A1439 states that, whenever possible, the City will make every effort to make purchases of over \$5000 through open competition unless they are exempt purchases (see Appendix B). Therefore, Administrative Directive 1439 emphasizes the value the City places on open competition by adopting a dollar threshold that is far lower than the dollar threshold requirements of the Agreement on Internal Trade.

Although the wording in Administrative Directive A1439 sets out the expectation that open competition will be the norm (barring exemptions), it does not make it mandatory. The directive simply states that departments should use open competition “whenever possible.” Therefore, departments are not limited to the exemptions outlined in Administrative Directive A1439 and provided in Appendix B of this report.

The City Manager’s delegation of authority to General Managers results from the authority bestowed by the City Administration Bylaw. As of 2003, the delegation from the City Manager states that professional service contracts of more than \$250,000 should normally be acquired through competition (open or departmentally-managed competitions). Further clarification is required regarding whether the delegation to General Managers simply reinforces the need for competition as the dollar value of the contracts increases, or supersedes the dollar thresholds outlined in the Agreement on Internal Trade and Administrative Directive A1439.

5.2.2. Exemption by Type of Professional Service

In addition to exemptions based upon the dollar value of the contract, some governing documents also exempt some professional services from the open competition requirement, based upon the nature of the service provided. In these instances, departments could consider open competition, departmentally-managed competition or sole-sourcing, as the situation warranted.

The Agreement on Internal Trade and Administrative Directive A1439 state that services that are required to be provided by licensed professionals (i.e., medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, accountants, lawyers and notaries) are exempt from the open competition requirement. Other services, such as those provided by financial analysts, are exempt at least in some circumstances (see Appendix B for a complete listing). Professional services that

are not exempt (e.g., management consulting, computing personnel, and actuarial services) would normally be retained through open competition unless the procurement was exempt for other reasons, such as unforeseeable urgency.

The Professional Services Appointment Process Toolbox, which came into effect January 2004, does not specify which, if any, professional services may be exempt from open competition. The general understanding of departments, though, is that all professional services are exempt from open competition and can be awarded through departmentally-managed competitions instead.

5.2.3. Exemption Due to Situational Demands

Administrative Directive A1439 and the Agreement on Internal Trade provide several circumstances under which purchases may be awarded without open competition due to situational factors. Acceptable justifications include situations of unforeseeable urgency and situations where the open tendering process could compromise government confidentiality or security (see Appendix B for a complete listing).

Potential business case justifications are also provided in the Professional Services Appointment Process Toolbox. In addition to some of the circumstances provided in Administrative Directive A1439, the Toolbox includes other potential justifications, such proven value or economy in continuing prior work, demonstrated competence on previous projects, and when the low value of the required services may not make it economical or practical to go through a competitive process (see Appendix C for a complete listing).

Recommendation 1	Management Response & Action Plan
<p>That the Administration review the Professional Services Agreement Process Toolbox, terms of the City Manager's delegation to General Managers, the City Administration Bylaw and Administrative Directive A1439 to ensure they reinforce and are synchronized with the Agreement on Internal Trade.</p>	<p>Management response: Accepted Target implementation date: December 2005 Party responsible: Corporate Services Proposed action plan: Action plans will be completed by the end of March 2005.</p>

5.2.4. Guidance for Exempt Professional Services

The Agreement on Internal Trade and Administrative Directive A1439 provide guidance to departments regarding circumstances when open competition should be used. However, guidance for procuring professional services that are exempt from open competition (e.g., services provided by licensed professionals) is also needed. The Asset Management & Public Works and Transportation & Streets Departments are working together to propose a model for adoption across the corporation.

