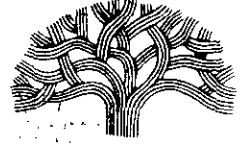


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Council Meeting Date: September 28, 2004

OFFICE OF THE MAYOR

**IGNACIO DE LA FUENTE, PRESIDENT
AND MEMBERS OF THE CITY COUNCIL
OAKLAND, CALIFORNIA**

Attn: Finance and Management Committee

**SUBJECT: INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
OF VEHICLES THAT WERE TOWED PURSUANT TO THE CONTRACT
BETWEEN THE CITY OF OAKLAND AND THE OAKLAND TOW CAR
ASSOCIATION**

Attached is the second in a series of reports that this office plans to issue regarding the contract between the City of Oakland and the Oakland Tow Car Association to tow and store vehicles. It focuses on compliance with State of California laws and regulations, as well as the contract provisions, regarding lien sales of vehicles that have been towed pursuant to the contract.

Although the Oakland Tow Car Association consisted of five towing companies when it was first organized in 1970, the contract is now carried out by the successor company, A and B Auto Company, Inc., and its affiliate, A&B Vehicle Processing, Inc. Therefore, in our report we refer to the towing contractor as A&B Auto.

This is only an interim report. We could not complete our audit because the owner of A&B Auto refused to permit us to audit his company's accounting records.

Although we conducted our audit in accordance with Generally Accepted Government Auditing Standards, as issued by the Comptroller General of the United States, the scope of our audit was impaired by the lack of access to A&B Auto's accounting records. Specifically, we could not (1) determine whether A&B Auto had accounted for lien-sale

proceeds according to State laws and regulations; and (2) test for possible fraud or abuse on the part of A&B Auto. Accordingly, we could not complete our audit.


On July 28, 2004 we sent copies of our draft report to the Chief of Police and the owner of A&B Auto for review and comment. We also suggested that they meet with us to discuss the draft report. Neither the Chief of Police nor his delegate responded, and a meeting did not take place.

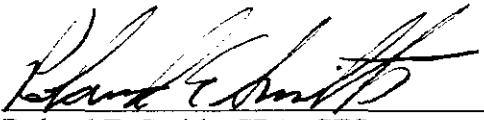
However, the owner and General Manager of A&B Auto did meet with us, and have agreed to implement many of our recommendations. Our report contains the full text of their letter of August 25, 2004, together with a summary of their comments and our responses. Their comments were greatly appreciated.

The City Auditor is elected by the citizens of Oakland to serve as an officer in charge of an independent department auditing City government activities. The independence of the City Auditor is established by the City Charter.

Prepared by:

Issued by:


Jack McGinity, CPA


Roland E. Smith, CPA, CFS
City Auditor

Field work completion date: January 29, 2004

Issue date: September 8, 2004

Attachment

**INTERIM REPORT ON
PERFORMANCE AUDIT OF LIEN SALES
OF VEHICLES THAT WERE TOWED
PURSUANT TO THE CONTRACT BETWEEN
THE CITY OF OAKLAND AND THE OAKLAND TOW CAR ASSOCIATION
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

04055

Item # _____
Finance and Management Committee
September 28, 2004

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

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**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

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**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

**EXECUTIVE
SUMMARY**

This is the second in the series of reports that we plan to issue on our audit of the contract between the City of Oakland and the Oakland Tow Car Association to tow and store vehicles. This report specifically focuses on compliance with State of California laws and regulations, as well as the contract provisions, regarding lien sales of vehicles that have been towed pursuant to the contract.

Although the Oakland Tow Car Association consisted of five towing companies when it was first organized in 1970, the contract is now carried out by the successor company, A and B Auto Co., Inc. and its affiliate, A&B Vehicle Processing, Inc. Therefore, in our report we refer to the towing contractor as A&B Auto.

This is only an interim report. We could not complete our audit because the owner of A&B Auto refused to permit us to audit his company's accounting records.

Lien-sale process

According to State law, when A&B Auto tows or stores vehicles under authorization by the Oakland Police Department, A&B Auto has liens on the vehicles in order to cover its towing, storage and selling fees. If the registered or legal owners do not pay the fees within prescribed time frames, A&B Auto may sell the vehicles at an auction in order to recover its fees. If the proceeds from the lien sales exceed the related fees, A&B Auto must remit the excess to the California Department of Motor Vehicles. Conversely, if the proceeds do not cover the fees, A&B Auto may collect deficiencies from the registered owners of the towed vehicles. If there are excess lien-sale proceeds, the City is also entitled to collect any parking violation fees related to the towed vehicles.

The lien-sale process, as described above, can be divided into three separate phases, all of which are important:

1. Appraising vehicles,
2. Holding public lien-sale auctions, and
3. Accounting for lien-sale proceeds.

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

Appraising vehicles

This phase is important, because whoever appraises the vehicles determines which State laws and regulations are applicable to the disposal of the vehicles. Specifically, whoever appraises the vehicles determines: (1) how long the vehicles must be stored before they are sold; (2) how much notice must be given to the public regarding the sale of the vehicles; and (3) whether the registered or legal owners of the vehicles have the right to redeem the vehicles after they have been sold.

**Holding public
lien-sale auctions**

This phase is important because the greater the number of bidders who compete against each other, the greater the sales prices are likely to be. This means that there will be more money available to pay (1) A&B Auto's fees, (2) fees that the City is entitled to receive regarding parking violations, and (3) the former owners.

**Accounting for
lien-sale proceeds**

This phase is important because State laws and regulations prescribe how lien-sale proceeds shall be accounted for. If the proceeds exceed the related fees, A&B Auto must remit the excess to the California Department of Motor Vehicles. Conversely, if the proceeds do not cover the fees, A&B Auto may collect deficiencies from the registered owners of the towed vehicles.

**Oakland Police
Department
responsibilities**

The Oakland Police Department is responsible for administering the contract. This includes ensuring that A&B Auto complies with all contract provisions, as well as State laws and regulations.

We found the following problems regarding the lien-sale process:

***SUMMARY OF
FINDINGS***

1. The Oakland Police Department has permitted A&B Auto to assume the authority to appraise towed vehicles. Although having this much control over the lien-sale process is not prohibited by the towing contract, or by State law or regulations, it may not provide the separation of duties that is essential to maintain internal controls over a process such as this.
2. The owner and general manager of A&B Auto do not use objective guidelines (such as the Kelley Blue Book or similar publications) when appraising vehicles, and are not required

**OAKLAND CITY AUDITOR'S
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FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

**SUMMARY OF
FINDINGS
(continued)**

to do so. Instead, they both rely on their many years of experience to estimate how much vehicles will actually sell for. In our opinion, it is sound business practice to use objective guidelines.

