



OFFICE OF THE
City Auditor

Contract Tendering Process Review

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The Office of the City Auditor conducted
this project in accordance with the
*International Standards for the
Professional Practice of Internal Auditing*

Contract Tendering Process Review

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Contract Tendering Process Review

Executive Summary

The primary objective of the contract tendering process is to obtain goods, services, and construction in a timely manner and at the best value for money through competitive bidding and contractual agreements. As a public body, the City should follow open, fair, transparent, and accountable purchasing processes, which are the basic principles of public procurement.

In this audit, the Office of the City Auditor assessed the openness, fairness, transparency, and accountability of the City's contract tendering process. We conducted a high level review of the contract tendering process, through which we assessed the City's governance structure and directing measures. We also conducted a detailed analysis of contract files and surveyed a sample of vendors to determine their perception of the City's contract tendering process. We found that the City's contract tendering process is generally open, fair, transparent, and accountable.

We have made four recommendations to improve the City's contract tendering processes.

Policy Changes

The City could improve its contract tendering processes by fully aligning its delegation of authority documents and Purchasing Directive with interprovincial trade agreements. At present, procurement accountability is not well-defined in the City. In our opinion, Materials Management Branch as the subject matter experts should have clearly delegated authority over the City's procurement processes. We believe that establishing an effective procurement accountability framework (including roles, responsibilities, and authorities) would improve the City's procurement practices.

Since 2009, the City has significantly reduced the amount of money it spends using sole source contracts even though the number of sole source contracts has not changed significantly. While there are a few legitimate reasons for sole source contracting, it does not provide assurance that the City is receiving the best value for those goods, services, and construction. It also reduces the openness of the City's procurement processes.

We recommend that the City conduct a comprehensive review of all procurement-related delegations of authority, administrative directives, procedures, and related guidance to ensure that the City's policy documents ensure compliance and promote good procurement practices.

Process Changes

We determined that the City needs to optimize risk allocation when developing tender documents to ensure that it receives best value. We observed that some of the City's

tender packages were complex and required clarification for bidders. We also noted that some vendors have questioned the fairness of the City's contracting evaluation and award processes. Finally, we observed that there is no clearly defined process for vendors to appeal perceived unfair treatment. We recommend that the City work with industry groups and City staff to enhance its procurement processes and address these issues.

Improved Communications

We noted that the City could improve the timeliness of posting the results of open tenders. We also observed that Materials Management Branch has not made procurement milestone information readily available to its internal clients and vendors. We recommend that Materials Management Branch address the opportunities for improvement.

Procurement Planning

We observed that the City could improve departmental accountability for contracting timelines by establishing a more formal procurement planning approach. City departments have typically engaged Materials Management Branch only to initiate the contracting process. We believe that further opportunities exist for the City to be more strategic, achieve additional cost savings, and improve service through improved procurement planning. We recommend that the Branch work with departments to formalize the procurement planning process.

Conclusion

We believe that implementing our recommendations will further improve the City's governance structure, contracting processes, improve its relationships with the vendor community, and increase the potential for contract savings.

Contract Tendering Process Review

1. Introduction

The Contract Tendering Process Review was approved by City Council as part of the 2011 and 2012 Office of the City Auditor's (OCA) annual plan. In this audit, we assessed the openness, fairness, transparency, and accountability of the City's contract tendering process. We also reviewed the control framework related to the contract tendering process. We identified four opportunities for improvement.

The primary objective of the contract tendering process is to obtain goods, services, and construction in a timely manner and at the best value for money through competitive bidding and contractual agreements. Open tendering is used, especially by the public sector, to gain the benefits of competition for advertised opportunities. In order to receive the best value for money, the City must strike the right balance between its procurement resource requirements and its desire to maximize competition for its tendered goods, services, and construction.

2. Background

2.1. City Procurement Methods

As the City's Administrative Directive A1439B, *Purchasing of Goods, Services, and Construction* (Purchasing Directive) indicates: "This directive helps ensure that the City of Edmonton receives the best possible financial, operational and environmental benefits when purchasing goods, services and construction." Public bodies are encouraged by the principles of public purchasing and by trade agreements to use open tenders as their primary means of obtaining goods, services (including Professional Service Agreements), and construction. Open tenders are preferred because they promote maximum competition amongst potential vendors.

In 2011, the City issued 3,188 contracts for goods, services, and construction valued at approximately \$1.6 billion. From 2010 to 2011, contracts increased by 31 percent in total number and almost 73 percent in total value. For each contract, Materials Management Branch (the Branch) records the manner in which the contract was awarded. There are eight detailed award codes, but each of them represents one of the two primary methods of procurement, open tender and sole source contracts:

- **Open tenders** are posted on an electronic system maintained by the Province of Alberta (Alberta Purchasing Connection) and are equally available to any entity that is interested in submitting a bid or proposal.
- **Sole source contracts** are used to establish a purchase order or contract with a single pre-selected vendor at an agreed-upon price. In some cases, because the goods or services are proprietary, there is actually only one vendor that can supply

them. In other cases, a department may choose to approach only one or a limited number of vendors. The City’s definition of sole source includes contracts for which a department may have solicited bids from more than one vendor, but the contract was not awarded through open tender.

Open tendering encourages maximum competition amongst potential vendors and is the preferred method for public sector procurement. However, the costs of tendering both to the City and the vendor community at some point outweigh the benefits of potentially lower prices. Consequently, the City has chosen to allow lower-value procurement by other means such as corporate procurement cards, low-value purchase orders, and sole source procurement.

As shown in Figure 1 and Table 1, the total value of contracts awarded using sole source contracting decreased from 2009 to 2011, while the value of those awarded through open tenders increased significantly.

Figure 1 – Percentage of Contract Value by Award Type

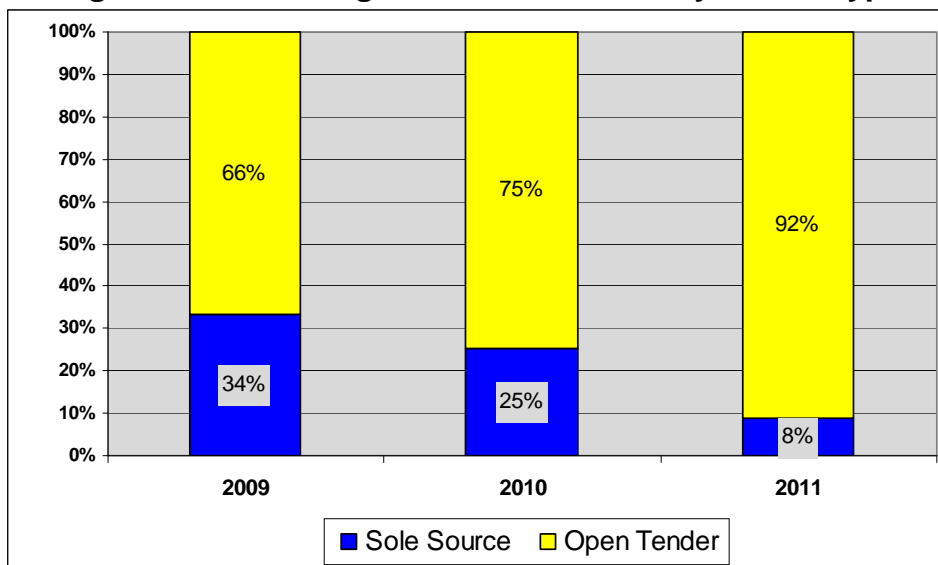


Table 1 – Value of Contracts by Award Type (millions)

