

Chapter 3

Section 3.07

Ministry of Transportation— Road Infrastructure Construction Contract Awarding and Oversight

Standing Committee on Public Accounts Follow-Up on Section
3.10, 2016 Annual Report

In May 2017, the Standing Committee on Public Accounts (Committee) held a public hearing on our 2016 audit of Road Infrastructure Construction Contract Awarding and Oversight. The Committee tabled a report in the Legislature resulting from this hearing in December 2017. The report can be found at www.auditor.on.ca/en/content/standingcommittee/standingcommittee.html.

The Committee made 11 recommendations and asked the Ministry of Transportation (Ministry) to provide it with written responses to its recommendations by the end of April 2018, unless otherwise specified. The Ministry formally responded to the Committee on February 12, 2018, on some of the recommendations and committed to provide further responses as the information becomes available. In January 2018, our Office asked the Ministry to provide an update on the status of actions taken to address the Committee's recommendations. Many issues raised by the Committee were similar to the audit observations in our 2016 audit, which we have also followed up on this year (see **Chapter 1, Section 1.10**). The updated status of the Committee's recommendations is shown in **Figure 1**.

We conducted assurance work between April 1, 2018, and August 14, 2018, and obtained written representation from the Ministry of Transportation that, effective October 31, 2018, it had provided us with a complete update of the status of the recommendations made by the Committee.

Overall Conclusion

As of August 14, 2018, 59% of the Committee's recommendations had been fully implemented and about 41% of the recommendations were in the process of being implemented.

Overall, the Ministry had improved its processes over the collection of asphalt samples to prevent the risk of sample switching; implemented a new acceptance review process on its construction contracts to verify key construction activities are performed to the appropriate standards; and completed training its staff on its new pavement warranty guidelines.

Figure 1: Summary Status of Actions Recommended in December 2017 Committee Report

Prepared by the Office of the Auditor General of Ontario

	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	2		2			
Recommendation 2	1		1			
Recommendation 3	1		1			
Recommendation 4	1	1				
Recommendation 5	3	3				
Recommendation 6	2	1	1			
Recommendation 7	2	2				
Recommendation 8	1	1				
Recommendation 9	2	2				
Recommendation 10	1		1			
Recommendation 11	1		1			
Total	17	10	7	0	0	0
%	100	59	41	0	0	0

However, it had not yet completed its review of administrative and contracting practices for future contracts for highway infrastructure procurement, fully updated policies and guidelines for fraud awareness and reporting, or implemented the new contractor performance rating system to assess whether a contractor should be prohibited from bidding on contracts due to performance issues.

Detailed Status of Recommendations

Figure 2 shows the recommendations and the status details that are based on responses from the Ministry, and our review of the information provided.

Figure 2: Committee Recommendations and Detailed Status of Actions Taken

Prepared by the Office of the Auditor General of Ontario

Committee Recommendation	Status Details
<p>Recommendation 1 The Ministry of Transportation provide the Committee, by February 13, 2018, with:</p> <ul style="list-style-type: none"> the final report of the Expert Panel; Status: In the process of being implemented by November 2018. the final report of the Expert Panel; Status: In the process of being implemented by November 2018. 	<p>In November 2017, the Ministry of Transportation (Ministry) assembled an independent expert panel to review and recommend administrative and contracting practices for inclusion in future contracts for highway infrastructure procurement. The panel comprised members with extensive experience in highway engineering, construction and contracting from across Canada, including British Columbia, Alberta, Saskatchewan, New Brunswick and Nova Scotia.</p> <p>The expert panel submitted its report with recommendations to the Ministry in May 2018. The Ministry sent the final report to the Committee on June 28, 2018. However, due to the election of a new government, the Committee had not yet been officially reconstituted and the report was not officially accepted. The Committee has since been reconstituted (in August 2018) and the Ministry expects to resubmit the report by November 2018.</p> <p>At the time of this follow-up, the Ministry had completed its review of the expert panel's report and recommendations. The Ministry had committed to report back to the Committee on the panel's report including the recommendations and their implementation status by November 2018.</p>
<p>Recommendation 2 The Ministry of Transportation provide the Committee, by February 13, 2018, with the results of the Ministry's review on how it develops policy, standards, and specifications related to construction contracts. Status: In the process of being implemented by December 2018.</p>	<p>The Ministry's review of how it develops policy, standards and specifications related to construction contracts was under way as of the time of our follow-up. The Ministry facilitated its first workshop in August 2017 with 27 technical stakeholders to obtain feedback from industry stakeholders, regulators and others regarding how the Ministry can improve the manner in which it consults with stakeholders and interested parties when developing policies and standards associated with highway construction projects.</p> <p>A second workshop was held on January 24, 2018, to present the Ministry's proposed approach to improving consultation and policy and standards development.</p> <p>The Ministry finalized the results of this review in August 2018 and planned to evaluate a number of the items arising from the review for implementation during the 2018 construction season, including:</p> <ul style="list-style-type: none"> creating a "one window" approach to provide a single point of contact for technical stakeholders; hosting annual stakeholder meetings; creating a protocol for the publishing of agendas and minutes from technical committee meetings; and developing a comprehensive website to provide a means to consult on technical policies and standards. <p>The Ministry anticipated reporting the results of this review to the Committee by the end of 2018.</p>