3. A&B Auto holds separate lien-sale auctions of vehicles (those valued at \$4,000 and under, and those valued over \$4,000). Combining the two types of auctions into one would increase the number of potential buyers, as well as the prices paid for the vehicles.
4. A&B Auto does not advertise vehicles valued over \$4,000 in a newspaper having wide circulation. This makes it likely that there will not be a large number of bidders competing against each other and driving the prices up. However, A&B Auto is in compliance with State law, which requires only that the vehicles be advertised in a newspaper having general circulation in the county.
5. The owner of A&B Auto did not permit us to audit his company's accounting records. Therefore, we could not determine whether A&B Auto has remitted excess lien-sale proceeds to the California Department of Motor Vehicles in accordance with State law and regulations.
6. When collecting deficiencies from former owners of lien-sale vehicles, A&B Auto does not provide itemized billings. Since the owner of A&B Auto has refused to permit us to audit his company's accounting records, we could not determine whether A&B Auto has attempted to collect the correct amounts.
7. The City has not set up a system to notify A&B Auto that there are parking violation fees to be collected.
8. The contract requires A&B Auto to prepare two reports on lien sales that do not appear to be useful. However, A&B Auto prepares only one of the two required reports. Moreover, having received the one report, the Police Department does nothing with it.

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

***SUMMARY OF
RECOMMENDATIONS***

To correct these problems, we recommend that:

1. the Oakland Police Department contract with an independent third party to appraise vehicles towed under the contract;
2. the independent third party appraiser use objective standards when appraising vehicles, and retain documentation showing how he or she determined their values;
3. A&B Auto hold a single weekly lien-sale auction, conducted by a professional auctioneer, which would include all vehicles that are available for sale, regardless of their values;
4. the City, when awarding a new towing contract, or extending the existing contract, require the contractor to advertise pending lien-sale auctions of vehicles valued over \$4,000 in a newspaper such as the Oakland tribune, which has wide distribution in the City of Oakland, as well as in Alameda County;
5. the City, when awarding a new towing contract, or extending the existing contract, require the contractor to permit the City to audit all accounting records, including the general ledger, cash receipts and cash disbursements records, bank statements and cancelled checks, and related financial records; Refusal to make the records available for audit should result in monetary penalties, as well as termination of the contract.
6. the City, when awarding a new towing contract, or extending the existing contract, require the contractor to furnish former owners of towed vehicles that are sold at lien-sale auctions with itemized bills along with demands for payment;
7. a. the City set up a database that can be accessed by the City's Parking Division, Police Department and A&B Auto to identify vehicles for which there are unpaid parking violation fees;

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

INTRODUCTION

This is the second in the series of reports that we plan to issue on our audit of the contract between the City of Oakland and the Oakland Tow Car Association to tow and store vehicles. This report specifically focuses on compliance with State of California laws and regulations, as well as the contract provisions, regarding lien sales of vehicles that have been towed pursuant to the contract.

Although the Oakland Tow Car Association consisted of five towing companies when it was first organized in 1970, the contract is now carried out by the successor company, A and B Auto Co., Inc. (incorporated January 22, 1954) and its affiliate, A&B Vehicle Processing, Inc. (incorporated January 5, 1988). Therefore, in our report we refer to the towing contractor as A&B Auto.

This is only an interim report. We could not complete our audit because the owner of A&B Auto refused to permit us to audit his company's accounting records. Specifically, we could not comply with those Generally Accepted Government Auditing Standards that require us to (1) determine whether A&B Auto had accounted for lien-sale proceeds in accordance with State laws and regulations; and (2) test for possible fraud or abuse on the part of A&B Auto.

BACKGROUND

The first contract between the City of Oakland and the Oakland Tow Car Association to tow and store vehicles was awarded in accordance with Oakland City Council Resolution No. 50982 C.M.S. (City Manager's Series), dated July 29, 1970. The second contract was awarded on October 15, 1981, without competitive bidding. There have been 11 amendments to the 1981 contract, including five contract extensions. The current contract will expire on October 15, 2005.

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

BACKGROUND

(continued)

According to State law, when A&B Auto tows or stores vehicles under authorization by the Oakland Police Department, the company has liens on the vehicles in order to cover its towing, storage and related fees. If the registered or legal owners do not pay the fees within prescribed time frames, A&B Auto may sell the vehicles in order to recover its fees.

State laws and regulations

State laws and regulations establish lien-sale guidelines that vary, depending on the appraised values of the vehicles. Simply stated:

1. Lien sales are public auctions.
2. Anyone may appear and bid.
3. Sealed bids shall not be accepted.
4. The public shall be informed on the details of the vehicles to be sold, and the specific date, exact time, and place of sale.
5. If the vehicles are valued over \$4,000 they must be advertised once in a newspaper of general circulation in the county in which the vehicles were located.
6. The public shall have the opportunity to inspect the vehicles at least one hour before the sale.
7. A&B Auto must send the lien-sale proceeds to the California Department of Motor Vehicles (DMV), after deducting (1) A&B Auto's fees for towing, storage, repairs, and cost of selling; and (2) parking violations fees due to the city. DMV, in turn, distributes the excess proceeds to the legal or registered owner.
8. Conversely, if the lien-sale proceeds do not cover the fees for towing, storage, repairs, and cost of selling, A&B Auto may collect deficiencies from the former registered owners.
9. If no one places a qualifying bid on a vehicle on the date that it is scheduled for sale, A&B Auto may sell the vehicle to itself, and dispose of it at a later date. In which case, A&B Auto is not required to remit any excess proceeds to DMV. However, A&B Auto may collect deficiencies from the former registered owners.
10. If the vehicles are valued over \$4,000, the legal or registered owners have the right to redeem the vehicles within 10 days after the sale.

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

BACKGROUND
(continued)

The lien-sale process, as described above, can be divided into three separate phases, all of which are important:

1. appraising vehicles,
2. holding public lien-sale auctions, and
3. accounting for lien-sale proceeds.

Appraising vehicles

This phase is important because whoever appraises the vehicles determines which State laws and regulations are applicable to the disposal of the vehicles. Specifically, whoever appraises the vehicles determines: (1) how long the vehicles must be stored before they are sold; (2) how much notice must be given to the public regarding the sale of the vehicles; and (3) whether the registered or legal owners of the vehicles have the right to redeem the vehicles after they have been sold.

**Holding public
lien-sale auctions**

This phase is important, because the greater the number of bidders who compete against each other, the greater the sales prices are likely to be. This means that there will be more money available to pay (1) A&B Auto's fees, (2) fees that the City is entitled to receive regarding parking violations and (3) the former owners.

**Accounting for
lien-sale proceeds**

This phase is important because State laws and regulations prescribe how lien-sale proceeds shall be accounted for. Specifically, A&B Auto must remit the proceeds to the California Department of Motor Vehicles (DMV) after deducting:

1. towing fees,
2. storage fees,
3. selling costs, and
4. parking violation fees.

