



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

**AUDIT OF MOONLIGHTING AND CORPORATE RISK ISSUES  
- TRAFFIC OPERATIONS DIVISION**

**2008**

**VÉRIFICATION - DEUXIÈME EMPLOI ET RISQUE DE CONFLITS DE  
SUPERVISION - DIVISION DE LA CIRCULATION ROUTIÈRE**



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## Table of Contents

EXECUTIVE SUMMARY .....	i
RÉSUMÉ.....	xi
1 Introduction.....	21
2 Moonlighting and Conflicting Supervisory Risk.....	21
3 Conflict of Interest .....	37
4 Sole Source Contractors and Proprietary Systems Risk.....	49
5 Conclusion .....	56
6 Acknowledgement.....	56



## EXECUTIVE SUMMARY

### *Introduction*

This audit was conducted as a result of reports to the Fraud and Waste Hotline. It was not originally identified in the 2008 Audit Plan that was presented to Council.

The report is divided into three areas:

- Moonlighting and Conflicting Supervisory Risk (Partham Engineering);
- Conflict of Interest (Partham Engineering); and,
- Sole Source Contractors and Proprietary Systems Risk (Thompson Technologies, Luxcom, Multilek).

### *Background*

Partham Engineering Ltd. (Partham) is an Ontario-registered engineering company, owned and controlled by Jim Bell, Manager of Traffic Operations Division. Mr. Bell indicates that Partham evolved based on the need of smaller nearby municipalities requiring affordable, convenient external expertise in traffic signal systems. The firm designs, builds and maintains traffic control signals and related street lighting. Its client base is small municipalities primarily in Eastern Ontario. On occasion, they provide subcontract work to contractors serving these municipalities and also work directly with private sector developers in these areas. No work is done within the City of Ottawa boundaries. Partham is primarily staffed with both current and retired employees of the Traffic Operations Division. Of note, Mr. Bell voluntarily invited the Office of the Auditor General (OAG) to examine, in detail, all Partham financial records and documents to facilitate this review. The Audit of Traffic Operations was completed in October 2008.

**Thompson Technologies** is a Gloucester-based consulting organization owned and operated by Andy Thompson, a former Regional Municipality of Ottawa-Carleton (RMOC) employee and original founding partner of Partham Engineering Inc. Thompson Technologies, an unincorporated organization, first began to produce work for the RMOC in the mid 1990s when Mr. Thompson was co-owner in Partham Engineering with Jim Bell (Mr. Bell and his spouse took over as sole shareholders in 1997). Thompson Technologies conducts research and development for the City of Ottawa for the design and manufacture of traffic controllers. These specialized electronic circuits are installed at every signalized intersection to read, interpret and control traffic flows, and, for most intersections, to then communicate with the central Traffic Operations Control Room on ongoing traffic operations. It is estimated that there are over 1,000 such controllers in current operation at all times within the City. Mr. Thompson, a former City employee, is Thompson Technologies' only identifiable technical employee.

**Luxcom Technologies (Luxcom)**, an Ottawa-based manufacturer of electronic communication equipment, is the manufacturer of specialized communication devices (e.g., telephone line and cellular modems) used by the City of Ottawa for the transmittal of digital information from traffic signal controllers. Luxcom was introduced to Thompson Technologies by the City of Ottawa, as Thompson Technologies was being used to develop designs and specifications for communication modems and traffic controllers which required manufacturing optimization and production.

**Multilek Systems (Multilek)** is an Ottawa-based manufacturer of civilian and military grade electronics. Over the period 1999 to 2008, Multilek has been supplying the City of Ottawa the 'Multilek Traffic Controller' and related traffic controller computer hardware used exclusively in traffic controllers and traffic control systems across the City of Ottawa.

## **Key Findings**

### **Moonlighting and Conflicting Supervisory Risk (Partham Engineering)**

This audit concludes that current and historic senior management within Traffic Operations Division and Public Works and Services, acted against the general management provisions of the current Employee Code of Conduct by not establishing necessary management systems to "establish and maintain adequate systems, procedures and controls to prevent and detect fraud, theft, breach of trust, conflict of interest, bias and any other form of wrongdoing".

It is our opinion that Mr. Bell should not have been promoted to Manager, Traffic Operations at the City while he directly or indirectly hired, supervised and disciplined staff while they were working for both Partham and the City. This is further supported by the assertion that, in order to properly exercise management responsibilities in the case of Partham (it is their decision to permit, within a single work unit at the City, several staff (supervisors and subordinates) to actively work for a separate private sector business), Senior management would necessarily take on themselves the added role of unit management, control and oversight with a special need to address anticipated conflicts of interest; all this at significant cost to the City. This should have been addressed when the City first accepted Mr. Bell's declared intent to create and operate Partham and then revisited over time at each potential appointment to higher levels of management.

At this time, best practises clearly support the termination of Partham activities by City of Ottawa employees primarily due to:

1. The ineffective management of the impact of Partham Engineering activity, real or perceived, on City work by past and current City senior management (i.e., unaware of compromised management/supervisory internal controls);

2. The ineffective management of Partham staff by current and past Traffic Operations Division supervisors and managers which may have allowed for inappropriate actions on the part of City staff working for Partham (e.g., undetected work performed for Partham on City time);
3. The continued potential for inappropriate behaviour given current compromised/ineffective supervisory and managerial inherent internal controls;
4. The future requirement for time consuming vigilant monitoring by supervisory staff to monitor behaviour of joint City/Partham staff to ensure inappropriate behaviour does not continue; and,
5. Disciplinary measures required to address the behaviours of [REDACTED]

### **Conflict of Interest (Partham Engineering)**

While there is no evidence that there was fraud or a breach of trust in any Partham transaction or activity or by any actions of Mr. Bell, the implicit and inherent internal controls which both Council and the public would reasonably expect to exist are seriously compromised; the onus to ensure there is no wrongdoing is entirely reliant upon the honour and ethics of Mr. Bell rather than on standard preventive and detective internal controls.

While Mr. Bell has stated that he intends to continue the status quo with Partham operations upon his retirement (and not expand) there is nothing to prevent Mr. Bell, potentially with a strategic alliance with another competitor such as Black and McDonald, from soliciting an Ottawa option bid for the design, build and maintenance of all City traffic signals, controllers and street lights. While this may or may not be beneficial to the City, it may also be a costly alternative forced upon the City if Mr. Bell leaves with a number of senior City officials, several who already work for Partham. It would be difficult for Council to ensure they were receiving objective advice on the potential Ottawa option due to Mr. Bell's history with the City. Either way, the City would be exposed to substantial unanticipated risk.

Best practises clearly support the immediate termination of moonlighting (Partham activities) by both Mr. Bell and other City of Ottawa employees if they continue to work for the City. In addition to points raised in the previous section this is recommended due to:

1. The unfair advantage (real or perceived) afforded Partham in acquiring contracts with neighbouring municipalities as a result of Mr. Bell's position at the City;
2. The level of effort required by Mr. Bell and his key Partham employees (who also work for the City) for Partham activities and the potential for reduced levels of effectiveness in their City position;

3. The negative impact on morale within Traffic Operations resulting from the perceived favouritism and biased treatment of City staff employed by Partham; and,
4. When City staff work for Partham Engineering, they deal with consultants and contractors that are also providing services to the City. This conflict could also affect the City's relationships with consultants and contractors.

Ultimately, the City is accountable for protecting the assets of, and the public trust in, the City. The current and continued activity of the City's Traffic Operations Division staff employed by Partham Engineering compromises this function.

In order to ensure City management was fully informed prior to bringing the organizational restructuring before Council on March 25, 2009, we raised the issues relating to Partham Engineering conflicts to the General Manager, Public Works on January 23<sup>rd</sup>. We also subsequently issued on February 2<sup>nd</sup>, earlier than had been scheduled, the draft report to the City Manager.

### **Sole Source Contractors and Proprietary Systems Risk (Thompson Technologies, Luxcom, Multilek)**

The staff's decision to rely on an unincorporated business, Thompson Technologies with a single technical employee for the planning, design and specifications of all traffic controllers used in the City, leaves the City without fall back or any reasonable alternative should Thompson Technologies, for any reason, be unable to meet its obligations. In particular, the use of sole source contracts and single qualified contractor contracts for traffic controller development through Thompson Technologies now exposes the City to substantial risk of service loss, price gouging and/or added service costs.

Given the strong historic linkages between Jim Bell, (Traffic Operations/Partham) and Andy Thompson (original Partham partner, now Thompson Technologies) and the strong reliance the City now has on Multilek and Luxcom for the supply of traffic technological products, it is critical that the City safeguard its future ability to meet traffic operations technology needs through the development of a longer term strategic plan which provides for the supply of an integrated traffic control system while also addressing these risks. In addition, the City needs to explore legal options for ensuring the protection of future income derived from the technology developed by Thompson Technologies, Luxcom, Multilek Technologies and/or Rogers Digital Communications while under contract to the City of Ottawa, in particular technology currently being touted by Rogers Digital Communications as having substantial transferability to other markets.

The progressive development of a management culture within the Traffic Operations Division that favours a 'do it ourselves' approach to procurement, assessment and service delivery presents certain significant added costs and risks to

City operations. The City's approach to traffic management includes significant program cost associated with research and development for traffic technology development (in lieu of market acquisition of commercially available product). In addition to the items mentioned in this report, in the Audit of Traffic Operations report (produced under separate cover) we note similar costs and risks associated with the Traffic Operations approach of 'doing it themselves' when developing exclusive local engineering analysis standards (in lieu of standard engineering practices); when purchasing, storing and handling materials for construction (in lieu of establishment and policing of specifications, etc.) and in other R&D and manufacturing program conducted by the Division.

## ***Recommendations***

### **Recommendation 1**

**That the City immediately clarify the Employee Code of Conduct to provide that employees involved in moonlighting be prohibited from working as supervisor-subordinates (direct or indirect subordination) within a single department work unit at the City.**

#### **Management Response**

Management agrees with this recommendation. The Legal Services branch will be undertaking a significant review of the *Employee Code of Conduct* in order to clarify and consolidate various sections that have been noted in audit reports over the course of the past few months. The Legal Services branch will include the "Outside Business Activity (Moonlighting)" provisions within the ambit of this review. This review will be complete by the end of Q3 2009.

### **Recommendation 2**

**That the City clarify the Employee Code of Conduct - Moonlighting, through supporting procedures, systems, documents and forms to provide guidance to managers and supervisors in assessing whether moonlighting is appropriate.**

#### **Management Response**

Management agrees with this recommendation. Within the context of the review noted above, the Legal Services branch proposes to include a "Supplementary Questions and Answers" section for the "Outside Business Activity (Moonlighting)" section of the *Employee Code of Conduct* by the end of Q3 2009. Similar guidance is set out with respect to the Gifts, Entertainment and Hospitality Corporate policy and is intended to provide managers and supervisors with practical examples to assist in outlining the City's ethical requirements. Legal Services will also reinforce the fact that any question regarding the interpretation or application of the *Code*, or other related advice or guidance, may be sought from the City Clerk and Solicitor.

### **Recommendation 3**

**That the City take immediate action to put in place necessary interim management oversight and controls over the activities of Partham Engineering and their employees consistent with the provisions of the current Employee Code of Conduct.**

#### **Management Response**

Management agrees with this recommendation. The Public Works department will work in collaboration with Legal Services, Human Resources and Labour Relations in identifying, implementing and monitoring measures and controls to ensure there are no conflicts or violations of the *Employee Code of Conduct* by the end of Q2 2009.

Some immediate measures have already been implemented as a result of the recent corporate realignment. The Manager of Street Lighting is now reporting directly to the new Manager of Roads & Traffic Operations and Maintenance. In addition, other key positions identified in the audit will have a new manager overseeing their functions.

### **Recommendation 4**

**Where a declared conflict of interest has been determined to have a serious operational impact, (either actual or perceived) and it impairs the employee's ability to carry out his/her responsibilities, that the City give the employee the option of terminating the conflict, or being removed from the position. This recommendation applies to Mr. Bell and all City staff working for Partham Engineering.**

**OAG COMMENT:** In order to ensure City management was fully informed prior to bringing the organizational restructuring before Council on March 25, 2009, we raised the issues relating to Partham Engineering conflicts to the General Manager, Public Works on January 23<sup>rd</sup>. We also subsequently issued on February 2<sup>nd</sup>, earlier than had been scheduled, the draft report to the City Manager.

#### **Management Response**

Management agrees with this recommendation. The Legal Services branch will work closely with senior management in the Public Works department to address any real or perceived conflict of interest or violation of the *Employee Code of Conduct* within the context of the revised organizational structure and in compliance with the requirements of any contract of employment or collective agreement by the end of Q3 2009.

**OAG COMMENT:** The OAG considers that this recommendation should be forwarded to the Audit, Budget and Finance Committee for discussion.

### **Recommendation 5**

**That the City take appropriate action, including disciplinary, regarding the misuse of sick leave and overtime by employees.**

#### **Management Response**

Management agrees with this recommendation. The City of Ottawa investigates all allegations of the misuse of sick leave and overtime by employees. Where warranted by the findings of such investigations, appropriate disciplinary action is taken by management following consultation with Legal Services (Labour Relations) and consideration of all relevant factors. Management will immediately review any specific incidents of alleged sick leave and overtime abuse identified in this audit and will take the appropriate disciplinary action that may be warranted as a result of the findings.

### **Recommendation 6**

**That the City Manager, to mitigate the City's risk exposure, assess the feasibility of a non-compete agreement (e.g., cooling off period) with [REDACTED]**

#### **Management Response**

Management agrees with this recommendation. However, [REDACTED] during Phase III of the corporate realignment exercise. Legal Services will include consideration of non-compete agreements as part of the overall review of the Outside Business Activity (Moonlighting) provisions of the *Employee Code of Conduct*. With regard to [REDACTED] the City's *Re-employment Policy* stipulates that "a former employee may not be re-employed on a permanent, temporary, fee for service or contract basis, whether independently or as part of a consulting firm, until the complete period of time equal to the length of their notice period and/or payment at departure has expired. A former employee may be employed by a consulting firm, but may not be assigned to work on a City contract by the firm until their combined notice period and/or payment at departure has expired." Given the restrictions imposed by the Policy, a further agreement is not necessary.

### **Recommendation 7**

**That the City undertake a review of the current procurement practices in place within the Traffic Operations Division in the areas of engineering services acquisition; traffic controllers hardware and software purchasing; and material purchasing to ensure that the City's best interests are met and that the current practice does not expose the City to unreasonable additional costs or risk assignment.**

**Management Response**

Management agrees with this recommendation. Supply Management will work with Traffic and Parking Operations to develop a supply chain strategy by the end of Q1 2010 for the acquisition of engineering services; traffic controller hardware and software; and associated materials with the goal of safeguarding its future ability to meet traffic operations technology needs and to ensure best value is achieved. Staff will also work with Legal Services to ensure that any necessary changes are incorporated into the City's standard contract terms.

