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Final Report

2007-726

Audit of PWGSC Construction Contracting Process

Office of Audit and Evaluation

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MAIN POINTS

- i. This Main Points is not a stand-alone document and must be read in conjunction with the body of this report.

What we examined

- ii. Construction work within PWGSC is defined as a contract entered into for the construction, repair, renovation or restoration of any work except a vessel. This includes: the supply and erection of a prefabricated structure; dredging; demolition; and the hire of equipment.
- iii. There are two departmental branches that deliver services related to construction. The first, the Real Property Branch (RPB) provides departments and agencies with professional expertise and technical real property services on an optional and fee-for-service basis. One of these optional services is the management of construction projects. The key responsibility in delivery of such services is to ensure that construction projects are delivered on time, on budget, and demonstrate value for money to the Crown. The second, the Real Property Contracting (RPC), within the Acquisitions Branch (AB) represents a procurement expertise and authority, which is dedicated solely to the specialized commodity of construction. Their role is to provide RPB with timely value-added acquisitions and related common acquisition services in order to support them in the delivery of construction projects to their clients.
- iv. Both departmental branches are responsible for establishing management controls that ensure that the contracting processes are compliant with established government regulations, as well as PWGSC policies and procedures. Although not within the scope of this audit, RPB is also responsible for providing value-added project management services and validating the costs incurred during the construction project.

Why it is important

- v. PWGSC awards roughly \$700 million in construction contracts and manages approximately 1,800 new construction contracting instruments annually. Furthermore, greater than 60% of the construction contracting instruments awarded by PWGSC is on behalf of RPB.
- vi. An effective contracting process provides the foundation that supports project management and ensures compliance with applicable legislation and policies. It further ensures the effective and efficient delivery of construction services to clients and value-added project management services. In enabling other government departments and agencies to provide programs and services to Canadians, it is important that PWGSC put in place a robust management control framework and appropriate management approach for the contracting process that focus on quality services, sound financial stewardship, and optimum value in construction projects.

What we found

- vii. We determined that there was no documentation on the National Accountability Framework that clearly defines the roles and responsibilities of RPB and RPC. Such a framework would have helped mitigate non-compliance with contract terms and conditions, risks, and contracting irregularities in areas of insurance, plans/specifications and change orders. It is important to build upon the momentum started in the Regions and the National Capital Area (NCA) in the establishment of a National Accountability Framework.
- viii. Management controls for risk management and the policy framework regarding construction contracting were appropriate, and the controls for the management of a financial delegation framework were in place to ensure that individuals were signing in accordance with their financial delegated authority. However, the consistent use of strong contract audit provisions and the regular undertaking of government audits on construction projects would help ensure that the Crown is protected and receives value for funds expended.
- ix. Overall, the sampled construction contract files were in compliance with applicable legislation and policies. However, we found that the maintenance of consistent and complete records was often lacking. For example, completed mandatory evaluations of a Contractor's performance were not in all the files.
- x. We identified that the practice of charging project-related expenses directly to construction work increased the risk of non-compliance with applicable legislation and policies and created an opportunity for potentially inappropriate behaviour.

Management Response

Acquisitions Branch and Real Property Branch accept the findings of the report as being fair and accurate.

Recommendations and Management Action Plans

Recommendation 1: The Assistant Deputy Minister of the Acquisitions Branch and Real Property Branch should develop a national accountability framework that lays out the roles and responsibilities of RPC Procurement Officers and RPB Services Project Managers for construction contracting. This framework should clearly address the issues related to insurance, plans/specifications and change orders identified in this audit.

AB's and RPB's responses. AB and RPB accept the recommendation and will be taking the following actions:

- 1.1. Real Property Branch NCA and Regions (Real Property Contracting) to jointly develop a draft accountability framework, with the collaboration of Acquisitions Branch NCA (Real Property Contracting Directorate), and consult, finalize and submit for national implementation. Synthesize comments and create a working level document by January 30, 2009.

- 1.2. Working level document submitted to Real Property Branch Regions for comment/editing by March 13, 2009.
- 1.3. Synthesize comments and create a draft accountabilities document by May 1, 2009.
- 1.4. Have final draft document translated by May 22, 2009.
- 1.5. Submit to ADM RPB and ADM AB for approval by June 19, 2009.
- 1.6. Post the approved document on the RPB National Project Management System (NPMS) and on the Real Property Contracting (Regions) / NCA (Real Property Contracting Directorate) national shared drive by September 8, 2009.

Recommendation 2: The Assistant Deputy Minister of the Acquisitions Branch and Real Property Branch should ensure that construction contracts include a more detailed audit provision in its standard terms and conditions, and that these audits are undertaken.

