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Canada

Final Audit Report

Audit of Contracting for Services

October 2010

Table of Contents

Executive Summary	ii
Introduction.....	1
Background.....	1
Objective	1
Scope and Approach	1
Findings, Recommendations and Management Responses.....	3
Management Control Framework	3
Governance	3
Policy Framework.....	5
Service Standards.....	5
Guidance and Training.....	6
Compliance with Contracting Policies and Procedures	7
Contract Planning.....	7
Contract Solicitation	8
Contract Award.....	9
Contract Administration, Monitoring and Completion.....	11
Conclusion	13
Appendix A - Lines of Enquiry and Audit Criteria.....	14
Appendix B – Sample of Contract Files.....	15
Appendix C – Contracting Requirements	16

Executive Summary

This report sets out the observations, conclusions and recommendations from the Audit and Accountability Bureau's Audit of Health Canada's Contracting for Services. This audit was included in the departmental Risk-Based Audit Plan for 2009-2012, which was approved for 2009-2010. This audit focused on key controls set out in the *Core Management Controls* guidelines from the Office of the Comptroller General. These guidelines are consistent with the ten elements of the federal government's *Management Accountability Framework*.

The objective of this audit was to determine whether Health Canada has put in place an effective management control framework for the procurement of services, and to verify if services contracts were issued in compliance with applicable laws, regulations, policies and procedures.

The audit was conducted by the Audit and Accountability Bureau in accordance with the *Internal Auditing Standards for the Government of Canada* and has examined sufficient, relevant evidence and obtained sufficient information and explanations to provide a reasonable level of assurance in support of the audit conclusion.

The Material and Asset Management Directorate within the Chief Financial Officer Branch, has implemented a strong management control framework for the procurement of services at Health Canada. Roles and responsibilities are stated clearly in "*A Contracting Guide for Cost Centre Managers and Administrators*". This control framework will be further strengthened through the implementation of service standards for the provision of procurement services and post-award verification procedures for contracts that are lower than \$10,000.

The results of the audit also revealed that, generally speaking, Health Canada complies with the requirements of the Treasury Board's Contracting Policy and departmental policies and procedures. The few instances of non-compliance that were identified relate to standing offers dealing with ongoing departmental requirements, documentation regarding price support for non-competitive contracts and the *Employment Equity Program*, and the reconciliation of invoiced amounts with the method of payment specified in contracts.

The report includes six recommendations to address areas where improvements are required.

Management agrees with the recommendations and its response indicates its commitment to take action.

Introduction

Background

This audit focuses on contracting for services that are acquired to support the Department in the delivery of programs and activities. The services acquired are those of: consultants, scientific analysts, medical personnel, engineers, architects, data analyst, researchers, technicians, etc.

A sound contracting function is essential to ensuring that the procurement of services is done in compliance with applicable legislation, policies and procedures; and that the department obtains value for money.

During 2008-2009, Health Canada issued 7,574 services contracts valued at \$139,176,837 (**Table 1**).

Contract	Dollar Value (\$)	Dollar value (%)	Number of Contracts	% of Contracts
Below \$10,000	22,485,072	16%	5,479	72%
\$10,000 and above	116,691,765	84%	2,095	28%
Total	139,176,837	100%	7,574	100%

Source: Health Canada Financial System (SAP)

Objective

The objective of this audit was to determine whether Health Canada has put in place an effective management control framework for the procurement of services, and to verify if contracts are issued in compliance with applicable laws, regulations, policies and procedures.

Scope and Approach

The Audit and Accountability Bureau conducted this audit in accordance with Health Canada's Risk-Based Audit Plan, which was approved for 2009-2010. The audit was conducted in accordance with the Treasury Board of Canada's *Policy on Internal Audit* and *Internal Auditing Standards for the Government of Canada*, and has examined sufficient, relevant evidence and obtained sufficient information and explanations to provide a reasonable level of assurance in support of the audit conclusion.

