Chapter 30

Sole-Source Contracting for Professional Services

Using Advance Contract Award Notices

Table of Contents

Exhibits

Sole-Source Contracting for Professional Services

Using Advance Contract Award Notices

Main Points

30.1 This chapter examines the government's practice of awarding sole-source contracts for professional services. It also examines a mechanism known as an Advance Contract Award Notice (ACAN), used widely by departments to advertise their intention to award sole-source contracts to a specific supplier.

30.2 The principles of accessibility, competition, fairness to suppliers, transparency and best value lie at the core of government contracting policy. The contracting regulations require that all contracts be let through a competitive process, with certain very narrowly defined exceptions. When the contract is needed in an emergency, when the value is small, when it is not in the public interest to solicit bids (for example, if national security is involved) or when there is only one supplier who can do the work, the contract can be let without competition on what is called a sole-source basis. Almost 90 percent of the 50 sole-source contracts we examined did not fall under any of the exceptions or did not have adequate evidence of doing so and hence ought to have been competitively tendered. As in last year's audit of sole-source contracts for professional services, we concluded that the process of awarding most of the contracts audited in this year's sample would not pass the test of public scrutiny.

30.3 We concluded that the ACANs associated with these sole-source contracts added transparency to directed contracting, because ACANs are publicly advertised (compared with the nearly 40 percent of sole-source contracts that are let without any public notice) and can be challenged before their expiry date. However, in our view the challenge process is flawed and discourages potential suppliers from submitting challenges. Only 35 of the 522 contracts that we reviewed had been challenged and only 4 of the challenges were accepted. We found the following:

- The information the ACANs provide is often vague and they are challenged infrequently. Furthermore, many ACANs are posted for less than the recommended 15 days. There is no policy defining the challenge process, nor any criteria for judging the validity of a challenge. Those who decide whether a challenge is valid are, for the most part, the same departmental officials who originally decided that the contract should not be open to competition. There is no recourse to appeal their decisions unless the contract is subject to trade agreements, in which case they may be appealed to the Canadian International Trade Tribunal. Mounting a challenge to an ACAN under these unfavourable circumstances requires the supplier to invest both money and good will, an investment that most find unattractive.
- Based on the 50 sole-source contracts selected for detailed examination, in most instances the decision to contract is not well considered, the requirements are often defined only vaguely, pricing is not done with due regard to economy and often deliverables are not assessed against the original requirements of the contract.
- The existing framework of contracting rules, policies and regulations for contracting is basically sound. However, the evidence shows that departments either do not understand this framework or in some instances choose not to follow it.

Background and other observations

30.4 In 1997, contracts of $25,000 and above for all types of services (including professional services) had a total value of $3.9 billion. Of that amount, $1.34 billion was for sole-source contracts. An ACAN was posted for

over half of those ($830 million) and the balance ($510 million) were entered into without public notice of the government's intent to issue a sole-source contract.

30.5 Our December 1998 Report (Chapter 26 — Contracting for Professional Services: Selected Sole-Source Contracts) noted that the process of awarding most of the contracts in the sample we audited that year would not stand the test of public scrutiny. In May 1999, the Standing Committee on Public Accounts supported the audit findings and expressed concerns about departmental practices as they relate to ACANs.

30.6 The objective of the current audit was to assess the use of sole-source contracts and ACANs in professional services contracts by National Defence, Human Resources Development Canada, the Canadian International Development Agency and Industry Canada, and by Public Works and Government Services Canada on their behalf. Our audit included all 522 ACANs issued by, or on behalf of, the four departments in 1998, and examined in detail a sample of 50 of these.

30.7 We have made recommendations designed to encourage and strengthen the accountabilities in departments and agencies for the exercise of delegated contracting authority by managers. Additionally, to strengthen the challenge process for contracts, including contracts let using ACANs, we have recommended that the government clarify the due process rights of contractors and establish an independent appeal mechanism for contractors.

The Treasury Board Secretariat has indicated that the Treasury Board's contracting policies are based on the strong values and principles of competition, openness, equal access, transparency, fairness and best value for Canadians. It explains that the Board's role is to establish these policies and that departments, in turn, are accountable to their ministers and to parliamentarians for implementing them. The Secretariat commits to introducing a program of training and certification for procurement specialists as well as implementing a monitoring framework for evaluating contracting activities. While Treasury Board policy encourages contract review mechanisms and internal audits, the Secretariat does not believe that a mandatory policy requirement for a contract review mechanism in departments is necessary, nor does it support the recommended scope for internal audits of sole-source contracts. The Secretariat does not believe that an independent appeal mechanism for contractors that deals with contracts lying outside the purview of the Canadian International Trade Tribunal is necessary.

Introduction

Background to the current audit

30.8 Our December 1998 Report Chapter 26 reported on an audit of a sample of sole-source contracts for professional services. That chapter indicated that the audit was to be the first in a series of audits of contracts. This chapter reports on the second audit in that series. It continues our focus on sole-sourcing — in particular, on sole-sourcing for professional services. This audit also focussed on a relatively new addition to the federal government contracting regime: the use of Advance Contract Award Notices to give public notice of the government's intent to enter into a sole-source contract.

30.9 Contracting is an essential tool for federal departments and agencies in delivering programs. Central to government contracting are the principles of best value and open access to contracting opportunities. "Best value" is the best combination of value and price that the government can obtain in acquiring goods or services for the Crown. "Open access" is a fair chance for all qualified vendors to do business with the Crown without political or bureaucratic favour. An open, competitive bidding process provides the best guarantee that both of these principles will be respected.

30.10 The Government Contracts Regulations state that competition is the norm, and departments are to solicit bids before entering into a contract. However, it is not always possible, practical or cost-effective to seek bids for every proposed contract. The regulations therefore allow the contracting authority, in certain well-defined circumstances, to set aside the requirement to solicit bids and instead to sole-source a contract. Specifically, the regulations permit the competitive process to be bypassed when there is a pressing emergency, the contract is valued at less than $25,000, it is not in the public interest to solicit bids, or only one person or firm is capable of doing the work. (When CIDA is contracting in support of an international aid project, its dollar exception is raised to $100,000.) There is also a temporary exception related to contracts for printing services with the Canada Communications Group Inc. Provision for this expires in 2002 and none of the contracts in this chapter relate to it.

30.11 In 1999, following a public hearing on our 1998 audit report, the Public Accounts Committee issued *A Report on Contracting for Professional Services*: *Selected Sole-Source Contracts*. In its report, the Committee concurred with the former Standing Committee on Government Operations, our audit report, and the testimony of Treasury Board Secretariat officials that the existing rules governing sole-source contracting are sound but that stricter compliance by all government officials is needed.

30.12 The Public Accounts Committee made eight recommendations for improving the way sole-sourcing is managed. Among other things, it called on the Treasury Board Secretariat to monitor departmental contracting activities more closely. It also recommended that the Secretariat modify its rules to ensure that the use of Advance Contract Award Notices would enhance transparency and, where warranted, encourage challenge and thus increase competition.

30.13 In 1998, Public Works and Government Services Canada (PWGSC) completed an audit of its use of ACANs in awarding sole-source contracts that it issues on behalf of other departments. The audit's objectives were to determine compliance with the ACAN requirements of the Supply Policy Manual, and the extent to which, before posting an ACAN, PWGSC procurement officers validate the sole-source justifications provided by departments. The report concluded that:

Central to government contracting are the principles of best value and open access to contracting opportunities.

An open, competitive bidding process provides the best guarantee that both of these principles will be respected.

- in 79 percent of a sample of 288 cases, there was no evidence on file that the procurement officer had made a determination as to the validity of the client's sole-source rationale; and

- more formal guidance is needed on the roles, responsibilities and accountabilities of both PWGSC officials and their clients for managing challenges to ACANs, especially when withdrawal of the challenge is a possibility.

30.14 In 1995, the Standing Committee on Government Operations recommended that the use of ACANs in sole-source contracting be reviewed to ensure that it promotes competition, access, fairness and transparency. The Committee also recommended that the Treasury Board exceptions to the requirement for open, competitive bidding be reviewed, to identify and reduce any tendency to bypass the competitive process by using ACANs. Finally, the Committee recommended that the Office of the Auditor General give special scrutiny to the use of sole-sourcing for government contracts.

The use of an Advance Contract Award Notice (ACAN) is meant to increase transparency.

The origin of Advance Contract Award Notices

30.15 ACANs were instituted in response to a complaint filed with the Procurement Review Board by a supplier in November 1989. The Department of Supply and Services (at that time) was required only to publish a notice within 60 days of awarding a sole-source contract. The complaint arose because the Department had awarded a contract without competition but had not published the required notice until 139 days after the fact. The Procurement Review Board (as it then was) heard the complaint in early 1990. It subsequently recommended that the Department review its policies on publishing notices of contract awards. The Board also recommended that the Department publish a notice *before* awarding a contract, indicating its intention to contract on a non-competitive basis.

30.16 The Department adopted this recommendation and in May 1992 posted the first ACAN on the electronic bulletin board known as the Open Bidding System. The Department (now Public Works and Government Services Canada — PWGSC) has been using ACANs since that date. They are currently published on the successor to the Open Bidding System, an Internet site called MERX.

30.17 The use of an ACAN to publicly advertise the intent to award a sole-source contract is meant to increase transparency by alerting potential suppliers to the upcoming sole-source procurement. This gives them an opportunity to challenge the award by demonstrating that they are capable of performing the work. If the department rejects the challenge, its decision cannot be appealed, unless the contract falls within the ambit of one of three trade agreements — the Agreement on Internal Trade, the North American Free Trade Agreement (NAFTA), or the World Trade Organization-Agreement on Government Procurement. In that case, the supplier can appeal the decision to the Canadian International Trade Tribunal.

