



*Office of the Auditor General/ Bureau du vérificateur général*

**AUDIT OF MINISTRY OF LABOUR CHARGES REGARDING  
CONTRACTOR EQUIPMENT IN SURFACE OPERATIONS**

**2007**

**Chapter 21**

**VÉRIFICATION DES FRAIS IMPOSÉS PAR LE MINISTÈRE DU  
TRAVAIL DE L'ONTARIO CONCERNANT DES  
VÉHICULES APPARTENANT À DES FOURNISSEURS  
DES OPÉRATIONS DE SURFACE**

**2007**

**Chapitre 21**



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## **EXECUTIVE SUMMARY**

### ***Introduction***

This audit was conducted as a result of report to the Fraud and Waste Hotline. It was not originally identified in the 2007 Audit Plan that was presented to Council.

### ***Background***

In May 2007, the Office of the Auditor General received a report via the Fraud and Waste Hotline alleging that the Ministry of Labour had fined the City in relation to contractor-owned equipment located at Woodward Yard. The report further alleges that the Ministry charges were the result of this equipment being deemed unsafe for operation. The Hotline report indicated that the City was paying standby fees for some of this equipment even though it was known that it was unfit for operation and the City should be recovering \$40,000 of the payments made.

### ***Audit Objectives***

The objectives of the audit were to determine:

1. The validity of the claim that there was a Ministry of Labour order with respect to safety issues on contractors' equipment;
2. The liability, if any, the City has with respect to the Ministry charges or other areas;
3. The relationship between the City, the associated contractors and their employees; and,
4. What liabilities the City has or may incur.

### ***Audit Scope***

We investigated these issues with Labour Relations and Human Rights and Employment Equity Division, Legal Services Branch, Supply Management Division and Surface Operations Branch. The issue is specific to contractor-owned graders located at Woodward Yard and excludes front-end loaders, sidewalk plows and any other vehicles or equipment owned by contractors.

### ***Summary of Key Findings***

1. The Ministry of Labour issued orders to the City requiring that:
  - a) Specific unsafe contractor-owned graders, located at Woodward Yard, have their safety deficiencies remedied and that the City provide proof of repair by way of a Mechanical Inspection Certificate obtained from the contractors after the work was completed;
  - b) The contractor provide the City with verification of the grader operators' competency; and,

- c) An Occupational Health And Safety Committee be established specifically for the Woodward Yard.

We were able to validate that orders a) and c) have been complied with, but not order b).

2. While the agreement with the contractors provides for the City's right to inspect the graders, there was no requirement for Safety Certificates for each vehicle to be provided to the City by the contractors. The City has now implemented such a requirement.
3. The City now requires that the contractor provide a Mechanical Inspection Certificate for each grader signed by a certified mechanic and dated no earlier than a month prior to the start of the season.
4. Surface Operations staff are required to inspect the equipment but may not have the appropriate training and assistance to do it.
5. The City does not have an adequate process to ensure that contractor safety deficiencies are promptly remedied and that liquidated damages for these units are charged to the contractor as provided for in the agreement.
6. The City has not applied the provisions of the contract despite the fact that contractor-owned equipment has been found to be unsafe from time to time.
7. There is inadequate reconciliation of contractor invoices prior to payment and the City is processing incomplete or erroneous contractor invoices.
8. The City has paid a minimum of approximately \$2,100 in standby fees in the last snow season (2006-2007) that should not have been paid.

## ***Recommendations and Management Responses***

### **Recommendation 1**

**That the City require that the grader contractors provide Surface Operations Branch with written verification that the contractors' grader operators are competent.**

#### **Management Response**

Management agrees with this recommendation.

Request for Tender No. 18007-96872-T02 for the 2007-2008 to 2009-10 seasons includes specifications addressing this recommendation:

Specification 5(a) "The Contractor shall submit in writing, the names of all operators to the Surface Operations Branch by October 1st of each year".

Specification 5(c) "No other operators shall be used unless the Area Manager is notified at least (5) five days in advance, of the names of the persons to be added to the list. Operators, which must be substituted for emergency situations, must be replaced with competent, qualified operators. The City's District supervisor shall be

advised of such change prior to the equipment commencing operations. The Contractor shall be responsible to ensure that all operators are totally familiar with the assigned beat and operational procedures”.

Specification 5(d) “The assigned operators shall be fully qualified, experienced and competent in the operation of the equipment”.

Specification 5(e) “The Contractor will be responsible for training his staff to carry out the work as described herein. Only competent employees who have previous snowplowing experience and are familiar with all applicable rules and regulations for same shall be used on this Contract”.

This recommendation has been implemented.

### **Recommendation 2**

**That Fleet Services, in conjunction with the operating department, review any new Request for Tender prepared for contractor graders to ensure that all pertinent areas are covered.**

#### **Management Response**

Management agrees with this recommendation.

In future, Surface Operations will work with the Supply Management and Fleet Services to develop a review process for future tenders.

The findings do not reveal any deficiencies in the tendering process with respect to equipment compliance requirements, however, as a precaution, Fleet Services will review the equipment compliance portion for contractor graders tenders for future tenders.

This recommendation will be implemented in future tenders.

### **Recommendation 3**

**That Surface Operations Branch request from each contractor, a signed statement listing the operators, indicating that each has been trained in the use of the equipment, and what the training included.**

#### **Management Response**

Management agrees with this recommendation.

When submitting a bid for the Request for Tender in question the contractor must guarantee by his signature that “We hereby offer to sell to the City of Ottawa, herein after referred to as the City, in accordance with the terms and conditions set out herein, referred to herein or attached hereto, the goods and/or services specified herein at the price(s) set out therefore.” This has already been implemented.