Committee Recommendation	Status Details
<p>Recommendation 3</p> <p>The Ministry of Transportation establish formal policies to guide contract administrators and supervisors who become aware of evidence of fraud. These policies should include directions on who must be notified and when, including notification of the police and other authorities.</p> <p>Status: In the process of being implemented by December 2018.</p>	<p>The Ministry created a new draft fraud policy in March 2018, which contains a guide for employees and management staff on fraud awareness, responsibilities and reporting. This policy has since been finalized and was communicated to Ministry staff in September 2018.</p> <p>In addition, the Ministry has documented and implemented processes to monitor, assess, report and take action on reports alleging construction fraud under its current fraud policies. The range of actions documented include reporting suspected fraud to the Ontario Internal Audit Division for assessment and investigation or reporting to the Forensic Investigations Team within the Ontario Internal Audit Division for assessment, investigation and, if applicable, referral to the Ontario Provincial Police or the appropriate police service for investigation.</p> <p>Reports of alleged fraud are also assessed by a Fraud Executive Committee, which is composed of senior Ministry staff including the Assistant Deputy Minister and three directors from the Provincial Highways Management Division.</p> <p>By the end of 2018, the Ministry also plans to update appropriate internal documents, such as the Contract Administration and Inspection Task Manual, to include policies and procedures for reporting alleged fraud and notifying appropriate authorities.</p>
<p>Recommendation 4</p> <p>The Ministry of Transportation provide the Committee with a report on how it addressed evidence reported by the Auditor General of improper tampering with asphalt samples by contractors, including which authorities were notified, and if no authorities were notified, the reason for not notifying.</p> <p>Status: Fully implemented.</p>	<p>On February 12, 2018, the Ministry responded to the Committee’s request with a chronology of events that took place from 2014 to 2016. It noted that the allegation of sample tampering was forwarded to the Ontario Provincial Police (OPP) for consideration in 2014; however, this did not result in further investigation by the OPP.</p> <p>In addition, since 2016, the Ministry has also made a number of changes to its processes over the collection of asphalt samples to prevent the risk of sample switching and improve awareness and reporting of fraudulent activities. These include:</p> <ul style="list-style-type: none"> • a new oversight process whereby the Ministry has custody and control of asphalt samples; • implementation of a new public tip-line to allow anonymous reporting of suspected fraudulent activity related to the Ministry’s construction contracts; • fraud awareness and prevention training for Ministry and consultant staff; and • a risk assessment of the asphalt sampling processes to determine if any further controls need to be considered.
<p>Recommendation 5</p> <p>The Ministry of Transportation provide the Committee, by February 13, 2018, with:</p> <ul style="list-style-type: none"> • an estimate of the number of contracts that have incorporated the Ministry’s acceptance reviews; Status: Fully implemented. • an estimate of its total number of contracts; Status: Fully implemented. 	<p>On February 12, 2018, the Ministry reported to the Committee that it had completed acceptance reviews on 15 major capital construction contracts to verify and provide certification that key construction activities were performed to the appropriate standards.</p> <p>On February 12, 2018, the Ministry reported to the Committee that, during the 2016/17 fiscal year, the Ministry tendered 117 major capital construction contracts. As of December 31, 2017, the Ministry had tendered 81 major construction contracts in the 2017/18 fiscal year.</p>

Committee Recommendation	Status Details
<ul style="list-style-type: none"> its plan for its use of acceptance reviews for all contracts going forward; Status: Fully implemented. 	<p>As of April 2018, the Ministry replaced the previous quality verification process, which was undertaken by the contractor, with a new acceptance review process that is now completed by Ministry staff and/or consultants working for the Ministry.</p>
<p>Recommendation 6 The Ministry of Transportation provide the Committee, by February 13, 2018, with the interim results of its audits of:</p> <ul style="list-style-type: none"> the Quality Verification Engineer (QVE) requirements from summer 2017; Status: Fully implemented. the new sample collection and delivery system. Status: In the process of being implemented by November 2018. 	<p>On February 12, 2018, the Ministry reported to the Committee on the results of the audit of the Quality Verification Engineer (QVE) requirements. The audit reviewed the QVE function on 15 projects across the province from the 2017 construction season.</p> <p>The audit found that the QVE process was not fully meeting the intent and expectations of the Ministry. While there was no evidence of misconduct, there were enough discrepancies noted to warrant a change from the current process. These issues included documentation not being submitted on time and Ministry staff having to correct work that was previously certified as being in general conformance with the contract documents. The audit also found that there was a general reluctance by the contract administrator to challenge the work that was being submitted by the QVE.</p> <p>Based on the findings of the Ministry's internal review and in our Office's report on issues with sample switching during asphalt testing on road construction contracts, starting in 2017, the Ministry transferred responsibility for sample collection and delivery from the contractors to the Ministry for all new contracts.</p> <p>In addition, in January 2018, the Ministry retained an independent consulting firm to undertake a risk assessment and review of the new sample collection process for asphalt. This review and a final report were expected to be completed in November 2018.</p>
<p>Recommendation 7 The Ministry of Transportation provide the Committee, by February 13, 2018, with:</p> <ul style="list-style-type: none"> details of the training that is planned, and already under way, for its Pavement Warranty Guideline; Status: Fully implemented. a copy of the guideline. Status: Fully implemented. 	<p>On February 12, 2018, the Ministry reported to the Committee that, in April 2017, training was provided to Ministry operations staff during the annual spring update meetings held in the five Ministry regions across the province.</p> <p>Subsequent to the reporting to the Committee, to improve the manner in which pavement warranties are administered and to ensure consistency and objectivity, the Ministry undertook the following:</p> <ul style="list-style-type: none"> An information session for external stakeholders was provided in April 2018. Training on the use of specialized equipment for collecting pavement-performance data was provided to Ministry engineering staff in May 2018. <p>The Ministry provided the Committee a copy of the guideline for administering pavement warranty provisions in April 2018.</p>