The scope of the audit encompassed all service contracts issued by Health Canada, at the Branch and Regional levels, in fiscal year 2008-2009.

The first line of enquiry assessed the Department's management control framework for procurement and contracting by examining the corresponding governance structure, the policy framework, and the guidance and training provided to employees.

The second line of enquiry assessed whether service contracts were issued in compliance with applicable laws, regulations, policies and procedures; focusing on contract planning, solicitation, award, and administration for contracts of more than \$10,000.

The *Core Management Controls* guidelines from the Office of the Comptroller General were used to identify the key management controls that could reasonably be expected to be in place, and the criteria to be used to assess these controls. The audit criteria were vetted with management (see **Appendix A**).

The audit approach included:

- interviewing key individuals from Chief Financial Officer's Branch, as well as those from First Nations and Inuit Health Branch, Health Products and Food Branch, and two Regions within the Regions and Programs Branch, i.e. the Manitoba and Saskatchewan Region, and the Quebec Region;
- reviewing various documents, reports, and workflows; and
- testing of a sample of 35 contracts issued in fiscal year 2008-09 for general compliance to contracting policies and procedures; and
- testing of a sample of 26 contracts issued in 2008-09 for compliance with policies regarding contract splitting.

Appendix B provides more details regarding those samples.

Findings, Recommendations and Management Responses

Management Control Framework

Governance

Audit Criterion

Roles, responsibilities and organizational arrangements for the procurement of services are clearly defined, understood and documented.

Roles, Responsibilities and Organizational Structure

At Health Canada, service contracts are initiated and signed-off by Cost Centre Managers who are supported in this role by the Material and Assets Management Directorate, within the Chief Financial Officer Directorate, and Contract and Requisition Control Committees.

Cost Centre Managers (also referred to as “Contracting Authorities”) have the authority to enter into contracts on behalf of Health Canada within their delegated financial signing authority limit and are accountable for administering each contract they sign. They are supported in their role by Cost Centre Administrators.

The Material and Assets Management Directorate provides decentralized procurement and contracting services via contract specialists located both in the National Capital Area and in the Regions. These specialists provide expert opinions on complex contract files; communicate contracting policy, procedures and information to all relevant parties within Health Canada; ensure that Contracting Authorities have appropriate training, guidance and working tools; and assist in drafting various solicitation and contracting templates and in reviewing and approving certain types of contracts.

The Contract and Requisition Control Committees (CRCC) form the foundation of the contract review process and operate in all branches and regions. In the National Capital Region, Branch Senior Procurement Officers act as Chairs. In the Regions, within the Regions and Programs Branch, Regional Senior Financial Officers perform this function. The primary role of the Committees is to review most contracts that are valued at more than \$10,000, including service contracts, supply arrangements, standing offers memoranda of understanding, and interdepartmental letters of agreement. The purpose of these reviews is to ensure that the Department complies with the Treasury Board of Canada’s *Contracting Policy* and Health Canada’s policies dealing with procurement and contracting and, if necessary, to recommend corrective actions.

At Health Canada, roles and responsibilities are stated clearly in the document titled “*A Contracting Guide for Cost Centre Managers and Administrators*” (Health Canada’s Contracting Guide), which has been developed by the Materiel and Assets Management

Directorate and is aimed at Cost Centre Managers, Cost Centre Administrators, Contract and Requisition Control Committee members, and other individuals who have responsibility for the procurement of goods, and contracting for services. Guidelines developed for members of the Contract and Requisition Control Committees also spell out their roles and responsibilities. In addition, the mapping (flowcharting) of internal controls surrounding procurement and contracting has been helpful in clarifying the definition of roles and responsibilities in contracting.

Review of Contracts less than \$10,000

In the current governance structure, contracts that are less than \$10,000 are not subject to CRCC reviews or any other type of pre-award verification. While the dollar value of such contracts is relatively low and it may not be feasible to review them at the pre-award stage, these contracts account for a significant percentage of all service contracts that are issued annually. As shown in Table 1, on page 1 of this report, this percentage stood at 72% in fiscal year 2008-09 even though they represented only 16% of the total dollar value. Periodic review of a sample of contracts that are less than \$10,000 at the post-award stage would help Health Canada to better manage its overall contracting risk and more effectively address any non-compliance issues.