30.18 The policy on using ACANs has been evolving for several years. To reinforce its policy, the Treasury Board Secretariat sent a Policy Notice on ACANs to departments and agencies in March 1999. Among other things, it reminded departments that every ACAN is to be posted for at least 15 days to allow potential suppliers to challenge it. Any valid challenge to the proposed contract award must not be ignored. Furthermore, the Secretariat directed that the ACAN not include any statement to the effect that it is not a competitive bid solicitation. Treasury Board officials explained that in their view, suppliers see such wording as prohibitive, and excluding it from ACANs will encourage challenges.

Government uses ACANs to a significant extent when contracting for services

30.19 In 1997, contracts of $25,000 and above for all types of services, including professional services, had a total value of $3.9 billion. Of that amount, $1.34 billion was for sole-source contracts. An ACAN was posted for over half of those ($830 million) and the balance ($510 million) were unadvertised. Initially, the use of ACANs was limited, as Exhibit 30.1 shows. However, in 1996 their use increased sharply; sole-source contracts accompanied by an ACAN now account for more than one fifth of all service contracts valued at over $25,000.

30.20 The Treasury Board Secretariat's Contracts Policy provides that if the ACAN is posted for 15 days and is not challenged, the contracting authority is allowed to award a larger contract on its own authority than if the ACAN had not been posted. This incentive may explain the significant growth in ACANs since 1995.

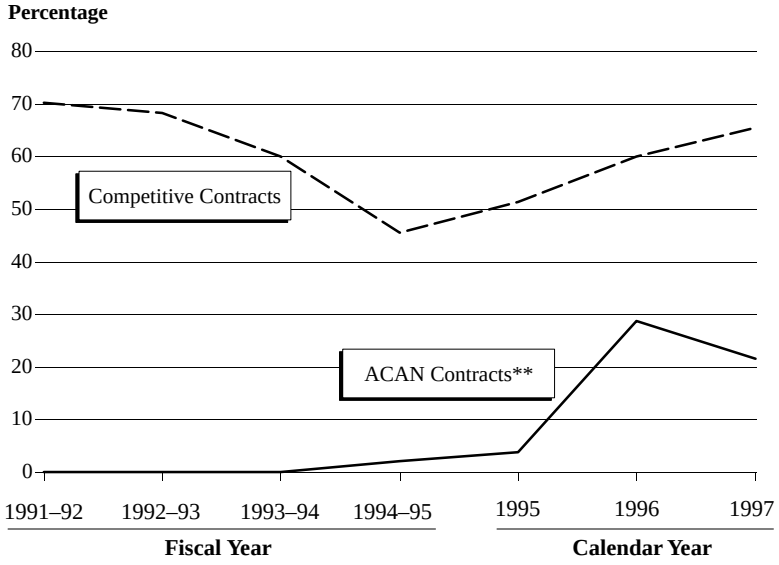
Focus of the audit

30.21 The purpose of our audit was to examine a sample of sole-source contracts for professional services (not involving goods) where Advance Contract Award Notices had been used. We wanted to determine the extent to which the applicable policies and regulations, principles of government contracting and good contracting practices were followed.

30.22 We examined a sample of 50 such contracts for amounts greater than $25,000. Each was advertised in an ACAN posted in the calendar year 1998. The sample was from four departments: National Defence (20 cases – 10 posted by the Department and 10 posted by PWGSC on its behalf), Human Resources Development Canada (10), Industry Canada (10) and the Canadian International Development Agency (10). Departments are permitted to let most service contracts directly, but may choose to request PWGSC to do so on their behalf. In those circumstances, PWGSC acts as the contract authority and is accountable for some aspects of the

Exhibit 30.1

Competitive and ACAN Federal Service Contracts Above the Sole-Sourcing Threshold*



* The threshold changed in fiscal year 1994–95 from $30,000 and above to $25,000 and above.

** Estimates limited by inconsistent collection of data.

In the Treasury Board's Annual Contracting Activity Reports, definitions changed from year to year. As a result, this information should be interpreted only as broadly indicative of trends.

Source: Treasury Board Annual Contracting Activity Reports – **UNAUDITED**

contracting process. This was the case for 17 of the contracts in our sample.

30.23 The sample was selected at random from a total of 522 professional service contracts over $25,000 for which an ACAN was posted by one of the five departments in 1998. The 522 ACANs represent about 25 percent of the total number of ACANs posted by all federal departments. The sample represents nearly 10 percent of the population from which it is drawn, and generalization from it is fully warranted. A selection of case studies begins on page 30–11.

30.24 We focussed only on the actions of government officials as they entered into and administered these contracts. We did not audit the contractors, and we make no comment on their actions.

30.25 Further details on the audit and on where to find related information referred to in the text can be found at the end of the chapter in **About the Audit**.

Exhibit 30.2

The Screening Process

Percentages of contracts in our sample of 50 that met or did not meet our criteria for screening.

Criteria	Met	Not Met
The need to acquire the services covered in the contract has been adequately justified and linked to program objectives.	75	25
There is evidence that an appropriate assessment was made of the costs of meeting the need from internal resources compared with external resources.	5	95
There is a statement of requirements prepared by the department or agency before tendering that is clear about expected performance, timing, services to be provided and estimated cost.	54	46
A departmental contract review committee exists for sole-source contracts, and it reviewed both the need for the requirement and the proposed procurement process.	0	100
The statement of work was approved by an appropriate authority before work began.	86	14

Observations

30.26 As we did last year, in this chapter we present the results of our audit under each stage of the contracting process. These stages and the issues they raise are common to all sole-source contracts. However, each of these particular sole-source contracts was let using a process that included posting an Advance Contract Award Notice and providing an opportunity for potential suppliers to challenge it. The special issues raised by the ACAN process are discussed later in the chapter.

Stages of the Contracting Process

Screening to establish and define the need

30.27 The screening process is the stage at which the decision is made that a service is required and that contracting for it is the most economical way to proceed. Screening includes developing a clear statement of what the needed service entails and determining whether internal resources could provide it more economically than a contractor (whether to “make or buy”). We examined the contract files to assess the adequacy of the needs analysis, requirement definition and the make-or-buy decision (see Exhibit 30.2).

30.28 We found that the need for about one quarter of the contracts was neither adequately justified nor linked to program objectives. Failure to include these steps increases the risk that “wants” will not be adequately distinguished from genuine program “needs” and that available financial resources will not be used with due regard to economy.

30.29 In 95 percent of the cases, the screening practices we noted did not include an analysis of alternatives that was adequate to support the decision to contract. We were informed during

(continued on page 30–16)

Selected Case Studies

These case studies were selected from the sample of 50 contracts that were audited for this chapter. They were selected to provide examples of the different types of problems we observed in contracting practices. They are not intended to be representative of the contracting practices in the departments from which they were drawn.

Problems With Challenges to Advance Contract Award Notices

National Defence

In assessing the qualifications of a challenger, the Department appears to have required a higher standard of proof than required of the chosen supplier.

In 1998, National Defence issued a request for proposals for the services of an information technology professional. It received several responses and judged that none met the requirement; letters to that effect were sent to the bidders. Normally in these circumstances, a department would re-examine its requirements to determine if they were too stringent and, if not, would ask the bidders if they wanted to correct the deficiencies in their original bids and bid again. If it received positive responses, it would tender the requirement again. Instead, because of perceived time constraints the Department approached one of the bidders and, after determining that it had remedied the deficiency in its bid, offered it a contract on a sole-source basis. An ACAN was posted in July 1998; on 30 July a challenge to the ACAN was filed. The Department reviewed the challenge and concluded that in two areas the challenger lacked the required minimum of four years' experience. The Department notified the challenger that the challenge was not valid, and awarded a contract for $348,820 to the selected supplier.

Our review of the selected supplier's qualifications led us to conclude that its proposal was deficient in the same two areas as the rejected challenger's. It had provided a statement that the person it proposed to supply met the requirements. However, it appears that the Department did not scrutinize the individual's resume as thoroughly as that furnished by the challenger. Clearly, in a competitive tendering situation all bidders must be assessed in the same way against the same standard. Apparently in this case, a more stringent assessment was applied to the challenger than to the chosen supplier.

National Defence

This case raises the question of the standard a challenge must meet to be considered valid.

On 12 June 1998, the Department posted an ACAN for a $75,000 contract, indicating that it required a senior person to provide it with advice related, in part, to compensation issues. The ACAN contained a list of required qualifications and identified a supplier as the one uniquely qualified to meet its requirement. On 26 June, the Department received a written challenge from another supplier who indicated that it was capable of doing the task. On 3 July the challenger wrote to the Department again in support of its challenge. Its letter expressed surprise that the Department could not supply it with a statement of work (SOW) for the requirement, and continued as follows:

> " ... an SOW would be very helpful to us to make sure that we clearly understand the requirement, anticipated deliverables, milestones and related issues. Without an SOW, we must select a CV from our firm, based on less than *nine lines* [emphasis in the original] of text provided in your ACAN. We do not consider this fair, since you have stated that you will decide whether to open this contract to competition, based on the relevance of the CV that we send you."

On 10 July, the Department wrote to the challenger that, in its view, the ACAN contained all of the necessary information and that hence a SOW was not required. It advised of the areas, detailed in the ACAN, in which the resume of the challenger was deficient. The Department concluded, "Your response did not provide sufficient evidence which demonstrates the capability of your firm fulfilling this requirement."

Based on the material submitted by the chosen supplier and provided to us by the Department, we assessed the supplier's qualifications against those in the ACAN and we were unable to determine whether the supplier fully met the requirements. In our view, it was unreasonable to require the challenger to meet a higher standard of proof than was required of the selected supplier. This raises two questions: What standard of proof must a challenger meet? and What information is a challenger entitled to have in order to prepare a challenge?

Canadian International Development Agency

CIDA did not respond appropriately to a challenge of an ACAN and awarded a sole-source contract to the supplier with whom it had originally intended to contract.