Surface Operations will work with Fleet Services and Supply Management to include a clause in all tenders that requires the successful firm(s) to submit a list of trained

operators acceptable to Surface Operations prior to commencement of the work. This will be implemented in all calls for future tenders.

#### **Recommendation 4**

**That the City establish and implement a process for ensuring that safety deficiencies detected in contractor-owned graders are remedied.**

##### **Management Response**

Management agrees with this recommendation.

The tendering documents for the 2007-2008 to 2009-10 seasons address this in the following specifications;

Specification 22(b)

“In the event that equipment, after starting operation, is not available as required due to mechanical breakdown or lack of an operator familiar with assigned roads, one (1) day’s standby will be deducted from that owing for every three (3) hours the equipment is not available and needed to a maximum deduction of five (5) days standby for any twenty-four (24) hour period”.

Specification 22(d) “Should the Contractor be unavailable when called, the Contractor will be recorded on a “Contractor Deficiency Report”. After a second (2) such occurrence the District Manager or designate will reserve the right to exclude the Contractor from any future work under this contract.”

The process for dealing with such situations will be incorporated within the yearly training. It will be mandatory to attach deficiency reports to the tracking sheets prior to sending to the Systems Control Administrator. SOPs will ensure that deficient equipment will not be put back in service until deficiencies has been corrected.

This recommendation has been implemented.

#### **Recommendation 5**

**That the City implement the liquidated damages clause provided for in the contract, as required in the Request for Tender.**

##### **Management Response**

Management disagrees with this recommendation.

However, experience with this industry has led Surface Operations to conclude that the liquidated damages clause could be problematic, and in fact could restrict bids in a marketplace already limited by grader availability. Surface Operations is of the opinion that clause 22(d), repeated above, deals with contract deficiency in a more practical manner.

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**Recommendation 6**

**That the City not process for payment any incorrect contractor invoices and that these be returned for correction.**

**Management Response**

Management agrees with this recommendation and it has already been implemented.

**Recommendation 7**

**That Surface Operations Branch provide the Systems Control Administrator with copies of the 2006-07 winter Standby and Call-out tracking sheets and the deficiency reports for reconciliation with the activity tickets prior to payment of contractor invoices.**

**Management Response**

Management agrees with this recommendation.

The documents will be provided to the Systems Control Administrator for reconciliation with the Activity Tickets prior to payment of contractor invoices. This requirement will be reiterated at the annual training sessions and integrated within branch wide procedures and monitored. This is in currently being implemented.

**Recommendation 8**

**That the City not pay standby fees for days on which the contractor-owned equipment is used.**

**Management Response**

Management agrees with this recommendation.

The following sentence was added to Specification 5 of the tendering documents for the 2007-2008 to 2009-2010 seasons, it specifies further the conditions under which standby fees apply; "The maximum Daily Standby days that will not be reimbursed per "snow plow equipment" call in shall be one (1) in any twenty four (24) hour period from 01 November to 15 April".

In addition, the process by which the information contained in the Standby and Call-out tracking sheets guides the determination of amounts owed to the Contractor will be reiterated at yearly training.

This recommendation has been implemented.

**Recommendation 9**

**That the City recover the standby fees inappropriately paid last season.**

**Management Response**

Management agrees with this recommendation.

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Surface Operations has completed the review of the instances identified by the Auditor, where standby fees may have been paid incorrectly, as of December 12, 2007 and will undertake measures to recover funds.

### ***Conclusion***

The City has agreements with contractors to provide graders, which are operated out of Woodward Yard. The agreement requires that the contractors provide units that meet all the safety requirements of the Traffic Act and various other acts and regulations, and that the operators be properly trained. The agreement provides for the City's right to inspect the vehicles and equipment and, if deemed to be unfit for use, the City may apply liquidated damages. We could not find any evidence that the City has enforced any of these clauses.

The Ministry of Labour visited Woodward Yard and determined that specific contractor-owned vehicles and equipment were unsafe and required them to be repaired and proof provided that this was done. The Ministry also required that an Occupational Health and Safety Committee be created for Woodward Yard. The City has complied with these orders.

### ***Acknowledgement***

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management.

## RÉSUMÉ

### ***Introduction***

La présente vérification fait suite à la réception d'un rapport adressé à la Ligne directe fraude et abus et ne figure pas dans le Plan de vérification de 2007 soumis au Conseil municipal.

### ***Contexte***

En mai 2007, le Bureau du vérificateur général a reçu, par l'entremise de la Ligne directe fraude et abus, un rapport alléguant que le ministère du Travail de l'Ontario a imposé à la Ville des frais concernant des véhicules appartenant à des fournisseurs de la Ville garés dans la cour d'entreposage Woodward, sous prétexte que les véhicules en question étaient jugés non sécuritaires. De plus, selon le rapport, la Ville payait des droits d'usage pour certains de ces véhicules même si elle savait qu'ils n'étaient pas en état de fonctionner. Le rapport indique que la Ville devrait récupérer 40 000 \$ sur les sommes versées.

### ***Objectifs de la vérification***

La présente vérification avait pour objectifs de déterminer :

1. la validité de l'allégation que le ministère du Travail de l'Ontario a émis une directive sur la sécurité des véhicules des entrepreneurs;
2. l'importance des frais imposés, s'il y a lieu, dont la Ville peut être tenue responsable par le Ministère ou d'autres autorités;
3. quelle relation existe entre la Ville, les entrepreneurs en question et leurs employés;
4. quels coûts peuvent être ou furent assumés par la Ville.

