

WESTERN ECONOMIC DIVERSIFICATION CANADA

FINAL REPORT

AUDIT OF CONTRACTING STANDARDS

January 2, 2004

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APPENDIX A – People Interviewed

EXECUTIVE SUMMARY

In October 2003, the Audit and Evaluation Branch of Western Economic Diversification Canada (WD) requested BMCI Consulting Inc. (hereinafter referred to as BMCI) to conduct an audit of WD's contracting standards. The objective of this audit was to conduct an assessment of contracting practices in place at WD and their compliance with established Government policies and regulations. Weaknesses and best practices were to be identified and relevant recommendations presented. Specifically, BMCI assessed the adequacy of the management framework for the procurement function and processes in WD. The audit was conducted between October 30, 2003 and December 10, 2003.

In implementing its mandate, WD contracts for certain goods and services. These contracts represent a major portion of its operating expenditures of \$48.3M for 2002-03. As reported in the Department's "Annual Purchasing Activity Report for Treasury Board Secretariat" for the calendar year 2002, the Department either directly or through Public Works and Government Services Canada (PWGSC) entered into 1,432 contracts with a total value of \$4.918M or 10.2% of the operating budget.

BMCI found that the Department has already taken positive measures to further strengthen its contracting processes including the establishment of a Contract Review Committee (CRC) - a best practice. The Executive Committee created the CRC in December 2002 with a mandate to review all sole-source service contracts and amendments to these contracts. The creation of the CRC has provided a formal challenge mechanism in the review of these contracts.

Opportunities exist for further enhancements to the contracting process. Departmental processes for procurement do not fully facilitate its efficient and effective management within the objectives and frameworks set by the Treasury Board and the management framework of the Department. The Departmental standards for contracting are generally appropriate but their application needs improvement. BMCI has made a recommendation that could lead to broadening the CRC mandate to include all contracting processes. BMCI has also recommended

that a risk assessment of the various contracting options being used be conducted to establish areas requiring additional executive oversight.

BMCI found that the roles and responsibilities of the participants in the contracting process are neither documented nor clear to all concerned. BMCI has recommended that the roles and responsibilities be documented and that consideration be given to making the documentation available to all employees through the Department's Intranet site along with checklists to guide employees through the contracting process.

In reviewing the contracts entered into by WD, or by PWGSC on behalf of WD, it was observed that there were many low dollar contracts for what appeared to be similar types of work. In most instances, these contracts were entered into through competitive processes. While seeking contractors through a competitive bidding process is commendable, it is not always the most efficient process for low dollar contracts. BMCI has suggested that the Department investigate the possibilities and potential for entering into standing offer and/or supply arrangements covering some of its forecast needs over a two year period. BMCI is aware of one such arrangement that the Department has put in place for audit, evaluation and consulting services and considers this a best practice. This supply arrangement has been used effectively by Headquarters and a number of regions.

BMCI understands that in the past the Department has had contracts with characteristics of employer/employee relationships. BMCI was informed that these have been dealt with and no such contracts were encountered in the sample of contracts it reviewed.

In conclusion, while WD has already taken important steps to strengthen its contracting and procurement processes, opportunities still exist to even further enhance these processes.

1.0 INTRODUCTION

In October 2003, the Audit and Evaluation Branch of Western Economic Diversification Canada (WD) requested BMCI Consulting Inc. (hereinafter referred to as BMCI) to conduct an audit of WD's contracting standards. The audit commenced with a Preliminary Survey on October 30, 2003 that included initial interviews and document reviews to identify focus areas for the audit. These interviews included individuals in the Audit and Evaluation Branch, the Headquarters office responsible for Contract Administration, the office responsible for Contract Administration in the British Columbia Region and senior officers whose areas of responsibility involve significant contracting activity. Fieldwork was carried out between November 24, 2003 and December 10, 2003.

1.1 Background

Founded in 1987, WD has been mandated to promote the development and diversification of the economy of Western Canada and to advance the interests of the West in national economic policy. Economic growth in Western Canada is uneven. Economic differences and opportunities exist between sectors, and geographically. Each province has unique challenges to address and opportunities to pursue. Differences exist between communities as well.

WD, due to its makeup and size, is in essence a strategic, pragmatic, responsive and flexible Department that is able to look for and create opportunities that a larger entity could not achieve. The Department is often asked to deliver national programs to western Canadians on behalf of other Federal departments. WD is a catalyst for collaboration and leveraging financing together with other governments, small start-up firms, universities, research institutes and large established enterprises.

In the delivery of its mandate, the Department expends a major portion of its operating expenditures on contracting for goods and services. The budgeted expenditures for the 2002-03 fiscal year were \$367.9M while the budgeted non-responsible revenue was \$26.5M. Grants and

Contributions made up \$322.9M of the budget. Actual expenditures in 2002-03 were \$246.8M. Grants and Contributions accounted for \$198.5M. The department’s operating expenditures accounted for \$48.3M.

As reported in the department’s “Annual Purchasing Activity Report for Treasury Board Secretariat” for the calendar year 2002, WD entered into 1,432 contracts either directly or through Public Works and Government Services Canada (PWGSC) with a total value of \$4.918M or 10.2% of its operating budget (please refer to Table 1).

The budgeted expenditures for the 2003-04 fiscal year are \$370.3M while non-respendable revenue is expected to be \$23.65M. Grants and Contributions are budgeted for \$324.9M. The operating expenditures are, therefore, expected to be \$45.4M.