AB's and RPB's responses. AB and RPB accept the recommendation and will be taking the following actions:

- 2.1. Review existing construction audit clause, the clause used in the private sector Canadian Construction Documents Committee (CCDC) documents and other PWGSC contracts by February 13, 2009.
- 2.2. Draft with Legal a revised clause, and translate by March 20, 2009.
- 2.3. Present clause to Treasury Board Advisory Committee on Contracting – Construction Subcommittee (TBACC-C), and seek approval to include new clause in the TB “*Government of Canada Standard Construction Contract Form*” by March 26, 2009.
- 2.4. Have the TBACC-C approved clause included in the next Standard Acquisitions Clauses and Conditions (SACC) release by December 2009.
- 2.5. Analyze current methods used in construction projects to ensure that there are measures to protect the financial interests of the Crown by December 2009.
- 2.6. Strengthen / improve any weaknesses found, including the implementation of audits as required by December 2009.

Recommendation 3: The Assistant Deputy Minister of the Acquisitions Branch and Real Property Branch should ensure that Contractor Performance Evaluation Forms (CPEPF) are completed by RPB Project Managers and that these forms are distributed to RPC Procurement Officers and retained in the contract files.

AB's and RPB's responses. AB and RPB accept the recommendation and will be taking the following actions:

- 3.1. A *Communiqué* will be sent to all Project Managers, explaining that CPEPF is to be completed on all construction files by March 30, 2009.
- 3.2. Annual employee performance review will consider completed vs. outstanding CPEPFs by June 30, 2009.

- 3.3. RPC Procurement Officers will be reminded in the RPC Operating Instructions that the completed CPERF provided by RPB is to be included on the file as part of file closeout procedures by September 4, 2009.

Recommendation 4: The Assistant Deputy Minister of the Acquisitions Branch and Real Property Branch should ensure that clear and adequate guidance is provided to RPB Project Managers and RPC Procurement Officers to make sure complete project and contracting files are maintained.

AB's and RPB's responses. AB and RPB accept the recommendation and will be taking the following actions:

- 4.1. The RPB National Project Management System 'procurement knowledge' area will be updated to inform Project Managers of their obligations by September 4, 2009.
- 4.2. A national operating instructions document will be created and will include a section on this topic (see item 6 below) by September 4, 2009.

Recommendation 5: The Assistant Deputy Minister of the Real Property Branch should implement and monitor a protocol for charging expenses to construction contracts.

RPB's response. RPB accepts the recommendation and will be taking the following actions:

- 5.1. Communiqué to be sent to all Senior Project Managers explaining under what circumstances expenses should be charged to construction contracts by July 2009.
- 5.2. Selective sampling of project once the communiqué has been issued post July 2009 and ongoing.

Recommendation 6: The Assistant Deputy Minister of the Acquisitions Branch should develop and communicate operating procedures for RPC Procurement Officers across all Regions to ensure consistent delivery of quality and on-time construction services to RPB Project Managers.

AB's response. AB accepts the recommendation and will be taking the following actions:

- 6.1. NCA Real Property Contracting Directorate will assemble the various operating instructions from each Region by February 27, 2009.
- 6.2. The various instructions will be reviewed and the best pulled from each to create a national standard by April 9, 2009.
- 6.3. Missing portions will be written and added to the national standard by May 29, 2009.
- 6.4. Document will be circulated for review and comments to all Regions by June 26, 2009.
- 6.5. Document will be finalized and translated by August 21, 2009.
- 6.6. Document posted to the RPC (Regions)/NCA (RPCD) shared drive for use by all regions by September 4, 2009.
- 6.7. Individual Regions will append any regionally unique requirement to the national standard by November 27, 2009.

INTRODUCTION

1. Construction work in the government requires project management expertise to ensure that construction projects are delivered on time, on budget, and demonstrate value-for-money to the Crown. The Government Contracts Regulations define construction contracting as a contract entered into for the construction, repair, renovation or restoration of any work except a vessel. This includes a contract for: the supply and erection of a prefabricated structure; dredging; demolition; and the hire of equipment.
2. Annually, PWGSC awards roughly \$8.6¹ billion in goods, services, and construction and manages approximately 35,222 new contracting instruments, such as standing offers, supply arrangements, and contracts. Of those instruments, 1,774 were coded as construction for a total of \$675.17M.
3. Within PWGSC there are two business line organizations that deliver construction services to other government departments and agencies. The first organization is in Real Property Branch, which provides optional professional and technical services on a fee-for-service basis that enables government departments and agencies to deliver their programs and services. Within Real Property Branch (RPB), Professional and Technical Services Project Managers provide technical expertise in the management of construction projects.
4. The second organization is in Acquisitions Branch, which supports government departments and agencies by providing timely and value-added procurement services. Within Acquisitions Branch, the Real Property Contracting (RPC) group provides procurement expertise that specializes in construction contracts. Of the 1,774 construction contracting instruments awarded by RPC Procurement Officers, the majority (66%) were for PWGSC RPB, Professional and Technical Services Project Managers. The other 34 % were construction contracting instruments awarded on behalf of other government departments.
5. Both departmental branches are responsible for establishing management controls that ensure that the contracting process is compliant with established government regulations, as well as PWGSC policies and procedures. Although not within the scope of this audit, RPB is also responsible for value-added project management services and validating the costs incurred during the construction project.
6. Throughout the report, the terms “Real Property Branch”, “Acquisitions Branch”, and “Real Property Contracting” will be used generically to include all regional offices and Headquarters.

