

Chapter 3

Ministry of Infrastructure

Section 3.06

Real Estate Services

Standing Committee on Public Accounts Follow-Up on Section 3.02, 2018 Annual Report

On October 17, 2018, and November 28, 2018, the Standing Committee on Public Accounts (Committee) held public hearings on our 2017 audit of Real Estate Services. The Committee tabled a report on these hearings in the Legislature in October 2019. A link to the full report can be found at www.auditor.on.ca/en/content/standingcommittee/standingcommittee.html.

The Committee made 18 recommendations and asked the Ministry of Government and Consumer Services (Ministry) and Infrastructure Ontario to report back by February 25, 2020. The Ministry and Infrastructure Ontario formally responded to the Committee on February 25, 2020. A number of the issues raised by the Committee were similar to the observations of our 2017 audit, which we followed up on in 2019. The status of each of the Committee's recommended actions is shown in **Figure 1**.

We conducted assurance work between February 2020 and July 2020, and obtained written representation from Infrastructure Ontario and the Ministry that effective October 9, 2020, they had provided us with a complete update of the status of the recommendations made by the Committee.

Overall Conclusion

At the time of our follow-up, the Ministry and Infrastructure Ontario had implemented, or had plans to implement the Committee's

recommendations. According to the information the Ministry and Infrastructure Ontario provided to us at the time of the follow-up, 29% of the Committee's recommended actions had been fully implemented; 52% were in the process of being implemented; and 19% had little or no progress.

The Ministry's and Infrastructure Ontario's completed actions included verifying that external project managers' reasons for revising completion dates are valid; ensuring that all ministries and agencies have the information they need on the services provided under the operating and maintenance service contracts; monitoring and reviewing on an ongoing basis significant increases in operating and maintenance costs to drive efficiencies; improving how variations (i.e., work not originally included in the Alternative Financing and Procurement agreement) P3 agreements are handled; clearly defining contractors' responsibilities and types of failures; and ensuring future agreements minimize contract disputes.

Recommendations that the Ministry and Infrastructure Ontario were in the process of implementing include setting up a reasonable time for reducing office space usage; and working with the Property and Land Management Service Provider and with Project Management Service Providers to improve project cost estimates.

Infrastructure Ontario had made little to no progress in conducting a jurisdictional scan of procurement practices for project management services either through the Property and Land

Figure 1: Summary Status of Actions Recommended in December 2019 Committee Report

Prepared by the Office of the Auditor General of Ontario

	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	3		1	2		
Recommendation 2	1		1			
Recommendation 3	1		1			
Recommendation 4	1		1			
Recommendation 5	2		1	1		
Recommendation 6	4	1	3			
Recommendation 7	3	2	1			
Recommendation 8	1		1			
Recommendation 9	1			1		
Recommendation 10	1		1			
Recommendation 11	2	1	1			
Recommendation 12	3		1	2		
Recommendation 13	1		1			
Recommendation 14	1	1				
Recommendation 15	1	1				
Recommendation 16	2	2				
Recommendation 17	2		2			
Recommendation 18	1	1				
Total	31	9	16	6	0	
%	100	29	52	19	0	

Management Service Provider (PLMSP), or the Project Management Service Provider (PMSP). As well, although Infrastructure Ontario told the Committee that it would be competitively procuring the PLMSP and PMSP contracts in 2009, it instead extended them to March 2022 with Board approval before and after the Public Accounts Committee hearing.

Both the Ministry and Infrastructure Ontario had also made little or no progress in implementing a plan to further reduce deferred maintenance. The Ministry addressed the Committees' recommendation to update base rents, by instead developing a new realty model to eliminate the allocation of rents and centralize the funding and management of realty assets.

