TO: Chair and Members  
Audit, Finance and Administration Committee  
WARD(S) AFFECTED: CITY WIDE  
COMMITTEE DATE: January 19, 2011  
SUBJECT/REPORT NO:  
Follow Up of Audit Report 2008-10 - Long Term Contract Review - Maple Reinders Constructors Ltd. (AUD11009) (City Wide)  
SUBMITTED BY:  
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PREPARED BY:  
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SIGNATURE:  
RECOMMENDATION  
That Report AUD11009 respecting the follow up of Audit Report 2008-10, Long Term Contract Review – Maple Reinders Constructors Ltd., be received.  
EXECUTIVE SUMMARY  
Audit Report 2008-10, Long Term Contract Review – Maple Reinders Constructors Ltd., was originally issued in May, 2009 and management action plans with implementation timelines were included in the Report. In November, 2010, Internal Audit conducted a follow up exercise to determine that appropriate and timely actions had been taken. Regarding the five (5) recommendations made in the original Report, three (3) recommendations are in compliance and two (2) continue to be 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 2008-10, Long Term Contract Review – Maple Reinders Constructors Ltd., was originally issued in May, 2009. The Report indicated five (5) 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 of the Public Works Department responsible for the administration of the long term contract with Maple Reinders Constructors 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 AUD11009 is as originally reported as Report 2008-10, along with an added follow up comment text indicating Internal Audit’s comments on pages 4-6.

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

- Review of the documented policies and procedures and the employee training program including an annual update of same, as necessary; and
- A formal reply to a complainant, in writing and within two (2) working days of receiving the complaint.
The recommendations regarding collection of the Contractor’s proof of insurance and a signed Performance Bond within the specific timeframe noted in the contract remain not in compliance.

**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)


**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 CCF 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 AUD11009.

ap:dt
Background
On December 21, 2005, a contract (the “Contract”) was entered into by the City of Hamilton (the “City”) and Maple Reinders Constructors Ltd. (the “Operator”) to carry out the operation at the Central Composting Facility (CCF) in conformance with the terms of the Contract including receiving and processing organic waste materials delivered to the CCF; handling, storing and marketing of the finished compost; and disposing of all residue generated. The Operator is also required to maintain a safe working environment at the CCF and to administer all facets of the CCF such as the maintenance of equipment and management of personnel on site. As agreed to by the City, the CCF has been operated by Aim Environmental Group Ltd. (a subcontractor of the Operator) since 2006.

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 26 Articles and 10 appended Schedules. This review focused on the following Articles and Schedules:

- Article 3 - Composting Operations
- Article 5 - General Operation of the CCF
- Article 6 - Maintenance of CCF and Equipment
- Article 7 - Staffing, Facilities and Training
- Article 9 - Compensation
- Article 10 - Marketing and Sale of Finished Compost
- Article 19 - Environmental Condition of the CCF
- Article 20 - Health and Safety
- Article 21 - Insurance
- Article 23 - Security for the Performance of the Contract
- Schedule B - Compensation
- Schedule J - Guidelines for Compost Quality from Canadian Council of Ministers of the Environment (CCME)

Based on Internal Audit’s personal observation on site, review of records and documentation and corroboration obtained from the management of the City’s Waste Disposal Section, the operational requirements of the Contract have been met. However, some administrative matters need to be addressed for compliance with the terms of the Contract.

Details of the review of the above focused Articles and Schedules are provided in the following text. In addition, recommendations for strengthening the process and ensuring compliance with the Contract will be made at the end of this report along with the corresponding management responses noted.

Focused Articles and Schedules
Article 3 – Composting Operations
Sections 3.1 to 3.39 stipulate requirements for receiving hours, capacity, handling of waste materials, disposal of residue, and quality of finished compost. There is compliance with the terms of Article 3 except for the following:

- Section 3.8 requires that the screening measures (that are part of the Operations Plan) be reviewed and updated annually by both the Operator and the Contract Administrator (from the City). Although the Contract Administrator indicates that these measures continue to be followed as they have worked effectively, there was no written evidence, at the time of audit, indicating the annual review and/or update required since April 2006 had taken place. Therefore, there is non-compliance with the terms of this provision.
Article 5 – General Operation of the CCF
Sections 5.1 to 5.15 dictate requirements for the general operation of the CCF. There is **compliance** with the terms of Article 5 except for the following:

- Section 5.13 mandates that a formal reply be forwarded to a complainant in writing outlining the actions taken to address the complaint within two working days of receiving the complaint. At the time of audit, there was no evidence of such written formal reply. The City's Project Manager on site is made aware of these complaints immediately. As most of the complaints came from the neighbouring area, a face-to-face visit with the complainant usually takes place in lieu of a formal reply in writing. However, with respect to the requirements as stated in the terms of this provision, there is **non-compliance**.