Recommendation 2	Management Response & Action Plan
<p>That the Administration provide clear direction regarding acceptable procurement practices for the retention of professional services that are exempt from the open competition requirement and then incorporate such guidance into the Toolbox.</p>	<p>Management response: Accepted Target implementation date: December 2005 Party responsible: Transportation & Streets Proposed action plan: Action plans will be completed by the end of March 2005.</p>

5.3. Reasonableness of Business Case Justifications for Sole Sourcing

To determine the reasonableness and defensibility of business case justifications that City departments provided for sole-sourcing professional services, the OCA referred to the City’s Administrative Directive A1439 list of AIT-exempt purchases (Appendix B). A summary of the justifications provided for the 50 professional services contracts in the OCA’s sample is presented in Table 5.

Table 5: Sole-Sourced Professional Services Contracts by Exemption
 (Sample of 50 Professional Services Contracts)

Exemption Category	Sole Source		Total
	\$100,000 or Less	Over \$100,000	
Exempt Due to Type of Prof. Service	5	4	9 (38%)
Exempt Due to Situational Demands	2	1	3 (12%)
Justification not Included in A1439	10	2	12 (50%)
Total	17	7	24 (100%)

Twelve of the 24 sole-source professional services were clearly exempt from the open competition requirement of the Administrative Directive and the Agreement on Internal Trade. Of this group, 9 were exempt due to the type of professional service retained (A1439 - exemption #1) and three were exempt due to computer security concerns (A1439 - exemption #11), the sensitive nature of the project (A1439 - exemption #8) and use of the vendor’s copyrighted program (A1439 - exemption #13).

The remaining 12 contracts did not involve AIT-exempt professional services and the departments’ reasons for sole-sourcing (e.g., the vendor’s expertise, the vendor’s previous experience with the City, and/or the value in continuing prior work), while not in violation of the Professional Services Appointment Process Toolbox guidelines, are not included as specific exemptions under Administrative Directive A1439. The OCA believes that expertise and prior experience with the City, while useful for deciding between firms, are not sufficient justifications for sole-sourcing.

The majority of the remaining 12 contracts that did not qualify for exemption under Administrative Directive A1439 were under the AIT dollar threshold of \$100,000 (10

contracts, 83%). For contracts that are below the \$100,000 AIT threshold for open competition, the benefits of open competition should outweigh the costs. The benefits of open competition include openness (i.e., equal opportunity to all vendors compete), transparency and potentially best value. The costs of open competition include factors such as time and expense for both the City and the vendor community.

It is possible that, since departments were providing justifications based upon and in accordance with the guidance provided in the Professional Services Appointment Toolbox, there may have been other factors that could have qualified for exemption under Administrative Directive A1439 and the Agreement on Internal Trade. Departments must be encouraged to justify their procurement decisions based on the exemptions provided in Administrative Directive A1439. Such a change will also assist the corporation in demonstrating its compliance with the Agreement on Internal Trade.

Recommendation 3	Management Response & Action Plan
<p>That, as part of the business case justification for sole-sourcing professional services that departments provide on the Professional Services Appointment form, departments formally identify how the contract award qualifies for exemption under Appendix III of Administrative Directive A1439.</p>	<p>Management response: Accepted Target implementation date: December 2005 Party responsible: Corporate Services Proposed action plan: Action plans will be completed by the end of March 2005.</p>

Departments also used “continuation of work” as justification for sole-sourcing some professional services, either for phased work or work of a similar nature. Aside from sole-sourcing the contract, there are alternative procurement options that could improve the openness, transparency and, potentially, best value of the contracting process. For example, structuring a contract to include the option of contract renewals for additional phases allows departments to put the full body of work to competition, but allows for the discontinuation of the contractual relationship at specified points if required. Another contracting option is the creation of open orders, where professional service providers compete for the right to provide services for a bundle of similar work (versus project by project). A third option is the use of strategic sourcing, where the City forms longer-term contractual relationships with vendors. All three options provide for continuity of work, yet allow for greater transparency and competition. Materials Management procurement specialists are the best resource for departments in terms of exploring the applicability of these options.