Detailed Status of Recommendations

Figure 2 shows the recommendations and status details that are based on responses from the Ministry of Government and Consumer Services (Ministry) and Infrastructure Ontario, 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 Infrastructure Ontario should review its procurement process for project management services with the objective of increasing competition by:</p> <ul style="list-style-type: none"> conducting a cross-jurisdictional scan of procurement practices in similarly sized jurisdictions; Status: Little or no progress. 	<p>At the time of this follow-up, Infrastructure Ontario had not conducted a cross-jurisdictional scan of procurement practices in other similarly sized jurisdictions. Infrastructure Ontario had planned to reach out to three organizations, two of which were in the same jurisdiction. It had begun to schedule future meetings with one these organizations in June 2020 to discuss procurement practices.</p> <p>On December 1, 2017, a few days prior to the release of our 2017 audit report, staff at Infrastructure Ontario presented options to its Executive Committee to address the March 2020 expiry of the Property and Land Management Service Provider (PLMSP) and Project Management Service Provider (PMSP) contracts. The options presented included negotiating contract extensions to March 2022, instead of going to market to competitively procure these services through an open Request for Proposal (RFP) when the contracts expire. Infrastructure Ontario indicated it wanted more time to develop a procurement strategy for these contracts.</p> <p>On June 6, 2018, the Board of Infrastructure Ontario approved the extension of the PLMSP contract until March 31, 2022 and also approved that work commence on extending the PMSP contract to align with the new expiry date of the PLMSP contract.</p> <p>On November 28, 2018, the Chief Executive Officer of Infrastructure Ontario informed the Public Accounts Committee that Infrastructure Ontario would be going out in 2019 to competitively procure the PMSP contracts and look at ways to increase the number of competitors.</p> <p>However, On October 24, 2019, the Board of Infrastructure Ontario approved the extension of the existing PMSP contracts to March 31, 2022.</p> <p>A number of the Committee's recommendations address the procurement of new PMSP contracts. However, there has been little or no progress on the implementation of related recommendations as a result of the June 2018 and October 2019 contract extensions.</p>
<ul style="list-style-type: none"> exploring all the proposals outlined in a 2014 consultant's report for the best approaches for outsourcing project management services; Status: In the process of being implemented by January 2022. 	<p>At the time of this follow-up, Infrastructure Ontario was drafting a request for proposal to procure a consultant that could provide technical advice and research for the next Project Manager Service Provider (PMSP) contract. Although the request for proposal, dated July 13, 2020, does not specifically mention the 2014 consultant's report, it does note that past reports will be used in deciding on recommendations for the future PMSP contract. Infrastructure Ontario informed us that the proposals from the 2014 consultant's report will be considered in developing the next PMSP procurement in January 2022.</p>
<ul style="list-style-type: none"> consulting with small to medium-sized businesses to understand their barriers to bidding on Project Management Service Provider contracts. Status: Little or no progress. 	<p>At the time of this follow-up, Infrastructure Ontario had not consulted with medium-sized businesses to understand their barriers to bidding on PMSP contracts. The draft request for proposal for a technical consultant to provide advice on the next PMSP contract outlines the requirement to consult with service providers; however, we noted that there is no requirement to consult with small to medium-sized businesses specifically.</p>