¹ Extracted from the PWGSC’s Acquisitions Information System for 2006/07

7. Typically in the process of managing construction contracts, client departments negotiate a fee and timeframe for RPB to manage the project. The role of the RPB Project Managers is to work with the client to identify the requirement, and either internally prepare the plans and specifications or contract with an architectural or engineering firm. They then prepare a risk assessment, estimation of costs, as well as a statement of work.

As technical authority for the project, RPB Project Managers request contracting services from RPC Procurement Officers.
8. The role of RPC Procurement Officers is to ensure the procurement process is undertaken with due regards to government contracting regulations and departmental procurement principles. RPB Project Managers evaluate the tenders received and recommend award. Contractors are notified via a letter of acceptance of tender and are provided a period of time to put in place appropriate insurance and financial security. After award, RPB Project Managers direct the work, negotiate and approve change orders, authorize progress payments, apprise clients of project status, provide oversight and technical expertise, evaluate interim and final completion, review the contractor's performance, and close-out the contract. Post-award, RPC Procurement Officers are responsible to amend the contract and ensure all terms and conditions of the contract are respected and adhered to.

FOCUS OF THE AUDIT

9. The objective of our audit was to provide assurance on the extent to which an adequate management control framework for the contracting process was in place to ensure effective and efficient delivery of construction services, and to ensure compliance with contracting legislation, policies and procedures.
10. The scope of the audit included the contract related activities of the RPB Project Managers and the RPC Procurement Officers. We examined a judgmental sample of 50 construction contracts consisting of 25 from each of two regional offices – Atlantic and Ontario. We concluded on related contract activities from the requirement stage, until the final certification of completion of the work, or until the time of the detailed examination phase of the audit.
11. More information on the objectives, scope, approach and criteria can be found in the section, "About the Audit."

OBSERVATIONS

ROLES AND RESPONSIBILITIES

12. Responsibility is the obligation to perform and accountability is the duty to monitor and report on performance. In situations where responsibility and accountability are shared, the clear delineation of responsibilities, delegated authorities, segregation of duties and line of communication supports the effective coordination between all parts of the organization and ensures that all parties within the organization are aware of, and comply with, their responsibilities.
13. We expected that PWGSC had developed and implemented an accountability framework that articulated the roles and responsibilities of the RPB Project Managers and the RPC Procurement Officers. This framework would ensure that accountabilities were clearly identified to deliver quality, on-time, and on-budget construction services.
14. In 2004, the RPC in the National Capital Area had created a draft Accountability Framework for the management of real property contracting. This Accountability Framework was not finalized within this region or disseminated across all Regions. This group has also developed guidelines and procedures for RPC, such as new construction documents, forms for administration, and handling of surety bond claims, which have been disseminated across all Regions.
15. As well, the Atlantic Region had developed, in 2000, a draft “Contract Operating Instructions, Real Property Services – Real Property Contracting Interface”. To finalize and implement this new accountability framework, the Atlantic Region has recently put in place an Enhanced Service Delivery Committee that is co-chaired by the Regional Manager of RPS and the Regional Manager RPC. The Terms of Reference established for this Enhanced Service Delivery Committee identify the key success factors to support accountability within the two organizations. As an example of best practices for other Regions, an excerpt of the Terms of Reference’s objectives is included in Exhibit 1.

Exhibit 1: Excerpt from Terms and Reference: Enhanced Service Delivery Committee

- *Facilitate awareness among employees within RPS and RPC branches concerning respective operational procedures and work processes;*
- *Streamline the RPS/RPC contracting process where applicable to speed up the timely delivery of service;*
- *Foster regular, two-way communication between employees within both branches regarding challenges and pressures faced in the daily work environment;*
- *Develop/formalize guidelines for communication regarding capacity and resource issues within branches (i.e. vacation schedules), changes to operational policy (national or regional), and other daily challenges/pressures faced; and*
- *Provide an ongoing, integrated forum to discuss and communicate issues of common interest, new or revised policies, and to ensure consistency among various RPC/RPS offices in the Region.*

16. Cited below are three examples related to insurance, plans/specifications, change orders, in which we observed that the lack of clear and documented roles and responsibilities resulted in contracting irregularities.

Certification of insurance missing or invalid

17. As part of the terms and conditions of the contract, contractors must demonstrate that they have obtained the required certification of insurance. This serves as protection against liability and/or builders risk on a construction job-site for their employees and subcontractors, as well as the Crown's employees or agents. As this is a contractual obligation, as contracting authority the RPC Procurement Officer is responsible to ensure that the insurance requirement is valid during the entire time of the contract. However, the RPB Project Manager is responsible for managing work on the job-site. Given that insurance supports the management of risk of potential liability on the job-site, it would seem that the RPB Project Manager would be responsible for ensuring that work is not conducted until all appropriate insurance documents are received.
18. We found that there was a lack of understanding related to the responsibilities between RPB Project Managers and RPC Procurement Officers for the process of certification of insurance. According to the letter for acceptance of tender, insurance requirements are to be sent to the RPC Procurement Officer within 30 days. In the preliminary site meeting with the contractor, the RPB Project Managers do reiterate that a certificate of insurance is required before work can begin. When RPC Procurement Officers receive the certificate they either call or email the RPB Project Manager to inform them of receipt and readiness to start work on the job-site. However, responsibilities that arise after the receipt of certification of insurance are not clear. For example, validation of the correct amount of insurance, of insuring Crown employees as additional liabilities, and insurance coverage period.

