

J. Paul Dubé, Ombudsman

March 1, 2017

Peter Fay, Clerk
Council for the City of Brampton
2 Wellington Street West
Brampton, ON
L6Y 4R2

Dear Clerk Fay:

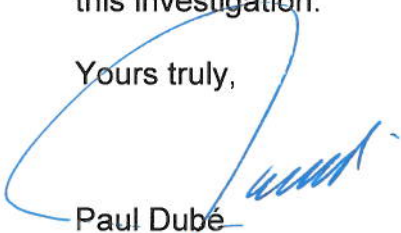
Re: Report – Office of the Ontario Ombudsman

I have completed my investigation into the City of Brampton's procurement practices, focusing on the administration of its purchasing by-laws, policies and procedures regarding non-competitive procurements. Please find my report enclosed.

I ask the city to make my report available to the public and that this be done no later than the next council meeting, which I understand is scheduled for March 8, 2017.

I would like to thank you and city staff for the co-operation we received during this investigation.

Yours truly,


Paul Dubé
Ombudsman of Ontario

Cc: Mayor Linda Jeffrey

Encl: Ombudsman Report – “Procuring Progress”

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Ombudsman Report

“Procuring Progress”

Investigation into the
City of Brampton’s procurement practices,
focusing on the administration of its
purchasing by-laws, policies and procedures
regarding non-competitive procurements

Paul Dubé
Ombudsman of Ontario

March 2017

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Executive Summary

- 1 Financial accountability and transparency are critical to inspiring public confidence in local government. Although elected members of council govern the affairs of a municipality, a significant amount of procurement and financial management takes place at the staff level, particularly in larger municipalities. Unless adequate and transparent accountability measures exist to demonstrate that municipal administrators have followed a fair process and obtained good value for taxpayer money, distrust can arise.
- 2 This is what happened recently in the City of Brampton, a rapidly growing city of more than half a million people. Concerned about a controversial multi-million-dollar construction project for additional municipal office space, as well as other financial practices, Brampton's council turned to my Office for assistance. Council invited us to investigate potential misconduct in procurement, real estate, planning approvals, and any other area we thought warranted scrutiny. Based on the evidence then available, and given the importance of – and public interest in – municipal procurement practices, I launched an investigation focusing on the City of Brampton's administration of its purchasing by-laws, policies and procedures regarding non-competitive procurements. This is my first investigation of municipal administration since new provincial legislation expanding my Office's oversight to include municipalities took effect in January 2016.
- 3 Although my investigation found evidence of two past procurements of concern, both from 2013, these had already been identified by the city's internal auditors, and the city has amended its purchasing by-law to prevent their recurrence. Other than these historical examples, our investigation found no evidence of maladministration in the city's purchasing by-laws, policies or procedures for non-competitive procurements. After interviewing 30 witnesses and reviewing tens of thousands of relevant documents, we determined that non-competitive procurements in Brampton (representing about \$29 million per year) were generally conducted in accordance with the city's purchasing by-law. We also noted that the city has taken numerous proactive steps in recent years to strengthen its procurement practices, such as amending its purchasing by-law to help ensure that future procurements comply with the by-law's provisions.
- 4 It is important to note that there is a distinction between an Ombudsman's investigation and the important work performed by auditors. While there may be some similarities, an Ombudsman investigation is not a financial or forensic audit. The objective of a financial audit is to conduct a fiscal examination of an organization, according to generally accepted accounting practices, to determine

whether its financial information is fairly presented. It also involves a determination of whether financial processes and controls are sufficient, by reviewing and testing the controls and procedures in place. In some cases, audits are conducted to determine if value for money has been obtained. Compliance audits often involve testing the controls in a system to determine whether or not the rules and regulations for that activity are being followed. Ombudsman investigations, on the other hand, are focused on matters of administration – including whether organizations have the proper policies and procedures in place and whether these are being followed. This includes interviewing witnesses, reviewing documentary evidence and making findings of fact, as well as recommendations for improvement where warranted.

- 5 Under the *Ombudsman Act*, if I investigate a public sector body and conclude that it has engaged in maladministration, such as conduct that is contrary to law, unreasonable, unjust, oppressive, improperly discriminatory or wrong, I can issue a report with recommendations.¹ **My investigation in this case did not reveal any such maladministration.** However, this is a new area of Ombudsman jurisdiction, there is a strong public interest in this matter, and the city has repeatedly requested an investigation. Although I did not find any maladministration, I believe this case presents a good opportunity for Brampton and other municipalities to consider improvements to their procurement practices. Accordingly, I have opted to document our work and findings in this report, and proposed several best practices that I believe will assist the city in optimizing openness, accountability and transparency.

Background

- 6 In November 2014, our Office was contacted on behalf of Mayor Linda Jeffrey to discuss whether we could assist in investigating certain issues in the City of Brampton. This was not possible, as the *Ombudsman Act* had not yet been amended to give our Office authority to investigate complaints about municipalities.
- 7 In April 2015, Brampton’s interim Auditor General issued a report regarding the city’s Southwest Quadrant project.² The Southwest Quadrant project involves a large development with the stated goals of constructing additional office space for city staff and revitalizing Brampton’s downtown core. Among other conclusions, the report found that the project’s procurement process was

¹ *Ombudsman Act*, R.S.O. 1990, c.O.6 - online: <<https://www.ontario.ca/laws/statute/90o06#BK25>>.

² George Rust-D’Eye, “Final report of the (interim) Auditor General on: The City of Brampton’s Southwest Quadrant Renewal Plan,” City of Brampton (27 April 2015), online: <https://www.brampton.ca/EN/City-Hall/Documents/Accountability_Transparency/20150427_AG%20Final%20Report_Consolidation_PF.pdf>

appropriate and implemented well on behalf of the city. The report also found that city council's limited role in the procurement was appropriate and that the confidentiality protocols followed were normal and essential requirements of the process. At the time our report on our investigation was written, the city was involved in litigation related to the bidding and selection process for the contract.

- 8 On May 4, 2015, Brampton city council held a special meeting to consider the interim Auditor General's report. During this meeting, council resolved to ask the province to appoint the Ombudsman to conduct an investigation under the *Public Inquiries Act, 2009*. The resolution specifically requested that the Ombudsman investigate "potential misconduct in procurement, real estate, planning approvals and any other area." Ontario's Attorney General declined to make this appointment, noting that our Office would have the power to undertake such an investigation once changes to our jurisdiction under the *Public Sector and MPP Accountability and Transparency Act, 2014*³ took effect on January 1, 2016.
- 9 After my predecessor's term ended in September 2015, city officials again requested that our Office investigate planning, procurement, real estate and other transactions within the city.
- 10 Shortly after our Office's expanded mandate took effect on January 1, 2016, Brampton provided us with materials for review. Investigators carefully reviewed the documents and had preliminary discussions with some city staff. The following month, Brampton city council passed a resolution asking our Office to investigate the city's handling of the procurement process related to the Southwest Quadrant project. By that time, a process was underway to appoint a permanent Ombudsman, and the then Acting Ombudsman deferred the request.
- 11 I was briefed on this matter after beginning my term as Ombudsman on April 1, 2016. In May, I launched an investigation into the city's non-competitive procurement practices. Procurement is a vitally important function within municipalities; the public expects that its money will be spent in a prudent and fair manner. Ensuring that municipalities have sound procurement policies, procedures and practices is vital to ensuring the public's confidence. I chose to focus the investigation on Brampton's non-competitive procurement practices because my Office's preliminary review found that two internal reviews conducted by the city identified concerns with these types of procurements. While open tendering processes for competitive procurements are inherently more transparent, whenever a municipality purchases goods or services without going through a competitive process, there is a risk that it will not receive value for money or that the public will not perceive the process as transparent and accountable.

