



Procurement Practice Review:

Follow-up Report on the 2013-2014 Procurement Practice Review
“Acquisition of Dental Services by the Department of Health, First
nations and Inuit Health Branch, Manitoba Region”

January 2017

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Main Points

What We Reviewed

1. In 2013-2014, the Office of the Procurement Ombudsman (OPO) conducted a procurement practice review entitled Review of Procurement Practices for the Acquisition of Dental Services by the Department of Health, First Nations and Inuit Health Branch, Manitoba Region.
2. In April 2016, OPO asked Health Canada (the Department), more specifically the First Nations and Inuit Health Branch, Manitoba region, to provide information regarding actions taken in response to the recommendations in the above-noted review.
3. The purpose of the follow-up exercise was to determine whether the Department considered and took action, or developed plans, in response to the Procurement Ombudsman's recommendations. In this regard, OPO assessed the information provided by the Department for overall reasonableness and credibility. This report provides a summary, as well as specific examples, of progress made in implementing the recommendations from the 2013-2014 review.

Why It's Important

4. There are three main reasons why reporting on progress made in response to the Procurement Ombudsman's recommendations is important. First, it informs interested stakeholders of specific actions organizations have taken to improve procurement practices. Second, by sharing information on changes being implemented by the organizations whose practices were reviewed, OPO facilitates other federal organizations' ability to introduce similar improvements where applicable. Lastly, the information on the nature and extent of responses to the recommendations provides an indication of the usefulness of OPO's reviews in promoting fairness, openness and transparency in federal procurement.

What We Found

5. OPO is encouraged by the Department's commitment to improving procurement practices. The Department has taken action in response to the recommendations made in the 2013-2014 review including: mitigating the risk of employee/employer relationships by clarifying the statement of work for dental services; revising evaluation criteria to only include requirements that are essential to the successful completion of the work; enhancing the Contracting Review Committee process; establishing a peer review process requiring procurement managers to review solicitations prior to posting on the Buyandsell.gc.ca website; developing a new standing offer for dental services to be implemented by April 1, 2017; and, implementing an automated Procure to Pay process to support records management.

Introduction

6. OPO published the following report in April 2014:

- *Review of Procurement Practices for the Acquisition of Dental Services by the Department of Health, First Nations and Inuit Health Branch, Manitoba Region.*

Objectives

7. The objectives of this follow-up review were to determine:

- Whether the Department considered the recommendations made by the Procurement Ombudsman in the 2013-2014 review with respect to its procurement practices;
- Whether action plans were prepared, approved, undertaken and responded to the recommendations; and,
- What actions were undertaken in response to the review, and the extent to which each action had been completed and monitored.

8. OPO expected the Department to have introduced changes to improve its procurement practices.

Scope, Methodology and Timing

9. OPO requested the Department provide information on actions implemented or planned as a result of the recommendations. This report reflects actions taken as of August 2016.

10. The approach used for this follow-up exercise differs from OPO's procurement practice reviews. The assessment of progress made against recommendations was compiled from the Department's self-assessment and assertions regarding its plans and actions. For each recommendation, OPO reviewed the information provided for overall reasonableness and credibility. This was done by:

- Verifying whether any contradiction existed between the Department's assertions and other available information such as the publicly accessible information found on the internet and information obtained during the 2013-2014 review;
- Analyzing the Department's responses to understand how its actions addressed the recommendations and whether there were plans to monitor the results or effectiveness of these actions or changes; and,
- Seeking clarification, as required, to ensure a clear understanding of the information provided by the Department.

11. This report consists of an overview of the Department's assertions regarding progress in implementing changes in response to the recommendations cited in the review. The

information provides a basis on which to assess the usefulness of OPO reviews and allows OPO to report on the progress made by the Department to enhance the fairness, openness and transparency of its procurement practices.