**Recommendation 8**

**That the City develop a long range plan for the design and sourcing of traffic controller and communications equipment (through standard competitive processes) and that contracts with successful firms include a significantly reduced degree of risk for the City (e.g., private sector involvement in R&D funding; Public-Private Partnership, etc.), or, if technology is developed at the cost and risk of the City, that the ownership, application rights and proceeds of R&D is wholly owned by the municipal corporation, with the City maintaining detailed full specifications of all R&D products to allow for the City's use in future competitive contracts.**

**Management Response**

Management agrees with this recommendation. Supply Management and Traffic and Parking Operations have taken significant steps to open up competitive bidding on traffic controllers in the past year. There are now two competing suppliers for traffic controllers.

Supply Management will continue to work with Traffic and Parking Operations to develop a sourcing plan for the acquisition of traffic controllers and communication equipment by Q1 2010 with the goal of increasing competition resulting in more competitive pricing, properly allocating risks between the supplier and the City, and exploring options for ownership of technology.

Legal Services, in cooperation with Supply Management and Traffic and Parking Operations, will review on an ongoing basis, the standards terms and conditions of contracts to ensure that they fully and adequately protect the City's intellectual property interests.

**Recommendation 9**

**That the City explore opportunities for the City to derive profits from technologies sales and services derived from existing inventions developed through City of Ottawa research and development funding, and, in particular, products developed by Thompson Technologies, Luxcom, Multitek and/or Rogers Digital Communications while under contract to the City.**

### **Management Response**

Management agrees with this recommendation. Staff will examine the possibility of generating revenue from the use of the City's intellectual property rights, recognizing the legal limitations on the municipality's ability to generate profits, as well as the practical difficulties associated with the management and marketing of the City's intellectual property.

With regard to the identified firms, staff will review the relevant contractual documents to determine whether the City

### **Conclusion**

The case reviewed in this audit indicates that the City does not have any mechanisms to manage conflict of interest. The main employee properly disclosed his conflict of interest but neither the employee nor the City exercised proper monitoring actions to ensure that private activities had no detrimental effect on the operations of the City.

In our opinion, every case of a declared conflict of interest should be evaluated to determine the impact on the operations of the City. If determined that the conflict of interest cause a real or perceived negative impact, such conflict of interest should be rejected and the employee should have a choice of either proceeding with the private activities and leave the City or stop the private activities and stay an employee of the City.

A City should not accommodate an employee conflict of interest to a point that it has a negative impact on its operations nor on its image of guardian of public good.

### **Acknowledgement**

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management and by the owners of Partham Engineering Ltd.



## RÉSUMÉ

### *Introduction*

La vérification dont il est ici question a été menée à la suite de rapports faits à la Ligne directe de fraude et d'abus. Elle ne figure pas dans le plan de vérification 2008 tel qu'il a été présenté au Conseil municipal.

Le rapport comporte trois sections :

- Deuxième emploi et risque de conflits de supervision (Partham Engineering);
- Conflit d'intérêts (Partham Engineering);
- Fournisseurs unique et risque lié au systèmes exclusifs (Thompson Technologies, Luxcom, Multilek).

### *Contexte*

Partham Engineering Ltd. (Partham) est une société d'ingénierie enregistrée en Ontario, dont le propriétaire et dirigeant est Jim Bell, gestionnaire de la Division de la circulation routière. Jim Bell indique que Partham a évolué pour répondre aux besoins des petites municipalités environnantes pour une expertise externe abordable et pratique en matière de systèmes de feux de circulation. La société conçoit, fabrique et entretient des feux de circulation et des éclairages de voies publiques connexes. Sa clientèle principale est constituée de petites municipalités, surtout de l'Est de l'Ontario. À l'occasion, la société offre des contrats de sous-traitance à des entrepreneurs de ces municipalités; elle travaille aussi directement avec des entrepreneurs du secteur privé dans ces régions. Aucun travail n'est effectué dans la limite territoriale de la Ville d'Ottawa. Le personnel de Partham est principalement constitué d'employés actuels ou retraités de la Division de la circulation routière. Il est à noter que Jim Bell a, de son propre gré, invité le Bureau du vérificateur général (BVG) à passer en revue, en détail, tous les dossiers financiers et les documents de Partham afin de faciliter l'examen. La vérification de la Circulation routière fut complétée en octobre 2008.

**Thompson Technologies** est une société d'experts-conseils ayant son siège à Gloucester dont le propriétaire et dirigeant est Andy Thompson, un ancien employé de la Municipalité régionale d'Ottawa-Carleton et un associé fondateur de Partham Engineering Inc. Thompson Technologies, une entreprise non constituée en personne morale, a commencé à réaliser des travaux pour la MROC au milieu des années 1990, alors qu'Andy Thompson était copropriétaire de Partham Engineering avec Jim Bell (Jim Bell et sa conjointe sont devenus actionnaires uniques en 1997). Thompson Technologies réalise des activités de recherche et développement pour la Ville d'Ottawa pour la conception et la fabrication de régulateurs du trafic. Ces circuits électroniques de pointe sont installés à chaque intersection muni de feux de circulation et permettent de détecter, d'interpréter et de contrôler le débit de la

circulation, en plus de communiquer la circulation actuelle à la salle des commandes de la Circulation routière, pour la plupart des intersections. Il y a actuellement, selon les estimations, plus de 1 000 régulateurs en fonction en tout temps dans la ville. Andy Thompson, un ancien employé de la MROC, est le seul technicien connu de Thompson Technologies.

**Luxcom Technologies (Luxcom)**, un fabricant d'équipement de communication électronique situé à Ottawa, fabrique des dispositifs de communication spécialisés (p. ex. des lignes téléphoniques et des modems cellulaires) utilisés par la Ville d'Ottawa pour la transmission des données numériques des régulateurs installés aux feux de circulation. C'est la Ville d'Ottawa qui a mis en communication Luxcom et Thompson Technologies, car elle faisait appel à ses services pour la conception et les cahiers des charges de modems et de régulateurs, qui nécessitaient une optimisation de la fabrication et une production.

**Multilek Systems (Multilek)** est un fabricant de matériel électronique pour les secteurs civil et militaire ayant son siège à Ottawa. Au cours de la période de 1999 à 2008, Multilek a fourni à la Ville d'Ottawa le « régulateur du trafic Multilek » et d'autre matériel informatique accessoire utilisé exclusivement avec les régulateurs du trafic et les systèmes de contrôle du débit de la circulation routière dans la ville d'Ottawa.

## ***Principales constatations***

### **Deuxième emploi et risque de conflits de supervision (Partham Engineering)**

La vérification conclut que les cadres dirigeants actuels et anciens de la Division de la circulation routière et des Services et Travaux publics ont agi à l'encontre des règles générales de conduite du Code de conduite du personnel actuel en n'établissant pas des modes de gestion nécessaires pour : « établir et tenir les systèmes, les procédures et les contrôles adéquats qui lui permettent de prévenir et de détecter les cas de fraude, de vol, d'abus de confiance, de conflit d'intérêts, de discrimination et toute autre forme de méfaits ».

Nous sommes d'avis que Jim Bell n'aurait pas dû être promu au poste de gestionnaire, Circulation routière, à la Ville d'Ottawa alors que, directement ou indirectement, il embauchait des employés, les supervisait et prenait des mesures disciplinaires à leur endroit au moment où ceux-ci travaillaient à la fois pour Partham et la Ville. Cet avis s'appuie aussi sur l'affirmation que, afin de gérer correctement Partham (les cadres dirigeants peuvent permettre, dans une unité de travail de la Ville, à plusieurs employés [superviseurs et subalternes] de travailler activement pour une entreprise privée), les cadres dirigeants doivent remplir eux-mêmes le rôle supplémentaire de gestion de l'unité, de sa surveillance et de sa supervision, en particulier le risque de conflit d'intérêts; tout ceci entraîne des coûts supplémentaires pour la Ville. Cette question aurait dû être traitée quand la Ville a

accepté, en premier lieu, la déclaration d'intention de Jim Bell de mettre sur pied et d'exploiter Partham, puis réévaluée lors de chaque possibilité d'affectation à un poste de direction.

Aujourd'hui, les pratiques exemplaires appuient manifestement la cessation des activités de Partham par les employés de la Ville d'Ottawa, principalement pour les motifs suivants :

1. La gestion inefficace des répercussions de l'activité de Partham Engineering, réelles ou perçues, sur le travail de la Ville, par des cadres dirigeants actuels et anciens de la Ville (c.-à-d. manque de connaissance de la gestion compromise/des contrôles internes exercés par les superviseurs);
2. La gestion inefficace des employés de Partham par des superviseurs et des gestionnaires de la Division de la circulation routière actuels et anciens qui pourrait avoir entraîné des actions inappropriées de la part des employés de la Ville qui travaillaient aussi chez Partham (p. ex. du travail non décelé réalisé pour Partham durant les heures de travail pour la Ville);
3. Le risque soutenu de comportement inadéquat, vu l'état actuel des contrôles internes exercés par les superviseurs et les gestionnaires, compromis ou inefficaces;
4. La nécessité pour le personnel de supervision d'exercer à l'avenir une surveillance étroite, qui exige beaucoup de temps, du comportement des employés qui travaillent à la fois pour la Ville et Partham, dans le but de s'assurer de l'arrêt des comportements inadéquats;
5. Les mesures disciplinaires nécessaires face aux agissements de [REDACTED]

### **Conflit d'intérêts (Partham Engineering)**

Même s'il n'y a pas d'éléments probants de fraude ou d'abus de confiance dans quelque transaction ou activité de Partham ou dans quelque action de Jim Bell, les contrôles internes implicites et inhérents auxquels le Conseil municipal et la population peuvent raisonnablement s'attendre, sont sérieusement compromis. Le fardeau de s'assurer qu'il n'y a pas d'écarts de conduite repose entièrement sur le sens de l'honneur et de l'éthique de Jim Bell plutôt que sur des contrôles internes de prévention et de détection normalisés.

Même si Jim Bell a affirmé qu'à son départ à la retraite, il a l'intention de maintenir le statu quo dans l'exploitation de Partham (sans croissance), rien ne l'empêche, dans une alliance stratégique possible avec un concurrent tel que Black and McDonald, de soumissionner auprès de la Ville d'Ottawa pour la conception, la fabrication et l'entretien de tous les feux de circulation, les régulateurs de trafic et l'éclairage des voies publiques de la Ville. Ceci peut être à l'avantage de la Ville ou non, mais pourrait être une option coûteuse imposée à la Ville si Jim Bell s'en va avec de nombreux cadres dirigeants de la Ville, dont plusieurs travaillent déjà chez

Partham. Le Conseil municipal aurait du mal à s'assurer qu'il reçoit des conseils objectifs à propos de l'option potentielle pour Ottawa, vu les antécédents de Jim Bell avec la Ville. D'une façon ou d'une autre, la Ville serait exposée à des risques substantiels imprévus.

Les pratiques exemplaires appuient manifestement la cessation immédiate du deuxième emploi (activités de Partham) de Jim Bell et des autres employés de la Ville d'Ottawa s'ils continuent de travailler à la Ville. En plus des motifs exposés dans la section précédente, cette recommandation se fonde sur les motifs suivants :

1. L'avantage indu (réel ou perçu) à Partham dans l'obtention de contrats auprès des municipalités avoisinantes qui découle des fonctions de Jim Bell à la Ville d'Ottawa;
2. Les efforts exigés de la part de Jim Bell et de ses employés principaux chez Partham (lesquels travaillent aussi à la Ville) dans les activités de Partham et la réduction possible de leur efficacité dans leurs fonctions à la Ville;
3. Les répercussions néfastes sur l'atmosphère de travail à la Circulation routière découlant du favoritisme perçu et du traitement partial des employés de la Ville aussi employés de Partham;
4. Quand les employés de la Ville travaillent pour Partham Engineering, ils traitent avec des experts-conseils et des entrepreneurs qui fournissent aussi des services à la Ville. Ce conflit pourrait également avoir des répercussions sur les relations entre la Ville et ces experts-conseils et entrepreneurs.

En fin de compte, la Ville est responsable de la protection du bien public et de la confiance que lui témoigne la population. Les activités actuelles et répétées des employés de Partham Engineering travaillant aussi au sein de la Division de la circulation routière mettent en péril ces deux responsabilités.

Afin de s'assurer que la direction, à la Ville, avait reçu une information complète avant de présenter la restructuration organisationnelle au Conseil le 25 mars 2009, nous avons soulevé la question des conflits liés à Partham Engineering au directeur général des Travaux publics le 23 janvier. Aussi, le 2 février, nous avons remis au directeur municipal le rapport provisoire, soit plus tôt que prévu.

### **Fournisseurs unique et risque lié au systèmes exclusifs (Thompson Technologies, Luxcom, Multilek)**

La décision des employés de choisir une entreprise non constituée en personne morale, Thompson Technologies, comptant un seul technicien s'occupant de la planification, de la conception et des cahiers des charges de tous les régulateurs de trafic utilisés par la Ville, a pour conséquence de priver la Ville de toute option de rechange raisonnable en cas d'incapacité de Thompson Technologies, pour quelque

raison que ce soit, de remplir ses obligations. En particulier, l'utilisation de marché négocié sans mise en concurrence ainsi que d'un fournisseur comptant un seul technicien qualifié de surcroît, dans les contrats de régulateur de trafic, c'est-à-dire Thompson Technologies, expose la Ville à un risque important de perte de services, de gonflement des prix et/ou de coûts de service additionnels.

Vu qu'il y a depuis longtemps un fort lien entre Jim Bell (Circulation routière/Partham) et Andy Thompson (associé de Partham à sa fondation, aujourd'hui chez Thompson Technologies), et vu que la Ville dépend maintenant fortement de Multilek et Luxcom dans l'approvisionnement en dispositifs de signalisation et de surveillance du débit de la circulation, il est crucial que la Ville protège sa capacité future à répondre à ses besoins en matière de dispositifs de signalisation à l'aide d'une planification stratégique à plus long terme quant à l'approvisionnement d'un système intégré de contrôle du débit de la circulation routière, tout en tenant compte des risques. De plus, la Ville doit explorer les options, en fonction de la loi, de protéger les revenus futurs découlant des avancées technologiques de Thompson Technologies, Luxcom, Multilek Technologies et/ou Rogers Digital Communications dans le cadre de leur contrat avec la Ville d'Ottawa, en particulier les technologies présentement vantés par Rogers Digital Communications pour leur transférabilité substantielle dans d'autres secteurs.