Committee Recommendation	Status Details
<p>Recommendation 2</p> <p>Infrastructure Ontario should standardize the Project Management Service Provider (PMSP) deduction regime for all future RFPs for PMSP contracts.</p> <p>Status: In the process of being implemented by January 2022.</p>	<p>In March 2020, Infrastructure Ontario extended the Project Manager Service Provider (PMSP) contract until March 2022. This contract was extended to provide more time to prepare a business case for creating a new standard contract using recommendations from our Office's past audit, as well conduct market research and obtain technical advice on a standard PMSP contract.</p> <p>As noted earlier, as of June 2020, Infrastructure Ontario was in the process of drafting a request for proposal to procure a consultant to provide technical advice and research for the next PMSP contract. During our follow-up, Infrastructure Ontario revised the draft request for proposal to require the consultant to incorporate our Office's past audit recommendation on performance and quality management. The proposal also specifically requires the consultant to include standard performance deductions in the new PMSP contracts starting in January 2022. The proposal was posted in August 2020, and Infrastructure Ontario expects the contract to be awarded in October 2020. The advisor's report is expected to be completed by July 2021.</p>
<p>Recommendation 3</p> <p>Infrastructure Ontario should implement a method to incorporate a Project Management Service Provider's (PMSP's) past performance into the future procurement of PMSPs and determine appropriate technical requirements for being awarded future PMSP contracts.</p> <p>Status: In the process of being implemented by January 2022.</p>	<p>During this follow-up, Infrastructure Ontario also revised the draft request for proposal to require the consultant to include recommendations on assessing the past performance of service providers. Infrastructure Ontario informed us that this advice will be used in the procurement of future PMSPs in January 2022.</p>
<p>Recommendation 4</p> <p>Infrastructure Ontario should continuously monitor and collect information on procurements conducted by external project managers and analyze data to ensure the procurement process functions as intended.</p> <p>Status: In the process of being implemented by fall 2020.</p>	<p>At the time of this follow-up, Infrastructure Ontario had begun to collect procurement data from external project managers, such as, the number of vendors that compete for contracts and which are successful in winning contracts. However, Infrastructure Ontario had not begun to continuously monitor the data. Infrastructure Ontario plans to conduct trend analysis meetings beginning in fall 2020 to assess this data on procurements.</p>
<p>Recommendation 5</p> <p>Infrastructure Ontario should:</p> <ul style="list-style-type: none"> • collect information on the total number of and reasons for manual adds (manually invoked firms) to the vendor of record to determine any trends that suggest non-cost-effective procurement practices; <p>Status: In the process of being implemented by fall 2020.</p>	<p>At the time of this follow-up, Infrastructure Ontario had begun to collect some information on the number of times specific vendors that had been manually added to a competition. However, we were unable to identify a noticeable trend due to the limited information collected by Infrastructure Ontario. Infrastructure Ontario had also started collecting information on the reasons why a vendor was manually added, but we found that it had not yet analyzed this information. Infrastructure Ontario informed us that it will begin to analyze this information in fall 2020. Although this analysis has been planned, more timely analysis would be more effective to identify potential issues earlier.</p>

Committee Recommendation	Status Details
<ul style="list-style-type: none"> use the information collected on manual adds to improve its procurement practices to ensure a competitive and economically sound process. Status: Little or no progress 	<p>As noted earlier, even though Infrastructure Ontario had begun collecting some information on manual adds, at the time of our follow-up, it had not assessed this information and used it to improve its procurement practices.</p>
<p>Recommendation 6 Infrastructure Ontario should improve capital project planning by:</p> <ul style="list-style-type: none"> working with the Property and Land Management Service Provider and with Project Management Service Providers to improve project cost estimates; Status: In the progress of being implemented by March 2021. reviewing best practices to incentivize project managers to complete projects on time and on budget; Status: In the process of being implemented by January 2022. verifying external project managers' reasons for revising completion dates are valid; Status: Fully implemented. assessing whether initial budget estimates are reliable for prioritizing projects. Status: In the process of being implemented by fall 2020. 	<p>In March 2018, Infrastructure Ontario had retained a third-party consultant to review project estimates. Infrastructure Ontario began adding contingencies in its estimates for costs that may be incurred above initial estimates, such as for other specialized consultants, miscellaneous permits, after-hours work, designated substance removal, security guards, remote location factors, and loss of economy of scale. According to Infrastructure Ontario, at the time of this follow-up, not enough projects had been completed to determine whether the contingency cost additions had improved the accuracy of the initial estimates to the actual cost of the projects. Infrastructure Ontario expected to have sufficient data by March 2021 to determine this.</p> <p>The third-party technical advisor that Infrastructure Ontario was in the process of engaging at the time of this follow-up (see Recommendation 1) is to also research best practices for providing incentives to project managers to complete projects on time and on budget, and make recommendations. The recommendations of the advisor are to be presented to the Board in November 2020, and incorporated into the Project Management Service Provider contracts in January 2022.</p> <p>Infrastructure Ontario developed and implemented a guideline in December 2018 that outlines the reasons acceptable for project schedule revisions, such as new or additional work not included in the original scope, unusual or adverse weather conditions, and changes in emission reductions or energy efficiency standards. The guideline also requires external managers to provide a description and relevant supporting documentation when project schedule dates are revised.</p> <p>Infrastructure Ontario reported that it had intended to develop a performance indicator to monitor the variance between initial budget estimates and actual project costs beginning in April 2020. However, because of the pandemic, priorities shifted and Infrastructure Ontario has not been able to track and assess whether initial budget estimates are reliable for prioritizing projects. According to Infrastructure Ontario, apart from a disruption in operations from staff working remotely, its resources were also redeployed in many cases to work on the construction of two health clinics in response to COVID-19 and in planning for the return to the workplace in government offices. It plans to develop and roll out this performance indicator by fall, 2020.</p>