### ***Portée de la vérification***

Nous avons fait enquête sur ces questions auprès de Division de relations de travail et droits de la personne et équité en matière d'emploi, Direction des services juridiques, Division de la gestion de l'approvisionnement et la Direction des opérations de surface. La présente vérification porte uniquement sur les niveleuses, appartenant à des entrepreneurs, garées dans la cour d'entreposage Woodward et exclus les chargeuses frontales, les déneigeuses de trottoir ou tout autre véhicule ou équipement appartenant aux entrepreneurs.

### ***Sommaire des principales constatations***

1. Le ministère du Travail a émis les directives suivantes à l'intention de la Ville :
  - a) que soient corrigées les déficiences posant des risques à la sécurité décelées sur certaines niveleuses appartenant à des entrepreneurs et garées dans la cour

d'entreposage Woodward, et que la Ville prouve que les travaux requis ont été effectués en obtenant des entrepreneurs un certificat d'inspection mécanique;

- b) que l'entrepreneur fournisse à la Ville une vérification de la compétence de ses opérateurs de niveleuse;
- c) que soit mis sur pied un comité sur la santé et la sécurité au travail responsable uniquement de la cour d'entreposage Woodward.

Nous avons déterminé que la Ville s'est conformée aux ordonnances a) et c), mais non à l'ordonnance b).

2. L'entente conclue avec les entrepreneurs donne à la Ville le droit d'inspecter les niveleuses, mais, jusqu'à récemment, elle n'obligeait pas les entrepreneurs à fournir à la Ville un certificat de sécurité pour chacun de leurs véhicules. La Ville impose maintenant cette exigence.
3. La Ville exige maintenant que l'entrepreneur lui remette pour chacune de ses niveleuses un certificat d'inspection mécanique signé par un mécanicien breveté et daté au maximum un mois avant le début de la saison.
4. Les employés d'Opérations de surface sont tenus d'inspecter les véhicules, mais n'ont peut-être pas la formation appropriée et l'aide dont ils ont besoin pour le faire.
5. La Ville ne dispose pas d'un processus adéquat lui permettant de s'assurer que les défauts sur le plan de la sécurité que présentent les véhicules appartenant aux entrepreneurs sont corrigés rapidement et que les dommages-intérêts convenus liés à ces véhicules sont imputés à l'entrepreneur conformément à l'entente.
6. La Ville n'applique pas les clauses du contrat malgré le fait que certains véhicules appartenant aux entrepreneurs sont parfois estimés dangereux.
7. La Ville n'effectue pas de rapprochement pour les factures d'entrepreneurs avant de leur verser les paiements et traite des factures d'entrepreneurs qui sont incomplètes ou erronées.
8. La Ville a payé au moins 2 100 \$ environ de trop en droits d'usage au cours du dernier hiver, soit la saison 2006-2007.

## ***Recommandations et réponses de la direction***

### **Recommandation 1**

**Que la Ville exige aux entrepreneurs avec qui elle fait affaire, et qui possèdent des niveleuses de remettre à la Direction des opérations de surface une attestation écrite des compétences de leurs opérateurs.**

### **Réponse de la direction**

La direction est d'accord avec cette recommandation.

La demande de soumissions n° 18007-96872-T02 pour les saisons 2007-2008, 2008-2009 et 2009-2010 comprend les clauses suivantes, qui ont trait à la présente recommandation :

Clause 5 a) - « L'entrepreneur soumet par écrit le nom de tous ses opérateurs à la Direction des opérations de surface au plus tard le 1<sup>er</sup> octobre de chaque année. »

Clause 5 c) - « L'entrepreneur ne fait appel à aucun autre opérateur, à moins qu'il ne donne au gestionnaire de secteur, au moins cinq (5) jours à l'avance, le nom des opérateurs devant être ajoutés à la liste. Les opérateurs de remplacement en cas d'urgence doivent posséder les compétences et les qualifications requises. Le gestionnaire de district de la Ville est avisé de tels changements avant le début des travaux. Il incombe à l'entrepreneur de s'assurer que tous ses opérateurs connaissent bien l'ensemble des itinéraires qui leur sont assignés et toutes les procédures opérationnelles. »

Clause 5 d) - « Les opérateurs assignés possèdent les qualifications, l'expérience et les compétences nécessaires pour faire fonctionner l'équipement. »

Clause 5 e) - « L'entrepreneur devra veiller à donner à ses employés la formation requise pour effectuer les travaux décrits aux présentes. Seuls des employés compétents, qui possèdent de l'expérience en matière de déneigement et qui connaissent tous les règlements et toutes les lois qui s'appliquent à cet égard sont affectés à ces travaux. »

Cette recommandation est appliquée.

## **Recommandation 2**

**Que le personnel de Services du parc automobile ainsi que le service exploitant examinent chaque nouvelle demande de soumissions à l'intention des entreprises possédant des niveleuses pour s'assurer que tous les éléments y sont traités.**

### **Réponse de la direction**

La direction est d'accord avec cette recommandation.

À l'avenir, la Direction des opérations de surface collaborera avec le personnel de la Division de la gestion de l'approvisionnement et de la Direction des services du parc automobile afin d'élaborer un processus d'examen pour les demandes futures de soumissions.

La vérification n'a révélé aucune lacune dans le processus d'appel de soumissions actuel en ce qui touche les conditions de conformité des véhicules; toutefois, par précaution, le personnel de la Direction des services du parc automobile passera en revue la partie consacrée à la conformité de l'équipement que devront remplir les entreprises de niveleuses.

