



Consulting and Audit
Canada

An Agency of Public Works
and Government Services
Canada

Conseils et Vérification
Canada

Une agence de Travaux publics
et Services gouvernementaux
Canada

National Energy Board

Final Report

Audit of Contracting Practices

March 2005

TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY.....	1
1. INTRODUCTION.....	3
2. SCOPE AND METHODOLOGY.....	3
3. MANAGEMENT FRAMEWORK – FINDINGS AND RECOMMENDATIONS.....	4
4. TRANSPARENCY AND COMPLIANCE TO REGULATIONS AND POLICIES – FINDINGS AND RECOMMENDATIONS.....	7
5. APPENDIX A – LIST OF NEB EMPLOYEES INTERVIEWED	10
6. APPENDIX B – AUDIT CRITERIA	11

EXECUTIVE SUMMARY

In light of heightened public awareness of specific types of service contracts of the federal government and the government's decision to conduct a comprehensive review of contracting, the National Energy Board (NEB) contracted with Consulting and Audit Canada (CAC) to conduct an independent audit of the NEB's contracting practices. The audit objectives were to determine the extent to which the NEB's contracting practices: are governed by an adequate internal control framework; follow the principles of best value, open access, fairness and transparency; and, comply with applicable acts and regulations and the policies and procedures of the Treasury Board and the NEB. CAC was to identify opportunities for improving the NEB's contracting practices and for using available resources more effectively.

Overall, the NEB demonstrated success in the following areas:

- Accountabilities and procedural guidelines for contracting activities are documented in the NEB contracting and procurement guide.
- Documents such as the FreeBalance Requisition and Request for Proposal (RFP)/tender documents are used as tools to ensure efficient and effective contracting.
- Commitment is made to promote Public Service values and ethics in the application of contracting policies and procedures.
- Contract requirements are defined in a way that link the proposed procurement to the objectives of the NEB.
- Contracting activities are in compliance with various government contracting regulations and policies.
- Contracts and amendments are approved within delegated limits.
- Contracts are administered in accordance with government financial policies, procedures, and accepted financial control practices.

Areas that could be improved were:

- No succession plan is in place to ensure qualified contracting specialists will be available in Supply Management.
- There is no qualified back up resource for the more complex contracts.
- Supply Management training and guidance on contracting procedures is performed on a piece-meal basis.
- Contracting process maps are not yet available to staff.
- Project managers responsible for contracting activities do not have signing authority; consequently, they do not have full responsibility for their decisions.
- A high percentage of contracts that could have been handled in-house are processed outside of the NEB.
- Instances of contract work started before the contract is in place.
- Contract request does not include adequate explanation for sole-source selection.
- The FreeBalance system is not user-friendly.
- No or infrequent cost-benefit analysis of alternatives is performed.
- There is no formal process for reviewing contracts at the NEB.

- Supply Management contract files do not contain all the necessary documentation.
- Supply Management does not request feedback from its clients on the performance of their services.

In this report, CAC has provided recommendations to address internal control gaps and to increase the effectiveness of the NEB's contracting practices.

1. INTRODUCTION

The National Energy Board (NEB) is a federal regulatory tribunal and a court of record. The NEB's responsibilities include the regulation of the construction and operation of inter-provincial and international pipelines and power lines; the setting of just and reasonable tolls for pipelines under federal jurisdiction; the regulation of exports of oil, natural gas, natural gas liquids, and electricity; and the regulation of oil and gas activities on certain Canadian lands.

Audit and Evaluation staff within the NEB are responsible for conducting internal audits and evaluations in accordance with the NEB Internal Audit and Evaluation Policy. Through internal audits and evaluations, the NEB seeks opportunities to improve performance, promote organizational learning and drive change.

In light of heightened public awareness of specific types of service contracts of the federal government and the government's decision to conduct a comprehensive review of contracting, the NEB Audit & Evaluation Committee considered fiscal year 2004-05 to be an opportune time to conduct an independent audit of the NEB's contracting practices. Consulting and Audit Canada (CAC) was contracted to perform this audit.