Recommendation No. 1

It is recommended that the Chief Financial Officer establish periodic, post-award verification procedures where samples of contracts lower than \$10,000 are reviewed to ensure compliance with policies and procedures.

Management Response

Management agrees with the recommendation.

In 2008, the Chief Financial Officer established a risk-based Materiel and Assets Management (MAM) Verification Plan to guide annual contract review and post completion verification activities.

The MAM Verification Plan will include low dollar value contracts (under \$10,000) by June 2010. These low dollar contracts will be part of the MAM Verification testing strategy beginning in the fiscal year 2010-2011.

Policy Framework

Audit Criterion

Departmental guidance regarding the procurement of services is consistent with governmental policies and regulations.

The Treasury Board of Canada *Contracting Policy* establishes the requirements for federal departments and agencies with respect to procurement and contracting. Section 16 of the Policy applies specifically to service contracts. The Policy is also supported by an array of other policies (e.g., the *Policy Framework for the Management of Assets and Acquired Services*, and the *Policy on Decision Making in Limiting Contractor Liability in Crown Procurement Contracts*), directives (e.g., *Directive on the Expenditure Initiation and Commitment Control*) and guidelines (e.g., *Guidelines on the Proactive Disclosure of Contracts*).

The legal framework for contracting is governed by the *Government Contracts Regulations*, the *Financial Administration Act* and trade agreements signed by the Federal government with other countries.

Health Canada's *Contracting Guide* reflects, in clear language, both the Treasury Board's policy requirements, and the legal obligations applying to contracting for services. An electronic version of this guide is available on the Department's Intranet, and it provides numerous hyperlinks to related policy and legal requirements. The guide also includes references to departmental templates (e.g., statement of work), guidelines (e.g., *Contract and Requisition Control Committees Guidelines*) and other documents (e.g., *Health Canada Delegation of Financial Signing Authorities Document*) that are aligned with the Government of Canada policies, laws and regulations.

Service Standards

Audit Criterion

Service standards for delivering Health Canada's procurement activities are in place and met.

There are currently no formal service standards in place regarding the provision of procurement services offered by the Materiel and Assets Management Unit.

Without appropriate service standards, there is a risk that Health Canada's contracts may not be issued in a timely manner. However, the Material and Assets Management Directorate has been proactively investigating the establishment of service standards as part of its proposed *Reengineering Plan*.

Recommendation No. 2

It is recommended that the Chief Financial Officer ensure the development and implementation of service standards regarding the provision of procurement services.

Management Response

Management agrees with the recommendation.

In June 2010, the Materiel and Assets Management Directorate (MAMD) re-engineered the procurement function in the National Capital region (NCR). The new process includes a new Request for Proposal (RFP)/Request for Standing Offer (RFSO) process which will impact on the amount of time required to review contracting activities. MAMD will collect data during this fiscal year to determine and develop new service standards that will include the RFP/RFSO process. National implementation of the re-engineered procurement process will occur by December 2010.

Guidance and Training**Audit Criterion**

Guidance and training provided to Health Canada employees regarding the procurement of services is sufficient.

Current departmental practices require that all employees complete a series of mandatory courses prior to being delegated with financial signing authority. Health Canada has also developed additional, optional courses to help employees maintain and further improve, on a continuous basis, their knowledge on policy and legal requirements.

Interviews conducted with employees involved in contracting, as well as the review of Health Canada's Intranet, indicate that employees have access to sufficient training and guidance material. However, the need for refresher courses has been raised by some interviewees on certain aspects of contracting, such as writing effective statements of work, and better documenting the contract files.