Goods and services are acquired through purchases using petty cash, acquisition cards, call-ups against standing offers, competitive contracting, and non-competitive contracting. Cash and acquisition card purchases are not included in the Treasury Board Secretariat’s Purchasing Activity Report.

WD delivers its programs and services through four regions, based on the western provincial boundaries, as well as through its Office in Ottawa. Each region, as well as the Ottawa Office, has its own procurement capability with Alberta handling the needs of Headquarters.

Table 1 – Summary of Contracting Activity for the Calendar Year 2002

	Contracts below \$25,0000		Contracts \$25,000 and above		Total	
	\$,000	#	\$,000	#	\$,000	#
Department itself						
Goods	1,618	1,104	0	0	1,618	1,104
Services	1,509	272	1,042	21	2,551	293
Departmental Total	3,127	1,376	1,42	21	4,169	1,397
PWGSC on behalf of Department						
Goods	96	8	111	2	207	10
Services	232	20	310	5	542	25
PWGSC Total	328	28	421	7	749	35

Grand Total	3,455	1,404	1,463	28	4,918	1,432
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WD, like most other departments and agencies, is subject to various trade agreements. For services, the threshold limits for the two-year period starting January 1, 2004 to December 31, 2005 are:

North American Free Trade Agreement	\$ 89,000
Internal Trade	\$100,000
World Trade Organization	\$261,300

Care must be taken when contracting to ensure that the rules of such trade agreements are followed. Preferential treatment policies may only be applied to procurement activities below the applicable thresholds or if the particular procurement is in an excluded category. Any circumstances in which WD’s contracting does not follow the rules of these trade agreements could result in a challenge through the Canadian International Trade Tribunal.

Each of the various procurement methods offers its own challenges and requires its own rigor in order to ensure compliance with government regulations. At its meeting of December 11-12, 2002, a decision was made by the Executive Committee to establish a Contract Review Committee (CRC) at WD to ensure that exemplary contracting practices are applied on a consistent basis.

The Audit and Evaluation Branch undertook a project in May 2003 to identify contracting standards in place at WD. Checklists were developed and shared with the appropriate contracting authorities for use in future audits of contracting.

The 2003-04 Audit and Evaluation Business Plan, approved by the Departmental Audit and Evaluation Committee (DAEC), identified the need to undertake an audit in which Departmental standards concerning contracting services were to be reviewed and evaluated in terms of their compliance with Government policies and regulations.

1.2 Objectives

The objective of this audit was to conduct an assessment of contracting standards and practices in place at WD and their compliance with established government policies and regulations. Weaknesses and best practices were to be identified and relevant recommendations presented. Specifically BMCI assessed the adequacy of the management framework for the procurement function and process in WD.

1.3 Scope

The scope of this audit involved an examination and assessment of contracting standards in place at WD. The period covered by the audit was from April 1, 2002 to September 30, 2003. WD's contracting standards were compared to Treasury Board and PWGSC requirements as well as other relevant Government legislation or policies. Travel, hospitality, and grants and contributions were excluded.

2.0 APPROACH AND METHODOLOGY

The approach and methodology utilized for the audit included interviews with appropriate subject matter specialists in WD as well as a meeting with the Treasury Board Secretariat's (TBS) Senior Analyst responsible for WD in Ottawa and its Policy Analyst responsible for contracting. In addition, reviews of a number of contract files were conducted to determine the process followed for individual contracts. As indicated by the 2002 Treasury Board Secretariat's Annual Purchasing Activity Report, 35 contracts with a value of \$749K were processed through PWGSC. Since the focus of the audit was on WD processes and not those of PWGSC, no interviews were carried out with PWGSC representatives.

Interviews were conducted with selected WD Responsibility Centre Managers whose operations include contracting. To confirm an understanding of processes, the Responsibility Centre

Managers or their delegates were asked to provide the step-by-step process used in handling their individual contract files. This process was carried out in each region as well as in the Ottawa Office.

The Audit was carried out according to the Terms of Reference on Contracting Standards dated September 23, 2003 provided by WD. The approach taken to both the interviews and the file reviews centred on appendices to that document i.e. the audit criteria dealing with standards as outlined in Appendix B and the risk areas identified in Appendix A. Appendix C of that document provides an approach to carrying out a contracting audit and it was also referenced during the course of BMCI's audit, as appropriate.

3.0 CRITERIA

The five criteria established for the audit were as follows:

3.1 Management of the Procurement Process

Departmental processes for procurement should facilitate its efficient and effective management within the objectives and frameworks set by the Treasury Board, and the management framework of the Department.

3.2 Planning the Process

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

3.3 Implementing the Process

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

3.4 Controlling / Monitoring the Process

Line managers and procurement staff should receive adequate information to control the ongoing performance of the contracting process.

3.5 Values and Ethics

The Department demonstrates its ongoing commitment in promoting values and ethics in the application of Departmental policies and procedures on procurement and contracting activities.

4.0 FINDINGS AND RECOMMENDATIONS

4.1 The Context

The context within which the Department enters into contracts is important to achieving a complete understanding of the findings, recommendations and conclusions of this audit. The following paragraphs provide this context:

What is a Contract?

A contract is an agreement or promise, enforceable by law. In this audit report, reference is made to agreements through which the department obtains goods and services from outside suppliers. The words "contracting", "contracting activity" and/or "contracting processes" are used to describe the approaches used by departmental officials to determine their procurement needs, to set up the appropriate contracts to meet these needs, and to monitor and discharge these related contracts.