³ *Public Sector and MPP Accountability and Transparency Act, 2014*, S.O. 2014 c. 13.

- 12 Despite Brampton's explicit requests, we did not include the Southwest Quadrant project within the scope of our investigation. The city previously retained an interim auditor general, who conducted a comprehensive review of the project. In addition, the project is the subject of pending litigation.

Investigative Process

- 13 On May 25, 2016, I advised council for the City of Brampton of my intention to investigate its procurement practices, focusing on the administration of its purchasing by-law, policies and procedures regarding non-competitive procurements, which amount to about \$29 million per year. On the same day, I issued a press release inviting the public to contact my Office with information related to the investigation. We received four complaints and submissions in connection with the investigation.
- 14 Six investigators from our Special Ombudsman Response Team, assisted by legal staff and three Ombudsman investigators, conducted more than 30 interviews and reviewed a large amount of documentation, including more than 10,500 electronic documents, provided by the city. The information included relevant by-laws, policies, procedures, training materials, internal audit documents, internal communications, and other documents. Investigators also carried out independent research and reviewed information from external sources.
- 15 We sought the assistance of an expert in the field of municipal procurement and internal audit practices to lend his expertise to this investigation. After assessing several potential advisors, we selected Mr. Jeff Griffiths, who served as Auditor General for the City of Toronto from 2002-2015, to assist us in this regard. Mr. Griffiths provided valuable analysis of the evidence and advice in identifying best practices.
- 16 We received excellent co-operation from Brampton city council and staff.

Brampton's restructuring

- 17 In September 2016, while our investigation was in progress, the city announced a major organizational and leadership restructuring, resulting in the layoff of 25 staff members, primarily at the management level. We were told that this was part of a two-stage transformation. A press release from the city indicated there

would be a “flattening” of the city’s organizational structure.⁴ According to media reports, Mayor Jeffrey said the changes would allow the city to be more responsive and efficient. Brampton’s Chief Administrative Officer (CAO), who commenced his duties in May 2016, reportedly said that the changes were intended to break down silos and eliminate unnecessary duplication of resources.⁵ In November 2016, the City of Brampton announced additional layoffs, which again consisted primarily of management staff.⁶

- 18 Although the reorganization did not hinder our investigation, it did make some steps more challenging and time-consuming, as we worked to ensure we were up to date on all the changes. Many of the city officials we spoke with during our investigation are no longer employed by the city. In addition, the location of the purchasing division within the organizational hierarchy changed. Purchasing was previously part of the finance division; it is now its own separate division within the corporate services department. Other departments were also affected by the reorganization. For instance, the previous management advisory services unit, a business unit of the strategic and enterprise services division reporting to the Chief Operating Officer, was reorganized as the service innovation and corporate performance team, reporting to the CAO.
- 19 For the sake of consistency and clarity, this report refers to the job titles and responsibilities of individuals prior to the restructuring.

Brampton’s Procurement Process

Purchasing by-law (by-law 310-2015) and policies

- 20 Under the *Municipal Act*, each municipality is required to adopt and maintain policies regarding the procurement of goods and services.⁷ In Brampton, purchasing practices are governed by purchasing by-law 310-2015, which was adopted by council on December 9, 2015, and came into effect on March 1,

⁴ “City of Brampton implements significant structural changes; sets foundation to build a ‘future ready’ organization” (6 September 2016), City of Brampton, online: <<http://www.brampton.ca/EN/City-Hall/News/Pages/Media-Release.aspx/291>>.

⁵ “City of Brampton lays off 25 employees in major restructuring,” *CBC News* (6 September 2016), online: <<http://www.cbc.ca/news/canada/toronto/brampton-layoffs-1.3750688>>.

⁶ San Grewal, “Brampton set for another round of sweeping management cuts,” *The Star* (23 November 2016), online: <<https://www.thestar.com/news/gta/2016/11/23/brampton-set-for-another-round-of-sweeping-management-cuts.html>>.

⁷ *Municipal Act, 2001*, S.O. 2001 c. 25, s. 270(1)(3).

2016.⁸ The by-law was further amended in September 2016 and February 2017 to reflect changes in the city's administrative structure.⁹

- 21 In addition to the purchasing by-law, the city has developed numerous purchasing policies and procedures that provide specific guidance on how to apply the by-law's provisions.
- 22 Our investigation found that the city's purchasing by-law is generally similar to the purchasing by-laws of comparably sized municipalities in Ontario.¹⁰ It outlines the processes that the city must follow when carrying out different types of procurements. In general, the applicable procurement method is determined by the dollar value of the purchase, with higher value purchases requiring a more robust and formal competitive process.¹¹

Non-competitive procurements under \$5,000

- 23 Purchases of goods, services, and construction under \$5,000 are exempt from the competitive procurement process and are handled at the department level. Prior to making a purchase, departments must ensure that the goods, services, or construction are not covered by an existing blanket purchase order or contract, and they must conduct sufficient research to ensure they have obtained good value at a competitive price. For purchases of \$1,000 and greater, evidence of the research should be maintained for 36 months. Purchasing cards (i.e. city-issued credit cards) are the preferred payment method for these purchases. Employees may not split transactions to qualify under this exemption.

Exclusions from otherwise competitive processes

- 24 Purchases greater than \$5,000 are subject to various competitive processes, which are summarized in Appendix A of this report. However, in certain instances, the purchasing by-law contains exclusions from the otherwise applicable competitive procurement process.

⁸ City of Brampton, by-law 310-2015, *A By-law to repeal Purchasing By-law 35-2012, as amended, and replace with this updated By-law to provide for the procurement of goods, services and construction* (9 December 2015) [Purchasing By-law], online: <<https://www.brampton.ca/EN/City-Hall/Bylaws/All%20Bylaws/Purchasing.pdf>>.

⁹ Refer to City of Brampton, by-law 172-2016, *A By-law to amend various by-laws to update position authorities implemented through the new organization structure, including Delegation of Authority By-law 191-2011, Financial Signing Authority By-law 116-2016 and Purchasing By-law 310-2015* (14 September 2016) and City of Brampton, by-law 31-2017, *To amend Purchasing By-law 310-2015, as amended* (22 February 2017).

¹⁰ Investigators reviewed the purchasing by-laws of Niagara Region, the City of Hamilton, and the City of Mississauga.

¹¹ *Purchasing By-law*, supra note 8 at s. 11.2.

- 25 Procurements over \$5,000 can be excluded from their respective competitive processes if they meet an exception or exclusion set out in the by-law's Schedule B (exceptions for "Single Source" procurements), Schedule C (exceptions for "Sole Source" procurements), or Schedule D (exclusions from competitive procurement requirements). The exceptions and exclusions encompass a range of situations where the otherwise applicable competitive processes need not be followed, including where:
- An open tendering process would compromise the city's confidentiality;
 - An open tendering process would interfere with the city's "ability to maintain security or order or protect human life or health";
 - There is only one vendor able to meet the requirements of the procurement (e.g. the need to ensure compatibility with an existing product or service); and
 - The procurement is for the services of a licenced professional (e.g. medical doctor, lawyer).
- 26 In order to proceed with a single- or sole-source procurement, departments must provide a valid justification including pertinent facts that give rise to the non-competitive procurement.¹² This justification must be approved by the appropriate approval authorities, which changes depending on the dollar value of the purchase.
- 27 In addition, the by-law exempts "emergency" procurements from the otherwise applicable competitive process. The amended by-law authorizes the Chief Administrative Officer or a department head to conduct an emergency procurement for any dollar value where there is an unforeseeable, serious emergency situation and the goods, services or construction cannot be obtained in time by means of an open competitive procurement method.¹³

Purchasing division's involvement

- 28 Under the purchasing by-law, the City of Brampton's purchasing division is responsible for administering various aspects of the procurement process, particularly those related to competitive procurements.