Article 6 – Maintenance of CCF and Equipment
- Sections 6.1 to 6.18 stipulate the Operator's responsibilities for maintaining, repairing and replacing buildings, fixtures, civil works and equipment throughout the term of the Contract. Based on audit work performed, the Operator is **in compliance** with the terms of this Article.

Article 7 – Staffing, Facilities and Training
Sections 7.1 to 7.15 require the Operator to meet certain standards for staffing, employee training and facility management. There is **compliance** with the terms of Article 7 except for the following:

- Section 7.10 requests the Operator to develop and update an employee training program that includes the credentials of the trainer, the duration of the training course, the specific content of the training course, the frequency of retraining, the schedule for updating staff training and the criteria to determine whether a trainee has met training objectives.

  Based on Internal Audit’s review of training records for the Operator’s employees on site, all the items specifically required under this Section were not included. Therefore, the Operator is **non-compliant** with the terms of this clause.

Article 9 Compensation
- Sections 9.1 to 9.9 outline the processes, methods and calculations associated with the City's payments to the Operator for all waste materials processed at the CCF. Based on audit work performed, there is **compliance** with the terms of this Article.

Article 10 Marketing and Sale of Finished Compost
- Sections 10.1 to 10.4 stipulate the Operator’s responsibilities for marketing, selling and where appropriate, disposing of the finished compost produced at the CCF. Based on audit work performed, the Operator is **in compliance** with the terms of this Article.
Article 19 – Environmental Condition of the CCF

Sections 19.1 to 19.6 define the City’s and the Operator’s responsibilities pertaining to the environmental condition of the CCF. There is compliance with the terms of Article 19 except for the following:

- Section 19.6 requires the Operator to develop a written protocol for the mitigation of and for the appropriate remedial actions for any spill and escape of hazardous substances. The Operator is also required to review this protocol annually.

Based on Internal Audit’s observation, the written protocol is available for review and thus the Operator is in compliance as far as developing the protocol. According to the City’s Project Manager on site, the original protocol remains in effect and thus requires no amendment. However, at the time of audit, there was no evidence provided of the Operator’s annual review of this protocol as indicated under the terms of this section. Thus, in regard to the review requirement, there is non-compliance.

Article 20 Health and Safety

- Sections 20.1 to 20.4 stipulate the Operator’s responsibilities for making the CCF a safe and healthy work environment and for keeping a certificate of good standing from the Workplace Safety & Insurance Board (WSIB). Based on audit work performed, the Operator is in compliance with the terms of this Article.

Article 21 Insurance

Sections 21.1 to 21.8 require insurance policies to be obtained and maintained by the Operator. There is compliance with the terms of Article 21 except for the following:

- Section 21.6 directs the Operator to deposit with the City evidence of its insurance no later than 30 days prior to the renewal date during the Contract term. The insurance certificates for 2008 provided to the City were dated September 4, 2008 while the insurance coverage had begun either from June 1, 2008 or August 1, 2008, depending on the individual insurance policy. As the provision stipulates a “30 days prior to the renewal date” timeline and this has not been adhered to, there is non-compliance with the terms of this clause.

Article 23 Security for the Performance of the Contract

Sections 23.1 to 23.6 set out detailed requirements for the letter of credit and performance bond from the Operator, acting as security for the performance of the Contract. There is compliance with the terms of Article 23 except for the following:

- Section 23.2 requires the Operator to provide the performance bond to the City at least 60 days prior to the Contract commencement date or 30 days prior to the beginning of each subsequent contract period. Per review of performance bonds for contract period 1 (i.e. 2006) and period 2 (i.e. 2007), the Operator was not in compliance with the terms of this provision as the performance bond for contract period 1 was dated 7 days prior to the Contract commencement date and the bond for contract period 2 was dated 12 days prior to the beginning of this period.

The performance bond for contract period 3 (i.e. 2008) was provided to the City 36 days prior to the beginning of this period and thus was in compliance with the terms of the provision.
Schedule B – Compensation

- Schedule B prescribes the payment rate per tonne for the waste materials processed at the CCF under the Contract. Based on audit work performed, there is compliance with Schedule B.