Year	Sole Source Contracts		Open Tender Contracts		Total Contract Values
	Up to \$75,000	More than \$75,000	Up to \$75,000	More than \$75,000	
2009	\$ 31.1	\$ 381.7	\$ 8.4	\$ 810.4	\$1,231.6
2010	\$ 29.4	\$ 204.6	\$ 5.6	\$ 684.8	\$ 924.4
2011	\$ 37.6	\$ 96.9	\$ 9.1	\$ 1,451.5	\$1,595.1
Change 2009 to 2011	21%	-75%	8%	79%	30%

2.2. Materials Management Branch

The Branch is the delegated tendering authority for the City of Edmonton and Edmonton Police Service. The Branch guides City departments through the procurement process

for all goods, services, and construction requirements. The Branch provides a full range of procurement services. This includes procurement planning and advice, tender and proposal preparation and management, contract negotiation, and contract/purchase order creation. In addition, the Branch is responsible for supply chain management services (which includes warehousing and stores operations, parts management, and distribution), printing services through the City's Digital Print Centre, and mail services. This review focused on the Branch's contract services role.

In the past few years, the Branch has undertaken several initiatives to improve the City's contracting processes and address the needs of smaller vendors, including:

- Updating the Professional Services Agreement online toolbox and associated guidelines;
- Introducing comprehensive consultant evaluation templates;
- Providing explicit guidance to managers who are at risk of violating trade agreements;
- Encouraging City staff to decrease reliance on sole source procurement;
- Increasing low-value purchase limits;
- Implementing an online Buying Guide to assist City staff with buying a wide variety of goods and services;
- Conducting "Selling to the City" seminars for small and local businesses that may be interested in selling their goods and services to the City; and
- Conducting (in some cases working jointly with Law Branch) seminars for City staff who are or may be hiring consultants or establishing contracts for goods, services, and construction.

Table 2 presents the Branch's expenses and full-time equivalent employee count for the contract services portion of its operations for the years 2009 through 2011. The table also includes data showing the number and value of contracts established on behalf of City departments that report to the City Manager.

Table 2 –MMB Contract Services Budget and City Contracts Awarded¹

Description	2009	2010	2011
MMB Contract Services Full-Time Equivalent Positions ²	50	58	61
MMB Contract Services Expenses (millions) ²	\$4.9	\$5.1	\$5.9
Number of City Contracts Awarded	2,793	2,427	3,188
Value of City Contracts Awarded (millions)	\$1,232	\$924	\$1,595

Note 1: City Contracts Awarded numbers do not include Authorities, Boards, or Commissions.

Note 2: MMB contract services positions include procurement coordinators, buyers, and managerial and administrative support personnel (Branch Manager, administrative assistant, methods analysts, etc.). MMB Contract Services also includes contracting services provided to Edmonton Police Service.

2.3. Interprovincial Trade Agreements

The Province of Alberta has signed three interprovincial trade agreements that commit it to creating a barrier-free interprovincial market that promotes free movement of persons, goods, services, and investments. These agreements apply to both the Province and its municipalities:

- *Agreement on Internal Trade* (AIT) included municipalities on July 1, 1999;
- *Trade, Industry, and Labour Mobility Agreement* (TILMA) included municipalities on April 1, 2009; and
- *New West Partnership Trade Agreement* (NWPTA) replaced TILMA and included Alberta and British Columbia municipalities immediately (July 1, 2010) since it did not change the terms of TILMA.

The AIT applies to all Canadian provinces and territories (except Nunavut). The NWPTA is more restrictive than the AIT, but applies only to Saskatchewan, Alberta, and British Columbia. The NWPTA tendering thresholds are lower than those of the AIT and there are fewer exemptions from tendering requirements. Compliance with the procurement provisions of the NWPTA is required at the provincial government level and at the level of “regional, local, district or other forms of municipal government” in each participating province.

The NWPTA (the most restrictive of the current interprovincial trade agreements) requires open tendering of contracts over \$75,000 for goods and services and over \$200,000 for construction. Exemptions from the requirement to publicly tender include procurements:

- From philanthropic institutions, prison labour or persons with disabilities;
- From a public body or a non-profit organization;
- Of goods purchased for representational or promotional purposes, and services or construction purchased for representational or promotional purposes outside the territory of the City;
- Of health services and social services;
- On behalf of an entity not covered by the NWPTA procurement provisions;
- By entities which operate sporting or convention facilities, in order to respect a commercial agreement containing provisions incompatible with the NWPTA free trade, non-discrimination and procurement provisions;
- Where it can be demonstrated that only one supplier is able to meet the requirements of a procurement;
- Where an unforeseeable situation of urgency exists and the goods, services or construction could not be obtained in time by means of open procurement procedures;
- When the acquisition is of a confidential or privileged nature and disclosure through an open bidding process could reasonably be expected to compromise government confidentiality, cause economic disruption or be contrary to the public interest;
- Of services provided by lawyers and notaries;
- Of goods intended for resale to the public; or
- In the absence of a receipt of any bids in response to a call for tenders.

There are few exceptions to the requirement to publicly tender contracts valued above the threshold values.

In our discussion with the Provincial Ministry responsible for enforcing the interprovincial trade agreements, we were advised that the Province believes that the agreements have the same status as trade treaties. Although the agreements are not legislation, the member provinces are required to enforce compliance by their agencies, including municipalities. We were advised that failure to comply with the terms of the agreements could result in financial penalties.

2.4. City Guidance

In addition to the interprovincial trade agreements and the City's Purchasing Directive, the following City Bylaw, Policy, and Administrative Directives and Procedures guide the City's contract tendering processes:

- Bylaw 12005, *The City Administration Bylaw* and the associated Delegation of Authority instruments
- City Policy C555, *Public Private Partnership (P3)*
- City Policy C556, *Sustainable Purchasing*
- Administrative Directive A1100C, *Employee Code of Conduct*
- Administrative Directive A1203B, *City Employees – Contracts with the City*
- Administrative Directive A1428A, *Contracting with Parties Who Have a Dispute with the City*
- Administrative Directive A1451, *Purchasing Light-Duty Vehicles*

The City Administration Bylaw delegates authorities for a variety of decisions (including procurement) to the City Manager. The City Manager then delegates procurement authority levels to General Managers, who in turn delegate procurement authority levels to their managers.

As outlined in Table 3, the City has four basic procurement tiers that are either mentioned in the Purchasing Directive or required by interprovincial trade agreements. The Purchasing Directive encourages City staff to use open tender calls through the Branch to establish contracts valued above \$25,000. The NWPTA requires open tendering for goods and services over \$75,000 and for construction over \$200,000.

