











Grightmire Arena Lessons Learned Audit (AUD22004)
Management Responses Status Report, August 2023

Completion Status Legend:
 Ongoing/ On Target
 Progressing but delayed
 Complete
 To be initiated
 Incomplete

Recom. No.	Responsible Division	Audit AUD22004 Recommendation	Management Response (AUD22004)	Recommendation Action Plan	Expected Completion Date	Completion Status	Status Update	
							Q3 2023 PW23007(a)-FCS23011(a)	Q4 2022 (PW23007-FCS23011)
Corporate Facilities & Energy Management (CFEM) Division								
4	Corporate Facilities and Energy Management Division	We recommend that management consider separating the roles of project management and contract management for capital projects in general, or alternatively with those that reach a pre-determined level of risk.	<p>Current practices will be reviewed with Legal and Procurement to determine the changes necessary related to the roles of project and contract management in general, or when a pre-determined level of risk is reached. As defined by the Office of the City Auditor (OCA), contract management for capital projects (in comparison to contract administration), is strictly concerned with contract delivery/ adherence to the contract terms (i.e., role of a contract compliance specialist). As such, EFFM will review the existing Service Level Agreement (SLA) with Legal Services with regards to the requirement to engage an experienced Legal representative knowledgeable in construction contract law to enforce contract management practices for applicable high-risk projects.</p> <p>EFFM will undertake a municipal scan to explore models for construction contract management successfully implemented by other municipalities in Ontario for multidisciplinary construction projects. Understanding that the City is bound by existing Legal and Procurement policies, and have limited ability/ flexibility to change processes, EFFM relies on the subject matter experts in these support divisions/department to provide guidance on contract management practices.</p>	Municipal Scan - Roles of Project and Contract Management	Original AUD22004 Completion: Q4 2023		<p>Q3 2023 – CFEM Update: A municipal scan was completed through the CFEM Director's Office in Q3 2023. Construction Management (CM/CCDC 5B) is one of the alternate contract delivery models utilized by various municipalities which mitigates risk and adversity in relationships between the consultant and contractor. Other municipalities have also expressed success with this model. CFEM & Procurement have collaborated on a CCDC 5B contract template for Facilities projects, and this has been implemented on a number of CFEM projects in 2023.</p> <p>All the findings will be reviewed with Procurement and Legal Services to determine if there are any opportunities to separate the project management and contract management roles. This is on track to be completed by the Q4 2023 deadline.</p>	<p>Q4 2022 – EFFM Update: EFFM is on target to complete a municipal scan and working with Legal Services will initiate this in Q2 2023 once the EFFM Quality Management Office is in place, to be completed by the end of Q4 2023.</p>
8	Corporate Facilities and Energy Management Division	We recommend that special contingency procedures and guidelines be developed for enhancing the oversight and contract management practices for projects in difficulty.	<p>A standard operating procedure will be developed for the management of contingency in order to enhance the oversight and contract management practices for projects in difficulty. This procedure will define roles and responsibilities, as well as ensure updates for all projects on a routine basis through a project tracker or similar mechanism while incorporating an existing escalation protocol.</p> <p>Since 2020, EFFM has implemented an escalation protocol through bi-monthly project status updates on significant/major capital projects, which allows senior management to be notified of any project issues.</p>	Critical Project Communications SOP	Revised Completion: Q4 2023 Original AUD22004 Completion: Q4 2022		<p>Q3 2023 – CFEM Update: The PWQMS team has developed a Level II Communications SOP in collaboration with the CFEM QMO for the Public Works department. The SOP is currently in its review phase and will be released before the end of Q4 2023. This will be adopted and implemented by CFEM project management staff.</p> <p>Additionally, for enhanced oversight of key projects - CFEM has implemented a Key Projects tracker which is updated weekly and shared with CFEM's management team, as well as the GM of PW and his Administrative Coordinator. Divisional tracking includes key project, litigation files, HR requests, as well as Councillor and media requests. Updates are shared by CFEM's Director with the GM, who escalates critical items to Council through variance reporting, etc.</p>	<p>Q4 2022 – EFFM Update: EFFM has kept senior management and Council apprised of project status updates and will continue to do so. The standard operating procedure will be developed in 2023 once the EFFM Quality Management Office is in place.</p>