Cette recommandation sera appliquée aux appels de soumissions ultérieurs.

### **Recommandation 3**

**Que la Direction des opérations de surface exige que tous les entrepreneurs signent une déclaration accompagnée de la liste de leurs opérateurs, attestant que chacun d'entre eux a reçu la formation requise sur l'utilisation de l'équipement et comprenant une description détaillée de cette formation.**

#### **Réponse de la direction**

La direction est d'accord avec cette recommandation.

Au moment de présenter sa soumission, l'entrepreneur doit apposer sa signature pour attester qu'il est d'accord avec l'énoncé suivant : « Nous, soussignés, offrons de vendre à la Ville d'Ottawa, ci-après appelée la Ville, conformément aux modalités définies aux présentes ou ci-jointes, les biens ou les services décrits aux présentes, aux prix convenus. » Cette pratique est déjà appliquée.

La Direction des opérations de surface collaborera avec le personnel de Services du parc automobile et de Gestion de l'approvisionnement afin d'ajouter à tous les documents d'appel de soumissions une clause selon laquelle le fournisseur retenu doit soumettre, avant le début des travaux, une liste des opérateurs qualifiés qui convienne à la Direction des opérations de surface. Cette initiative sera mise en œuvre pour tous les appels de soumissions ultérieurs.

### **Recommandation 4**

**Que la Ville établisse et mette en œuvre un processus pour faire en sorte que toute défektivité dans la niveleuse d'un entrepreneur qui pourrait présenter un danger soit corrigée dès qu'elle est décelée.**

#### **Réponse de la direction**

La direction est d'accord avec cette recommandation.

Les documents d'appels de soumissions lancés pour les saisons 2007-2008, 2008-2009 et 2009-2010 comprennent les clauses suivantes qui adressent la recommandation :

Clause 22 b) - « Dans le cas où, après le début des travaux, l'équipement n'est plus disponible en raison d'une panne mécanique ou de l'absence d'un opérateur qui connaît l'itinéraire, l'équivalent d'un (1) jour sera déduit du paiement exigible pour chaque tranche de trois (3) heures pendant laquelle l'équipement est requis mais n'est pas disponible, jusqu'à une déduction maximum de cinq (5) jours par période de vingt-quatre (24) heures. »

Clause 22 d) - « Si l'entrepreneur n'est pas disponible lorsqu'on fait appel à lui, il fera l'objet d'un rapport d'insuffisance contractuelle. Au deuxième incident de ce genre, le gestionnaire de district ou son mandataire se réserve le droit d'exclure l'entrepreneur de tous les travaux prévus aux termes du présent contrat. »

Le processus utilisé pour traiter ce genre de situation sera intégré à la formation offerte chaque année. Les rapports d'insuffisance contractuelle devront

obligatoirement être joints aux feuilles de route avant que le tout ne soit envoyé à l'administrateur des contrôles de système. Le personnel d'Opérations de surface s'assurera que l'équipement défectueux n'est pas remis en service tant qu'il n'aura pas été réparé.

Cette recommandation fut mise en oeuvre.

### **Recommandation 5**

**Que la Ville applique la clause sur les dommages-intérêts convenus figurant dans le contrat, conformément aux modalités de la demande de soumissions.**

#### **Réponse de la direction**

La direction n'est pas d'accord avec cette recommandation.

Cependant, la Direction des opérations de surface a constaté avec les années que la clause de dommages-intérêts convenus peut poser des problèmes et, en fait, limiter le nombre de soumissions reçues dans un marché où les niveleuses sont déjà difficiles à trouver. Selon la Direction des opérations de surface, la clause 22 d) ci-dessus traite l'insuffisance contractuelle de façon beaucoup plus pragmatique et efficace.

### **Recommandation 6**

**Que la Ville ne traite pas les factures erronées provenant des entrepreneurs et qu'elle les renvoie à ces derniers pour qu'ils les corrigent.**

#### **Réponse de la direction**

La direction est d'accord avec cette recommandation, qui est déjà appliquée.

### **Recommandation 7**

**Que la Direction des opérations de surface fournisse à l'administrateur des contrôles de système des copies de la feuille de route sur les périodes de disponibilité et de rappels pour l'hiver 2006-2007 et des rapports d'insuffisance contractuelle pour qu'il effectue le rapprochement des comptes avant le paiement des factures de l'entrepreneur.**

#### **Réponse de la direction**

La direction est d'accord avec cette recommandation.

Les documents seront remis à l'administrateur des contrôles de système pour qu'il effectue le rapprochement des comptes avant de payer l'entrepreneur. Cette exigence sera répétée aux séances de formation annuelles, intégrée aux procédures en vigueur dans la Direction et surveillée. La mise en oeuvre de cette recommandation est en cours.

### **Recommandation 8**

**Que la Ville ne paie pas de droits d'usage les jours où l'équipement de l'entrepreneur est utilisé.**

### **Réponse de la direction**

La direction est d'accord avec cette recommandation.

La phrase suivante, qui apporte d'autres précisions sur les modalités relatives à l'application des droits d'usage, a été ajoutée à la clause 5 des documents d'appel de soumissions pour les saisons 2007-2008, 2008-2009 et 2009-2010 : « Les droits d'usage quotidiens maximums qui ne seront pas remboursés pour chaque appel concernant de l'équipement de déneigement équivaldront à un (1) jour par période de vingt-quatre (24) heures du 1<sup>er</sup> novembre au 15 avril. »

De plus, le processus en vertu duquel les renseignements contenus dans les feuilles de route sur les périodes de disponibilité et de rappels déterminent les sommes dues à l'entrepreneur sera répété aux séances de formation annuelles.

