



Hamilton

CITY OF HAMILTON

**CITY MANAGER'S OFFICE
Audit Services Division**

TO: Chair and Members Audit, Finance and Administration Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: March 2, 2011	
SUBJECT/REPORT NO: Follow Up of Audit Report 2008-13 - Long Term Contract Review – Canada Fibers Ltd. (AUD11014) (City Wide)	
SUBMITTED BY: Ann Pekaruk Director, Audit Services City Manager's Office	PREPARED BY: Ann Pekaruk 905-546-2424 ext. 4469
SIGNATURE:	

RECOMMENDATION

That Report AUD11014 respecting the follow up of Audit Report 2008-13, Long Term Contract Review – Canada Fibers Ltd., be received.

EXECUTIVE SUMMARY

Audit Report 2008-13, Long Term Contract Review – Canada Fibers Ltd., was originally issued in May, 2009 and management action plans with implementation timelines were included in the Report. In January, 2011, Internal Audit conducted a follow up exercise to determine that appropriate and timely actions had been taken. Regarding the four (4) recommendations made in the original Report, three (3) recommendations are in compliance and one (1) remains not in compliance with the terms of the contract.

Alternatives for Consideration – Not Applicable

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

- Financial:** None.
- Staffing:** None.
- Legal:** None.

HISTORICAL BACKGROUND (Chronology of events)

Audit Report 2008-13, Long Term Contract Review – Canada Fibers Ltd., was originally issued in May, 2009. The Report indicated four (4) recommendations to address compliance of administrative and operational matters with the terms of the contract.

It is normal practice for Internal Audit to conduct follow up reviews within a 12-18 month period following issuance of the original report in order to determine whether action plans committed to by department management have been implemented.

POLICY IMPLICATIONS

None.

RELEVANT CONSULTATION

The results of the follow up were provided to management and staff of the Operations and Waste Management Division of the Public Works Department responsible for the administration of the long term contract with Canada Fibers Ltd. and the City's Legal Services.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The report attached as Appendix "A" to Report AUD11014 is as originally reported as Report 2008-13, along with an added follow up comment text indicating Internal Audit's comments on pages 4-5.

The following recommendations have been addressed and now ensure compliance with the Contract terms as indicated:

- The revision to the definition of "part" for routine maintenance costs to reflect the original intent and actual practices of the City and the Operator;
- The review and update of the documented policies and procedures; and
- The correction of the cost sharing factor for contamination audits.

The recommendation regarding the retention of documentation to support charges on the monthly invoices for processed materials remains not in compliance with the terms of the Contract.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Not applicable.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Financial Sustainability

- ◆ Delivery of municipal services and management of capital assets/liabilities in a sustainable, innovative and cost effective manner.

Environmental Stewardship

- ◆ Aspiring to the highest environmental standards.
- ◆ Ensuring the Material Recovery Facility operates in an efficient and environmentally responsive manner and in compliance with contract terms and regulations is necessary for the environmental well-being of the City.

Healthy Community

- ◆ The provision of efficient and effective waste disposal facilities is important to the residents of the community.

APPENDICES / SCHEDULES

Appendix “A” to Report AUD11014: Audit Report 2008-13

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Background

On March 31, 2003, a contract (the Contract) was entered into by the City of Hamilton (the City) and Canada Fibers Ltd. (the Operator) to carry out the operation at the Material Recovery Facility (MRF) in conformance with the Contract, including receiving and processing recyclable materials delivered to the MRF, handling, storing and marketing of the processed materials and disposing of all residue generated. The Operator is also required to maintain a safe working environment at the MRF and to administer all facets of the Facility such as maintenance of equipment and management of personnel on site.

As part of the 2008 Internal Audit work plan, Council approved the review of the long-term Contract between the City and the Operator. The Contract is comprised of 38 Articles and 5 appended Schedules. This review focused on the following Articles and Schedule:

- Article 3 - Scope of MRF Operation and Maintenance Services
- Article 4 - Maintenance of Material Recovery Facility, Equipment and Rolling Stock
- Article 5 - Term of Contact
- Article 6 - Compensation
- Article 12 - Delivery and Collection Days
- Article 19 - Contract Coordinator and Administrator of the Contract Designate
- Article 23 - Reporting, Spills and Emergency Response
- Article 24 - Claims Procedure and Contingency Plan
- Article 25 - Workplace Safety & Insurance Board
- Article 26 - Insurance
- Article 31 - Performance of Contract Security
- Schedule C - Compensation

Based on Internal Audit's on site observation, review of records and documentation and corroboration obtained from the management of the City's Materials Recycling Section, the operational requirements from the Contract have been met but some administrative issues need to be addressed for compliance with the Contract.