Recommendation 4	Management Response & Action Plan
<p>That the Administration creates guidelines for the procurement of professional services for phased or similar projects, which may include contract renewals, open orders and strategic sourcing.</p>	<p>Management response: Accepted</p> <p>Target implementation date: December 2005</p> <p>Party responsible: Asset Management & Public Works</p> <p>Proposed action plan: Action plans will be completed by the end of March 2005.</p>

5.4. Compliance with the Professional Services Appointment Process Toolbox

The Professional Services Appointment Process Toolbox was created to guide departments in deciding whether or nor they need to look to external professional service providers and how to undertake this process.

For open competitions, Corporate Services’ Materials Management Division manages the competitions on behalf of all City departments. This includes advertising the competition, facilitating the evaluation of the proposals, facilitating the creation of the contractual agreement, creating the purchase order and posting the contract award.

In contrast, for departmentally-managed competitions or sole-sourced procurements of professional services, the departments generally assume all of the duties other than the creation of the purchase order. Although departmentally-managed competition and sole-source contract awards are not posted publicly, all contract awards over \$100,000 are either reported to Council or approved by a committee of Council.

This portion of the review was conducted to determine the level of departmental compliance to the Professional Services Appointment Process Toolbox with regard to the completion of key documents. Results are reported based on the value of the contract (under/over \$100,000) and the type of service (i.e., AIT-exempt or non-AIT-exempt). AIT-exempt professional services are those that must be provided by licensed professionals (i.e., medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, accountants, lawyers and notaries).

5.4.1. Professional Services Appointment Form

The Professional Services Appointment (PSA) form is intended to contain a summary of the project, the professional service provider’s responsibilities, the cost of the service, the project’s history before committees of Council or Council, the outcome of the litigation check, the selection process (i.e., open competition, departmentally-managed competition or sole source), the justification for selection of a specific service provider, and the written approval of the department’s general manager or delegate.

The OCA's review indicated that, for the majority of the contracts, departments had completed the PSA form and all had obtained the appropriate level of signed approval. In the three instances in which departments had not completed the form, project managers were able to provide adequate documentation outlining the evolution of the project and consultant selection. Confusion regarding the new process was the explanation offered for not completing the PSA form. All three contracts involved were completed within the first four months of 2004 and involved non-AIT-exempt services. Only one was greater than \$100,000 in value.

5.4.2. Professional Services Contractual Agreements

Departments are to create professional services contractual agreements (the legal contract) using the guidelines and documents provided in the on-line Toolbox. The agreement is to include the description of work, payment terms, the applicable general terms, additional terms as required and affidavits of execution or affidavits verifying signing authority, as appropriate. The Law Branch reviews agreements when there are significant revisions and/or when the contract's value exceeds \$100,000 including GST and contingencies.

Compliance is important because it is through the contractual document that the City enforces its rights should the professional service provider breach his/her obligations under the contract. Compliance in the completion of contractual agreements was not as consistent for contracts that were \$100,000 or less and for services that were not AIT-exempt (e.g., were not required to be provided by licensed professionals). The instances of non-compliance are detailed below.

- In the sample of 50 contracts, there were four instances where General Terms to the contractual agreement were either not the actual Terms (a summary document was used in lieu), were the wrong Terms given the value of the contract, or were amended without the Law Branch's review and approval. Three of the four contracts were for non-AIT-exempt professional services and were less than \$100,000 in value.
- In addition, the OCA observed three instances where the departments had not properly executed the contract (i.e., did not have the affidavit of execution or the affidavit verifying signing authority completed when required). All three contracts were for non-AIT-exempt services, two of which were less than \$100,000 in value.
- The OCA also observed that the start dates that were identified in the agreements often predated the dates that the agreements were fully executed. Further work would be required to determine whether the actual start of work also pre-dated the execution of the agreement.

The decentralization of professional services contracting to the departments has increased the risk of inconsistent practice across the corporation. One way to mitigate this risk is to assign contracting responsibilities to select individuals within sections, branches or departments depending on the level of contracting performed. This approach is already in use in some City departments.