Cette recommandation est appliquée.

### **Recommandation 9**

**Que la Ville récupère les droits d'usage qu'elle n'aurait pas dû payer la saison dernière.**

### **Réponse de la direction**

La direction est d'accord avec cette recommandation.

La Direction des opérations de surface a achevé l'examen des cas relevés par le vérificateur général au 12 décembre 2007 où les droits d'usage ont probablement été payés à tort et prendra les mesures requises pour récupérer les sommes qui lui sont dues.

### **Conclusion**

La Ville a conclu des ententes avec des entrepreneurs pour la fourniture de niveleuses qui sont exploitées à partir de la cour d'entreposage Woodward. En vertu de l'entente, l'entrepreneur doit fournir des véhicules qui respectent toutes les exigences de sécurité du *Code de la route* et d'autres lois et règlements connexes, et ses opérateurs doivent avoir reçu la formation adéquate. En outre, l'entente donne à la Ville le droit d'inspecter les véhicules et l'équipement et, si elle détermine qu'ils présentent des risques, elle peut demander des dommages-intérêts conventionnels à l'entrepreneur en cause. Nous n'avons trouvé aucune preuve que la Ville a appliquée l'une ou l'autre de ces clauses.

Après avoir visité la cour d'entreposage Woodward, des représentants du ministère du Travail de l'Ontario ont conclu que certains véhicules et équipements appartenant à des entrepreneurs n'étaient pas sécuritaires et ont demandé à la Ville de les faire réparer et de présenter une preuve confirmant la réparation. Enfin, le Ministère a exigé que soit mis sur pied un comité sur la santé et la sécurité au travail responsable de la cour d'entreposage Woodward. La Ville a donné suite à ces directives.

## ***Remerciements***

Nous tenons à remercier la direction et le personnel de leur bienveillante collaboration et de l'aide qu'ils ont apportée à l'équipe de vérification.

## **1 INTRODUCTION**

This audit was conducted as a result of report to the Fraud and Waste Hotline. It was not originally identified in the 2007 Audit Plan that was presented to Council.

## **2 BACKGROUND**

In May 2007, the Office of the Auditor General received a report via the Fraud and Waste Hotline alleging that the Ministry of Labour had fined the City in relation to contractor-owned equipment located at Woodward Yard. The report further alleges that the Ministry charges were the result of this equipment being deemed unsafe for operation. The Hotline report indicated that the City was paying standby fees for some of this equipment even though it was known that it was unfit for operation and the City should be recovering \$40,000 of the payments made.

## **3 AUDIT OBJECTIVES**

The objectives of the audit were to determine:

1. The validity of the claim that there was a Ministry of Labour order with respect to safety issues on contractors' equipment;
2. The liability, if any, the City has with respect to the Ministry Charges or other areas;
3. The relationship between the City, the associated contractors and their employees; and,
4. What liabilities the City has or may incur.

## **4 AUDIT SCOPE**

We investigated these issues with Labour Relations and Human Rights and Employment Equity Division, Legal Services Branch, Supply Management Division and Surface Operations Branch. The issue is specific to contractor-owned graders located at Woodward Yard and excludes front-end loaders, sidewalk plows and any other vehicles or equipment owned by contractors.

## **5 APPROACH**

Our approach was as follows:

1. Conduct interviews in the following areas:
  - a) Interview operational staff at Woodward Yard to establish which contractors or contractors' equipment was involved in the issue and to determine the alleged unfit conditions of the equipment, where they were stored, why they were stored on City property, what other City involvement exists.

- b) Interview Labour Relations to determine whether there was an order(s) issued by the Ministry of Labour relating to the safety of the contractor's equipment and whether there were any other issues relating to the contractors.
  - c) Interview Legal Services with respect to the same items in b) above and obtain their perspective.
  - d) Interview Supply Management to determine the contract requirements covering these issues.
2. Obtain copies of the Request for Tender (RFT), Contracts or Purchase Orders Standby reports applicable to or governing the work of the contractor(s) and review them.
  3. Obtain and review any documentation available from a CUPE filing with the Labour Relations Board.
  4. Determine what costs the City has incurred or may incur related to the issue.
  5. Determine what liabilities the City has incurred.

## **6 DETAILED OBSERVATIONS, FINDINGS, AND RECOMMENDATIONS**

Our detailed findings are grouped into the following areas:

1. Was a Ministry of Labour order(s) issued to the City with respect to safety issues on contractors' equipment?
2. Does the City have any liability with respect to the Ministry orders or other areas?
3. What is the relationship between the City, the contractor(s) in question and their employees?
4. What costs has or may the City incur?

### ***6.1 Was a Ministry of Labour Order(s) issued to the City?***

#### **Observations**

On February 28, 2007 the Ministry of Labour visited Woodward Yard and inspected the equipment parked there and issued a number of orders.

They photographed and carried out inspections of a number of graders. The Ministry ordered that reports were to be filed with the Ministry by March 2, 2007, stating that all graders in Woodward Yard were safe to operate, bearing the name and signature of a qualified mechanic. The City filed the required documents on March 9, 2007.

The Ministry also required that the City have a process in place to verify that the contractors' grader operators were competent.