The audit objectives were to determine the extent to which the NEB's contracting practices are governed by an adequate internal control framework, follow the principles of best value, open access, fairness and transparency, and comply with applicable acts and regulations and the policies and procedures of the Treasury Board and the NEB. CAC was to identify opportunities for improving the NEB's contracting practices and using available resources more effectively.

2. SCOPE AND METHODOLOGY

CAC conducted an examination of the process of preparing, awarding, and administering service contracts by the NEB.

The methodology used for conducting the audit included interviews with employees and review of a sample of contract files. Interviews were held during the week of October 18 to 22, 2004 with twenty-two NEB employees with different levels of contracting experience. The employees were from all business units and at different levels in the organization. A list of the employees interviewed, by job title, is provided in Appendix A. A sample of twenty service contract files from fiscal years 2002/03 and 2003/04 were selected for review.

Criteria for auditing the contracting process in the NEB are outlined in Appendix B. They focus upon existing federal contracting regulations, control frameworks and good management practices.

3. MANAGEMENT FRAMEWORK – FINDINGS & RECOMMENDATIONS

Findings – Management Framework

At the time of the audit, CAC observed successes in the following areas.

- 3.1.1 Accountabilities and procedural guidelines for contracting activities conducted by the NEB are documented in the NEB contracting and procurement guide. This document includes information on contract policy, and the NEB governance model which outlines contracting activities, and responsibilities and accountabilities. The contracting and procurement guide is posted on the i-Web, the NEB's intranet.
- 3.1.2 There is an adequate process for requesting contracts at the NEB. Documents such as the FreeBalance Requisition and Request for Proposal (RFP)/tender documents are used at the NEB as tools to ensure efficient and effective contracting. The FreeBalance Requisition form is used to initiate all requests for goods, services or construction, regardless of their value. This form is initiated by the project manager and is approved by either the team leader or business unit leader. A request for proposal (RFP)/tender document is prepared and issued by Supply Management for competitive contracts. Most of the interviewees were aware of the existence of the FreeBalance Requisition, and, if they were involved in a competitive process, they were aware of the RFP/tender document.
- 3.1.3 The NEB demonstrates commitment in promoting Public Service values and ethics in the application of contracting policies and procedures by keeping information related to contracting confidential, and taking measures with employees and contractors to prevent potential or real conflicts of interest. A code of ethics form is completed when an employee is hired. The Human Resources unit sent staff a reminder in September 2004 to complete a code of ethics form if their situation has changed. For contractors, a "conflict of interest" clause is included in the contract form. All contractors are security cleared to a level appropriate for the type of contract.

During the audit, CAC observed instances where the NEB contracting function did not provide line managers with services that were responsive to their needs.

- 3.2.1 The project managers responsible for contracting activities do not have signing authority; therefore, they do not have full responsibility for their decisions. Instead, signing authorities are delegated to the business unit leaders and team leaders. Two interviewees indicated this approval procedure is problematic when project managers are not accountable for project costs or when team leaders are not aware of project details and costs.
- 3.2.2 A high percentage of contracts that could have been handled in-house are processed outside of the NEB. This creates a cumbersome process that requires extended time periods because of the added number of people involved. One contract that was processed outside of the NEB took three years to be awarded requiring the old contract to be extended which resulted in higher costs for the NEB.