Schedule J – Guidelines for Compost Quality from CCME

- Schedule J stipulates the standards for the finished compost produced at the CCF. Based on audit work performed, there is compliance with the requirements set out in Schedule J.

Subsequent Information

Non-compliance with the sections listed below was originally noted during the audit. Upon discussion with management at the audit closing meeting, management took immediate actions and provided Internal Audit with additional information that had not been supplied at the time of audit. Based on further review of the new information, compliance with the following sections was confirmed:

- Section 5.10 & 5.11 – items to be included in the Contingency Plan
- Section 7.6 & 7.8 – evidence of keeping both the Health & Safety Manual and the Occupational Health & Safety Program up to date
- Section 23.2 – a copy of 2008 Performance Bond signed by the Operator

Recommendations and Management Responses

Policies, Procedures and Forms

It is recommended:

- That the existing employee training program be reviewed and updated to include all items required under Section 7.10.
- That existing policies and procedures such as the screening measures under Section 3.8 and the written protocol for mitigation of spills under Section 19.6 be reviewed annually and updated, as appropriate, with written evidence of review retained for future reference.

Management Response:
Agreed. The employee training program has been reviewed and all items required under Section 7.10 of the Contract have been put in place as of January, 2009. All policy and procedure documentation required under the Contract now includes a sign-off section that references the date of the annual review and the signature of the City staff member who conducted the review. This procedural change has already been implemented.

Follow Up Comment (Nov. 2010):

Employee Training
In Compliance. Internal Audit reviewed the Employee Training Binder. For the sample of training topics reviewed, all contract requirements were met by the contractor.
Policy & Procedures Documentation-Review by City Staff and Operator

**In Compliance.** Internal Audit reviewed the Health and Safety and Operation Policy Statement which indicated that operator management had reviewed the Health and Safety Policy and Procedures, Standard Operations binder (containing screening measures) and Emergency Contingency Plans (containing protocol for spill mitigation) in January 2010.

Internal Audit also reviewed the contingency plan, with a focus on reviewing the topic of spills contained therein. The binder was signed off as reviewed by the City management in both 2009 and 2010. City management also signed off for reviewing the SOP binder (containing screening measures) in 2009 and 2010.

Additionally, Internal Audit reviewed CCF-SOP-005 (Screening) to ensure that this document was recently updated by the Operator. CCF-SOP-005 was found to have been last updated in March 2010 by the Operator. All of these reviews meet the Contract requirements for the City and the Operator to review policy and procedures documentation annually.

**Complaint Response**

*It is recommended:*

- **That a formal reply in writing be forwarded to the complainant within two working days of receiving the complaint, explaining the possible causes and actions taken to eliminate the causes, as required under Section 5.13.**

**Management Response:**

Agreed. To date, the Waste Management Division has conducted face-to-face visits with complainants as a more effective way to deal with people's concerns. A formal reply to the complainant within two working days shall be implemented immediately. However, in some instances, the investigation of the complaint may not be complete in this time frame. If this is the case, a formal reply with an update will be provided to the complainant and again when the investigation has been completed. This procedural change has already been implemented.

**Follow Up Comment (Nov. 2010):**

**In Compliance.** Internal Audit reviewed the complaint summary listing for 2009 and 2010 and tested a sample of complaints. Of the five complaints reviewed, all complaints were found to have a written response sent to the complainant within two business days.

**Insurance Certificate and Performance Bond**

*It is recommended:*

- **That the Operator be requested to provide evidence of its insurance to the City no later than 30 days prior to the renewal date for each remaining contract period, as stipulated in Section 21.6.**

- **That the Operator be requested to continue providing a signed performance bond to the City at least 30 days prior to the beginning of each remaining contract period, as required by Section 23.2.**
Management Response:
Agreed. Staff will ensure that insurance certificates and performance bonds are received as required under the Contract.

Follow Up Comment (Nov. 2010):
Insurance:
2009 - In Compliance; 2010 - Not in Compliance.
In 2009, insurance documents were received as required under the contract by the City. In 2010, insurance documents were not received within the time frame as required under the Contract by the City.

Performance Bond:
2009 - In Compliance; 2010 - Not in Compliance.
In 2009, the performance bond was received as required under the contract by the City. In 2010, the performance bond was not received within the time frame as required under the Contract with the City.