While the Ministry was present at Woodward Yard, they determined that the City had at least 20 employees in the Yard and wrote up an order requiring the City to set up a Health and Safety Committee specifically for Woodward Yard. This Health and Safety Committee was to consist of City management and employee representation and pertained only to City employees and equipment.

The City formed the Occupational Health and Safety Committee and, by the end of May 2007, had three trained members as required by the Ministry.

The City now requires that the contractor provide a Mechanical Inspection Certificate for each grader, signed by a certified mechanic, and dated no earlier than a month prior to the start of the season.

### **Recommendation 1**

**That the City require that the grader contractors provide Surface Operations Branch with written verification that the contractors' grader operators are competent.**

#### **Management Response**

Management agrees with this recommendation.

Request for Tender No. 18007-96872-T02 for the 2007-2008 to 2009-10 seasons includes specifications addressing this recommendation:

Specification 5(a) "The Contractor shall submit in writing, the names of all operators to the Surface Operations Branch by October 1st of each year".

Specification 5(c) "No other operators shall be used unless the Area Manager is notified at least (5) five days in advance, of the names of the persons to be added to the list. Operators, which must be substituted for emergency situations, must be replaced with competent, qualified operators. The City's District supervisor shall be advised of such change prior to the equipment commencing operations. The Contractor shall be responsible to ensure that all operators are totally familiar with the assigned beat and operational procedures".

Specification 5(d) "The assigned operators shall be fully qualified, experienced and competent in the operation of the equipment".

Specification 5(e) "The Contractor will be responsible for training his staff to carry out the work as described herein. Only competent employees who have previous snowplowing experience and are familiar with all applicable rules and regulations for same shall be used on this Contract".

This recommendation has been implemented.

## **6.2 Was the City liable with respect to the Ministry of Labour Orders?**

### **Observations**

We determined that the Ministry's orders pertained to contractor equipment only (not City owned equipment). According to staff, the safety deficiencies were on several graders, which were owned by more than one contractor. The City was deemed to be the "Employer" under the Occupational Health and Safety Act, which required that the City convey the Ministry's orders to the contractors. The City's Zone Supervisor was to obtain Mechanical Inspection Certificates from all contractors and forward them to the Ministry.

We determined that the contractors remedied the deficiencies mentioned in the Ministry's orders, and provided Mechanical Inspection Certificates to the City which were conveyed to the Ministry on March 9, 2007.

The Ministry required the City to form an Occupational Health and Safety Committee for Woodward Yard with properly trained City Management and Employee representatives. The Committee was formed for Woodward Yard and the first meeting was held on June 5, 2007. The Manager, Health and Safety confirmed that the Ministry's order to establish a Committee did not require involvement of the contractors or the contractors' employees.

A review of the RFT and contract for graders indicated that the City required the contractors to comply with the National Safety Code for Motor Carriers and Regulations; and the graders were to be equipped with all the accessories and equipment required by the Highway Traffic Act of Ontario and any other Acts, Regulations or By-Laws that apply to the units. In addition, they were to be equipped with warning lights as required by the Ontario Ministry of Transportation. The contractor was to be responsible for maintaining their equipment throughout the contract. The City had the right to terminate the agreement if the contractor failed to comply with any of the conditions specified in the agreement.

Although safety deficiencies were identified by the Ministry, according to the contract between the City and the contractors, the equipment was to have been previously inspected by the City Zone Supervisor when the contracts were awarded and again when the graders were first parked at Woodward Yard. Upon identifying deficiencies with the equipment, the City was not to allow a contractor to use unfit graders until the shortcomings were corrected.

The RFT is one that has been in use by the City for many years. When the current RFT was constructed, Supply Management did not vet it with Fleet Services to determine whether Fleet was aware of any new acts, regulations, etc., pertaining to the safety of the equipment that may not have been covered adequately in the new RFT. However, Legal Services gave us no indication that any new acts, laws or regulations had been

omitted from the current tender. As a precaution, however, it would be of value to include Fleet Services in the RFT preparation review process.

The RFT also required that operators were to be fully trained, experienced and competent in operating the machines and hold a valid vehicle operating license. A list of the operators was to be provided to the City prior to the season beginning and no other operators were to be used unless the City's Area Manager was notified at least five days ahead of time, except in the case of an emergency. There was no requirement in the RFT for the contractor to provide the City with proof of operator training. We determined that Surface Operations Branch believed that Supply Management Division was to obtain the list of operators, and Supply Management believed that Surface Operations was to obtain the list. No evidence was provided to us of the City's receipt of the list of contractors' grader operators or their competency to operate the equipment. It is our opinion that following up on this type of information would normally be considered an operational responsibility.

We checked with Legal Services and Supply Management to determine whether safety issues could be considered a reason to not allow a piece of equipment to work, and both advised us that, in their opinion, the contractor could be told to park their equipment. Finally, we asked Legal Services whether the City could require, on a contract extension, that a Mechanical Inspection Certificate be presented prior to the use of a unit, even though the original contract did not specifically request it. We were advised that the City could do this. Legal Services believes that the City should be asking the contractors for proof of the fitness of the equipment. We received confirmation from Supply Management that since the Ministry's orders, they have sent out a letter to contractors indicating that on the contract extension for the forthcoming year, they would be required to file a Mechanical Inspection Certificate with the City, signed by a Ministry certified mechanic, for each piece of equipment they operate on under the contract.

The conclusion is that the City has adequate protection in its contract, including the current amendment regarding the Mechanical Inspection Certificates, to legally separate it from the contractors. A process needs to be put in place to confirm that deficiencies have been remedied by contractors, that operators have been properly trained, and that contract clauses need to be enforced.