Le développement progressif d'une culture de gestion favorisant une façon de faire autonome au sein de la Division de la circulation routière en matière d'approvisionnement, d'évaluation et de prestation de services présente d'importants coûts et risques supplémentaires pour le fonctionnement de la Ville. La gestion de la circulation routière par la Ville comprend des coûts de programme considérables liés à la recherche et au développement des dispositifs de signalisation (au lieu de l'acquisition de produits déjà commercialisés sur le marché). En plus des points soulevés dans le présent rapport, dans le rapport de vérification de la Circulation routière (dans un document distinct), nous relevons des risques et des coûts similaires liés à la façon de faire autonome de la Circulation routière dans l'élaboration de normes d'analyse locales exclusives en matière d'ingénierie (au lieu de pratiques d'ingénierie normalisées); lors de l'achat, du stockage et de la manutention de matériaux de construction (au lieu de la mise en place et du contrôle des cahiers des charges, etc.); ainsi que dans d'autres programmes de recherche et développement et de fabrication menés par la Division.

## ***Recommandations***

### **Recommandation 1**

**Que la Ville précise immédiatement le Code de conduite du personnel de façon à ajouter que des employés occupant un deuxième emploi n'aient pas la**

**permission de travailler en tant que superviseur-subalterne (subordination directe ou indirecte) au sein d'une unité de travail de la Ville.**

### **Réponse de la direction**

La direction est d'accord avec cette recommandation. La Direction des services juridiques entreprendront une importante révision du Code de conduite du personnel afin de préciser et de consolider les divers articles soulignés dans les rapports de vérification au cours des derniers mois. Les Services juridiques ajouteront des clauses relatives à l'« activité professionnelle extérieure (deuxième emploi) » dans le cadre de cette révision. Cette dernière sera terminée d'ici la fin du troisième trimestre de 2009.

### **Recommandation 2**

**Que la Ville précise le Code de conduite du personnel - Deuxième emploi, à l'aide de procédures, de systèmes, de documents et de formulaires apportant soutien et conseils aux gestionnaires et aux superviseurs dans l'évaluation de la pertinence d'un deuxième emploi, selon la situation.**

### **Réponse de la direction**

La direction est d'accord avec cette recommandation. Dans le contexte de l'examen mentionné ci-dessus, les Services juridiques proposent d'inclure une section « Questions et réponses supplémentaires » dans l'article « Activité professionnelle extérieure (deuxième emploi) » du Code de conduite du personnel d'ici la fin du troisième trimestre de 2009. Le même type de fiche-conseil est prévu pour la Politique sur les cadeaux et les divertissements et la Politique sur les activités d'accueil afin de présenter aux gestionnaires et aux superviseurs des exemples concrets leur donnant un aperçu des obligations éthiques en vigueur à la Ville. Les Services juridiques mettront aussi l'accent sur la possibilité de demander des conseils au greffier municipal et chef du contentieux pour ce qui est de l'interprétation et de la mise en œuvre dudit Code, ou toute autre question connexe.

### **Recommandation 3**

**Que la Ville intervienne immédiatement pour mettre en place les moyens provisoires de supervision et de contrôle de la direction nécessaires pour surveiller les activités de Partham Engineering et de ses employés en fonction du Code de conduite du personnel actuel.**

### **Réponse de la direction**

La direction est d'accord avec cette recommandation. La Direction des Travaux publics collaborera avec les Services juridiques, les Ressources humaines et les Relations de travail pour déterminer, mettre en œuvre et surveiller les mesures et

les moyens de contrôle afin qu'il n'y ait pas de conflits ou de violations du Code de conduite du personnel, d'ici la fin du deuxième trimestre de 2009.

Des mesures immédiates ont déjà été mises en œuvre à la suite du récent remaniement à la Ville. Le gestionnaire de l'éclairage de rue relève maintenant directement du nouveau gestionnaire de l'Entretien des routes et de la Circulation routière. De plus, d'autres postes importants indiqués dans le rapport de vérification relèveront d'un nouveau gestionnaire.

#### **Recommandation 4**

**Quand il est déterminé qu'un conflit d'intérêts déclaré a des conséquences importantes sur le fonctionnement (qu'elles soient réelles ou perçues) et qu'il nuit à l'employé dans sa capacité à remplir ses responsabilités, que la Ville donne à l'employé l'option de mettre fin au conflit ou d'être démis de ses fonctions. Cette recommandation s'applique à Jim Bell et à tous les employés de la Ville travaillant chez Partham Engineering.**

**COMMENTAIRE DU VÉRIFICATEUR GÉNÉRAL** : Afin de veiller à ce que la direction de la Ville soit bien informée avant la présentation de la restructuration organisationnelle au Conseil le 25 mars 2009, nous avons signalé les questions concernant les conflits d'intérêts liés à Partham Engineering au directeur général, Travaux publics, le 23 janvier. Par la suite, le 2 février, nous avons également soumis, plus tôt que prévu, la version préliminaire du rapport au directeur municipal.

#### **Réponse de la direction**

La direction est en désaccord avec cette recommandation. Les Services juridiques œuvreront de près avec les cadres dirigeants des Travaux publics afin de traiter tout conflit d'intérêts ou violation du Code de conduite du personnel, réel ou perçu, dans le contexte de la nouvelle structure organisationnelle et en accord avec les exigences de tout contrat d'embauche ou de toute convention collective, d'ici la fin du troisième trimestre de 2009.

**COMMENTAIRE DU VÉRIFICATEUR GÉNÉRAL** : Le vérificateur général considère que cette recommandation devrait être transmise au Comité de la vérification, du budget et des finances aux fins de discussion.

#### **Recommandation 5**

**Que la Ville intervienne immédiatement, y compris à l'aide de mesures disciplinaires, à propos de l'usage abusif des congés de maladie et des heures supplémentaires par les employés.**

#### **Réponse de la direction**

La direction est d'accord avec cette recommandation. La Ville d'Ottawa enquête à propos d'allégations d'usage abusif de congés de maladie et d'heures supplémentaires par des employés. Quand les résultats de ces enquêtes le

justifieront, des mesures disciplinaires adéquates seront prises par la direction après consultation des Services juridiques (Relations de travail) et en tenant compte de tous les facteurs pertinents. La direction examinera immédiatement tout cas particulier d'allégation d'usage abusif de congés de maladie ou d'heures supplémentaires souligné dans le présent rapport de vérification et prendra les mesures disciplinaires adéquates en fonction des résultats.

### **Recommandation 6**

**Que le directeur municipal, afin d'atténuer le risque auquel la Ville est exposée, évalue la faisabilité d'une entente de non-concurrence (p. ex. une période tampon) avec [REDACTED]**

#### **Réponse de la direction**

La direction est d'accord avec cette recommandation. [REDACTED]

[REDACTED] de la restructuration à la Ville. Les Services juridiques tiendront compte d'une telle entente de non-concurrence dans le cadre de la révision de l'article « Activité professionnelle extérieure (deuxième emploi) » du Code de conduite du personnel. À propos de [REDACTED] la Politique de réemploi de la Ville stipule que « les anciens employés ne peuvent être employés de nouveau de façon permanente, temporaire, contractuelle ou selon le principe de la rémunération à l'acte, que ce soit à titre de travailleurs autonomes ou d'employés d'une société d'experts-conseils, avant la fin de la période correspondant à la durée de leur délai de préavis et/ou de leur indemnité de départ. Les anciens employés peuvent être embauchés par une société d'experts-conseils retenue par la Ville, mais ne peuvent être assignés à des tâches liées à un contrat conclu avec cette dernière avant la fin de la période correspondant à la durée de leur délai de préavis et/ou de leur indemnité de départ. » Vu les restrictions de la Politique, une entente distincte n'est pas nécessaire.

### **Recommandation 7**

**Que la Ville entreprenne une révision des pratiques courantes d'approvisionnement à la Division de la circulation routière pour ce qui est de l'acquisition des services d'ingénierie ainsi que de l'achat de l'équipement et des logiciels de régulation du trafic et d'autres équipements afin de s'assurer d'agir dans le meilleur intérêt de la Ville et que la pratique actuelle n'expose pas la Ville à des coûts ou des risques supplémentaires et déraisonnables.**

#### **Réponse de la direction**

La direction est d'accord avec cette recommandation. La Division de la gestion de l'approvisionnement collaborera avec la Direction de la circulation et du stationnement afin d'élaborer une stratégie de chaîne d'approvisionnement d'ici

la fin du premier trimestre de 2010 pour ce qui est de l'acquisition des services d'ingénierie, d'équipement et de logiciels de régulation du trafic et d'équipements connexes dans le but d'assurer sa capacité future à répondre à ses besoins en matière de dispositifs de signalisation et d'obtenir le meilleur rapport qualité/prix. Le personnel œuvrera aussi avec les Services juridiques afin d'intégrer les changements voulus aux conditions des contrats types de la Ville.

### **Recommandation 8**

**Que la Ville élabore un plan à long terme pour la conception et l'approvisionnement d'équipement de régulation du trafic et de communication (à l'aide des processus concurrentiels normalisés), et que les contrats avec les entrepreneurs choisis présentent un risque substantiellement réduit pour la Ville (p. ex., contribution du secteur privé au financement de la recherche et du développement, partenariat public-privé, etc.), ou, dans le cas où la technologie est conçue aux frais de la Ville et à ses risques, que la propriété, les droits d'usage et les revenus de la recherche et du développement reviennent entièrement à la Ville. Il est aussi recommandé que la Ville conserve les cahiers des charges détaillés de tous les produits de la recherche et du développement et qu'elle puisse ainsi en faire usage lors de contrats futurs.**

### **Réponse de la direction**

La direction est d'accord avec cette recommandation. La Division de la gestion de l'approvisionnement et la Direction de la circulation et du stationnement ont déjà pris des mesures importantes pour les appels d'offres concernant les régulateurs du trafic au cours de la dernière année. Il y a désormais deux fournisseurs concurrents de régulateurs du trafic.

La Division de la gestion de l'approvisionnement continuera de collaborer avec la Direction de la circulation et du stationnement afin d'élaborer un plan d'approvisionnement en équipement de régulation du trafic et de communication d'ici le premier trimestre de 2010, dans le but d'augmenter la concurrence, ce qui engendrera des prix concurrentiels et permettra de répartir les risques équitablement entre le fournisseur et la Ville, et d'explorer les options de propriété de la technologie.

Les Services juridiques, en collaboration avec la Division de la gestion de l'approvisionnement et Circulation et Stationnement, examineront de façon régulière les conditions normalisées des contrats afin de s'assurer que ceux-ci protègent complètement et correctement les intérêts de la Ville en matière de propriété intellectuelle.

### **Recommandation 9**

**Que la Ville explore les possibilités de tirer profit de la vente de technologie et des services associés aux inventions créées dans le cadre de la recherche et du développement financés par la Ville d'Ottawa et, en particulier, des produits**

conçus par Thompson Technologies, Luxcom, Multilek ou Rogers Digital Communications pendant qu'ils étaient liés à la Ville par contrat.

### **Réponse de la direction**

La direction est d'accord avec cette recommandation. Le personnel étudiera la possibilité de tirer profit de l'utilisation des droits de propriété intellectuelle de la Ville, tout en tenant compte des limites de la capacité de la Ville à faire des profits, sur le plan juridique, ainsi que des contraintes pratiques associées à la gestion et au marketing de la propriété intellectuelle de la Ville.

Pour ce qui est des entreprises indiquées, le personnel étudiera

### **Conclusion**

Le cas examiné dans la présente vérification indique que la Ville ne possède pas de mécanismes de gestion des conflits d'intérêts. L'employé principal a divulgué correctement son conflit d'intérêts, mais ni l'employé ni la Ville n'ont mis en œuvre des mesures de contrôles appropriées afin de s'assurer que les activités personnelles de l'employé n'ont pas d'effets nuisibles sur le fonctionnement de la Ville.

À notre avis, chaque cas de conflit d'intérêts déclaré devrait être évalué afin d'en déterminer les conséquences sur le fonctionnement de la Ville. S'il est déterminé que le conflit d'intérêts a des conséquences néfastes, réelles ou perçues, il doit être rejeté et l'employé devrait avoir à choisir entre poursuivre ses activités personnelles et quitter son emploi à la Ville et cesser ses activités personnelles et garder son emploi à la Ville.

Une administration municipale ne devrait pas tolérer le conflit d'intérêts d'un employé au point que ce dernier ait des conséquences néfastes sur son fonctionnement ou sur son image de gardienne du bien public.

### **Remerciements**

Nous souhaitons souligner notre reconnaissance pour la coopération et l'assistance offertes à l'équipe de vérification par la direction et les propriétaires de Partham Engineering Ltd.

## 1 Introduction

This audit was conducted as a result of reports to the Fraud and Waste Hotline. It was not originally identified in the 2008 Audit Plan that was presented to Council.

The report is divided into three areas:

- Moonlighting and Conflicting Supervisory Risk (Partham Engineering);
- Conflict of Interest (Partham Engineering); and,
- Sole Source Contractors and Proprietary Systems Risk (Thompson Technologies, Luxcom, Multilek).

## 2 Moonlighting and Conflicting Supervisory Risk

### 2.1 Background

#### 2.1.1 Partham Engineering Ltd.

Partham Engineering Ltd. (Partham) is an Ontario-registered engineering company, owned and controlled by Jim Bell, Manager of Traffic Operations Division. Mr. Bell indicates that Partham evolved based on the need of smaller nearby municipalities requiring affordable, convenient external expertise in traffic signal systems.

The firm designs, builds and maintains traffic control signals and related street lighting. Its client base is small municipalities primarily in Eastern Ontario. On occasion, they provide subcontract work to contractors serving these municipalities and work directly with private sector developers in these areas also. No work is done within the City of Ottawa boundaries.

Partham is primarily staffed with both current and retired employees of the Traffic Operations Division. Most Partham work by existing City of Ottawa employees is reportedly conducted on evenings and weekends, but some is done during weekdays. While, Mr. Bell does not draw a salary or wages from the company, Partham employs the following staff:

- Nine existing Traffic Operation staff (casual)
- Two retired Traffic Operations staff (casual)
- Mr. Bell's wife - office manager (employed by Partham since her retirement as a former City of Ottawa employee a few years ago)
- 

Of note, Mr. Bell voluntarily invited the Office of the Auditor General (OAG) to examine, in detail, all Partham financial records and documents to facilitate this review. The Audit of Traffic Operations was completed in October 2008.

## 2.2 Work Conducted

The review of Moonlighting and potentially conflicting supervisory responsibilities was examined in terms of the City's Employee Code of Conduct. Relevant excerpts of this document are contained in Table 1 on the following page.