On 30 July 1998, CIDA posted an ACAN announcing its intent to contract with a selected supplier to provide monitoring and evaluation services for agri-forestry projects in Kenya and South Africa. On 9 August, the Agency received a written challenge to the ACAN from a second supplier. The person who reviewed the challenge noted that it appeared to be "a very strong one." The Agency's response was to cancel the ACAN, in a notice posted 13 August. This step was taken correctly. The next steps should have been to communicate in writing to the challenger (as CIDA committed to do in its ACAN) that it considered the challenge valid, and to open the contract to competition by calling for tenders. The Agency took neither step.

Following the cancellation of the ACAN, the Agency re-examined its requirements and concluded that the work in South Africa could be done by other contractors whom it had already engaged. However, it still required a supplier for the work in Kenya. Rather than opening that requirement to competition, on 5 September the Agency let a sole-source contract for $29,960 to the supplier it had identified in the original ACAN, in the full knowledge that there was at least one other potential supplier. No ACAN was posted for the contract. The decision to sole-source a contract for $29,960 is technically permissible because CIDA has a higher dollar exemption for sole-sourcing.* However, the decision to proceed in this way violated the spirit of the regulations and was an inappropriate response to the intent of the original ACAN and to the valid challenge CIDA had received.

** In the contracting regulations CIDA is permitted to sole-source a contract valued at up to $100,000 if it is for an international project. However, as a matter of Agency practice this exception is to be invoked only rarely, and it was not invoked in this instance. The remainder of CIDA's operations are subject to the $25,000 limit that applies to all other departments.*

Cases Related to the Use of Contracting for Staffing

National Defence

The Department used contract staff to compensate for apparent delays in the normal staffing process, at substantial additional cost to the government.

In 1998, National Defence let a sole-source contract to a firm of informatics professionals to fulfil a requirement until permanent staff could be hired. The ACAN advertised that the services would be needed for up to six months, at an estimated cost of $118,000. The contract that was signed covered the 10-month period ending 31 March 1999; it was subsequently amended to change the value to $177,000 but with no change to the end date. The contract did not specify the rate that the firm was to be paid for the services of the individuals it provided. According to the submitted invoices, the daily rates ranged from $325 to $650 — the equivalent of between $70,000 and $140,000 per annum. We note that government employees in the Computer Science category at the CS 2 and CS 3 levels are paid between $53,000 and $77,000 per annum (including benefits) for similar work.

The Treasury Board Secretariat's Contracting Policy states:

> Contracting for services has traditionally been accepted as an effective way to meet unexpected fluctuations in workload, to acquire special expertise not available in the Public Service, or to fill in for public servants during temporary absences in certain circumstances. At the same time, excessive or improper contracting for services can result in circumvention of person-year controls and government legislation, regulations and policies covering such matters as the merit principle and bilingualism.

According to the Department, this contract was used as an interim staffing measure to obtain expertise that, while not readily available in the public service, could have been recruited if staffing had been authorized. We were advised that additional staff had been requested at first but that, because of what management claimed were long delays in the Department's internal staffing process, it became necessary to use contract staff to meet ongoing operational requirements. We were provided with neither documentation nor adequate explanations indicating why the possibility of using full-time or term positions was not pursued during this period. Furthermore, we calculate that in this case, the use of a contractor was significantly more costly than staffing.

As with most ACANs in our sample, we found problems with the justification for sole-sourcing. While the Department stated that the firm was the only one capable of meeting the requirement, it could not provide any evidence to support that position.

Canadian International Development Agency

An unjustified sole-source contract was let in a way that created the appearance of an employer-employee relationship. Further, the payment rate in the contract was set without due regard to economy.

In 1998, CIDA needed financial management services to assist it in an information systems project. On 14 September 1998, it posted an ACAN indicating its intent to acquire the services of the selected contractor for a period of six to eight months. The posting closed on 24 September at 2:00 p.m. and a contract for $65,000 was let for a period of one year. As the ACAN had been posted for only 10 days, the contract could not be "deemed competitive"; and because it was an internal management project, CIDA's exemption for international projects did not apply. Moreover, the contractor had begun work on 24 September, before the ACAN posting closed.

The initial value of the contract was based on the assumption that the contractor would work half time over the contract period. However, his time reports indicate that he began working full time from the beginning of the assignment, and the contract funds began to run out with half a year to go. The contract was then amended to $130,000, to cover the balance of the year. The fact that the contractor began working immediately at double the "planned" rate of effort raises the prospect that this was the equivalent of a split contract. The Agency has no documented explanation for this.

The contract exhibits the characteristics of an employer-employee relationship. The contractor worked on government premises, used government facilities and followed a work plan that was determined by the needs of the government. He worked continuously for longer than 20 weeks, contrary to Treasury Board rules on the use of temporary help.

The contract did not represent due regard to economy. Ultimately, the contractor was paid $117,500 for a year's work — equivalent to the salary of a senior executive. The specialist staff at CIDA had recommended that the contractor be paid at the rate of a senior FI-4, which at that time would have been $359 per day, or $84,365 for the 235 days of the contract. That would have been close to the cost (including all benefits and payroll taxes) of hiring a senior FI-4 on a term basis for a year. Senior management overrode the recommendation and set the rate at $500 per day. We have seen no evidence that a term appointment to meet this need was even considered. The decision to contract instead cost the Crown $33,135.

Finally, the decision to sole-source was not justified; indeed, the documentation we reviewed made no assertion that it was. It simply stated that the contractor met CIDA's requirements and was available.

We have been informed by CIDA that management has examined this case and taken steps to prevent a repetition of these practices.

Industry Canada

The Department used contractors continuously for a number of years to carry out a specific function, creating the appearance of an employer-employee relationship.

In 1995, Industry Canada awarded a competitive contract to a company to provide three to four clerical employees on a full-time basis. This was a continuation of a practice that had been going on for a number of years. Their job was to do routine checks on the integrity of data being input to one of the Department's information systems. The 1995 contract was for one year, with options to renew for two additional one-year periods.

When the contract expired in 1998, the Department decided to award a new contract to the same company, for a maximum of one year. One of the Department's justifications for sole-sourcing was that the company was "uniquely qualified" because of its past experience. Another was that the quality assurance function that the contractor's staff had been working on was to be phased out, probably in less than a year. The Department said it would not be cost-effective to change contractors and train new people for such a short time.

We have two concerns. First, although a new contractor might have had to absorb some training costs in order to be competitive, this is a matter for the market to decide. It is not a sufficient justification under the Government Contracts Regulations for awarding a sole-source contract. Second, the Department hired full-time contract staff for four years — well over the 20 weeks allowed for temporary help — to do work on government premises, using government equipment, and in accordance with government-established procedures, creating the appearance of an employer-employee relationship. The Department has informed us that the contract ended on 30 September 1999.

Cases Related to the Quality of the ACAN

Human Resources Development Canada

Two sole-source contracts, one retroactive and the other using an ACAN that did not accurately describe the nature of the work, should have been opened to competition.

In October 1998, Human Resources Development Canada (HRDC) awarded a contract to a communications company, retroactive to 1 April 1998. The company had carried out a pilot project to test a system that enabled clients to register electronically for Social Insurance Numbers. On the basis of the pilot, the Department later decided to contract with the company on a sole-source basis to operate the system in one province for 24 months.

The decision to sole-source this second contract was not justified under the contracting rules. Although HRDC has since told us that other communications companies would be capable of operating the system from virtually any call centre, at the time it justified sole-sourcing on the grounds that the company was "uniquely positioned". Clearly, the contractor was not unique, and the contract did not meet the Government Contracts Regulations conditions for sole-sourcing.

We also found that the ACAN posted for this contract did not accurately describe the nature and scope of the work. In effect, it restricted competition by discouraging other capable suppliers from mounting a challenge. HRDC acknowledges that the statement of work in the ACAN implied that the contract largely involved doing further work on the pilot project as well as related evaluation activities rather than the ongoing operation of the system — which it acknowledges could have been done by other companies. Accordingly, the ACAN did little to further the government's objective of achieving transparent, open and fair contracting.

The Department does not know whether it might have been possible to negotiate more favourable terms through competition.

National Defence and Public Works and Government Services Canada

A sole-source contract was issued that should have been opened to competition, and an ACAN was posted that did not meet requirements.

On 13 August 1998, National Defence sent a requisition to PWGSC to begin the process of setting up a sole-source contract of $141,220 for a consultant to provide a baseline review of support services at one of its bases. This was to be part of a review of alternative services delivery. The justification for sole-sourcing that was supplied to PWGSC (and subsequently posted in the ACAN) was twofold: the requirement was urgent, as the work had to be completed by mid-December 1998; and the chosen supplier was very knowledgeable and would do a good job. Neither of these reasons is recognized in the regulations as a justification for not opening such a contract to competition. While the deadlines appeared tight when the contracting process began, the selected supplier's initial proposal is dated 16 June 1998 — some two months earlier. These circumstances fall well short of those that warrant invoking the "pressing emergency" exception to the regulations. Moreover, although the Department states that the chosen supplier was well qualified, it did not claim that the supplier was unique.

Notwithstanding the absence of a sole-sourcing justification, the Department and PWGSC posted an ACAN on 8 September 1998 with a closing date of 17 September 1998.

On 17 September, a written challenge was received from a major firm, asking that the requirement be opened to competition:

> We feel that based on the criteria used to determine this opportunity as an ACAN, we fully qualify to provide these services ... . We also believe that other firms possess the qualifications required to provide the services for this ACAN and, based upon the dollar value of the assignment, this should have followed a competitive procurement process.

However, on 18 September, after receiving assurances that this contract represented only the initial part of a larger procurement and that the second part would be competitively tendered, the firm withdrew its challenge.