- 3.2.3 Supply Management's approach to providing training and guidance on contracting procedures is not efficient. The extent of contracting activities for most interviewees is limited; consequently, there is heavy reliance on Supply Management for advice and information. Generally, interviewees felt Supply Management provided good information on contracting. However, some of the interviewees expressed frustration with getting advice and information on a piece-meal basis and not being able to understand how each step fits in the contracting process.
- 3.2.4 Contracting process maps have not been made available to the NEB staff. They are currently under review by Supply Management. These maps will include all the activities, pathways, and decision points for the various procurement processes (e.g. service contracts, temporary help contracts, and goods contracts).
- 3.2.5 There is no succession plan in place to ensure qualified contracting specialists will be available in Supply Management. The team leader of Supply Management indicated the NEB is looking at a succession plan. In Supply Management, advice and guidance on contracting is provided by two Supply Management Advisors. One Supply Management Advisor is responsible for service contracts and the more complex contracts while the other Supply Management Advisor is responsible for goods contracts and call-ups against standing offers. Both Supply Management Advisors can provide assistance to their clients on goods contracts and the less complex service contracts. However, there is no qualified back up resource for the more complex contracts.
- 3.2.6 All of the interviewees that use FreeBalance indicated the system was not user-friendly. They described the system as cumbersome, confusing, and archaic. Most of the interviewees indicated FreeBalance did not produce reports useful to them. Three interviewees indicated they maintain their own records to track contract status.
- 3.2.7 There is no formal process to review and challenge contracts prior to award (such as sole source and contracts exceeding a determined amount). For fiscal years 2002/03 and 2003/04, a high percentage (approximately 74 %) of all contracts awarded by the NEB were sole source. In the sample files audited, CAC observed a number of instances where the sole source contracts did not include adequate justification.
- 3.2.8 Supply Management does not request feedback from its clients on the performance of their services. The team leader of Supply Management indicated this area is currently under review. Many interviewees indicated they were not aware of performance/services standards for Supply Management. Two interviewees indicated they had to ask Supply Management for an update on the status of their request. Their requests were three weeks old and Supply Management's response was that they "misplaced the request."

Recommendations – Management Framework

Recommendations were prioritized and rated as High, Medium, or Low.

- MF-1. Consider developing a back-up resource with the required procurement expertise in complex contracting and a succession plan in place to ensure qualified contracting specialists will be available in Supply Management. (High)
- MF-2. Include information on the entire contracting process in training and guidance on contracting procedures. Supply Management should encourage their clients to use the NEB contracting and procurement guide as a reference tool. (High)
- MF-3. Finalize and make available the contracting process maps to all employees. (Medium)
- MF-4. Improve Supply Management’s control and monitoring of the contracting process by requesting feedback from its clients on their performance of services. (Medium)
- MF-5. Consider conducting more contracting in-house, and reduce the number of contracts processed outside of the NEB. (Medium)
- MF-6. Consider delegating financial signing authority to the project managers responsible for contracting activities. (Medium)
- MF-7. Consider establishing a formal review and challenge process to further strengthen the NEB’s contracting processes. The process should ensure a review of contracts of high risk such as sole source, possible or potential employer/employee relationship and contracts exceeding a determined amount prior to awarding them. (Medium)
- MF-8. Develop a process to review management requirements for reporting. Additional standard reports should be developed for those managers requesting similar information. (Medium)
- MF-9. Consider providing a simplified training package to FreeBalance users. (Medium)

4. TRANSPARENCY AND COMPLIANCE TO REGULATIONS AND POLICIES – FINDINGS & RECOMMENDATIONS

Findings – Transparency and Compliance to Regulations and Policies

During the audit of the sample files, CAC observed successes in the following areas:

- 4.1.1 Requirements were defined in a way that linked the proposed procurement to the objectives of the NEB on the FreeBalance requisition and the statement of work. Requirements were clearly defined, and objectives and performance criteria were included with the evaluation criteria to be used.
- 4.1.2 The pricing methods used in the contracts were appropriate to ensure best value and effective cost control. The chosen pricing methods were suitable for the defined requirements and established costs, and were consistent with industry practice (e.g. advances, holdbacks, fixed price, etc.).
- 4.1.3 Practices in the NEB to amend contracts were in the government's best interest. Amendments were issued with proper approvals and justifications. The number and value of the amendments were reasonable.
- 4.1.4 Contracting activities in the NEB were in compliance with various government contracting regulations and policies. Contracts and amendments were approved within delegated limits. All non-competitive contracts that were reviewed included appropriate contract approvals from Supply Management. There were no instances of employee/employer relationship in the audited files sampled. There were no occurrences of contract splitting in order to circumvent the prescribed approval limits.
- 4.1.5 Contracts were administered in accordance with government financial policies, procedures, and accepted financial control practices. Reviews of Finance files indicated invoices were in accordance with contract terms and conditions. In all Finance files reviewed, invoices were properly approved to certify receipt of goods or service under the Financial Administration Act (FAA), Section 34, and approved to request payment from the Consolidated Revenue Fund under FAA, Section 33. Cheques were mailed or delivered direct to suppliers, and those involved in the procurement function were independent from the cheque issue function.