A random sample of Partham timesheets and invoices (dates in parenthesis indicate timesheet periods compared to City records) prepared by the nine City of Ottawa employees conducting significant work (■ hours or more) for Partham over the past three years were reviewed. Specifically:

1. Dave Rybak (■)
2. Tom Fitzgerald (■)
3. Scott Edey, (■)
4. Keith Ouellette (■)
5. Wayne Cox (■)
6. Marcel Bourguignon (■)
7. Terry James (■)
8. Bob Dale (■)
9. Ken White (■)

For the above sample of Partham timesheets, work completed on a weekday (Monday-Friday) was identified. These dates were then compared with City of Ottawa daily records of annual leave, time off in lieu (TOIL), overtime and sick leave to determine if any work was conducted on days for which the City paid the employees for overtime or sick leave. Weekdays for which the employees Partham timesheets indicated work in excess of five hours, for which no City of Ottawa Annual Leave was taken, were noted.

## 2.3 Observations

### 2.3.1 Moonlighting Activity

As mentioned above, timesheets submitted by staff to Partham for payment were matched to employee records of annual leave, time off in lieu as well as sick leave to determine if there were any inappropriate conduct (i.e., staff working for Partham on days when reported to be working for City or on sick leave). As well, a full review of recent investigations conducted by Corporate Security over the years was also conducted.

The current employees identified in Mr. Bell's June 30, 2008 memo to Michael Flainek, Director of Traffic Operations were confirmed against payroll records. In seven of eight cases, the estimated hours were less than the actual hours in 2007. In several cases the hours reported in the memo were significantly lower than payroll records, in one case approximately 250 hours reported in the memo vs. 630 hours paid and in another 150 hours reported in the memo vs. 350 hours paid. While this

does not imply any wrongdoing, it does indicate that some staff are working significantly more hours than indicated in the memo.

[REDACTED] works approximately 750 hours annually for Partham Operations. This is not possible to confirm.

Mr. Bell reported that if he is required to attend a meeting on behalf of Partham, he generally schedules them at the end of day or takes annual leave. While it was not possible to confirm this, it is consistent with his annual leave records. In the period January 1, 2007 to September 30, 2008, there were [REDACTED]

[REDACTED] However, there were no similar amounts in 2006 records.

Mr. Bell reported that most years, while employed with the City (and RMOC), [REDACTED]

[REDACTED]

As mentioned in the Traffic and Parking Operations audit “the rotation of ‘on-call’ duties to signal systems crew leaders also includes the assignment of duties to [REDACTED] who [REDACTED] within the Division. These [REDACTED] are assigned to [REDACTED] to address after hours and weekend collision-related repair. These [REDACTED]

[REDACTED] They also self-identify as moonlighting employees of Partham Engineering. The Division was unable to explain why they were permitted to conduct after-hours work they do not address in their substantive duties.”

These [REDACTED] Their situations are discussed further below.

[REDACTED] a key Partham employee with the highest hours worked of all City employees investigated. In addition to the standard 40 hours per week, [REDACTED] has worked annual City overtime of between approximately 500-630 hours (refer to Table 2) over the past three years with minimal time off in lieu of overtime (payment was received). In addition, he has received between \$12,000-\$24,000 income per year for the past few years from Partham with approximately 600 hours worked in 2007. Vacation taken was typically in excess of 27 days for the years reviewed.

However, most disturbing in the case of [REDACTED] was that of 11 uncertified sick leave days taken in 2007, he worked between 4 and 14 hours for Partham on six of the same days<sup>1</sup>. In addition, three uncertified sick leave days<sup>2</sup> were taken following a 22-hour stretch of working for Partham the previous weekend. Further comparison of City records to Partham records revealed three more instances<sup>3</sup> of inappropriate sick leave taken on days when work was conducted for Partham and one more following an 18-hour work weekend<sup>4</sup> for the periods reviewed (Dec 2004-Dec 2007). While, the City is always vulnerable to staff taking uncertified sick leave for purposes other than being sick, these instances are blatant.

Finally, there were 17 days<sup>5</sup> in [REDACTED] for which [REDACTED] timesheets for Partham were submitted in excess of eight hours on weekdays when [REDACTED] reportedly also worked eight hours for the City. This does not indicate definitively that he was working for Partham while on City hours, however, coupled with the information in the preceding paragraph, it may be suspect. Should [REDACTED] be working 16 hours per day, it is evidence that his moonlighting activity is undoubtedly impacting his effectiveness and productivity at the City.

Of note, while unsubstantiated, a complaint received through the Fraud and Waste hotline states that [REDACTED] completes his own timesheets and has an implied lack of supervision to ensure he works eight hours per day for the City in his normal course of duties. [REDACTED] currently reports, along with 10 other front line workers, to the [REDACTED]. There is a less than optimum organizational structure which will be discussed in the next section "Direct Supervision of Moonlighting Staff".

It is important to note that, among other duties, [REDACTED] [REDACTED] projects. This is an inappropriate duty given his Partham responsibilities.

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1 Charged sick leave - worked at Partham Sept 27/07, Oct 18/07, Nov 1/07, Nov 2/07, Nov 13/07, Nov 14/07

2 Charged sick leave following Partham weekend - Mon- Wed - Oct 15/07, Oct 16/07, Oct 17/07

3 Charged sick leave - worked at Partham May 1/06, May 2/06, Oct 13/05

4 Charged sick leave following Partham weekend - Monday Jan 24/05

5 Worked 8 hours or more for the City and also 8 hours or more for Partham - Jan 9/06 11 hr., Jan 11/06 11.5 hr., Jul 17/06 8 hr., Aug 31/06 9 hr., Nov 13/06 10 hr., Dec 20/06 8 hr., Mar 19/07 8 hr., Apr 26/07 14 hr., May 3/07 1 hr., May 18/07 8 hr., Jul 3/07 8 hr., Jul 12/07 8.5 hr., Jul 18/07 10 hr., Aug 9/07 9hr., Nov 12/07 11 hr., Dec 6/07 10 hr., Dec 20/07 8 hr.

**Table 1: City of Ottawa Employee Code of Conduct (2008) - Relevant excerpts****Outside Business Activity (Moonlighting)**

An employee must ensure that “moonlighting” at an external job does not negatively impact on their effectiveness at the City, nor contravene any of its related policies and procedures. Employees considering or already engaged in outside employment activity must comply with the following guidelines:

- The outside job must not conflict with their City hours of work.
- Outside activities must not interfere with the efficient performance of City duties.
- Employee’s external business activities must not compete with City services.
- Employees shall not use the City’s time or resources... for the benefit of their second job...
- Employees shall not engage in any business activity or have a financial or other personal interest that is incompatible with the employee’s official duties.

Employees must act in the best interests of the City and the taxpayer. Responsibility to avoid actual or perceived conflicts of interest lies with the individual employee. Employees should disclose in writing all moonlighting situations with their manager in order to receive their approval and to ensure compliance with the Code and its related policies.

**Employee Responsibility**

Employees of the City must follow the highest standards of ethical behaviour in the course of their work to ensure that public confidence and trust is maintained. The City and all its employees must be above suspicion and beyond reproach, and must be perceived in this manner.

**Disclosure**

... each employee is required to be knowledgeable about the Code.... each employee is required to address any situations of actual or potential non-compliance. For example, when an employee believes that they may be in breach of the Code, then that employee must make prompt and full disclosure in writing to their Department Head or delegated official. This disclosure should include a detailed description of the actual or potential breach. An actual or potential breach may arise without any intentional wrongdoing or improper conduct on the part of the employee.... However, all employees are expected to make every effort to avoid such circumstances. Employees are to use sound judgment and apply the Code in a proactive fashion in order to maintain the public’s trust in the City’s objectivity and integrity. An employee failing to disclose an actual or potential breach of the Code may be subject to discipline.

**Management Responsibility**

As part of effective management, each Department must ensure that its employees are aware of, and act in compliance with, this Code and its related policies... The management of the City is accountable for protecting the assets of, and the public trust in, the City. Toward this end, management must make every effort to establish and maintain adequate systems, procedures and controls to prevent and detect fraud, theft, breach of trust, conflict of interest, bias and any other form of wrongdoing... Upon receiving written disclosure of an actual or potential breach of the Code, the Department Head shall either determine that no breach exists or take reasonable steps to ensure that the matter is addressed in the appropriate manner. This may include seeking a written legal opinion from the City Solicitor.... It is the responsibility of management to ensure that each incident of suspected wrongdoing is investigated...

**Family/Personal Relationships (Nepotism)**

As a major public sector employer responsible for providing a variety of programs and services to the Ottawa community, City employees must ensure that their personal lives and their official duties co-exist independent of each other... One area of concern is with respect to “nepotism” or the appointment to a position or the receipt of an employment benefit based on one’s kinship or family relatives. As in other areas of City business, there is an expectation, shared by the public and City staff alike, that all hiring, promotions, performance appraisals or discipline will be undertaken in an objective and impartial manner. In order to meet this expectation, the City prohibits employment situations where relatives would be:

- Supervised by, or subordinate to, one another
- Given preferential treatment in being recruited and/or selected for vacancies
- Appointed to positions where job responsibilities would be incompatible with positions occupied by relatives

Should these, or any other nepotism issues arise, employees are required to disclose the particulars to their manager for appropriate resolution.

[REDACTED] was interviewed. He is [REDACTED] of both the City of Ottawa and Partham Engineering. Within the City of Ottawa organization chart, [REDACTED] He reports to [REDACTED] who is also employed by Partham Engineering. [REDACTED] describes the majority of his duties as [REDACTED] where [REDACTED] and indicates that '98% of my customers are developers'. He is, in part, responsible for [REDACTED]. Available overtime records indicate that in 2007 [REDACTED] earned \$12,611 in overtime for 332 hours worked (excluding TOIL) and almost double that in 2006 with 702 overtime hours.

[REDACTED] indicated that he [REDACTED] volunteer to [REDACTED] do not exceed maximum allowable hours limits set out by Ministry of Labour regulations. [REDACTED] worked approximately 125 and 225 hours respectively in 2006 and 2007 for Partham Engineering. Hours worked in 2008 were not available. There were no questionable days noted in a comparison of hours worked by both Partham and the City. However, it is of concern that he also worked between 200-700 hours for the past three years in overtime for the City (refer to Table 2).

[REDACTED] combined extra income (City overtime and Partham) not only calls into question their effectiveness during regular City hours, including the risk of making an error, but may have resulted, based on complaints made through the anonymous Fraud and Waste Hotline in 2008, in resentment from other members of Traffic Operations.

In the review of the information available over approximately a two-year period, we did find instances where employees had routinely reportedly worked in excess of five hours (and at times in excess of eight hours) for Partham on days where they also reportedly worked eight hours for the City.

There were no other observations regarding inappropriate use of time in the review of employees. However, it is a concern that the hours worked by Partham are as high as indicated.

While we attempted to evaluate if City staff were doing Partham work on City hours and if they were less effective in their City work as a result of their outside work, in the end, not surprisingly there was little hard evidence to make an assessment. The only effective way to monitor the impact of moonlighting is by regular monitoring by the immediate objective supervisor (something which should be done by each supervisor for all staff within the City as part of their supervisory responsibilities). In the case of Traffic Operations, this is impeded by the

incompatibility of the job functions vis-à-vis Partham relationships. This is discussed further in the following sections (2.3.2-2.3.5).

Table 2: Summary of City/Partham Employee Hours Worked

Employee	Position	Reports to	Comment	City Overtime <sup>6</sup> 2008 2007 2006	Partham Hours paid <sup>7</sup> 2007 2006	Hours reported in memo <sup>8</sup>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	605 497 630	639 342	250
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	22 84 83	371 258	150
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	15 43 155	180 341	100
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	213 332 702	232 123	100
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Not reviewed	546 228	300
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	0 84 70	200 243	200
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	146 145 273	151 63	125
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	0 240 328	n/a 233	50
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	0 42 102	0 30	Not listed

### 2.3.2 Disclosure of Moonlighting Activities by Traffic Operations Staff

The City’s Employee Code of Conduct states that, “Responsibility to avoid actual or perceived conflicts of interest lies with the individual employee. Employees should disclose in writing all moonlighting situations with their manager in order to receive their approval and to ensure compliance with the Code and its related policies.” In this regard, there are no supporting documents or regulations which

<sup>6</sup> Per City records – 2008 to Oct 12 only

<sup>7</sup> Approximate hours paid by Partham – based on review of Partham payroll records and timesheets submitted by staff – 2008 numbers not yet available

<sup>8</sup> In June 30 2008 memo from Jim Bell to Michael Flainek – Subject: Moonlighting Partham Engineering Ltd.

further expand upon the disclosure requirements outlined in the City of Ottawa Employee Code of Conduct (2008). Specifically, there is no guidance to supervisors to help them to assess whether the outside jobs of their subordinates conflicts with their City hours of work or the efficient performance of City duties. This has left the assessment to employees and management based on their individual interpretations of the intent of the Code of Conduct.

For his part, Mr. Bell has repeatedly disclosed his work with Partham to his supervisors firstly at the RMOC and again at the City. Similarly, 8 of the 10 Partham employees (includes J. Bell) have advised their supervisors, including placing letters on their human resources files, that declared their moonlighting activities. However, this has not been done for all Partham/City employees and/or on a regular basis. We noted that the details of the level of work conducted has not been disclosed (nor requested to be disclosed). Prior to the announcement of the audit, some letters on file were several years old; some were updated in 2008. Refer to sections 2.3.3 - 2.3.5. Table 3 below summarizes which employee declared their conflict of interest and on which date.

**Table 3: City/Partham Employees Conflict of Interest Declarations**

(Source: Director of Human Resources, April 23, 2009)

Employee Name and Title	Date Declared	Nature of Conflict
1 James Bell, Manager, Traffic Operations	30-Sep-96	Moonlighting
2 Tom Fitzgerald, Program Manager, Traffic Engineer	12-Nov-97	Moonlighting
3 Scott Edey, Program Manager, Street Light Asset Management	None	
4 Dave Rybak, Traffic Signal Plant Inspector	12-Nov-97	Moonlighting
5 Keith Ouellette, Traffic Signal Plant Inspector	30-Jun-08	Moonlighting
6 Wayne Cox, Supervisor Traffic Signals	12-Nov-97	Moonlighting
7 Marcel Bourguignon, Utility Placement and Investigating Inspector	12-Nov-97	Moonlighting
8 Bob Dale, Signal Design Technician	30-Jun-08	Moonlighting
9 Terry James, Electronic Technician	30-Jun-08	Moonlighting
10 Kevin White, Signs & Pavement Supervisor	None	

### 2.3.3 Direct Supervision of Moonlighting Activities by Staff

The City's Employee Code of Conduct states that, "An employee must ensure that "moonlighting" at an external job does not negatively impact on their effectiveness at the City, nor contravene any of its related policies and procedures" and "Employees must act in the best interests of the City and the taxpayer."