Why Does the Department Contract?

In general, the goal of contracting for goods or services is to meet operational needs and to secure the best value for the money spent. Buying goods and services from external suppliers provides one way to obtain the inputs that the Department needs to conduct its business. Under some circumstances, it may be preferable to buy such inputs from outside suppliers than to make or provide them directly using internal resources.

What are the Risks in Contracting?

There are a number of potential risks involved in the contracting process. Some of these risks include:

- Unclear objectives i.e. managers may fail to adequately clarify what they really want to achieve through a contractual arrangement e.g. what are the deliverables?
- Inadequate examination of options i.e. managers may determine a course of action without adequately examining all available options;
- Managers might inadvertently buy from unreliable or high-cost suppliers;
- Managers might order too much or too little of a specific good or service;
- Managers might accept less qualitatively or quantitatively than was agreed to in the contract;
- Managers who contract must work within the framework of civil and criminal law; and
- Managers may make contracting decisions for their own advantage, or that of friends or associates.

All of these considerations apply to contracting in both the private and the public sectors.

However, public sector contracting must also, for example:

- contribute to a range of public policy objectives that are "secondary" to direct operational needs, but important to stakeholders;
- conform, as a matter of law, to complex Federal government and other legal obligations; and
- deal appropriately with any pressures that might involve electoral or partisan advantage or apply special-interest considerations, including those of suppliers. Treasury Board policy

makes it clear that each transaction must be able to withstand the test of public scrutiny.

Two complementary principles are central to Federal Government contracting: best value and open access to contracting opportunities.

- The principle of best value is designed to ensure that in acquiring goods or services, the Government receives the best combination of value and price.
- The principle of open access gives all qualified vendors a fair chance to do business with the government without political or bureaucratic favour.

An open, competitive bidding process provides the best guarantee that both of these principles will be respected. In certain circumstances, however, it may be impractical or undesirable to hold an open competition and a directed or sole-source contract must be met. The Government Contract Regulations recognize and provide for this when:

- the value of the contract is relatively small;
- there is an urgent need for the good or service;
- it is not in the public interest to have an open competition; or
- the good or service is unique and can be obtained from only one source.

The Government Contract Regulations and the Treasury Board's Contracting Policy elaborate on these exceptions. The following chart is an extract from the Contracting Policy:

Government Contracts Regulations	Treasury Board Secretariat's Contracting Policy
Pressing emergency	Emergencies are normally unavoidable and require immediate action. An emergency may be an actual or imminent life-threatening situation, a disaster that endangers the quality of life or has resulted in the loss of life, or one that may result in significant loss or damage to Crown property.
Value of less than \$25,000	Specific dollar limit
Not in the public interest	Should normally be reserved for dealing with security considerations or to alleviate some significant socio-economic disparity
Only one person (firm) capable of performing the work	Should be invoked only where patent or copyright requirements, or technical compatibility factors and technological expertise suggest that only one contractor exists. This exception should not be invoked simply because a proposed contractor is the only one known to management.

Note: According to the Treasury Board’s Contracting Policy, any use of the four exceptions to the bidding requirement should be fully justified on the contract file or, where applicable, in submissions to the Treasury Board.

Source: Government Contracts Regulations (Section 6), and Treasury Board's Contracting Policy (Section 10.2.2 to 10.2.5).

4.2 Management of the Procurement Process

The audit criterion of the “management of the procurement process” was that “Departmental processes for procurement should facilitate its efficient and effective management within the objectives and frameworks set by the Treasury Board and the management framework of the department.” In the opinion of BMCI, while WD has taken important measures to strengthen the procurement process, including a “best practice” of establishing a Contract Review Committee, this criterion has not been fully met in all significant respects.

4.2.1 Delegated Financial Authorities

BMCI reviewed the Delegation of Financial Authorities document for WD and found it to be consistent with the authorities delegated to the Department. It was noted, however, that the

current Delegation of Financial Authorities document was last approved by the Deputy Minister and Minister in 1997. Since then, the Department has been restructured. Treasury Board policy requires that departments review and update all delegated authorities at least annually. The policy also states that though the appointment of a new Minister does not automatically nullify existing delegations of authority, departments must prepare a new document as quickly as possible for the new Minister's approval. BMCI was shown a draft of a proposed replacement document that more accurately reflects the department and how it currently operates.

Recommendation:

It is recommended that the Director General, Finance ensures that an appropriate Delegation of Financial Authorities document is presented to the Deputy Minister and Minister for their approval at the earliest opportunity.

4.2.2 Contract Review Committee

BMCI expected to find a comprehensive Departmental management framework for contracting that would describe and map the contracting process as well as the functional financial controls supporting the process. However, such a framework is only partially in place e.g. WD has established a Contract Review Committee (CRC). This Committee was created at the meeting of the Executive Committee on December 11th and 12th, 2002. Such Committees are encouraged by the Treasury Board Contracting Policy and are considered a "best practice".