19. We observed that in 12 out of 50 files reviewed, a copy of the insurance provisions was either not on file or did not span the time of the contract and yet the work progressed on the job-site. As a result, risks to the Crown and Contractor were elevated and insurance requirements were not in compliance with the terms and conditions of the contract.

Inefficient review of pre-tender project plans and specifications

20. Complete and quality plans and specifications are important to minimize delays in the tender solicitation stage and to reduce change-order costs in the construction stage.
21. Given the RPC Procurement Officer's responsibility to ensure that contracting documents are prepared such that Crown interests are protected, they believe they have a responsibility to ensure that no clauses or conditions are included in the plans and specifications (in excess of 200 pages) that are at risk of impacting the contract's legal obligations. However, there appears to be concerns on the part of the RPB Project Managers that one factor causing delays in the contracting is that RPC Procurement Officers are reviewing plans and specifications for which they have limited technical expertise.
22. RPC has had some success in limiting their time to complete a review by having standardized contract terms and conditions. However, plans and specifications that are an addendum to the contract are as varied as the construction contracts they describe. As a result, responsibility assignment around the review of pre-tender project plans and specifications and the impact of that review on the contracting process continue to pose challenges.

Change-orders not provided in a timely manner

23. A change-order is work that is added or deleted from the original contract scope and may alter the original contract value or completion date. Once a change-order is submitted and approved it generally serves to alter the original contract such that it becomes part of the contract. In terms of contractual obligations, change-order is a standard and accepted

practice in the construction industry. The RPB Project Manager is responsible for preparing change-orders, while the RPC Procurement Officer is responsible for amendments to contracts resulting from change-orders.

24. Change-orders can occur under different circumstances, for example:
- Site or field conditions not known during the bidding process;
 - Changes to correct plans and/or specifications;
 - Engineering changes in design or scope; and
 - Extensions to time.
25. As a best practice, the Atlantic Region had included procedures regarding change-orders and amendments as part of their draft Contract Operating Instructions and their ISO 9000 compliance activities. The procedures outlined that RPB Project Managers were to give all change-orders, in a timely manner, to RPC Procurement Officers so that appropriate contract amendments could be issued.

26. We observed that it is standard practice for RPB Project Managers to provide batches of construction change-orders to RPC Procurement Officers. Further, the time frame for submitting the batches, and thereby making the RPC Procurement Officers aware of the magnitude of the changes to the contract, varied from weeks to months.
27. We consulted RPC in the National Capital Area on this particular issue since they are responsible for providing guidance to the Regions with respect to real property contracting. We learned that they have established a short-form rapid advance approval process. This one-page document provides flexibility for the change-order approval process and recognition that the work schedules for construction projects are often outside regular working hours. Although the process was in place, we identified situations where RPB Project Managers did not follow this approval process and continued to send change-orders after the work had started.
28. Failure to process change-orders, and the resulting amendment, in a timely manner can require the ratification of approval for work after the fact. Further, this situation impacts the integrity of contract information in the Acquisition Information System and disclosure of amendments greater than \$10K on the Government Internet website.
29. Without clarity and acceptance by both organizations of their roles and responsibilities with respect to the contracting process there is increased occurrences of risks and contracting irregularities. This impacts compliance with established legislation and policies, and PWGSC's capacity to deliver quality, on-time and on-budget projects to client departments.

MANAGEMENT CONTROLS

30. Internal controls are any actions taken by management to enhance risk management and increase the likelihood that established objectives and goals related to operational effectiveness, reliable reporting, and compliance will be achieved. These controls include a range of activities as diverse as risk mitigation, policies and procedures, finance, transaction practices and controls, and security of physical assets and information.
31. We expected that the construction contracting process would incorporate key controls and these would be functioning effectively. We observed that in most cases, controls were in place and functioning appropriately, however some were determined to be ineffective. We have referenced below management controls in the areas of risk management, policy framework, validation of financial delegations, and mitigation of contract risk through audit clauses.

Effective Program and Project Risk Management process in place

32. Within PWGSC, an Integrated Risk Management process permits organizations to integrate risk into their annual program business planning process. It is linked to the Treasury Board Risk Management Policy and the Integrated Risk Management Framework. As well, PWGSC has developed departmental policies for Integrated Risk Management and the Real Property Services Risk Management Framework.
33. We found that both Branches had developed and posted on their Regional Intranet web site an integrated Business Plan and Human Resources Plan that responded to program and human resources risks and strategies. In addition, the Real Property Professional and Technical Programs within the Atlantic Region had developed a detailed 2008-09 Operational Plan linked to their regional objectives.
34. Normally, RPB Project Managers develop a Project Risk Management Plan. This plan, approved by Senior Project Management, facilitates client department's buy-in and identifies and quantifies risk factors and their impacts throughout the life cycle of a project. The plan is proactive in the management of risks and is part of the contracting approval and authority requirements as it identifies an estimation of future monies required for change orders. In all the sampled construction contracts reviewed we observed that a Project Risk Management Plan was on file.
35. Having an effective risk management process in place, both on an organizational and in particular at a project level, ensures that PWGSC can deliver quality, on-time and on-budget project management services for client departments.

