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# **Contract Award Review**

Tender 901374: Used Oil, etc.

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Tender 901374: Used Oil, etc.

## 1. Introduction

On April 13, 2005, the City received a letter of complaint from a vendor regarding the award of tender number 901374. In a memo dated April 28, 2005, the General Manager, Corporate Services Department asked the Office of the City Auditor (OCA) to review the contract award process. The OCA initiated the review in May 2005.

The City periodically establishes contracts with vendors to collect and recycle used oil, oil filters, glycol, and waste fuel. This contract was established using the City's standard procurement practices (define specifications, request bids, evaluate bids, and award the contract to the successful bidder).

The services rendered under the terms of this and similar contracts result in net revenue to the City since several of the products collected will be resold by the bidders. The products to be collected include used oil, empty plastic oil containers, used oil filters, contaminated fuel, and used glycol (antifreeze). These items are collected at ECO Stations, Cloverbar Landfill, and Mobile Equipment Services (MES) locations throughout the city.

Following the 2005 contract award, an unsuccessful vendor (Vendor A) challenged the contract award based on the following allegations:

1. Evaluation points were incorrectly calculated.
2. The contract award did not maximize City's expected revenue.
3. One vendor was given favoured treatment.

In this document, Vendors A and B will be used in lieu of their names to maintain confidentiality. Vendor A filed the complaint with the City that led to this review, the contract was awarded to Vendor B.

## 2. Objectives

The OCA's objectives in this review were to:

- Evaluate the tendering process used to award the contract,
- Determine whether calculation errors impacted the contract award, and
- Identify any evidence of unequal vendor treatment.

### 3. Scope and Methodology

The OCA reviewed the contract files maintained by Materials Management in order to determine whether or not the documentation in the contract file supported Vendor A's allegations.

The OCA also interviewed individuals from the Corporate Services and the Asset Management & Public Works Departments to obtain additional documentation and to clarify some steps of the evaluation and award process for this contract.

For the purposes of this report, all quantities and values are reported in annual terms. The subject contract is for a two-year term with provision for up to two one-year renewals.

### 4. Observations and Analysis

#### 4.1. Tender Process

The City's bid evaluation procedures are intended to provide an impartial means of determining which bidder or bidders offer the best value for the City. Vendor bids are often in the form of unit costs or revenues. Those unit costs/revenues are then combined with the City's estimate of annual consumption or production to determine the expected costs or revenues resulting from the contract. At a high level, the tendering processes for this contract were conducted appropriately. However, at the detail level, there were several errors that ultimately appeared to limit the City's choices in awarding the contract.

##### 4.1.1. Impact of quantities used

The City used 2004 ECO Station/Cloverbar Landfill quantities in evaluating the bids received instead of the 2003 ECO Station/Cloverbar Landfill quantities that were cited in the RFP. The net impact of this error was relatively small since it did not affect the outcome of the tender. However, evaluating bids using quantities that differ from those supplied to potential bidders in the RFP could result in legal challenges regarding the validity of the process.

In addition, the quantity of used glycol that was used in the MES portion of the City's evaluation sheet was in error. This error reduced the apparent contract award options to two: award to a single vendor or award to two vendors based on product lines. The third option, which wasn't apparent because of the quantity error, was to award to two vendors based on business unit.

The estimated quantity of used glycol to be picked up from MES was expressed in litres in the City's evaluation sheet, while the quantity cited in the RFP package was the number of drums<sup>1</sup> to be processed from MES. Three of the five bidders quoted a cost

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<sup>1</sup> 1 drum = 205 litres

per drum to the City for disposing of the used glycol, but the other two (one was Vendor B) offered to accept the used glycol at no charge. The net effect of the quantity error was to change the relative ranking of the bidders so that Vendor B, not Vendor A, appeared to provide the highest forecast revenue for the MES portion of the contract.

#### **4.1.2. Best overall revenue**

The maximum revenue to the City would have been achieved by splitting the contract along product lines. In the maximum revenue scenario, Vendor A would have received the used oil portion of the contract and Vendor B would have received the other items. In that scenario, Vendor B would have picked up the used oil containers, filters, contaminated fuel, and glycol. However, when the City attempted to award a contract for the products other than used oil, the two vendors that bid low or no cost to the City for used glycol (Vendor B and one other vendor) were unwilling to accept such a contract (those vendors had quoted lower prices for used oil than did Vendor A).

As noted above, an alternative to splitting the contract by products could have been to split it by City business units (one contract for ECO Station/Cloverbar Landfill, one for MES). On the City's evaluation sheet, however, this option did not appear to have any benefit because of the quantity error in the evaluation sheet. Using the quantities cited in the RFP package shows an advantage to the City for this type of split award. Awarding the ECO Station/Cloverbar Landfill portion to Vendor B and the MES portion to Vendor A would have resulted in forecast revenues to the City of approximately \$500 more than by awarding the entire contract to Vendor B.

Ultimately, the City's decision to award to a single vendor was reportedly based on a business decision arising from the options that were apparent on the City's evaluation sheet.

#### **4.2. Calculations of Costs and Revenues**

As noted above, the quantities used in the City's bid evaluation sheet were not the same as the quantities included in the RFP package.