Assessment of Implementation of the Department's Actions

Summary of 2013-2014 Review Findings

12. OPO reviewed 20 sample contract files (and their related program files) as well as relevant Department procurement policies to determine whether its procurement policies, guidance and procedures supported fairness, openness and transparency; and whether the Department's contracting practices for acquiring dental services during the review period were consistent with the appropriate policies, guidance and procedures.
13. The review found:
 - The procurement and contracting environment for the acquisition of dental services for First Nation and Inuit communities in Manitoba contained characteristics not found in typical procurement and contracting; and,
 - Some of the Department's procurement practices differed from both government-wide and internal procurement policy requirements.
14. The Procurement Ombudsman concluded:
 - The Department faced challenges in providing the necessary dental services to its clients living in First Nation and Inuit communities. However, so long as the Department provided these services using contracts, as opposed to some other mechanism (challenges notwithstanding), it must follow the applicable Treasury Board and Departmental procurement policies.
 - OPO found no evidence to suggest that the Department had abused its authority nor that it had done anything but attempted to maximize the amount of dental care provided to First Nation and Inuit communities. However, during the review period, OPO found some of the Department's procurement practices differed from elements of the applicable Treasury Board and Departmental procurement policies.
 - In addition, OPO found that most aspects of the Department's contracting practices were fair, open and transparent; however, there were areas where the Procurement Ombudsman made recommendations for improvement.
15. Five recommendations were issued by the Procurement Ombudsman in the review:
 - Recommendation 1: Take appropriate steps to ensure that employer-employee relationships are not created when contracting for dental services and that Health Canada has not created unnecessary risks by differing from its Contracting Guide.

- Recommendation 2: Confirm whether Treasury Board approval is required prior to the release of the request for proposals for fiscal year 2015-2016 dental services requirement. If it is determined that Treasury Board approval is required, Health Canada should obtain the necessary approvals for 2015-2016 and, in accordance with section 11.2.12 of the Treasury Board Contracting Policy, seek ratification from Treasury Board of the dental services' contracts awarded between fiscal years 2009-2010 and 2013-2014.
- Recommendation 3: The Department clearly articulate, in future solicitations, those elements that represent the minimum requirements that are essential to the successful completion of the work (i.e. mandatory criteria) and those where flexibility is permitted.
- Recommendation 4: A more robust contract review committee process be implemented (including ensuring complete documentation is available on the Contract and Requisition Control Committee (CRCC) process) and that the CRCC review the overall requirement, including any planning documents, *before* bids are solicited to ensure adherence to the appropriate Treasury Board and Health Canada policies.
- Recommendation 5: The Department maintain complete procurement files, including all correspondence and all documents related to the assignment and payment of the work, in accordance with Treasury Board and Health Canada policies.

Summary of Department Response

16. The Department's response stated it has taken action on all five recommendations made in the 2013-2014 report, with four of the five recommendations reported as being fully implemented. The following summarizes the actions taken by the Department.
17. Recommendation 1: The Department stated it addressed the issue of employer-employee relationships by changing the statement of work for dental services. More specifically the Department indicated that, in the 2014-2015 Request for Proposal (RFP) for Dental Services, the deliverables were clarified and direction on how the contractor was to perform the work was removed.
18. Recommendation 2: In its initial response to OPO, the Department stated it had prepared a new standing offer as the preferred contracting mechanism for dental services, to be implemented October 1, 2016. During the reporting phase of this review, the Department informed OPO its internal review process of the Request for Standing Offer document, coupled with staff changes, pushed the implementation date of the new standing offer to April 1, 2017. The Department was also seeking Treasury Board Contracting Policy interpretation relating to departmental delegated authority limits.
19. Recommendation 3: The Department revised evaluation criteria in the 2014-2015 RFP to reflect the minimum requirements essential to the successful completion of the work.

20. Recommendation 4: The Department stated it had implemented a two tier Contract Review Committee (CRC), which performed due diligence on selected draft contracts and solicitations. A document providing an overview of tier one, dated June 9, 2016, was provided in the Department's response. No additional information, such as meeting agendas or records of decision from the CRC, were provided.
21. Additionally, as of April 1, 2016, the Department implemented an informal peer review process whereby all solicitations were reviewed by a procurement manager prior to posting on the Buyandsell.gc.ca website. No documentation was provided to substantiate this action.
22. Recommendation 5: The Department indicated it had implemented a fully automated Procure to Pay process in which all relevant records related to the procurement files and associated payment information were stored electronically.