Adequate Policy Framework in place

36. RPC Procurement Officers follow a policy framework documented in a Supply Manual and Standard Acquisition Clauses and Conditions Manual. In addition, RPC in the National Capital Area has developed and distributed to the Regions, new or revised guidelines specific to the construction industry. Some of the documents were developed jointly with the Treasury Board Advisory Committee on Contracting for Construction, as well as in close cooperation with the Canadian Construction Association, Surety Association of Canada, and other relevant organizations.
37. RPB Project Managers follow a National Project Management System (NPMS) that was launched in 2006-07 to improve service delivery and increase client satisfaction. An integral part of the system is a performance measurement and assessment framework to improve project management. It provides the methodology, web-based tools, and project governance structure, as well as an enhanced client and quality management focus in order to deliver projects on time, on budget and within their defined scope.
38. The Atlantic Region Real Property Project Management has developed a Quality Procedures Manual as part of their ISO 9000 program. These procedures are being updated to bring them in line with the NPMS. The manual details information and process flowcharts on different aspects for real property services including: instruction for risk management; instruction for procurement of construction service; procurement of consultant services; and changes to construction contracts. This manual could be distributed across the Regions as a best practice document.

39. However, at a Regional level, we were informed that more detailed procurement procedures for delivering contracting services directed to RPB Project Managers would be valuable. In particular, it would help ensure that key steps in the contracting process are consistently followed and assist in the delivery of quality and timely procurement services to RPB Project Managers. These detailed procedures would also be a useful tool when dealing with new and relatively inexperienced RPC Procurement Officers.
40. The policy framework that PWGSC has put in place for the delivery of procurement and project management services is adequate. Inconsistencies in Regional offices could be improved through a standardized approach and procedures, which would increase the delivery of quality services for construction projects.

Tracking system for Financial Delegated Authority in place

41. Financial authorities are delegated to employees based on the requirements of their position. With this authority comes responsibility to certify, under section 32 and 34 of the *Financial Administration Act (FAA)*, that sufficient funds are available for the purchase and that the goods or services have been received in accordance with the terms and conditions under which they were purchased. Both Regions had a process in place to ensure the completion of the Schedule 1 (departmental financial delegation form), and the undertaking of a mandatory course prior to the exercising financial delegated authority. All RPB Project Managers who signed for receipt of goods and services (*FAA* section 34) related to the construction project's progress claims had valid authority and that a completed form was on file. The majority of requisitions for services for the commitment of funds (*FAA* section 32) were in order. In only 3 out of 50 requisitions were signatures missing or the delegation form not found.
42. Having up-to-date, complete, and accessible information regarding the Financial Delegated Authority ensures that employees signing against the *FAA* have proper authority and understand their responsibilities.

Strengthening of Audit Clause

43. To reduce the risk of excessive project cost and to demonstrate value-for-money to the Crown, it is important that a clearly worded, specific provision for the Crown's right to undertake an audit is included within the standard construction contract terms and conditions and that audits are subsequently carried out.
44. The standard template for construction contracts contains a General Conditions clause #51 for records to be kept by a Contractor. This clause incorporated most of the criteria for an audit to be undertaken. Such criteria included a requirement for records to be retained for a period of at least 2 years; access to records of associated sub-contractors; and the right of an audit if the Crown determined a requirement. However, consistent with other audit clauses used in contracting, these clauses could be strengthened to include reference to: the Crown's right to validate the accuracy of the Contractor's time recording system, and the amounts claimed including the number of hours charged and costs incurred for materials, supplies, other direct costs and travel and living expenses; the results and findings of the audit as being conclusive; and the prompt refund to Canada if there has been any overpayment.

45. We validated that construction projects are rarely audited. It is important that audits be carried out on a regular basis. Such audits could be carried out by the Acquisitions Branch, Contract Audit Group or auditors hired by RPB Project Managers. The Contract Audit Group administers a Cost Audit Program, which serves to protect the financial interests of the Crown through systematic audits of contracts that PWGSC has issued. These audits provide assurance that the contracts do not contain a material amount of loss to the Crown due to excessive profits or inaccurate or unreasonable costing practices; deter contractors from initiating unacceptable practices by maintaining a sufficient level of audit presence; and provide quality control information on the acquisitions process, including contract management.
46. Strengthening of this clause and undertaking government audits on construction projects, where appropriate, will ensure that the Crown is protected and receives value for the funds expended.
47. Overall, the management control framework that is in place is functioning as intended and permits the organizations to accomplish their established objectives. Effective controls and risk management practices ensure that construction services are delivered to clients on-time and on-budget. Improvements are needed in the areas of project plans and specifications reviews, communication of change orders to key stakeholders and the strengthening of audit clauses. These improvements will improve the control framework and increase the value-added optional services offered to clients.