On 23 September 1998 the contract was awarded to the chosen supplier. National Defence has argued that the withdrawal of the challenge meant there was no "valid" challenge and that it was thus free to proceed. However, the withdrawal of the challenge did not alter the facts that there were other firms qualified to supply the services and that the justifications given for sole-sourcing did not support the posting of an ACAN in the first place.

Cases Related to Sole-Sourcing on the Basis of Prior Experience

Industry Canada

The Department entered into a sole-source contract that created the appearance of contract splitting and other breaches of the contracting rules and that should have been opened to competition.

This contract is one in a series awarded to a company to provide computer-related support to Industry Canada. It was sole-sourced after an ACAN was posted indicating that the contractors had extensive experience and knowledge of the requisite business software, which enabled it to bridge two production environments. As well, it had expertise in planning and co-ordinating system migration projects for other departments. (We note that other firms had provided the same types of services.)

The evidence appears to indicate that the Department split the contract to avoid NAFTA-related rules. These rules require justification for sole-sourcing contracts of this nature if their value (including GST) is more than $72,600. We found that the requirement had initially been estimated at $110,000. When it was brought to the attention of the responsible manager that the value of the contract would make it subject to NAFTA and the Agreement on Internal Trade (AIT), the requirement was reduced to $65,000, plus GST — the value stated in the ACAN. This creates the appearance that the reduction was made to avoid the rules under NAFTA and AIT and not because the scope of the required work had changed. During 1999, the Department amended the contract by increasing the scope and duration of the work. At the time of our audit, the value of the contract had been increased to approximately $177,000 including GST. The contract ended in September 1999.

National Defence and Public Works and Government Services Canada

PWGSC acting on behalf of National Defence issued a sole-source contract that should have been tendered because the uniqueness of the selected supplier had not been established. The case shows the difficulties of negotiating a rate with a supplier once the ACAN has been posted.

In May 1998, PWGSC on behalf of and based on information supplied by National Defence let a sole-source contract of $128,400 for assistance in restructuring the corporate services function in a headquarters branch. An ACAN was posted for 13 days. The contract required the selected firm to supply the services of a specified individual for a period of six months. Through amendments, the contract was extended to cover an 11-month period; its value was increased to $176,550.

We found compliance problems with the contract. The Department used the uniqueness exception to justify sole-sourcing. It stated that there was no other firm with the same current, specialized, comprehensive base of knowledge and experience, but it was unable to provide us with any evidence to support that statement. While the Department's stated justification for sole-sourcing made a strong case for the selected supplier's qualifications, it failed to provide any evidence that there were no other suppliers equally capable. The statement of justification thus falls short of what is needed to demonstrate that the selected supplier is unique. Accordingly, sole-sourcing this contract was not in compliance with the regulations.

PWGSC, the contracting authority, had difficulty establishing a rate for the contractor. It noted that the firm was refusing to negotiate the rate, although under previous contracts with the Department it had been paid a much lower rate than it was asking for in this contract. Ultimately, National Defence as the technical authority took responsibility for the demanded rate and approved it. This illustrates the potential difficulty of establishing a contract's value without the market test that competition provides, particularly when the selected supplier is aware that management is on the record in the ACAN as considering it the only one capable of meeting the requirement.

In the course of our inquiries we became aware that, to assist management in business transformation work, the Department had established a competitive standing offer with a number of firms, including the selected supplier, all of whom the Department considered capable of performing the general type of work contracted for in this instance. In the standing offer, the rate quoted for a person at the level of the selected individual is approximately $100 per day lower than the rate ultimately agreed to by the Department.

(continued from page 30–10)

interviews with departmental managers that their senior management discourages the hiring of new staff; and even when they are permitted to hire, the process is seen as complex, slow and in need of streamlining. Consequently, to meet their program requirements they view contracting as the only feasible alternative "to get the job done". The absence of a "make or buy" analysis, indicating the relative advantages of both options, increases the risk that managers with the appropriate authority to approve and spend public funds will decide to do so without the benefit of an informed business rationale.

30.30 Our audit also found that in 46 percent of the cases the statement of work and statement of requirements were unclear about expected performance, level of effort, the services to be delivered and the costs. When expectations are unclear, the achievement of "best value" is at risk. Furthermore, when contracting is used to fill gaps in staffing, unclear service expectations can increase the risk that an employer/employee relationship will develop. When this happens, there is a risk to the Crown — allegations of an employer-employee relationship could leave a department open to penalties for unpaid Employment Insurance premiums, Canada Pension Plan contributions and income tax deductions. It could also be subject to claims for benefits, including pensions, and to payments of notice or pay in lieu of notice if the contract were to be cancelled. The Treasury Board Secretariat's policy clearly cautions departments about the need to avoid establishing such a relationship. Finally, a statement of work that is unclear increases the risk that the department may not receive the service it expected and may become involved in disputes with the contractor.

When expectations are unclear, "best value" is at risk.

30.31 The Treasury Board Secretariat's Contracting Policy encourages departments to establish a mechanism for formal internal review of all proposed contracts. It recommends a review of all aspects of a proposed contract, including the definition of needs and the justification for sole-sourcing. It also recommends that the results of these reviews be provided regularly to deputy heads so they can determine whether their delegated signing powers are being administered properly. Only one of the four departments in our sample had a formal contract review function, and it had a relatively limited mandate that did not include examining sole-source contracts. Consequently, management has lost, along with the benefits of challenge review, the opportunity to confirm the need for the contract, compliance with the government's policy, and the legitimacy of the proposed procurement process.

The decision to sole-source

30.32 As we have noted, there are four specific circumstances that allow for an exception to the regulatory requirement to solicit competitive bids when contracting. The Treasury Board Secretariat's Contracting Policy provides clear guidance to managers who may want to use an exception to justify their decision to sole-source. Over one third of the contracts in our sample were subject to the provisions of one or more of the trade agreements cited in paragraph 30.17. However, in all of these cases the relevant provisions of the Government Contracts Regulations, which apply to all government contracts, are as restrictive or more restrictive than the corresponding trade agreement provisions.

30.33 The Contracting Policy requires that use of an exception be fully justified on the contract file. If the contract qualifies for an exception, the contracting authority is encouraged, whenever possible, to advertise the intent to sole-source through an Advance Contract Award Notice and to justify it in the ACAN.

30.34 The policy places the onus on a manager who believes that an exception

applies to a contract to show clearly why it is warranted. The manager is expected to provide written evidence in the contract file to justify the exception. We expected that the contract files in our sample would clearly identify which exception had been invoked to justify sole-sourcing, and would contain written evidence of management's due diligence in verifying that the exception was warranted.

30.35 Only 11 percent of the 50 contracts we examined had a justification for sole-sourcing on file that complied with the conditions stipulated in the Government Contracts Regulations (see Exhibit 30.3). Specifically, none of the contracts in our sample were for under $25,000. None invoked the exceptions for pressing emergency or national interest. The critical decision used to justify sole-sourcing most of these contracts was the determination that the contractor was "unique" — that is, the only person or firm capable of performing the work. Managers are supposed to make this determination, justify it and document it *before* deciding to sole-source and *before* posting an ACAN. However, in 89 percent of the 50 cases we examined, the uniqueness of the contractor was either not determined at all (that is, management was fully aware that the firm selected was not unique) or was unsupported in fact.

30.36 Program managers often consider the knowledge and experience gained by a contractor in the course of previous work for them as sufficient to justify a determination that the contractor is unique (see Exhibit 30.4). This is not consistent with current Treasury Board Secretariat guidance and represents an abuse of the program manager's delegated contracting authority. Recent decisions on contracting by the Canadian International Trade Tribunal (CITT) recognize prior experience as one legitimate factor in assessing the qualifications of a potential supplier. However, the CITT decisions also emphasize that the advantage of incumbency ought not to be used as a reason to avoid competition and that the government must be careful not to overstate the value of incumbency in setting up competitions for contracts. We observed a number of instances in which an incumbency advantage, often gained as the result of earlier, unjustified sole-source contracts, had become the sole basis to justify uniqueness (and further contracts).

30.37 In departments there is usually a division of duties between the "contracting authority" — the specialist group in the department responsible for actually drafting the contract and looking after the legal aspects of the contracting process — and the "technical authority" — the line manager to whom the contractor will actually provide the services. A department that contracts through PWGSC is the technical authority and PWGSC is the contracting authority. Our audit found that, irrespective of location, the role of the contracting authority is too often primarily transactional. In only 25 percent of the cases did we see evidence that the contracting authority had effectively challenged either the substance of the

Only 11 percent of contracts we examined had a justification for sole-sourcing that complied with the Government Contracts Regulations.

Exhibit 30.3

Decision to Use Sole-Source Procurement

Percentage of contracts in our sample of 50 that met or did not meet the Government Contracts Regulations criteria for sole-sourcing.

Criteria	Met	Not Met
The reasons for choosing sole-sourcing rather than competitive tendering were identified and documented.	49	51
The decision to sole-source was in accordance with one of the four exceptions in the regulations.*	11	89
The contracting authority made sufficient inquiries to determine whether the justification for sole-sourcing proposed by the technical authority was substantively valid.	25	75

* When CIDA lets a contract in direct support of an international aid project, it is permitted by the regulations to sole-source for contracts up to $100,000. However, as a matter of Agency practice, to encourage competition and transparency CIDA invokes this exception rarely and encourages its managers to either tender or use an ACAN for all contracts over $25,000. This exception was not invoked for any of the contracts in the sample.

sole-source justifications advanced by the managers or the fact that they did not comply with the regulations. In general, the contracting authorities had restricted this aspect of their role to ensuring that some statement of justification was on the file.

30.38 The result is that the departments far too often bypassed the competitive process improperly and used sole-sourcing, as Exhibit 30.3 also shows. Program managers frequently told us that they chose sole-sourcing over the competitive process because it was a less complex and quicker way to contract. This has an adverse effect on the integrity of the contracting process.