The Materiel and Assets Management Directorate has recently put together the “*e-learning Solution for the Orientation Session for the Acquisition of Goods and Services*”, which has been launched in May 2010. This initiative has moved the *Orientation Session for the Acquisition of Goods and Services* from an in-class to an on-line course and has also brought about a guide on statement of work requirements. This change is aimed at making course material easier to access and helps reduce training costs. Furthermore, the e-learning format requires a passing mark, in order to ensure that employees retain the information presented to them.

Compliance with Contracting Policies and Procedures¹

(Compliance with contracting policies and procedures verified for contracts over \$10,000.)

Contract Planning

Audit Criterion

Contract planning activities clearly define the requirements, take into account applicable policies, and identify the most appropriate contracting vehicle.

The testing for this criterion focused on the following contract planning requirements:

- statement of work;
- ongoing requirements and consideration of mandatory standing offers;
- absence of contract splitting;
- employer-employee relationship;
- ownership of intellectual property; and
- security requirements.

Appendix C provides a description of each of those contract planning requirements.

The results of the audit revealed general compliance with requirements regarding the development of statement of work, contract splitting, employee-employer relationships, ownership of intellectual property and security requirements.

Use of Standing Offers

The only two contract planning issues identified relate to standing offers. The first issue highlights the fact that standing offers for ongoing departmental requirements did not always exist; and the second issue relates to the fact that existing standing offers were not always used.

Eight of the 35 contracts that were examined were considered to be for ongoing departmental requirements, and there were standing offers in place in three of those eight instances (two mandatory, and one optional standing offers). None of these standing offers were used. Standing offers provide a number of advantages such as better prices through consolidation of service requirements and increased competition among suppliers, reduction of administrative costs and in lead time, and an assurance of approved product/service quality and standards.

¹ Compliance with contracting policies and procedures verified for contracts over \$10,000.

Recommendation No. 3

It is recommended that:

- *the Chief Financial Officer ensure that standing offers are in place and communicated regularly to facilitate access to services that are required to meet ongoing departmental requirements; and*
- *Assistant Deputy Ministers of Program Branches ensure that Cost Centre Managers participate in an annual procurement planning exercise aimed at facilitating the development of consolidated instruments such as standing offers.*

Management Response

Management agrees with the recommendation.

The results of previous rounds of procurement planning were used to develop strategies for several high-priority commodities such as language training schools, Employee Assistance Program specialists, and laboratory services providers. Procurement planning data will be collected with the Investment Planning data for the 2010-11 Integrated Planning cycle and beyond.

The CFO and ADMs of Branches will collaborate throughout the procurement planning process to ensure that opportunities for SOAs can be identified and developed for use whenever possible.

Contract Solicitation**Audit Criterion**

Solicitation activities are supportive of competitive procurement processes unless exceptions are documented and supported by applicable regulations. They take into account trade agreements when applicable.

The testing for this criterion focused on the following contract solicitation requirements:

- The sourcing of a competitive procurement is in compliance to Treasury Board of Canada's *Contracting Policy*;
- The sourcing of, and justification for a non-competitive procurement is in accordance with *Contracting Policy*;
- Trade Agreements or Comprehensive Land Claim Agreements were applied when required by policy;
- Bid selection method and evaluation criteria are clearly outlined in the bid solicitation document;
- Changes to the bidding process are handled in accordance to Policy; and

- Evaluation of proposals and contractor selection are conducted as per the terms and conditions of the Request for Proposal document and signed bid evaluation reports are on file.

Appendix C provides a description of each of those contract solicitation requirements.

The results of the audit revealed general compliance with sourcing and justification requirements, due consideration of Trade and Land Claim Agreements, and compliance with requirements related to bid selection, changes to bidding process and evaluation of proposals.

Contract Award

Audit Criterion

Contracts are awarded within the approval limits set forth in Health Canada's *Delegation of Financial Signing Authorities Instrument* and are issued in a manner that protects the Department's interests and helps ensure value for money.