Committee Recommendation	Status Details
<p>Recommendation 8</p> <p>The Ministry of Transportation provide the Committee, by February 13, 2018, with an update of how the Ministry has improved contract warranties through clarifying its contract requirements. Status: Fully implemented.</p>	<p>On February 12, 2018, the Ministry reported to the Committee on the changes to the warranty requirements in the contracts.</p> <p>Effective May 2017, the Ministry improved its contract warranties by:</p> <ul style="list-style-type: none"> • developing and implementing new specifications, which include extended hot mix warranty requirements. The new specification requires that the hot mix pavement meet a set standard during the entire warranty period, including the final year of the warranty period; • defining in the new specification the required repairs when contract requirements are not met; and • updating the Construction Administration and Inspection Task Manual to better define tasks for staff to complete the administration of warranties before, during and after construction and throughout the warranty period.
<p>Recommendation 9</p> <p>The Ministry of Transportation should:</p> <ul style="list-style-type: none"> • describe the new financial security requirements for designated contracts; Status: Fully implemented. • provide the Committee with the total number of designated contracts that exceed the \$250,000 threshold. Status: Fully implemented. 	<p>In order to increase financial security for designated contracts, effective April 1, 2017, on contracts typically between \$250,000 and \$2 million in value, the Ministry no longer accepts a certified cheque as a form of financial security. The Ministry now requires either that the contractor be bonded or provide a letter of credit.</p> <p>Bonding may be issued by a guarantor that secures the performance of all aspects of construction work valued at up to 50% of the total contract price. In addition, a second bond issued and approved by a guarantor is required for all labour and material supplied for the construction work.</p> <p>The contractor also has the option to provide a letter of credit that is drawn on a Canadian regulated financial institution. The value of the letter of credit must be at least 10% of the total contract price.</p> <p>On February 12, 2018, the Ministry reported to the Committee the number of contracts exceeding the \$250,000 threshold: 62 in the 2016/17 fiscal year, and 38 as of December 31, 2017, for the 2017/18 fiscal year.</p>
<p>Recommendation 10</p> <p>The Ministry of Transportation provide an overview of the jurisdictional scan completed on other road authorities as it relates to safeguards and sanctions. Status: In the process of being implemented by November 2018.</p>	<p>The Ministry completed the jurisdictional scan in July 2017. As of the time of our follow-up, the Ministry anticipated providing the overview of the scan to the Committee by November 2018.</p> <p>As it relates to safeguards and sanctions, the jurisdictional scan reviewed the following questions:</p> <ul style="list-style-type: none"> • Do other jurisdictions have a process to suspend or restrict contractors from bidding, practices to monitor and improve contract performance, and any performance requirements to bid? • Were safety and environmental performance used as criteria in procurement, and did the performance rating of a contractor affect its ability to bid? • How do other jurisdictions deal with poorly performing contractors; how do they ensure that the quality and safety of performance affects the management of construction contracts?

Committee Recommendation	Status Details
<p>Recommendation 11</p> <p>The Ministry of Transportation provide the Committee with the results, when available, of its review on prohibiting contractors with performance issues from bidding on contracts.</p> <p>Status: In the process of being implemented by December 2019.</p>	<p>Based on an on-going review initiated in 2016, the Ministry has completed a system change that will allow it to restrict smaller contractors with performance issues from bidding on other contract work with the Ministry.</p> <p>At the time of our follow-up, the Ministry was still in the process of developing a new contractor performance rating system which, when implemented, is intended to further improve contractor performance and safety and to assess if a contractor should be prohibited from bidding on contracts due to performance issues. The Ministry told us that the new system will objectively and consistently assess the contractor's performance to ensure that any issues are addressed. Pilot testing of the new system began in 2017. A report dated February 2018 showed that 18 contracts had been tested under the new rating system by that time.</p> <p>The Ministry plans to complete and review the pilot testing by December 2018. Based on the results of the pilot, a schedule for implementation will be determined in 2019, with implementation to be completed before the end of 2019.</p>