The contractor community is often denied access to potential business.

30.39 Accordingly, many more contracts than could be justified were awarded without competition — a situation that does not reflect the principle of open access to contracting opportunities with the federal government. The awarding of these contracts would not withstand public scrutiny. This situation also imposes significant opportunity costs on the contractor community at large, which is all too often unfairly denied access to potential business that it has a right to compete for.

Exhibit 30.4

Reasons Given by Program Managers for Sole-Sourcing Contracts in Our Sample

Criteria	Number of Contracts
Prior experience with program or project	34
Best candidate for the requirement	14
Management does not know of another source	2
Not in the public interest**	5
Proprietary rights	3
Unique capability	3
Not cost-effective to change contractors	2
Other	2
Total	**65***

* Adds to more than 50 because sometimes more than one reason was given.

** Use of this reason reflects the manager's decision that the chosen supplier would win a competition if it were held and hence, in management's view, it was not in the public interest to give the other suppliers a chance.

Setting up the contract to provide for best price and value

30.40 Sole-sourcing for services leaves vulnerable the government's goal of receiving best value. In contrast, when bids are sought, the request for proposals requires a clear statement of the nature and scope of the work and of what specifically is to be delivered. The competitive bidding process thus provides some degree of assurance that the best value will emerge from among the bids submitted. In a non-competitive situation, especially one that lacks these elements and where the chosen supplier is in a near-monopoly position, it is important that other steps be taken to ensure best value.

30.41 One such step is management's preparation of a detailed statement of the work to be done or the results expected and how they will be assessed, along with its estimate of the nature, extent and cost of the work. These form the basis for requesting a proposal from the selected supplier and for assessing its reasonableness.

30.42 It is also important that management ascertain the "prevailing rate" for the services of similarly qualified individuals or firms and use this information in negotiating the rate for the contract. The Treasury Board Secretariat recommends that in sole-source situations, management examine the selected supplier's costs and consider requiring the supplier to certify that it is giving the Crown its best rate. In our view, cost certification should be a routine part of all sole-source contracts. Finally, before work begins, each contract is to clearly set out what is to be done, by when, and at what cost.

30.43 In general, we found in our sample of contracts that the justification for the requirement was often weak, the

statement of work was generally vague and uncosted, and the proposal was not assessed against an independently drafted statement of requirements. Like other sole-source contracts for professional services that we reviewed last year, these contracts were not well managed.

30.44 In 46 percent of the cases, the department had not prepared a fully developed statement of work that included management's estimates of the time and costs involved to do the work. Often we found that the only detailed statement of work, assessment of time and costs, and definition of deliverables had been prepared by the selected contractor in response to the department's very summary statement of requirements. Moreover, in 31 percent of the cases we found that the statement of work in the actual contract differed significantly from the statement of requirements made available to other potential suppliers through the ACAN process.

30.45 We found evidence in only 23 percent of the cases that the amount of work proposed by the contractor had been examined critically. Price support or evidence that fees had been negotiated on the basis of known prevailing rates was provided for 35 percent of the contracts. In 39 percent of the 50 cases, management had obtained the supplier's certification that it was offering its best price. In those cases, at least, some assurance was provided on price — if not on value. Exhibit 30.5 shows our criteria for setting up the contract to provide for the best price and value.

30.46 The departments were not able to provide any other evidence that the government was receiving good value from these contracts. Managers generally asserted that they had undertaken price negotiations, but they were unable to provide us with documented evidence of this. A more disciplined and well-structured approach to negotiations is needed to demonstrate due diligence and to obtain best value.

Ensuring delivery in accordance with the terms of the contract

30.47 The Treasury Board Secretariat's policy states that the terms and conditions of any contract issued are to be in writing, and that the contract is to be signed by the authorized departmental officials and the contractor's representatives as soon as possible after notice of the award to the successful bidder. Without a written and signed contract that specifies the terms and conditions of the work to be done, it is difficult for the Crown to ensure that it is getting what it intended to purchase and to hold the contractor accountable.

In only 23 percent of the cases was the amount of work proposed by the contractor examined critically.

30.48 We examined the contract files for evidence that the contractor had carried out the work in accordance with the contract specifications, on time, and at the agreed cost. Our audit criteria were based on the Government Contracts Regulations and the Treasury Board Secretariat's Contracting Policy.

Exhibit 30.5

Selection of Supplier, Setting Up the Contract

Percentage of contracts in our sample of 50 that met or did not meet our criteria for setting up the contract to provide for best price and value.

Criteria	Met	Not Met
The contractor's proposal was assessed against the statement of requirements prepared by the department to ensure that mandatory requirements were met, and that the proposal was commensurate with the scope and estimated cost of the work.	23	77
The supplier was required to certify that its prices were as low as those given to its most favoured customer/client.	39	61
The supplier was required to supply financial information about its operations to support its proposed prices.	35	65
The statement of requirements posted in the ACAN and the statement of work in the contract were substantially the same.	69	31
A discretionary audit clause was included in the contract.	98	2
There is evidence that an audit was conducted.	0	100

30.49 We found that the deliverables — the services the contractor was to provide — were generally described in intangible terms (such as "advice" and "professional services"). Most contracts did not specify clearly what service was required and over what time period. In the absence of a clear basis for holding the supplier accountable, the program manager's ability to effectively manage and administer the contract was compromised from the outset. The potential for achieving best value through sound contract administration practices was placed at risk.

30.50 In just over 50 percent of the cases were departments able to provide us with copies of suppliers' invoices and sign-offs certifying that the services had been delivered in accordance with the contract conditions and in accordance with section 34 of the *Financial Administration Act* (see Exhibit 30.6). Other documentation in the files was limited.

30.51 The Treasury Board Secretariat's Contracting Policy requires departments to document evidence that the deliverables specified in the contract have been provided in full, on time and at the agreed cost. As Exhibit 30.6 also shows, departments could not provide us with that evidence for 56 percent of our sample. Consequently, management is unable to provide assurance that services in those cases were rendered according to all the terms of the contracts and that funds were disbursed for the purposes that had been authorized.

Exhibit 30.6

Contract Delivery and Assessment

Percentage of contracts in our sample of 50 that met or did not meet our criteria for ensuring delivery in accordance with the terms of the contract (35 of the contracts did not involve amendments).

Criteria	Met	Not Met
Formal certification pursuant to section 34 of the *Financial Administration Act* was on file indicating that the services had been delivered as specified in the contract and that payment was justified. (One contract still in progress)	53	46
There was a written assessment of whether the deliverables were provided complete, at acceptable quality, on time and at the contracted price. (One contract still not signed)	43	56
The contract was not a continuation of similar work under a previous contract, and there was no subsequent contract for similar work.	50	50
Contract amendments were properly justified and approved. (64 percent not amended)	31	5
Contract amendments were in the best interest of the government (e.g. not caused by poor contract planning or established with the intent of contract splitting). (64 percent not amended)	27	9

Amendments can compromise open access

30.52 We examined our sample of 50 contract files for evidence that a duly executed contract had been on file when amendments were made, and that the amendments had been properly justified and approved in accordance with Treasury Board policy. We also assessed whether the amendments were in the "best interest of the government" and were neither the result of poor contract planning nor a means of circumventing other contracting rules.

30.53 We found evidence that half the contracts in our sample either continued similar work begun under a previous contract or led to a subsequent contract for similar work.

30.54 Over a third of the contracts in our sample had amendments; only four of these were properly justified and approved. However, it was often difficult to distinguish between the amendment and the original contract's statement of work and definition of scope, which were ambiguous. The files contained very limited evidence that management had reviewed or challenged either the amount of work provided for in an amendment or the negotiation of the price. The absence of such evidence provides little assurance

that appropriate efforts were made to obtain best value for the Crown.

30.55 In a quarter of the cases with amendments, we found no indication on file of an increase in the work to be done in return for the increased amount to be paid. Such contract amendments are not in the best interest of the Crown. Poor planning of procurement, inadequate needs analysis and poor definition of requirements contribute to the often complex and expensive process of changing the original contract. Furthermore, extending or substantially amending contracts instead of soliciting new bids compromises both public scrutiny of the spending of public funds and open and fair access to contracting opportunities for other suppliers.

Posting of an Advance Contract Award Notice

30.56 As noted earlier, the posting of an Advance Contract Award Notice (ACAN) indicates a department's intent to award a sole-source contract to a particular supplier. If no other potential suppliers come forward by the end of the posting period, the contract may be awarded to the named supplier. There is no policy requirement about how long an ACAN must be posted. The PWGSC Contracting Manual stipulates that ACANs posted by its officers are to be posted for a minimum of seven working days. The Treasury Board Secretariat's Contracting Policy is unclear on whether there is a minimum period, but officials have told us that the intent is that all ACANs be posted for at least 15 days. What is clear in the Policy, however, is that for the contract to be "deemed competitive" for the purposes of giving a department access to the higher spending authorities that implies, the notice must be posted for at least 15 calendar days. Furthermore, this does not exempt the department from the requirement to confirm, before it posts an ACAN, that the contract qualifies for sole-sourcing under at least one of the four stipulated exceptions.

30.57 Used properly, ACANs are a useful addition to the government's contracting processes. In particular, they add transparency to the practice of sole-sourcing and, as a consequence, provide the opportunity for challenge by other potential suppliers. Before the use of ACANs was introduced, a sole-source contract remained essentially a private transaction between the chosen supplier and the department until well after the contract was let. The only way an interested party could find out about, let alone object to, such a contact before it was let was "through the grapevine."

Used properly, ACANs are a useful addition to the government's contracting processes.

30.58 We examined our sample of contracts for their compliance with the Contracting Policy requirements on the use of ACANs. These are outlined in Exhibit 30.7.