The testing for this criterion focused on the following contract award requirements:

- Availability of funds is certified prior to contract award;
- Appropriate contract type is used (i.e. long-form, short-form, call-up, etc);
- Standard terms and conditions are used;
- Adherence to Employment Equity Program (part of the *Employment Equity Act*);
- Price support is documented for non-competitive procurement;
- Contract value is within Health Canada's contracting authorities;
- Contract Review Committee approval is obtained;
- A signed copy of the contract is on file; and
- Services were not provided before the effective date of the contract.

Appendix C provides a description of each of those contract award requirements.

The results of the audit revealed general compliance with contract award requirements related to the availability of funds, the use of proper contract types and of standard terms and conditions, and contract sign-offs, reviews and approvals.

Issues were identified regarding compliance with Employment Equity requirements, and documentation of price support for non-competitive contracts.

Requirements of the Employment Equity Program

Out of the 35 contracts tested, 18 had to meet the Employment Equity Program requirement. For seven contracts, the procurement file lacked evidence to prove that Health Canada obtained a certificate of commitment from the suppliers for their

Employment Equity Program. Further analysis and contact with Cost Centre Managers revealed that the contractors had employment equity programs in place but the certificates were either not obtained, or obtained but not kept in the procurement file.

Recommendation No. 4

It is recommended that the Chief Financial Officer and Assistant Deputy Ministers of Program Branches ensure that all contracts that are subject to the Employment Equity Program requirement have the necessary documentation on file confirming that the contractor has in place an employment equity program.

Management Response

Management agrees with the recommendation.

The re-engineering of the procurement process, implemented in June 2010, included a review of relevant contract templates to ensure the completeness of the RFP & Statement of Work (SOW) contract documents, as well as the CRCC checklist. The Employment Equity Program requirement is included on both the CRCC checklist and RFP template. As a result, Procurement Specialists and CCMs are advised to collaborate before contracts are initiated to ensure that Employment Equity Program requirements are met and documented.

Documentation of Price Support for Non-Competitive Contracts

The sample included 15 non-competitive contracts. For ten of the 15 contracts, contract files lacked proper price support, i.e., documented evidence that the fees which the supplier charged were at or near market value. For procurement file documentation purposes, it is considered a good practice to include in the contract file a written price support in order to demonstrate that the Crown has not been charged more than the fair market value for the services received and to create an appropriate audit trail for future potential challenges, disputes and audits.

Recommendation No. 5

It is recommended that the Chief Financial Officer and Assistant Deputy Ministers of Program Branches ensure proper price support documentation of non-competitive contract files in their respective areas of responsibility.

Management Response

Management agrees with the recommendation.

The TB *Contracting Policy* and *Contracting Policy Notice 2007-04* recommend price support be obtained when only one bid is received or only one person can do the work

requested (ACAN).

The re-engineering of the procurement process, implemented in June 2010, ensures Procurement Specialists and CCMs collaborate before contracts are initiated to ensure that proper documentation regarding price support and sole source justification is included on file.

The CFO will enhance tools (solicitation documents, checklist for contract approval) to aid CCMs in ensuring appropriate documentation is on file. Procurement Specialists and CCMs will collaborate at the contract planning stage (prior to contract initiation) to ensure proper contracting procedures are followed and contracting policies adhered to.

Contract Administration, Monitoring and Completion

Audit Criterion

Contract administration and monitoring activities are conducted to ensure that services are delivered as stated in the contracts.

The testing for this criterion focused on the following contract administration requirements:

- Contract amendments were issued before the contract expiry date and there is appropriate justifications on file;
- Contract amendments were approved by the Contract and Requisition Control Committee. Aggregate value of amendments is within Health Canada's contracting authorities for amendments;
- Invoices were certified under section 34 of the *Financial Administration Act*;
- There is evidence that services were rendered and deliverables were provided; and
- The invoiced amounts are consistent with the contract's Method of Payment.

Appendix C provides a description of each of those contract administration requirements.

The results of the audit revealed general compliance with contract administration requirements related to contract amendments and certification that services were rendered and that deliverables have been provided.

