TO: Chair and Members  
Audit and Administration Committee
WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: May 19, 2010

SUBJECT/REPORT NO:  

SUBMITTED BY:  
Ann Pekaruk  
Director, Audit Services  
City Manager’s Office
PREPARED BY:  
Ann Pekaruk 905-546-2424 x4469

SIGNATURE:

RECOMMENDATION


EXECUTIVE SUMMARY

Audit Report 2007-14, Long Term Contract Review – Waste Management of Canada Corporation (WMCC), was originally issued in June, 2008 and management action plans with implementation timelines were included in the Report. In April, 2010, Internal Audit conducted a follow up exercise to determine that appropriate and timely actions had been taken. Regarding the implementation of the six (6) recommendations made in the original Report, staff have been diligent in completing four (4) of the recommendations, providing an alternative of one (1), while one (1) implementation is in progress.

Alternatives for Consideration –Not Applicable

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.
Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: None.
Staffing: None.
Legal: None.

HISTORICAL BACKGROUND (Chronology of events)


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. Due to staff vacancies, Internal Audit was not able to follow up the Report to confirm that appropriate and timely actions had been taken until April, 2010.

POLICY IMPLICATIONS

None.

RELEVANT CONSULTATION

The results of the follow up were provided to management and staff responsible for the administration of the WMCC contract in the Operations and Waste Management Division of the Public Works Department.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The report attached as Appendix “A” to Report AUD10017 outlines the observations, recommendations and Management Action Plans as originally reported in Audit Report 2007-14. A fourth column has been added indicating Internal Audit’s follow up comments.
The implementation of four (4) recommendations has been completed. Best practice reviews were conducted internally and externally before the issuance of the RFP. Refund of an overpayment to the contractor was collected. Inflation escalation rate calculations (used for the Annual Fixed Price and tonnage rates in the contract) were reviewed and approved by Budget and Finance staff. Staff ensure that WSIB certificates are submitted as required by the contract and are easily retrievable.

Even though annual performance meetings were held with the contractor in 2008 and 2009 (such performance reviews are also required by the new contract), there is no evidence of written acknowledgment by either party to indicate agreement or further action. Thus, this recommendation is in progress.

Instead of allowing for the updating of certain metrics over the course of a long term contract, an alternative was implemented which provided incentives for compaction rates exceeding the minimum standard.

**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**

- Reduced impact of City activities on the environment

**APPENDICES / SCHEDULES**

Appendix “A” to Report AUD10017.

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<th>OBSERVATIONS OF EXISTING SYSTEM</th>
<th>RECOMMENDATION FOR STRENGTHENING SYSTEM</th>
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<td>1.</td>
<td><strong>Performance Metrics</strong>&lt;br&gt;Internal Audit noted that while the contractor is in compliance with the individual provisions of the agreement, some performance metrics within the agreement, having been established in 1996, do not appear to have kept abreast with trends within the industry and may therefore no longer be measures of optimal performance. For example, while the contractor is landfilling waste at a rate of 600 kg/m$^3$, staff indicated that the industry is achieving higher compaction ratios. After the closure of the City’s incinerator that used to process over 40% of the City’s waste, it has become particularly important to ensure that the compaction ratio is improved in order to prolong the life of the City’s only landfill.</td>
<td>That, prior to issuing future requests for proposals, staff review best practices in the industry to ensure current standards are incorporated. In addition, the flexibility of updating certain metrics over the course of the long term contract should be considered.</td>
<td>Agreed. A best practices review has been completed as part of the Request for Proposal (RFP) that is underway and findings have been incorporated into the document that will be issued. In addition to minimum compaction rates, conditions have been placed in the RFP that allow the rate to be re-negotiated over the term of the contract.</td>
<td>Completed. Best practice reviews were undertaken by the Public Works (PW) Department and an outside consultant. The minimum compaction rate determined by the consultant’s work was incorporated into the new WMCC contract starting January 1, 2010. Alternative Implemented. Incentives were stipulated in the new WMCC contract for compaction rates exceeding the minimum +50 kg/m$^3$. Over the ten-year contract term, WMCC should aim for higher compaction to earn more incentive payments. This in essence acts as a re-negotiating tool as WMCC should strive to continue increasing the compaction rate to the City’s benefit.</td>
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<td>2.</td>
<td><strong>Overpayments</strong>&lt;br&gt;Clauses 10.01 to 10.03 as well as the Term Sheet require that Annual Fixed Price and the tonnage rates be adjusted in January of each year by an adjustment factor using a formula prescribed in the contract. While there is compliance with this requirement, an error was made in the calculation of the 2005 adjustment factor. As the preceding year’s prices are used as a base for calculating the following year’s rates, the error was compounded in subsequent years resulting in a cumulative overpayment of approximately $117,000 for the 2005 – 2007 years.</td>
<td>That WMCC be immediately advised of the error and a request be made for a refund of the overpayments to date. That annual inflation escalation rates be reviewed and approved by management.</td>
<td>Agreed. WMCC has been advised and informed of the City’s intention to recover the overpayment. Staff are working with WMCC to determine the refund amount. A formal meeting with WMCC is planned before the end of April 2008 to discuss the process of recovering the overpayment. Effectively immediately, the calculation of the annual escalation rate is being reviewed / determined by Finance &amp; Administration (F&amp;A) staff and subsequently reviewed by Waste Management staff for accuracy and adherence to the contract. An additional review is being done by Budgets &amp; Finance before being finalized.</td>
<td>Completed. Following consultation with the contractor, the overpayment was re-calculated to $117,057.81. The whole amount was received by the City and deposited into the City’s bank account on May 27, 2008. Completed. The 2008 and 2009 annual inflation escalation rate calculations were reviewed and approved by staff from Budgets &amp; Finance with the involvement of F&amp;A.</td>
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### Observations of Existing System

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<th>#</th>
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<th>Recommendation for Strengthening System</th>
<th>Management Action Plan</th>
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<td><strong>Documentation Retention</strong></td>
<td>That the processes related to the receipt and retention of documents submitted by contractors be reviewed and changes be implemented to ensure timely retrieval capability.</td>
<td>Agreed. As of April 1, 2008, the contractor has been requested to submit Workplace Safety &amp; Insurance Board (WSIB) certificates with the monthly invoice. In addition to the original invoices being microfiched corporately, invoice files are retained in the division for two (2) years and then archived.</td>
<td>Completed. Since May 2008, the contractor has been submitting WSIB certificates electronically to staff in Waste Processing and Disposal. The project management system tracks the submission of the certificates and sends an electronic notification to PW Waste Management staff when the certificates are not received within 15 days of month end. In addition, paper copies of the WSIB certificates are usually attached to the invoices that the contractor submits to Finance &amp; Administration. The invoices are kept on site for two years before being archived.</td>
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<td><strong>Annual Performance Review</strong></td>
<td>That management perform a formal, documented, annual comprehensive review of the contractor’s performance. Both City and Waste Management of Canada Corporation (WMCC) management should sign the form as agreement to its contents.</td>
<td>Agreed. A formalized annual performance review will be performed and documented for 2008 and 2009. This requirement has been incorporated into the new RFP.</td>
<td>In Progress. Annual performance meetings were held with the contractor for the 2008 and 2009 calendar years. During the meetings, detailed reviews of the contractor’s performance were conducted, including operational issues, health and safety and other contractual obligations. The results of both reviews are documented as meeting minutes. However, there is no written acknowledgment by both parties to indicate agreement or further action. The new contract, effective January 1, 2010, also includes requirements for an annual meeting to discuss the Contractor’s performance and subsequent Contractor responses.</td>
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