Conversely, if the proceeds do not cover the fees, A&B Auto may collect deficiencies from the registered owners of the towed vehicles.

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

OBJECTIVES

The objectives of our audit were to determine whether:

1. A&B Auto was in compliance with State laws and regulations, as well as the towing contract provisions regarding lien sales of vehicles that have been towed under the contract; and
2. The Oakland Police Department was carrying out its responsibility to administer those provisions of the towing contract regarding lien sales.

**Responsibilities
of A&B Auto**

The towing contract assigns to A&B Auto a wide range of responsibilities, such as dispatching tow trucks punctually, protecting towed vehicles and their contents, carrying adequate insurance, responding to customer complaints, etc.

With respect to lien sales of vehicles that are towed under the contract, Specification No. 399-001 (page 33 of 37) provides:

“Contractor shall meet all requirements of the California Vehicle Code in rendering services provided for in this contract. Additionally, the contractor shall comply with all applicable State and local laws and regulations pertaining to lien sales of vehicles in their custody.”
(Underscoring added.)

State laws

The State laws and regulations pertaining to lien sales are contained in:

- Civil Code Sections 3067 through 3074;
- Vehicle Code Sections 22651, 22670, 22851, and 22855; and
- Department of Motor Vehicle instructions Forms HTVR 7 (REV. 8/2000) and HTVR 8 (REV. 8/2000).

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

OBJECTIVES
(continued)

There are no local laws or regulations regarding lien sales, other than the provisions of the contract between the City of Oakland and the Oakland Tow Car Association.

**Responsibilities of
Police Department**

The Oakland Police Department is responsible for administering the contract. Specification No. 399-001 (page 28-37) provides:

“The administration of the contract, after award, is assigned to the Police Department. Any appeals of decisions made by the Chief of Police may be made to the City Manager within 10 days or shall be deemed void. A decision by the City Manager shall be final.”

Two Sections of the Department share these responsibilities: the Traffic Section and the Records Section.

Traffic Section

Located at Eastmont Mall, the Traffic Section is responsible for enforcing laws regarding traffic and parking. In March 2000, the Section was also given the responsibility to enforce various provisions of the City's towing contract, such as inspecting tow trucks, making background checks of tow truck drivers, inspecting A&B Auto's storage yard, and investigating complaints made by owners of vehicles that have been towed.

The Traffic Section is also responsible for assuring that A&B Auto meets all requirements of the California Vehicle Code in rendering services provided for in the contract. This includes complying with all applicable State and local laws and regulations pertaining to lien sales of vehicles in A&B's custody.

Records Section

The Records Section, located in the Police Department's Administrative Building, maintains a log of vehicles towed, as well as copies of Towed/Stored Vehicle Reports; collects release fees from owners of vehicles that have been towed; and adjudicates requests that fees for towing, storage or parking violations be waived.

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

SCOPE

Our audit covered the lien sales of vehicles that were towed pursuant to the contract between the City of Oakland and the Oakland Tow Car Association for the period January 1, 1998 through January 29, 2004, except that, as discussed in Finding # 5, the information we obtained from the State Department of Motor Vehicles covered lien sales proceeds that A&B Auto remitted to DMV during the period January 1, 1997 through May 4, 2004.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards (GAGAS), as issued by the Comptroller General of the United States, except that the scope of our audit was impaired by the fact that the owner of A&B Auto would not permit us to audit his company's accounting records. Therefore, we could not (1) obtain sufficient evidence to determine whether A&B Auto has accounted for lien-sale proceeds according to State laws and regulations; and (2) test for possible fraud or abuse on the part of A&B Auto. Generally Accepted Government Auditing Standards pertain to auditors' professional qualifications, as well as the quality of conducting and reporting on audits. These standards are to be followed by federal agencies for audits of government organizations, programs, activities and functions. These standards are also to be followed by state and local government auditors when auditing programs that receive federal funds, and are recommended for use by state and local government auditors in conducting all their audits.

Specifically, we were unable to comply with the following Generally Accepted Government Auditing Standards as they pertain to performance audits:

<u>Standards</u>	<u>Sections</u>
Prepare and maintain sufficient audit documentation	7.66
Consider risks due to fraud	7.21, 7.22
Detecting fraud	7.23
Detecting abuse	7.24

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

METHODOLOGY

In conducting our audit we reviewed the contract provisions that pertain to lien sales, as well as the applicable State laws and regulations.

We discussed the lien-sale process with the owner and the general manager of A&B Auto, toured A&B's business office and storage facilities, and observed lien-sale auctions of vehicles that had not been redeemed by owners. For purposes of comparison, we also observed a lien-sale auction conducted by City Tow, which towed and stored vehicles under contract with the City of San Francisco.

We made a list of vehicles valued over \$4,000 that were advertised in the Montclairian for sale by A&B Auto at a public auction, and determined whether they were actually available for sale at the date, time and place specified.

We discussed the lien-sale process with staff of the Oakland Police Department's Traffic Section, and obtained a copy of a quarterly report on lien sales entitled "Lien Sale Processing Report", which A&B prepares in response to the requirements of the towing contract.

We obtained from the California Department of Motor Vehicles (DMV) a summary of lien-sale proceeds that A&B Auto had remitted to DMV for the period January 1, 1997 through May 4, 2004.

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

***FINDINGS AND
RECOMMENDATIONS***

Finding # 1

Authority to appraise towed vehicles

The Oakland Police Department has permitted A&B Auto to assume the authority to appraise towed vehicles. This gives A&B Auto the authority to determine (1) how long it must store vehicles before selling them; (2) how much notice A&B Auto must give to the public regarding the sale of the vehicles; and (3) whether the registered or legal owners of the vehicles have the right to redeem the vehicles after they have been sold.

Although having this much control over the lien-sale process is not prohibited by State laws and regulations, or by the towing contract, it may not provide the separation of duties that is essential to maintain internal controls over a process such as this.

State law gives the Department the authority to appraise towed vehicles. In turn, the Department has delegated to A&B Auto, in writing, the authority to appraise abandoned vehicles that are towed from public property. Moreover, when the Department does not appraise other types of towed vehicles, A&B Auto does so, as permitted by State law. In practice, the Department usually does not appraise towed vehicles; therefore, A&B Auto does.

**Authority of
Police Department**

Section 22855 of the State Vehicle Code provides:

“The following persons shall have the authority to make appraisals of the value of vehicles for purposes of this chapter, subject to the conditions stated in this chapter:

(c) Any regularly employed and salaried police officer or other employee designated by the chief of police of any city.”

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

Finding # 1(continued)

Section 22670 of the State Vehicle Code likewise gives the Department the authority to appraise vehicles, but in addition gives A&B Auto this authority if the Department does not make the appraisals:

**Authority of
A&B Auto**

“If the Public Agency fails or refuses to put a value on, or to estimate the value of, the vehicle within three days after the date of removal of the vehicle, the garage keeper specified in Section 22851 or the garage keeper’s agent shall determine, under penalty of perjury, if the estimated value of the vehicle that has been ordered removed, towed, or stored, is three hundred dollars (\$300) or less, over three hundred dollars (\$300) but four thousand dollars (\$4000) or less, or over four thousand dollars (\$4000).”

