



**Office of the Auditor General: Follow-up to the
2011 Audit of Procurement Practices related to
the Source Separated Organics Contract, Tabled
at Audit Committee – June 14, 2018**

Table of Contents

Executive summary	1
Conclusion	2
Acknowledgement.....	2
Detailed report – Assessment of implementation status	3

Executive summary

The 2011 Audit of Procurement Practices related to the Source Separated Organics (SSO) Contract was presented to Audit Committee and Council in 2014. Our original audit reviewed the SSO contract with Orgaworld Canada Ltd (Orgaworld), including the determination of the key assumptions that the contract was based on (e.g. facility's capacity and curb-side participation rate) and the City's internal contract approval.

The key findings included the following:

- Data from pilot projects was not correctly interpreted. There were fundamental errors in arriving at the tonnage estimates used in the eventual contract, which required a facility to process an annual waste tonnage of 100,000 tonnes, and assisted in the determination of an annual 80,000 tonne put-or-pay threshold. The put-or-pay threshold obligated the City to pay Orgaworld for at least 80,000 tonnes of organic processing per year, even if the City did not deliver that quantity.
- Leaf and yard waste can be processed by the City at its Trail Road / Barnsdale facility for a fraction of the per tonne cost of sending it to Orgaworld. The potential savings from the internal processing of separately collected leaf and yard waste were not considered when establishing the facility's required capacity or the put-or-pay threshold. It would have been cost effective to set lower contract tonnages and redirect more of the leaf and yard waste to Trail Road.
- Communication to Council was ambiguous. It was unclear that leaf and yard waste was included in the 100,000 tonnes requirement of the contract, and it gave the impression that the 80,000 tonnes put-or-pay threshold would be easily achievable. Communications contained little or no discussion of the options and risks, and these were provided only after the Request for Proposal process had already been completed.
- There was an absence of documented and approved assumptions and analyses, nor was there a documented review and approval demonstrating a lack of due diligence.
- Roles, responsibilities and accountability for the oversight of the project were not clearly defined. The assessment and approval required on key elements of the project could not be located in the corporate records and were not provided to us by City staff.

Table 1: Summary of status of completion of recommendations

Recommendations	Total	Complete	Partially complete	Not started	No longer applicable
Number	10	9	1	-	-
Percentage	100%	90%	10%	-	-

Conclusion

Management has made good progress by fully addressing 9 of 10 recommendations.

Most household leaf and yard waste is now collected and processed together with household organics. One aspect of one of the audit recommendations was to present to Council the marginal cost implications of separate leaf and yard waste processing and collection. Although staff did assess some of the costs associated with this alternative, it was not fully explored as an option in the City’s March 2018 business case, nor was it made fully transparent as it was not provided to Council.

Acknowledgement

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management.

Detailed report – Assessment of implementation status

The following information outlines management's assessment of the implementation status of each recommendation as of December 31, 2017 and the Office of the Auditor General's (OAG) assessment as of March 2018.

Recommendation #1

Table 2: Status

Management update	OAG assessment
Complete	Partially complete

Audit recommendation:

That the City update its most recent projections on the volumes of organic material to be processed for the balance of the contract, and present the findings to Council, on a regular and periodic basis, including any future put-or-pay payments and marginal cost implications for separate leaf and yard waste processing and collection.

Original management response:

Management agrees with this recommendation.

Management provided updated projections to Environment Committee and Council in April 2011 as part of the Solid Waste Collection Service Level Review Report (ACS2011-ICS-ESD-0002). Management has subsequently updated the forecast of organics diversion for 2015 and beyond. A memorandum with regard to the most recent projections will be circulated to Members of Council in Q3 2014 and will be provided thereafter on an annual basis.

Feedback from the Multi-residential Waste Diversion Stakeholder Consultation Group was incorporated, to the extent possible, into the service delivery changes launched in 2012 and the Solid Waste Collection Design Guidelines for Multi-unit Residential Development, which were approved by Council on October 31, 2012. The working group has subsequently disbanded as a formal working group.

Management update:

Implementation of this recommendation is complete.

A memorandum with most recent projections on the volumes of organic material to be processed for the balance of the contract was circulated to Members of Council in Q3 of 2014. The City then provided regular updates on organics tonnage to Council through the Semi-Annual Performance Report. These reports provided detailed information on all of Solid Waste Service’s diversion programs, including organics. In Q1 2016, a Council-approved decision was made to discontinue the Semi-Annual Performance

Follow-up to the 2011 Audit of Procurement Practices related to the Source Separated Organics Contract

Report as it was determined that it was no longer providing the best value for stakeholders and was therefore not the best use of City resources.