12	Corporate Facilities and Energy Management Division	We recommend that communication with Council regarding projects in difficulty be timely and forthright, and that the risk assessment process (see Recommendation 1) be utilized to bring potentially unfavorable conditions and negative community impact to Council's attention in a proactive manner.	<p>A standard operating procedure will be developed to document the procedure for timely and forthright communication of projects in difficulty to Council. This procedure will incorporate the output of the risk assessment process to ensure that potentially unfavorable conditions and negative community impact are proactively brought to Council's attention.</p>	Critical Project Communications SOP	Revised Completion: Q4 2023 Original AUD22004 Completion: Q4 2022		<p>Q3 2023 – CFEM Update: Please refer to the response for recommendation #8.</p>	<p>Q4 2022 – EFFM Update: EFFM has continued to keep Council and senior management apprised of project updates since the completion of this audit. The standard operating procedure will be developed in 2023.</p>
14	Corporate Facilities and Energy Management Division	We recommend that management implement and/or strengthen processes to ensure that when faced with contractor claims for cost increases or time extensions due to alleged design issues, that these alleged design flaws are rigorously and independently evaluated, commensurate with their seriousness. In particular, design flaws that potentially impact safety should be promptly addressed and accountability/ liability for actual design flaws is assured.	<p>The EFFM Capital team through its new Quality Management Office, in collaboration with Legal Services and Procurement will explore means of strengthening current process that is currently governed by both (i) CCDC-2 design-bid-build contract, which defines the role of the Consultant as the contract administrator (i.e., The Consultant will provide administration of the Contract as described in the Contract Documents), and (ii) the Ontario Building Code (OBC), whereby, the capital construction projects delivered by EFFM require building permits in compliance with the OBC, which include a Commitment to General Review signed by the Prime Design Consultant and/or design Engineers to complete construction documentation, field inspections, review of shop drawings and testing reports, and contract administration services to ensure compliance with the design.</p> <p>Additionally, CCDC-2 also includes mechanisms for conflict resolution. EFFM will review the existing Service Level Agreement (SLA) with Legal Services with regards to the requirement to engage an experienced Legal representative knowledgeable in construction contract law to enforce contract management practices for applicable high-risk projects. This will allow the City to act promptly to enforce our contractual rights going forward in situations where alleged design flaws are raised during the construction phase.</p>	Strengthen Contract Claim Review Process & Revise SLA between Legal & CFEM	Revised Completion: Q2 2024 Original AUD22004 Completion: Q2 2023		<p>Q3 2023 – CFEM Update: CFEM is in discussion with our colleagues in Legal Services to review revisions to the SLA, including engagement of an experienced Legal representative knowledgeable in construction contract law to enforce contract management practices for applicable high-risk projects. Legal is also reviewing the settlement process for litigation as part of Recommendation #15 assigned to them.</p>	<p>Q4 2022 – EFFM Update: EFFM will formalise a process in consultation with Legal Services, Risk Management and the Procurement Section, once the EFFM QMO office is operational in Q1 2023 (as noted in the update to Recommendation #7). Limited staffing resources have resulted in requiring an extension.</p> <p>EFFM will collaborate with Legal Services to review the Service Level Agreement in 2023.</p>

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1	Corporate Facilities and Energy Management Division	We recommend that management develop a risk assessment framework and process, and that formal evaluation of risk be conducted as part of the project planning for each capital project. This would inform and identify the project management approach to be taken, resources that should be allocated, as well as the issues and mitigations that need to be tracked and reviewed on an ongoing basis.	A risk assessment framework and process are planned for development as part of the continued implementation of the Quality Management System (QMS) in Public Works in 2022. The PW QMS team has developed and implemented project management documents (including a PM manual, project charter template, project transition checklist and closing report template) working with a cross-divisional team across the City. Energy, Fleet and Facilities Management Division (EFFM) has further developed project initiation and close-out checklists, a project budget template and communications plan for capital projects to continually improve project management processes and mitigate risk. EFFM's 2022-2023 initiatives include further development of planning/ design and implementation/ construction phase checklists.	Risk Assessment Process	COMPLETE	<input checked="" type="checkbox"/>	<u>Q3 2023 – CFFM Update:</u> The PW QMS team developed and released a Risk Management Procedure in March 2023, which has been reviewed and is being implemented by CFEM. Risks are identified with mitigation mechanisms in the Project Charter as part of every capital project.	<u>Q4 2022 – EFFM Update:</u> EFFM has developed internal working committees for various continuous improvement initiatives. EFFM has also recently completed the recruitment for the Sr. Project Manager of the EFFM Quality Management Office, which will be in place by the end Q1 2023, following which new template documents will be prepared.