### **Recommendation 2**

**That Fleet Services, in conjunction with the operating department, review any new Request for Tender prepared for contractor graders to ensure that all pertinent areas are covered.**

### **Management Response**

Management agrees with this recommendation.

In future, Surface Operations will work with the Supply Management and Fleet Services to develop a review process for future tenders.

The findings do not reveal any deficiencies in the tendering process with respect to equipment compliance requirements, however, as a precaution, Fleet Services will review the equipment compliance portion for contractor graders tenders for future tenders.

This recommendation will be implemented in future tenders.

### **Recommendation 3**

**That Surface Operations Branch request from each contractor, a signed statement listing the operators, indicating that each has been trained in the use of the equipment, and what the training included.**

#### **Management Response**

Management agrees with this recommendation.

When submitting a bid for the Request for Tender in question the contractor must guarantee by his signature that “We hereby offer to sell to the City of Ottawa, herein after referred to as the City, in accordance with the terms and conditions set out herein, referred to herein or attached hereto, the goods and/or services specified herein at the price(s) set out therefore.” This has already been implemented.

Surface Operations will work with Fleet Services and Supply Management to include a clause in all tenders that requires the successful firm(s) to submit a list of trained operators acceptable to Surface Operations prior to commencement of the work. This will be implemented in all calls for future tenders.

### **Recommendation 4**

**That the City establish and implement a process for ensuring that safety deficiencies detected in contractor-owned graders are remedied.**

#### **Management Response**

Management agrees with this recommendation.

The tendering documents for the 2007–2008 to 2009-10 seasons address this in the following specifications;

Specification 22(b)

“In the event that equipment, after starting operation, is not available as required due to mechanical breakdown or lack of an operator familiar with assigned roads, one (1) day’s standby will be deducted from that owing for every three (3) hours the equipment is not available and needed to a maximum deduction of five (5) days standby for any twenty-four (24) hour period”.

Specification 22(d) "Should the Contractor be unavailable when called, the Contractor will be recorded on a "Contractor Deficiency Report". After a second (2) such occurrence the District Manager or designate will reserve the right to exclude the Contractor from any future work under this contract."

The process for dealing with such situations will be incorporated within the yearly training. It will be mandatory to attach deficiency reports to the tracking sheets prior to sending to the Systems Control Administrator. SOPs will ensure that deficient equipment will not be put back in service until deficiencies has been corrected.

This recommendation has been implemented.

### **6.3 *Is there an Employer-Employee Relationship between the City and the Contractor***

#### **Observations**

According to the City Solicitor, the definition of employer-employee relationship under the Occupational Health and Safety Act is much broader than under other legislation. Being deemed an Employer under this Act does not imply that the City is the Employer under other legislation.

The City does not maintain or operate any of the contractor equipment, not even to relocate it in Woodward Yard. The City does not provide any parts or safety equipment for the contractor equipment.

We obtained documentation from Labour Relations that indicated that CUPE Local 503 attempted to have the City and the contractors deemed a single Employer for the graders contract in 2007. A decision was handed down by the Labour Board on May 8, 2007, which rejected this declaration and suggested that it be resolved by an Arbitration Board, which is the forum that is currently considering this matter.

### **6.4 *What costs has or may the City incur?***

#### **Observations**

According to the contract, the City can stop the contractors from using equipment with safety deficiencies.

The Systems Control Administrator, Surface Operations prepared an Excel spreadsheet entitled Standby and Call-out Winter 2006 & 2007 Tracking to assist the tracking and reconciliation of standby fees. Woodward Yard used this tool for part of the 2006-2007 season. However, the Antares operation, which also controls a number of contractor graders located at Woodward Yard, did not use this form. Activity tickets are prepared when a grader is sent out on a beat and this document is forwarded to the Systems Control Administrator who reconciles them to the contractors' invoices. The lack of an activity sheet for a contractor would not be proof that a grader was not available when required, as the grader may not have been requested to work.

The City pays contractors a \$55 per diem standby fee for any days during the contract period when the contractor's equipment was available but was not used. However, if the operator failed to commence work within 30 minutes of the schedule, the contractor was to be charged liquidated damages of a minimum of \$400 plus \$80 for each subsequent hour to a maximum of \$950 per eight hour shift. After starting operation, if the equipment was not available as required due to a mechanical breakdown or lack of an operator familiar with the work, one day's standby fee was to be deducted from that owing for every three hours the equipment was not available, and needed, to a maximum of five days of standby fee for any 24 hour period.

Surface Operations staff advised us that when the graders were initially parked at Woodward Yard, they did a cursory inspection of the contractors' equipment for obvious safety related items, but did not do a mechanical inspection. Staff also indicated that they were only qualified to identify deficiencies that were obvious as they were not trained mechanics. Fleet Services confirmed that they had no responsibility to either inspect the graders or verify that a contractor's mechanic was Ministry certified. Neither area had requested that the contractors provide them with Mechanical Inspection Certificates.

If a deficiency was noted, it was up to the contractor to get it fixed and advise the Zone Supervisor when it was done. The Zone Supervisor would then inspect the unit. Staff indicated that the graders were not inspected each time they went out. When inspecting the contractors' work on beats, if City staff noticed that a grader had an obvious safety defect, they were to advise the contractor to get it fixed. However, staff did admit that there was no formal process set up to track this. One staff person told us that a deficiency report should be raised, a copy of which would be sent to Supply Management. If a contractor had two deficiency reports, there was a risk they could lose their contract. Supply Management advised that they have never received a deficiency report, nor were they aware of any contractor being docked standby fees. The Deficiency Report and Standby and Call-out Winter 2006 & 2007 Tracking should also be sent to the Systems Control Administrator for reconciliation with the activity tickets and the contractors' invoices.