ACANs are becoming a "fifth exception"

30.59 As already noted, the Contracting Policy states that before an ACAN is

Exhibit 30.7

Posting an ACAN

Percentage of contracts in our sample of 50 that met or did not meet the Treasury Board policy criteria for the use of ACAN.

Criteria	Met	Not Met
The ACAN clearly identified which regulatory exception had been invoked to justify sole-sourcing the requirement, and/or it clearly identified which trade agreement exception had been invoked.	54	46
The posting of the ACAN was in accordance with the policy requirement that one or more of the regulatory exceptions to tendering must apply before an ACAN is posted.	11	89
In accordance with Treasury Board policy, the ACAN gave sufficient information on requirements, services to be provided and products to be delivered, timing and scope of work, and estimated cost to enable a potential supplier to prepare a valid challenge.	42	58
ACAN was posted on MERX for at least 15 calendar days.	6	94

posted, the department must have satisfied itself that one of the exceptions permitting sole-sourcing applies. In particular, the guidance makes it clear that ACANs are not to be used to "test the waters" to see if an exception applies. Our finding that the decision to sole-source was either not justified or not properly substantiated in 89 percent of the 50 cases we examined indicates that the Policy is not being followed.

30.60 In our interviews with managers it became clear that that they believed the use of an ACAN significantly lowered the threshold for defining "uniqueness". Their logic was, in essence, that an ACAN is posted publicly and allows for any other qualified potential supplier to challenge the proposed procurement. If there is no challenge, they reasoned, then there is nobody else who can do the work and the designated supplier is "unique" by default. This widely shared belief is, in our view, establishing ACANs as an informal "fifth exception" for sole-sourcing. The use of this rationale is contrary to both the spirit and the intent of the regulations.

ACANs are becoming an informal "fifth exception" for sole-sourcing.

Statements of requirements often inadequate

30.61 It is important that an ACAN contain enough information about the proposed procurement to give a potential supplier an adequate basis to mount a challenge. The necessary information would include, for example, the timing and value of the contract, the specific deliverables and any special requirements a proposal would need to meet, such as security or language requirements. We found that the quality of information contained in posted ACANs is generally incomplete, and sometimes inaccurate. As Exhibit 30.7 shows, for example, in 58 percent of our sample of 50 cases the ACAN failed to provide a sufficiently detailed statement of work and/or requirements, expected results of the procurement, the estimated value of the contract, or the name of the selected supplier. This is contrary to the intent for ACANs, which is to increase transparency in procurement and encourage challenges. The absence of this information means that other suppliers do not have sufficient information to decide if they can mount a challenge. A vaguely worded ACAN does not stimulate interest among potential suppliers (indeed, it may well mislead them), nor is it likely to result in a challenge. Further, should a potential supplier decide to mount a challenge, a vaguely worded ACAN will leave it at a substantial disadvantage in comparison with the chosen supplier, who may well have had extensive discussions with the department about its requirements. This has an adverse effect on the fairness and integrity of the ACAN process.

Over 90 percent of the notices in our sample were posted for less than 15 days.

No statement of reason for sole-sourcing

30.62 Only 54 percent of the ACANs provided the required statement indicating which of the exceptions was being invoked to justify sole-sourcing. The few in our sample that had to specify reasons for "limited tendering" exceptions under trade agreements did provide complete information, and appeared to have given attention to meeting the policy requirements.

Not posted long enough to be "competitive"

30.63 We found that over 90 percent of the notices in our sample were posted for less than 15 days. Again, this has an adverse effect on openness of access and fairness of opportunity, as potential suppliers may not have enough time to see the posting and mount a credible challenge.

Challenging an ACAN

30.64 In practical terms, the only exception to the competitive tendering requirement that applies to ACANs is the uniqueness of the supplier. If, as required by policy, the departments have taken steps before issuing an ACAN to ensure

that the selected supplier is indeed unique, then there should be no basis for the ACAN to be challenged and challenges should be rare. However, as we have found, departments are not taking the necessary steps and, based on our sample results, we estimate that about 90 percent of the ACANs posted are potentially challengeable.

30.65 This would lead us to expect that ACANs would be challenged relatively often. However, we found that challenges to ACANs are rare (see Exhibit 30.8). Of 522 ACANs for professional services posted by the four departments in 1998, only 35 were formally challenged in writing; 16 of those challenges were subsequently withdrawn by the challenger and the departments dismissed another 10 as invalid. Only 4 challenges were accepted — that is, the department considered whether the original ACAN should be cancelled — and they resulted in the initiation of a competitive procurement.

The management of challenges

30.66 We expected that the management of challenges to ACANs would comply with Treasury Board policy and, in cases involving PWGSC, with its Supply Manual. However, we found in these sources a lack of clear and documented policy direction and guidance for departments. Once an ACAN has been posted, a potential challenger has until the closing date specified in the Notice to present its challenge to the department. A department may reject any challenge received after that date. The guidance to departments on the treatment of challenges is vague. It requires that records of all contacts be kept and that the challenger be informed in writing of the result of the challenge. If the challenge is valid, the department is required to open the contract to competition. However, what constitutes a "valid" challenge is unspecified, as are the challenger's "due process entitlements". Some jurisprudence on these matters can be found in the decisions issued by the Canadian International Trade Tribunal on awards involving ACANs that were appealed to it, but most managers seem unaware of these decisions.

Lack of due process for challengers

30.67 Our audit findings suggest that there is a significant problem with the fairness of the challenge process.

30.68 There is no consistency in the way challenges are managed, even within a department. Procedures and practices vary with the contract officer and the program manager — in particular, with respect to the burden of proof they require from the challenger. We found no generally accepted criteria that define what constitutes a valid challenge. We also found ambiguity in the respective roles, responsibilities and accountabilities of the contracting officer and the program manager for deciding whether a challenge is valid or not.

We found that challenges to ACANs are rare.

30.69 The audit found that the level of effort required of a challenger to demonstrate proof of his or her capability to meet the contract's requirements is much higher than is required of the supplier named in the ACAN. An examination of decisions by the Canadian International Trade Tribunal suggests that it considers the challenger's burden of proof to be lower: the existence of a

Exhibit 30.8

ACANs Issued and Challenged

Calendar year 1998, issued by the four departments.

Criteria	Number	Percent
ACANs issued	522	100
ACANs challenged in writing	35	7
Challenges withdrawn by challenger	16	3
Challenges dismissed by department	10	2
Challenges accepted by department	4	1
ACAN cancelled by department	5	1

challenge with at least prima facie validity should be sufficient reason to put the matter to the test of the marketplace. In the cases we examined, it appears that the departments required the challenger to meet a standard of proof "beyond a reasonable doubt" before they would accept the validity of the challenge and open the contract to competition.

The challenge process lacks independence.

30.70 We found also that the challenge process lacks independence. A challenge is submitted to, and reviewed by, the same managers who presumably have already determined that the selected supplier is unique. Further, there is no mechanism for recourse to an independent third party if a challenger remains unsatisfied with a department's response to the challenge. An exception is when the contract is subject to one of the national or international trade agreements. In that case, after the initial departmental review, any dispute can then be appealed to the CITT (see Exhibit 30.9).

30.71 As already noted, while most ACANs could be challenged it is relatively rare that they are. A challenge represents an investment by the challenger of not only resources but also, potentially, good will. Very short time frames to formulate a challenge (15 days at most and typically less); an already chosen supplier who may have had months and the assistance of departmental officials to develop its proposal; a statement of requirements that may be vague and incomplete; a decision on the challenge's validity made by the very people who originally elected to sole-source, judged against unknown criteria to meet an unspecified standard of proof — taken together, these constitute good reasons for a potential challenger to decide that the investment does not hold a reasonable prospect of return.

30.72 In the end, what do ACANs as they are currently used add to the procurement process? It can be fairly concluded that they add transparency to

Exhibit 30.9

Canadian International Trade Tribunal – Sample Case

The Canadian International Trade Tribunal (CITT) is an impartial quasi-judicial body reporting to Parliament through the Minister of Finance. The Tribunal conducts inquiries into complaints by potential suppliers concerning procurements by the federal government that are covered by the *North American Free Trade Agreement*, the *Agreement on Internal Trade* and the World Trade Organization *Agreement on Government Procurement*.

The CITT adjudicated 73 cases from 1 April 1994 to 31 March 1999 including seven sole-source contracts, each of which was advertised by an ACAN. The CITT ruled in favour of the complainant in all seven cases.

In March 1999, Human Resources Development Canada posted an ACAN announcing its intention to contract with Microsoft to purchase certain software. Novell challenged the ACAN in writing. The challenge was not accepted and in April 1999 Novell filed a complaint with the CITT. In its complaint, Novell stated that this purchase was the penultimate step in HRDC's project aimed at eventually replacing its existing software with a single department-wide implementation of Microsoft's software. Novell also asserted that despite its protests to HRDC, it had not been provided with the information that it needed to respond to the ACAN and demonstrate its ability to meet the requirement. The CITT concluded that it was not persuaded that there was no reasonable alternative to the chosen software. It further stated that sole-sourcing this contract in the light of overwhelming indications of future long-term needs would seriously prejudice Novell and the competitive procurement system itself. It recommended that the contract be terminated, and that the requirement be drafted in generic terms and opened to competition. It awarded costs to Novell.

This ruling in favour of Novell's complaint is indicative of how the CITT interprets article 1016(2) of the North American Free Trade Agreement and corresponding articles of the Agreement on Government Procurement and the Agreement on Internal Trade. These articles relate to the fourth exception to the Treasury Board Government Contracts Regulations, which permits sole-sourcing where only one person is capable of performing the work.

the sole-sourcing of contracts, an area that before was relatively opaque. This transparency has led to some challenges by potential suppliers. It is not by accident that all of the sole-sourcing cases heard by the CITT since 1994 had been advertised in an ACAN. At least some of the proposed contracts in our sample were challenged. However, based on our audit findings we conclude that ACANs have contributed very little to competitiveness. Indeed, the fact that many in departments view them as having lessened the stringency of the uniqueness exception suggests that, on balance, their impact may have been a negative one.