The inherent and implicit internal controls required to manage moonlighting (which normally exist in the organizational structure of a normal business environment) are compromised and ineffective within the Traffic Operations Division due to the organizational reporting dynamics of Partham Engineering.

As City of Ottawa employees working for Partham are employed at most supervisory levels within the Division, it is impossible to properly supervise the City workforce. The following Traffic Operations organizational chart (Table 4) identifies the Partham staff in the chequered boxes. City employees who moonlight for Partham Engineering Ltd. cannot be adequately supervised by their City supervisors, both immediate supervisors and above, to ensure that the moonlighting activities do not interfere with City responsibilities. Supervisors [REDACTED] who work for Partham cannot, based on the concepts of standard management practises; effectively ensure that City work is not being compromised as a result of the Partham work.

While these reporting relationships do not mean that wrongdoing has occurred, the internal controls for detecting and reporting inappropriate conduct are compromised and ineffective. This lack of effective supervision is evidenced by the fact that individual supervisors have not exerted their supervisory responsibilities (e.g., documenting moonlighting activity, critical reviews of hours worked, limiting City overtime) in ensuring that employees' moonlighting does not negatively impact on their effectiveness at the City, nor contravene any of its related policies and procedures and that the employees are acting in the best interests of the City and the taxpayer. For example, during our review, we noted that two of the City employees who work the most fieldwork hours for Partham [REDACTED] [REDACTED] also work significant overtime for the City, the combination of which could compromise their effectiveness at the City. Yet, there is no evidence to indicate that this issue has ever been discussed or addressed.

Mr. Bell offered excellent assistance to the audit team, yet there was regular evidence gathered through the interviews that both senior and lower level subordinates within the Division were reluctant to discuss Partham activities with the auditors. The "one team of good guys/gals" culture espoused and nurtured by Mr. Bell with his Traffic Operations employees led us to believe that staff might not question his direction, nor question the actions of joint Partham/City employees whom he regularly described as 'the best of the lot' (best of his employees at the City). For example, if a non-Partham Supervisor has a concern about the conduct of an employee who works at Partham, they may not feel comfortable disciplining the employee or discussing the issue with their Program Manager or Mr. Bell due to the Partham relationships. This supervisor is placed in a very difficult position, especially if new to the organization, given that the Partham work has been disclosed, is openly supported by Mr. Bell, and is long standing.

While we have been advised by Traffic Operations staff, who also work for Partham, that conflicts of interest are "avoided", the focus has been on ensuring that work is not done on City hours (largely on an honour basis) but not on whether supervisors and program managers can perform their supervisory duties, including hiring, promoting, assessing performance, assigning overtime, approving time off and maintaining general morale. As a result, [REDACTED] are in violation

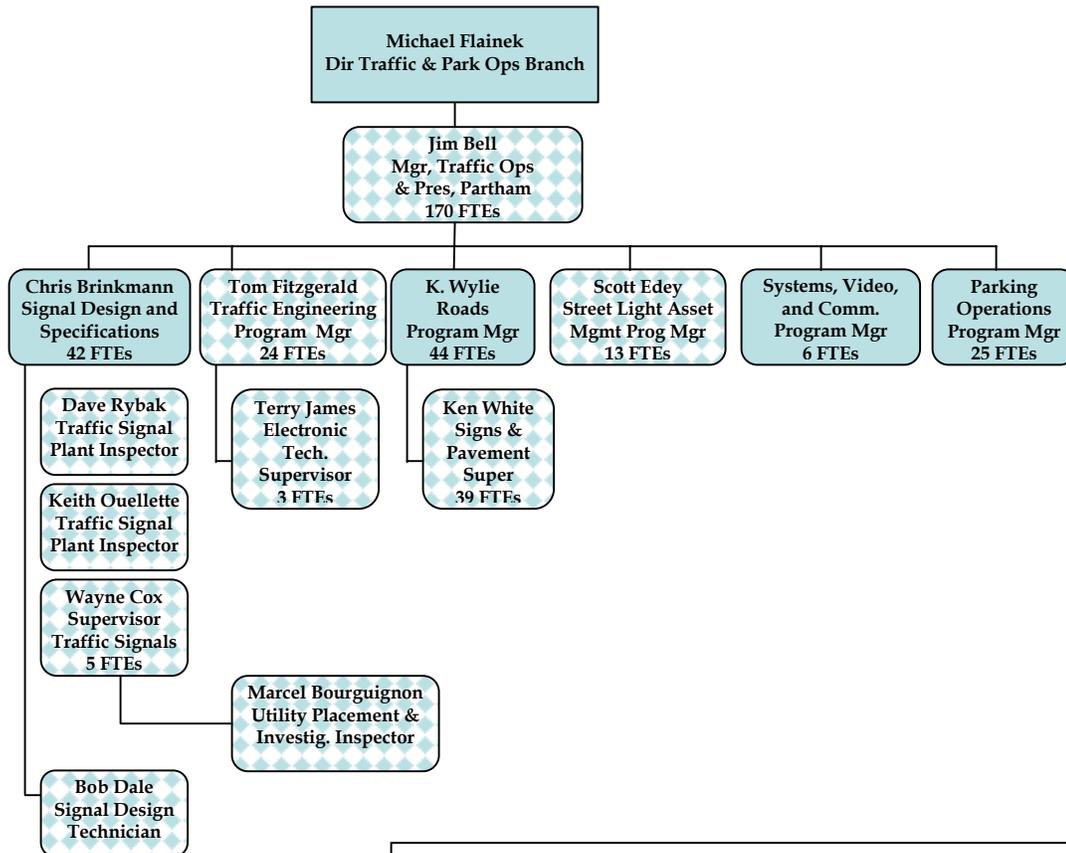
of the Code of Conduct requirement that, “Outside activities must not interfere with the efficient performance of City duties”. It is important to state that the issue is not whether some employees have received preferential treatment but whether there has been the opportunity, whether real or perceived, as a result of the organizational structure which is intended to ensure the City’s objectivity and integrity while maintaining public trust.

The lack of a comprehensive Moonlighting policy (to specifically address supervision and moonlighting) has contributed to this undesirable and inappropriate situation continuing, as it does not provide any guidelines or direction on this topic. More specifically, the current policy does not forbid this type of relationship, as it should. By way of similar comparison, the current Code of Conduct offers much greater detail when it addresses similar situations for family members, specifically under Family/Personal Relationships (Nepotism) it states, “City employees must ensure that their personal lives and their official duties co-exist independent of each other...” One area of concern with respect to “nepotism” is the appointment to a position or the receipt of an employment benefit based on one’s kinship or family relatives. As in other areas of City business, there is an expectation, shared by the public and City staff alike, that all hiring, promotions, performance appraisals or discipline will be undertaken in an objective and impartial manner. In order to meet this expectation, the City prohibits employment situations where relatives would be:

1. Supervised by, or subordinate to, one another;
2. Given preferential treatment in being recruited and/or selected for vacancies;
3. Appointed to positions where job responsibilities would be incompatible with positions occupied by relatives.

We believe that similar detailed regulations should be in place for instances of moonlighting, particularly when moonlighting is regular and involves significant sums of money, as in the case of Partham. While, not actual family members, because of the personal Partham relationships, if the intent of the Nepotism section of the Code of Conduct is applied to Traffic Operations, there are numerous major violations to items 1 and 3 above. We have no evidence to indicate that item 2 above has occurred, although we acknowledge that this has been the topic of some Fraud and Waste reports.

### Traffic Operations Division Organizational Structure



Chequered boxes indicate Partham (part-time) staff

#### 2.3.4 Program Managers Ability to Perform Functions while reporting to Partham Owner

There are instances where Program Managers who are directly supervised by Jim Bell work regularly for Partham (refer to Table 4). In one case, a staff member who works for Partham is supervised directly and indirectly by another Partham employee, and in two cases Program Managers reporting to Jim Bell supervise five Partham employees. As well, the Program Manager responsible for the billing of Outside Sales to Partham clients (outlying municipalities) reports to Mr. Bell. In addition, with many senior supervisors also employed by Partham, reporting to senior management on questionable work performance by Partham moonlighting staff is difficult if not impossible. Other Program Managers, even those not working for Partham, are also in a difficult position as any complaints against Partham employees could be “career limiting”; that is, could reasonably be viewed as having real or perceived serious negative repercussions to employment prospects or future advancement.

In some cases the Program Managers were promoted into their positions after working for Partham for extended periods of time.

The [REDACTED] of which 50% to 75% are to Partham clients was promoted by Mr. Bell. We found that this [REDACTED] offered little critical managerial oversight on the appropriateness of the significant use of the [REDACTED] to Partham Engineering, a firm [REDACTED] fully knows is owned and operated by [REDACTED] boss. In fact, a number of Program Managers were not willing to discuss the Partham activity and referred us to Mr. Bell if we had questions regarding Partham. If Mr. Bell's relationship with any of his other [REDACTED] is familiar enough that they do not question his direction, they could be complicit in any wrongdoing, if it did exist. It highlights the potential for breaches in internal controls especially if motivated by the potential to use materials or other resources (including staff time) in an outside business (Partham).

### **2.3.5 Senior Management Oversight of Partham Related Activity**

The Code of Conduct states that "management of the City is accountable for protecting the assets of, and the public trust in, the City. Toward this end, management must make every effort to establish and maintain adequate systems, procedures and controls to prevent and detect fraud, theft, breach of trust, conflict of interest, bias and any other form of wrongdoing... Upon receiving written disclosure of an actual or potential breach of the Code, the Department Head shall either determine that no breach exists or take reasonable steps to ensure that the matter is addressed in the appropriate manner. This may include seeking a written legal opinion from the City Solicitor...."

When Partham was first created, it was a very small entity with small weekend projects and clearly had the agreement of the Director of Transportation RMOC (Mr. Mike Sheflin). Subsequently, Mr. Bell was promoted to Manager of Traffic Operations, first with the Region and then with the amalgamated City, with disclosure of Partham activity. It was considered to have received acceptance at its inception. Since then, the appropriateness of the growing activity has never been questioned, notwithstanding investigations arising from the Fraud and Waste Hotline and this report.

In our opinion, the issue was never subjected to due diligence<sup>9</sup> to address the impact on internal controls within Traffic Operations or from the view of ensuring the "protection of public trust" both real and perceived. Rather, it was approved as it was seen as a way of providing a service to small neighbouring municipalities without involving the RMOC.

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<sup>9</sup> Defined as "Measure of prudence, responsibility, and diligence that is expected from, and ordinarily exercised by, a reasonable and prudent person under the circumstances."

Based on our audit, we found no evidence of action by senior branch or departmental management aimed at monitoring or assessing conflict of interest by Partham employees. In this regard, there are no current systems, procedures or controls in place to prevent or detect excessive and/or inappropriate moonlighting. There was also no evidence of senior management seeking advice from the City Solicitor or Finance regarding internal controls. It was, however, evident that senior management had been involved in investigating and responding to complaints of conflict of interest and wrong-doing (vis-à-vis Partham) received through the Fraud and Waste Hotline; the subject of significant resources by Corporate Security over time.

Senior management decisions not to intervene or undertake inside audits of management and internal control appears to be based on their faith in Jim Bell as an individual, and that he would protect the interests of the City of Ottawa over his own profit motive or personal interests. This has also put Mr. Bell in a difficult position of “wearing both hats” while managing the approximately 170 City employees under his management. As a result,

[REDACTED]

The Code of Conduct does not adequately provide direction on the moonlighting issues. Specifically, it is based upon the notion that moonlighting activities will be conducted by individual employees or co-workers – but not supervisors and subordinates, and most definitely does not address the possibility that employees will be conducting moonlighting activities with an individual to whom they report to (directly or indirectly) for their City work.

As with other parts of the City of Ottawa administrative structure, in order for the management of Traffic Operations Division to be accountable for protecting the assets of the City and the trust of both the public and other employees, they are required to make every effort to establish and maintain adequate systems, procedures and controls to prevent and detect fraud, theft, breach of trust, conflict of interest, bias and any other forms of wrongdoing. Necessarily, this must start with a sound organizational structure, as this is a basic management control issue, as evidenced in the Nepotism section of the Code of Conduct.

Again, we reiterate, while there is no evidence of inappropriate behaviour on Mr. Bell’s part, as the senior manager,

[REDACTED]

### 3 Conclusion

Beyond the activities of Partham, only a few employees were identified as being involved in moonlighting activities, either as home-based sole-practitioners involved in non-work-related activities or as occasional labourers for firms undertaking work for the private sector (line painters). The actions of these other employees appeared to remain well within the provisions of the Code of Conduct policy.

This audit concludes that current and historic senior management within Traffic Operations Division and Public Works and Services, acted against the general management provisions of the current Employee Code of Conduct by not establishing necessary management systems to “establish and maintain adequate systems, procedures and controls to prevent and detect fraud, theft, breach of trust, conflict of interest, bias and any other form of wrongdoing”.

Given the degree to which Mr. Bell sought and was given permission to initiate Partham Engineering and continue to operate Partham Engineering with the approval of senior management, our audit of Traffic Operations and Partham Engineering did not reveal any individual wrongdoing on the part of Mr. Bell, per se, but instead found him responsible, along with other senior management for inaction which permitted the current situation to develop.

It is our opinion that Mr. Bell should not have been promoted to Manager, Traffic Operations at the City while he directly or indirectly hired, supervised and disciplined staff while they were working for both Partham and the City. This is further supported, by the fact that in order to properly exercise management responsibilities in the case of Partham, that is the decision to permit, within a single work unit at the City, several staff (supervisors and subordinates) to actively work for a separate private sector business, would necessitate that Senior management take on to themselves the added role of unit management, control and oversight with a special need to address anticipated conflicts of interest; all this at significant cost to the City. This should have been addressed when Partham was first contemplated, and revisited over time.

At this time, best practises clearly support the termination of Partham activities by City of Ottawa employees primarily due to:

1. The ineffective management of the impact of Partham Engineering activity, real or perceived, on City work by past and current City senior management (i.e., unaware of compromised management/supervisory internal controls);
2. The ineffective management of Partham staff by current and past, Traffic Operations Division supervisors and managers which may have allowed for inappropriate actions on the part of City staff working for Partham (e.g., undetected work performed for Partham on City time);

3. The continued potential for inappropriate behaviour given current compromised/ineffective supervisory and managerial inherent internal controls;
4. The future requirement for time consuming vigilant monitoring by supervisory staff to monitor behaviour of joint City/Partham staff to ensure inappropriate behaviour does not continue; and,
5. Disciplinary measures required to address the behaviours of [REDACTED]

Ultimately, the City is accountable for protecting the assets of, and the public trust in, the City. The current and continued activity City Traffic Operations Division staff employed by Partham Engineering compromises this function.