Staff will be presenting a report to the Environment and Climate Protection Committee (ECPC) in Q1 2018, concerning the Source Separated Organics (SSO) Program. This report will include the most recent projections on the volumes of organic material to be processed for the balance of the contract and the recommended approach to provide Members of Council with updates on future projections.

OAG assessment:

The OAG confirmed that staff provided updates to Council on the tonnage processed. These figures were presented on a regular and periodic basis until 2015 Q3 when Council directed staff to stop providing them. However, staff were not providing Council with future put-or-pay payments estimates nor the marginal cost implication analysis for separate leaf and yard waste processing and collection. The put-or-pay estimates were prepared and included in a March 5, 2018 SSO business case. Key elements of this business case were provided in a report to Council on March 28, 2018. The business case was also made available to Councillors upon request. The marginal cost implication analysis for separate leaf and yard waste processing and collection was assessed, but not presented in the above business case.

Recommendation #2

Table 3: Status

Management update	OAG assessment
Complete	Complete

Audit recommendation:

That the City conduct the necessary analysis to determine the estimated “put-or-pay” penalty for the life of the contract as well as the marginal cost implications for separate leaf and yard waste collection.

Original management response:

Management agrees with this recommendation.

Management has conducted a preliminary analysis and acknowledges that this analysis, conducted earlier this year, is representative of the type of analysis that should have been presented to Council and informed the decision to award the contract in 2007.

The City Manager will highlight the results of the preliminary analysis, which includes consideration of processing and collection costs, alternative facility capacity options, inclusion of leaf and yard waste, and all payments made under the City’s minimum tonnage guarantee, at the tabling of the Audit. An update of that analysis will be presented to Council in conjunction with the results of the work to be conducted by staff in response to Recommendation #3.

Management update:

Implementation of this recommendation is complete.

Tonnages are forecasted to be near or above the put-or-pay threshold for the remainder of the Orgaworld contract as per the most up-to-date tonnage projections. These projections are the tool staff would use to analyze future put-or-pay penalties, and therefore, staff do not anticipate any penalties moving forward.

There can be variation in actual tonnage based on the amount of leaf and yard waste diverted in a given year (e.g. a dry summer), which can cause a deviation from the tonnage projections. Further analysis on these projections will be included as part of the

report being presented to the Environment and Climate Protection Committee (ECPC) in Q1 2018.

OAG assessment:

The OAG reviewed the City's November 2013 analysis of the estimated "put-or-pay" penalty for the life of the contract. In addition, the Business Case presented to Council in March 2018, which is based on volume projections from Dillon (adjusted by Financial Services), indicates that for all years after 2017, the minimum 80,000 tonne threshold will be surpassed. The 80,000 put-or-pay threshold will be met through the processing of kitchen organics and leaf and yard organic waste.

The marginal cost implication analysis for separate leaf and yard waste collection was assessed by City staff and reviewed by the OAG during our review of the March 5, 2018 Business Case and related documents.

Recommendation #3

Table 4: Status

Management update	OAG assessment
Partially complete	Complete

Audit recommendation:

That the City conduct the necessary analysis to determine the cost implications and benefits of pursuing the early termination clause of the SSO contract and provide that analysis to Council.

As part of the consideration of the cost implications of terminating the existing agreement with Orgaworld, the City should conduct a comprehensive cost assessment to determine the feasibility to design, build and operate a City-owned facility to process the SSO waste, based on current market conditions and inclusive of all collection costs.

Original management response:

Management agrees with this recommendation.

During the course of negotiations for the Orgaworld contract, the issue of termination at the discretion of the City became significantly contentious due, at least in part, to events surrounding the cancellation of the light rail contract and the resultant litigation. A summary of the negotiations, as well as an explanation of the Termination for Convenience Clause, was the subject of a confidential update by the City Clerk and Solicitor to City Council on March 11, 2008.

The Termination for Convenience clause in the contract provides a formula for calculating termination payments. As these payments decline over the life of the contract, the City Clerk and Solicitor Department analysis of the termination costs and other legal implications would necessarily depend on the timing of the termination.

Apart from the financial consequences of terminating the contract, consideration must also be had to the non-monetary implications of doing so.