Committee Recommendation	Status Details
<p>Recommendation 7</p> <p>Infrastructure Ontario should support the effective use of operating and maintenance service contracts for ministries and agencies by:</p> <ul style="list-style-type: none"> renewing any expired operating and maintenance service agreements; Status: In the process of being Implemented by September 2021. ensuring that all ministries and agencies have the information they need on the services provided under the operating and maintenance service contracts; Status: Fully implemented. monitoring and reviewing on an ongoing basis significant increases in operating and maintenance costs to drive efficiencies. Status: Fully implemented 	<p>On June 20, 2019, Infrastructure Ontario proposed a draft agreement to the Ministry to replace the operating and maintenance agreements that had expired in 2015. The proposed agreement outlined the real estate services to be provided to ministries and agencies, such as strategic advisory and planning services as well as asset, property and land management services. However, two initiatives will need to be completed to fully implement the new agreement: a new office realty model; and consultations for the transformation of broader public realty. These initiatives are currently under way and scheduled to be completed by September 2021.</p> <p>In June 2019, Infrastructure Ontario implemented a customer-service portal that shows the volume, frequency and type of services that ministries and agencies receive specific to each property so that they can determine whether they are receiving the amount and type of services they are paying for.</p> <p>In October 2018 and 2019, Infrastructure Ontario shared information at the Chief Administrative Officer forum on how to offset increasing operating and maintenance expenses, such as wages and energy utility rates. For example, it suggested negotiating price reductions directly with existing service providers and implementing a program aimed at reducing energy consumption. According to Infrastructure Ontario, it plans to share this information annually at the forum, which includes the Chief Administrative Officers from all provincial government ministries.</p>
<p>Recommendation 8</p> <p>The Ministry of Government and Consumer Services and Infrastructure Ontario should update the base rents, incorporating a portion to be used to address the deferred maintenance. Status: In process of being implemented by March 2027.</p>	<p>On April 8, 2020, the Ministry reported to the Committee that rather than continue with the current realty model of charging and collecting base rent from tenants, it is developing a new realty model that will eliminate rents and centralize the funding and management of realty assets. As such, the Ministry is in the process of developing other approaches, such as consolidating office space to help address the capital repair funding gap. It expects to fully implement the new model following the completion of the reconstruction of the Macdonald Block in 2024 and the occupancy of the Grosvenor Tower in 2027.</p>
<p>Recommendation 9</p> <p>The Ministry of Government and Consumer Services and Infrastructure Ontario should implement a plan to further reduce deferred maintenance in government-owned buildings. Status: Little or no progress.</p>	<p>At the time of this follow-up, the amount of deferred maintenance in government owned buildings had grown to \$862 million. The Ministry and Infrastructure Ontario is currently renovating the Queen's Park complex, which is expected to be completed in 2024. The reconstruction of the Queen's Park complex is estimated to reduce deferred maintenance by \$400 million however, it was already underway during our audit in 2017. Since then, the Ministry has not implemented other initiatives to further reduce deferred maintenance in government-owned buildings.</p>