The quantities used in the ECO Station/Cloverbar Landfill portion of the City's evaluation sheet were based on 2004 actual quantities, not the 2003 actual quantities that were cited in the RFP package. Since the 2004 actual quantities had become available by the time the RFP was being reviewed, the ECO Station/Cloverbar Landfill personnel used 2004 actual quantities in their internal evaluation of the bids to better forecast their expected revenues. Those 2004 actual quantities were then copied into the City's bid evaluation sheet. This error did not affect the relative ranking of Vendors A and B.

Another anomaly noted in the MES portion of the RFP was that the estimated quantities cited in the RFP were significantly lower than expected. Further review determined that the quantities cited in the RFP represented only the first few months of 2004 rather than the entire year. However, the partial year quantities were used as if they represented a full year in both the RFP and the City's evaluation sheet. While this error did not affect

the outcome of the contract award, it did result in understated revenue expectations for the MES portion of the contract. Using actual 2003 quantities to estimate 2005 revenues for a split award by business units would have resulted in forecast revenues approximately \$4,000 higher than awarding the entire contract to Vendor B.

Other errors observed on the City's evaluation sheet that, while they did not impact the evaluation outcome, do indicate that there was insufficient validation of the data entry and formulae on the City's evaluation sheet (see the recommendations in Section 6).

### 4.3. Favoured Treatment

According to Law Branch, because of the wording in the City's standard tender documents, tenders that are submitted and not withdrawn before the bidding period closes are irrevocable. This means that the City could force a bidder to carry out the terms of the contract regardless of the bidder's willingness.<sup>2</sup> When offered a contract for the less desirable portion of the contract, Vendor B asked to withdraw its bid. The City was completely within its rights to refuse that request. However, forcing a vendor to perform a low value or net cost portion of contract when other viable options exist would not be in the long-term best interests of maintaining healthy relationships between the City and the winning bidder. Based on the quantities and calculations on the City's evaluation sheet, the City's best available option at the time appeared to be to award the entire contract to Vendor B. There was no evidence that the City gave preferential treatment to any of the five vendors that submitted bids in response to the RFP.

## 5. Conclusions

The errors in this file were a combination of data entry errors, incomplete volume data, and a unit conversion error. Unfortunately, this collection of errors happened on a single contract file. If those errors had not occurred, the City might have pursued an additional alternative by attempting to split the contract award by business units between two vendors. How the vendors would have responded to the alternative is unknown.

The errors in this file did not impact the award for the ECO Stations/Cloverbar Landfill portion of the contract. Correcting the errors did not change the selection of the successful bidder (Vendor B) for this portion of the contract.

The errors did, however, impact the evaluation of the MES portion of the contract. If the errors had not occurred, the fact that Vendor A's bid offered more value to the City for the MES portion of the contract would have been obvious.

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<sup>2</sup> Law Branch provided the following opinion: "...the duties owed by a tenderer to the owner are circumscribed by the terms of the bid contract. Thus, after bid close and in the face of a clause providing that its tender is irrevocable, the tenderer may not withdraw its tender during the period of irrevocability. Provided that the tender is capable of lawful acceptance by the owner, the owner may award to the tenderer and the tenderer will be liable for the owner's losses in the event the tenderer declines to enter into the contract following an award."

If the City had decided that the goal of the tender was to identify a single vendor that would provide the maximum revenue, then Vendor B would have received the contract even if the errors had been corrected.

However, the RFP Evaluation Criteria stated:

- 2.8 The City of Edmonton reserves the right to split award of this proposal as it deems necessary. Individuals department’s requirements may be awarded separately as well as split between more than one vendor.

**Evaluation Criteria**

Proposals submitted which meet the mandatory criteria will be evaluated using the following criteria and weighting:

- a) Total Revenues to the City 100%

Because of the errors on the City’s evaluation sheet, the explicit goal of maximizing total revenues to the City was not achieved.

## 6. Recommendations

Recommendation 1	Management Response and Action Plan
<p>The OCA recommends that the Administration implement controls to minimize the risk of data entry and calculation errors that will impact contract award decisions.</p>	<p><b>Accepted</b>  Comments:  <u>By end of the third quarter, 2005:</u></p> <ul style="list-style-type: none"> <li>• Materials Management to provide changes in administrative procedures that will include peer review of all Buyers reports that will seek to verify data entry and calculation results.</li> <li>• Materials Management will develop training plan for its staff and make revisions to the standard-form Buyer’s Report to include this additional process step.</li> </ul> <p><b>Planned Implementation:</b> October 2005  <b>Responsible Party:</b> Materials Management</p>

<b>Recommendation 2</b>	<b>Management Response and Action Plan</b>
<p>The OCA recommends that the Administration implement controls to ensure a reasonable degree of accuracy in forecast quantities used in tender documents.</p>	<p><b>Accepted</b>  Comments:  <u>By end of the third quarter, 2005:</u></p> <ul style="list-style-type: none"> <li>• Materials Management to provide changes in administrative procedures that will include a Buyer review of forecast quantities. In cases where the Buyer may have cause to question forecast quantities, verification will be sought from the responsible departmental manger.</li> <li>• Materials Management will develop training plan for departmental staff and make revisions to the standard-form Buyer's Report to include this additional process step.</li> </ul> <p><b>Planned Implementation:</b> October 2005  <b>Responsible Party:</b> Materials Management</p>