Under the contract, the City retains significant control over the source and composition of the organics processed at the Orgaworld facility. Pursuant to those provisions, Orgaworld is precluded from accepting waste from other jurisdictions, or waste that is not of the same composition as that which is supplied through the City’s Green Bin

program, without the consent of the City. Absent these contractual limitations, and recognizing that the Environmental Review Tribunal in 2010 agreed to expand Orgaworld's Certificate of Approval to allow the facility to accept plastics, sanitary products and pet waste, Orgaworld would be free to accept an SSO stream from other sources (e.g. City of Toronto, commercial sectors, etc.) that would contain organics other than kitchen and leaf and yard waste, such as diapers and pet feces.

Further, there is currently no local supplier with sufficient capacity to process the City's SSO waste stream.

The cancellation of the current contract would require staff to undertake a review of the City's Integrated Waste Management Master Plan and analysis of the City's overall waste management program, including a comprehensive technology review, and thereby reconfirm City Council's direction in respect of the various elements of the City's program and waste management policies. Such an analysis, which would necessarily include the impact of such things as the future implementation of the Plasco waste-to-energy technology, would also examine the current estimated lifespan of the Trail Road Waste Disposal Facility, as well as other local landfill capacity and availability. The results of this analysis will be provided to Members of Council in 2015.

Management update:

Implementation of this recommendation is partially complete.

The analysis has been completed and will form part of the staff report being presented to the Environment and Climate Protection Committee (ECPC) in Q1 2018.

OAG assessment:

The OAG confirmed that the City conducted the necessary analysis to determine an estimate of the cost implications and benefits of pursuing the early termination clause of the SSO contract. This analysis was provided to Council through a report at its March 28, 2018 meeting. Included in this report was a class D estimate of the cost to design, build and operate a City-owned facility to process the SSO waste based on current market conditions and inclusive of all collection costs.

Recommendation #4

Table 5: Status

Management update	OAG assessment
Complete	Complete

Audit recommendation:

That the City ensure that staff on projects with key roles in program analysis and development have appropriate qualifications and are adequately trained and supervised.

Original management response:

Management agrees with this recommendation.

Management is committed to ensuring that the right people are in the right positions for all work including priority projects. The implementation of the City’s SSO program was a complex project that required coordination among a number of staff in various departments and disciplines. Management agrees that additional oversight could have helped to avoid the issues identified earlier, namely the failure on the part of staff to reconfirm with Council the critical elements of the design of the City’s SSO program.

Management update:

Implementation of this recommendation is complete.

The City has hired staff with the appropriate qualifications, and they are trained and supervised on a regular basis.

OAG assessment:

The OAG interviewed staff at various levels as part of its review of the March 5, 2018 SSO Business Case. All staff appeared to have appropriate qualifications and be adequately trained and supervised. Staff generally indicated that they are provided with the necessary training and materials for their position and that during transitions, whenever possible, there is a period of overlap between the incumbent and the new employee so that corporate knowledge can be transferred.

Recommendation #5

Table 6: Status

Management update	OAG assessment
Complete	Complete

Audit recommendation:

- a) That the City ensure that in future projects of importance, such as SSO, that a project charter be fully documented, approved (by Executive Management Committee), implemented and periodically updated in order to identify the scope, objective and milestones of the project. It should delineate roles and responsibilities of the staff and managers involved for oversight and control from the operational department, Legal Services and Supply Management.
- b) That the City should establish for Executive Management Committee specific project criteria (i.e. dollar value, duration of contract, potential impact on the public) for when this recommendation would apply.

Original management response:

Management agrees with this recommendation.

A corporate project management policy has been developed and adopted to ensure that appropriate project management methodologies are used in a consistent manner for future projects. Criteria have been established to determine when a comprehensive project charter needs to be developed and provided to executive management for approval. Project charters include the identification of key roles, required competencies and management oversight that will be applied to the project.

Management update:

Implementation of this recommendation is complete.

The City has adopted a Project Management Methodology that ensures all major projects have the proper oversight and approvals from senior management, Legal Services and Supply Services, in accordance with Council-approved delegated authorities and purchasing by-laws.

OAG assessment:

The OAG confirmed that the City has developed policies and frameworks for projects of importance that include an approved project charter. The need to implement and periodically update the charter is included. The guidance documents also delineate the roles and responsibilities of staff and managers involved for oversight and control from the operational department, Legal Services and Supply Services. We also found that there are specific criteria (i.e. dollar value, duration of contract, potential impact on the public) for when a project should be brought to the attention of the relevant General Manager or City Manager.