CONTRACTING COMPLIANCE

48. Contracting compliance is a contracting activity that conforms or is in agreement with applicable legislation, Government Contracts Regulations, central agency and departmental policies, guidelines, and approved sector and regional practices. Contracting activities must be conducted in a manner that will stand the test of public scrutiny in matters of prudence and probity, facilitate access, encourage competition and reflect fairness in the spending of public funds.
49. We expected to find that the sampled files were compliant, and furthermore, we expected that the contracting and project files were well maintained and contained all appropriate information.
50. Overall, the audit team found the 50 construction contract files reviewed were compliant with applicable contracting legislation and policies. However, we identified non-compliance in relation to the policies on performance evaluations, documentation, and weaknesses in contracting practices related to project charges, which are presented below.

Limited evidence of completed Contractor Performance Evaluations

51. The terms and conditions of the contract make it mandatory for performance evaluations of Contractors to be completed. Good management practice requires that these be kept on the file as contract performance evaluation is a key component to mitigating future performance issues. In the past, the Contractor Performance Evaluation Form (CPEF) was developed by the Real Property Branch and the Acquisitions Branch in conjunction with the Canadian Construction Association and the Professional Associations of Architects and Engineers. They established a generic framework with specific evaluation criteria to objectively assess the quality of services provided by consultants and contractors on federal real property projects. As well, the Treasury Board Secretariat's Contracting Policy stipulates that upon completion of a contract, an evaluation should be undertaken by officials competent in the particular fields involved.
52. As part of our file review, we noted that 19 of 50 contracting and project management files did not have evidence that Contractor Performance Evaluation forms were completed.
53. It is important that the evaluation of a Contractor's performance be completed since the evaluation is a key component of the departmental Vendor Performance Policy; helps improve client service and expectations; and mitigates vendor performance issues.

Incomplete documentation on project/contract files

54. The PWGSC Supply Manual and Treasury Board Contracting Policy require procurement files provide a complete 'audit trail' that contains details of relevant communications and decisions. Documentation serves as a historical record of actions, decisions, and procurement activities that occurred during the life of the contract. They are important evidence in the event of a financial review or subsequent legal action. As well, documents facilitate management oversight and the transfer of information to RPC Procurement Officers and RPB Project Managers who may consult the file or assume responsibility for it at a later date.
55. Files maintained by both the RPC Procurement Officer and the RPB Project Manager, even when examined as a single construction project/contract file, did not contain sufficient documentation. We noted missing documentation on file such as client requisitions, contract prior approval authorities, Request for Proposals, bid solicitation, insurance documents, bonding documentation, licenses, certifications, or performance reports.
56. As an example, we expected to find a Contract Planning and Advance Approval (CPAA) or Procurement Plan document on the procurement file for construction requirements over \$50,000. It is a control document that addresses procurement strategy and selection method and provides a higher level of contracting authority. We found that in 9 out of 50 of the contract files reviewed, that were greater than \$50,000, the document was not on file.

57. The impact of missing documentation from the procurement file or project file could result in an inability to demonstrate compliance to policies and procedures. It is crucial that the information and documentation is consistent and relevant, to safeguard the interests of the Contractor, the Client department and PWGSC.

Unclear practice of charging expenses to construction projects

58. The RPB Project Management Services are optional services. The cost that is paid by client departments for the service, is composed of two components: the expenses related to the contracts for private sector contractors or consultants; and a fee for the Project Management Services to cover billable hours and a mark-up on those hours. The expenses for contractors include other construction costs incurred by RPB, such as equipment and tools to support a project management office and to deliver the project. The pricing structure is established on a non-profit model, which provides the best possible pricing based on a fixed volume of work and allows the RPB to recover their direct and indirect expenses. To ensure a fair and transparent pricing structure, it is important that all construction costs are clearly identified, that they comply with policies, and that they are tracked to the Specific Service Agreements signed by client departments.
59. We determined that among the fees charged related to the delivery of the project were the cost of 'assets', such as cameras, bookcases or office and technical equipment, as well as specialized training and courses and casual office support. The established practice is that if an item is required specific to a project then it is charged to the client as an additional construction charge. While, if it is required as part of PWGSC normal duties then it is paid for by PWGSC.
60. Assets charged to a client against a project would become the client's property at the completion of the project, while those that are paid for by PWGSC would remain its property. We were not able to provide assurance that the standard practice of billing to client departments was sufficiently detailed that clients would be aware that the project costs included assets or that it would be evident to them that the disposal or custody of such assets is their responsibility and must comply with government policies.
61. Although it is reasonable that such expenses are required for the purpose of delivery of a construction project there exists a risk and opportunity for misappropriate behaviour since such expenses: are requisitioned and approved for payment by one Project Manager; are charged to a PWGSC revolving fund that does not fall under the same financial scrutiny as budgetary line expenditures; and that the costs are recovered from client departments without sufficient detail. As well, PWGSC has a duty to its employees to ensure that all necessary health and safety equipment and specialized training is provided during the course of construction activities. Any required assets or technical equipment should be recorded and retained by PWGSC for future projects.
62. Overall, the sampled construction contract files were compliant with applicable contracting legislation and policies. However, improvements were identified in the areas of limited completion of the Contractor Performance Evaluation Report Form, the completeness of file documentation, and the project expenses practices and recording.