Recommendation 5	Management Response & Action Plan
<p>That City departments institute controls to ensure that PSA forms and contracts are completed consistently and in compliance with applicable guidelines, directives, and legislation.</p>	<p>Management response: Accepted</p> <p>Target implementation date: December 2005</p> <p>Party responsible: Senior Management Team</p> <p>Proposed action plan: Action plans will be completed by the end of March 2005.</p>

5.4.3. Delegated Authority Limits

Under the current delegation of authority, General Managers or delegates have the authority to sign PSA agreements awarded through departmentally-managed competitions or sole-sourcing providing the value does not exceed \$100,000, inclusive of GST, contingencies and change orders.

The City Manager has the authority to sign the agreements up to \$250,000 in total value. Above that threshold, the department must first report to and receive approval from a Committee of Council. Change orders that bring the total value of a contract above the next approval threshold must be re-approved by the party with the applicable level of authority given the new value (e.g., City Manager or Committee). In the sample of 50 files that the OCA reviewed, the PSA forms, PSA agreements and change orders were in compliance with delegated authority limits.

Although change orders were not used frequently in the OCA’s sample, they were significant in terms of their dollar impact. The five change orders in the sample increased the value of the contracts in the sample by between 30 to 305 percent. Rationale for the change orders was included in the file for 4 of the 5 contracts; the rationale for the change order to the fifth contract (for a non-AIT-exempt professional service under \$100,000) was simply a reiteration of why the consultant was originally chosen for the project. In all cases, justifications for change orders should be adequately documented.

The OCA’s review of key documents and approvals highlighted that, in addition to enhanced departmental controls, the need for corporate monitoring and enforcement remains. This could take the form of a Contract Office that guides and reviews City contracting activities; alternatively, the responsibility could be assigned to a current business area.

Recommendation 6	Management Response & Action Plan
<p>That, as part of the Shared Services governance structure review, the Administration assign responsibility for monitoring and reporting on the corporation's overall compliance with applicable procurement guidelines, directives, and legislation.</p>	<p>Management response: Accepted Target implementation date: December 2005 Party responsible: Senior Management Team Proposed action plan: Action plans will be completed by the end of March 2005.</p>

5.5. Usability of Data

During this review, the OCA identified issues with the SAP purchasing data that impacted the data's usability and reliability. The problems concerned contract award codes and cost element codes.

5.5.1. Contract Award Codes

The purpose of the contract award codes is to capture and differentiate between various purchasing scenarios (see Appendix A for descriptions of the codes used by the City).

Currently, Materials Management considers all contracting that is performed without full and open competition as a single category when presenting purchasing reports. Therefore, when the OCA attempted to sole-source data from departmentally-managed competition data, it found that the contract award codes did not adequately differentiate between sole source awards (single vendor) and departmental managed competitions (three or more invited vendors) to allow comparison of each of these categories to open competition (unlimited vendors). As a result, data could not be separated into categories without reviewing each individual purchasing file. This prevented the OCA from performing analyses (e.g., frequency, trends) on each portion of the complete data set.

To further improve the quality of information available, additional work needs to be done by Administration to determine which contract award codes provide meaningful information and whether additional codes need to be added. Once this determination is made, Materials Management needs to fully define the award codes and monitor their application to ensure that the information produced is reliable.

5.5.2. Cost Element Codes

In January 2004 as part of the Professional Services Appointment Process Toolbox, the City adopted specific cost element codes that were designed to provide costing by type of professional service retained (e.g., engineering, management consulting, computing personnel services) and thereby facilitate better make/buy decisions. The Professional Services Appointment Process Toolbox also requires that information regarding the nature of the professional service retained be captured on the Professional Service Appointment (PSA) form.