Table 3 – City Procurement Tiers

Purchase Value	Typical Purchase Methods	Average Annual Spend and Transaction Level ¹
\$0 - \$10,000	Corporate Procurement Card and low-value purchase order	\$52.4 million in 100,565 transactions
Contracts		
\$0 - \$25,000	Purchase Order Contract: Sole source, limited competition, and open tender	\$10.0 million in 1,328 transactions
\$25,001 - \$75,000	Purchase Order Contract: Sole source, limited competition, and open tender	\$30.4 million in 643 transactions
Over \$75,000 ²	Purchase Order Contract: Open tender (with some sole source and limited competition)	\$1,209.9 million in 832 transactions

Note 1: Averages for 2009 through 2011.

Note 2: There are some construction contracts included in the “Over \$75,000” purchase value tier with values between the NWPTA tender thresholds for goods and services (\$75,000) and construction (\$200,000).

2.5. Public Procurement Principles

As a public body, the City should follow open, fair, transparent, and accountable purchasing processes, which are the basic principles of public procurement. We have adapted definitions of these characteristics to reflect the City’s environment and validated them with the Branch:

- **Openness:** All qualified vendors have an equal opportunity to compete for City contracts and vendor prequalification processes. As required by the interprovincial trade agreements (NWPTA and AIT), there are no geographically-based obstacles to competition.
- **Fairness:** The City uses non-discriminatory (i.e., non-prejudiced and non-biased) contract tendering practices, from writing contract specifications to evaluating and awarding contracts.
- **Transparency:** The City’s practices and processes are easily accessible and understandable by the market. The public and potential vendors can easily obtain contract tendering information including the City’s bid processes, tender documents, and contract award results.
- **Accountability:** The City takes ownership in ensuring the efficiency and effectiveness of the contracting process and responsibility to all stakeholders, including the public.

3. Objective and Criteria

Our objective for this review was to assess the City's contracting process against the public procurement principles of openness, fairness, transparency, and accountability. We assessed the City's contract tendering process to determine whether it:

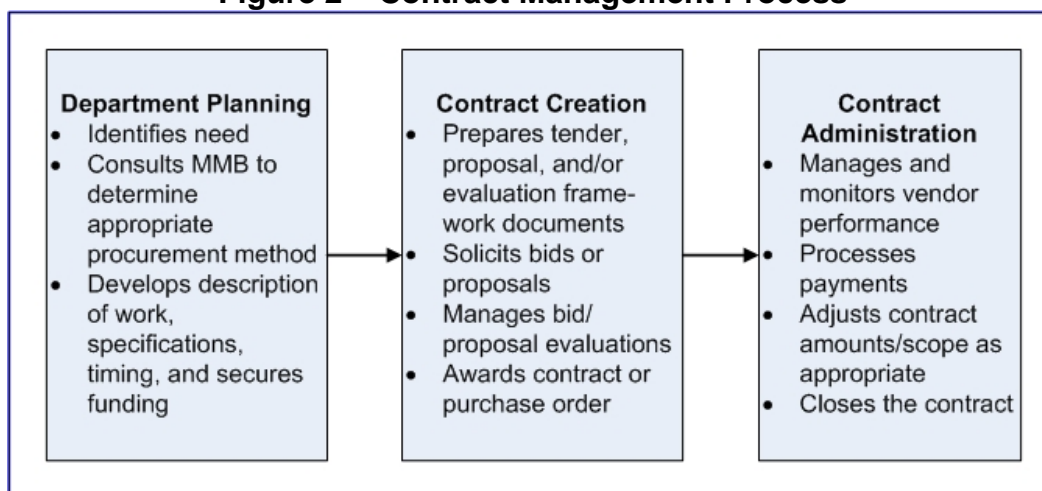
1. Is open to all qualified vendors and in compliance with interprovincial trade agreements [openness].
2. Is non-discriminatory, does not incorporate unfair obstacles, and is documented appropriately [fairness].
3. Provides easy access to information about the City's bid process, tender documents, and contract award results [transparency].
4. Demonstrates effectiveness, efficiency, and compliance with good practices and applicable governing documents [accountability].

4. Scope and Methodology

4.1. Scope

The contract management process includes contract planning, creation, and administration as outlined below in Figure 2. In the City's process, departments are primarily responsible for the first step (Department Planning) and the third step (Contract Administration). The Branch manages the second step (Contract Creation) for open tenders and issues purchase orders for all contracts above \$10,000 in value. This second step was the focus of our review.

Figure 2 – Contract Management Process



We excluded low-value purchase orders, cheque requisitions, corporate credit card transactions, and sign-off payments, all of which are generally of lower transaction value, from the scope of this project. We excluded contract tendering activities relating to the Edmonton Public Library and Edmonton Police Service from this review.

4.2. Methodology

We conducted a high-level review of the contract tendering process, through which we assessed the City's governance structure and directing measures. We analysed the distribution of sole source and open tender contract awards for the years 2009, 2010, and 2011. To meet the objective of this audit, we selected a sample of 26 contracts awarded in 2009 and 25 contracts awarded in 2010. We also selected 1 contract awarded in 2011 for detailed review. There were 22 publicly tendered and 30 sole source contracts in our sample.

We then conducted a detailed analysis of those 52 contracts by reviewing the files maintained by the Branch. This included analysing the number of bidders, critical tender timing points, and analysing change order histories and contract spending for completed contracts.

We conducted higher level analysis on the entire population of contracts awarded in 2009, 2010, and 2011 to determine full population trends. We also reviewed the contracts with values between \$75,000 and \$200,000 awarded in 2011 to determine whether there were examples of non-compliance with applicable trade agreements.

We sent a survey to 564 vendors that had expressed interest in the City's publicly tendered projects included in our sample and had a response rate of 26 percent.¹ The purpose of that survey was to determine the perspectives of bidders, potential bidders, and interested parties on the City's contract tendering processes. Ninety percent of the 145 respondents had experience in bidding for City contracts. We also compared those results with the results of the Branch's internal client survey that was conducted earlier in 2011.

5. Observations and Analysis

5.1. Openness of Purchasing Process

We observed that the City's contracting practices tend to be open, but we observed some factors that detract from openness and provide opportunities for improvement.

Our vendor survey indicated that 63 percent of respondents believe that the City's tendering practices are open. Positive comments included acknowledgement that all the requirements are clearly stated and several statements indicating the vendor had no reason not to think the process is open. There were, however, several comments indicating that some vendors believe that the process favours Edmonton and/or Alberta firms. Some vendors commented that not posting drawings on the Alberta Purchasing Connection requires firms from outside Edmonton to make special arrangements to obtain hardcopy drawings directly from the City. We learned that they can also be

¹ A recent study noted that for 199 online surveys with 523,790 invitations in total, the median response rate was 26.45 percent. (PeoplePulse, <http://www.peoplepulse.com.au/Survey-Response-Rates.htm>, accessed 2012 March 22)

viewed at the Edmonton Construction Association or online through its COOLNet system and partners. We also learned that the Province does not allow construction drawings to be posted on the Alberta Purchasing Connection. In addition, a few comments indicated that the respondents believe that the City favours specific products or equipment.