ACANs and reporting on contracting performance

30.73 In compiling its statistics on contracting performance for 1996 and 1997, the Treasury Board Secretariat began the practice of treating contracts awarded after posting an ACAN as "competitive" for some statistical reporting purposes. In our view, this practice is misleading. First, as can be seen from our observations, the contracts are sole-source contracts — not the result of an open, competitive tendering process. Posting a notice of the intent to issue a sole-source contract is not a substitute for competition. Second, the classification is in error even by the Secretariat's own definition, as we estimate that approximately 90 percent of the ACANs posted in 1997 were not posted for the 15 days required for them to be "deemed competitive."

Values and the Use of Sole-Sourcing

30.74 Procurement decisions involve the exercise of judgment and discretion. They confer a benefit on the chosen supplier and equally deny the possibility of that benefit to all other potential suppliers. The decision to direct a contract involves more discretion than the decision to choose a supplier through a competitive bidding process. In directed (sole-source) contracting, there is no comparison of bids. With fewer controls, sound values are essential. Ultimately, probity in contracting depends on the sound values of individuals and a management infrastructure that supports those values.

30.75 In ethical terms, if there were no contracting regulations, a decision to sole-source a contract would require the balancing of different values. On the one hand is the efficiency and often personal convenience that sole-sourcing affords the manager; a qualified supplier is at hand and can begin work quickly, whereas opening the requirement to competition will be time-consuming, add cost, and may well yield the same result. On the other hand is the right of all suppliers to compete fairly for the Crown's business, and the expectation of taxpayers that they will receive the economic benefits of the competitive market. Fortunately, in this instance, individual managers do not have to determine where that balance of values lies; it has been determined for them by the government and is reflected in the contracting regulations. In those regulations, the government has, with narrowly drawn exceptions, established the balance firmly in favour of the rights of suppliers to compete fairly for business. Expanding on the exceptions, or ignoring them, represents an unwarranted decision by individual officials to alter the value balance that the government has established to guide the conduct of its affairs.

30.76 Our 1995 Report included a chapter on a study of ethics and fraud awareness in government. In the study, we asked public servants and senior managers if they believed it would be appropriate to issue a sole-source contract for $50,000 when instructed to do so by a superior if they knew that more than one supplier could provide the goods or services. Seventy-one percent of senior managers and 78 percent of public servants believed that it would be inappropriate.

Expanding on the permitted exceptions, or ignoring them, represents an unwarranted decision by individual officials to alter the balance of values the government has established to guide the conduct of its affairs.

30.77 Part of ensuring that contracting remains an "ethical" process is ensuring that staff at all levels follow the government's contracting rules and regulations. It is important to document the rationale for any contracting decision; documentation is particularly important when a sole-source contract is contemplated. A written record of decisions leading to the awarding of a contract is key to demonstrating that there is a need to contract, that requirements have been thought out carefully, and that the "right" contractor has been chosen. Later, it is important to document whether the contractor has delivered a good product on time and at reasonable cost. All of this information is needed so that managers can be held accountable for the contracting decisions they make.

The continuing practice of trying to justify the uniqueness of that which is clearly not unique can only have a morally corrosive effect on the working ethics of all of those involved in it.

30.78 The evidence we obtained in this audit suggests that in many instances, contracts were sole-sourced with full knowledge that the chosen supplier was not unique and that no other exception applied. In some cases, incomplete, incorrect and misleading information was provided in the ACAN. We are concerned that such practices deprive other potential suppliers of the rightful opportunity to bid. Further, the continuing practice of trying to justify the uniqueness of that which is clearly not unique can only have a morally corrosive effect on the working ethics of all of those involved in it.

Conclusion and Recommendations

30.79 This year, we examined 50 sole-source contracts that were advertised using an ACAN. We found that 89 percent of the contracts we reviewed should, under the government's rules, have been put out to public tender.

30.80 The decision to sole-source was, in our opinion, in accordance with the regulations in only 11 percent of the cases examined. In last year's audit we found that nearly a third of the sole-sourcing decisions were justified. Some of this difference may be explained by the fact that all of this year's contracts were advertised using ACANs, combined with the view generally held by the managers we interviewed that posting an ACAN reduces the onus on them to first fully establish the uniqueness of their chosen supplier. This leads to a conclusion that for most of the public servants associated with these contracts, the ACAN has become an unofficial "fifth exception" to the requirement that contracts be competitively tendered.

30.81 While there is no doubt that ACANs do increase the transparency of sole-source contracting, they do little to increase competitiveness. In addition to the problems associated with the uniqueness exception are the problems related to the completeness and accuracy of the ACANs, the absence of a clearly stated and widely shared standard of proof required for challenges, and the lack of guidance on standards of due process for challengers. These need to be addressed before ACANs begin to play a role beyond adding transparency.

The sole-source syndrome

30.82 The combined results of this year's and last year's audits lead to a conclusion that contract management problems — inadequate needs assessment, poor definition of requirements, weak cost control and poor control over deliverables — represent a syndrome arising from the lack of challenge and discipline inherent in the sole-sourcing process. The competitive tendering process has a certain built-in discipline that encourages good contract management. At the outset, for example, there is a need to develop a statement of requirements that is articulated clearly enough to serve as the basis for a competitive bid solicitation. A scoring system is also developed that permits the bids received to be assessed fairly and objectively. This adds further structure to the contracting process. The

competitive process itself serves to provide some assurance on price and value. The discipline inherent in the process will not guarantee that deliverables will be properly assessed and value received. However, the development of a biddable statement of work and criteria for evaluating bids certainly provides a solid foundation for those activities.

30.83 Based on our work this year and last, it is clear that the problems we have observed are government-wide in nature. While we recognize the Treasury Board Secretariat's limitations in dealing with matters of departmental management, we believe that as the entity responsible for contracting policy its strategic leadership is needed in responding, with departments and agencies, to the problems associated with sole-sourcing and ACANs. Accordingly, we are directing our recommendations to the Treasury Board Secretariat and through it to the departments and agencies of the government as a whole, rather than to any specific entity or entities.

30.84 Last year we concluded that the rules governing contracting were fundamentally sound; the key was to ensure that they were understood and followed. This led to two recommendations; we repeat the essence of those recommendations here.

30.85 The Treasury Board Secretariat should encourage deputy heads to ensure that those to whom contracting responsibilities are delegated fully understand the dual objectives of government contracting policy (open access and best value) and are held accountable for adherence to them.

30.86 The Treasury Board Secretariat should encourage deputy heads to ensure that when contracts are sole-sourced, the circumstances are fully consistent with the provisions of the Government Contracts Regulations and, if applicable, the relevant trade agreements.

Treasury Board Secretariat's response: *The Treasury Board's procurement policies, which apply to all departments and agencies, are based on the strong values and principles of competition, openness, equal access, transparency, fairness and best value for Canadians. Treasury Board's role is to establish these policies. Departments are accountable to their ministers and to parliamentarians for implementing these policies. To assure sound implementation, the Treasury Board has committed to developing a program of training and certification for procurement specialists in departments.*

ACANs do little to increase competitiveness.

30.87 In order for senior management to be accountable for contracting practices, it must be aware of what is happening. We observed that the decisions on sole-sourcing are often made by relatively junior officers and are not subject to review. In particular, we believe that a decision to sole-source on the basis of the supplier's uniqueness needs to be subject to independent review and approval by a senior member of departmental management before an ACAN is posted. We have been informed that National Defence is in the process of forming a senior-level committee whose mandate will include advance reviews when it is deemed necessary. Further, to support departmental senior management in its collective accountability for good contracting practices, we believe that in departments with a high volume of sole-sourcing (annually more than 50 sole-source contracts for amounts over $25,000), an internal audit of a sample of sole-source contracts needs to be conducted each year to verify compliance with government regulations and departmental policy, and the results reported to the deputy head.

The rules governing contracting are fundamentally sound.

30.88 The Treasury Board Secretariat should amend its policy on contracting to require that when a decision to sole-source is based on a determination

that the selected supplier is unique, the decision must be reviewed and approved by an independent senior departmental manager.

Treasury Board Secretariat's response: *The Treasury Board Contracting Policy already encourages departments and agencies to establish contract review mechanisms to review all, including sole-source, contract proposals. We do not agree that a policy requirement is necessary.*

30.89 The Treasury Board Secretariat should encourage deputy heads in departments that let more than 50 sole-source contracts each year for amounts over $25,000 to require that an annual internal audit of a sample of sole-source contracts be conducted to assess compliance with government regulations and departmental policy. The results of the audits should be reported to the deputy heads.

Treasury Board Secretariat's response: *The Treasury Board Secretariat is committed to implementing a monitoring framework for evaluating contracting activities. Such a framework will rely primarily on the results of departmental internal audits. The Treasury Board Secretariat is committed to consulting with the Auditor General on the best methodology for conducting these internal audits, and will communicate the methodology to departmental internal audit groups. We submit, however, that large-scale auditing of a sample of sole-source contracts by departments that award more than 50 contracts each year for amounts over $25,000 is simply not a cost-effective use of scarce resources for oversight activities.*

30.90 In looking at the instances in which an ACAN has been challenged, we have been struck by the lack of guidance to departments on how this process is to be conducted.

30.91 The Treasury Board Secretariat should develop and publish policy guidance on the management of the challenge process for Advance Contract Award Notices. This guidance should address the issue of the due process rights of challengers and the standard of proof required to sustain the validity of a challenge.