CONCLUSIONS

63. Based on our first audit objective to determine whether an appropriate management control framework existed for construction projects we concluded that:
- An accountability framework for roles and responsibilities would have helped mitigate non-compliance with contract terms and conditions, risks, and contracting irregularities in areas of insurance, plans/specifications and change-orders.
 - Management controls for risk management, a policy framework, and the validation of financial delegations were appropriate.
 - Detailed procurement procedures for delivery of real property contracting would assist in the delivery of quality and timely procurement services.
 - The risk of excess charges could be mitigated by the undertaking of cost-audits, as appropriate, which is authorized in clear audit provisions of the terms and conditions of construction contracts.
64. Based on our second audit objective to assess compliance of construction contracts applicable legislation and policies, we concluded that:
- Overall, the sampled construction contract files were in compliance with applicable contracting legislation and policies.
 - Limited completion of the mandatory evaluation of a Contractor's performance reduced the opportunity to strengthen good contractor performance, improve client service, and support the departmental Vendor Performance Policy.
 - Some files did not contain sufficient documentation to adequately demonstrate compliance to policies and procedures.
 - The risk of non-compliance with government policies on assets and the opportunity for inappropriate behaviour is increased when there is an unwritten practice of charging expenses to construction projects.

MANAGEMENTS RESPONSE

Acquisitions Branch and Real Property Branch accept the findings of the report as being fair and accurate.

RECOMMENDATIONS AND MANAGEMENT ACTIONS

Recommendation 1: The Assistant Deputy Minister of the Acquisitions Branch and Real Property Branch should develop a national accountability framework that lays out the roles and responsibilities of RPC Procurement Officers and RPB Services Project Managers for construction contracting. This framework should clearly address the issues related to insurance, plans/specifications and change orders identified in this audit.

AB's and RPB's responses. AB and RPB accept the recommendation and will be taking the following actions:

- 1.1. Branch NCA and Regions (Real Property Contracting) to jointly develop a draft accountability framework, with the collaboration of Acquisitions Branch NCA (Real Property Contracting Directorate), and consult, finalize and submit for national implementation. Synthesize comments and create a working level document by January 30, 2009.
- 1.2. Working level document submitted to Real Property Branch Regions for comment/editing by March 13, 2009.
- 1.3. Synthesize comments and create a draft accountabilities document by May 1, 2009.
- 1.4. Have final draft document translated by May 22, 2009.
- 1.5. Submit to ADM RPB and ADM AB for approval by June 19, 2009.
- 1.6. Post the approved document on the RPB National Project Management System (NPMS) and on the Real Property Contracting (Regions) / NCA (Real Property Contracting Directorate) national shared drive by September 8, 2009.

Recommendation 2: The Assistant Deputy Minister of the Acquisitions Branch and Real Property Branch should ensure that construction contracts include a more detailed audit provision in its standard terms and conditions, and that these audits are undertaken.

AB's and RPB's responses. AB and RPB accept the recommendation and will be taking the following actions:

- 2.1. Review existing construction audit clause, the clause used in the private sector Canadian Construction Documents Committee (CCDC) documents and other PWGSC contracts by February 13, 2009.
- 2.2. Draft with Legal a revised clause, and translate by March 20, 2009.
- 2.3. Present clause to Treasury Board Advisory Committee on Contracting – Construction Subcommittee (TBACC-C), and seek approval to include new clause in the TB “*Government of Canada Standard Construction Contract Form*” by March 26, 2009.
- 2.4. Have the TBACC-C approved clause included in the next Standard Acquisitions Clauses and Conditions (SACC) release by December 2009.

- 2.5. Analyze current methods used in construction projects to ensure that there are measures to protect the financial interests of the Crown by December 2009.
- 2.6. Strengthen / improve any weaknesses found, including the implementation of audits as required by December 2009.

Recommendation 3: The Assistant Deputy Minister of the Acquisitions Branch and Real Property Branch should ensure that Contractor Performance Evaluation Forms (CPEPF) are completed by RPB Project Managers and that these forms are distributed to RPC Procurement Officers and retained in the contract files.

AB's and RPB's responses. AB and RPB accept the recommendation and will be taking the following actions:

- 3.1. A *Communiqué* will be sent to all Project Managers, explaining that CPEPF is to be completed on all construction files by March 30, 2009.
- 3.2. Annual employee performance review will consider completed vs. outstanding CPEPFs by June 30, 2009.
- 3.3. RPC Procurement Officers will be reminded in the RPC Operating Instructions that the completed CPEPF provided by RPB is to be included on the file as part of file closeout procedures by September 4, 2009.

Recommendation 4: The Assistant Deputy Minister of the Acquisitions Branch and Real Property Branch should ensure that clear and adequate guidance is provided to RPB Project Managers and RPC Procurement Officers to make sure complete project and contracting files are maintained.