In turn, the Department has directed that abandoned vehicles towed on public property be appraised by either the member of the Department who authorized the tow or the driver of the tow truck. Section C.3 of General Order J-3, Revised April 7, 2000, provides:

“a. The assigned member or employee towing the vehicle shall determine the estimated value of the vehicle.”

Notwithstanding the fact that it has the authority to appraise towed vehicles, the Department seldom does so. Even when the Department does appraise towed vehicles, A&B Auto still makes its own appraisals.

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

Finding # 1 (continued) State law establishes three categories of appraised values of towed vehicles.

- \$300 or less** 1. \$300 or less, and towed on public property: A&B Auto may sell the vehicle 15 days after sending written notices to the registered and legal owners. A&B Auto is not required to notify the public of the disposal. [Vehicle Code, Section 22851.3(h)]
- \$301 - \$4,000** 2. \$301 - \$4,000: A&B Auto may generally sell the vehicle 31 days after sending written notices to the registered and legal owners. A&B must post a notice of the pending sale in a conspicuous place at its office. [Civil Code, Section 3072.]
- Over \$4,000** 3. Over \$4,000: A&B Auto may generally sell the vehicle after 120 days. The California Department of Motor Vehicles notifies the registered and legal owners of the pending sale. A&B Auto must advertise the contemplated sale for one day in a newspaper of general circulation in the county. Moreover, a registered or legal owner may redeem the vehicle within 10 days after the sale. [Civil Code, Section 3071.]

See Exhibit I for a table showing the effect of appraised values on lien sales of towed vehicles

Conclusion

Although permitting A&B Auto to have this much control over the lien-sale process is not prohibited by State laws and regulations, or by the towing contract, it may not provide the separation of duties that is essential to maintain internal controls over a process such as this. Therefore, if the Department does not have the capability to appraise towed vehicles, it would be more desirable to use an independent third party to make the appraisals, rather than A&B Auto.

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

Finding # 1 (continued)

Recommendation for Finding # 1

We recommend that the Oakland Police Department contract with an independent third party to appraise vehicles towed under the contract.

Finding # 2

Guidelines for appraising towed vehicles

The owner and the general manager of A&B Auto do not use objective guidelines, such as the Kelley Blue Book or similar publications, when appraising towed vehicles, and are not required to do so. Instead, they both rely on their many years of experience to estimate how much vehicles will actually sell for. Although A&B Auto is not required by State laws and regulations, or by the towing contract, to use objective guidelines when appraising vehicles, in our opinion, it is sound business practice to do so. Moreover, the owner and the general manager of A&B Auto do not retain documentation to show how they determined values of vehicles.

In order to estimate the value of the vehicle, it is common practice to use published guidelines such as the *Kelley Blue Book* or *Edmund's Automobile Buyer's Guide*. For older model vehicles, the appropriate guideline might be the *Black Book Collectible Vehicle Value Guide*. However, neither State law or regulations, nor the towing contract, require A&B Auto to use published guidelines.

The owner and the general manager of A&B Auto both told the auditors they rely on their many years of experience to estimate how much a vehicle will actually sell for. They do not use published guidelines for the following reasons:

1. The published guidelines are based on national figures, and are not realistic for use in the local market. For example, in their opinion the Kelley Blue Book undervalues Honda, Toyota, and Lexus vehicles, while overvaluing Ford Escorts, Lincolns, BMWs and Saabs.

**OAKLAND CITY AUDITOR'S
INTERIM REPORT ON PERFORMANCE AUDIT OF LIEN SALES
FOR THE PERIOD JANUARY 1, 1998 THROUGH JANUARY 29, 2004**

Finding # 2 (continued)

2. Many vehicles are in very poor condition, and the owners themselves did not consider the vehicles to have much value: otherwise, they would have redeemed their vehicles.

Therefore, A&B Auto's owner and general manager lower the values of vehicles for defects such as the following:

1. there were no keys;
2. the registration had expired more than one year ago;
3. there were one or more flat tires;
4. the motor was missing;
5. one or more wheels were missing;
6. there had been a collision;
7. the interior had been stripped;
8. there were broken windows;
9. there were many dents, etc.

We agree that published guidelines are frequently not applicable to the types of vehicles that A&B Auto tows under the contract. However, we were also of the opinion that it is important for the appraiser to document how he or she estimated the value. One method might be to begin with a published value as a baseline amount, and then deduct standards amounts for each of the various defects as listed above.

Conclusion

It is sound business practice to use objective standards when appraising vehicles, and to retain documentation showing how he or she determined their values.

Recommendation for Finding # 2

We recommend that the independent appraiser referenced in recommendation # 1 use objective standards when appraising vehicles, and retain documentation showing how he or she determined their values.

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Finding # 3

Conducting public lien-sale auctions

Prior to June 18, 2003, A&B Auto did not use a professional auctioneer when conducting lien sales. On that date, A&B Auto began using a professional auctioneer when conducting lien sales of vehicles valued \$4,000 and under, but still does not use a professional auctioneer for conducting lien sales of vehicles valued over \$4,000. Unless a professional auctioneer conducts lien sales, it is likely that there will not be a large number of bidders competing against each other and driving the prices up. However, State laws and regulations give towing companies considerable flexibility in how to hold lien-sale auctions.

**State laws
and regulations**

State laws and regulations regarding lien-sale auctions are set forth in Sections 3071 and 3072 of the State of California Civil Code and the California Department of Motor Vehicles instructions Form HTVR 7 (REV. 8/2000), and Form HTVR 8 (REV. 8/2000).

Simply stated:

1. Lien sales shall be public auctions;
2. The public shall be notified of the auctions;
3. Anyone shall be permitted to appear and bid;
4. The vehicles shall be available for inspection at least one hour before the auction;
5. Sealed bids shall not be accepted; and
6. The lienholder (i.e. A&B Auto) shall conduct the lien sale in a commercially reasonable manner.

This gives A&B Auto considerable flexibility in how to hold lien-sale auctions.

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Finding #3 (continued)

Presently, A&B Auto holds two different types of auctions, depending upon the appraised values of the vehicles.

**A&B Auto's
lien-sale auctions**

Effective June 18, 2003, A&B Auto began holding what might be considered a formal auction every Wednesday. A professional auctioneer conducts the auction, and there are several buyers bidding against each other. At an A&B Auto auction that we attended on November 5, 2003, the auctioneer sold 63 vehicles in 65 minutes.