BMCI did not evaluate the Department's financial controls as this was outside the scope of this audit, however, it is generally accepted that well-functioning financial controls provide the foundation for sound financial management. Appropriate financial controls provide important mechanisms and processes that enable an organization to comply with, for example, *the Financial Administration Act (FAA)*. The following sections of *the FAA* are relevant:

- Section 32 of the *FAA* requires an organization to ensure that it has the money to pay

- for any goods or services before it orders them;
- Section 34 of the *FAA* requires an organization to verify that it has received these goods or services and that they are satisfactory;
 - Section 33 of *the FAA* requires that the person who "signs the cheque" for goods and services must have the authority to do so; must be satisfied that the requirements noted above have been met; and must be satisfied that it is a lawful charge against the appropriation.

With the creation of the CRC, it is now necessary, prior to initiating a contract to obtain goods or services, to establish whether or not the contract is subject to approval by the CRC. The membership of the CRC includes one Assistant Deputy Minister (as Chairperson), the Director General, Finance and the Director General, Human and Corporate Services. It was noted that the Treasury Board Contract Policy states that when such committees are established, the Chairperson of the committee should be the Senior Financial Officer.

While this requirement could be interpreted as an attempt to ensure that at least the Chairperson is a senior departmental executive, there may well be other important reasons for the Treasury Board stating that the Chairperson should be the Senior Financial Officer. Accordingly, it may be useful for WD to seek a clarification from the Treasury Board Advisory Committee on Contracts on the basis for this requirement.

Recommendation:

It is recommended that the Chairperson of the WD Contract Review Committee seek a clarification from the Treasury Board Advisory Committee on Contracts regarding the Treasury Board Contracting Policy requirement that the Chairperson of departmental contract review committees must be the Senior Financial Officer. It may also be useful to address the recommended membership of the Committee at the same time.

The Deputy Minister announced the creation of the CRC in December 2002 and stated that it would be the approval level for all non-competitive service contracts. The Terms of Reference

were established and provided to the various Departmental offices in May 2003. The CRC's mandate is to serve as the approval level for all non-competitive service contracts, amendments to such contracts and those contract proposals for which three bids were not received by either, telephone, fax, or mail.

It is important to note that the restriction requiring a minimum of three bids to be received is more stringent than the Treasury Board Contracting Policy which considers a contract to have been established through a competitive process if three or more proposals were sought, but only one received. BMCI concurs with the CRC's position that unless three bids were received the process may not have the appearance of being truly competitive. Questions may also arise as to whether the manager asked for proposals from three or more firms all the while knowing that all of the firms except one would either not send in a proposal, or would not be able to respond

The WD Executive Committee may have concluded at the time that the contract area of greatest risk was non-competitive (or sole source) service contracts. While this may have been the case, it has not been substantiated through a risk assessment of the contracting activity of the Department or a review of the contracting process.

In May 2003, the CRC requested detailed information on all non-competitive service contracts that had been entered into or amended since December 12, 2002. These contracts were to be reviewed by the CRC and a report prepared for the Executive Committee. The Terms of Reference of the CRC also required it to report to the Executive Committee every three months beginning on July 1, 2003 indicating the level of activity of the CRC as well as its key observations. To date such a report has not been prepared. Part of the reason for the difficulty encountered by BMCI in locating any analysis associated with the CRC's activities may be that no officer has been identified specifically to provide dedicated analytical and other support to the CRC.

BMCI is of the opinion that in addition to this review of non-competitive service contracts and amendments to such contracts, the CRC should direct that data be compiled on all contracting

activities so that a risk assessment can be conducted of WD's overall contracting process.

BMCI noted that as part of the review conducted in May by the Audit and Evaluation Branch (referred to in section 2.1 of this report), a framework for recording the results of a risk assessment of contracting and procurement was developed. In this framework document, Advanced Contract Award Notice (ACAN) contracts are grouped with non-competitive contract options. Treasury Board Policy considers that if an ACAN is not challenged, it receives the same contracting limits as open bidding (competitive process).

Treasury Board Contracting Policy states that the committees are a means to maintain a formal challenge mechanism for all contractual proposals, including those within departmental authority, those sent to PWGSC, and those submitted to Treasury Board. As previously mentioned, BMCI noted that the current mandate of the CRC is restricted to only non-competitive service contracts.

Recommendations:

It is recommended that the Director General, Human and Corporate Services consider the following:

- *The Chairperson of the CRC and the Directors General, Finance and Human and Corporate Services take the necessary action to identify an employee to fulfil the role of CRC Analyst to provide the necessary analytical and other support for the Committee.*
- *The CRC take the necessary action to fulfil its requirement for regular reporting to the Executive Committee at the earliest opportunity.*
- *The Director General, Human and Corporate Services conduct a risk assessment of contracting activities and processes for the review of the CRC and ultimately, the Executive Committee.*

- *The Executive Committee ensures that the mandate of the CRC continues to reflect Departmental requirements within the context of the aforementioned risk assessment and other factors, as appropriate.*

BMCI did not find any other documents that described the contracting process to be followed within the department. A number of departmental employees were interviewed. Some of these individuals were directly responsible for contracting in their offices and other individuals were essentially users of the contracting process as a means to achieve operational objectives of their organizations. Many in the latter category had never seen the Terms of Reference for the CRC. They were also not aware of the requirement that if only one bid has been received, the CRC did not automatically consider the contracting process to have been competitive and its approval was required.

Through these interviews and file reviews it also became evident that some officers responsible for providing advice and assistance to those originators of contracts were not aware of the requirement for receiving at least three valid proposals. Furthermore, a number of employees advised that they did not require contractor assistance often and, therefore, relied on the advice and expertise of the administrative staff in the office for guidance on the process. The Contract Officer in the British Columbia Region is aware of the need to provide managers with advice and has been developing guidance on contracting that could ultimately be placed on the Intranet site for managers to refer to as required. While BMCI is not endorsing the application of the guidance developed in the Region to the Department overall, the concept has merit. Clearly, there is a need for more information of an authoritative nature on the contracting process to be made easily available to employees.