We determined that although some safety issues had been identified last season, City staff did not raise a deficiency report as required, nor did they impose a reduction of standby fees other than for one grader which was not available for most of the month of March. There was no evidence on the Excel spreadsheets of contractor equipment being levied liquidated damages, nor were we able to find credits against any contractors' accounts payable account for liquidated damages. At this time, it is not possible to determine how many safety infractions there were during the season or how much in liquidated damages the City could have levied.

We reviewed all invoices for standby and beat charges from contractors for graders parked at Woodward Yard (some of these are managed by Woodward and some by Antares). During the 2006-2007 season, there were a total of 27 graders parked in

Woodward Yard for which the City paid a total of 3,548 days of standby fees for an approximate total of \$195,000. This excludes 31 days in March for one grader.

In addition, RFT clause 20 b. specifies that the standby fee is to be paid only when the graders are not working anytime during the day. During the season, there were a total of 161 days in which contractors billed for grader work. Aside from the unidentified days that the City should not have paid standby fees due to defective equipment, the City paid 38 days of standby charges not required due to a misinterpretation by staff of Clause 20 b. in the RFT.

The table below provides additional explanation.

Month	Days	Graders	Maximum Standby Days	Total
November	16	27	432	
December	31	27	837	
January	31	27	837	
February	28	27	756	
March	31	26	806	
Less: Beat days paid (excludes 3 days for a grader excluded from standby)			-158	
Total Maximum Standby Days Less Beat Days Paid				3,510
Total Standby Days Paid				3,548
Number of Days Overpaid				38
<b>Dollar Value of Overpayment @ \$55 per day</b>				<b>\$2,090</b>

It should be noted that standby fees have also been incurred for defective graders. The above figures exclude this amount, as the number of days for which these fees were paid could not be determined at the time of the audit.

During the examination of the contractors' invoices for both standby and beat fees, we noticed numerous omissions and errors in the invoices. For example, some invoices did not have the date for which the beat time was being charged, the start and stop time of work, or the grader number. Some were addressed to Antares when they should have been addressed to Woodward. Some had the amount of hours or days being charged for crossed out and changed. Incorrect contractor invoices should not be processed for payment by the City and should be returned to the contractor who should be required to submit an error free invoice.

The City has not incurred any additional costs relating to the contractors repairing the safety deficiencies noted by the Ministry's orders nor for the Mechanical Inspection Certificates required by them.

The City has notified the contractors that on the contract extension, Mechanical Inspection Certificates will be required for each unit provided under the contract.

**Recommendation 5**

**That the City implement the liquidated damages clause provided for in the contract, as required in the Request for Tender.**

**Management Response**

Management disagrees with this recommendation.

However, experience with this industry has led Surface Operations to conclude that the liquidated damages clause could be problematic, and in fact could restrict bids in a marketplace already limited by grader availability. Surface Operations is of the opinion that clause 22(d), repeated above, deals with contract deficiency in a more practical manner.

**Recommendation 6**

**That the City not process for payment any incorrect contractor invoices and that these be returned for correction.**

**Management Response**

Management agrees with this recommendation and it has already been implemented.

**Recommendation 7**

**That Surface Operations Branch provide the Systems Control Administrator with copies of the 2006-07 winter Standby and Call-out tracking sheets and the deficiency reports for reconciliation with the activity tickets prior to payment of contractor invoices.**

**Management Response**

Management agrees with this recommendation.

The documents will be provided to the Systems Control Administrator for reconciliation with the Activity Tickets prior to payment of contractor invoices. This requirement will be reiterated at the annual training sessions and integrated within branch wide procedures and monitored. This is in currently being implemented.

**Recommendation 8**

**That the City not pay standby fees for days on which the contractor-owned equipment is used.**

**Management Response**

Management agrees with this recommendation.

The following sentence was added to Specification 5 of the tendering documents for the 2007-2008 to 2009-2010 seasons, it specifies further the conditions under which

standby fees apply; “The maximum Daily Standby days that will not be reimbursed per “snow plow equipment” call in shall be one (1) in any twenty four (24) hour period from 01 November to 15 April”.

In addition, the process by which the information contained in the Standby and Call-out tracking sheets guides the determination of amounts owed to the Contractor will be reiterated at yearly training.

This recommendation has been implemented.

### **Recommendation 9**

**That the City recover the standby fees inappropriately paid last season.**

#### **Management Response**

Management agrees with this recommendation.

Surface Operations has completed the review of the instances identified by the Auditor, where standby fees may have been paid incorrectly, as of December 12, 2007 and will undertake measures to recover funds.

## **7 CONCLUSION**

The City has agreements with contractors to provide graders, which are operated out of Woodward Yard. The agreement requires that the contractors provide units that meet all the safety requirements of the Traffic Act and various other acts and regulations, and that the operators be properly trained. The agreement provides for the City’s right to inspect the vehicles and equipment and, if deemed to be unfit for use, the City may apply liquidated damages. We could not find any evidence that the City has enforced any of these clauses.

The Ministry of Labour visited Woodward Yard and determined that specific contractor-owned vehicles and equipment were unsafe and required them to be repaired and proof provided that this was done. The Ministry also required that an Occupational Health and Safety Committee be created for Woodward Yard. The City has complied with these orders.

## **8 ACKNOWLEDGEMENT**

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management.