**Vehicles valued
at \$4,000 or less**

This is a significant change from the procedures that were in place when we began our audit. Prior to June 18, 2003, A&B Auto held lien sales generally every business day. These were what many people would not consider to be formal auctions. In order to see what vehicles were available for sale, a prospective buyer (1) made a \$200 deposit in cash or credit card; (2) was escorted to and shown vehicles that were available for sale; and (3) was invited to make an offer, which was expected to at least equal A&B's towing and storage fees. There may or may not have been other prospective buyers present bidding against each other. If the prospective buyer decided to buy a vehicle, the \$200 deposit was applied to the purchase price; otherwise, the deposit was refunded.

**Vehicles valued
over \$4,000**

Approximately every other Thursday, A&B Auto continues to hold a separate auction for vehicles valued over \$4,000. The frequency of such auctions depends on how many vehicles are available for sale at a given time. Either A&B Auto's owner or the general manager usually presides over the auction and asks for minimum bids that will at least cover the company's towing, storage, and advertising costs or fees.

Although A&B Auto's owner told us he did not know how many vehicles are sold at lien-sale auctions, it appears that only a relatively small number of such vehicles are valued over \$4,000. At the A&B Auto's auction that we observed on January 29, 2004, there were 11 vehicles available for sale and only three bidders present. By contrast, there were 63 vehicles valued at \$4,000 or less that were available for sale at the November 5, 2003 weekly auction that we attended.

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Finding #3 (continued)

**San Francisco's
lien-sale auctions**

For purposes of comparison, we also attended a lien-sale auction held by City Tow, which towed vehicles under contract with the City of San Francisco. City Tow held only one auction per week, which was conducted by a professional auctioneer, and included all vehicles that were available for sale, regardless of their appraised values. At the auction that we attended, there were 123 vehicles available for sale and approximately 30 bidders.

Conclusion

Unless a professional auctioneer conducts lien sales, it is likely that there will not be a large number of bidders competing against each other and driving the prices up.

Moreover, there should not be separate auctions for vehicles valued over \$4,000, since attendance at such auctions is low.

Recommendation for Finding # 3

We recommend that A&B Auto hold a single weekly lien-sale auction, conducted by a professional auctioneer, which would include all vehicles that are available for sale, regardless of their appraised values.

Finding # 4

Advertising lien-sale auctions

A&B Auto does not advertise pending lien-sale auctions of vehicles valued over \$4,000 in a newspaper having wide circulation in the City of Oakland, where the vehicles are stored and the auctions are held. This makes it likely that there will not be a large number of bidders competing against each other and driving the prices up. However, A&B Auto is in compliance with State law, which requires merely that A&B Auto advertise in a newspaper of general circulation in the county.

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Finding #4 (continued)

Section 3071 of the California Civil Code provides:

State law

“(f) Upon receipt of the authorization to conduct the lien sale from the department, the lienholder shall immediately do all of the following:

1. A least five days, but not more than 20 days, prior to the lien sale, not counting the day of the sale, give notice of the sale by advertising once in a newspaper of general circulation published in the county in which the vehicle is located...” (Underscoring added.)

**A&B Auto's
advertising**

A&B Auto does its advertising in the Montclarion. Although the latter may meet the requirements of State law, it does not have wide circulation in Oakland, where the vehicles are stored and the auctions are held. This makes it likely that there will not be a large number of bidders competing against each other and driving prices up.

Recommendation for Finding # 4

We recommend that the City, when awarding a new towing contract, or extending the existing contract, require the contractor to advertise pending lien-sale auctions of vehicles valued over \$4,000 in a newspaper such as the Oakland Tribune, which has wide distribution in the City of Oakland, as well as in Alameda County.

Finding # 5

Distributing proceeds from lien-sale auctions

The owner of A&B Auto has refused to permit to us to audit his company's accounting records, including the general ledger, cash receipts and cash disbursements registers, bank statements, etc. Therefore, we could not determine whether A&B Auto has distributed lien-sale proceeds according to State laws and regulations. Although we believe that the contract and the City Charter authorize us to have access to

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Finding # 5 (continued)

the records, the owner of A&B Auto disagrees. Therefore, we have subpoenaed the records, and this matter is in litigation.

Towing contract requirements

Specification No. 399-001 (page 33 of 37) of the towing contract provides:

“Contractor shall meet all requirements of the California Vehicle Code in rendering services provided for in this contract.

Additionally, the contractor shall comply with all applicable state and local laws and regulations pertaining to lien sales of vehicles in their custody...
(Underscoring added.)

State laws and regulations

With respect to lien-sale proceeds, State laws and regulations require A&B Auto to remit the proceeds to the Department of Motor Vehicles (DMV) after deducting:

1. towing fees,
2. storage fees,
3. selling costs, and
4. parking violation fees.

These requirements are set forth in Civil Code Section 3073 (a) and (b) DMV Form REG 168 (REV 3/2000); and DMV Form 168A, (REV 3/2000).

If the lien-sale proceeds do not cover the towing fees, storage fees, and selling costs, State law permits A&B Auto to collect the deficiencies from the former registered owners, as discussed in Finding # 6 of this report.

The parking violation fees are to be remitted to the City of Oakland, as discussed in Finding # 7 of this report.

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Finding # 5 (continued)

The towing contract requires A&B Auto to permit the City to audit its accounting records. The Ninth Amendment, dated June 11, 1996, provides:

Towing contract

“ 7. AUDIT: Definitions. ‘Services’ as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

The audit shall be limited to insure that the Contractor is in compliance with the provisions of this amendment. For services performed by Contractor pursuant to this Contract, Contractor shall maintain account and records as will adequately substantiate charges hereunder and shall produce such records for the City’s audit upon the City’s request, for a period of three (3) years following the furnishing of the respective services. The City shall have the right to examine accounts, records, documents, and other evidence and accounting procedures and practices sufficient to reflect compliance with all federal, state and local laws, and to substantiate all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such accounts and records shall be available at all reasonable times for examination by the City or at the City’s option, shall be subject to verification by Contractor’s independent auditors. The cost of certification by the contractor’s independent auditor shall be reimbursable to Contractor by the City without regard to the authorized amount. The City shall give timely notice of its intent to perform such audit...”
(Underscoring added.)

City Charter

Moreover, Section 403 of the City Charter provides:

“The City Auditor shall have the power, and it shall be his or her duty to audit the books, accounts, money and securities of all departments and agencies of the City and such other matters as the Council may request;...”

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Finding # 5 (continued)

The City Auditor shall conduct surveys, reviews and audits as the Auditor deems to be in the best public interest or as required by the Council or Mayor..."

The owner of A&B Auto disagrees that we have the authority to audit his company's accounting records. Therefore, we have subpoenaed the records, and this matter is in litigation.

**Lien-sale proceeds
remitted to DMV**

Although we could not determine whether A&B Auto has remitted lien-sale proceeds to DMV in accordance with State laws and regulations, DMV informed us that the company has remitted only \$14,651.70 since January 1, 1997, the earliest date for which DMV records are available. The entire \$14,651.70 involved lien sales that were made during the period August 6, 2003 through May 4, 2004.