5.1.1. Risk of non-compliance with trade agreements

The City could improve the openness of its contract tendering processes by fully aligning its delegation of authority documents and its Purchasing Directive with interprovincial trade agreements.

Delegations of authority

The City's delegations of authority flow through from the City Manager to senior managers, authorizing them to approve sole source contracts up to \$500,000. That is well above the tendering thresholds of the NWPTA (the more restrictive interprovincial trade agreement) – \$75,000 for goods and services and \$200,000 for construction. However, the City's directing measures do not assign the authority or accountability to require compliance with either the trade agreements or with the principles of public procurement. In our research, we noted that some jurisdictions have given their purchasing organizations the authority and accountability for enforcing compliance with policies, procedures, legislation, and agreements.

Examples of non-compliance

In our fifty-two detailed file reviews, we found five contracts that exceeded the trade agreement tendering threshold. In three of the five cases, departments obtained sole source authorization from a Committee or Council. In the cases where departments obtained Committee or Council approval, the departments did not indicate in the covering reports that the resulting contracts would be in violation of one or both trade agreements.

We also conducted a high level analysis of the 413 contracts that were awarded in 2011 with values between \$75,000 and \$200,000. Based on the contract titles, 33 of the 413 contracts do not appear to comply with the trade agreement requirement for open tendering. These contracts were approved at the department level. Some of them were reported to Executive Committee after they had been awarded (as part of the semi-annual report of contracts over \$100,000), but they were not identified as non-compliant.

Better alignment needed

Some instances of non-compliance may result from a lack of familiarity with the trade agreements. Council adopted the principles of the AIT in May 1999. Some of the non-compliant contracts may be an unintended consequence of the delegation of authority that flows from the *City Administration Bylaw*, which was approved a month later in June 1999. The delegation instruments include the phrase, "subject to any approved policies, procedures, standards, guidelines or other delegations." However, there is nothing in those instruments that explicitly requires compliance with requirements external to the

City. By delegating the authority to create sole source contracts and agreements with values that exceed trade agreement limits to departmental managers, the advice of the City's tendering authority (the Branch) can be and has been over-ridden.

Amendments to the delegation of authority documents and Purchasing Directive need to be structured to create clear authority and responsibility roles for the City's entire procurement system. The Purchasing Directive and its Procedure clearly indicate that compliance with the trade agreements is expected. The Purchasing Procedure states that the AIT is, "An interprovincial trade agreement that has been adopted by the City that encourages open competition and fair purchasing practices." The Purchasing Procedure indicates that the Branch has a role in monitoring and reporting exceptions to senior managers, but departments have at times chosen to proceed in spite of the Branch's advice.

We believe that the roles, responsibilities, and accountabilities in the City's procurement policy documents need to be reviewed. (See Recommendation 1 – Policy Changes)

5.1.2. Sole source contracts

Since 2009, the City has significantly reduced the amount of money it spends using sole source contracts even though the number of sole source contracts has not changed significantly.

Sole source trends

There are legitimate reasons for sole source contracting (proprietary goods or services, unforeseeable emergencies, and other exemptions mentioned in the trade agreements as listed in Section 2.3 above). However, sole source contracts are not open; they are either the result of limited competition or negotiation between the client department and a single vendor. In addition to the risk of non-compliance discussed in Section 5.1.1, there is also a risk that the City will pay more than it should for its purchases. In most instances, open tendering is the best available means for increasing competition and thereby obtaining the best value for money when buying goods, services, and construction.

The sole source contracts valued below \$75,000 were awarded in compliance with the trade agreements, but did not necessarily support the City's stated goal to "purchase goods, services and construction fairly and based on best value." As seen in Table 4, although the City continues to increase the total number of sole source contract awards, most of the sole source contracts are valued at less than \$75,000, which is below the tendering limits imposed by the trade agreements.

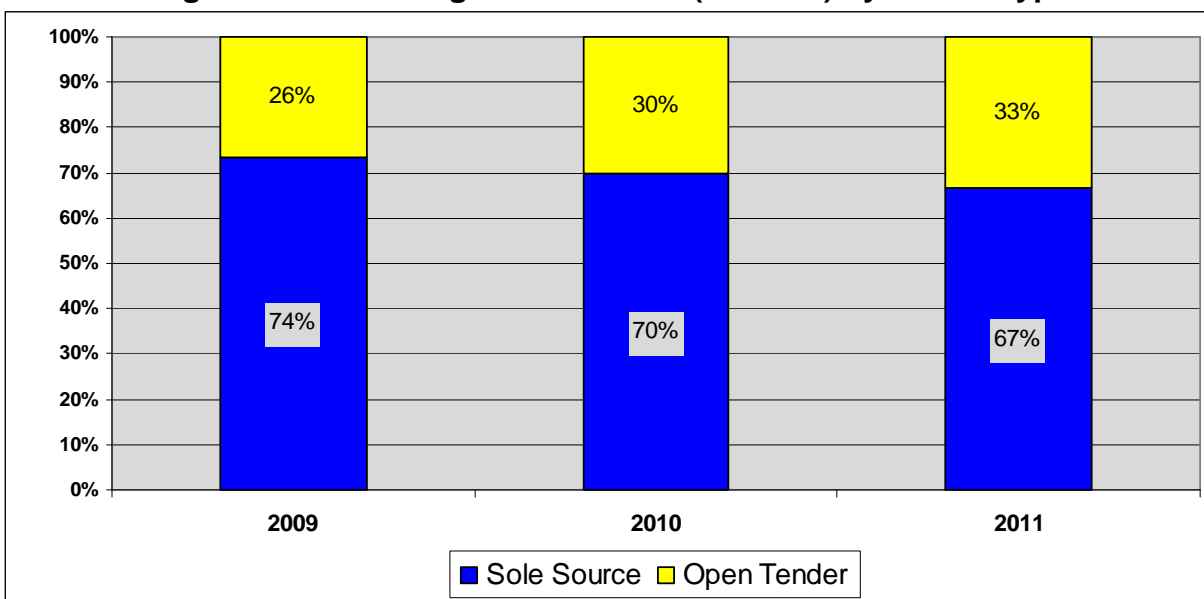
We are aware that at least some of the sole source contracts were awarded based on a department obtaining multiple quotes, but that information is not captured in the City's financial system. Ensuring that the City obtains multiple quotes for the majority of those contracts could result in additional savings through increased competitive bidding.

Table 4 – Number of Contracts by Award Type

Year	Sole Source Contracts		Open Tender Contracts		Total Contracts Awarded
	Less than \$75,000	More than \$75,000	Less than \$75,000	More than \$75,000	
2009	1,670	383	280	460	2,793
2010	1,511	183	246	487	2,427
2011	1,875	251	331	731	3,188
Change 2009 to 2011	12.3%	-34.5%	18.2%	58.9%	14.1%

Figure 3 demonstrates that while the total percentage (numerically) of sole source contracts for the past three years have been declining slightly, the ratio of sole source contracts to all contracts has remained around 70 percent.