¹² *Purchasing By-law*, supra note 8 at s. 11.12.2.

¹³ *Purchasing By-law*, supra note 8 at s. 11.11.1.

- 29 The division consists of some 25 staff members, about 10 of whom are purchasing buyers. The division is headed by a Director of Purchasing who reports to the Commissioner of corporate services. Purchasing buyers need to have the requisite experience and be qualified as a Certified Professional Public Buyer (or equivalent), which is a certification from the Universal Public Procurement Certification Council.¹⁴ Some staff members also have other, related professional qualifications.
- 30 Prior to the division's reorganization in September 2016, purchasing was a section within the finance division of the corporate services department.
- 31 The purchasing division's primary responsibilities relate to the competitive procurement process. With respect to non-competitive procurement, staff in the purchasing division ensure that the purchasing by-law is being followed when they address inquiries or requests from departments engaged in the purchasing process.
- 32 For single- or sole-source procurements (under Schedule B or C of the by-law), purchasing staff review the documentation provided by the requisitioning department to ensure that the justification for following a non-competitive process is appropriate. If the rationale is not appropriate, purchasing staff may either request further information or inform the department that it must follow a competitive procurement process.
- 33 Purchasing has no role in reviewing non-competitive procurements under Schedule D of the by-law, which excludes various types of goods and services from a competitive procurement process.¹⁵ For these purchases, the requisitioning department co-ordinates with the accounting department and follows the cheque requisition process to facilitate payment for the goods or services.
- 34 In addition, the by-law provides that the purchasing division must receive the rationale for "emergency" purchases within 60 days of the purchase.¹⁶ Purchasing's role in this review is limited; we were told that purchasing staff will sometimes deem emergency purchases to be non-compliant with the by-law if the reason for the purchase was not a true emergency. However, the amended purchasing by-law and related procedure state that emergency purchases are at

¹⁴ "Universal Public Procurement Certification Council," online: <<http://www.uppcc.org/>>.

¹⁵ Examples of items excluded from a competitive procurement process under Schedule D of the by-law include contracts with a public body or non-profit organization, services provided by certain licensed professionals, entertainment or artistic services, subscriptions to newspapers or magazines, training or educational workshops and real property. *Purchasing By-law*, supra note 8 at Schedule D.

¹⁶ *Purchasing By-law*, supra note 8 at s. 11.11.3.

the “sole discretion of the Chief Administrative Officer or Department Head.”¹⁷ Accordingly, purchasing staff are obligated to issue the purchase order as long as it has been signed by the department head or CAO.

- 35 The by-law requires that the Director of Purchasing approve any procurement that would otherwise not comply with the by-law’s provisions. For procurements under \$100,000, the requisitioning department head must provide approval as well. The approval of the CAO is further required for procurements over \$100,000.¹⁸ Essentially, this is what is known as an “administrative cure,” allowing the city to process payment for a procurement that is otherwise non-compliant with the purchasing by-law and/or the city’s policies and procedures.

Council’s involvement

Where it is known before commencement that a procurement may or will not comply with the by-law, council’s approval is required before the procurement can commence. In some cases, council must first be provided with a legal opinion that includes a risk assessment and addresses the application of relevant trade treaties.¹⁹ The by-law also requires that various procurement-related information be reported to council on a quarterly basis. Each quarter, the Director of Purchasing is required to provide council with a summary of purchasing activities, including certain high-value contracts, non-compliant and emergency procurements, as well as any disposal of surplus goods and equipment.²⁰

Procurement complaints and disputes resolution committee

- 36 The purchasing by-law includes a complaints and disputes resolution process, which is outlined in the city’s Procurement Complaints and Disputes Resolution Policy.²¹ The final stage of complaints and disputes resolution process is for the complaint to proceed to the Procurement Complaints and Disputes Resolution Committee. We were informed that this committee has never met, because there have been no complaints since the policy was put in place in December 2014.

¹⁷ *Purchasing By-law*, supra note 8 at s.11.11.2.

¹⁸ *Purchasing By-law*, supra note 8 at s.3.4.3.

¹⁹ *Purchasing By-law*, supra note 8 at s. 3.4.4.

²⁰ *Purchasing By-law*, supra note 8 at s. 14.

²¹ *Purchasing By-law*, supra note 8 at s. 3.7.

Volume of competitive and non-competitive procurements

- 37 A small proportion of procurements in Brampton are non-competitive. According to materials produced by the city, approximately 90% of procurements conducted between October 2013 and November 2014 followed a competitive process – representing a total value of \$273 million. Approximately 10% – \$29 million – were done on a non-competitive basis. Of the 10% that were conducted non-competitively, 92% came within the exclusions in Schedules B, C, or D of the purchasing by-law, 2% were emergency procurements, and 6% did not follow a competitive process in accordance with the by-law. Some of these were instead approved under the provision of the by-law that allows the city to “administratively cure” procurements that would otherwise not comply with the by-law.
- 38 Those we spoke with at the city did not express concern that 10% of Brampton’s procurements were conducted using a non-competitive process. As one purchasing supervisor said, it is important to put the \$29 million in the context of all city spending. When asked about the 6% of non-competitive procurements (\$1.8 million) that did not follow a competitive process in accordance with the purchasing by-law, a senior city official told our Office that two procurements in 2013 accounted for \$1.2 million of this amount. Both were identified as issues during the city’s internal audit process.

Room for Improvement: Evidence for Best Practices

- 39 Our investigation exhaustively reviewed Brampton’s non-competitive procurement practices, focusing on the administration of its purchasing by-laws, policies and procedures regarding non-competitive procurements. We found evidence of two past procurements where competitive processes were not conducted in compliance with the purchasing by-law, but they had already been identified by the city’s internal audit division. Other than these historical examples, **our Office found no evidence of maladministration in the city’s purchasing by-laws, policies or procedures, in the documents we reviewed, or in any of our interviews with staff.**
- 40 Rather, our investigation determined that non-competitive procurements in Brampton were generally conducted in accordance with the purchasing by-law. Only a small percentage of the city’s procurements were conducted non-competitively, and an even smaller percentage did not follow a competitive process in accordance with the by-law. The city has subsequently taken numerous steps to strengthen its procurement practices to help ensure that future procurements are conducted in a fair, accountable, and transparent manner.

- 41 When our Office asked city staff for examples of problematic procurements, those we interviewed were typically only able to identify the two past examples already addressed by the city. (These two matters, both from 2013, are further detailed in paragraphs 78 and 83 of this report.) In general, they said that the purchasing by-law contains adequate controls and enforcement mechanisms, and that staff comply with the by-law's provisions. A staff member in the purchasing division said she does not think city staff try to circumvent the procurement rules: "I think they know it's not going to get too far." Another senior staff member's view was that "our folks follow the by-law pretty rigorously." Our investigation supports this assessment.
- 42 However, our investigation did enable us to identify ways in which the city's purchasing practices can be improved. Along with a few specific, immediate suggestions, we have proposed several best practices, which are directed at improving the city's purchasing and internal oversight functions.²² I hope these will be carefully reviewed and used to improve Brampton's existing processes. They reflect the principles of openness, accountability, and transparency, which are each necessary to maintain the public's confidence in the city's non-competitive procurement process.

Purchasing division

- 43 Brampton's purchasing division plays a vital role in conducting competitive procurements in accordance with the city's purchasing by-law. The division also has an oversight role for certain non-competitive procurements. Although we did not find any practices within the division that require our Office to make recommendations under the *Ombudsman Act*, we have identified ways in which the division's practices can be improved.