Committee Recommendation	Status Details
<p>Recommendation 10</p> <p>The Ministry of Government and Consumer Services should set a reasonable timeline for reducing office space usage in government properties to 180 rentable square feet per person.</p> <p>Status: In the process of being implemented by March 2027.</p>	<p>In February 2019, the Treasury Board Secretariat approved amendments to Ontario's Realty Directive to incorporate a new standard for office accommodation space. On February 27, 2020, Cabinet ratified the approval of up to 180 rentable square feet or 160 useable square feet per workspace and a minimum sharing ratio of 1.3 staff persons per workspace. The Ministry has completed an office optimization plan for several downtown Toronto locations and for five regional hubs (London, Kingston, Oshawa, North Bay and Sudbury) that have the greatest opportunities for decreasing office space footprints, reducing reliance on costly leased space, and achieving the greatest annual rent savings. The expected completion date for the Toronto and regional office optimization plan is March 2027.</p>
<p>Recommendation 11</p> <p>Infrastructure Ontario should continue to reduce the costs associated with maintaining vacant buildings by:</p> <ul style="list-style-type: none"> • following a current divestment plan approved by the Government for all vacant buildings intended for disposal; <p>Status: In the process of being implemented by March 2024.</p> <ul style="list-style-type: none"> • consistently tracking building vacancy data. <p>Status: Fully implemented.</p>	<p>The following three Orders-in-Council were approved to dispose of 327 properties in the government's real estate portfolio (if they were no longer needed for government use):</p> <ul style="list-style-type: none"> • December 2018: Disposal approved for up to 231 government properties identified as surplus in the portfolio. • August 2019: Disposal approved for up to 11 additional government properties identified as surplus in the portfolio. • March 2020: Disposal approved for up to 85 additional government properties identified as surplus in the portfolio. <p>As of June 17, 2020, Infrastructure Ontario had disposed of 62 properties; it expects to dispose of the remaining 265 government properties by the end of March 2024.</p> <p>On March 1, 2020, Infrastructure Ontario implemented a centralized database that integrates the tracking of vacant building information with changes in occupancy status. The dates of all vacancies in the real estate portfolio previously tracked manually are now uploaded into the database. As of March 31, 2020, there were 514 vacant buildings with a total annual operating and maintenance cost of \$9,630,765.</p>
<p>Recommendation 12</p> <p>Infrastructure Ontario, in conjunction with the Ministry of Government and Consumer Services, in order to comply with AODA, should:</p> <ul style="list-style-type: none"> • assess the current level of accessibility of government properties; <p>Status: In the process of being implemented by March 2021.</p> <ul style="list-style-type: none"> • review and prioritize properties for potential and future investment to improve accessibility; <p>Status: Little or no progress.</p> <ul style="list-style-type: none"> • execute based on an approved and funded government plan. <p>Status: Little or no progress.</p>	<p>Infrastructure Ontario is currently assessing the accessibility of government buildings in use and buildings that may be put into use. As of March 17, 2020, 525 of 783 buildings had been assessed. The remaining assessments are expected to be completed by March 2021.</p> <p>In conjunction with Infrastructure Ontario, the Ministry will review the results of the accessibility assessments and prioritize properties for potential and future investment to improve accessibility.</p> <p>On April 8, 2020, the Ministry reported to the Committee that once a funding plan is developed and approved, Infrastructure Ontario will then be able to make the required accessibility changes to government properties.</p>

Committee Recommendation	Status Details
<p>Recommendation 13</p> <p>The Ministry of Government and Consumer Services should review the operating model for government properties, including exploring different delivery options, which transfer responsibility from Project Management Service Providers to the Ministry.</p> <p>Status: In the process of being implemented September 2021.</p>	<p>The Ministry engaged all ministries to assess their resource requirements and develop a business case for a new real estate model. In December 2019, this model was approved by the Treasury Board. The new model will transfer responsibility for government properties from Project Management Service Providers to the Ministry, which will be solely accountable for overseeing properties using centralized funding and decision-making. The work to implement the new model and its oversight and accountability measures is expected to be completed by September 2021.</p>
<p>Recommendation 14</p> <p>Infrastructure Ontario should improve how variations (i.e., work not originally included in the Alternative Financing and Procurement (AFP) agreement) are handled and reduce the risk for hospitals to use outside vendors in all future AFP agreements.</p> <p>Status: Fully Implemented.</p>	<p>Between February 2017 and November 2018, Infrastructure Ontario revised the AFP template agreement to address issues that had been raised by facility owners on existing projects. For example, it provided a clearer definition of reimbursable costs, clarified how mark-ups are calculated, added further requirements to substantiate costs, and gave owners more discretion over requiring project companies to competitively tender variations. These revisions apply to both the construction and operations phases of projects and have been included in agreements for all new AFP projects. Also, Infrastructure Ontario reported to the Committee that it will continue making changes to the AFP agreements as needed through its Continuous Improvement Committee.</p>
<p>Recommendation 15</p> <p>Infrastructure Ontario should clearly define contractors' responsibilities and types of failures, especially availability failures, during the maintenance phase of all future Alternative Financing and Procurement agreements.</p> <p>Status: Fully Implemented.</p>	<p>Infrastructure Ontario reported that all Alternative Financing and Procurement (AFP) agreements after September 2019 define categories of performance failures to ensure that contractors comply with their obligations during the maintenance phase of the project. In addition, Infrastructure Ontario created a training program for facility owners and contractors on contractors' obligations contained in the agreements. Infrastructure Ontario also reviewed past AFP agreements and clarified what falls under availability or service failures through two bulletins issued to hospitals in April 2018 and June 2018.</p>
<p>Recommendation 16</p> <p>Infrastructure Ontario should:</p> <ul style="list-style-type: none"> • be mandated to support public-private partnership (P3) hospital clients for the duration of the P3 agreement (including during the dispute resolution process), taking into account feedback provided by hospitals and other P3 assets; and <p>Status: Fully implemented.</p>	<p>On July 25, 2019, Infrastructure Ontario began providing contract management advisory support to 16 hospitals during the maintenance phase of P3 (AFP) project agreements. The cost of these advisory services is estimated to be \$150,000 per hospital per year, and includes dedicated technical assistance, decision support, capital planning, and assistance with financial, legal, and energy matters. Infrastructure Ontario will use unspent capital funds in the original project budget to cover the costs associated with these advisory services. Infrastructure Ontario and the MOH formalized the provision of such services via a Memorandum of Understanding dated August 2019.</p>