At the time of the audit, CAC observed instances where the NEB contracting activities could be improved upon to ensure the principles of best value, open access, fairness and transparency are followed and appropriate regulations and policies are complied with.

- 4.2.1 One contract involved a former public servant who was awarded a contract shortly after retirement to perform work substantially the same as he did as an employee.
- 4.2.2 Three contracts examined were renewals of retainer service agreements. These contracts were non-competitive, and there was no evidence that other sources were considered. The NEB had contracted with these companies for a number of years. One company was used for the past ten years.
- 4.2.3 The NEB's contract approval and award process could be improved. For five of the twenty contract files reviewed, the contractor began work on the project before the contract was in place.
- 4.2.4 Generally, Supply Management contract files did not provide a complete audit trail. The files examined did not contain the bids received or all of the tender evaluations. Only one evaluation was observed. Consequently, CAC could not make comment on whether or not contract evaluations and selection methodologies in the NEB were consistent, transparent, and cost effective.

Cost-benefit analysis of alternatives was not completed in nineteen of twenty files reviewed. Due to the absence of cost-benefit analyses in our sample of selected files, CAC could not determine if the cost-benefit methodology used in the NEB was appropriate or if alternate sources were considered.

Copies of the FreeBalance Requisitions were not placed in the contract files; however, copies of e-mail correspondence between the users and Supply Management regarding the approved requests were included.

There was no evidence in any of the contract files that an evaluation of the contractor's performance was performed to ensure the terms of reference were met and the identified requirement was addressed. If there were unsatisfactory evaluations, CAC did not find any evaluations in the sample files audited.

Of the twenty files audited, the contents of ten files were mostly loose. Information was not maintained in a chronological order, and facsimile copies were mostly undated.

Recommendations – Transparency and Compliance with Regulations and Policies

Recommendations were prioritized and rated as High, Medium, or Low.

- TC-1. For contract requests that do not go through the competitive process, include adequate explanations for sole-source selection or any other exceptions to the bidding process. (High)
- TC-2. The project authority must not give approval for the contractor to begin work on the project before the contract is in place. If retroactivity is necessary, a reason must be provided and approved by a higher authority. (High)
- TC-3. Discretion should be taken when issuing contracts with former public servants to ensure that the work performed is not work that could or should be done by a successor. (High)
- TC-4. Review NEB's practice of renewing retainer service agreements year after year without a periodic cost-benefit analysis of alternatives. (Medium)
- TC-5. Provide a complete audit trail in the contract files. The files should contain all documentation on user's request through the FreeBalance Requisition form, options considered, bid solicitations and evaluations, decisions, approvals, etc. All contents in the contract file should be secured to prevent loss, and filed in chronological order. (Medium)
- TC-6. Perform and document cost-benefit analysis of alternatives in the files where warranted. (Medium)
- TC-7. Request the project authority to complete contractor evaluations/performance records at the completion of the contract. These records should be maintained for future reference of prospective contractors. (Medium/Low)

APPENDIX A – LIST OF NEB EMPLOYEES INTERVIEWED

Business Unit	Title
Applications	Environmental Specialist, Alliance, Northern,

	Greenfield Teams
Commodities	Team Leader, Oil/NGL
Corporate Services	(Acting) Business Leader
Corporate Services	Financial Advisor – Reporting, Finance Team
Corporate Services	Financial Assistant, Finance
Corporate Services	Team Leader, Supply Management
Corporate Services	Supply Management Advisor, Contracting and Property Management
Corporate Services	Supply Management Advisor, Contracting and Procurement
Corporate Services	Administrative Assistant, Human Resources
Information Management	Business Leader
Information Management	Systems Project Manager, Information Systems
Information Management	Team Leader, Desktop and Network Services
Information Management	(Acting) Team Leader, Information Resources and Distribution
Information Management	Team Leader, Information Systems
Information Management	Technical Leader, Change Initiative
Internal Audit & Evaluation	Manager, Audit & Evaluation
Operations	Business Unit Administrator
Operations	Integrated Compliance Planning Project Manager
Operations	Team Leader, Operations Compliance
Operations	Team Leader, Pipeline Audits
Secretary and Regulatory Services	Secretary of the Board
Secretary and Regulatory Services	Regulatory Administrator

APPENDIX B – AUDIT CRITERIA

- Objective – To assess the adequacy of the management framework for the contracting function in the NEB.**

The planning, directing, controlling and monitoring of the functions from the NEB viewpoint

were examined. This component includes examining the management framework, planning and implementing the process, controlling/monitoring the process, and values and ethics.