Revised purchasing by-law

- 44 During interviews with our Office, city staff generally did not express concern about the adequacy of the procurement by-law, but some said it provided too little flexibility and unnecessarily prolonged the procurement process. The CAO told us he recognized procurement as an area in need of review and improvement, and part of that process might involve revising the purchasing by-law to provide greater flexibility. I recognize the benefits of greater efficiency in the procurement process, however, as a best practice, **the city should ensure any revision to the purchasing by-law adequately balances the need for controls and enforcement mechanisms with the desire for flexibility.**

²² A full list of the best practices proposed in this report can be found at page 28.

Training on the purchasing by-law and related policies

- 45 Some of those we interviewed felt the purchasing by-law was not “user-friendly” and that staff outside the purchasing division would benefit from additional training on its policies and procedures. Training on the purchasing by-law is not mandatory, and there is no step-by-step overview of the entire purchasing process to serve as a quick reference guide.
- 46 When the new by-law was introduced in 2015, the purchasing division offered five training sessions to walk certain employees through the informal and formal procurement processes. However, there are no ongoing training opportunities for staff. One employee we interviewed in the purchasing division suggested that the division hold regularly scheduled by-law training sessions.
- 47 This suggestion has merit. **The City of Brampton should consider offering additional training sessions and easy-to-use reference materials to facilitate understanding of and compliance with the purchasing by-law and related policies.** Adequate training and support is vital to ensuring that staff have the knowledge necessary to act in accordance with the purchasing by-law. The city could consider providing this training through a web-based platform.

Delay and workload issues

- 48 Although our Office’s investigation was limited to reviewing non-competitive procurements, many of those we spoke with expressed frustration with the length of time involved in the competitive procurement process. Different groups of city staff identified different reasons for this delay.
- 49 Those in the corporate services department, which houses the purchasing division, indicated that a significant reason for delay is that requisitioning departments do not provide accurate bid information to the purchasing division. As a result, purchasing staff must spend time reviewing and correcting errors and inconsistencies. For example, purchasing staff told our Office that departments have submitted documents that use inconsistent terminology (e.g., “vendor” rather than “seller”) or use old purchasing forms rather than the most up-to-date versions. Our investigation found that concerns about the quality of bid information submitted by departments have been raised for at least the past five years.
- 50 The city has undertaken various initiatives to address these concerns. In 2014, the purchasing division added a new step to the procurement process – an initial planning meeting between the requisitioning department and the purchasing agent. The purpose of this meeting is to clarify roles and responsibilities and to

discuss the procurement. The purchasing division has also taken proactive steps to ensure departments know where to find up-to-date purchasing documentation and forms on the internal website portal.

- 51 In contrast, workers in departments that conduct a large volume of procurements said the delay is primarily caused by purchasing staff, who they feel focus too closely on minor issues in procurement documents. Some also said the purchasing division generally takes a long time to complete each step in the procurement process and that a lot of “back and forth” is required. It is possible that some of this backlog is due to the purchasing division’s practice of having one specified individual authorize certain types of purchase orders.

Initiatives to improve the procurement process

- 52 The city has already undertaken several initiatives to improve issues identified in the procurement process.

Additional staff resources

- 53 Although there were different explanations for procurement delay, those we interviewed generally agreed that the purchasing division needs more staff, given the volume of work it is asked to complete. Purchasing division employees told us they have heavy workloads and that staff turnover has occurred as a result of the large volume of projects that each purchasing buyer is assigned.
- 54 The CAO recognized that delayed procurements are an issue and told us that, as a result, Brampton is “not competitive with neighbouring municipalities.” He said he has heard concerns about the workload in the purchasing division and plans to devote additional resources to it.
- 55 The city has already established a new position – a Procurement Business Analyst – to review and update the existing purchasing manuals and to consolidate various policies and procedures into one document. This person’s duties also include reviewing, creating, and updating procurement policies and procedures on an ongoing basis. This initiative remains in progress and there is no fixed timeline for consolidating the purchasing manual.

Automation – electronic bidding, purchase order software

- 56 The purchasing division also plans to implement a fully electronic procurement process in early 2017. The new system will allow potential vendors to bid electronically on the city’s ongoing procurements with a dollar value greater than \$5,000, eliminating some of the present manual processes that slow the

purchasing division down. We were told the goals of the new process are automation and transparency. Staff expressed hope that it will improve workload issues and decrease delay in the purchasing division.

- 57 Staff also told us the city intends to upgrade the internal software used to create and process purchase orders. The existing system, which was implemented in 1999, contains functionalities that are not configured for use, such as the ability to roll over purchase orders from one fiscal year to the next. At present, purchasing staff must conduct this rollover process manually, which is time-consuming. The city is aware of issues related to this software; during an audit of the system, it identified opportunities to increase the division's efficiency by automating activities. Those we interviewed said improvements to this software were being pursued in conjunction with the new electronic bidding system.

Procurement process review

- 58 In early 2015, Brampton initially initiated a review of its procurement processes. We were told this review was prompted by a corporate reorganization, as well as complaints from various departments about the existing procurement process. In February 2016, Brampton's leadership team put the review on hold pending the completion of our investigation. In September 2016, the city again commenced a review of its procurement practices, and in December 2016, the review resulted in recommendations to improve the city's practices. The city said it is in the process of implementing these recommendations.

Fraud prevention hotline

- 59 In July 2016, Brampton launched a fraud prevention hotline that allows city employees to report allegations of fraud within the city anonymously. The hotline operates in tandem with the existing Corporate Fraud Prevention Policy. A report to the audit committee in December 2016 noted that the city has received and taken action on tips received through the hotline.²³ At present, the hotline is only available to staff and councillors. The city will conduct an in-depth review related to the hotline in 2017.

Documentation improvements

- 60 Brampton staff told our Office the city is updating and consolidating many of its manuals, policies and procedures, including the existing purchasing manual. We were also told that the city is creating a consolidated online library of standard

²³ Report to Audit Committee meeting, December 13, 2016, online: <https://www.brampton.ca/EN/City-Hall/meetings-agendas/Audit%20Committee/20161213au_Agenda.pdf>.

operating procedures. The goal of the online library is to make it easier for staff to find and access relevant procedures, as well as automatically notify departments when procedures require reviewing or updating.

- 61 Given the importance of timely and accurate procurements, I commend Brampton's proactive initiatives to improve the timeliness and efficiency of its procurement processes. Additional staff, the new e-bidding platform, the fraud hotline, planned improvements to the software for creating and processing purchase orders, and the completion of a comprehensive purchasing manual have the potential to relieve workload pressures in the purchasing division and ensure a timely, accountable, and transparent procurement process. **The City of Brampton should ensure that its initiatives to improve the procurement process remain a priority and that sufficient staff and monetary resources are allocated to each project. Specific timelines for their implementation should be developed and staff should be held accountable for meeting these deadlines.**

Internal audit division

- 62 Although the purchasing division plays the most direct role in monitoring and administering the procurement process, Brampton's internal audit division is also responsible for ensuring the accountability and transparency of the city's purchasing practices.

Function

- 63 The internal audit division is responsible for independently and objectively assessing various processes within Brampton. As noted in the city's Internal Audit Charter:

Internal Auditing is an independent and objective assurance and consulting activity that is guided by a philosophy of adding value to improve the operations of the City of Brampton. It assists the City in accomplishing its objectives by bringing a systematic and disciplined approach to evaluate and improve the effectiveness of the organization's governance, risk management and internal control.²⁴

- 64 The organizational independence of the internal audit function must be confirmed to the audit committee on an annual basis.²⁵ In addition, every five years the

²⁴ City of Brampton, June 3, 2015 Internal Audit Charter Update, online:

<https://www.brampton.ca/EN/City-Hall/meetings-agendas/Audit%20Committee/20150603au_E1.pdf>

²⁵ *Ibid* at 2.

division's independence is assessed by an external, independent assessor. We were told that this assessment last occurred in 2011 and that the division was due for another external assessment in 2016.