It is difficult to understand why the amounts that A&B Auto remitted to DMV are reportedly so low. It is especially difficult to understand why there were no remittances at all from January 1, 1997 until August 6, 2003, a period of more than six-and-one-half (6½) years. We cannot be sure of the reason unless the owner of A&B Auto permits us to audit his company's accounting records and related financial records.

Recommendation for Finding # 5

We recommend that the City, when awarding a new towing contract, or extending the existing contract, require the contractor to permit the City to audit all accounting records, including the general ledger, cash receipts and cash disbursements records, bank statements, and related financial records. Refusal to make the records available for audit should result in monetary penalties, as well as termination of the contract.

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Finding # 6

Collecting deficiencies from former owners

If the lien-sale proceeds do not cover the towing fees, storage fees, repair costs and selling costs, State law permits A&B Auto to collect the deficiencies from the former registered owners. This means that the former owners have not only lost title to their vehicles, but they must also pay for the various uncollected fees and costs. Since the owner of A&B Auto has refused to permit us to audit his company's accounting records, we could not determine whether A&B Auto has attempted to collect the correct amounts from former owners.

State law

Section 3068.2 of the State of California Civil Code provides:

“(a) A tow truck operator who has a lien on the vehicle pursuant to Section 3068.1 has a deficiency claim against the registered owner of the vehicle if the vehicle is not leased or leased with a driver for an amount equal to the towing and storage charges, not to exceed 120 days of storage, and the lien sale processing fee pursuant to Section 3074, less the amount received from the sale of the vehicle.”

The Office of the Oakland City Auditor has received many complaints from former registered owners of lien-sale vehicles who have received demand letters from a collection agency on behalf of A&B Auto. Their concerns were:

1. They questioned whether A&B Auto could legally collect a deficiency.
2. They had not received itemized bills from the collection agency or A&B Auto. Accordingly, they were unable to determine whether the amounts were computed accurately.

Conclusion

It is clear that State law permits A&B Auto to collect deficiencies from the former registered owners of lien-sale vehicles. However,

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Finding # 6 (continued)

However, it appears reasonable for the former owners to receive itemized bills along with the demands for payment. Moreover, it is necessary for the City to be able to audit the contractor's accounting records in order to verify that the billed amounts are correct.

Recommendations for Finding # 6

We recommend that the City, when awarding a new towing contract, or extending the existing contract, require the contractor to furnish former owners of vehicles with itemized bills along with the demands for payment.

We also repeat the recommendation that we made regarding finding # 5. Namely, we recommend that the City, when awarding a new towing contract, or extending the existing contract, require the contractor to permit the City to audit all accounting records. Refusal to make the records available for audit should result in monetary penalties, as well as termination of the contract.

Finding # 7

Collecting parking violation fees

As stated in finding # 5, the City of Oakland is entitled to receive any parking violation fees that are collected pertaining to lien-sale vehicles. According to City Records, A&B Auto has not remitted to the City any such fees. However, the City has not set up a system to notify A&B Auto that there are fees to be collected.

The City needs to set up a system to notify A&B Auto that there are unpaid parking violation fees to be collected. A&B Auto, in turn, needs to remit to the City any parking violation fees to which the City may be entitled.

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Recommendations for Finding # 7

We recommend that:

- a. the City set up a database that can be accessed by the City's Parking Division, Police Department and A&B Auto to identify vehicles for which there are unpaid parking violation fees; and
- b. in turn, A&B Auto remit to the City any parking violation fees to which the City may be entitled.

Finding # 8

Reporting on lien sales

The contract requires A&B Auto to submit to the Oakland Police Department two reports regarding lien sales. However, A&B Auto submits only one report, and the Police Department does nothing with it.

As stated earlier in this report, the towing contract, dated October 15, 1981, assigns to the Oakland Police Department the responsibility to administer the contract. The contract also requires A&B Auto to submit to the Department two types of reports regarding lien sales:

1. Listing of vehicles for which a lien sale is contemplated; and
2. Quarterly report on the lien sale of vehicles towed by the Police Department, pursuant to the City's Scofflaw Program.

Contract Specification No. 399-001 (page 33 of 37) provides:

"Contractor shall meet all requirements of the California Vehicle Code in rendering services provided for in this contract.

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Finding # 8 (continued)

**Listing of vehicles
for which a lien sale
is contemplated**

Additionally, the contractor shall comply with all applicable State and local laws and regulations pertaining to lien sales of vehicles in their custody. Furthermore, the Police Department shall be provided with a listing of all vehicles for which a lien sale is contemplated, prior to such disposal. The listing shall contain a complete description of the vehicle including license and identification numbers where available." (Underscoring added.)

There are two problems with this requirement:

1. It is too broad. If an owner of a vehicle that is valued \$301 or more does not redeem the vehicle within three days after it has been towed, A&B Auto presumes that the vehicle will eventually be sold, and begins the lien-sale process. This involves sending a notice to the State Department of Motor Vehicles (DMV), in order to get a clearance date for the sale.
2. It does not say how often the report shall be sent to the Police Department.

**Quarterly report on
lien sales pursuant
to Scofflaw Program**

The Fifth Amendment to the contract, effective July 21, 1992, added the requirement for a quarterly report regarding the lien sales of vehicles towed under the City's Scofflaw Program, i.e. vehicles with more than five (5) parking violations over a period of five (5) or more days:

"6. The Association will provide a quarterly report on the lien sale of vehicles towed by the Police Department, pursuant to the City's Scofflaw Program under California Vehicle Code, Section 22650 (i) (1)."
(Note: The correct citation appears to be Section 22651 (i) (1)).

A&B Auto submits to the Police Department only one of the two required reports. It is submitted quarterly and is entitled "Lien Sale Processing Report".

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Finding # 8 (continued)

We obtained and analyzed a copy of a quarterly report, which was a computer printout dated June 5, 2001. It was lengthy – 95 pages long and listing 2,734 vehicles. For each vehicle the listing included: license number; year; make; color; model; body type; vehicle identification number; storage location; date towed; date reported to DMV; date of DMV response; date the owner was notified of the pending sale; and DMV's clearance date for the sale.

Conclusion

We conclude that this report has little or no value to the Police Department, for the following reasons:

1. Even after the lien-sale process has begun, the owner can still redeem the vehicle before the sales date by paying A&B Auto for towing, storage, selling and parking violation fees.
2. The report does not show which vehicles were actually sold at the lien sale, or the amounts of the proceeds.

We also conclude that this is why the Police Department, having received the report, does nothing with it.

Recommendations for Finding # 8

We recommend that:

- a. the City, when awarding a new towing contract, or extending the existing contract, require the contractor to submit reports regarding lien sales that are meaningful for monitoring the lien-sale process, containing information such as which vehicles were actually sold at a lien sale and the amount of the proceeds; and
- b. in turn, the Police Department analyze the reports.