Details of the above focused Articles and Schedule are provided in the following text with further information and comments provided as needed. In addition, recommendations for strengthening the process and ensuring compliance with the stated terms of the Contract will be made at the end of this report along with the corresponding management responses noted.

Focused Articles and Schedules

Article 3 – Scope of MRF Operation and Maintenance Services

- Sections 4 to 9 stipulate requirements for processing of recyclable materials including Operator staffing levels. Based on audit work performed, the Operator is **in compliance** with this Article.

Article 4 – Maintenance of Material Recovery Facility, Equipment and Rolling Stock

Sections 10 to 15 dictate requirements for the preventative maintenance of equipment at the MRF and the responsibility for the associated costs. There is **compliance** with Article 4 except for the following:

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- Section 12 c) stipulates that payment responsibility for routine maintenance costs for parts of the City-owned processing equipment be shared 50/50 for any part costing between \$1,000 and \$5,000 (a part costing under \$1,000 is solely the Operator's responsibility and any part costing more than \$5,000 is the City's responsibility). "Part" is further defined in this clause as a single unit and not the accumulation of single units. Using Internal Audit's interpretation that unit costing applies to the part itself, a review of maintenance invoices revealed some instances in which the City appears to have overpaid as individual parts' unit costs were under the \$1,000 threshold but the gross invoice accumulated costs of several of the same part amounted to between \$1,000 and \$5,000. The total overpayment for this interpretation on the review of seven monthly maintenance charges amounted to approximately \$5,000. Both City and Operator management disagree with Internal Audit's interpretation and have stated that this clause was meant to refer the per unit pricing to a single unit of equipment, not a single part. Due to the disagreement and the definitions in the current Contract, Internal Audit is indicating **non-compliance**.

Article 5 – Term of the Contract

- Sections 16 to 18 stipulate the Contract period and the options for extending the Contract period. Based on audit work performed, Council approval was sought and granted for extensions to the Contract period. The City and Operator are **in compliance** with this Article.

Article 6 – Compensation

Section 19 outlines the compensation that the City agrees to pay the Operator for operation of the MRF. There is **compliance** with Article 6 except for the following:

- Section 19 a) notes that records provided with **each** invoice are to be maintained by the Operator and/or the City. Based on Internal Audit's sampling of invoices from 2003 to 2008, there were instances where supporting information (i.e. invoices for maintenance items) to the Operator's monthly invoice was not on file with the City and/or Operator. These omissions were mainly for the years prior to 2005 with much fewer instances in the more recent past. Nonetheless, there was **non-compliance** with this provision.

Article 12 - Delivery and Collection Days

- Sections 29 to 30 outline the requirement that acceptable recyclable materials be discharged and processed in a timely manner. Based on audit work performed, there is **compliance** with this Article.

Article 19 - Contract Coordinator and Administrator of the Contract Designate

- Section 40 stipulates that the City and Operator designate representatives as Administrator (City) and Contract Co-ordinator (Operator). These designates are to meet on a regular basis. Both the City and the Operator have made such assignments. Monthly meetings are held. The City and the Operator are **in compliance** with this Article.

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Article 23 – Reporting, Spills and Emergency Response

Sections 47 to 49 outline environmental responsibility for any spills that occur at the MRF. There is **compliance** with Article 23 except for the following:

- Section 49 requires the Operator to develop a written protocol for the mitigation of and appropriate remedial actions for any spill. The Operator is also required to review this protocol annually.

Based on Internal Audit's review, such protocol is in place so the Operator is **in compliance** as far as developing the protocol. The original protocol (dated March 2006) remains in effect and thus requires no amendment. However, at the time of the audit, there was no evidence of the Operator's annual review of this protocol as required under this section. In this regard, there is **non-compliance**.

Article 24 - Claims Procedure and Contingency Plan

- Section 50 stipulates the Operator's responsibility for dealing with claims made by third parties and the requirement for written procedures and a contingency plan to deal with work stoppages. Based on the work performed, the Operator is **in compliance** with this Article.

Article 25 - Workplace Safety & Insurance Board

- Section 51 notes that the Operator shall submit a Clearance Certificate from the Workplace Safety & Insurance Board (WSIB) and keep this certificate in good standing. Based on audit work performed, the Operator is **in compliance** with this Article.