WD is currently an active member of the Treasury Board Advisory Committee on Contracts which considers matters involving the form and procedure of Government contracts or the policy and guidelines on contracting that may be referred to it, or where the Committee sees the need for change or clarification.

To ensure that the concerns of WD are being addressed at the Treasury Board Advisory Committee on Contracts as well as internally, a forum where Contract Administrators can share best practices and deal with issues is required.

Recommendations:

It is recommended that the Director General, Human and Corporate Services consider:

- *establishing a “Contracting and Procurement” section on the departmental Intranet site that could include:*
 - *A brief description of the various ways contracts can be entered into;*
 - *The results of the risk assessment of contracting activity;*
 - *A description of the roles and responsibilities for all participants in the process;*
 - *A process map and checklists to assist employees through the process, including a list of authoritative contacts for further discussion.*

- *promoting an annual working session for Contract Administrators so they may share best practices, develop approaches that would contribute to greater standardization of contract administration Department-wide and be apprised of current rules and regulations applicable to contracting in WD.*

4.2.3 Training

An important aspect of the management of the procurement process is ensuring that all those involved in the contracting process have received appropriate training. BMCI understands that WD had training in contracting processes conducted during the latter part of 2002. BMCI requested a copy of the course curriculum, the learning objectives for the course and a list of those who had participated in the course, however, this information was not provided. BMCI is, therefore, unable to assess whether the training was suitable or whether it was provided to the

appropriate individuals. Such training is vital to an efficient and effective contracting process. Some departments consider it sufficiently important that individuals have their authority to approve contracts removed until they take the prescribed training.

Before any contracting authority is delegated to an individual, management should ensure that the individual has had the required training.

Recommendation:

It is recommended that the Director General, Human and Corporate Services ensure that all those involved in the contracting process receive the prescribed training in a timely manner; consideration should also be given to applying possible limitations on the exercise of contracting authority until such time as this training has been received.

4.2.4 Acquisition Cards

In accordance with Treasury Board policy, WD does use acquisition cards as a convenient and less burdensome method of procuring and paying for some goods and services, while still ensuring effective financial control. BMCI was advised that the total activity for the fiscal year 2002-03 was approximately \$500,000. These cards are issued to a limited number of individuals in Headquarters, the regions and the Ottawa office. WD considers the use of acquisition cards to be low risk even though an actual risk assessment has not been carried out. Greater detail on the use of these acquisition cards was not readily available for review, however, BMCI understands that the use of these cards is monitored by the Finance function. Given the materiality of this issue, BMCI concluded that additional work was not required on Acquisition Cards at this time.

4.2.5 1997 Internal Audit

An internal audit was carried out by WD's Audit and Evaluation Branch in 1997 and a number of recommendations were made and accepted by Departmental management. BMCI requested,

but has not received, information indicating management's assertions on the current status of the recommendations.

The Treasury Board Policy on Internal Audit (effective April 2001) requires that Deputy Heads ensure that monitoring systems are established in order that management action plans responding to internal audit observations are successfully implemented. It is recognized that the 1997 audit was conducted four years before the revised Policy on Internal Audit became effective, however, it is accepted good management practice to ensure regular follow-up on corrective actions that have been agreed upon.

Recommendation:

It is recommended that the Deputy Head ensure that a monitoring system is established in order to verify that management action plans responding to internal audit observations have been successfully implemented. The action plan should include all the recommendations related to the 1997 internal audit.

4.3 Planning the Process

The criterion for this portion of the audit was "Planning for the process should be integrated within the departmental planning process to facilitate the achievement of program objectives and goals." BMCI is of the opinion that this criterion is met in most significant respects.

Ideally managers would be able to forecast the need for future contractor assistance in their operations during the annual planning exercise. In some cases in WD, it is possible to identify ongoing requirements specifically. An example could be the need for environmental

assessments. In other cases, it is only possible to identify in a more general manner, the nature of the work that will likely be contracted since some of this work will be similar to that done by public servants and the contracts are used to handle the peak workload periods. In the files that BMCI reviewed there was evidence that such needs were identified and alternative methods of meeting these needs were considered.

In BMCI's review of the lists of contracts entered into in each office, it was found that there was normally a short period of time from the date the contract was awarded to the date the work actually started. Officers responsible for the contracting process in the regions informed BMCI that they are often asked at the last minute for assistance in arranging contracts. This is not necessarily indicative of weaknesses in the Departmental planning process. Rather, it is more likely an indication of a lack of clear understanding by clients of the work effort and time required by functional procurement and contracting experts involved in the contracting process. The establishment and communication of service standards for the various contracting options would be one possible approach to reducing the pressure of "last minute" requests. These standards should clearly indicate the time required for the process to function efficiently and effectively as well as the roles and responsibilities of both the client and the service provider.

Recommendation:

It is recommended that the Director General, Human and Corporate Services establish and communicate service standards that would apply across the Department for the various contracting options as well as the roles and responsibilities of clients and service providers involved in the contracting process. The CRC should be provided with a copy of any documentation issued in this regard.