- 65 The division's work is also governed by the Internal Audit Procedures Manual, which sets out specific procedures that the division must follow in carrying out its work. The procedures manual further requires that the division's work conform with international standards, guidelines, and procedures.
- 66 Each year, the internal audit division develops an audit work plan, setting out which city processes it intends to review in the coming year. The division's procedures manual states:
- The work plan is developed by taking into consideration a comprehensive risk assessment performed by Internal Audit, last time area/process was audited, and special requests from departments and Council. Several risk factors are considered as part of the risk assessment such as: financial, reputational, operational and technology risks.
- 67 Feedback on the work plan is sought from the CAO and senior management prior to being presented to the audit committee. Audits are ranked in terms of priority and mapped against available resources.
- 68 After conducting an audit, the division writes an audit report that documents the audit's findings and usually makes recommendations to improve the city's practices. The audit reports are reviewed by a committee of council – the audit committee – before being submitted for consideration by council as a whole.

Structure

- 69 The internal audit division is headed by the Director of Internal Audit. The Director communicates to council through the audit committee regarding the results of each audit and the audited department's progress in implementing recommendations.
- 70 Under Brampton's new organizational structure, the internal audit division reports administratively to the CAO and functionally to council for the City of Brampton through the audit committee. This structure is common in municipalities throughout Ontario. The division's procedures manual requires the Director of Internal Audit to provide a copy of all audit reports to the CAO through department heads (known in Brampton as "commissioners"). The commissioners have three weeks to get back to the division with action plans to address each recommendation in the report. The action plan must indicate who will be

responsible for implementing the recommendation and the expected completion date. If management disagrees with the internal audit division's findings, a reason or revision must be provided.

71 The existence of a reporting relationship between the internal audit division and the CAO raises the possibility of management interference, through the CAO, in the division's functions. Our investigation found one instance where a now-former city official disagreed with the findings of an audit report and asked that it not be submitted to the audit committee for consideration. Ultimately, the audit report was brought forward to council as whole, rather than to the audit committee. Although this situation was an exception to Brampton's standard practice, it clearly demonstrated the way in which management, through the CAO, could interfere in what is intended to be an independent audit process.

72 In their interviews with us, some internal audit staff expressed concerns about the division's independence from city management. Brampton's current CAO is aware of this potential conflict and told us:

In my new world, I will not review audit reports before they go to audit committee because otherwise it's not independent...and as CAO, I'm not going to get engaged in a lot of those reports, other than making sure there is full co-operation for the audit...

73 While I commend the CAO for recognizing the need for an independent audit process, the CAO should play an important role in reviewing audit reports before they go to the audit committee. For instance, the CAO needs to review all audit reports in order to formulate immediate action plans to address the report's recommendations.

74 I am encouraged by the CAO's support for an independent internal audit function and suggest the city consider developing mechanisms for reducing or eliminating the possibility of management interference in the internal audit division's work. Specifically, **Brampton should review its policies and procedures to ensure that the reporting relationship between the division and the CAO does not undermine the division's independence.**

Audit reports related to procurement processes

75 Our Office reviewed several audit reports prepared by the city's internal audit division from January 2014 to the present. Three of these reports, which referred to events in 2013, identified weaknesses in Brampton's procurement processes and made recommendations to address these concerns.

Employee purchasing card audit – 2013-2014

- 76 The employee purchasing card audit reviewed the adequacy and effectiveness of internal controls, processes, and compliance with Brampton’s purchasing card policy between January 2013 and February 2014. It was presented to council in April 2015. Due to a disagreement between now-former senior city officials, the report was not tabled with the audit committee prior to being presented to council.
- 77 The report found that, generally, adequate controls were in place regarding purchasing cards. However, the audit identified some problems within the policy, as well non-compliance in monitoring and enforcement. Internal audit staff made seven main recommendations, all of which were accepted by management. Management advised the audit committee that all of the recommendations from the audit had been implemented, primarily through updates to the purchasing card policy and procedures that became effective on June 1, 2015.

Purchasing process audit – 2013-2014

- 78 The purchasing process audit reviewed the adequacy and effectiveness of internal controls, as well as compliance with policies and procedures, within the purchasing process from October 2013 to November 2014. It was presented to the audit committee in September 2015.
- 79 The report found that there were generally adequate controls in place within the purchasing process, although the audit did note one procurement from 2013 where the city did not conduct a competitive process in compliance with the purchasing by-law. Internal audit staff found that the consultant who conducted the procurement on behalf of the city followed the incorrect competitive process and that there was inadequate rationale to support this non-compliance. In accordance with the purchasing by-law in place at the time, the non-compliant procurement was approved by the then department head, Treasurer, and the then City Manager. Changes to the city’s purchasing by-law were made in 2015, requiring council to approve this type of non-compliant procurement before it could proceed. Since then, the by-law has been amended again to require that the Director of Purchasing and department head, and for larger purchases the CAO as well, approve otherwise non-compliant procurements. The city told us that the Director of Purchasing’s role provides the higher credibility needed to give council assurance that purchasing is being managed in a responsible manner and provides greater transparency as all purchasing disclosures will now occur through one division.

80 The publicly available report made five recommendations to improve the purchasing division's processes, all of which were accepted and implemented by city management. These recommendations were to:

1. Establish a cross functional team to review the bidding and purchasing process, to identify opportunities for efficiency such as automating activities using PeopleSoft [software for creating and processing purchase orders] or alternative software;
2. Develop a training program that is ongoing/available to staff, and that the policies and procedures are available on the City portal (Our Brampton) Knowledge Centre;
3. Enhance the quarterly reporting process, including optimizing PeopleSoft functionality to improve efficiency, ensuring accuracy and consistency;
4. Review the justification and supporting documentation for the rationale to conduct a procurement through a non-competitive process to ensure it is reasonable; and
5. Enhance the vendor management process related to vendor performance and vendor master file maintenance.²⁶

81 The audit committee considered a different version of the report, containing additional observations and recommendations, in closed session. Some were repeated from a similar purchasing process audit report from 2011.

82 A further audit regarding Brampton's purchasing practices was initially included on the internal audit division's 2016 work plan. However, it was indefinitely deferred because of concerns that it would conflict with our Office's investigation. **As appropriate, the city should reschedule this audit in a timely manner.**

Draft audit of former city official – 2012-2016

83 In 2015 and 2016, the internal audit division conducted a compliance review of activities related to a former senior city official. The audit examined operating expenses, purchasing, and human resource issues from October 2012 to March 2015. Regarding procurement, it examined one notable procurement where the city did not conduct a competitive process in compliance with the purchasing by-law. The draft audit report was presented to council during a closed meeting in

²⁶ "Purchasing Process Audit Report," City of Brampton (21 August 2015), online: <http://www.brampton.ca/EN/City-Hall/meetings-agendas/Audit%20Committee/20150916au_Full%20Agenda.pdf >.

July 2016. Council provided no direction regarding how the audit findings were to be addressed.

Effectiveness of oversight

- 84 The deficiencies identified in the three procurement-related audit reports parallel the findings and recommendations that our Office would have otherwise made to the city about its procurement practices. However, the role of the Ombudsman is not to duplicate the work of other oversight mechanisms. Accordingly, we have opted not to repeat the findings from these audits, but rather to propose best practices to help the city improve its own internal oversight functions. Enhancing the effectiveness of internal oversight will help ensure the effectiveness, accountability, and transparency of Brampton's procurement practices now and into the future.