Figure 3 – Percentage of Contracts (Number) by Award Type



Efforts to reduce sole sourcing

Of all the City’s contracting processes, sole source procurement is the easiest and fastest method of procuring goods, services, and construction with values over the City’s low-value purchasing limit, making it the most attractive option. However, it does not provide assurance that the City is receiving the best value for those goods and services. The Branch, with the support of Corporate Leadership Team (CLT), issued a memo in the fall of 2010 to all Branch Managers advising them that:

CLT strongly supports efforts to increase the use of competitive processes to not only drive savings but also to demonstrate transparency to Council and taxpayers. ... For low value purchases, encourage your staff to seek 3 quotes and to request City of Edmonton discounts wherever possible.

While this effort was clearly a step in the right direction, it has not significantly affected the number of sole source purchase orders issued by the City. If the City could save

even one percent on contracts that were sole sourced in 2011, it would result in savings of over \$1 million. By obtaining at least three quotes on the majority of those contracts between \$10,000 and \$75,000 for goods and services or \$200,000 for construction that are currently being sole sourced (as suggested in the memo to Branch Managers), the City could reasonably expect to save money from the benefits of competitive bidding. (See Recommendation 1 – Policy Changes)

5.1.3. Risk allocation

The City should re-evaluate its overall project risk allocation practices. Risk is basically a quantitative measure or estimate of the uncertainty associated with delivering a good or service. When procuring pads of paper, for example, by specifying particular brands that are acceptable, there is little risk to the vendor or the City. When contracting for a major construction project, all the unknowns at the beginning of the project (e.g., actual subsurface conditions) can constitute substantial risk to both the contractor and the City.

Optimize risk allocation

To optimize its risk costs, the City needs to determine who is in the best position to bear the project risk – the contractor, the City, or both. The more risk the City transfers to the contractor, the more the contractor is likely to charge because of unknown factors. For example, if the City assumes the risks associated with weather delays, then the contractor does not need to include any estimated costs of overtime to make up for the delays. If actual weather delays occur, the City would then need to determine whether to pay additional costs to remain on schedule or to delay project completion. On the other hand, if a contractor is required to maintain the project schedule in spite of weather delays, then it needs to estimate the number and its cost of any such delays. Those estimated costs would then be included in the contractor's bid price.

In a positive example of risk allocation, the City recently decided to reduce its total project costs by buying its own construction insurance instead of passing that portion of project risk to its contractors. That project is expected to save between 50 and 100 percent of the insurance premium cost that was being paid to contractors.

Ten comments in our vendor survey indicated that the City's current tendering practice transfers too much risk to its contractors. In some instances, the comments indicated that the City's contract demands exceeded the standard amounts of insurance coverage available in the industry. Two comments indicated that the City's terms and conditions were one-sided, strongly favouring the City. We believe that the City should also ensure that any redesign of the terms and conditions evaluate risk allocation in a manner that is aligned with its Enterprise Risk Management model (under development) and initiatives being undertaken in the Project Management Office. (See Recommendation 2 – Process Changes)

Tender processes

Our survey also indicated that overall, most vendors did not have an issue with the time allowed by the City to prepare bids unless there were multiple City tenders that they were bidding on at the same time. Concerns were raised, however, with regard to

obtaining clarifications on tender information in a timely manner, frustrations with the difficulty of new vendors in obtaining work from the City, and requirements that are difficult or impossible to meet for out-of-province vendors. One comment indicated that unknowns increase bid prices.

One example of an unplanned risk that we observed in our file reviews was a tender targeted at a market composed largely of owner/operators. That tender included very detailed specifications and environmental compliance statements (it was reportedly one of the first tenders to include the Sustainable Purchasing vendor leadership questionnaire). We found the document package in that specific tender to be complex and difficult to comprehend. The City should better align tender document complexity with contract value and risk exposure. A simple task that poses little risk to the City should have a relatively simple tender package. Otherwise, vendors who could be very capable, but intimidated by the tender complexity, might choose not to bid. We believe that the City should re-evaluate the wording of its standard contracting terms and conditions to ensure that risks are assigned to the parties best-positioned to manage specific types of project risks. (See Recommendation 2 – Process Changes)

5.2. Fairness of Contracting Processes

Apart from a few exceptions, we found that the City's contracting processes are fair; however, further process changes could strengthen the fairness of contracting processes.

Our vendor survey indicated that 59 percent of respondents believe that the City's contract tendering process is fair. Positive comments included observations that the City's tender documents are non-discriminatory, the scoring system is presented in advance, the low bid gets the work, and that personal experience has been positive. Negative comments included assertions that vendors with previous experience are favoured over new vendors, sometimes tender document changes are issued too close to the closing date, and that, on some tenders, specifications were tailored for a single vendor or product. Issuing an open tender with tailored specifications for a single product would not be fair to those vendors offering competing, comparable quality goods and/or services.

5.2.1. Tender extensions

The City allows potential vendors to ask questions to clarify the intent of tender documents prior to a specified deadline. Typically, those deadlines are 5 to 7 days prior to the tender closing date. We observed 8 tenders for which bid addenda were issued 3 days or less prior to tender closing. Of the 8 tenders, 4 were issued either the day before or the day of tender closing. We also noted that in one instance, the ordering department was unwilling to extend the closing date in spite of significant changes to the tender documents. Not allowing vendors sufficient time to incorporate changes into their bids increases the risk that the City will end up paying more than it should for contracts.

The City needs to ensure that vendors have sufficient time to incorporate tender package changes into their bids and proposals and that all vendors are treated equally. Twelve responses in our vendor survey indicated that the City did not allow reasonable extensions of contract closing dates following changes to tender packages. Minimal changes to tender packages may not warrant extensions of the closing date or time. We believe that the Branch should be given the authority and responsibility to determine the reasonability of extending closing dates. (See Recommendation 1 – Policy Changes)

5.2.2. Equal footing

We found one instance in which a tender did not provide equal footing to bidders. The incumbent had detailed data (e.g., quantities, types, fees by type, and day of week) available from its own records. However, when one of the bidders requested "specific income and expense figures," the Department provided only total expense, total annual usage, and average annual "cost per use" – information that added little to the yearly data that was already in the tender documents. In that same instance, the detailed bid evaluation criteria were not transparent (e.g., "Bid details and Proponent's financial capability and references" was the title of the section that included bid pricing).

In this instance, we also noted that that price was not the determining factor in the contract award. In this and some other files we have reviewed previously, we observed that the qualitative portions of the bid evaluations used only subjective criteria. Rather than being specific (e.g., a rating of 5 indicates that the vendor has at least 10 years experience), the criteria used were subjective (e.g., a rating of 5 indicates that the bid "exceeds expectations, excellent probability of success"). We believe that the Branch needs to provide effective guidance to ensure that bid evaluations are fair and that subjective evaluation criteria are minimized. (See Recommendation 2 – Process Changes)

5.2.3. Managing expectations

We observed that in three of our sample contracts, the City split the award to multiple vendors, but then used the services of only one vendor for the majority of the work. In one instance, one vendor received 88 percent of the contracted work as of mid-November 2011.