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EXHIBIT I

Table Showing Effect of Appraised Values on Lien Sales of Towed Vehicles

	\$300 or less	\$301 - \$4,000	Over \$4,000
How many days must A&B Auto hold a vehicle after notices of the pending sale have been sent to the registered and legal owners?	15	31	120
Must A&B Auto notify the public of the pending sale?	No	Yes	Yes
Must A&B Auto advertise the pending sale in a newspaper of general circulation in the county in which the vehicle is located?	No	No	Yes
Must A&B sell the vehicle at a public auction?	No	Yes	Yes
Does the registered or legal owner have the right to redeem the vehicle within 10 days after the sale?	No	No	Yes
Must A&B Auto remit lien-sale proceeds to DMV, after deducting towing fees, storage fees, repair costs, selling costs and parking violation fees?	No	Yes	Yes

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VIEWS OF A&B AUTO OFFICIALS

To ensure that our report is fair, complete and objective, we submitted a draft to A&B Auto officials for their review and comment.

The pages that follow contain (1) the full text of their letter dated August 25, 2004, and (2) a summary of their views and our responses.

FILED
CITY AUDITOR'S OFFICE
2004 AUG 26 PM 12:36

A & B VEHICLE PROCESSING, INC

8717 G. STREET

OAKLAND, CA. 94621

To: Roland Smith, City Auditor
City of Oakland
1 Frank Ogawa Pl.
Oakland, Ca. 94612

August 25, 2004

Re: Views of A & B Officials of performance audit of lien sales

Finding 1. Hiring an independent appraiser is acceptable to us but appears impractical and not cost effective given the number and type of vehicles involved.

1. All vehicles currently have an inventory made on scene by officer ordering tow.
2. Re-appraising 30,000 vehicles per year would likely cost hundreds of thousands of dollars or more.
3. Appraiser would be required at entrance gate 24 hrs per day 7 days a week or have to find the vehicles at a later date among thousands of other vehicles.
4. The city may be responsible for the cost of delays in starting lien process and claimed errors due to finding and appraising each veh. A & B has always accepted legal liability for vehicles they appraise.

A & B will cooperate with whatever the city decides in the area of appraisals. OPD may consider appraising more vehicles on scene since they make out a detailed inventory on each vehicle already and do appraise some vehicles. On scene appraisal would avoid redundancy of vehicle inspection and avoid locating each vehicle again.

Finding 2. Bluebook has little to do with the value of a vehicle sold at lien sale. Blue Book assumes veh. is registered, running, licensed, has passed smog testing, and is sold by a dealer normally with a warranty. Lien Sale auction results reflect the value of vehicles sold at lien sale auctions when registered or legal owners refuse to pay the tow bill and pick them up (normally with good reason based on their low value). Lien sale vehicles are often not safe to drive or don't drive at all, owe registration, need smog work, need keys, and never have a warranty. But, again, if the city chooses to appraise each vehicle we will cooperate in that endeavor. In conversations with AutoReturn (San Francisco's current tow operator) the City of SF has found it impractical to appraise each vehicle. We refer to Bluebook when necessary and have subscribed to Kelley Bluebook for years but relating Blue Book value to lien sale value is, at best, a very long stretch.

Finding 3. At the Auditor's suggestion we have already scheduled Civil Code Section 3071(\$4000 & over valuation) auctions to be held on the same day as Civil Code Section 3072 (\$301 to \$4000 valuation) auctions but the auctions must be separate. To qualify to bid on an over \$4,000 vehicle (cc3071) the bidder must have the minimum bid in cash or cashiers check in order to participate.

Finding 4. At the Auditor's suggestion we now use the Oakland Tribune for advertising Civil Code Section 3071 vehicles. The first listing has not been scheduled since we have no Civil Code 3071 Vehicles currently available for lien sale. Once we have a list of such vehicles the Tribune will advertise them at least 5 days but not more than 15 days before the sale date. We will notify the Auditor's office of the Tribune's date of publishing the next sale.

Finding 5. On August 6, 2004 the city appealed the court's judgment of case# 2002-077264 issued by the court on 10/15/03 re: further records for compliance audit.

Finding 6. We agree that an itemized bill should accompany any deficiency notice. A & B has made arrangements to implement. We believe lien sale procedures are regulated and enforced by the Department of Motor Vehicles. We also believe we have fully complied with all contract terms. Again, the City appealed the court's judgment on August 6, 2004 re: further records for contract compliance audit.

Finding 7. Although we cannot find authority to direct excess funds from lien sales to the City for unpaid parking tickets we will do so immediately when authority is found without requiring the contract to be amended. Civil Code Section 3073 states: "The proceeds of a vehicle lien sale under this article shall be disposed of as follows:" requiring all excess proceeds from lien sales must be remitted directly to DMV within 5 days for cc 3072 sales and 15 days for cc 3071 sales. The Auditor is currently researching the issue to locate authority.

Finding 8. A report listing all vehicles for which a lien sale is contemplated is now provided to the city. A report specified by OPD or the Auditor will be provided for all vehicles towed pursuant to the City's Scofflaw Program including all lien sale proceeds but we currently have no method of determining vehicles towed for scofflaw and don't know of anyone in the City that wants such a report.

A handwritten signature in black ink, appearing to read "Bob Connor", with a long horizontal flourish extending to the right.

Bob Connor VP/GM
A & B Vehicle Processing, Inc.
8717 G St.
Oakland, Ca. 94621

**OAKLAND CITY AUDITOR'S
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Recommendation #1: We recommend that OPD contract with an independent third party to appraise towed vehicles.

VIEWS OF RESPONSIBLE OFFICIALS

Hiring an independent appraiser is acceptable to us but it appears impractical and not cost effective given the number of vehicles involved. The appraiser would be required at the entrance gate 24 hours per day 7 days a week or have to find the vehicles at a later date among thousands of other vehicles.

A&B will cooperate with whatever the City decides in the area of appraisals.

The Oakland Police Department may consider appraising more vehicles on scene since they make out a detailed inventory on each vehicle and do appraise some vehicles. On scene appraisal would avoid redundancy of vehicle inspection and avoid locating each vehicle again.

CITY AUDITOR RESPONSE

In our opinion, an independent appraiser, stationed at A&B Auto's storage yard, can handle the number of vehicles involved, just as the owner and General Manager of A&B Auto presently do. Most of the vehicles are towed during business hours, (Monday through Friday), except that the City occasionally orders sweeps of illegally parked vehicles on a weekend. The appraiser would be able to appraise the vast majority of towed vehicles during business hours. If necessary, the appraiser could work extra hours on Monday to catch up on vehicles that had been towed on weekends or after work hours.