Understanding the division's role

- 85 Some city staff members we interviewed expressed conflicting views or confusion about the role, function, and importance of the internal audit division. Given the division's vital role and the importance of strong working relationships between auditors and department staff, **the city should consider developing educational and training materials regarding the role and responsibilities of the internal audit division, as well as the steps in the audit process.**
- 86 In addition, the internal audit division is largely invisible to the public. Despite being one of the city's primary accountability mechanisms, it is not listed on its website under "Accountability & Transparency," and other portions of the site do not provide a description of the division's roles and responsibilities.²⁷ **Brampton should consider adding information about the internal audit division, as well as links to its audit reports, to the "Accountability & Transparency" portion of its website.**

Structure and content of reports

- 87 The internal audit division's procedures manual sets out a detailed process for documenting the factual foundation for audit findings and sharing that information with the audited department. However, city staff expressed frustration to us about the content of the division's reports. This frustration came both from staff members in the departments being audited, and from auditors within the division. We heard complaints that in the past, the division's reports made findings and

²⁷ "Accountability & Transparency," City of Brampton, online: <<http://www.brampton.ca/en/city-hall/pages/accountability-and-transparency.aspx>>.

recommendations without providing sufficient, detailed evidence to support them. Some staff told our Office that supporting documentation was not provided even when requested. For many, this approach undermined the persuasive value of the audit reports and made it impossible for departments to correct any errors or misunderstandings that may have occurred during the audit process. Some complained that in the past, internal audit staff had a “gotcha” attitude that was not conducive to improving the city’s processes and procedures.

- 88 We were told the division is taking steps to address concerns about the content of audit reports, and we repeatedly heard that the working relationship between the division and the rest of the organization has begun to improve. One city employee said the relationship between city departments and the internal audit division had changed from a “gotcha” approach to “we want to help you identify areas of risk and then come up with reasonable ways of addressing it.”
- 89 To continue fostering this improved relationship and to allow for informed feedback and decision-making among management, **the internal audit division should ensure that its reports and the evidence relied on to support each conclusion are shared with the audited department in a fair and transparent way.** The internal audit procedures manual sets out an information-sharing process, but our investigation identified concerns about the amount of information shared with audited departments. **The division may also wish to re-examine the process for sharing evidence with audited departments.** Improving this process will help audited departments understand the rationale for audit findings and recommendations, leading to more fulsome improvements to city processes and procedures.
- 90 We were also told the division included some findings assessed as “low risk” in a “minor issues memo,” rather than a formal audit report. The internal audit procedures manual provides the following rationale for minor issues memos:
- There may be times during fieldwork of an audit where an observation is identified, but as it carries a low risk it is not included in the draft audit report. The minor issues memo is used to communicate these additional lower risk observations that are not included in the draft audit report, but which the auditor has determined are important to report to the Client. The observations outlined in the minor issues memo do not require Management Action Plans.
- 91 The minor issues memo, unlike the audit report, is a private document distributed exclusively to Brampton management. While there may be issues that auditors wish to raise outside the strict confines of a formal audit report, **the city should ensure that minor issues memos are not used to circumvent the accountability and transparency that accompanies the standard reporting**

process. The internal audit division should consider providing the audit committee with yearly summaries of the information contained in its minor issues memos.

Ensuring implementation of recommendations

- 92 Our investigation identified concerns with the process used to assess and track whether the recommendations made by the internal audit division have been successfully implemented.
- 93 The internal audit procedures manual contains a process for following up on audit recommendations. “Management action plans” are created to ensure that the audited department addresses the issues identified in audit reports. Departments are required to provide the internal audit division with a quarterly update on the progress of realizing the agreed-upon recommendations. Auditors review the information provided by the departments and can meet with department heads if further discussion is required. When the auditor is satisfied that the recommendation has been carried out, this information is recorded and the department is no longer asked to provide quarterly updates. The Director of Internal Audit must submit a quarterly report to the CAO and audit committee on “all outstanding recommendations.”
- 94 In rare cases, the internal audit division may perform a follow-up audit to confirm that its recommendations have been implemented and that the department’s processes and procedures are operating effectively. However, this type of follow-up audit has not been standard practice.
- 95 We noted that findings from a 2015 purchasing process audit report repeated some observations from an earlier audit in 2011. When asked about this, internal audit staff told us there was a “huge, huge gap” in “managing the whole action plan process.” Despite the process contained in the procedures manual, one staff member said there was no formal structure for recording who was responsible for implementing recommendations or how they intended to do so. This meant that during subsequent audits, the auditors were unable to determine who addressed an earlier observation or how; there was no one to ask and no records to consult. The staff member felt this resulted in a twofold problem: First, management has no reason to address a recommendation in an audit report if no one will be following up; second, management can say it has implemented recommendations without doing so, since the internal audit division never asks for proof.
- 96 While the existing follow-up process provides some mechanism for ensuring the implementation of audit recommendations, it has obvious shortcomings. Most concerning, audit staff rely on unverified information provided by others to

determine if a recommendation has been carried out. There are no provisions in the internal audit procedure manual that require staff to verify the information received from audited departments. Improvements to the city's procurement practices cannot be fostered by internal audit reports unless departments are accountable for implementing recommendations in a timely and fulsome manner.

- 97 **Accordingly, the internal audit division should consider creating an effective, objective process for conducting follow-up audits.** This would allow auditors to independently verify whether or not a report's recommendations have been put into practice. **The follow-up audit process should have defined responsibilities, timelines, documentation requirements, and assessment procedures. The results should be reported back to the audit committee, and ultimately, to council.**
- 98 **Brampton should also consider leveraging the resources and expertise of the service innovation and corporate performance team to implement audit recommendations that would improve the efficiency, effectiveness, and quality of the city's practices.** The service innovation and corporate performance team, formerly known as the management advisory services unit, consults with departments throughout the city to identify business processes in need of improvement. Essentially, the team is a corporate resource intended to benefit the operating departments of the city, but at present, it does not play a formal role in helping operating departments put audit recommendations into practice.
- 99 A formal relationship between the internal audit division and the service innovation and corporate performance team may allow for better information sharing and eliminate some duplication of resources, since both have a mandate to drive or improve corporate performance. **The city should consider establishing such a relationship, as a best practice.**

Audit committee

- 100 Beyond identifying potential process improvements within the internal audit division, my investigation also determined that aspects of the audit committee process could be strengthened.

Committee function and structure

- 101 Brampton's audit committee oversees the functions of the internal audit division and communicates the division's findings to Brampton city council. As noted on the city's website, the audit committee provides a focal point for improved communication between council, the internal and statutory auditors, and

management. It is also intended to strengthen the city's impartial, objective, and independent review of management practices.²⁸

- 102** The audit committee's terms of reference set out its responsibilities and provide that "the objective of the Audit Committee is to further enhance Council's understanding of financial and control reporting both internally (as provided by the City's Internal audit division) and statutorily (as provided by the City's Auditors)."²⁹
- 103** The committee consists of five members of council and meets on a quarterly basis unless a special meeting is convened. The councillors appointed to the committee do not have any specialized training or expertise in auditing, and there are no specific processes or procedures in place to direct how the audit committee functions.
- 104** In addition to reviewing various audits before they are sent for council's consideration, the audit committee approves the internal audit division's audit work plan, which sets out the audits it intends to conduct over the coming year. However, the committee is not responsible for setting the division's budget or the compensation of its director.
- 105** The audit committee also plays no role in evaluating the effectiveness of the internal audit division. Instead, auditors send an "Audit Effectiveness" survey after the completion of an audit.³⁰ The internal audit procedures manual describes the survey as "a tool used to identify areas where improvements in processes can be made to provide better audit and consulting services to the City of Brampton."

Concerns about committee practices

- 106** Our investigation determined that, in general, the audit committee fulfills its role of acting as a conduit between the internal audit division and council. However, we identified some concerns regarding the committee's composition and structure. These include:

²⁸ "Audit Committee," City of Brampton, online <<http://www.brampton.ca/EN/City-Hall/Council-Committees/Pages/Audit-Committee.aspx>>.