In order to ensure City management was fully informed prior to bringing the organizational restructuring before Council on March 25, 2009, we raised the issues relating to Partham Engineering conflicts to the General Manager, Public Works on January 23<sup>rd</sup>. We also subsequently issued on February 2<sup>nd</sup>, earlier than had been scheduled, the draft report to the City Manager.

### **3.1 Recommendations**

#### **Recommendation 1**

**That the City immediately clarify the Employee Code of Conduct to provide that employees involved in moonlighting be prohibited from working as supervisor-subordinates (direct or indirect subordination) within a single department work unit at the City.**

#### **Management Response**

Management agrees with this recommendation. The Legal Services branch will be undertaking a significant review of the *Employee Code of Conduct* in order to clarify and consolidate various sections that have been noted in audit reports over the course of the past few months. The Legal Services branch will include the "Outside Business Activity (Moonlighting)" provisions within the ambit of this review. This review will be complete by the end of Q3 2009.

#### **Recommendation 2**

**That the City clarify the Employee Code of Conduct - Moonlighting, through supporting procedures, systems, documents and forms to provide guidance to managers and supervisors in assessing whether moonlighting is appropriate.**

#### **Management Response**

Management agrees with this recommendation. Within the context of the review noted above, the Legal Services branch proposes to include a "Supplementary Questions and Answers" section for the "Outside Business Activity (Moonlighting)" section of the *Employee Code of Conduct* by the end of Q3 2009. Similar guidance is set out with respect to the Gifts, Entertainment and

Hospitality Corporate policy and is intended to provide managers and supervisors with practical examples to assist in outlining the City's ethical requirements. Legal Services will also reinforce the fact that any question regarding the interpretation or application of the *Code*, or other related advice or guidance, may be sought from the City Clerk and Solicitor.

### **Recommendation 3**

**That the City take immediate action to put in place necessary interim management oversight and controls over the activities of Partham Engineering and their employees consistent with the provisions of the current Employee Code of Conduct.**

#### **Management Response**

Management agrees with this recommendation. The Public Works department will work in collaboration with Legal Services, Human Resources and Labour Relations in identifying, implementing and monitoring measures and controls to ensure there are no conflicts or violations of the *Employee Code of Conduct* by the end of Q2 2009.

Some immediate measures have already been implemented as a result of the recent corporate realignment. The Manager of Street Lighting is now reporting directly to the new Manager of Roads & Traffic Operations and Maintenance. In addition, other key positions identified in the audit will have a new manager overseeing their functions.

### **Recommendation 4**

**Where a declared conflict of interest has been determined to have a serious operational impact, (either actual or perceived) and it impairs the employee's ability to carry out his/her responsibilities, that the City give the employee the option of terminating the conflict, or being removed from the position. This recommendation applies to Mr. Bell and all City staff working for Partham Engineering.**

OAG COMMENT: In order to ensure City management was fully informed prior to bringing the organizational restructuring before Council on March 25, 2009, we raised the issues relating to Partham Engineering conflicts to the General Manager, Public Works on January 23<sup>rd</sup>. We also subsequently issued on February 2<sup>nd</sup>, earlier than had been scheduled, the draft report to the City Manager.

#### **Management Response**

Management agrees with this recommendation. The Legal Services branch will work closely with senior management in the Public Works department to address any real or perceived conflict of interest or violation of the *Employee Code of Conduct* within the context of the revised organizational structure and in

compliance with the requirements of any contract of employment or collective agreement by the end of Q3 2009.

The OAG considers that this recommendation should be forwarded to the Audit, Budget and Finance Committee for discussion.

### **Recommendation 5**

**That the City take appropriate action, including disciplinary, regarding the misuse of sick leave and overtime by employees.**

#### **Management Response**

Management agrees with this recommendation. The City of Ottawa investigates all allegations of the misuse of sick leave and overtime by employees. Where warranted by the findings of such investigations, appropriate disciplinary action is taken by management following consultation with Legal Services (Labour Relations) and consideration of all relevant factors. Management will immediately review any specific incidents of alleged sick leave and overtime abuse identified in this audit and will take the appropriate disciplinary action that may be warranted as a result of the findings.

## **4 Conflict of Interest**

### ***4.1 Background***

#### **4.1.1 Evolution of Partham Engineering**

In order to put this review in context, an understanding of the evolution of Partham is necessary. From 1985 to 1990, the City of Ottawa regional government, Regional Municipality of Ottawa-Carleton (RMOC), offered inter-municipal support to nearby municipalities and townships to assist with their limited traffic signal needs. This service was provided on a charge-back basis and was initiated in response to the lack of available private sector expertise and the high cost of retaining private sector service companies, typically required to travel from South-western Ontario, in the traffic signals field.

In 1990, in response to public pressure, political committees directed that the inter-municipal support program should cease. Senior management reports were submitted to relevant Regional Committees of Council advising that a separate legal entity had been formed (Partham), owned by two municipal employees (one of whom was Mr. Bell) and substantially staffed by municipal employees. The reports informed Committee that this firm would continue to offer traffic signals support services to outlying communities in lieu of City of Ottawa staff. This arrangement was fully disclosed and accepted by senior management at the RMOC and later by the newly amalgamated City of Ottawa.

Partham Engineering was incorporated in the early 1990's under the ownership of Jim Bell and his fellow RMOC, employee Andy Thompson. Mr. Thompson's shares in Partham were signed over in 1997 when ownership and control of Partham was vested in Mr. Bell and his spouse. In 2008, Ontario corporate records indicate that Mr. Bell is the sole owner and shareholder of Partham Engineering Ltd. Mr. Bell confirmed this during interviews conducted as part of this review.

Over the period 1990 to 2008, approaching 20 years, Partham has continued to provide a range of traffic signals and traffic lighting services to both eastern Ontario municipalities (outside the City of Ottawa) and private sector companies serving those municipalities. The business, including the size of projects undertaken, level of effort required by Mr. Bell to manage and the staffing resources of off-duty City staff utilized and revenue streams, has grown substantially over this period. It is noteworthy that during this time, Partham has been widely recognized as the leader in traffic signals engineering throughout eastern Ontario, with other players in the field remaining very small and of limited capabilities.

Over the 1990's and following amalgamation, Mr. Bell and the relevant City department have repeatedly disclosed the activities of Partham, including staffing, in response to inquiries and complaints received via the anonymous Fraud and Waste Hotline. In addition, this was fully disclosed and implicitly (although we believe erroneously) deemed not to be a conflict of interest by Transportation senior management when Mr. Bell was first promoted to Manager, Traffic Operations under the RMOC and later the City.

Current senior management acceptance of Mr. Bell's activities was confirmed through interviews by the audit team with Employee Services' officials who facilitated discussion between senior management and Mr. Bell following complaints received through the Fraud and Waste Hotline as well as audit interviews with Traffic and Parking Branch senior staff.

Mr. Bell, [REDACTED], indicated during audit interviews that he [REDACTED]

As noted above, Mr. Bell voluntarily invited the consultants to examine, in detail, all Partham financial records and documents to facilitate this review.

## **4.2 Work Conducted**

### **4.2.1 Contracts (Revenue)**

As part of this review, files and records for several major Partham contracts from February 2006 - October 2008 (approximately 50% of total sales and the largest contracts for the period) were reviewed. Specifically:

- 1. Prescott-Russell – County Road 17 and Edward St (summer 2006 - summer 2007)**
  - Temporary and permanent installation (phased) of traffic control signals, installation and wiring of detector loops, underground wiring of intersection and street lighting, modified existing controllers, added new detectors, signals, etc. Install 21 new street lights. Hardware supplied by City of Ottawa.
- 2. Kemptville/North Grenville – Prescott and Reuben (spring - fall 2007)**
  - Remove existing traffic signals.
  - Reinstall traffic control signals, supply all new signal heads with LED displays, new power supply cabinet for underground installation, all new cabling, detector loops, layout of underground plant installation, as built and new drawings. All hardware supplied by City of Ottawa (painted by Partham).
- 3. Town of Renfrew - Gillan Road and O'Brien**
  - Design of signals, meetings on railway interconnect, design of underground plant, provision of ACAD drawings for underground, production of PRM 125 form, installation of traffic signals including providing underground materials through City of Ottawa and some of necessary hardware for traffic control signal installation, providing remaining hardware, providing UPS system, traffic controller, LED displays, audible signals, wiring, pre-emption to railway, detector loops and fill installation including ESA inspection, permits, etc.
- 4. County of Renfrew – Bruce and Stewart (summer - fall 2007)**
  - Rebuild traffic control signal including new underground plant, road and sidewalk reinstatement, new traffic controller, new wiring, poles and hardware, audible signals, LED signal displays.
  - Underground work completed by subcontractor (ATA Utility Contractor). Their contract included all material, labour and equipment. No City of Ottawa materials used.
- 5. County of Renfrew – audible signals (fall 2006)**
  - Installation of audible signals at multiple sites. No City of Ottawa materials used. Reviewed invoices for materials purchased directly by Partham from supplier. To get copy for “support envelope”.
- 6. Teraflex (subcontracts summer 2007)**
  - Subcontract work performed for Teraflex for United Counties of Prescott-Russell for County Rd 17 and Smart Centre entrance (Walmart).
  - New traffic control signal and street lighting.

- Price quoted to Teraflex included supply of underground plant material, traffic cable, joint use poles, arms, signal heads, detector loops, ESA, controller, LED lights.

#### 7. Cornwall Gravel (subcontracts fall 2006 - fall 2007)

- Cornwall Gravel did roadwork for County Road #17 and Edward. Cornwall Gravel first hired Partham for temporary work during construction at County Road #17 and Edward in fall 2006. Then again for permanent installation summer 2007 plus two additional contracts in fall 2007 (Cornwall - Brookdale & Tollgate and Cumberland & 7th St). Prior to this, Partham's office manager indicated that Black and MacDonald were the only company performing this work in the Clarence/Rockland and Cornwall area.
- Reviewed invoices for controller from ITS and Fortran at same timeframe (both orders for controllers which could have been used). Reviewed invoice from Fortran for LEDs.

The files were reviewed for the following types of information:

- Quotation and invoices submitted to municipalities or contractors;
- Correspondence/minutes of meetings attended or requested, particularly during standard City of Ottawa working hours and also time/dates of work to be conducted (e.g., daytime, evenings, weekends);
- Faxes sent or received from the City of Ottawa Traffic Operations;
- E-mails sent or received from City of Ottawa accounts; and,
- Indications of whether Partham received unfair advantages (real or perceived) in the awarding of contracts.

#### 4.2.2 Materials (Costs)

For the contracts mentioned above, indepth reviews of the source of materials supplied was conducted. A sample of Outside Sales found in Partham files (detailed below) were also noted and traced back to City of Ottawa records to ensure payment was received for each Outside Sale and that the appropriate municipality was invoiced.

The files were reviewed for the following types of information:

- Rough calculations of labour and material costs as well as major material items and volumes as applicable (e.g., number of street poles or controllers required) prepared by Mr. Bell for preparing quotations to municipalities or contractors.
- Quotation and invoices submitted to municipalities or contractors.
- Maintenance orders from City of Ottawa to municipalities (in some case maintenance orders were found on file, in others screen captures of the

transaction. In all cases, Jim Bell obtained these documents from the Maintenance Management group within Traffic and Parking Operations.).

- Relevant invoices from suppliers for supply of materials and/or subcontract work (e.g., Partham subcontracts to construction companies for underground work).

The following substantive tests and reviews were performed:

- Reasonableness tests of the sources of major materials identified in the rough calculations used for the quotation were conducted. That is, all major materials were accounted for through either Outside Sales from City of Ottawa directly to the municipality or purchases from external suppliers. In all cases, these materials were accounted for. Reviewed contracts to assess whether Partham received unfair advantages (real or perceived) in the awarding of contracts.
- Reviewed contracts to assess whether Partham received unfair advantages (real or perceived) in the pricing of contracts by virtue of receiving materials at a cost lower than would be expected through connections and/or influence with the City or by the ability to enable the municipalities to purchase materials from the City of Ottawa (Outside Sales).

#### **4.2.3 Vehicles**

Files were reviewed for all vehicles identified as Partham vehicles. Documents specifically examined for:

- Bills of sale;
- Purchase date;
- Description of vehicles; and,
- Vendor.

#### **4.2.4 Other Expenses**

Records (cheque register and/or invoices) were reviewed to determine other expenses. Supporting documentation to confirm the two locations used for storage of Partham equipment and vehicles were also reviewed. Mr. Bell extended the auditor an invitation to view these facilities, but as they had been visited by Corporate Security in 2008, this was not deemed necessary.

### **4.3 Observations**

#### **4.3.1 General Information provided by Mr. Bell**

Jim Bell [REDACTED], provided the following information at meetings during the review.

Services provided by Partham include the design, construction and maintenance of traffic signals and street lighting. They do not believe they have any competitors who provide this full service or type of turnkey operation, although there are electrical contractor competitors in components of the business, in particular street lighting (Black and McDonald, RW Electric in Kingston). However, these companies do not do their own design work.

Mr. Bell is the only professional engineer (P.Eng.) working at Partham Engineering. Every Ontario engineering company is required to have a fully qualified P.Eng. in the company. As a P.Eng., he is required to receive an annual PEO (Professional Engineers of Ontario) certification of authorization, and is obliged to abide by the Ethics and Conflict of Interest guidelines as prescribed by the PEO organization.

[REDACTED] worked for the City for many years before leaving to [REDACTED]. During employment with the RMO, she worked in the Traffic Operations Division. [REDACTED] of the Transportation Division.

Partham operates out of Jim Bell's home office. Partham letterhead and fax cover sheets include an office phone number (which rings at the home office) and a 24-hour emergency pager number.

Sue McInnes is the office manager and is responsible for the day-to-day accounting including accounts receivable, accounts payable, payroll, etc. In addition, she has a bookkeeping business where she provides similar services for five clients. Sue McInnes was found to be very knowledgeable of Partham operations. Files were well maintained. Financial information is recorded in "Quick Books" a popular electronic bookkeeping system which meets the needs of the organization. Prior to 2006, records were kept manually, making extraction of financial data for purposes of the review more difficult. However, since it was deemed more relevant to focus the review on the past few years, this was not a significant factor.