3	Corporate Facilities and Energy Management Division	We recommend that contract management training be provided to project managers to ensure the City's rights under contract are protected and timely remedies can be implemented during the capital project process.	Contract management training will be provided to Project Managers involved in the planning and delivery of construction projects to ensure the City's rights are protected and timely remedies are implemented. Training will be provided once Legal and Procurement have confirmed delegated authority and available support.	Contract Management Training	COMPLETE	<input checked="" type="checkbox"/>	<u>Q3 2023 – CFFM Update:</u> CFEM staff participated in contract management training in April 2023.	<u>Q4 2022 – EFFM Update:</u> Contract Management Training is being organized by the Corporate Asset Management office on the new CCDC 2-2020 contract for all departments across Public Works. Training sessions will be scheduled in Q1-2023.
7	Corporate Facilities and Energy Management Division	We recommend that project management processes be improved to ensure adequate project documentation is maintained by the City, including delays and deficiencies, ensuring that contract management administrative requirements are strictly adhered to, and formal communications with the contractor are timely, effective and sufficient.	Project management processes will be improved with the planned introduction of a central filing system through the Enterprise Asset Management (EAM) project for all required project documentation, including delays and deficiencies. The EAM project is the medium-term solution to ensure adequate project documentation is always maintained. Implementation is expected by 2025. The existing EFFM Contract Analyst position along with a new Quality Management Office within EFFM will be redefined to add duties related to quality management and project record retention. A standard operating procedure detailing project management processes will also be introduced related to ensuring contract management and contract administrative requirements are strictly followed for timely and effective contractor communications.	Project Documentation - Management and Control (EAM)	COMPLETE	<input checked="" type="checkbox"/>	<u>Q3 2023 – CFEM Update:</u> CFEM has reviewed the PW Project Management SOP and will follow the record retention requirements per the SOP as well as the new EAM system (once implemented). Project files for capital projects are currently maintained following the Divisional capital project folder template in alignment with Project Management principles. Future improvements will be made to incorporate document control through EAM once it is implemented for the Division.	<u>Q4 2022 – EFFM Update:</u> EFFM continues to collaborate with the departmental Public Works Quality Management System (PWQMS) and EAM project teams in the development of project management processes. EFFM has also recently completed the recruitment for the Sr. Project Manager of the EFFM Quality Management Office, which will be in place by the end of Q1 2023. Estimated Completion: Q4 2022 for Quality Management Office (QMO) and EAM implementation by 2025
9	Corporate Facilities and Energy Management Division	We recommend that Public Works implement a process to share critical capital project information such as cost estimates with Procurement to ensure the procurement team has all relevant information for a capital project.	A standard operating procedure will be developed to document the process to share critical capital project information with Procurement to ensure the Procurement team has all relevant information for a capital project e.g. cost estimates tracked in advance of tender issuance. This information could be attached as supporting documentation to the existing project budget template, RFCTA form and Project Charter submitted at the time of tender.	Share Critical Capital Project Estimates with Procurement	COMPLETE	<input checked="" type="checkbox"/>	<u>Q3 2023 – CFEM Update:</u> Including the project budget as part of the Request for Contract/Tender Approval (RFCTA) form has met this recommendation and complies with the Procurement Policy. An additional SOP is not required in addition to following the Procurement forms.	<u>Q4 2022 – EFFM Update:</u> EFFM has started including the completed project budget as part of the Request for Contract/Tender Approval (RFCTA) package. The standard operating procedure will be developed in 2023 to document the process.