²⁹ "Internal Audit Charter and Audit Committee Terms of Reference," Audit Committee Report (February 11, 2011), City of Brampton, online: <http://www.brampton.ca/en/City-Hall/meetings-agendas/Audit%20SubCommittee%202010/20110309au_E1.pdf>.

³⁰ "Results of the Audit Effectiveness Survey," Audit Committee Report (January 27, 2016), City of Brampton, online: <http://www.brampton.ca/EN/City-Hall/meetings-agendas/Audit%20Committee/20160223au_Agenda.pdf>

- **Skillset of committee members:** There are no specific qualifications required of councillors on the audit committee. Some city staff said that this lack of specialized knowledge means that the committee only acts “like a rubber stamp” on audit reports before they go to council. We were told that the audit committee relies heavily on the internal audit division to explain audit processes and results.
- **Composition:** All of the committee members are also members of council, and some city staff indicated that this can politicize the audit process. Some also felt that this negated the independence and objectivity of the committee members, and that it would be useful to also have qualified, independent members of the public on the committee. The current chair of the audit committee told us he has considered including one or more public members on the committee. This practice has already been adopted by other municipalities in Ontario, including the City of London, the City of Waterloo, and the City of Burlington.³¹

107 We identified additional concerns about the relationship between the audit committee and the internal audit division. The committee has no direct role in establishing the budget of the division and does not evaluate its effectiveness. Rather, the current budget process provides for all members of council to approve the city’s budget, with the internal audit division budget request separated from the CAO office budget for greater transparency. In addition, internal audit staff told our Office that the division must obtain the committee’s approval for each of its annual audit work plans, although the audit committee’s terms of reference simply state that the committee “reviews and receives” work plans. This approval practice could be seen as compromising the independence of the internal audit division.

Rethinking the audit function

108 While the structure and practices of Brampton’s audit committee largely mirror those of other Ontario municipalities, the city’s ongoing reorganization represents a unique opportunity to rethink the structure of the city’s audit function and to enhance its effectiveness, independence, and impartiality.

³¹ “Audit Committee,” City of London, online: <<https://www.london.ca/city-hall/committees/task-forces/Pages/Audit-Committee.aspx>>; “Terms of Reference,” City of Waterloo, online: <http://www.waterloo.ca/en/contentresources/resources/government/audit_committee_terms_reference.pdf>; “Audit Committee,” City of Burlington, online: <<https://www.burlington.ca/en/your-city/audit-committee.asp>>.

Audit committee training and composition

- 109 The audit committee is responsible for overseeing the work of auditors. The committee's terms of reference set out its responsibilities and the city also has an audit committee overview manual that is shared with the committee. The manual provides information on the roles, objectives and responsibilities of the audit committee, internal and external audits, and how the internal audit activity is performed at the city. However, **developing operational policies and procedures regarding the committee's functions would help further ensure it has the information necessary to carry out its mandated role.** These policies and procedures could also be posted on Brampton's website to improve the public's understanding of the role of the audit committee.
- 110 **The city should also consider recruiting and appointing qualified, independent members of the public to serve alongside council members on the audit committee.** This would help ensure that the committee has both the expertise and independence necessary to carry out its oversight function. The audit committee chair told our Office he is considering this possibility, and I urge the city to carefully consider the benefits of making this change. The city may wish to contact other municipalities, including London, Waterloo, and Burlington, that have already adopted this practice. **More generally, the city should consider developing selection criteria for all audit committee members to ensure that, where possible, each person appointed to the committee has some expertise in finance or audit procedures.**

Appointing an auditor general

- 111 **The City of Brampton should consider, as a best practice, appointing a permanent, independent auditor general to provide external oversight of the city, including its procurement practices.**
- 112 Under the *Municipal Act, 2001*, municipalities can appoint an auditor general who:
- [R]eports to council and is responsible for assisting the council in holding itself and its administrators accountable for the quality of stewardship over public funds and for achievement of value for money in municipal operations.³²
- 113 The Act grants an appointed auditor general various powers, privileges, and immunities, such as the right to access information within the municipality and to

³² *Municipal Act, 2001*, supra note 7 at s 223.19(1).

examine individuals under oath. Although auditors general can be employees of the municipality, the Act requires that they perform their responsibilities in an independent manner.³³

- 114 The City of Toronto is the only municipality required to appoint an Auditor General, although other municipalities – Ottawa, Markham, and Greater Sudbury – have done so voluntarily.³⁴ With the exception of Toronto, which is an anomaly due to its size, municipalities that appointed an auditor general eliminated their internal audit function.
- 115 Although there are similarities between the internal audit division and the function of an auditor general, there are also important differences. Auditors general report directly to council or a committee of council, ensuring their independence from municipal management. In contrast, the internal audit division functionally reports to council while administratively reporting to senior administration. In addition, an auditor general’s budget is approved directly by council, sometimes as an automatic percentage of the total municipal budget. In contrast, the budget for other divisions, including internal audit, goes through a different administrative process.
- 116 The most fundamental difference, however, is the statutorily prescribed independence of an auditor general. This lends credibility to his or her findings and helps strengthen the public’s confidence that the municipality is acting in a transparent and accountable manner. The auditor general’s independence also resolves issues inherent to the relationship between city management, the audit committee, and the internal audit division. In Brampton, these issues include setting the division’s budget, evaluating its performance, and approving its yearly audit work plan; with an independent auditor general, these potential conflicts would be eliminated.
- 117 The City of Brampton’s recent past is filled with controversy, leading some members of the public, as well as members of council, to lose trust in the city. Establishing an independent, permanent auditor general would help re-establish the public’s confidence in the city and ensure that the public trusts the city to act fairly, accountably, and transparently.
- 118 I urge the City of Brampton to consider this best practice, as well as the others contained in this report, during its present reorganization and transformation. Ensuring fairness, transparency and accountability in the procurement process is essential for maintaining public confidence. The audit function – whether undertaken by an auditor general or the internal audit division – plays a pivotal

³³ *Ibid* at 223.19(1.1).

³⁴ *City of Toronto Act, 2006*, S.O. 2006 c. 11 schedule A at s. 177(1).

role in achieving these ideals. Wherever possible, the purchasing process and the oversight function should be optimized to promote fairness, openness, and accountability in the municipality.

Conclusion

- 119 My investigation into the City of Brampton’s non-competitive procurement practices has not identified any maladministration that would warrant a formal report and recommendations under section 21 of the *Ombudsman Act*, such as conduct that is contrary to law, unreasonable, unjust, oppressive, improperly discriminatory or wrong; as this report explains, we did not find any such evidence.
- 120 However, I encourage Brampton to consider the best practices I have proposed, which I believe would enhance the transparency and accountability of the city’s procurement practices and encourage increased confidence in its administration.