Sue McInnes indicated that she covers the pager when Mr. Bell is unavailable. This was not observed since the pager is reportedly only used outside of office hours. Audit interviews confirmed that some municipal clients contact Mr. Bell at the City of Ottawa; although Mr. Bell indicated that he responds to these call after hours, or through on duty Partham employees. Most correspondence (e-mails and faxes) on file was sent from the home office in the evening. It was noted that over the three-year period, of the documents reviewed, three faxes on file were sent from the City of Ottawa Traffic Operations in the early morning. This is not considered to require follow-up.

Scheduled traffic signal work is typically completed by Partham during evenings and weekends. Design is completed well in advance with a long lead time. Unscheduled scenarios such as a street light requiring immediate daytime repair

(electrical) or traffic controller problems are typically handled by the two retired City of Ottawa staff George Conlin (electrical) and Paul Lalonde (controller). Fall is typically the busiest time; partly due to the budgeting process of municipalities and also since the traffic signals are required at completion of road builds or rebuilds.

Often when Partham is working directly for other municipalities, they arrange for the other municipalities to purchase materials (usually poles and arms, occasionally controllers and underground ducting and cable) from the City of Ottawa stores. These purchases are coordinated through 'Outside Sales' administered by Traffic Operations Division staff, Dave Rybak. As per City of Ottawa policy, Outside Sales are marked up 11% for inter-municipal sales. Mr. Bell stated that this method of obtaining materials for these jobs does not result in the materials being obtained for a lower cost than if they were purchased directly from suppliers by Partham or another similar firm but is more convenient with shorter wait times. Our review of unit prices charged under Outside Sales compared to prices charged by retail operations in serving eastern Ontario confirmed that Outside Sales prices were some of the lowest in the marketplace; offering savings of 2% to 12%.

If Mr. Bell is required to attend meetings on behalf of Partham Engineering he reports that he generally schedules them at the end of day or takes annual leave. He also reports that he has had several years during his employ with the City of Ottawa [REDACTED]

Jim Bell has stated that Partham does not work within the City limits. There was no evidence to the contrary in the review of records.

In his position as Manager, Traffic Operations, Mr. Bell has provided disciplinary action to several employees. In some cases this has resulted in terminations and/or resignations.

Jim Bell anticipates that [REDACTED]  
[REDACTED]. Mr. Bell has stated that [REDACTED] has never worked for Partham. There was no evidence to the contrary in the review of records.

#### **4.3.2 Contracts Awards**

Approximately 50% of the dollar value of all Partham sales for the past three years (2006, 2007 and 2008) was tracked through a detailed review of contracts. In all cases, supporting evidence confirmed that all materials were paid for either through City of Ottawa Outside Sales (invoiced directly to municipalities) or purchased directly from recognized suppliers. There was nothing of note for most contracts reviewed. The following findings were made:

##### **1. Sample Partham Project 1: Town of Renfrew, Gillan Road Traffic Control Signal**

Work for the Town of Renfrew for new traffic signalization at the intersection of Gillan Road and O'Brien was conducted in 2006-2007. This was one of the largest

projects undertaken to date by Partham. The work was complicated by coordination of signalization required due to a nearby railway line (needed to ensure that cars for the traffic light would not be stopped at or near the tracks, and lights also required pre-emption when a train approached). The work at the Gillan and O'Brien intersection involved numerous parties including the County of Renfrew, Town of Renfrew, Ministry of Transportation Ontario (MTO) and the Ottawa Valley Rail link).

Partham has had a long-standing relationship with both the County of Renfrew and Town of Renfrew. Partham initially issued a quotation of signalization with related street lighting added later. Information in the Partham files indicates that the contract was sole sourced, not a competitive bid, by the Town. Records (faxes, e-mails, meeting minutes) indicate that Partham was also involved as a desired player at the table in the early stages prior to any issuance of quotations based on their knowledge of the intersection and previous work with both the Town and County.

Morrison Hershfield, an engineering firm with offices in Ottawa, completed the initial study in 2006, which identified an urgent need for the signalization. Morrison Hershfield has also conducted work for the City including a Real Property Asset Management (RPAM) contract that explored options for relocation of Traffic Operations. There is no indication that Morrison Hershfield influenced the decision of the Town to contract the work to Partham.

Documents indicate that Jp2g Consultants Inc. was retained for the design and contract administration.

Partham subcontracted the underground utility work to ATA Utility Contractor. Underground materials used by ATA and other materials used by Partham were supplied by City of Ottawa (Outside Sales) and billed to the municipality.

Minutes indicated 

Pricing for the Town may have been lower than if materials were supplied by the private sector, however in this case, based on long standing relationship, it was deemed unlikely that materials purchase price would have impacted the awarding of the contract.

## **2. Sample Partham Project 2: Prescott and Russell Road 17: Teraflex Subcontract**

In 2006/2007, Teraflex subcontracted Partham for the construction of a new traffic control signal and street lighting for the united counties of Prescott-Russell (County Rd 17 and Smart Centre entrance (Walmart)). In general, this contract work is similar to the previous example, as Partham is contracted to conduct work beyond the geographic boundaries of the City of Ottawa. However, in this case Partham was retained by Teraflex, an Ottawa based electrical contractor that is also a pre-qualified contractor for intersection construction for City of Ottawa Traffic

Operations. Their website states, "Ottawa's leader in providing utility services to the commercial, industrial and government markets. Whether it be a street light that needs to be repaired or a full signalized intersection installed, we have the staff, experience and equipment to serve you." Interviews conducted during the audit confirmed that Teraflex is regularly used by the City of Ottawa for the construction of traffic control signal civil structures (e.g., duct work, manholes, etc.).

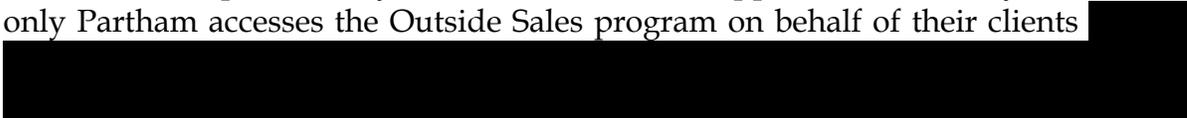
These two sample Partham projects raise several questions about the appropriateness of Partham's activities. Did Partham receive these contracts because, by using City supplied materials, it was known that their quote (even if non-competitive) would be lower than other bidders? And if so, did the municipality hire Partham for access to these lower cost materials? Given this potential issue and the fact that only Partham Engineering has effectively sourced City Outside Sales materials for their municipal clients, is the supply of significant materials appropriate activity for the City? Is this fair to the rest of the private sector? Does/did Morrison Hershfield and/or Jp2g receive preferential treatment/contracts in their working relationship with the City of Ottawa Traffic Operations in exchange for providing work to Partham? Did/does Teraflex receive preferential treatment or added contractual work with the City of Ottawa due to their subcontracting of Partham?

While there is no evidence that there was fraud or a breach of trust, it is not good practise to have these lines blurred; the onus is entirely on the honour and ethics of Mr. Bell, rather than on independent internal controls.

### 4.3.3 Material Costs

In all cases audited, materials related to the above noted contracts were accounted for, either as a City of Ottawa Outside Sale or purchase direct from suppliers. As per City of Ottawa Policy, these Outside Sales to municipalities included an 11% administration charge. It is felt that this fee, however, does not sufficiently cover the costs incurred by the City for these transactions (material management, shipping/receiving, invoicing, storage, financing) and that handling of materials for external agencies is counter-productive when the City's operations at 175 Loretta suffer considerably from productivity difficulties due to insufficient space (inside and yard) to accommodate current levels of City activity.

Typically underground work at intersections (civil works) is subcontracted out by municipalities. Generally these contractors are responsible for supply of their own materials. Partham, for their works, arranges for the municipalities to purchase underground ducting, cables and a wide range of other materials from the City of Ottawa. Technically, there is nothing restricting other contractors from arranging that the municipalities they work for order their supplies from the City. However, only Partham accesses the Outside Sales program on behalf of their clients



submitted by Partham employees who also work for the City of Ottawa Traffic Operations Division). Although it can be assumed that other subcontractors are not aware of this program, it is more likely that they cannot reasonably access this program as they cannot be properly informed about available materials at the City as lists of available inventory are not published.

In the above-noted Teraflex contract (Sample Partham Project 2) the price quoted by Teraflex to Prescott and Russell included supply of underground plant material, traffic cable, joint use poles, arms, signal heads, detector loops, ESA, controller, LED lights. Yet, these materials, in the end, were ordered by Partham to be delivered to the municipality, paid for by the municipality, and then Partham reimbursed the municipality.

An e-mail on file to the municipality from Partham (Jim Bell) states, " I would like to use the same equipment at this one as we have along this whole stretch, at Chamberland, Super C, will have at Edwards. ...I will be working for Teraflex. I cannot have the City supply material to a contractor only a municipality. ...which means I would like to bill all of the material to Prescott-Russell I think should come from the City and I will supply the rest...the stuff billed to you would be for consistency sake along this stretch of road. Teraflex or myself (Partham) would be responsible to pay the County." The end result was that Prescott-Russell paid the Outside Sales invoice from Ottawa and received the materials; Partham then reimbursed Prescott-Russell for the same amount.

This contract activity raises several questions. First, did Teraflex receive the contract because, knowing they would be using City supplied materials, their quote was lower than other bidders? And if so, did Teraflex hire Partham for access to these lower cost materials? And second, was this the appropriate activity for the City, notwithstanding the desire for the municipality to be provided with the same materials as provided on previous jobs performed by Partham? Again, as mentioned in the Traffic Operations audit report, is the City covering its costs, both direct and indirect, for acting as a broker of materials? Does/did Teraflex receive preferential treatment/contracts with Traffic Operations in exchange for providing work to Partham? Given that there are costs to the City associated with providing these materials to contractors for work performed outside the City and given the well known fact that storage space at the Traffic Operations facilities at Loretta Avenue is not a sufficient size for City activity alone, is this the business they should be in? Is it fair to the rest of the private sector?

While there is no evidence, that there was fraud or a breach of trust, once again it is not good practice to have these lines blurred, and brings into question whether decisions not to close down or scale back Outside Sales have been made objectively. Finally, as noted above, the onus is entirely on the honour and ethics of Mr. Bell rather than on independent internal controls. [REDACTED]

[REDACTED]

[REDACTED] have expressed their concern over Partham activities and have stated in audit interviews that they believe Partham delivers product to their clients through preferential pricing of materials obtained through City Outside Sales. Our review of unit prices for standard traffic signal equipment (e.g., 32 foot joint use aluminium utility poles, etc.) confirmed that City of Ottawa Outside Sales prices were some of the lowest in the marketplace, with purchasers offered savings of 2% to 12% over competitor quotations. In general, the price differences were not substantial enough to suggest that they offer substantial savings to Partham clientele.

#### 4.3.4 Access to Confidential Information

On October 2, 2008 the Ottawa Construction Association<sup>10</sup>, issued a letter to the Office of the Auditor General expressing their, *“opposition to the current position of the City of Ottawa to allow employees to utilize valuable knowledge, specifically privileged industry pricing information, gained while in their employment at the City to their advantage in business conducted outside of the geographic boundaries of Ottawa... [REDACTED] has access to information on bids from firms that are members of our Association. At the same time, [REDACTED] competes against these same member firms in Eastern Ontario. Whilst there is no strict evidence that [REDACTED] to inside information, the mere perception of this possibility is troubling to our membership. This letter should not be interpreted as a slight against the integrity or professionalism of [REDACTED]*

In the review of Partham records, there was no indication that this type of information was used in preparing quotations or soliciting business. We concur, however, that [REDACTED] would have access to the information indicated above; although in most cases the City contracting decisions would be made directly by the Program Managers [REDACTED]

#### 4.4 Conclusion

While there is no evidence that there was fraud or a breach of trust in any Partham transactions or activity, or by any actions of Mr. Bell, the implicit and inherent internal controls which both Council and the public would reasonably expect to exist are seriously compromised; and the onus to ensure there is no wrongdoing is entirely reliant upon the honour and ethics of Mr. Bell rather than on standard preventive and detective internal controls.

Mr. Bell has stated that he [REDACTED]

[REDACTED] However, there is nothing to prevent Mr. Bell (potentially with a strategic alliance with another

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<sup>10</sup> Note – Mr. Mike Sharp from Black and McDonald Ottawa, a Partham competitor, is the current Chairman of the OCA

competitor (e.g., Black and McDonald) and existing strong relationships with the City sole source suppliers of traffic control research, development and manufacturing) from soliciting an Ottawa Option bid for the design, build and maintenance of all City traffic signals, controllers and street lights. While such a proposal for service may be beneficial, in part, it could also be a costly alternative forced upon the City

. Under this option

, it would be difficult for Council to ensure they were receiving objective advice on the strengths, weaknesses and risks of such an Ottawa option due to Mr. Bell's history with the City and Partham's inextricable linkages within Traffic Operations at every level of the organization. Either way, the City would be exposed to substantial unanticipated risk that it would be poorly prepared to address. In this regard, the City should consider mechanisms at its disposal to mitigate the risk the City faces under a forced Ottawa Option bid from Partham Engineering, in its current form or under the name of a successor firm.

Best practises clearly support the immediate termination of moonlighting (Partham activities) by both Mr. Bell and other City of Ottawa employees if they continue to work for the City. In addition to points raised in the previous section this is recommended due to:

1. The unfair advantage (real or perceived) afforded Partham in acquiring contracts with neighbouring municipalities as a result of Mr. Bell's position at the City;
2. The level of effort required by Mr. Bell and his key Partham employees (who also work for the City) for Partham activities and the potential for reduced levels of effectiveness in their City positions;
3. The negative impact on morale within Traffic Operations resulting from the perceived favouritism and biased treatment of City staff employed by Partham; and,
4. When City staff work for Partham Engineering, they deal with consultants and contractors that are also providing services to the City. This conflict could also affect the City's relationships with consultants and contractors.

Ultimately, the City is accountable for protecting the assets of, and the public trust in, the City. The current and continued activity of City Traffic Operations Division staff employed by Partham Engineering compromises this function.

## 4.5 Recommendation

### Recommendation 6

That the City Manager, to mitigate the City's risk exposure, assess the feasibility of a non-compete agreement (e.g., cooling off period) [REDACTED]

#### Management Response

Management agrees with this recommendation. However, [REDACTED]

[REDACTED] of the corporate realignment exercise. Legal Services will include consideration of non-compete agreements as part of the overall review of the Outside Business Activity (Moonlighting) provisions of the *Employee Code of Conduct*. [REDACTED] the City's *Re-employment Policy* stipulates that "a former employee may not be re-employed on a permanent, temporary, fee for service or contract basis, whether independently or as part of a consulting firm, until the complete period of time equal to the length of their notice period and/or payment at departure has expired. A former employee may be employed by a consulting firm, but may not be assigned to work on a City contract by the firm until their combined notice period and/or payment at departure has expired." Given the restrictions imposed by the Policy, a further agreement is not necessary.