Reconciliation of the Amounts Invoiced with the Method of Payment

The only issue noted relates to the reconciliation of the amounts invoiced with the Method of Payment (also referred to as "Basis of Payment"). Although, the Method of Payment was clear in all cases, in five of the 35 contract files examined, invoices lacked sufficient details to allow for the reconciliation of the invoiced amounts with the Method

of Payment. The follow-up of these cases by auditors has revealed that in none of them was the Department overcharged for services received. However, situations where invoices can not be readily reconciled to the Method of Payment present a risk to the Department and significantly reduce the quality of the audit trail.

Recommendation No. 6

It is recommended that the Chief Financial Officer and Assistant Deputy Ministers of Program Branches implement controls to ensure that amounts invoiced by suppliers are consistent with terms specified in the Method of Payment.

Management Response

Management agrees with the recommendation.

The Health Canada Account Verification procedures include an account verification checklist for CCMs and CCAs with the following item: “*the price is in accordance with the contract, authorized contract amendment, or if not specified by a contract, is reasonable.*”

The Health Canada Delegation of Financial Signing Authorities Course includes the requirement to ensure invoiced amounts are in accordance with the payment terms specified in the related contracts when certifying section 34.

In 2008, Health Canada implemented a risk-based quality assurance on account verification procedure for payments. More recently, the CFOB has implemented statistical sampling for some payments, which provides assurance that payments are in accordance with the payment terms specified in the related contracts. Full quality assurance is performed on high risk payments and sampled low risk payments based on payment dollar value.

The SAP functionality and quality assurance procedures for statistical sampling were implemented in all regions as of April 1, 2010.

Each Accounting Office (NCR and Regions) records critical and non-critical errors in SAP using standardized codes (including tracking payments made that were not in accordance with the method of payment specified in the related contracts).

On a quarterly basis, each Accounting Office will conduct an analysis of the quality assurance results and provide a report to CFOB. These analysis reports will be used by Accounting Offices to identify error trends in account verification and determine any corrective actions required with Branch personnel; by CFOB to monitor the effectiveness of the statistical sampling processes and consider recommendations for change; and by CFOB to support Branch and Departmental certifications on controls.

Conclusion

Health Canada has in place a strong management control framework for the procurement of services. Roles and responsibilities are stated clearly in “*A Contracting Guide for Cost Centre Managers and Administrators*”, which was developed by the Chief Financial Officer’s Branch. This control framework will be further strengthened by the implementation of service standards for the provision of procurement services and post-award verification procedures for contracts that are lower than \$10,000.

The results of the audit also revealed that, generally speaking, service contracts were issued in compliance with the requirements of the Treasury Board’s *Contracting Policy* along with departmental policies and procedures. The few instances of non-compliance that were identified relate to standing offers dealing with ongoing departmental requirements, documentation regarding price support for non-competitive contracts and the *Employment Equity Program*, and the reconciliation of invoiced amounts with the method of payment specified in contracts.

Appendix A - Lines of Enquiry and Audit Criteria

Line of Enquiry No. 1: To determine whether Health Canada has put in place an adequate management control framework for the procurement of services.

Audit Criteria

- Roles, responsibilities and organizational arrangements for the procurement of services are clearly defined, understood and documented;
- Departmental guidance regarding the procurement of services is consistent with governmental policies and regulations;
- Service standards for delivering Health Canada's procurement activities are in place and met; and
- Guidance and training provided to Health Canada employees regarding the procurement of services is sufficient.

Line of Enquiry No. 2: To verify if contracts are issued in compliance with applicable laws, regulations, policies and procedures.

Audit Criteria

- Contract planning activities clearly define the requirements, take into account applicable policies, and identify the most appropriate contracting vehicle;
- Solicitation activities are supportive of competitive procurement processes unless exceptions are documented and supported by applicable regulations. They take into account trade agreements when applicable;
- Contracts are awarded within the approval limits set forth in Health Canada's *Delegation of Financial Signing Authorities Instrument* and are issued in a manner that protects the Department's interests and helps ensure value for money; and
- Contract administration and monitoring activities are conducted to ensure that services are delivered as stated in the contracts.