Proposed Best Practices

- 121 In order to improve the City of Brampton’s procurement practices, I am making one specific suggestion and proposing that it adopt several best practices. Specifically, I am suggesting that the city reschedule its previously planned audit of purchasing processes.
- 122 The best practices I am proposing – and which I hope will also serve as a guide to other municipalities to improve the accountability and transparency of their procurement practices – are as follows:
- 1. The City of Brampton should ensure that any revision to its purchasing by-law adequately balances the need for controls and enforcement mechanisms with the desire for flexibility.**
 - 2. The City of Brampton should consider offering additional training sessions and reference materials to facilitate staff understanding of and compliance with the purchasing by-law and related policies.**
 - 3. The City of Brampton should ensure that its initiatives to improve the procurement process remain a priority and that sufficient staff and monetary resources are allocated to each project. Specific timelines for the implementation of each initiative should be developed and staff should be held accountable for meeting these deadlines.**

4. The City of Brampton should review its policies and procedures to ensure that the reporting relationship between the internal audit division and the CAO does not undermine the division's independence.
5. The City of Brampton should consider developing educational and training materials regarding the role and responsibilities of the internal audit division, as well as steps in the audit process.
6. The City of Brampton should consider adding information about the internal audit division, as well as links to its audit reports, to the "Accountability & Transparency" portion of its website.
7. The City of Brampton's internal audit division should ensure that its reports and the evidence relied on to support each conclusion are shared with the audited department in a fair and transparent way. The city may also wish to re-examine the process used to share information between the internal audit division and the audited department.
8. The City of Brampton should ensure that minor issues memos are not used to circumvent the accountability and transparency that accompanies the standard audit reporting process. The internal audit division should consider providing the audit committee with yearly summaries of the information contained in its minor issues memos.
9. The City of Brampton's internal audit division should consider creating an effective, objective process for conducting follow-up audits to independently verify whether a report's recommendations have been implemented. The follow-up audit process should have defined responsibilities, timelines, documentation requirements, and assessment procedures. The results of this follow-up should be reported back to the audit committee, and ultimately, to council.
10. The City of Brampton should consider leveraging the resources and expertise of its service innovation and corporate performance team to implement audit recommendations that would improve the efficiency, effectiveness and quality of the city's practices.
11. The City of Brampton should consider establishing a formal relationship between the internal audit division and the service & corporate performance team to allow for better information sharing and eliminate some duplication of resources.

12. The City of Brampton should consider developing operational policies and procedures regarding the audit committee's functions to ensure the committee has information necessary to carry out its mandated role.
13. The City of Brampton should consider recruiting and appointing qualified, independent members of the public to serve alongside council members on the audit committee.
14. The City of Brampton should consider developing selection criteria for all audit committee members to ensure that, where possible, they have some expertise in finance or audit procedures.
15. The City of Brampton should consider appointing a permanent, independent Auditor General under section 223.19(1) of the *Municipal Act, 2001*.

Response

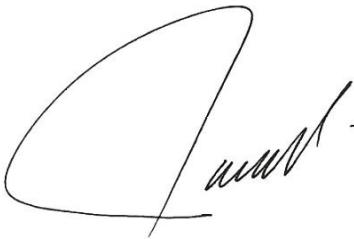
- 123 The city was provided with an update on this investigation and an opportunity to review and comment on our suggestions and best practices. The Chief Administrative Officer responded on behalf of the city and council on February 22, 2017, thanking my Office for the time and effort taken in conducting the investigation, and observing that overall the report was accurate and concise. The city's response was considered in preparing this report.
- 124 The CAO noted many of my suggestions were "in line with the changes that are being undertaken at the city." For example, in fall 2016, Brampton's service innovation and performance management staff commenced a review of procurement and provided recommendations for improvements. Work has begun on developing solutions to address those recommendations and modernize procurement, with a focus on improving processes, enhancing training for staff, updating technology, and utilizing business intelligence to achieve value for money. As well, the purchasing by-law will undergo a thorough review to ensure alignment with pending Canada European Trade Agreement legislation, and the city will take my report into account in this review.
- 125 In addition, Brampton has retained an external consultant who is a leader in the internal audit field to perform a quality assessment review of the internal audit division. Noted the CAO:

The anticipated output of these two reviews will be a road map to transform the division into a leader and innovator in the field of Internal

Audit, providing value-added services, encouraging more collaboration with departments, and leveraging the Corporate Performance and Innovation team. We feel that this will be an innovative approach for continuous improvement that other municipalities will want to follow.

As of 2017, the city has also stopped using minor issues memos (best practice 8) and adopted a methodology to ensure effective and objective follow-up of audit recommendations (best practice 9).

- 126 The CAO stressed that the ongoing “transformation” of Brampton’s internal audit division “towards a continuous improvement model and away from a strict policing/compliance model” will highlight the division’s independence, adding: “We feel strongly that this model will provide value, transparency and confidence to the residents of Brampton.”
- 127 I am encouraged by the city’s interest in ensuring the quality of the internal audit function as well as its commitment to consider my suggestions and best practices as it continues to review its procurement practices.



Paul Dubé
Ombudsman of Ontario

Appendix A: City of Brampton purchasing bylaw and policies

Procurement practices by value

Dollar Range of Purchase	Procurement method
<p>Purchases of up to \$5,000.00</p>	<p>Acquisitions within this range (excluding taxes) are exempt from the competitive procurement process.³⁵ Department Heads are authorized to make direct purchases.</p> <p>The Standard Operating Procedure for Direct Purchases up to \$5,000 specifies that departments are required to “conduct sufficient research to ensure they have obtained good value at a competitive price.” When the value of the purchase is \$1,000 or greater, departments should maintain evidence of this research for 36 months for audit purposes.</p>
<p>Purchases of \$5,000.01 to \$49,999.99</p>	<p>Purchases within this range follow a competitive process called “Informal Invitational Procurement.”³⁶ This process requires soliciting bids from at least three vendors who are known to provide the goods, services, or construction. However, the procurement does not need to be publicly advertised.</p> <p>Under the by-law, either the purchasing agent or the requisitioning department may administer the procurement process, but both must approve the acceptance of the bid.</p> <p>Further, where the purchase is for consulting services or a “non-standard result” has occurred,³⁷ the Treasurer must also approve acceptance of the bid.</p>
<p>Purchases of \$50,000.00 to \$99,999.99</p>	<p>Purchases within this range are administered by the purchasing division and are subject to a Formal</p>

³⁵ *Purchasing By-law*, supra note 8 at s. 11.4.

³⁶ *Purchasing By-law*, supra note 8 at s. 11.5.

³⁷ The purchasing by-law defines a “Non-Standard Result” as a result in a procurement in which bids are submitted and any of the following has occurred or is likely to occur: 1) No eligible bids are received; 2) Less than three eligible bids are received; 3) Another procurement process would have resulted in successful completion of the procurement in the determination of the Purchasing Agent based on bid results; or 4) Award of a contract to other than the lowest eligible bid received. *Purchasing By-law*, supra note 8 at s 2.27.

	<p>Invitational Procurement process.³⁸ While these procurements do not need to be publicly advertised, at least three vendors known to provide the required goods, services, or construction are requested to submit written sealed bids.</p> <p>The purchasing agent and a representative from the requisitioning department will open the sealed bids. Bids are evaluated according to the evaluation methodology set out in the procurement document.</p> <p>As with purchases from \$5,000.01 to \$49,999.99, approval is required from both the purchasing agent and the requisitioning department head. In addition, Treasurer approval is required where the purchase is for consulting services or a “non-standard result” has occurred.</p>
<p>Purchases of \$100,000.00 and greater</p>	<p>Procurements (including Requests for Proposals) for goods, services and construction within this range are administered by the purchasing division and must follow a Formal Open Procurement process.³⁹</p> <p>Advertising is required for a minimum of 15 calendar days prior to the specified closing date and time. Bids are submitted sealed and may be opened in public by the bid opening committee. Bids are evaluated in accordance with the evaluation methodology set out in the procurement document. Approvals are required from the purchasing agent, the requisitioning department head(s), and the Treasurer.</p> <p>Under the amended by-law, approval from the Chief Administrative Officer is also required if the bid is for consulting services, a non-standard result has occurred, or the bid exceeds \$1 million.</p> <p>Further, city council’s authorization is required prior to the commencement of a procurement process with an estimated value of \$1,000,000 or greater and for procurements less than \$1,000,000 deemed to be of interest such as procurements that involve significant risk, security concerns or significant community interest.⁴⁰</p>

³⁸ *Purchasing By-law*, supra note 8 at s. 11.6.

³⁹ *Purchasing By-law*, supra note 8 at s. 11.7.

⁴⁰ *Purchasing By-law*, supra note 8 at s. 4.0.