The OCA observed that departments assigned the new cost element codes to 58 percent of the total number of contracts awarded in 2004; the rest were coded with the previous high-level codes (e.g., “contracted work”). Further, when the OCA compared the services detailed on the PSA form with the cost element code that the departments had assigned, they did not always coincide. For example, for five of the 50 contracts in the OCA’s sample, departments accidentally coded some services as “management consulting services.”

Cost element miscoding reduces the value of the information reports compiled using these codes as a criterion. Consequently reports such as the Management Consulting report presented to City Council in the fall of 2004 must be manually compiled to ensure their accuracy. Manually constructing the reports is labour intensive and should be unnecessary if the codes are used as intended.

Recommendation 7	Management Response & Action Plan
<p>That the Administration evaluate means of improving the accuracy and quality of data captured in SAP for both contract award codes and cost element codes.</p>	<p>Management response: Accepted</p> <p>Target implementation date: December 2005</p> <p>Party responsible: Corporate Services</p> <p>Proposed action plan: Action plans will be completed by the end of March 2005.</p>

6. Conclusions

The purpose of this review was to determine the frequency with which sole-sourcing was used to procure professional services, the degree of compliance to established guidance, and the reasonableness of sole source justifications.

The City of Edmonton uses sole sourcing procurement to obtain a variety of professional services, ranging from small projects to complex engineering projects. Coding did not allow contracts awarded by sole-sourcing to be isolated from contracts awarded by departmental competition, but sampling confirmed that sole-sourcing was a common means by which to procure professional services (24 out of the sample’s 50 contracts, 48%). Stratified sampling limits the OCA’s ability to generalize this proportion to the entire population of professional services contracts, but does provide a good indicator of its frequency of use.

The review identified some variability among the four documents governing the procurement of professional services in terms of what guidance applies to whom and under what circumstances. Compliance can be enhanced through updating the Professional Service Appointment Process Toolbox, the City Manager’s delegations to General Managers, City Administration Bylaw and the Purchasing of Goods, Services and Construction Directive (A1439) to reflect the Agreement on Internal Trade. The

corporation also needs to provide clear guidance concerning acceptable procurement methods for AIT-exempt professional services.

The OCA evaluated the reasonableness of business case justifications using the exemptions provided in the City's purchasing directive, Administrative Directive A1439. Twelve of the 24 sole-sourced professional services contracts qualified for exemption due to type of professional service provided or situational factors. The remaining 12 sole-sourced professional contracts in the OCA's sample were focused on the service providers' aptitudes (e.g., expertise and prior experience with the City).

As part of the review, the OCA also reviewed departments' completion of two key documents, the Professional Services Appointment form and the Professional Services Agreement. Guidance for completion of these two documents is provided in the Professional Services Appointment Process Toolbox. Compliance was adequate with regard to documenting the procurement decision in the Professional Services Appointment form. However, compliance to established guidelines for creating professional services agreements was less consistent for contracts valued at less than \$100,000. The decentralization of professional services contracting to the departments has increased the risk of inconsistent practices across the corporation and additional controls are required to mitigate this risk.

The OCA also believes that SAP data needs to be improved to enhance the quality of data available for decision making. More meaningful contract award codes will allow the Administration to better monitor trends in the use of departmentally-managed competitions and sole-source contract awards. Further, more effective monitoring of the application of cost element codes will provide better information for departments' use when making their make/buy decisions for procuring professional services.

Given that the primary focus of this review was the adequacy of sole-source justifications, the OCA did not explore other aspects of contract management such as contract negotiations and contractor oversight. These aspects may be addressed during the OCA's review of project management later in 2005. The OCA will also explore continuous auditing as a means to review the procurement of sole-sourced goods.

The OCA appreciates the assistance and participation in this project by both management and staff within the Administration.