Conclusion on Follow-up Review of Procurement Practices for the Acquisition of Dental Services

23. The Department has implemented a series of measures to strengthen its management controls and procurement practices, such as: clarifying the statement of work and revising evaluation criteria for dental services; enhancing the Contracting Review Committee process; establishing an informal peer review process; and implementing an automated Procure to Pay process to support records management. The full implementation of these measures should improve the fairness and openness of the acquisition of dental services by the Department.
24. In addition, the Department developed a new standing offer for dental services to be implemented by April 1, 2017, and was in the process of seeking Treasury Board Contracting Policy interpretation related to departmental delegated authority.
25. One recommendation item remains outstanding with regard to seeking ratification from Treasury Board of dental services contracts awarded between 2009-2010 and 2013-2014.

Overall Conclusion

26. The Department assessed the recommendations from the 2013-2014 procurement practices review and provided information on its respective plans and actions.
27. OPO is encouraged by the fact the Department has responded to the recommendations and taken steps to strengthen its procurement practices. Full implementation of associated actions should improve the Department's procurement practices related to the acquisition of dental services.

Annex A – OPO Recommendations and the Department's Responses

| OPO Recommendations | Department's Responses |
|--|---|
| 1. The Procurement Ombudsman recommends Health Canada take appropriate steps to ensure that employer-employee relationships are not created when contracting for dental services and that it has not created unnecessary risks by differing from its <i>Contracting Guide</i> . | <p>"Appropriate steps to ensure that employer/employee relationships are not created were taken as part of the 2014/15 request for proposal (RFP) process. This includes changes to the Dentist Services Contract statement of work to reflect expectations in what the contractor was expected to do versus directing the contractor on how to carry out the work. These changes were reflected in the 2014/15 request for proposal for Dental Services."</p> |
| 2. The Procurement Ombudsman recommends Health Canada confirm whether Treasury Board approval is required prior to the release of the request for proposals for fiscal year 2015-2016 dental services requirement. If it is determined that Treasury Board approval is required, Health Canada should obtain the necessary approvals for 2015-2016 and, in accordance with section 11.2.12 of the Treasury Board Contracting Policy, seek ratification from Treasury Board of the dental services' contracts awarded between fiscal years 2009-2010 and 2013-2014. | <p>"FNIHB worked with Material and Asset Management Division (MAMD) of the Chief Financial Officer Branch who advised that a standing offer agreement would be the preferred contracting mechanism. Health Canada is preparing a new standing offer planned to be implemented by October 1, 2016. The interim strategy was to amend the 2014/15 contracts to include the 2015/16 contract fiscal year, followed by a second six month bridging amendment for April 1 2015 to September 30, 2016. Each individual contract value and amendment value fall within Health Canada's departmental delegated authority limits. This ensured there was no interruption to dental services to First Nations communities."</p> <p>Subsequent events: During the reporting phase of this review, the Department informed OPO the implementation of the standing offer would be delayed to April 1, 2017. The Department reported it had issued "a third and final bridging amendment [to extend the contracts to include] October 1, 2016 to March 31, 2017".</p> |

| OPO Recommendations | Department's Responses |
|--|--|
| 3. The Procurement Ombudsman recommends in future solicitations FNIHB Manitoba clearly articulate those elements that represent the minimum requirements that are essential to the successful completion of the work (i.e. mandatory criteria) and those where flexibility is permitted. For example, mandatory criteria could be related to the professional dental qualifications and flexible requirements could be related to the submission due date flexibility. | "Contract criteria was revised to reflect minimum requirements essential to carry of (sic) the work for the 2014/15 RFP for Dental Services Contract for FNIHB – Manitoba Region." |
| 4. The Procurement Ombudsman recommends that a more robust contract review committee process be implemented (including ensuring complete documentation is available on the CRCC process) and that the CRCC review the overall requirement, including any planning documents, <i>before</i> bids are solicited to ensure adherence to the appropriate Treasury Board and Health Canada policies. | "MAMD established a two tier Contract Review Committee (CRC) which reviews and performs due diligence on selected draft contracts and solicitations. In addition, a peer review process has been established for all solicitations documents being posted on Buy and Sell. Procurement managers (PG-05) are now responsible for reviewing all solicitations being tendered on Buy and Sell." |
| 5. The Procurement Ombudsman recommends FNIHB Manitoba maintain complete procurement files, including all correspondence and all documents related to the assignment and payment of the work, in accordance with Treasury Board and Health Canada policies. | "Health Canada has implemented a fully automated Procure to Pay process in which all relevant records for procurement files and associated payment information are stored electronically in SAP [i.e. the Department's financial system]." |