Treasury Board Secretariat's response: *As a follow-up to the guidance on Advance Contract Award Notices issued in March 1999, the Treasury Board has committed to providing further guidance on the implementation of the Advance Contract Award Notice Policy.*

30.92 When a contract for goods or services falls within the ambit of one or more of the trade agreements, an unsatisfied supplier can appeal to the Canadian International Trade Tribunal (CITT) for independent review and resolution of the matter. However, the trade agreements apply only to relatively large contracts for services (over $72,600 for NAFTA, over $100,000 for AIT and over $254,100 for WTO; different threshold values apply to contracts involving goods), and an appeal to the CITT sometimes involves retaining legal counsel and incurring the related expense. For all other contracts, the potential supplier's only recourse is to appeal back to the very department whose actions are the object of the appeal. The availability of an independent and efficient dispute resolution mechanism for appeals in the case of these other contracts could do much to enhance the fairness and transparency of the contracting process in general and sole-sourcing in particular.

30.93 The government should consider establishing an independent dispute resolution mechanism to deal with disputes related to contracts that fall outside the ambit of the trade agreements related to procurement.

Treasury Board Secretariat's response: *The government has in place the*

Canadian International Trade Tribunal, which handles bid disputes in contracts subject to three trade agreements, covering the key areas of federal government procurement. In addition, contractors who may have reservations about a contract situation now have recourse to departmental officials to resolve disputes. The Treasury Board Contracting Policy also encourages mediation, negotiation, and arbitration for dispute settlement. Finally, all contractors have the option of using the courts for redress. It is for these reasons that we do not feel an additional dispute mechanism is required.

National Defence's comment: *In the calendar year to date, 18 percent of sole source ACAN requests in the Department of National Defence have been denied by the departmental contracting authority. Moreover, the percentage of contracts over $25,000 involving ACANs has declined from 34 percent to 19 percent over the last three years.*

The Department acknowledges the need for continuing improvements in the use of ACANs and has taken steps to increase vigilance over their use. For example, the Department is creating a Contracting Advisory Committee of senior managers to review selected sole-source justifications, analyze trends and advise concerned managers on the need for changes to procedures and delegation levels.

Another Contracting Observation

The following case is one that came to our attention during the course of other audit work done by the Office. It was not one of the sample of cases audited for this chapter. However, many of our concerns about this case echo concerns raised in the chapter and, accordingly, we decided to publish it as part of this chapter rather than in the Other Audit Observations chapter of the Report.

The Royal Canadian Mounted Police and Public Works and Government Services Canada

Assistant Auditor General: Jean Ste-Marie
Director: Peter Sorby

The RCMP gave preferential treatment to a contractor and recommended without justification that the contractor receive a sole-source contract for police training. Furthermore, we are concerned about the conclusions drawn from an internal RCMP administrative review and a PWGSC review of the contracting process.

In 1996 the Royal Canadian Mounted Police recommended that Public Works and Government Services Canada (PWGSC) award a $362,000 sole-source contract for police training services. The contract did not meet the criteria for sole-sourcing specified in the Government Contracts Regulations. With additional competitively awarded contracts, the company has received a total of about $913,000.

30.94 In March 1996, a foreign government requested training assistance for its police supervisors. The RCMP decided it would hire a contractor to develop a course curriculum and train RCMP instructors, who would then train the foreign country's local police instructors. The contractor also would monitor the RCMP's training of the local instructors.

30.95 In June 1996, the RCMP initiated discussions with a single supplier to provide these services. The next month, it requested that PWGSC award a sole-source contract to this supplier. The RCMP's justification for sole-sourcing was that the work was urgent and confidential and that the firm had unique knowledge or experience. Normally, if the "pressing emergency" exception is invoked, the contract is let immediately to reflect the urgency of the requirement. However, more than four months elapsed between the foreign government's request for the assistance and the RCMP's request that PWGSC initiate the contracting process.

30.96 The RCMP had provided its selected supplier, the prime contractor, with information about the contract requirements one month before initiating the contracting process with PWGSC. It had met with the supplier to discuss the training program before the contracting process began and had informed him that no other suppliers were being considered for the job. Based on that information, and with documentation that the RCMP provided on the new training model to be used, the supplier began working on the project two months before PWGSC awarded the contract. Further, the supplier travelled to the foreign country to prepare and begin the training program before the contract was awarded.

30.97 In late August 1996, PWGSC awarded the contract on a sole-source basis because "the nature of the work was such that it would not be in the public interest to solicit bids." PWGSC told us this reflected RCMP representations that a public tender of the contract could embarrass both the Canadian and the foreign governments. Furthermore, PWGSC did not post an ACAN because the RCMP indicated that the contract involved work that was confidential, and the requirement to post an ACAN can be waived in such circumstances.

30.98 The RCMP's justification that it would not be in the public interest to solicit bids is not supported. Our examination of public records, including media articles and Hansard transcripts of proceedings in the House of Commons, showed that the state of the foreign police force and the RCMP's involvement in the training were already matters of public knowledge six months before the RCMP initiated the contracting process. Our review of the contract files revealed that PWGSC concluded there was "no security requirement that applies to this procurement since it does not involve the release of sensitive Canadian information, nor any access to a restricted Canadian site." In July 1996, the RCMP had signed a security requirement checklist confirming this. It could not provide us with a satisfactory explanation of the contradiction between these statements and its representation to PWGSC that the work to be done was confidential.

30.99 The value of the 1996 contract award, approximately $362,000, was significantly over the limit of $25,000 for non-competitive contracts, as prescribed in the Government Contracts Regulations. The contractor was paid $186,000 for six months work, with the remainder paid to his employees and spent on other related expenses.

30.100 The Government Contracts Regulations state that an exception to competitive bidding should not be invoked "simply because a proposed contractor is the only one known to management." The RCMP informed PWGSC that the supplier was the only firm known to have the necessary knowledge and experience. The RCMP did not try to identify other potential firms. An RCMP administrative review indicated that the supplier had been told that no other companies were being considered. The supplier was a former RCMP member and a former co-worker of the RCMP officials involved in initiating this contract.

30.101 In February 1997, senior RCMP officials were requested to approve a second contract with the same supplier in the amount of $22,500, with contracts of similar size to follow. RCMP documents indicate that the contractor had been told he would be awarded these contracts. Following an external complaint, this request was turned down; RCMP officials concluded that the "awarding of the second contract could have violated Treasury Board guidelines regarding contract splitting." In May 1997, PWGSC solicited bids from firms for the new contract. The supplier who had been awarded the first contract on a sole-source basis was in an advantageous position and subsequently was awarded the second contract valued at $315,159.

30.102 The conclusions drawn by previous internal departmental reviews of this contract differ from ours. A PWGSC review that considered only its role in the process concluded, "It is evident that the contracting officer made reasonable efforts to validate the sole-source rationale, and that proper procurement procedures were followed in this regard." The RCMP's administrative review concluded that "proper administrative procedures were generally followed during the awarding of the first contract." We are concerned that neither review detected any significant weaknesses in the contracting practices involved in this contract.

About the Audit

Objective

The objective of this audit was to examine a sample of sole-source professional services contracts to determine the extent to which they complied with the rules for contracting. We chose the contracts from four departments. All of these contracts had been advertised using an Advance Contract Award Notice. The audit assessed the extent to which the four principles that guide federal procurement — openness of access, competition, fairness of opportunity and obtaining best value for the Crown — were achieved by compliance with the rules and good practices for contracting. The overall purpose was to report to Parliament on the results of this work, especially since the ACAN is a relatively new mechanism whose use in government contracting is growing.

Scope

We based our examination on the policy requirements related to directed (sole-source) procurement and the use of ACANs as outlined in both the Government Contracts Regulations (GCRs) and the Treasury Board Manual on Contracting. Our criteria were derived from:

- an analysis of sections 5 and 6 of the GCRs and their interpretation in the Treasury Board policy;
- recent testimony and proceedings of the Public Accounts Committee, and its Report on Contracting for Professional Services;
- interviews with officials in the Treasury Board Secretariat, Public Works and Government Services Canada, and four line departments; and
- previous chapters on contracting in Reports of the Auditor General of Canada — 1997, Chapter 6 and 1998, Chapter 26.

To examine the results achieved by those working within the procurement policy framework, we also considered additional information based on:

- analysis of documents provided by, and discussions held with, officials in National Defence, Industry Canada, Human Resources Development Canada, and the Canadian International Development Agency;
- a survey of all 522 ACANs posted by the four departments in 1998, and certain basic information on all of the Notices and in particular on the nature and disposition of any challenges to them. This included attempting to interview all of the challengers of these contracts (response rate was 80 percent);
- an audit of a sample of more than 50 professional services contracts, selected at random from the 522 that used ACANs and representing payments by the four departments that totalled approximately $100 million.

The audit sample was identified and selected from the total population on the basis of a computer-generated random sampling frame. The results were adjusted to reflect the sampling design. The 95 percent confidence interval for the percentages presented in the chapter ranges from ± 13 percent for percentages of around 50 percent to ± 8 percent for percentages of around 90 percent.

The audit did not assess either the performance or the qualifications of the suppliers. No comments in the report should be construed as criticism of any supplier.

Related Information Sources

The Standing Committee on Public Accounts, *Report 28, Contracting for Professional Services: Selected Sole-Source Contracts.*
http://www.parl.gc.ca/InfoComDoc/36/1/P ACC/Studies/Reports/paccrp28-e.htm

The Treasury Board Secretariat, *Contracting Policy,*
http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/Contracting/contractingpol_e.html

Public Works and Government Services Canada, *The Supply Manual*,
http://www.pwgsc.gc.ca/sos/text/sm/en/

Audit Team

Assistant Auditor General: Shahid Minto
Principal: Hugh McRoberts
Director: Jaak Vanker

Bryan DePape
Paul Morse
Sami Sourani
Shahid Maqsood
Rosemary Marenger

For information, please contact Hugh McRoberts.