For all three contracts, the vendors were required to bid on individual jobs as they arose. In two contracts, each job was to be awarded to the lowest bidder. The third contract awarded work for specific jobs primarily based on price and past performance. While split awards may appear to be fair distribution of work, the final outcome may not look that way. The risk is that vendors may believe that they have been treated unfairly when that is not necessarily the case.

Based on our review of contract files and vendor complaints, we believe that the City could better manage vendors' expectations. We noted that while the City clearly spells out dispute resolution processes in its formal contract documents, there is no process defined for potential vendors to appeal perceived unfair treatment. The City should describe the avenues available to them for resolving matters that may seem to

demonstrate unfair treatment (e.g., developing a supplier rights statement coupled with a description of their options for escalating concerns). We believe that these changes are needed to improve the City's reputation for dealing fairly with the vendor community. (See Recommendation 2 – Process Changes)

5.3. Process Transparency

The City can increase transparency by improving its bid processes, tender documents, and publishing contract award results.

Our vendor survey showed that 58 percent of respondents agreed that the City's tendering practices are transparent. Positive comments included statements that the City uses the Alberta Purchasing Connection website so vendors can see contract awards, tenders state how bids will be evaluated, and that the City is transparent based on their experience. Negative comments included statements that it is difficult to determine tendered contract awards, suggesting that the information is not posted in a timely manner. Receiving untimely answers to questions during tender periods, documents being accessible but not understandable, hiring preference for Alberta vendors, and improving the user-friendliness of the City's website for vendors were also mentioned.

5.3.1. Posting procurement results

The City uses the Alberta Purchasing Connection as its primary electronic tendering system. The Alberta Purchasing Connection is operated by the Province and provides consistency in the manner in which the government and its municipalities, academic institutions, schools, and hospitals present their tendering opportunities. The system makes the basic contract documents available for interested parties to view and/or download in order to prepare their bids. It also tracks the interested parties, bidders, and contract awards for each tender.

We believe that posting the results of open tenders in a more timely fashion and publishing information for every contract awarded is needed to improve transparency. For example, periodically posting the results of procurements over a defined dollar threshold amount would allow the vendor community at large opportunity to observe the City's buying patterns and pursue opportunities to do business with the City.

The Branch issued a memo to its staff in March 2011 advising them of what they can routinely release within the bounds of the provincial *Freedom of Information and Protection of Privacy Act* (FOIP). Buyers are encouraged to release the title of the contract or tender, names of the winners, the term of the contract (years), and the total value of the contract but cannot reveal individual item pricing.

The City of Edmonton does not normally release information about tender evaluations without a FOIP request. A FOIP Officer with the City of Calgary indicated that in most instances, they have released or recommended release of at least some weighted bid analyses. We believe that the City should review its tender evaluation release strategy to ensure that it remains compliant with FOIP and to determine whether additional

information can be released to improve process transparency. (See Recommendation 3 – Improved Communications)

5.3.2. Procurement service milestones

The Branch should establish and publish procurement milestone information.

During our review of the City's Administrative Directives relating to procurement, we observed that the Branch has not established standard timelines for its various procurement functions such as request for proposals and tenders. Both our vendor survey and the Branch's internal survey identified concerns that existing procurement processes were too lengthy and complicated. Other comments indicated that at times the service was slow and that processes should be streamlined. About 61 percent of our vendor survey respondents rated the City's tender process as good or excellent, while about 10 percent rated the City's tender processes as fair or poor in comparison to other Alberta public sector organizations. About 21 percent rated the City as adequate and 8 percent did not provide a rating.

To determine the time required to process purchase requests, we calculated the elapsed time to create a purchase order for the two basic types of contracts we observed in our sample. Our sample of 52 contracts included 22 publicly-tendered contracts with award values ranging from \$67 thousand to \$95 million. Tendered contracts take longer to process than sole source contracts. For both procurement methods, client departments have to define their requirements and prepare specifications before they ask the Branch to create tenders or purchase orders. Tenders provide, on average, 4 weeks for bidders to respond (opening to closing). The time required for bid evaluation through contract award for the 22 tenders took between 0 and 38 weeks, with the majority taking less than 6 weeks. If departments were given a larger role in obtaining quotes for lower-value and relatively straight-forward purchases, then the City may be able to reduce the cycle time for those purchases while gaining the benefits of increasing competition.

Establishing procurement milestone information will lead to improved transparency and openness of the City's contracting process. We believe that established procurement timelines will increase vendor confidence and participation in City tenders. We believe that increased participation could translate into increased competition and could result in cost savings for the City. (See Recommendation 3 – Improved Communications)

5.4. Process Accountability

The City can improve its accountability by improving the governance framework for its procurement practices.

Since process accountability is mostly invisible to organizations external to the City, we did not include any questions on accountability in our vendor survey. In our research, we noted that some jurisdictions have given their purchasing organizations clear authority and accountability for enforcing compliance with policies, procedures, legislation, and agreements. For example, Public Works and Government Services Canada (PWGSC) has a well-defined process for managing government procurement, including specific provisions for managing sole source contract requests above its defined threshold level. That process helps the government to ensure that it receives competitive pricing for intermediate-value purchases.

5.4.1. Authority and responsibility framework

Establishing an effective procurement accountability framework, including roles, responsibilities, and authorities, would increase accountability for the City's procurement practices. At present, procurement accountability is not well-defined in the City.

As mentioned in Section 5.1, the City has not defined accountability for managers who fail to practice the principles of open tendering or do not comply with the trade agreements. Similarly, there is no established accountability for ensuring that the contracting process operates consistently and follows good public procurement practices. Examples of good public procurement practices include PWGSC's *Supply Manual*; the World Trade Organization's United Nations Commission on International Trade Law (UNCITRAL) *Model Law on Procurement of Goods, Construction and Services*; and the Australian National Audit Office's Better Practice Guide, *Developing and Managing Contracts*.

PWGSC, for example, requires that all sole source procurement requests over established threshold values be submitted to the applicable contracting officer with detailed justification. The contracting officer then determines whether or not the sole-sourcing justification is adequately supported. If it is not, then the contracting officer advertises the intent to sole source on the government's electronic tendering system for at least 15 days. During this period, potential competitors are encouraged to challenge the sole source award. The contracting officer then determines whether to proceed with the sole source award or to publicly tender for the goods and/or services. The City of Calgary has a similar process defined in its procurement administration policies. If the City of Edmonton implemented a similar process, it could benefit from the potential savings resulting from increased competition for at least some of the 840 sole source contracts over \$25,000 that were awarded in 2011.

In our opinion, the Branch, as the subject matter experts, should have clearly delegated authority over the City's procurement processes. We believe that the City's procurement processes and directing measures should have well-defined roles, responsibilities, and

accountabilities. There needs to be an appointed authority that provides oversight to ensure that the City’s procurement processes are followed consistently and are in accord with good public procurement practices. (See Recommendation 1 – Policy Changes)

5.4.2. Procurement planning

The City could improve accountability for contracting timelines by establishing a more formal procurement planning approach.