AB's and RPB's responses. AB and RPB accept the recommendation and will be taking the following actions:

- 4.1. The RPB National Project Management System 'procurement knowledge' area will be updated to inform Project Managers of their obligations by September 4, 2009.
- 4.2. A national operating instructions document will be created and will include a section on this topic (see item 6 below) by September 4, 2009.

Recommendation 5: The Assistant Deputy Minister of the Real Property Branch should implement and monitor a protocol for charging expenses to construction contracts.

RPB's response. RPB accepts the recommendation and will be taking the following actions:

- 5.1. Communiqué to be sent to all Senior Project Managers explaining under what circumstances expenses should be charged to construction contracts by July 2009.
- 5.2. Selective sampling of project once the communiqué has been issued post July 2009 and ongoing.

Recommendation 6: The Assistant Deputy Minister of the Acquisitions Branch should develop and communicate operating procedures for RPC Procurement Officers across all Regions to ensure consistent delivery of quality and on-time construction services to RPB Project Managers.

AB's response. AB accepts the recommendation and will be taking the following actions:

- 6.1. NCA Real Property Contracting Directorate will assemble the various operating instructions from each Region by February 27, 2009.
- 6.2. The various instructions will be reviewed and the best pulled from each to create a national standard by April 9, 2009.
- 6.3. Missing portions will be written and added to the national standard by May 29, 2009.
- 6.4. Document will be circulated for review and comments to all Regions by June 26, 2009.
- 6.5. Document will be finalized and translated by August 21, 2009.
- 6.6. Document posted to the RPC (Regions)/NCA (RPCD) shared drive for use by all regions by September 4, 2009.
- 6.7. Individual Regions will append any regionally unique requirement to the national standard by November 27, 2009.

ABOUT THE AUDIT

Authority

This audit was approved by the department's Audit and Evaluation Committee as part of the 2007-2010 Risk-Based Multi-Year Audit and Evaluation Plan.

Objectives

The objectives of this audit were:

- To determine whether an appropriate management control framework exists for construction projects to ensure effective management by PWGSC, on behalf of other government departments, including PWGSC, for the whole procurement process; and
- To assess compliance of construction contracts with applicable legislation, the Government Contracts Regulations, central agency and departmental policies/guidelines, and approved Sector/Regional practices.

Scope and Approach

The audit was conducted in accordance with the Treasury Board Secretariat's *Policy on Internal Audit* and the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing.

The fieldwork was conducted from April 2008 to July 2008. We focused on construction projects that were managed by RPB Project Managers, who acted as the technical authority, and were procured through the RPC Procurement Officers who acted as the contracting authority.

This audit is the first in a series of planned audits that will examine various aspects of real property services. The scope of this audit included the Branch / Regional governance framework, method of risk management and controls in place throughout the contracting process within both the RPB and RPC. This audit did not examine standing offers or supply arrangements; the controls or value-added of project management services; nor the accuracy and completeness of the costs incurred during the construction project. Planned future audits will examine the monitoring of controls over standing offers, as well as project management services.

A judgemental sampling approach was based on a variety of criteria and the cumulative contract knowledge and experience of the audit team. Criteria included empirical indicators such as number of contracts per annum, overall value of contracts, stratification of contract values, and variety of contract types. A review of the data for the different Regions and Sectors indicated that the Atlantic and Ontario Regions had a high overall volume and variety of construction contracts.

For the purpose of the audit, the group most involved in project management of construction projects was the RPB Professional and Technical Services who is responsible for project management, architecture and engineering services, and maintenance management. As defined in the PWGSC's Project Delivery System, project management is involved with planning, defining, implementing, commissioning and evaluating of all building, marine, airport, road and bridge projects undertaken. The group most involved in providing construction contracting services is RPC. They provide procurement expertise that specializes in construction contracts.

Interviews were conducted with approximately 30 key personnel. A total of 50 contract/project files were reviewed for compliance. Relevant processes and documentation were reviewed. Based on analysis of the information and evidence collected, the audit team prepared findings and conclusions, which were validated with the appropriate managers. The Draft Final Report was tabled to the PWGSC Audit and Evaluation Committee for their recommendation for approval of the report by the Deputy Minister on March 19, 2009.

Criteria

The following audit criteria were reviewed and accepted by the Acquisitions and Real Property Branches:

- Senior management should establish a governance framework to enable the achievement of departmental objectives and intended results;
- The systems, processes, and practices should enable the organization to identify, assess, and mitigate significant risks to support the achievement of organizational objectives and intended results;
- There should be specific controls in place throughout the contracting process that ensure compliance with established government regulations and PWGSC policies and procedures; and
- The construction contracting should be in compliance with applicable legislation, Government Contracts Regulations, central agency and departmental policies, guidelines, and approved sector and regional practices.

Audit Work Completed

Audit fieldwork for this audit was substantially completed on July 18, 2008.

Audit Team

The audit was conducted by members of the Office of Audit and Evaluation (OAE), overseen by the Director, Procurement Directorate and under the overall direction of the Chief Audit Executive, OAE. The audit was reviewed by the Quality Assurance function of OAE.