4.3.1 First Opportunities to Western-Based Contractors

One of the sub-criterion in the planning process for contracting is "In line with its overall objectives does the Department give first opportunity to western-based contractors?" BMCI

observed that in the awarding of both non-competitive and competitive contracts, the source lists developed consisted primarily of western-based contractors. Individuals interviewed indicated that providing such an opportunity to western-based contractors was practical as these firms were familiar with the culture and the economies of the western provinces. Furthermore, by using a western-based supplier, any travel costs would be reduced or eliminated. BMCI is not aware of any authority that allows the Department to only consider western-based contractors. If a detailed understanding of, or experience with, the culture and economies of the western provinces are important, or would add value, then such expertise should be included in the criteria used in evaluating the bids received.

4.4 Implementing the Process

The criterion used for this portion of the audit was “The procurement function should provide line managers with services that are responsive to their needs and are in compliance with established policies, laws, regulations and procedures.” WD has made progress in this area, particularly with creation of the CRC to provide oversight to the contracting activities. However, BMCI is of the opinion that further measures are required to ensure that the Department is contracting in an efficient and effective manner.

In Section 5.2, the creation of the CRC and the new direction it is setting for contracting in the Department were discussed. In that Section, a requirement was identified to clearly define the roles and responsibilities of procurement staff (the service providers) as well as operational staff (the clients) so that all participants would know and understand the process and their part in it. BMCI noted that the procurement function was indeed operating in accordance within the policies established by the Treasury Board for contracting.

Other opportunities exist to further strengthen the process. BMCI observed changing approaches to the issue of contracting by both procurement staff and operational staff. Many interviewees informed us that they thought having their contract proposals referred to the CRC would significantly slow them down. Accordingly, many were switching to competitive contracting

processes and seeking bids or proposals for most of their contracts. It is difficult to challenge any approach that makes Government business more open, transparent and apparently available. Treasury Board does, however, clearly permit non-competitive contracting in several situations. One of these is contracts under \$25,000. Most of WD contracts are under this dollar limit. In fact, a large percentage of contracts are under \$10,000.

One of the reasons Treasury Board allows sole source contracting under \$25,000 is to enable the contracting process to be efficient for both the Government and potential suppliers. It can be perceived to be a burden by suppliers to prepare proposals for low dollar value contracts. This can be especially so if the evaluation criteria are complex or if a large number of suppliers have been sent a request for proposal. The time spent preparing proposals is overhead for these suppliers and cannot be billed. Potential suppliers must perceive that their work effort is not out of proportion to both the size of the potential contract and the likelihood of success in being selected as the successful bidder. The likelihood of being selected as the successful bidder is influenced by a number of factors some of which are the availability of the skills and experience to do the requested work and the number of potential competitors. This is less of a difficulty when the nature of the proposal is not complex and the determining factor is the price at which the supplier is willing to work.

4.4.1 Standing Offers/Supply Arrangements

BMCI observed that a significant number of the Department's low dollar value contracts fell into certain common categories. This suggests that it might well be possible for the Department to forecast the need for specific services one or two years into the future, make one larger dollar value request for proposals and establish either a standing offer or a supply arrangement. In fact, WD has already established one fairly large supply arrangement for audit, evaluation and consulting services that can be described as a "best practice". BMCI found that this supply arrangement has already been used by HQ as well as by two different regions consistent with expectations when it was established. Basically, the work effort is not a great deal more for a large contract than for a small one.

Following this line of reasoning, both Departmental and supplier effort is more efficiently used when the skills required for a job are similar to the skills that might be used in other jobs over a period of, say, two years. The potential work now is greater and thus more attractive to potential suppliers. Suppliers, knowing that they will be competing to get on the standing offer or supply arrangement tend to offer their best skills at the most attractive prices. While standing offers and supply arrangements are not the solution for all needs, they often result in skills being available at attractive prices. Furthermore, they are relatively easy to use and drawdowns can be arranged rather quickly. In the next few paragraphs, a description is provided of the differences between these two, often confused competitive contracting processes.

- **Standing Offers:** A standing offer is not a contract. It is an offer from a potential supplier to provide goods and/or services at pre-arranged prices, under set terms and conditions, when and if required. No contract exists until the Government issues an order or a “call-up” against a standing offer and there is no actual obligation, by the Government, to purchase until that time.
- **Supply Arrangements:** Supply arrangements are non-binding agreements between PWGSC and suppliers to provide a range of goods or, more commonly, services on an “as required” basis. They are lists of qualified suppliers identified as potential sources from which departments can obtain firm price quotations on specific requirements.
- **Supply arrangements include a set of predetermined terms and conditions that will apply to any subsequent contracts. Supply arrangements allow departments to solicit bids based on their specific scope of work and in this way they differ from standing offers which only allow departments to accept a portion of a requirement already defined and priced. Many supply arrangements include ceiling prices which allow customer departments to negotiate the price downward based on the actual requirement or scope of work.**

Recommendation:

It is recommended that the CRC review WD's contracting activity for a suitable period (perhaps over the past two years) to determine if there are patterns that suggest that there are opportunities for establishing supply arrangements or standing offers.

4.4.2 Contract Splitting

Treasury Board Policy states that contracting authorities must not split contracts or contract amendments in order to avoid obtaining either the approval required by statute, by the Treasury Board Contract Policy or by the appropriate level of management within the department or agency. BMCI's review indicates that a certain level of contract splitting may be taking place.