Appendix B – Sample of Contract Files

One of the main objectives of this audit was to assess the effectiveness of the controls surrounding the contracting activities at Health Canada. A sample of 35 contract files has been selected judgmentally to achieve this objective. The breakdown of the sample, which focuses on controls for high-risk transactions, is as follows:

Description	Number of Files
Highest value contract for each of the regional offices	11
Highest value contract for each of the program branches	10
Contracts of value close to but below the \$25,000 threshold (1)	3
Highest value call-ups against standing offers	2
Contracts close to but below the NAFTA threshold (\$76,500) (2)	3
Contracts close to but over the NAFTA threshold (\$76,500)(2)	2
Highest value contracts with universities	2
Contracts for health services delivered to First Nations people and Inuit, with a value close to the \$400,000 threshold (3)	2
Total	35

Notes: The sample selection has considered the various thresholds surrounding the procurement and contracting activities, as explained below:

- (1) For requirements in excess of \$25,000, including sale taxes (GST/HST), that do not qualify under any other Government Contract Regulations exemptions, competitive tendering must be used.
- (2) Contracts exceeding \$76,500 for services being procured by departments and agencies may be subject to North American Free Trade Agreement requirements.
- (3) Health Canada has additional competitive procurement exemptions that are specific to the Department in the area of health care services to First Nations people and Inuit. A contract of up to \$400,000 may be entered into for the provision of such health care services.

Total contract value of 35 sample files tested is \$14.5 million i.e. 10.4% of the population's total contract value (\$139.2 million). In addition, 26 other contract files were selected and examined for possible contract splitting.

In terms of purchase order/contract type, the sample breakdowns as follows: 8 call-ups against a standing offer (942's), 24 contracts over \$10,000 (PS1's) and three miscellaneous ones.

Appendix C – Contracting Requirements

The review of a sample of 35 contracts focused on compliance to the following contracting requirements that are described and presented by key phases of the contracting process examined.

Audit Planning Requirements

Statement of Work

The statement of work, or description of work requirements, should clearly describe the work to be carried out, the objectives (including deliverables) to be attained and the time frame. It should explicitly describe the client's requirements and the contractor's responsibilities so that questions of interpretation can be avoided. The statement of work should be detailed enough to ensure that the client department receives the services or advice that it requires but, at the same time, flexible enough to permit innovation and initiative by the contractor in the interests of the client department.

Ongoing Requirements and Consideration of Mandatory Standing Offers

Over the years, Public Works and Government Services Canada (PWGSC) has negotiated a number of standing offers on behalf of the government. As announced in Budget Speech 2005, it is mandatory for all departments and agencies to use PWGSC's standing offers for widely-used commodities and services, where they exist. The use of all other standing offers, while desirable, is for the moment, optional. Where operationally feasible, standing offers should be established and used (through a process referred to as a "call-up") to satisfy ongoing requirements, instead of issuing multiple contracts with the same supplier.

Contract Splitting

Contract splitting is defined as the practice of unnecessarily dividing a large, ongoing requirement into a number of smaller contracts to avoid controls or restrictions with respect to competition, the duration of assignments or contract approval authorities.

Employer–Employee Relationship

Employer-employee relationships should not be created when contracting for the services of individuals based on criteria established by the Canada Revenue Agency and pertinent court rulings. If such a relationship is created, the Department may be found liable for claims to pension and other benefits.

Ownership of Intellectual Property

The Treasury Board of Canada *Policy on Intellectual Property Arising Under Crown Procurement Contracts* specifies that ownership of intellectual property arising from Crown contracts should normally reside with the contractor. If the Crown wishes to retain ownership of intellectual property, one of the exceptions listed in the Policy must be invoked.

Security Requirement

Prior to performance of obligations under a contract, the Contractor and any of the Contractor's employees assigned to the performance of the contract must be security cleared at the required level.