Recommendation #6

Table 7: Status

Management update	OAG assessment
Complete	Complete

Audit recommendation:

That the City ensure the retention of sufficient and adequate documentation to support the decision-making process; and ensures that documentation is retained for a full seven years after project completion.

Original management response:

Management agrees with this recommendation.

The Corporation has a Records Retention and Disposition By-law that determines the required retention periods for official business records. In addition, the City has a Records Management Policy, which defines what an Official Business Record is, staff responsibilities regarding records management and a records classification scheme that directs staff on how records should be classified and their corresponding retention periods.

It appears that the policy was not properly applied with respect to some key areas of this project. As a result, management has taken the following action to prevent a reoccurrence: at its meeting of June 3, 2013, Executive Committee approved a new “E-Records Strategy” presented by the City Clerk and Solicitor, wherein it was proposed that BIMS, the City’s electronic records management system, would be made mandatory for senior managers and their respective office so that all of the formal decisions of the Corporation will be available and accessible in an electronic format. Following a one-year review of this pilot approach, the mandatory requirement for BIMS will be further extended into the Corporation to all levels of management and, thereafter, all City staff.

Notwithstanding the above, the Audit’s suggestion that the lack of documentation led to a direct increase in the City’s legal costs fails to account for the fact that the determination of any additional legal costs that may have been avoided had better documentation been available defies easy quantification. While the ability to cogently and persuasively present a particular version of events may reduce the requirement for

evidence given by witnesses, legal proceedings may become protracted by a range of factors, including the need for expert evidence, the range and complexity of legal issues, as well as the need to resolve procedural issues that arise during the course of the proceeding. As a result, while it is possible that the total length of the Orgaworld hearing could have been reduced had better documentation been available, this is extremely difficult to verify at this point in time. As noted in the Audit, the lack of documentation made difficult the process of determining the rationale underlying the decision staff made in the design of the SSO program and the award of the contract to Orgaworld. However, that complication may not necessarily translate directly into an increase in the length of the hearing and/or its costs, as suggested.

Management update:

Implementation of this recommendation is complete.

Documentation related to the decision-making process for key projects is maintained in accordance with the City's Records Management Policy.

OAG assessment:

The OAG confirmed that the City has policies and by-laws requiring retention of sufficient and adequate documentation to support the decision-making process. The documentation is required to be retained for seven years after project completion.

Recommendation #7

Table 8: Status

Management update	OAG assessment
Complete	Complete

Audit recommendation:

That the City ensure that all future reports to Council are clear, concise and define options and risks associated with the initiative.

Original management response:

Management agrees with this recommendation.

The City has existing procedures for the completion of reports to Committee and Council and these are aligned with the “Corporate Standard Report Template”, which includes mandatory fields that require input from the report writer. One of these fields entitled “Risk Management Implications” prompts the writer to provide general risk information, details, rationale and associated impacts related to the report. It also provides contact information for the Corporate Risk Management Co-ordinator should questions arise. In addition, the City Clerk and Solicitor’s office offers support with regard to the drafting requirements for any reports and are in the process of implementing training sessions on report writing for employees who require it.

Adherence to these procedures did not occur in this instance. Going forward, executive management will review all reports associated with projects or initiatives that are subject to compliance with project management policy before they are submitted for Committee or Council consideration.

Management update:

Implementation of this recommendation is complete.

The City uses the Corporate Standard Report Template for all deliverables to Council, including sections that clearly address financial implications, legal implications, risk management strategies, consultations, etc. Furthermore, where appropriate, staff appends important documentation (e.g. business cases) to ensure that Council has all the required information and analysis to make an informed decision.

OAG assessment:

The OAG found that the City has developed toolkits, manuals and templates applicable to all future reports to Council. These aids support reports that are clear, concise and define options and risks associated with the initiative. Furthermore, management indicates that they are implementing training sessions on report writing for employees, on an as needed basis.

Recommendation #8

Table 9: Status

Management update	OAG assessment
Complete	Complete

Audit recommendation:

That the City ensure that all future reports to Council for major contractual requirements are submitted for approval prior to the Request for Proposal (RFP) process, so that the terms, conditions and options of the RFP are clear to Council prior to tendering.

Original management response:

Management agrees with this recommendation.