While Treasury Board provides some limited direction on this issue, the North American Free Trade Agreement deals with the issue in more detail. The following is an extract:

“5. Where an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:

(a) the actual value of similar recurring contracts concluded over the prior fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or

(b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.

6. In the case of a contract for lease or rental, with or without an option to buy, or in the case of a contract that does not specify a total price, the basis for valuation shall be:

(a) in the case of a fixed term contract, where the term is 12 months or less, the total contract value, for its duration or, where the term exceeds 12 months, the total contract value, including the estimated residual value; or

(b) in the case of a contract for an indefinite period, the estimated monthly installment multiplied by 48.

If the entity is uncertain as to whether a contract is for a fixed or an indefinite term, the entity shall calculate the value of the contract using the method set out in subparagraph (b).”¹

Recommendation:

It is recommended that the Director General, Human and Corporate Services consider the implications of adopting the criteria as outlined in NAFTA and that discussions with the CRC also be held at the appropriate time.

4.5 Controlling/Monitoring the Process

The criterion for this portion of the audit was “Line managers and procurement staff should receive adequate information to control the ongoing performance of the contracting process.” The Department does not meet this criterion in all significant aspects.

An important new feature of the WD process for monitoring and controlling the contracting processes within the Department is the CRC. BMCI wanted to be certain that the CRC was in fact being referred all contracts that should have been sent to it for review and approval. It was found that the CRC does not actually meet (either in person or by telephone); instead, CRC members review many contracts using an email process. Furthermore, BMCI could not locate a record of all contracts considered by the CRC and the decisions made with respect to each of those contracts.

In each region, the officers responsible for contracting and procurement activities maintain a spreadsheet, in Microsoft Excel, with information about the contracting activity in the specific region. These spreadsheets are a necessary database because the Department's Gx financial system is not yet fully functional and is not able to provide reports on contracting activity in the Department. The officers use these spreadsheets to provide answers to whatever questions they may receive from senior management; to respond to ad hoc requests such as the CRC request in May 2003 and to ATIP requests; and as a basis for input to the Treasury Board Annual Purchasing Activity Report. It is important to note that the spreadsheets do differ from region to region and that while core information is essentially the same, there are some differences that appear to reflect a local requirement. It is understood that the Gx system is expected to be fully operational by the end of the fiscal year. Should there be significant delays, it would be desirable for steps to be taken to ensure that all regions are collecting contracting information in comparable formats.

In addition, BMCI noted that senior management had significant concerns about the availability and timeliness of WD's financial information. Such information is critical for planning and decision making as well as when responding to Access to Information and Privacy (ATIP) requests.

Recommendations:

It is recommended that the CRC:

- *designate the CRC Analyst as the focal point to receive all submissions to the CRC as well as for communicating CRC decisions to the originating office;*
- *require the CRC Analyst to maintain a record of CRC decisions; and*
- *request the Audit and Evaluation Branch to periodically monitor the process to confirm that the CRC does receive all contracts for review that it has requested and*

¹ North American Free Trade Agreement, Chapter 10

that its decisions are implemented.

4.5.1 Treasury Board Annual Purchasing Activity Report

The information contained in the Treasury Board Annual Purchasing Activity Report may not be accurate insofar as the information on WD is concerned. The report is prepared by PWGSC based on information prepared and submitted by the Department. An officer in WD compiles the input based on information the officer receives in response to a request sent to each WD office. After PWGSC compiles the report for all departments it sends a copy of the relevant section to each department for confirmation and/or correction. If PWGSC does not receive a response from an individual department, then PWGSC considers the information to be correct. BMCI was informed that for WD the verification of the PWGSC is not performed. Accordingly, information being used by Treasury Board and others may not correctly reflect the actual situation.

Recommendation:

It is recommended that the Director General, Human and Corporate Services ensure that the information contained in the Treasury Board Annual Purchasing Activity Report correctly reflects the situation at WD.

4.5.2 Verbal Contracts

In reviewing these spreadsheets, it was observed that there were a number of contracts in which the contractor commenced work prior to the official date of the contract's commencement. The most likely reason for such a situation would be that a verbal contract had been agreed to after which a written contract was prepared. Such contracts, while binding on the Government, represent a significant risk.

The Treasury Board Contract Policy requires that the terms and conditions of any contract issued pursuant to the Government Contract Regulations and the Contract Policy be formulated in writing and authorized by an individual with appropriate authority. It is possible that a contract entered into verbally would not have been approved through the normal process. BMCI was informed of one instance in the Department where this occurred and disciplinary action was taken that required the person who entered into the contract to have all decisions of a financial nature reviewed and counter-approved by the individual's supervisor for a period of six months. This was an appropriate measure since had no remedial and disciplinary action been taken, other individuals may have concluded that the proper contracting procedures need not always be followed and that there is no penalty for non-compliance.

Recommendation:

It is recommended that the Director General, Human and Corporate Services consider measures that might be taken to further encourage compliance with Contract Policy as well as approaches that might be taken with individuals for whom non-compliance becomes a concern.

4.5.3 Access to Information and Privacy Requests

BMCI was informed that WD receives a number of ATIP requests for information on its contracts. Such requests are labour and time intensive, involving locating contract files and extracting the requested information. It should be noted that contracts entered into by PWGSC on WD's behalf are included on the "Contract History" web site of Contracts Canada. Therefore, the information on these contracts is already in the public domain. In order to increase transparency and reduce the workload caused by ATIP requests, WD may wish to consider approaching Contracts Canada about the possibility of including all WD contracts on this web site. At the moment no other department has all of their contracts listed although one is in the process of making their internal database appropriately compatible for doing so.