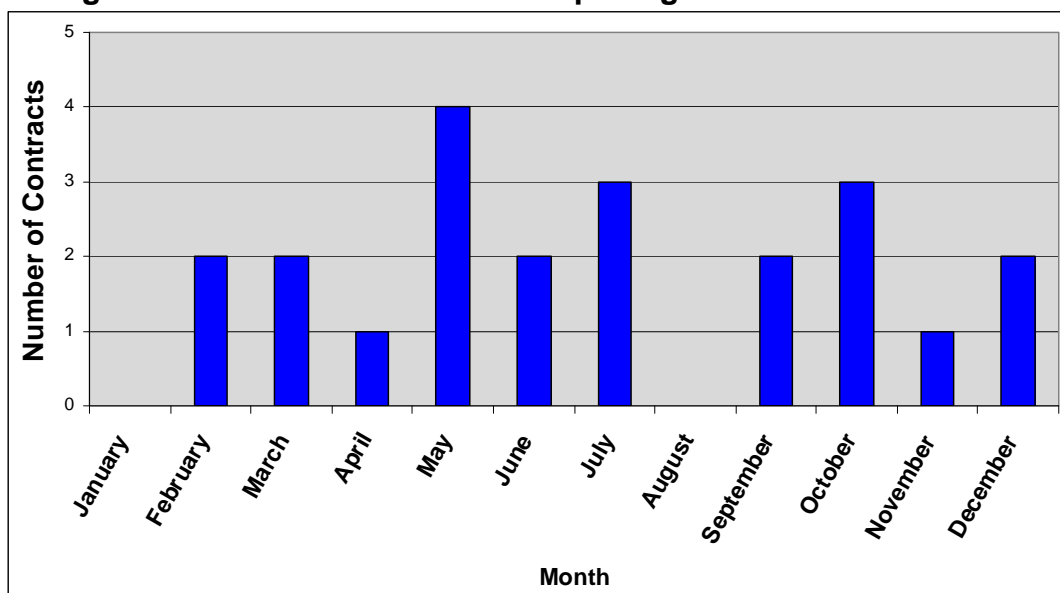
Contract award distribution

Currently, City departments complete operating and capital budgets on an annual basis (with the capital budget approved as a three-year budget plan). However, they do not routinely prepare procurement plans. Historically, City departments have typically engaged the Branch only to initiate the procurement process or to issue a purchase order for specific goods and services.

The Branch reports that it is increasingly involved in departmental project planning and that procurement planning is being incorporated into the capital project management processes (currently being established by the Project Management Office). The benefits of procurement planning include improved resource scheduling, optimized procurement strategies, and leveraged purchasing power.

The annual purchasing workload distribution for the 22 tendered contracts in our sample of 52 contracts (Figure 4) show some evidence of varying demand for the Branch’s services at various times during the year.

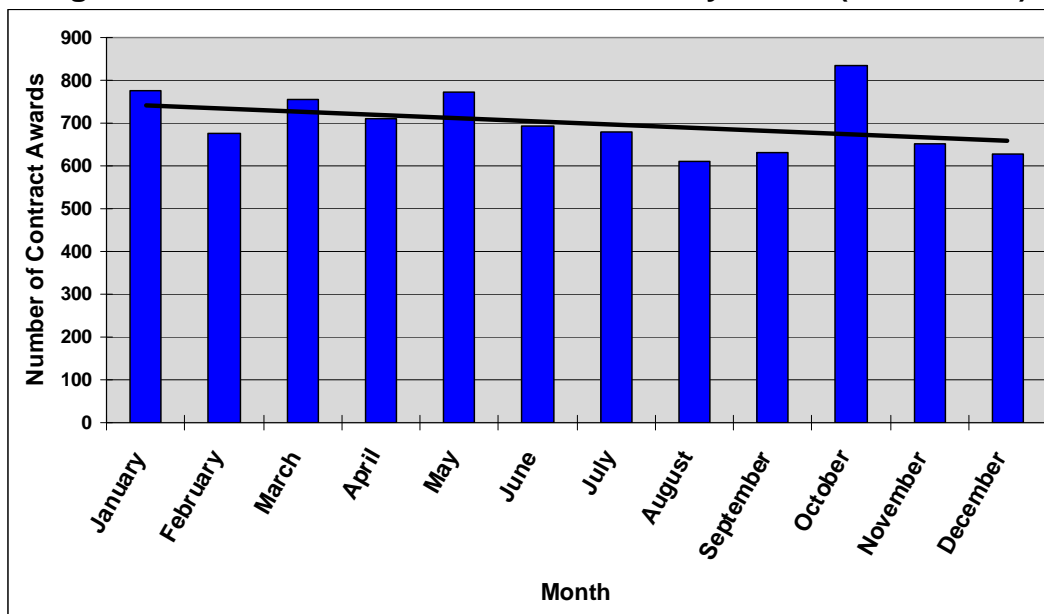
Figure 4 - Distribution of Tender Opening Dates for 22 Contracts



When looking at the distribution for all contracts awarded in 2009 through 2011 (Figure 5), there is no clear indication of seasonality. However, the number of contracts and

purchase orders per month (with the exception of October) declines slightly as the year progresses.

Figure 5 - Distribution of Contract Awards by Month (2009 - 2011)



Stakeholder concerns

We reviewed an internal survey that the Branch conducted in 2011 to gather input from City departments and compared it with the results of our vendor survey. The results of the two surveys generally aligned. In the surveys, 25 percent of the vendors and several internal customers indicated that they experienced bottlenecks in the procurement process. One key concern identified was that some vendors can face multiple tender closings in a given week. Another was that the Branch staff, although helpful, seemed at times to have a high workload. City departments commented that the process was too lengthy and that the Branch should provide better service to facilitate the process. In the internal survey, while 64 percent were satisfied or very satisfied and 20 percent were neutral, 16 percent of respondents from client departments were dissatisfied or very dissatisfied with procurement planning and advice received.

From a longer-term perspective, the City's contract spending is expected to decline over the next three years in response to declining capital budgets. This reduced spending trend should result in freeing up some resources within the Branch, which could be used to improve both service quality and proactive procurement planning. The forecast change in City spending also highlights the need for longer-term procurement planning so that expected standards of quality and performance can be maintained.

Since 2003, the Branch has used a strategic sourcing methodology for a number of the City's product and service requirements, such as furniture and auto body services. Efficiencies and cost savings have been achieved through consolidating requirements, product standardization, lifecycle costing (Total Cost of Ownership), leveraging

technology, and offering longer-term contracts. We believe that further opportunities exist for the City to be more strategic, achieve additional cost savings, and improve service through improved procurement planning. (See Recommendation 4 – Procurement Planning)

6. Conclusions and Recommendations

The overall objective of this review was to assess the City's contract tendering process against the public procurement principles of openness, fairness, transparency, and accountability. We found that the City's contract tendering process is generally open, fair, transparent, and accountable. We have identified four opportunities to further enhance the contracting process. We believe that implementing our recommendations will further improve the City's governance structure, contracting processes, improve its relationships with both internal clients and the vendor community, and increase contract savings.