Staff should have reconfirmed the scope/nature of the program for which they were procuring a processing facility, prior to the RFP. Such an approach has been adopted for large-scale projects such as the LRT, where Council was asked to approve design elements that would constrain options in the future (e.g. electric v. diesel) and pre-determine certain other program elements. While program elements contained in the Integrated Waste Management Master Plan influenced the later choices to be made in terms of defining the SSO program (i.e. the inclusion of leaf and yard waste within the Green Bin as opposed to a kitchen-only program), these should have been reconfirmed with Council prior to the issuance of the RFP.

Contracts are awarded in accordance with Council-approved delegated authority and the City’s Procurement By-law. The existing procurement by-law contains an article with regard to prescribed Council approval. In those instances where Council approval has not been expressly delegated, the procurement strategy, evaluation criteria and basis of selection will be subject to Council consideration and approval prior to the release of the bid solicitation document.

In those instances where the project management policy applies, the fundamental business terms of a potential contract will be presented to Council prior to commencing the procurement process. This requirement will be specified in the project charter. Additionally, senior management and the Chief Procurement Officer have been reminded of the importance of ensuring that prior to proceeding with the procurement of

major contracts, that consideration is given to bringing the procurement strategy to Council for consideration and approval where warranted.

Management update:

Implementation of this recommendation is complete.

Where not expressly delegated to staff by the Procurement By-law (such as Public Private Partnerships or contracts prescribed by Statute to be made by Council), or where Council consideration is required by way of corporate policy (such as Managed Competitions and Ottawa Option procurements), the procurement strategy, evaluation criteria and basis of selection are approved by Council in a report prior to the release of the bid solicitation document.

OAG assessment:

The OAG found that the City's Procurement By-Law includes a "Prescribed Council Approval" section that states which contracts are subject to Council approval. As well, management indicates that all future reports to Council for major contracts will be submitted for approval prior to the Request for Proposal process, so that the terms, conditions and options of the RFP are clear to Council prior to tendering.

Recommendation #9

Table 10: Status

Management update	OAG assessment
Complete	Complete

Audit recommendation:

That the City ensure that the individuals listed as the point of contact on all reports to Council or Committee are able to provide all necessary documentation and information.

Original management response:

Management agrees with this recommendation.

As outlined in the Management Response to Recommendation #7, the City has formal procedures regarding the generation of Committee and Council reports. Every submission to Committee and Council identifies an appropriate point of contact. These contacts are able to provide all of the necessary information in relation to the matter being discussed. This requirement will be highlighted in the roles included in the project charter for major projects and initiatives going forward.

Management update:

Implementation of this recommendation is complete.

Every submission to Committee and Council identifies an appropriate point of contact on the front page, and this individual is able to provide all of the necessary information in relation to the matter being discussed. Should an information request arise that falls outside of this individual’s purview or area of expertise, he/she is able to coordinate a response with the appropriate point of contact.

OAG assessment:

The OAG found that the City’s revised Corporate Standard Report Template states that the individuals listed as the points of contact on reports to Council or Committee are to be able to provide all necessary documentation and information.

Recommendation #10

Table 11: Status

Management update	OAG assessment
Partially complete	Complete

Audit recommendation:

That the City exercise its contractual right to audit the capacity of Orgaworld as per clause 7.18: Accounts and Audit, and takes appropriate action based on the results.

Original management response:

Management agrees with this recommendation.

Earlier this year, the City delivered a Notice of Dispute to Orgaworld questioning the extent of the built capacity of the Ottawa facility and seeking appropriate compensation for any unnecessary put-or-pay payments made to Orgaworld pursuant to the minimum tonnage guarantee.

Management update:

Implementation of this recommendation is partially complete.

This recommendation will be addressed as part of the staff report being presented to the Environment and Climate Protection Committee (ECPC) in Q1 2018.

OAG assessment:

The OAG confirmed that the City exercised its contractual right to audit the capacity of Orgaworld as per clause 7.18. Staff then issued a Notice to Orgaworld in 2014 putting into question the capacity of the processing plant. A response from Orgaworld was received shortly thereafter. The matter is not yet concluded. While it has not been finalized, staff advise that this element forms part of a concession under the revised agreement, which was supported by the Business Case that was presented to Council in March 2018.

Table 12: Status legend

Status	Definition
Not started	No significant progress has been made. Generating informal plans is regarded as insignificant progress.
Partially complete	The City has begun implementation; however, it is not yet complete.
Complete	Action is complete, and/or structures and processes are operating as intended and implemented fully in all intended areas of the City.
No longer applicable	The recommendation is obsolete due to time lapses, new policies, etc.