Recommendation:

It is recommended that the Director General, Human and Corporate Services investigate options to make information on WD contracting activity more readily available such as the possibility and practicality of listing all WD contracts on the Contracts Canada web site or on the Department's own Intranet site.

4.6 Values and Ethics

The criterion for this aspect of the audit was “The department demonstrates its ongoing commitment in promoting values and ethics in the application of departmental policies and procedures on procurement and contracting activities.” BMCI is of the opinion that the Department meets this criterion.

A major issue is the protection of third party information as required under the Privacy Act. BMCI found that:

- the contract files in each office were maintained in secure locations; and
- access to the WD offices is sufficiently controlled to prevent unauthorized individuals from accessing these files.

The second major issue is the potential for real or perceived conflicts of interest in the contracting process. BMCI found that employees in general were aware of the potential for conflict of interest situations. Of the files sampled, BMCI found only one contract where the individual was a retired Government employee and this individual had retired from a Crown Corporation. Steps were taken to ensure that there was no conflict of interest for the Department and the contractor. In addition, the individual won the contract through a competitive process.

4.6.1 Employer-Employee Relationships

Treasury Board Contracting Policy states that outside the Public Service, the existence of

employer-employee relationships is determined through the application of a number of tests established by the common law. It is virtually impossible establish general rules on the meaning of employment in common law that apply uniformly and without exception; each relationship must be assessed individually.

In the past, WD had a significant number of contracts that had many of the characteristics commonly associated with employer-employee relationships. BMCI was advised that these contracts have effectively dealt with and that only a few remain.

BMCI requested, but has not received, the following information regarding the number and value of these contracts:

- those that were active in 2002;
- those outstanding at the time of this audit; and
- those projected to still be in place as of March 31, 2004.

It is important to note that BMCI's review of contracting standards and the limited file review has not identified any such contracts.

Recommendation:

It is recommended that in their monitoring of contracting activity, the CRC should ensure that potential employer-employee relationships are identified and brought to the attention of the contract originators for remedial action, as necessary.

5.0 CONCLUSIONS

The following conclusions have been reached based on BMCI's audit of WD's contracting standards and the criteria for this audit:

- BMCI is of the opinion that while WD has taken important measures to strengthen the management of the procurement process, including a “best practice” of establishing a Contract Review Committee, the criterion related to the management of the procurement process has not been fully met in all significant respects. Departmental processes for procurement should facilitate its efficient and effective management within the objectives and frameworks set by the Treasury Board and the management framework of the department and opportunities exist to further enhance existing processes.
- BMCI is of the opinion that the Department meets, in most significant aspects, the criterion that “planning for the process should be integrated within the departmental planning process to facilitate the achievement of program objectives and goals.”
- BMCI is of the opinion that further measures are required by the Department to ensure that “the procurement function provides line managers with services that are responsive to their needs and are in compliance with established policies, laws, regulations and procedures.”
- BMCI is of the opinion that the Department does not meet, in all significant aspects, the criterion that “Line managers and procurement staff should receive adequate information to control the ongoing performance of the contracting process.”
- In terms of values and ethics, BMCI is of the opinion that the Department meets this criterion and that it demonstrates its ongoing commitment in promoting values and ethics in the application of Departmental policies and procedures on procurement and contracting activities.

APPENDIX A

LIST OF PEOPLE INTERVIEWED

APPENDIX A – LIST OF PEOPLE INTERVIEWED

<i>LOCATION</i>	<i>TITLE</i>
Headquarters	Director General – Human and Corporate Services
	Director – Audit and Evaluation
	Officer – Audit and Evaluation
Alberta Region	Assistant Deputy Minister
	A/Director General – Operations
	Director – Policy
	Finance Manager – Finance and Corporate Services
	Manager – Classification and Staff Relations
	Finance Officer – Finance and Corporate Services
	Finance Officer – Finance and Corporate Services
B.C. Region	Acting Manager – Finance and Corporate Services
	Senior Business Officer (Innovation)
	Contracting & Service Officer – Finance and Corporate Services
	Program Development Officer – Strategic Initiatives
	Communications Officer – Consultations, Marketing and Communications
	Coordinator, Urban Aboriginal Strategy
Manitoba Region	Director - Corporate Administration
	Director – Policy, Planning and External Relations
	Regional Manager – Finance and Corporate Services
	Manager – Special Projects
	Manager – Operations (Program Delivery)
	Manager – Canada-Manitoba Business Service Centre
	Regional Administrative Office – Finance and Corporate Services
	Finance Clerk
Saskatchewan Region	Director General - Program Development and Strategic Services
	Manager - Finance and Corporate Services
	Manager – Payments and Monitoring
	Manager - Partnership Agreements
	Manager – Infrastructure
	Senior Policy Analyst
	Regional Administrative Officer
Ottawa Office	Assistant Deputy Minister
	Director General – Operations
	Director - Financial Planning, Analysis and Resource Management
	Director, Consultations, Marketing and Communications
	Manager, Financial Policy and Corporate Accounting
	Corporate Contracting and Procurement Officer
	Director Executive and Ministerial Secretariat
Treasury Board Secretariat	Senior Analyst

	Project Officer – Procurement and Project Management Policy Directorate
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