This might be the best solution. However, in the past the Department has not exercised its authority to appraise towed vehicles. If the Department does not agree to exercise its authority in the future, we believe it is necessary for an independent third party to make the appraisals.

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Recommendation #2: We recommend that the independent appraiser referenced in recommendation #1 use objective standards, such as the Kelley Bluebook or other publications, when appraising vehicles.

VIEWS OF RESPONSIBLE OFFICIALS

The Bluebook has little to do with the value of a vehicle sold at a lien sale. The Bluebook assumes that the vehicle is registered, running, licensed, has passed smog testing, and is sold by a dealer normally with a warranty. Lien sale auction results reflect the value of vehicles sold at lien sale auctions when registered or legal owners refuse to pay the tow bill and pick them up (normally with good reason given their low value). Lien sale vehicles are often not safe to drive or don't drive at all, owe registration, need smog work, need keys, and never have a warranty.

But again, if the City chooses to appraise each vehicle we will cooperate in that endeavor.

CITY AUDITOR RESPONSE

We do not expect the Kelley Bluebook or other publications, as adjusted for various defects, to be accurate indicators of what a vehicle will actually sell for at a lien-sale auction. However, such guidelines would be helpful to ensure that the vehicle is properly valued at \$300 or less, \$301-\$4,000, or over \$4,000. These are the three categories of value that determine (1) how long the vehicle must be stored before it is sold, (2) how much notice must be given to the public regarding the sale of the vehicle, and (3) whether the registered or legal owner has the right to redeem the vehicle after it has been sold.

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Recommendation #3: We recommend that A&B Auto hold a weekly lien-sale auction, conducted by a professional auctioneer, which would include all vehicles that are available for sale, regardless of their appraised values.

VIEWS OF RESPONSIBLE OFFICIALS

At the Auditor's suggestion we have already scheduled Civil Code Section 3071 (\$4,000 and over valuation) auctions to be held on the same day as Civil Code Section 3072 (\$301 to \$4,000) valuation) auctions but the auctions must be separate. To qualify to bid on an over \$4,000 vehicle the bidder must have the minimum bid in cash or cashiers check in order to participate.

CITY AUDITOR RESPONSE

We agree with A&B Auto's decision to hold the two types of lien sale auctions on the same day.

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Recommendation #4: "We recommend that the City, when awarding a new towing contract, or extending the existing contract, require the contractor to advertise pending lien sale auctions of vehicles valued over \$4,000 in a newspaper such as the Oakland Tribune, which has wide distribution in the City of Oakland, as well as in Alameda County.

VIEWS OF RESPONSIBLE OFFICIALS

At the Auditor's suggestion we now use the Oakland tribune for advertising Civil Code Section 3071 vehicles. The first listing has not been scheduled since we have no Civil Code 3071 Vehicles currently available for lien sale. Once we have a list of such vehicles the Tribune will advertise them at least 5 days but not more than 15 days before the sale date. We will notify the Auditor's office of the Tribune's date of publishing the next sale.

CITY AUDITOR RESPONSE

We agree with A&B Auto's decision to advertise pending lien sale auctions of vehicles valued over \$4,000 in the Oakland Tribune.

The first such advertisement appeared in the Tribune's September 5, 2004 edition.

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Recommendation #5: We recommend that the City, when awarding a new towing contract, or extending the current contract, require the contractor to permit the City to audit all accounting records, including the general ledger, cash receipts and disbursement records, bank statements, and related financial records. Refusal to make the records available for audit should result in monetary penalties, as well as *termination of the contract*.

VIEWS OF RESPONSIBLE OFFICIALS

On August 6, 2004 the city appealed the court's judgment of case #2002-077264 issued by the court on 10/15/03 re: further records for compliance audit.

CITY AUDITOR RESPONSE

We stated in our interim report that this matter is in litigation.

Notwithstanding the outcome of the litigation, we stand by our recommendation.

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Recommendation #6: We recommend that the City, when awarding a new towing contract, or extending the current contract, require the contractor to furnish former owners of vehicles with itemized bills along with demands for payment.

We also repeat the recommendation regarding finding #5. Namely, we recommend that the City, when awarding a new towing contract, or extending the current contract, require the contractor to permit the City to audit all accounting records. Refusal to make the records available for audit should result in monetary penalties, as well as termination of the contract.

VIEWS OF RESPONSIBLE OFFICIALS

We agree that an itemized bill should accompany any deficiency notice. A&B has made arrangements to implement the recommendation.

We believe lien sale procedures are regulated and enforced by the Department of Motor Vehicles. We also believe we have fully complied with all contract terms.

Again, the City appealed the court's judgment on August 6, 2004 re: further records for contract compliance audit.

CITY AUDITOR RESPONSE

We agree with A&B Auto's decision to furnish former owners of vehicles with itemized bills along with demands for payment.

Since the Owner of A&B Auto has refused to permit us to audit his Company's accounting records, we are unable to determine whether the Company has complied with all state laws and regulations regarding lien sales.

Notwithstanding the outcome of the litigation, we stand by our recommendation.

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Recommendation #7: We recommend that:

- a. the City set up a database that can be accessed by the City's Parking Division, Police Department and A&B Auto to identify vehicles for which there are unpaid parking violation fees; and**
- b. in turn, A&B Auto remit to the City any parking violation fees to which the City may be entitled.**

VIEWS OF RESPONSIBLE OFFICIALS

Although we cannot find authority to direct excess funds from lien sales to the City for unpaid parking tickets we will do so immediately when authority is found requiring the contract to be amended. Civil Code Section 3073 states: "The proceeds of a vehicle lien sale under this article shall be disposed of as follows:" requiring all excess proceeds from lien sales must be remitted directly to DMV within 5 days for Civil Code Section 3072 sales and 15 days for Section 3071 sales. The Auditor is currently researching the issue to locate authority.

CITY AUDITOR RESPONSE

We are awaiting clarification from the California Department of Motor Vehicles.

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Recommendation #8: We recommend that:

a. the City, when awarding a new towing contract, or extending the existing contract, require the contractor to submit reports regarding lien sales that are meaningful for monitoring the lien-sale process, containing information such as when vehicles were actually sold at a lien sale and the amount of the proceeds; and

b. in turn, the Police Department analyze the reports.

VIEWS OF RESPONSIBLE OFFICIALS

A report listing all vehicles for which a lien sale is contemplated is now provided to the city. A report specified by the Oakland Police Department or the Auditor will be provided for all vehicles towed pursuant to the City's Scofflaw Program including all lien sale proceeds but we have no method of determining which vehicles were towed for scofflaw and don't know of anyone that wants such a report.

CITY AUDITOR RESPONSE

Our recommendations are directed at the City and the Police Department.

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VIEWS OF OAKLAND POLICE DEPARTMENT OFFICIALS

Oakland Police Department Officials did not offer any comments on our draft report, and did not respond to our suggestion that they meet with us.