Appendix A: Award Codes

The OCA reviewed a sample of contracts using the following purchase order award codes:

Award Code	Description
BD - Business Decision	Reflects situations where Materials Management has made a business decision to proceed with a particular vendor. For example, administrative costs may not warrant entering the marketplace for competitive bids.
C - Standardized	Department has stated that the vendor is the only one approved for this material/service. Competition may be available, but the department states that it is impractical to change suppliers due to costs for training, parts supply, double-stocking, etc.
H - Only Known Supplier	Only one supplier is known to exist, therefore unable to obtain competition.
JC - User Department Commitments	Commitment given to the vendor by user department prior to issuing requisition to Materials Management.
JD - Unable to Evaluate Bids	Department is unable to sufficiently specify quantity, material or service required to enable Materials Management to evaluate bids (e.g., miscellaneous control orders). Also used for consultants.
JF - Department Requested Restricted Vendor Selection	Due to circumstances resulting in time or other restrictions, the department requests that a purchase order be issued to a supplier. Materials Management has insufficient time to obtain competition.

Appendix B: Excerpt from Administrative Directive A1439, *Purchasing of Goods, Services, and Construction*

Purchasing of the following categories of goods, services and construction are exempt from the Tender Call requirement of the AIT:

1. services that may only be provided by the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, accountants, lawyers and notaries;
2. transportation services provided by locally owned trucks for hauling aggregate on highway construction projects;
3. services of financial analysts or the management of investments by organizations who have such functions as a primary purpose;
4. financial services respecting the management of government financial assets and liabilities (i.e. treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution;
5. health services and social services;
6. advertising and public relation services;
7. where an unforeseeable situation of urgency exists and the goods, services or construction cannot be obtained in time by means of open procurement procedures;
8. where goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;
9. where a contract is to be awarded under a cooperation agreement that is financed, in whole or in part, by an international cooperation organization. Only to the extent that the agreement between the City and the organization included rules for awarding contracts that differ from the obligations set out in the AIT;
10. where construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt compound and pre-mixed concrete for use in the construction or repair of roads;
11. where compliance with the open tendering provisions set out in the AIT would interfere with the City's ability to maintain security or order or to protect human, animal or plant life or health;
12. in the absence of a receipt of any bids in response to a Tender Call made in accordance with this Directive;
13. to ensure compatibility with existing products, or to recognize exclusive rights, such as exclusive licenses, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;
14. where it has been demonstrated by means of an open inquiry process that there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular vendor and no alternative or substitute exists;
15. goods or services the supply of which is controlled by a vendor that is a statutory monopoly;
16. goods on a commodity market;
17. work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;

18. work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property of the original work;
19. a contract to be awarded to the winner of a design contest;
20. a prototype of a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
21. goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
22. original works of art;
23. subscriptions to newspapers, magazines or other periodicals;
24. land matters;
25. personnel services (services provided by individuals who are not considered employees but have an employer-employee type relationship with the City);
26. employment;
27. goods intended for resale to the public;
28. contracts with a public body or a non-profit organization;
29. any goods the inter-provincial movement of which is restricted by laws not inconsistent with the AIT;
30. goods, services and construction that is financed primarily from donations that are subject to conditions that are inconsistent with AIT;
31. goods and services related to cultural or artistic fields and computer software for education purposes...

Appendix C: Excerpt from the *Professional Services Appointment Process Toolbox*

Business Case Justification for Sole Sourcing

You must prepare a detailed analysis answering why proceeding with sole sourcing (entering into a commitment for retaining professional services without using a Request for Proposal process) is the most beneficial choice for the City.

Some factors where sole sourcing may be justified include:

- case of extreme urgency
- proven economy or value in continuing prior work
- nature of work is such that it would not be in the public interest to solicit bids
- only one firm is capable of performing the services
- only one firm is available to provide the services, or the expertise required for the project
- demonstrated competence on previous projects
- the firm is recognized as the leading experts in this field, has developed successful methodology for the work
- low value of the required services may not make it economical or practical to go through a competitive process
- project timelines are such that going with a competitive process will unacceptably delay the project
- work is of a very sensitive nature and the organization has demonstrated its trustworthiness on previous projects.

Any of the above factors must be substantiated as part of the business case.