## 5 Sole Source Contractors and Proprietary Systems Risk

In order to provide necessary context to the audit findings for this section, the following overview information on three private sector firms, Thompson Technologies, Luxcom Technologies Inc. and Multilek Systems Inc. is provided below. The intent is to address how services and goods offered by these firms are linked to the City of Ottawa Traffic Operations Division, and to highlight concerns which arose during the audit pertaining to the sourcing and contracting of research and development services and related manufacturing and supply of speciality equipment.

### 5.1 Background

#### 5.1.1 Thompson Technologies

Thompson Technologies is a Gloucester-based consulting organization owned and operated by Andy Thompson, a former RMOC, employee and original founding partner of Partham Engineering Inc. Thompson Technologies, an unincorporated organization, first began to conduct work for the RMOC in the mid 1990s when Mr. Thompson was co-owner in Partham Engineering with Jim Bell (Mr. Bell and his spouse took over as sole share holders in 1997). While this audit cannot reasonably

address historic influence Mr. Bell may have had in the selection of his business partner for City sole source contracts, the potential for serious conflict of interest is most evident.

Thompson Technologies conducts research and development for the City of Ottawa for the design and manufacture of traffic controllers. These specialized circuit boards are installed at every signalized intersection to read, interpret, and control traffic flows, and, for most intersections, to then communicate with the central Traffic Operations Control Room on ongoing traffic operations. It is estimated that there are over 1,000 such controllers in current operation at all times within the City.

Mr. Thompson, Thompson Technologies' only identifiable technical employee, provides software and hardware innovations and products related to traffic control signals, controllers and data handling. His firm has at various times also advertised innovative traffic control hardware it is able to supply.

### **5.1.2 Luxcom Technologies**

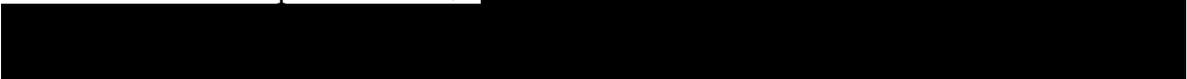
Luxcom Technologies, an Ottawa-based manufacturer of electronic communication equipment, is the manufacturer of specialized communication devices (e.g., telephone line and cellular modems) used by the City of Ottawa for the transmittal of digital information from traffic signal controllers. Luxcom was introduced to Thompson Technologies by the City of Ottawa, as Thompson Technologies research and development projects were used to develop designs and specifications for modems and traffic controllers.

### **5.1.3 Multilek Systems**

Multilek Systems is an Ottawa-based manufacturer of civilian and military grade electronics. Over the period 1999 to 2008, Multilek has been supplying the City of Ottawa the 'Multilek Traffic Controller' and related traffic controller computer hardware used exclusively in traffic controllers and traffic control systems across the City of Ottawa.

### **5.1.4 Rogers Digital Communications**

Rogers Digital Communications is a major market Canadian player in the delivery of digital cellular communications services including by voice and data transfer. In audit interviews, City staff have confirmed that Rogers has been contracted to provide cellular data transmission for an increasing number of traffic signal controllers equipped with newer generation traffic controllers designed by Thompson Technologies and Multilek and equipped with modems developed by Luxcom. In 2006, the Vice President of Rogers Digital Communications, in a national business presentation, 

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## 5.2 Observations

### 5.2.1 Risk of Service Failure, Price Gouging

The Traffic Operations Division annual budget sponsors research, development, production, deployment, maintenance and optimization of various hardware and software inventions for use in the traffic management systems including: modified traffic controller housings; traffic controller hardware and software; pedestrian push buttons; hard-wired and wireless communications processes and protocols. This approach to traffic controller sourcing is considered risk intensive, with the City of Ottawa assuming all of the risk (development costs, risk of failure, risk of service loss, risk of long range servicing failure, etc.). It leaves the City very vulnerable.

At this time the Division reports that the entire Ottawa Traffic management system has been assembled with controllers and software supplied by the local suppliers mentioned above (Thompson Technologies, Multilek and Luxcom) and that the technology employed is not available through other manufacturers. Virtually all 1,000 traffic controller units and communication modems across the City have been developed for the Division by Thompson Technologies (a one man operation) and manufactured by Multilek and Luxcom. These devices are in active use in the vast majority of the City's intersections and data communications systems.

Reviewing work conducted for the City of Ottawa over the period 1999 to 2005 (available records), **Thompson Technologies** has been under contract for a number of research and development initiatives and projects related to traffic signal technology advances. From 1999 to 2004, Thompson Technologies was retained without competition (e.g., under sole source contracts) totalling \$809,500. Beginning in 2005, Thompson Technologies submitted a priced proposal for work under a competitive bidding process for Traffic System Software Support (City of Ottawa RFP 00105-92047-P01) however they were the sole bid received. Finally, under a separate standing offer contract (City of Ottawa RFSO 09705-92500-S01), Thompson was pre-qualified to conduct additional work related to Transit Priority and Traffic Signals consulting services. Total invoicing by Thompson Technologies over the period 2004 to 2008 (September) are reported to be \$896,518. In total over the period 1999 to 2008, invoices by Thompson Technologies to the City of Ottawa are estimated at **\$1.7 million**.

Audit interviews confirmed that **Luxcom** has been used exclusively for the supply of traffic information modems; although they are but one of a number of companies potentially able to supply the required parts. Over the period 2001 to 2008, sole source contracts approved for Luxcom Technologies have totalled over **\$360,000**

with average annual payments over the period 2005 to 2007 of over \$47,000 for the supply of computer systems hardware and supplies. Limited records provided suggest that Luxcom modems are purchased on an as needed basis.

Records document sole sourcing contracts totalling to **Multilek** of approximately **\$2.5 million** over the period 1999 through 2008 inclusive, with average annual contracts of over \$250,000. City staff indicates that they have encouraged other manufacturers of traffic controller hardware to offer similar systems and are considering adopting generic controllers used elsewhere in North America or developing technical specifications that would better permit competition for Multilek.

The use of sole source contracts and single qualified contractor contracts for traffic controller development and supply through Thompson Technologies, Luxcom and Multilek now exposes the City to substantial risk of service loss, price gouging and/or added service costs.

Possibly a greater issue for the City vis-à-vis risk abatement, is the need for the City to develop a longer range plan for the sourcing of traffic controller and communications equipment through a competitive process in the private sector; with the successful firm(s) offering the City reduced risk envelope, where technology developed is wholly owned and specified for the City's use (for future release of competitive contracts) and where contract terms are limited or profit margins limited to a percentage of private sector costs.

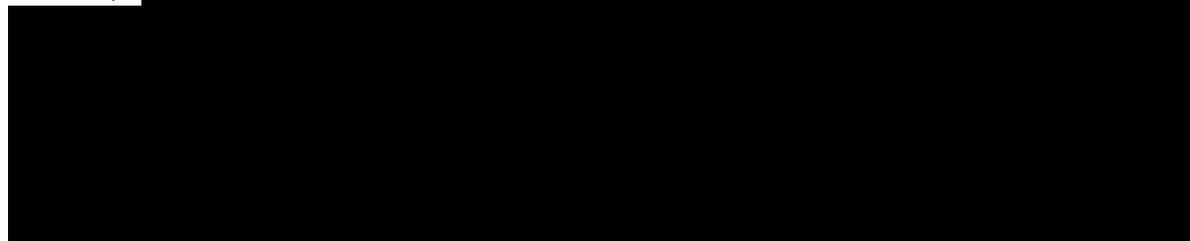
### 5.2.2 Potential Income Foregone

Historically City traffic controllers have been "hard wired" to telephone landlines.

At



City staff was unaware that Thompson Technologies' work, paid for by the City of Ottawa,



[REDACTED]

[REDACTED] and under the ownership of the City. However, at the time of the audit they had not sought any legal advice. As a result, the City is found to be absorbing all the risk, [REDACTED] and yet the City is not well situated to recoup any of the benefit/profits from further R&D application.

### **5.2.3 Inadequate Contracting Terms**

During audit interviews, senior staff indicated that the City of Ottawa had developed a specialized agreement with Thompson Technologies which addressed City proprietorship over research and development advances developed under contract.

The staff's decision to rely on an unincorporated business with a single technical employee, Andy Thompson, for the planning, design and specifications of all traffic controllers used in the City, leaves the City without fall back or any quick alternative should Thompson Technologies, for any reason, be unable to meet its obligations.

Our review of contract documents between the City and Thompson Technologies revealed that the only contract in place with Thompson Technologies was the general contractual terms set out in standard municipal RFP documents in which the Thompson Technologies and the City of Ottawa agree to protect each other from claims related to royalties/licenses/fees etc., brought about by others during the course of the contract. There are no terms to protect the City if Thompson Technologies sells technology, which they develop specifically for the City, and at significant cost to the City. Clearly, this "contract" was treated as a routine service provider contract without attention to potential revenue streams for the City.

While the Division may portrayed this program as a research and development program with potential for improved service delivery and possible marketing and profit sharing (with Thompson, Multitek, Luxcom and/or Rogers Communications), such a venture should reasonably be further developed and be protected by a more robust partnership agreement (with each of these firms sharing in the cost and risk of technology development and the City sharing in profits). The use of City funds supporting a for-profit venture would reasonably require augmented Council reporting and approval.

### **5.3 Conclusion**

The staff's decision to rely on an unincorporated business with a single technical employee, Andy Thompson, for the planning, design and specifications of all traffic

controllers used in the City, leaves the City without fall back or any quick alternative should Thompson Technologies, for any reason, be unable to meet its obligations. In particular, the use of sole source contracts (mid 1990's to 2004) and single qualified contractor contracts (2005 through 2008) for traffic controller development through Thompson Technologies now exposes the City to substantial risk of service loss, price gouging and/or added service costs.

Given the strong historic linkages between Jim Bell, (Traffic Operations/Partham) and Andy Thompson (original partner in Partham Engineering / current owner of Thompson Technologies) and the strong reliance the City now has on Thompson Technologies, Multilek and Luxcom for the supply of traffic technological products, it is critical that the City safeguard its future ability to meet traffic operations technology needs through the development of a longer term strategic plan which provides for the supply of an integrated traffic control system while also addressing these risks. In addition, the City needs to explore legal options for ensuring the protection of future income derived from the technology developed by Thompson Technologies, Multilek, Luxcom and/or Rogers Digital Communications while under contract to the City of Ottawa.

The progressive development of a management culture within the Traffic Operations Division that favours a 'do it ourselves' approach to procurement, assessment and service delivery presents certain significant added costs and risks to City operations. The City's approach to traffic management includes significant program cost associated with research and development for traffic technology development (in lieu of market acquisition of commercially available product). Of note, in addition to the items mentioned in this report, in the Audit of Traffic Operations report (produced under separate cover) we note similar costs and risks associated with the Traffic Operations approach of 'doing it themselves' when developing exclusive local engineering analysis standards (in lieu of standard engineering practices); when purchasing, storing and handling materials for construction (in lieu of establishment and policing of specifications, etc.) and in other R&D and manufacturing program conducted by the Division.

The Traffic Operations Division needs to better understand the nature of risk and how to control it while also leveraging opportunities. This will assist staff in taking more ownership of their own risks and how to mitigate them. Staff need to understand the risk, consequences and existing controls to avoid, reduce, transfer, accept or retain the risk. An approved framework should allow for continuous review and updating at both the detailed level for operational purposes and at a high level for strategic planning and accountability purposes. Currently, this does not exist.

## **5.4 Recommendations:**

### **Recommendation 7**

**That the City undertake a review of the current procurement practices in place within the Traffic Operations Division in the areas of engineering services acquisition; traffic controllers hardware and software purchasing; and material purchasing to ensure that the City's best interests are met and that the current practice does not expose the City to unreasonable additional costs or risk assignment.**

#### **Management Response**

Management agrees with this recommendation. Supply Management will work with Traffic and Parking Operations to develop a supply chain strategy by the end of Q1 2010 for the acquisition of engineering services; traffic controller hardware and software; and associated materials with the goal of safeguarding its future ability to meet traffic operations technology needs and to ensure best value is achieved. Staff will also work with Legal Services to ensure that any necessary changes are incorporated into the City's standard contract terms.

### **Recommendation 8**

**That the City develop a long range plan for the design and sourcing of traffic controller and communications equipment (through standard competitive processes) and that contracts with successful firms include a significantly reduced degree of risk for the City (e.g., private sector involvement in R&D funding; Public-Private Partnership, etc.), or, if technology is developed at the cost and risk of the City, that the ownership, application rights and proceeds of R&D is wholly owned by the municipal corporation, with the City maintaining detailed full specifications of all R&D products to allow for the City's use in future competitive contracts.**

#### **Management Response**

Management agrees with this recommendation. Supply Management and Traffic and Parking Operations have taken significant steps to open up competitive bidding on traffic controllers in the past year. There are now two competing suppliers for traffic controllers.

Supply Management will continue to work with Traffic and Parking Operations to develop a sourcing plan for the acquisition of traffic controllers and communication equipment by Q1 2010 with the goal of increasing competition resulting in more competitive pricing, properly allocating risks between the supplier and the City, and exploring options for ownership of technology.

Legal Services, in cooperation with Supply Management and Traffic and Parking Operations, will review on an ongoing basis, the standards terms and conditions

of contracts to ensure that they fully and adequately protect the City's intellectual property interests.

### **Recommendation 9**

**That the City explore opportunities for the City to derive profits from technologies sales and services derived from existing inventions developed through City of Ottawa research and development funding, and, in particular, products developed by Thompson Technologies, Luxcom, Multilek and/or Rogers Digital Communications while under contract to the City.**

#### **Management Response**

Management agrees with this recommendation. Staff will examine the possibility of generating revenue from the use of the City's intellectual property rights, recognizing the legal limitations on the municipality's ability to generate profits, as well as the practical difficulties associated with the management and marketing of the City's intellectual property.

With regard to the identified firms, staff 



## **6 Conclusion**

The case reviewed in this audit indicates that the City does not have any mechanisms to manage conflict of interest. The main employee properly disclosed his conflict of interest but neither the employee nor the City exercise proper monitoring actions to ensure that private activities had no detrimental effect on the operations of the City.

In our opinion, every case of a declared conflict of interest should be evaluated to determine the impact on the operations of the City. If determined that the conflict of interest cause a real or perceived negative impact, such conflict of interest should be rejected and the employee should have a choice of either proceeding with the private activities and leave the City or stop the private activities and stay an employee of the City.

A City should not accommodate an employee conflict of interest to a point that it has a negative impact on its operations nor on its image of guardian of public good.

## **7 Acknowledgement**

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management and by the owners of Partham Engineering Ltd.