Article 26 – Insurance

- Section 52 sets out the requirement for insurance certificates to be obtained and maintained by the Operator. There is **compliance** with Article 26.

Article 31 - Performance of Contract Security

- Section 57 sets out detailed requirements for a letter of credit and performance bond from the Operator serving as security in the performance of the Contract. There is **compliance** with Article 31.

Schedule C – Compensation

- Schedule C lists the payment rate per tonne for processed recyclable materials at the MRF under the Contract. Based on audit work performed, there is **compliance** with Schedule C.

Recommendations and Management Responses

Definition of "part" for Maintenance Costs

It is recommended:

- ***That the Contract revision (dated January 1, 2008) currently under review be adjusted to incorporate precise wording more definitive of the meaning of "part" wording in regard to the City and Operator responsibility for routine maintenance costs for parts as per 12 c) of the current Contract.***

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Management Response:

Agreed. Section 12 of the revised Contract has been adjusted to clarify the original intent of this Section. The original clause in the RFP was meant to refer the per unit pricing to a single unit of equipment, not a single part and this was confirmed with the consultant hired to assist City staff in the preparation of the request for proposal specifications. The revised wording reflects how the parties have been operating and clarifies the intent so as to avoid any misinterpretations.

Follow Up Comment (January 2011):

In Compliance. Internal Audit reviewed the Revised Contract (dated January 1, 2008). The definition of "part" for maintenance costs was revised to reflect the original intent and actual practices of the City and the Operator. It is detailed enough to avoid any misinterpretations.

Supporting Documentation

It is recommended:

- ***That all supporting documentation to the monthly invoices for processed materials be retained at all times by the City and/or Contractor to ensure compliance with section 19 a) of the Contract.***

Management Response:

Agreed. Files containing copies of invoices and supporting documentation to those invoices are retained in the Division's Finance and Administration (F&A) area. Original invoices and supporting documentation are retained corporately. As noted in the auditor's comments, retention of the supporting documentation has improved in recent years. Copies of invoices and supporting documentation will continue to be maintained within the F&A area of the Division with added attention paid to those vendor files requiring additional documentation to satisfy contractual obligations. In addition, the Contractor retains all supporting documentation not on site but at their head office location.

Follow Up Comment (January 2011):

Not in Compliance. Internal Audit chose four random invoices received from the Operator in the 2010 calendar year and vouched quantities, rates and amounts on each invoice to supporting documentation retained within the F&A area. All invoices chosen for testing were located and the majority of items on the invoice were supported. However, Internal Audit could not locate documentation to support the number of contaminated loads received from the school board. City staff who examine and accept school board contaminated loads do not document the number of loads received or the approval of such loads.

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Even though the retention of documentation to support invoices has greatly improved, the lack of information for contaminated loads from the school boards (be it minimal) results in non-compliance with the term of the Contract.

Annual Procedures Review

It is recommended:

- ***That existing procedures such as the written protocols for spills and the Operator Operations Plan be reviewed annually and updated, as appropriate, with evidence of review documented for future reference.***

Management Response:

Agreed. The written protocol which is contained in the Contractor's Operations Plan has been reviewed. A sign-off section will be included on the protocol and operations plan that references the date of the annual review and signature by both City and contractor staff who conducted the review. In addition, staff will incorporate this item in the monthly contract administration meetings under "Important Dates" so that both parties are aware of this annual requirement and the impending date for review.

Follow Up Comment (January 2011):

In Compliance. Internal Audit reviewed the 2009 and 2010 declarations signed by both City and contractor staff who conducted the protocol review. Also, Internal Audit identified the annual Operations Plan review as an upcoming item in monthly contract administration meeting minutes.

Other

As per Article 1 (Schedules and Definitions), section 2 v) states that the cost of contamination audits are to be shared by the Operator (2/3) and the City (1/3). Review of several monthly invoices shows the cost sharing at 50/50. From 2006 to September 2008, the overpayment amounts to approximately \$5,900. Divisional management has stated that this was an error in the executed Contract but has never been corrected with an amendment to read 50%. This will be corrected in the revised Contract noted above.

Management Response:

Agreed. The revised Contract has been adjusted to correct the error and reflect the 50/50 cost sharing.

Follow Up Comment (January 2011):

In Compliance. Internal Audit reviewed the Revised Contract (dated January 1, 2008). The proportion of contamination audit costs shared by the Operator and City was revised to 50/50 cost sharing. This reflects the actual cost proportions assumed by the City and Operator as evidenced in the invoice review noted previously under Supporting Documentation.