We observed that the City's governing documents are not totally aligned with public purchasing best practices or interprovincial trade agreements. We observed some examples in which roles, responsibilities, authorities, and accountabilities were not clearly defined. We also believe the City should further reduce its dependence on sole source contracting. We recommend the following policy changes:

Recommendation 1 – Procurement Policy

The OCA recommends that the General Manager, Corporate Services conduct a comprehensive review of all procurement-related delegations of authority, administrative directives, procedures, and related guidance to:

- Ensure compliance with interprovincial trade agreements;
- Ensure that the City's expectations, roles, responsibilities, authorities, and accountabilities with regard to procurement processes are clearly defined as discussed in this report; and
- Ensure that the City's use of sole source contracts is fully justified.

Management Response and Action Plan

Accepted

Action Plan:

- a) The Council committee reports to obtain sole source approvals will include information relating to trade agreement implications.
- b) Trade agreement conditions will be communicated to Corporate Leadership Team, Branch Managers, and Directors to increase awareness of the trade agreement obligations related to City procurement.
- c) A comprehensive review and updating of procurement governance documents, including delegations of authority, administrative directives, procedures and related corporate guidance will be undertaken. This review will ensure that corporate procurement processes are in compliance with interprovincial trade agreements, will ensure that the City's expectations, roles, responsibilities, authorities, and accountabilities with regard to procurement processes are clearly defined and that

the use of sole source contracts is fully justified.

- d) A communication plan (which may include a procurement training program) will be developed to ensure that the changes are understood.
- e) Materials Management purchase order award codes for sole source purchases will be reviewed and updated in order to better identify and pursue opportunities to improve procurement outcomes through competitive bidding or negotiation of pricing and terms.

Planned Implementation Dates:

- a) Fall 2012 – Sole source reports to include trade agreement implications.
- b) June 1, 2012 – Trade agreement conditions communicated to CLT, Branch Managers, and Directors.
- c) April 1, 2013 – Updated delegation of authority, administrative directives, procedures and guidelines approved by Corporate Leadership Team.
- d) April 1, 2013 – Communication plan developed and approved by Corporate Leadership Team.
- e) April 1, 2013 – Revised purchase order award codes in use.

Responsible Party: Branch Manager, Materials Management

We observed that some of the City's tender packages were complex and required clarification for bidders. The City has traditionally transferred as much risk as possible to vendors rather than optimizing risk allocation. We noted that some vendors have questioned the fairness of the City's contracting evaluation and award processes. Finally, we observed that there is no clearly defined process for vendors to appeal perceived unfair treatment. We recommend the following process changes:

Recommendation 2 – Procurement Process

The OCA recommends that the Manager of Materials Management Branch:

- In consultation with industry groups and the Standard Documents Committee re-evaluate the City's risk allocation methods to ensure that the City receives best value in its procurement;
- Further enhance the City's tender document packages to enhance clarity and better align tender complexity with contract values and vendor market sophistication;
- Enhance the City's bid evaluation process to maximize the use of objective criteria and minimize the use of subjective criteria; and
- Ensure that bidders understand their right to receive bid evaluation debriefings.

Management Response and Action Plan**Accepted**

Action Plan:

- a) Materials Management periodically reviews and updates all standard procurement documents to ensure that they still meet the City and industry needs. In 2012, we are reviewing key standard procurement and contract documents to ensure appropriate risk allocation, simplify tender packages to make sure bid evaluation processes utilize objective criteria where possible.
- b) Materials Management will update the City's external Selling to the City web page to highlight the City's commitment to fairness in the tendering process including supplier rights with respect to receiving feedback on bid evaluations.

Planned Implementation Dates:

- a) December 31, 2012 for Construction, Technology and General Supply standard documents. In 2013, Professional Services Agreement documents will be reviewed.
- b) July 1, 2012 – Fairness commitment included on City Web-site

Responsible Party: Branch Manager, Materials Management

We observed that several vendors indicated difficulty in obtaining contract award results in a timely manner. We also observed that both vendors and internal clients indicated that the City did not effectively communicate expectations around contract timelines. We recommend the following improvements:

Recommendation 3 – Improved Communications

The OCA recommends that the Manager of Materials Management Branch improve communications practices to ensure that:

- Tender results and basic procurement information for contracts are routinely posted in an easily accessible and timely manner; and
- Procurement milestone information is made available to clarify expectations for both internal clients and external vendors regarding typical process time requirements.

Management Response and Action Plan**Accepted**

Action Plan:

- a) Materials Management uses Alberta Purchasing Connection to post all tender results and has implemented process changes to ensure that tender results are communicated in a timely manner.
- b) Materials Management will publish an annual report of all contracts greater than \$10,000 (the current Low-value threshold) on the City's web-site to promote transparency of the City's purchasing requirements.
- c) Procurement milestone information will be posted on the internal and external City website to clarify expectations regarding typical process timelines.

Planned Implementation Dates:

- a) May 1, 2012 – Tender results on APC
- b) March 31, 2013 – 2012 contract information published on City website
- c) June 1, 2012 – Procurement milestones

Responsible Party: Branch Manager, Materials Management

We observed that there were complaints from some vendors and internal clients that timely service is not always available. Our analysis of contract volumes and distribution indicate that there is an opportunity to improve resource allocation. We recommend the following:

Recommendation 4 – Procurement Planning

The OCA recommends that the Manager of Materials Management Branch work with client departments to establish a more formal procurement planning approach to enhance resource planning, competitive bidding, and strategic sourcing.

Management Response and Action Plan

Accepted

Action Plan:

- a) Materials Management will work with the Project Management Office (PMO) to build a formal procurement planning stage and guidance into the Project Management Framework and related project management training program in order to ensure that optimal go-to-market strategies are determined in the project planning stage of capital projects.
- b) Materials Management will continue to work with Design & Construction Branches to develop an annual tendering schedule that outlines the work plan for the upcoming year. These tender schedules will be used to ensure that incidences of multiple tender closings are avoided wherever possible. These tender schedules will also assist Branches and Materials Management in effectively scheduling staff workloads, and will be used to communicate upcoming work to the various industry associations including the Edmonton Construction Association, Alberta RoadBuilders, Consulting Engineers of Alberta and Consulting Architects of Alberta.
- c) Materials Management will evaluate opportunities to utilize a strategic sourcing approach for corporate contracts and other strategic procurement opportunities where the City can consolidate requirements, drive product standardization, lifecycle costing (total cost of ownership), leverage technology for process efficiency and offer longer term contracts in order to achieve cost savings and service improvements.

Planned Implementation Date:

- a) Q2, 2013 Procurement planning phase in Project Management Framework
- b) January 2013 – Annual Tendering schedule
- c) Strategic Sourcing opportunities – ongoing

Responsible Party: Branch Manager, Materials Management

We thank the staff in Materials Management Branch for their assistance throughout this review as they provided us with open access to their files and expertise. We also thank those in the vendor community who responded to our survey.