Committee Recommendation	Status Details
<ul style="list-style-type: none"> ensure the terms of future P3 agreements minimize contract disputes. Status: Fully Implemented. 	<p>Infrastructure Ontario made two rounds of revisions to the AFP agreement template in 2017 and 2018 to reflect the feedback of project owners, limit the cost of variations, and minimize disputes. These changes included: defining reimbursable costs more clearly, clarifying how mark-ups are calculated, adding further requirements to substantiate costs, and giving owners more discretion over requiring project companies to competitively tender variations. These revisions apply to both the construction, operations and maintenance phases of projects and have been included in agreements for all new AFP projects.</p>
<p>Recommendation 17 Infrastructure Ontario should:</p> <ul style="list-style-type: none"> implement a formal evaluation program to assess private sector companies' performance during the public-private partnerships' (P3s') maintenance periods in existing and future P3 agreements; Status: In the process of being implemented by fall 2020. consider this when awarding future contracts. Status: In the process of being implemented by February 2021. 	<p>On May 27, 2020, the Continuous Improvement Committee approved Infrastructure Ontario's performance criteria relating to infractions. These criteria are to be included in a formal vendor performance program for the maintenance periods of P3 (AFP) projects. Infrastructure Ontario expects that the program will be fully implemented by fall 2020.</p> <p>Infrastructure Ontario intends to begin monitoring vendor performance monthly starting in fall 2020. It will measure the effectiveness of the program on an annual basis and will incorporate the vendors' performance when evaluating future bids. Any performance deductions will be considered when awarding future contracts starting in February 2021.</p>
<p>Recommendation 18 Infrastructure Ontario should ensure that private-public partnership (P3) contracts and procurement processes include stronger provisions to prevent risks and costs that are assigned to a contractor from being shifted back onto the public, including in cases where a contractor faces financial insolvency or is otherwise unable or unwilling to meet contractual obligations. Status: Fully implemented.</p>	<p>On September 6, 2019, Infrastructure Ontario reported to the Committee that it worked with facility owners to develop and implement a framework for the intake, tracking, management and resolution of notices such as delays and insolvency. This framework will help project teams determine whether a claim is the facility owner's responsibility or the contractors. For example, when a contractor seeks relief (in the form of either financial compensation or a deadline extension) based on alleged negligence of the facility owner, the project teams will follow the notice management procedure to assess the merits of the claim. If it is determined that the contractor's claim is without merit, Infrastructure Ontario will reject the claim and deny relief. If the root cause of the delay is the contractor's responsibility, the facility owner can use provisions in the contract to require the contractor to accelerate construction at its own expense. In potential situations of insolvency, this will trigger the facility owner's rights to terminate the agreement. The framework encourages Infrastructure Ontario's project teams to watch for and promptly escalate early warnings of project risks. Early warnings of insolvency, for example, may include increased subcontractor claims, reduced capital expenditures and declining maintenance standards.</p>