Audit Criteria for the Management of the Contracting Function

1.1 Management of the Contracting Process

The NEB processes for contracting should facilitate its efficient and effective management within the objectives and frameworks set by the Treasury Board, and the management framework of the NEB.

1.2 Planning the Contracting Process

Planning for the contracting process should be integrated within the NEB planning process to facilitate the achievement of program objectives and goals.

1.3 Implementing the Contracting Process

The contracting function should provide line managers with services that are responsive to their needs and are in compliance with established regulations, and policies.

1.4 Controlling/Monitoring the Contracting Process

Line managers and procurement staff should receive adequate information to control and monitor the contracting process.

1.5 Values and Ethics

The NEB demonstrates its ongoing commitment in promoting Public Service values and ethics in the application of the NEB's contracting policies and procedures.

APPENDIX B – AUDIT CRITERIA (continued)

2 Objectives – To ensure that the NEB follow the principles of best value, open access, fairness and transparency, and to ensure that contracting activities are administered in accordance with the appropriate regulations and policies.

The requirements identification and specifications, the assessment of alternatives, the

preparation of the user's request, the procurement and pricing methods, the bid solicitation and evaluations, the contract approval and award, the financial controls, the progress reports, the amendments, and the post-contract evaluation were examined.

The overall contracting process must be transparent within a competitive environment and all existing regulations and policies must be adhered to.

The contracting process should be conducted in a manner that will:

- a) Stand the test of public scrutiny in matters of prudence and probity, facilitate access, encourage competition and reflect fairness in the spending of public funds;
- b) Ensure that operational requirements are met;
- c) Support corporate goals to ensure public safety, maximize economic benefits, protect the environment, and respect the rights of those affected by energy facilities and activities under the NEB's jurisdiction; and,
- d) Comply with the Government's obligations under the North American Free Trade Agreement (NAFTA), the World Trade Organization-Agreement on Government Procurement (WTO-AGP) and the Agreement on Internal Trade (AIT).

Audit Criteria for the Requirements Definition

2.1 Requirements Identification

The requirement should be defined in a way that clearly links the proposed contract to the objectives of the NEB.

2.2 Requirement Specifications

For service requirements, the nature of the services, quality performance and timeliness should be specified.

2.3 Assessment of Alternatives

There should be an assessment of alternatives to meet the requirement, complete with supporting information and time and cost estimates.

2.4 Preparation of user's requests

The user's request for acquisition should be properly completed and authorized.

APPENDIX B – AUDIT CRITERIA (continued)

Audit Criteria for Acquisition

2.5 Contracting Method

The contract planning process should assess the contracting method to ensure best value-for-money, development of the contracting schedule and any necessary management, production and logistics plans.

2.6 Pricing Method

The pricing method used in all contracts shall be the most appropriate to ensure best value and effective cost control.

2.7 Bid Solicitation and Evaluations

Where it is cost effective to do so, all qualified firms shall have an opportunity to compete for government contracts.

Contract evaluation and selection methodology should be consistent, transparent and cost effective.

2.8 Contract Approval and Award

Contracts shall be approved by the levels of authority set out in the Government Contract Directives and the NEB internal delegation of authority whichever are lower.

Audit Criteria for Contract Administration

2.9 Financial Controls

Contracts should be administered in accordance with government financial policies, procedures and accepted financial control practices.

2.10 Progress reports

The contractor should provide progress reports on the financial and technical status of the contract, as per the contract terms and conditions.

2.11 Amendments

Contracts shall not be amended unless such amendments are in the government's best interest.

APPENDIX B – AUDIT CRITERIA (continued)

2.12 Post-Contract Evaluations

The contract is reviewed to ensure compliance and contractor performance.

A Post Contract evaluation form should be completed and kept on file. Each procurement office should also maintain a separate summary of performance records by contractor for reference in possible future contracts.