13	Corporate Facilities and Energy Management Division	We recommend that the budget for the capital projects portfolio include sufficient funding for necessary corporate services, such as legal, financial, and contract management expertise, in order to ensure that they City's interests are protected during the completion of capital projects.	Corporate Services Financial Planning, Administration and Policy staff will work with the Corporate Asset Management team and the asset owners to assess the type of costs charged to Capital Projects and assess resources needed to support Capital Projects. Under the Asset Management framework, staff will develop a definition of the cost of a Capital Asset including a review of operating costs recovered from Capital Projects. Staff will be looking to change our approach for costs that are recovered from Capital Projects, such that, capital projects may only include costs that are directly attributable to a capital project. Therefore, we will be reviewing costs for City project management, City contract management, other City overhead, City financial services, City and external legal services, etc. It is expected that the impact of any change will be assessed, and the pros and cons of alternatives will be provided. (Operating budget, capital financing costs, i.e. transfers to capital, may be needed to offset operating budget capital cost recoveries).	Capital Projects Portfolio Funding	COMPLETE	<input checked="" type="checkbox"/>	<u>Q3 2023 – FPAP Update:</u> A revised process to allocate operating costs in the budget and actuals to CFEM capital projects was implemented in 2019 and reviewed in Q3 2023. Costs directly attributable to capital projects are charged to CFEM capital projects. When unexpected project costs arise, financing sources are sought and the Capital Projects' Budget Appropriation and Work-in-Progress Transfer Policy is followed. In addition, Corporate Services Financial Planning, Administration and Policy (FPAP) staff are working with all assets owners to develop consistent processes to allocate all costs directly attributable to capital projects in the budget development and in the actuals as Asset Management Plans are developed. <u>CFEM Supplemental Comment:</u> CFEM's project budget template is required to be completed for all large capital projects and includes an estimate for operating fee recoveries as a percentage of the project budget. Budget overage requests associated with unplanned project issues during the closing phase (such as litigation) would follow FPAP processes for additional funding requests.	<u>Q4 2022 – EFFM Update:</u> EFFM is continuing to work on this item. EFFM's project budget template includes an estimate for internal fee recoveries as a percentage of the project costs. This will be reviewed along with the costs of other stakeholders mentioned in the recommendation column. As noted in the update to Recommendation #7, EFFM's QMO office will be operational by the end of Q1 2023, and meeting the expected completion target will be part of its mandate.
Finance and Corporate Services Department (Procurement, Legal Services and Risk Management Services Divisions)								
5	Procurement Section	We recommend that contractor performance for each contract be tracked and formally evaluated using a consistent and robust process, and that the use of contractor ratings from previous performance be considered for implementation as a procurement criterion in order to mitigate the risk of poor results.	It is within Procurement's workplan to research and develop a more robust Vendor Performance Program. The context of this program has yet to be determined however, Procurement will investigate the potential to use contractor ratings from previous contract performance as a procurement criterion in order to mitigate the risk of poor results. Procurement also recognizes that significant consultation is required with both internal and external stakeholders in order for this program to be successful. EFFM Supplemental Comment: In discussions with Procurement, EFFM will participate in this initiative to develop a more robust Vendor Performance Program.	Robust Vendor Performance Program	Revised Completion: Q2 2024 Original AUD22004 Completion: Q4 2022		<u>Q3 2023 – Procurement Update:</u> A Project Manager has been recruited to review and improve the City's Vendor Performance Program and work has been initiated. Development of the new the Vendor Performance (VP) Program is ongoing, and is on track to be completed by the Q2 2024 deadline. <u>CFEM Supplemental Comment:</u> CFEM are keeping Procurement apprised of vendor issues and completing the current VP form as required. We will also continue to participate in this initiative with Procurement to develop a more robust Vendor Performance Program.	<u>Q4 2022 – Procurement Update:</u> Procurement is still experiencing a shortage of staffing resources to complete this work. A recruitment is under way for a project manager to develop and implement. This is a priority for Procurement Staff to complete.

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6	Legal and Risk Management Services Division with Procurement Section	We recommend that the values used for liquidated damages be reviewed to ensure they adequately compensate the City for the damages of late delivery and daily costs incurred, and to motivate contractors to take prompt action to cure project delays/deficiencies. Where liquidated damages would likely fall short of what is necessary to motivate Contractors to meet schedule requirements, we also would recommend the use of bonus/penalty clauses and earn-backs in the Contract.	Staff will investigate and pursue best practices including discussion with other municipalities, on the approach to liquidated damages, bonus and penalty provisions pertaining to contractual dealings. Legal Services will aid Procurement in updating the approach to appropriately amending contracts arising from this investigation in order to best protect the City's interests as permitted by these measures. Further, Procurement staff will engage and consult with client staff to assess consequences and controls in order to ensure appropriate application of the changes involved.	Contract Penalties & Bonuses Process Review	Original AUD22004 Completion: Q4 2023		<p>Q3 2023 – Legal Services Update: Legal Services is developing an updated process for liquidated damages, including standard clauses to be included in capital construction contracts. The process will also include references to the relevant sections of the <i>Construction Act</i> for staff reference. This is on track to be completed by the Q4 2023 deadline.</p> <p>CFEM Supplemental Comment: CFEM has provided assistance to Legal Services by sharing information received from other municipalities with respect to bonus/penalty clauses as part of the municipal scan completed per Recommendation #4.</p>	<p>Q4 2022 – Procurement Update: Procurement staff has had preliminary discussions with both internal staff (including Facilities, Hamilton Water, Legal Services) and external municipalities within Ontario. Limited staffing resources are such that an extension is required.</p>