Contract Solicitation Requirements

Compliance with sourcing and justification requirements

The method of procurement used for a particular acquisition must give all qualified firms an equal opportunity for access to government business. Accordingly, contracting authorities need to ensure that reasonable efforts are devoted to ensuring that potential contractors are identified and that the area of coverage is not defined so narrowly as to inhibit free competition. Moreover, the *Contracting Policy* emphasizes the need to provide sole source justifications in all instances where non-competitive contracts are signed.

Compliance with Trade Agreements and Comprehensive Land Claim Agreements

There are specific provisions in the *Contracting Policy* regarding procurements processes that are subject to the trade agreements (such as the *North American Free Trade Agreement*, the *World Trade Organization - Agreement on Government Procurement*, *Agreement Between the Government of the Republic of Korea and the Government of Canada on the Procurement of Telecommunications Equipment* and the *Agreement on Internal Trade*). Similarly, there are specific provisions regarding compliance with Comprehensive Land Claim Agreements, which have been entered into by the Government of Canada with aboriginal communities. These agreements have the force of law and are protected in Canada's Constitution. Many agreements include provisions dealing with economic and social development benefits affecting contracting in land claim areas.

Bid Selection, Changes to Bidding Process and Evaluation of Proposals

Adequate management controls should be in place to protect the integrity of the bidding process. It is recognized that the bidding process may employ either traditional hard copy documents or electronic bid documents. In either situation, in order to stand the test of

public scrutiny in matters of prudence and probity, Departments must have the ability to demonstrate that all bid materials are received on time and in the manner prescribed in the tender/solicitation documents. In the case of electronic bids, Departments must also ensure that the documents are not altered, forged, changed or corrupted either intentionally or by error. The combination of price, technical merit, and quality should be determined by the contracting authority prior to the bid solicitation and be set out in the bid solicitation evaluation criteria, which forms the basis of evaluation and negotiation between the parties to arrive at an acceptable basis for the services offered.

Contract Award Requirements

Availability of Funds

Both the *Contracting Policy* and the *Financial Administration Act* (FAA) require that the availability of funds be certified by someone with a delegated authority before a contract can be awarded.

Contract Terms and Conditions

Service contracts should be prepared using Health Canada's standard terms and conditions which help ensure that the Crown's interests are well protected.

Employment Equity

Contractors need to certify that they have an Employment Equity Program in place for all contracts of more than \$200,000 with an entity that employs 100 or more people. Such certificate is required by the *Employment Equity Act* and the *Contracting Policy*. Non-compliance with the Act and the Policy exposes the Department to the risk of legal action or challenge.

Price Support for Non-Competitive Procurement

Evidence of price support is required to both comply with the *Contracting Policy*, and to show that the Crown has obtained fair value from services suppliers.

Contract Sign-Off, Review and Approval

Contracts need to be signed-off by individuals with appropriate delegated signing authorities, and comply with a Health Canada requirement whereby all contracts exceeding \$10,000 need to be submitted to a Contract and Requisition Control Committee (CRCC) for review and approval prior to being awarded.

Contract Effective Date

Services should not be delivered prior to the contract's effective date to avoid the negative consequences that could arise such as: preventing the enforcement of the terms of the contract, being perceived as undermining the competitive process and, in the event that the contract is not approved, the Crown having to pay damages to the supplier.

Contract Administration Requirements**Contract Amendments**

Amendments should be subject to the same rigour that went into the development and approval of original contract.

Certification of Services Rendered

When goods or services are deemed to be in accordance with the terms and conditions of the contract, certification under Section 34 of the *Financial Administration Act* (FAA) can be made. The invoices should be certified as per Section 34 of the FAA, only when there is documented evidence that services were rendered and deliverables were provided.

Procurement Files

The procurement files should be organized in a manner that facilitates management oversight and provides a complete audit trail that contains contracting details related to relevant communications and decisions including the identification of involved officials and contracting approval authorities.