15	Legal Division	We recommend that management review its process for approving settlements that exceed a predetermined threshold to ensure appropriate due diligence is being exercised over the proposed settlement amounts. Such process should be designed to provide Council with assurances that proposed settlements of significant cost were being subjected to the necessary scrutiny and validation and were properly supported.	Management supports reviewing its process to approve settlements to ensure appropriate checks and balances are in place before recommendations are made to Council. Staff will target completion of this review Q3, 2022, in advance of 2023 budget deliberations.	Settlement Review and Approval Process Review	Revised Completion: Q4 2023 Original AUD22004 Completion: Q3 2022		<p>Q3 2023 – Legal Services Update: Legal Services is reviewing and revising the settlement process for litigation in alignment with the Delegation of Authority By-Law, which is under development. The City Solicitor has directed that litigation files will be reported to Council on a quarterly or semi-annual basis, and proposed settlements that are beyond the authority of the City Manager and or where there is some significance will be provided to Council for instructions. This is in progress and to be implemented by Q4 2023, however the Delegation of Authority By-Law is a large initiative being led by the City Manager's office and therefore the timeline may be impacted during their consultation and implementation phases.</p>	<p>Q4 2022 – Legal Update: A new City Solicitor joined the City in mid-October 2022 and as such, the timing of implementation of this review is deferred until the new City Solicitor has been given the opportunity to review.</p>
2	Procurement Section and Legal and Risk Management Services Division	We recommend that when using a CCDC 2 Stipulated Price contract for construction projects, that the current version be used and that the contract conforms with the changes introduced by recent changes to the <i>Construction Act</i> .	All construction contracts utilized through a procurement process are current with respect to the <i>Construction Act</i> . A working group of staff has been tasked with updating supplemental conditions to be used with the new CCDC 2-2020 Stipulated Price contract for implementation in June 2022.	CCDC 2-2020 Stipulated Price Contract	COMPLETE	<input checked="" type="checkbox"/>	<p>Q4 2022 – Procurement Update: As of June 30, 2022, the updated CCDC 2-2020 is in effect and staff are using it as required. Staff has completed its review of the supplemental conditions to the contract and these are currently being used as well.</p>	
10	Procurement Section	We recommend that the practice of single sourcing of professional consulting firms be reviewed and be utilized only during exceptional circumstances. Professional consulting services generally should only be retained through a competitive process as outlined in the City of Hamilton's Procurement By-law.	The City's Procurement Policy sets out the requirements for awarding contracts to vendors. Staff agree that the most prudent mechanism to select a vendor is through a competitive process. However, where exceptional circumstances exist and a competitive process is not recommended, the appropriate approval to single source must be obtained either by the General Manager or Council.	Single-Source Contract Process Review	COMPLETE	<input checked="" type="checkbox"/>	<p>Q4 2022 – Procurement Update: Procurement Section has developed and implemented a revised Policy 11 approval form specifically for consultants. The new form requests additional information to support the Policy 11 request as well as includes an acknowledgement by the client department that, pending the dollar value of the services, a formal contract with the vendor will be required.</p>	
11	Procurement Section	We recommend that a standard form of contract be developed and used for the procurement of architectural consulting as well as for contract administration services including terms and conditions specific to each type of service. Furthermore, we recommend contract management techniques be utilized to manage the consultant's performance based on these agreements.	Procurement has developed and currently utilizes various templated competitive procurement documents for the engagement of contract administration and architectural consulting services. For those circumstances where architectural or contract administration services are not procured through a competitive process, staff will ensure that a formal contract is to be executed with the vendor prior to any work being carried out. The next revision of the Procurement Policy will be amended to include this requirement.	Prime Design Consultant Standard Form of Contract	COMPLETE	<input checked="" type="checkbox"/>	<p>Q4 2022 – Procurement Update: As noted in the update to Recommendation #10, the new Policy 11 form requires a formal contract with the vendor based on the value of services. Procurement has a standard form of contract for a Prime Consultant in place. Any standard terms of reference or scope of work required under the contract shall be created and maintained by Facilities and modified on a case by case basis to reflect project specific requirements.</p>	

Links to previous reports:

- (1) [CONFIDENTIAL AUD22004 - JL Grightmire Arena Lessons Learned Audit, April 7, 2022](#)
- (2) [Report PW23007-FCS23011 - Grightmire Arena Lessons Learned – Management Responses Status Report, Feb. 2, 2023](#)